EU legislation in the field of M&As

Evidence from case law studies in the Greek and the EU law system

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1. Introduction

The merger is the largest corporate event that transforms two separate firms in one single entity. Practically, it is the legal union of one or two or more companies in one contract. The past decades, we have noticed and unprecedented pace of consolidation in all developed economies. In fact, merging activity is the result of the economic conditions that prevailed in the late 1990s and early 2000s century, leading to the creation of large, multinational conglomerates[1].

In the recent decades, the financial markets have witnessed successive waves of mergers and acquisitions (M&As) in an unprecedented magnitude. A determinant factor for this consolidation trend was the several legislative changes that influenced the structure of each sector. To this end, it is highly important to examine the impact of the legal systems on M&As, despite the fact that such events constitute corporate events. Hence, in this thesis, I attempt to examine global M&As under a legal perspective, while focusing primarily on legal frameworks and law cases in Greece and the European Union (EU). In this regard, I describe all the legislative changes that are likely to influence merging activity, as well as the evolution of mergers and acquisition overtime.

From a legal standpoint, I examine the M&As phenomenon under the perspective of the competition law, which is a specific part of the commercial law. In the first part of this thesis, I attempt to analyze the M&As phenomenon in the light of the European law, based on the relevant directives and law provisions. As such, I describe all the relevant regulatory changes for the merger and acquisitions market, and the results of these changes in determining the future and structure of consolidation within the Union while examining significant court decisions regarding M&As in the recent

[1] Perrakis E. Law of limited company m vol.8 , company transformations, conversion, merger, disruption, aquisition , publications Nomiki Vivliothiki, 2001.

years. In addition, I analyze the approach of the European Commission (EC) for the approval of a proposed merger, by examining the geographical and relevant market between the two merging entities, in an effort to detect whether the deal may violate the merger regulation and have negative externalities in the competitiveness on the Union, while addressing specific categories of undertakings and their merger process as an exception to the general rule. Additionally, I compare cases between mergers of banking and nonbanking firms under a law viewpoint, while I also refer to the new consolidation directives imposed by the EU, in order to distinguish the differences in the examination of a merger between standard commercial companies and special sub-categories of commercial companies, such as credit institutions.

In the second part of this thesis, I approach the issue on a theoretical case-law basis of the M&As in the Greek market. For this reason, I investigate the most important case -law examples for Greek mergers in the banking industry, and in the nonfinancial sector in general. Alongside with this investigation, I again compare acquisitions between banking and nonbanking firms on a theoretical basis. Lastly, I analyze the legal consequences of these M&As in the local market, the nullity conditions of such practices, and the potential influence on the competitiveness of the Greek market.

In the last part of this thesis I refer to the amendments proposed by EC in order the current state of merger regulation be improved. Particularly, I refer to the effectiveness of European merger legislation and the need to amend the existing EU legislation in order to simplify administrative procedures and make legislation for contracting parties more efficient.

PART 1- The European market for corporate control.

The development of the single European market, alongside with the introduction of the single currency and the willingness to be involved in the transatlantic dealings had fueled the rapid development of the M&A wave in Europe at that time[2].

At this point, we choose to analyze the merger procedure, in terms of regulatory approval for a proposed merger in the European Union. In the later part of this section we will refer on the EU merger regulatory policy, requirements and antitrust laws, as well as the stages of the examination for a proposed merger in the EU, and finally, selective case studies from the EU banking and non-banking industry.

While organizations joining powers (referred as mergers) could expand markets and convey advantages for the economy, a few combinations might diminish competition. Joining the exercises about various organizations might permit the companies, for example, to create new products more effectively or to decrease generation or circulation costs. Through their expanded efficiency, it turns out that buyers take advantage from higher-quality products in more attractive costs. However, some mergers might diminish rivalry for a market, as a rule by making or fortifying a predominant player. This is probably going to affect buyers through higher costs, decreased decision or less advancement. Expanded competition inside the European single market and globalization, are among the key variables which motivate firms to merge. Such reorganizations are welcome to the degree that they don't obstruct competition but on the contrary they increase competitiveness, enhancing the states of development and raising the way of life in the EU. The target of looking at proposed mergers is to prevent hurtful impacts on competition. Cross-border mergers within the

[2] M. Marina, & L. D. R Renneboog, "Mergers and Acquisitions in Europe."(CentER Discussion Paper; vol. 2006 -6). Tilburg: Finance, p.2 -3.

EU countries would be inspected at a European level. This permits organizations exchanging in different Member States of EU to get tolerance for their mergers in one go.

1.1 The European merger control procedure – European legislation applicable to mergers and acquisitions.

Going further the analysis for the European mergers and acquisitions, it is essential that we refer to the procedure followed by the European Commission in order to review those mergers.

A key factor in the success of M&As is the legal framework of the country where the business partnership takes place. The laws and regulations applicable to M&As are important in order to complete the merger process, as many complex legal issues may arise, which must be resolved by specific laws and regulations in the sector of M&As. Referring to the framework of the EU, the European Commission adopts directives and regulations from time to time to protect free competition. Member states are required to comply with European Union directives by adopting laws in agreement with them. Competent authority for Community-level competition issues is *the European Competition Commission* with Representatives in every EU member state. A major part of the legal framework for M&As is also the *international financial reporting standards*, the main objectives of which are increased transparency and the measurement of company profitability. These objectives are directly related to the depiction and measurement of the effects of acquisitions and mergers on the financial consistency of companies[3].

Following the adoption of the first Merger Regulation in 1989, the audit concentration in the EU has become one of the main pillars of EU competition law and its key is clearly defined. The recast Merger Regulation (after the Reform), which was issued in 2004, further strengthened the monitoring function of concentrations at EU level in many ways, in particular through introducing the SIEC criterion as a relevant criterion for examining mergers and by improving the possibilities for referral of merger cases by the Member States to the Commission and vice versa[4] (we will analyze it thoroughly below).

The control of concentrations in the EU contributes significantly to its operating internal market, both by providing a harmonized set of rules for mergers and acquisitions, as well as by assuring that the economic concentration on the market does not cause damage to the competition. Judging from the recent experience, the increasing globalization of business activities and the deepening of the internal market has led their control concentration in the EU to focus even more on cross-border assumptions and those that have an impact on the European economy.

The vast majority of the concentrations investigated, already, by the Commission does not create competition concerns and is approved after a preliminary Phase I investigation. The Commission has banned only 24 concentrations from in 1990 and 6 in 2004[5] .

[3] Europa.eu/competition/mergers/overview
[4] White Paper, “towards more effective EU merger control”, COM (2014) 449 final, 2014.
[5] Commission Staff working document accompanying the White Paper "Towards more effective EU merger control".

1.2. Historical background of EU merger legislation – what is in force today?

A first protection effort of free competition was attempted by the Treaty of Rome (25 March 1957) by which the European Economic Community was established. This treaty set up bases for a common competition policy that would be pursued by the Commission, in Articles 85 and 86. Article 85 outlined several provisions, which restrict or distort competition within the common market, which are stated to be incompatible with the common market and are prohibited by associations of undertakings, while Article 86 refers to the abuse of dominant position by the businesses. The Commission was not given direct authority to the former control of mergers, even though in the Treaty of Paris there was provision for such responsibilities. Articles 85 and 86 of the Treaty of Rome, they can also be applied in the case of mergers, but there are procedural difficulties because the specific provisions on merger control are not included. The need to set up a system of prudential control of mergers was intense.

Following the negotiations of the Member States, the Council of European Communities adopted on 21 December 1989 the Regulation (EEC) 4064/89 on the control of concentrations between undertakings. This Regulation entered into force on 21 September of 1990 directly in each Member State, and all of its parts were binding. This regulation was a legal tool to control those business concentrations depending on their impact on structure of competition in the Community. Its goal was to establish the principle according to which they are declared incompatible with the common concentrations of undertakings with a Community dimension, create or reinforce a position which implies a significant impediment of undistorted competition on the market (Article 2). This regulation is based on the "one-stop-shop principle", which provides the Commission with the ability to have exclusive control on each important cross-border merger. The scope of this regulation is, all business concentrations with a Community dimension, such as this defined in Article 1 of the Regulation. Criterion for an assessment of the Community dimension of the concentration of undertakings is the total turnover of the participating undertakings. Additionally, the Regulation also refers to the method of calculating turnover (Article 5). According to Article 3 of the Regulation, a concentration takes place if two or more previously independent businesses are merged or when one or more persons who already control at least one undertaking or one or more enterprises, acquire, directly or indirectly, in a way that they purchase holdings in the capital or assets, (by contract or otherwise) the control of the whole or parts of one or more other businesses[6]. As referred to, in the Regulation (Article 4), concentrations of Community-scale undertakings must be notified to the Commission within one week of the conclusion of the agreement. The Commission shall impose fines in the event of failure to notify the concentration act, when providing false information when communicating, but also in other cases referred to in Article 14. The Commission shall monitor the notification as soon as it is received and decides whether the notified concentration is compatible with the market (Article 6). In case the concentration is incompatible with the market, notifies its decision to the undertakings concerned but also to the rest Member States (Article 9) and gives the right to be heard (Article 18). Responsible for dealing with the merger competition is either the Commission or the competent authority of any Member State in which the undertaking is established (Article 6). The Commission can collect (from Member States, competent authorities, businesses) everything necessary for the fulfillment of its obligations (Article 11). Finally, Commission

[6] Council Regulation 4064/89, 1989 O.J. (L395/1), corrigendum 1990 O.J. (LL257/14), as amended by Council Regulation 1310/97, 1997 O.J. (L180/1).

officials can help their competent authorities, which carry out appropriate inspections by the Commission (Article 12). Regulation (EEC) No 4064/89 was replaced as from 1 March 1998 by Regulation (EC) No 1310/97, signed on 30 June 1997. The Regulation was intended to allow the Commission to ensure that, the mergers will not hinder effective competition in single market. The cases of mergers and acquisitions falling within the scope of this Regulation can be assessed by the Commission a priori, and the Commission has so far not been competent only for a posteriori assessment of the effects of the mergers in the market. Another key point of this regulation is to allow quick decisions in a clear legal framework and to avoid the multiple applications of national regulations. An important amendment to Regulation 1310/97, in relation to the Regulation 4064/89 is that, contrary to Article 1 of the old one Regulation (it must be mentioned that only two cases of mergers of enterprises were described as being Community dimension) ,the new regulation, considers that a concentration of undertakings is *Community dimensions* if the following applies:

a) The total worldwide turnover of all participating companies exceeds € 2.5 billion.

b) The total turnover of the participating companies is at least EUR 100 million.

c) In each of at least three Member States, the total cycle work carried out by each of the at least participating companies exceeds EUR 25 million.

d) The total turnover of each of the businesses separately, of at least the two undertakings concerned, within the Community, exceeds EUR 100 million, unless each of the participants covers more than two-thirds of the total Community turnover in one and the same Member State.

The majority of mergers, and especially in the banking industry, have became quite complex, as reported in the Commission's economic analyses. Therefore, it was necessary that the merger control system would make it more flexible. That is why on 20 In January 2004, the new Regulation (EC) 139/2004 was signed, which entered into force on 1 May 2004 and abolished the two previous ones regulations (4064/89 and 1310/97). This new Regulation, while preventing the same concentration from being notified to more competition authorities in the EU, repeats its "principle of subsidiarity', according to which the competent authority which has jurisdiction, is the most appropriate to address this concentration and simplifies the notification and investigation process.

1.3. The EC Merger Regulation No 139/2004- presentation of the regulation and innovative points.

The EC Merger Regulation No 139/2004 along with the Implementing Regulation, consist the primary legislative writings of this “new era”. The Merger Regulation contains the principle rules for the evaluation of concentrations, though the Implementing Regulation concerns procedural issues (notice, due dates, appropriate to be heard). The official structures for standard merger warnings (Form CO), improved merger notices (Short Form CO) and referral demands (Form RS) are connected to the Implementing Regulation. The Form CO specifies the information that must be provided by notifying parties when submitting a notification to the European Commission of a proposed merger, acquisition or other concentration (ANNEX I of implementing regulation). The Short Form CO specifies the information that must be provided by the notifying parties when submitting a notification to the European Commission of certain proposed mergers, acquisitions or other concentrations that are unlikely to raise competition concerns. (ANNEX II of implementing regulation).

FORM RS (RS = reasoned submission pursuant to Article (4) and (5) of Council Regulation (EC) No 139/2004), specifies the information that submitting parties must provide when making a reasoned submission for a pre-notification referral under Article 4 or 5 of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings.

The change brought about by the new regulation concerns the following innovations[7]:

- The clarification of the substance criterion for the analysis of concentrations. A criterion of substance has so far been that of a dominant position, whereby undertakings have a dominant position, when they have the financial capacity to influence the competition parameters and to reduce it considerably. This Regulation completes the interpretation of the dominant position and the criterion now incorporates all anticompetitive effects on the oligopolistic markets where the merged entity is not dominant in the strict sense of the term.
- Rationalizing the notification deadlines by introducing the possibility of notifying an operation before it has been the subject of a binding agreement between the parties and the abolition of the notification obligation in the week during which the binding agreement is concluded.
- The simplification of the referral system by the committee to the national authorities and vice versa.
- The more flexible implementation of the investigation schedule with the possibility of extending the deadline of three weeks for the parties to submit their solutions in agreement with the parties possibility of a four-week extension to enable the Committee to carry out thorough examination.

[7] EU Competition law – rules applicable to merger control, europa.eu/competition/mergers/legislation.

- To strengthen the Commission's powers to conduct research, so that it can more easily gather the information it needs to impose larger fines on businesses that hinder it.

At this point in the field of cross border M&As, we have to say that The Third Directive, concerning national mergers of public limited liability companies, is considered to be the setting stone for the mergers rules within the EU. Third Directive recognized two types of mergers - by acquisition or by formation and allowed the transfer of assets with implied continuity of ownership[8]. By introducing this Directive, the European legislator intended to increase the mobility of companies within the European Union by providing the tools to companies to restructure and cooperate at the European level[9].

1.4. The substansive assesement.

The most important change in the reform of the regulation on 2004 was the introduction of the SIECs test [10]. This control, therefore, is continuing to be used as the basis for the previous decisions of the Commission and the case-law of the European Courts. Moreover, the SIEC criterion was to eliminate a possible "enforcement gap" of the legislation, because there was a perception that the previous audit , did not clearly identify the potential effects on competition when a merger between two firms results in a dominant market position and enhances oligopoly[11]. The Introduction of the SIEC control eliminated this uncertainty and allowed the

[8] A. MADS and F. WOOLDRIDGE, European Comparative Company Law, Cambridge, Cambridge University Press 2009. P.

[9] F. DOBBELAERE AND E. POTTIER, "A Practical Guide to Cross-Border Mergers in Belgium", *European Company Law*, 10(6), 2013, p. 187

[10] White Paper, "towards more effective EU merger control", COM (2014) 449 final, 2014.

[11] See Recital 25 of the Merger Regulation.

Commission to strengthen its economic analysis of complex concentrations. A combination of qualities is used for the evaluation and, where available, quantitative / empirical evidence[12].

In most cases, the Commission considered as possible harmful effects, which have been the merger of two companies which were operating in the same market without being coordinated with other competitors ("non-coordinated effects"). To a lesser extent cases, the Commission's inquiries which examined whether the merger would be increasing the risk of coordination between the merged entity and others ("coordinated effects")[13] or whether the merger between enterprises operating in vertically or closely interconnected markets, would lead to the exclusion of competitors from the market ("vertical effects "and" conglomerate effects ", respectively).

Since 2004, the Commission has used the SIEC criterion in its investigation, in a significant number of cases. For example, in the Western case Digital / Hitachi, the Commission has examined a proposed acquisition on the drivers market hard drive (HDD). Redemption would reduce the number of competitors who are active in the hard drive industry from 4 to 3, and in others purchase 3.5-inch hard disk drivers from 3 to 2. Analyzing Quantities and qualitative data together, the Commission has come to the conclusion that under the given circumstances, the exclusion of Hitachi from the market would have prevented competition.

The control of concentrations at national level falls exclusively within national law. The EU Merger Regulation is a model for many national legal systems in this area,

[12] Like in :COMP/M.6570-UPS/TNT Express,of 30-1-13, COMP/M6458 –Universal musis group/EMI music of 21-9-12, COMP/m.6663-Ryanair/Aer Lingus of 27-2-13.

[13] Eg. COMP/M.4980 –ABF/GBI Business, of 23/9/08.

which has led to a convergence of basic legislation between countries, in particular as regards the applicable substantive test criterion[14].

1.5 Core provisions of the Treaty on the Functioning of the EU concerning mergers and acquisitions ("TFEU").

Article 101 (ex Article 81 TEC) .

The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, ...possibility of eliminating competition in respect of a substantial part of the products in question.

In order to facilitate the application of Article 101 (3) with respect to the “moreeconomics-based-approach”, the Commission has provided guidelines[15].Thus, companies are now required to do a self-assessment of whether an agreement that restricts competition under Article 101 (1) might benefit from an exemption under Article 101 (3). Moreover, this assessment is required if an allegation of infringing Article 101 (1) arises.

Article 101(1)(a)-(e) gives a non-exhaustive rundown of cases of kinds of arrangements protected by Article 101(1). It is fundamentally gone for typical cartels, known as horizontal competition; however it is likewise intended to manage prohibitive assertions amongst producers and retailers, known as vertical competition, which influences the accessibility of products and ventures.

Agreements are not just restricted to binding contracts of whatever kind but additionally incorporate understandings and the supposed, casual 'gentleman's

[14] E.g Germany replaced the previous dominance test with SIEC as laid down in article 2 (2), 2(3) of the Merger Regulation (2013).

[15] EC Commission, Communication of the Commission, Notice, Guidelines on the application of Article 101(3) of the Treaty, OJ (C) 101/97, 27.4.2004.

agreement' as found in C-41/69 Chemiefarma v Commission of the European Communities [1970] ECR 661. This is supported just by the honesty of the counter-party to really keep the terms of the understanding. Consequently, there is no legitimately binding report for any of the parties to later depend on.

The type of “free” arrangements that may subside under Article 101(1) is defined in C-32/78 and 36-82/78 *BMW Belgium v Commission of the European Communities* (1979) ECR 2435 ,where the court stated that signing and returning a copy of a document, not a contractual document, amounted to an agreement. The scope of ‘agreement’ was further considered in T-148/8 *Trefilenrope SARL v Commission* [1995] ECR II-1063 where the General Court ruled that: *“…for there to be an agreement within the meaning of…(Article 101(1) TFEU), it is sufficient for the undertakings in question to have expressed their joint intention to conduct themselves in the market in a particular way.”*

In the context of this article, it is also important to analyze another one specific situation, where article 101 applies. Thus, in the case of T-8/89 DSM NV v the Commission (Polypropylene) (1991) ECR II-1833, the EU Commission investigated an intricate cartel agreement of 15 firms over many years. This constituted one agreement. The arrangement was oral with no contract or documents to prove the existence of the cartel. However, all the companies had a ‘joint intention’ of establishing one and a single agreement and thus there was a violation of Article 101. Even though not all the firms attended all the cartel meetings, they were part of the overall agreement. This is an example of the fact that participating in the whole process can prove the company's illegality , hence incompatibility with article 101 TEFU.

Accordingly, in Cases 96-102, 104-106, 86 and 110/82 IAZ International Belgium NV v Commission [1983] ECR 3369, it was held that *”a recommendation, even if it has no binding effect, cannot escape Article 101(1) where compliance with the recommendation by the undertaking to which it is addressed has an appreciable influence in the market in question”.* However, the Court of Justice has recognized in C-153/93 Germany v Delta (1994) ECR I-2517, that there is a boundary to the application of Article 101 where the chosen people of an exchange affiliation concerned with the value fixing were truly independent of their parent bodies. Paragraph 3 of the same article provides:

The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

– any agreement or category of agreements between undertakings,

– any decision or category of decisions by associations of undertakings,

– any concerted practice or category of concerted practices, which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

The exceptions of article 101(3) are :

In fact, not all proposed mergers that have the potential to affect competition will be applicable to Article 101(1). Article 101(3) incorporates exceptions, under which, the negative effect of some deals may be outweighed by their beneficial interest. For example, in the case the case of T-102/92 Viho Europe BV v Commission [1995] ECR II-17, the authorities claimed that Article 101 does not apply to the relationship between the subsidiary and the parent company with which it forms an economic unit.

The non-exhaustive list of Article 101(3) allows the Commission to remain free to identify other agreements or practices which operate in an anti-competitive way, providing a degree of flexibility. It is clear that the policies in relation to 'agreement' and 'cartels' are interpreted as widely as possible. However, the exceptions are interpreted as narrowly as possible. Generally, any contact between competitors will raise suspicion and the Commission will begin to pay attention. Restrictions in horizontal agreements are likely to affect inter-market competition and restrictions in vertical agreements are likely to affect intra-market competition. Inter-market competition poses a greater threat to the internal market due to the potential effect on customers. For example, if two independent manufacturers of a particular product fix their prices, this will eventually become a negative externality for consumers due to increased prices. Evidently, this is a violation of Article 101(1).

Any evaluation under Article 101 comprises of two sections. The initial step is to survey under Article 101 (1) regardless of whether an agreement has an anticompetitive object or actual (or potential) anti-competitive effects. The second step, which just winds up relevant when an assention is found to be prohibitive of competition under Article 101 (1), is to decide the master aggressive advantages created by that agreement and to evaluate regardless of whether these master aggressive impacts exceed the focused impacts. This sort of adjusting the anti-competitive and pro-competitive effects is conducted within the framework laid down by Article 101 (3). From that point of view, in Article 101 a European "“structured rule of reason” " is applied[16].

Article 102 (ex Article 82 TEC)

Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States. Such abuse ...of such contracts.

Article 102 (and 101) applies only to “undertakings”. So, the first important element of this article which needs explanation is the term “undertaking”. The term “Undertaking” is not defined in the TFEU , but according the case law Höfner-Elser (C-41/90, § 21)¨, Public body employment that mediates for finding work or labor potential was classified as an undertaking, subject to the competition :

«21. In *that regard, it must be stated in the context of competition law that the concept of an undertaking covers any entity engaged in an economic activity irrespective of its legal status and the manner in which it is financed and that mediation to find a job or work is an economic activity*."

The second of high importance term of this article ,which needs explanation is the term “dominance”.

According the Case 27/76, United Brands v Commission ,the term “dominance” is defined as the position of economic strength enjoyed by an undertaking ,which

[16] Competition Competence Report ,article ,European Economic & Marketing Consultants - EE&MC GmbH.

enables it to prevent effective competition being maintained on the relevant market, by giving it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers" . Also, according Case 85/76, Hoffmann LaRoche v Commission: "Such a position does not preclude some competition, which it does where there is a monopoly or a quasi-monopoly, but enables the undertaking which profits by it, if not to determine, at least to have an appreciable influence on the conditions under which that competition will develop, and in any case to act largely in disregard of it so long as such conduct does not operate to its detriment."

Furthermore, according Case T-61/99 Adriatica di Navigazione SpA v Commission, para 27 , "For the purposes of Article (102), the appropriate definition of the relevant market is a necessary precondition for any judgment concerning allegedly anti-competitive behaviour (…), since, before an abuse of a dominant position is ascertained, it is necessary to establish the existence of a dominant position in a given market, which presupposes that such a market has already been defined." Accordingly, "Market definition has already been defined above in part 1 of this thesis, but according the Commission Notice, para 2, it is a tool to identify and define the boundaries of competition between firms. It serves to establish the framework within which competition policy is applied by the Commission. The main purpose of market definition is to identify in a systematic way the competitive constraints in which the undertakings have been involved ."

The dominant position must be held in a substantial part of the internal market and trade between Member States must be affected for Article 102 (and 101) to apply. If trade is not affected, an agreement will be regulated by national competition law exclusively with parallel application above the limit. According the Case 56/65, STM

: "It must be possible to foresee with a sufficient degree of probability on the basis of a set of objective factors of law or fact that it may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States" .

Article 106 (ex Article 86 TEC).

In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in the Treaties, in particular to those rules provided for in Article 18 and Articles 101 to 109.

Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union.

3.The Commission shall ensure the application of the provisions of this Article and shall, where necessary, address appropriate directives or decisions to Member States.

First of all, we have to notice that, the supply of goods and services on a given market is important, because it is in competition with other businesses or non profit organizations, affecting their economic survival. The non-existence of a profit goal is indifferent[17].

"122.On the opposite, when a banking institution, which itself operates in sectors of

[17] Case Cassa di Risparmio di Firenze (C-222/04, 122,123) and MOTOE case (C-49/07, 28).

public interest or social benefit, makes use of the option provided by national law and carries out the financial, commercial and property-related operations necessary or relevant to the fulfillment of those purposes, may possess goods or provide services, acting in a competitive manner towards other areas such as scientific research, education, art or health.

123. If, in the national court's view, such a situation exists, a bank must be regarded as an undertaking in so far as it carries on an economic activity, even if the disposal of the goods or the provision of services is not intended to profit, by pursuing those activities, compete with other traders pursuing such purposes."

28. The fact that MOTOE, the appellant in the main proceedings, is itself a non-profit-making association does not, in that light, have any effect on the classification of a legal person such as ELPA as an undertaking. On the other hand, non-profit associations that offer goods or services on a given market can find themselves competing with one another. In particular, the success or economic survival of such syndicates depends in the longer term on their ability to impose the benefits they offer on the relevant market at the expense of the benefits offered by other economic operators.

For the application of Article 106 (1) TFEU, the restriction of competition must take place to be attributable to the State measure and not the autonomous economic activity of the undertaking, otherwise 101, 102 TFEU are directly applicable without the use of the referral order. Related Case RTT / GB Inno BM (C-18/88, 20):

«20. However, Article 86 only concerns anti-competitive activities by undertakings on their own initiative[18] *and not the State measures. In the case of State measures, Article 90 (1) applies. This provision prohibits Member States from laying down, by*

[18] *see Case C-202/88 France v Commission Terminals [1991] ECR I- 1223.*

legislative, regulatory or administrative measures, public undertakings and undertakings to which they grant special or exclusive rights in a situation in which the undertakings in question could not find on their own, acting independently without infringing the provisions of Article 86".

Based on established case law, we conclude that there is no need for an ad hoc abuse. It is sufficient for the State measure to create an objective risk of abuse.

•In that sense the granting of an exclusive or special right creates such a risk because such a dominant position on the market, which, by virtue of a structure, precludes any competitor from providing the same level of good or service on equal economic terms.

•Does anyone wonder whether the European Community Courts have a margin of discretion in reversing the burden of proof under Article 106 (1) TFEU, in such a way as to make the 106 (2) TFEU the only way out for the State if it does not prove that it has secured the avoidance of abuse? :

Case C-320/91 Corbeau give such an impression:

"13.This provision has to be read in conjunction with the provision in paragraph 2 of that article, which provides that undertakings, services of general economic interest are subject to the rules in so far as the application of those rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.

14. The latter provision also allows Member States to grant to undertakings entrusted with the operation of services of general economic interest, exclusive rights which may prevent the application of the competition rules of the Treaty, since the restrictions on competition, and in particular the complete foreclosure of competition by other operators are necessary in order to ensure that the particular task assigned to undertakings enjoying exclusive rights is fulfilled"

1. 6 The role of EC in the control of mergers.

We have already developed the role of the European Commission for Merger Control and indeed , one of the main tasks of the Commission, is to ensure that EU rules are applied in a fairly way in every business operating in the EU single market – independently by size, sector or citizenship. Only in this way, a truly level playing field is guaranteed and that is why the Commission has over the last few decades imposed state aid rules. The role of the Commission in merger control is particularly important for the protection of fair competition in all sectors and industries, but it can be even more important in areas already characterized from a degree of concentration. The Commission must ensure that the powerful companies do not abuse their power in a way that benefits them while affecting their customers and the rest of the economy.

In order to carry out this task, the Commission has a wide range of powers of control and enforcement, such as conducting business inquiries, auditing and granting exemptions. The Commission has these powers under Article 105 of the Convention on the Functioning of the European Union, according to which the Committee is responsible for the implementation of the principles laid down in Articles 101 and 102, at the request of a Member State or on its own initiative. The member states then have to provide cases of alleged infringements of those principles and the Commission has to implement the appropriate measures to bring the infringement to an end. There are many ways in which the European Commission is aware of a possible violation of competition law, so it can carry out an investigation in which it has the right to request information from governments, Member States' competent authorities, but also from their own businesses. The European Commission may also become aware of a possible violation following a complaint by an affected party. Member States and all natural or legal persons are entitled to lodge a complaint, provided they have a legitimate interest. In accordance with Article 101 (2) of the Treaty on the Functioning of the European Union, agreements or decisions in breach of Article 101 (1) of the Treaty are automatically void. In addition, the European Commission may impose fines. However, it should be noted here that some analysts[19] argue that the European Commission's stronger powers in the field of competition policy have been largely ineffective. On the other hand[20] it has been argued that the commission has been very rigorous in the application of Community competition law, while at the same time the company dynamics have been ignored in many cases, which could indeed be beneficial to both the consumers themselves and the quality of the available goods in some cases. Following the adoption of the strategy of decentralizing the application of the competition rules through the so-called Modernization Regulation[21] , since 2004, certain tasks of implementing and enforcing the Commission's competition policy have been undertaken by the Member States in the context of the modernization process under Regulation 1/2003 . That regulation confers on national competition authorities and national courts the power to apply and enforce Articles 101 and 102 of the Treaty.

For example, the Commission closely monitors the market for plant protection products to ensure that the market structures resulting from mergers, do not ultimately affect the European farmers, whose living depends on access to seeds and plant

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[19] Michele Cini and Lee McGowan, Competition Policy in the European Union, Palgrave Macmillan, 1998, p. 41-5.

[20] Valentin Korah ,an introductory guide to EC competition law and practice, 8th edition, Hart publishing 2004.

[21] Commission Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Text with EEA relevance) L 001 of 04/01/2003.

protection products in competitive prices. Practically, in 2016, the Commission launched two in-depth investigations on proposed concentrations in this area. The first proposed transaction concerns Dow and DuPont, two US companies, from which the largest vertically integrated company would be the transaction plant protection products and seeds world-wide [22] ,a significant track record of introducing innovative products plant protection and seed in the market. The second proposed concentration is between Swiss Syngenta, one of the major seed and product companies' plant protection worldwide, and the Chinese ChemChina, which controls Adama, the largest supplier of generic plant protection products in Europe. Their products are used in the cultivation of many of the major species that are grown in Europe such as cereals, cotton, corn, fruit and vegetables, rape, soybean, sugar beet and sunflower. In-depth investigation will examine whether the proposed concentrations could lead to higher prices or less innovation for these products[23]. Furthermore, the Commission is investigating whether the national competition authorities have all of the powers, resources and independence needed for effective enforcement of EU competition law. In 2016, the Commission confirmed its contribution to this area by actively participating in international organizations which are related to competition, such as the OECD Competition Commission, the World Bank, the United Nations Conference on Trade and Development (UNCTAD). The Commission is also a leading member of the International Competition Network (ICN), which is the leading global forum for competition services which lists 132 members. Significant results of this polymeric agreement are the "Merger Remedies Guide" and the "Catalog on

[22]COMP M.7932 Dow / DuPont.
[23] http://europa.eu/rapid/press-release_IP-16-3579.

Investigative Powers". Both texts were issued by the International Network Competition in 2016 [24].

In the field of European Commissions' jurisdiction, the Opinion of the Advocate General Juliane Kokott in Case 202/06 P (Cementbouw Handel & Industrie BV v. European Commission) of 26/4/07 is clear and concerns the exclusive jurisdiction of the Commission. Regulation 4064/89 makes a clear delimitation of competences under the principle of double exclusivity. Concentrations within the Community are controlled solely by the Committee on Competition and are assessed by it solely on the basis of the criteria of the same Regulation. Sometimes, it may be disputed in individual cases, which competition authority in the Community is responsible for examining and approving a concentration of undertakings. The Commission considered this more than that is responsible for featured both operations as part of single transaction, met the criteria of a concentration with a Community dimension .The applicant company Cementbouw Hendel appealed to the Court the decision of the Commission and questioned its competence. O*nly the state of affairs as it arises at the time of the birth of any notification obligations, that is to say, the competence of the committee must be determined having regard to the date from which a draft concentration must be corrected to be communicated to that committee.* It is self-evident that the Commission loses its power to control a merger when the participating firms have completely abandoned their project because it becomes "not applicable" (devoid of purpose). On the other hand, if the undertakings concerned, simply make certain modifications to their concentration, without leaving it completely, then that procedure is not devoid of purpose and this is why the European

[24] COM(2017) 285 final.

Commission does not lose its jurisdiction and remains still the competent authority in the control of merger.

Although, Guidance is also provided by the EU Courts, as Commission decisions in merger cases are subject to demanding judicial review[25].

Finaly, in the field of the legal review of a Commissions' decision, in order to assess whether a merger decision was appropriate, the examiner must answer two crucial questions :1) What is the absolute economic purpose of a merger decision and secondly 2) if the Commission had adopted a different decision on the merger what would be the outcome ? To answer the second question, we are basically considering possible alternatives that the Commission could have taken. According to the MCR, the committee may place obligations and restrictions on the parties to the merger that the parties themselves have already proposed. Consequently, the Commission has no jurisdiction to clear a merger subject to remediesother than those put forward by the parties[26].

1.7 Types of markets used in order to evaluate a merger.

Before we move on to specific merger cases we have to analyze further the two types of markets that are usually used in order to evaluate a merger, analysing the consequences of that merger on these two markets in light of the Competition law .

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[25] See Case T-12/03 P Commission v TetraLaval [2005] ECR I-987, paragraphs 39 et seq.; Case C-413/06 P Bertelsmann and Sony v Independent Music Publishers and Labels Association (Impala) [2008]. Since 2004, the vast majority of commission decisions in merger cases have been upheld by the European counts. Notably, the Courts have not rejected any decision whether it approved or prohibited the proposed merger. In fact, the only case where the commission decision of approval was rejected by the Court does not relate to competition issues, but to the fact that the proposed acquirer had to be divested. (COMP/M.2978 – Lagardère/Natexis/VUP, decision of 30 July 2004, was rejected by the Court of Justice in 2012 in mutual Cases C-553/10 P and C-554/10 P Commission and Lagardère v Editions Odile Jacob). The General Court in the case T-464/04 Independent Music Publishers and Labels Association (Impala) v Commission [2006] ECR II-2289, effectively rejected the Commission's decision of 2004 about clearance of COMP/M.3333 – Sony/BMG.

[26] EX-POST REVIEW OF MERGER CONTROL DECISIONS A study for the European Commission prepared by Lear – Laboratorio di economia, antitrust, regolamentazione, Paolo Buccirossi, Lorenzo Ciari, Tomaso Duso Sven-Olof Fridolfsson, Giancarlo Spagnolo ,Cristiana Vitale.

1.7.1 In retail banking:

1) Product market

In accordance with the Commission's notice regarding the definition of the relevant market for the purposes of Community competition law, the definition of the central market is a tool for determining the degree of competition between undertakings in a single market. It aims to establish the Framework within which the Competition Policy is implemented by the European Commission. The main objective of the Commission's definition of the relevant market is to systematically identify the constraints on competition that the undertakings concerned are subject to[27].

The definition of the relevant product market and the relevant geographic market is essential to determine the degree of competition in a market. If the market is broadly defined, the market share of each company will be comparatively small and therefore the effects of its competitive behavior will be less apparent. The European Commission defines a product market as including all these products and services that are considered interchangeable or substitutable by the consumer due to their characteristics, prices and intended use.

The definition of the relevant product market by the European Commission is largely based on the examination of the physical characteristics and functioning of the products in question. Their function, which is critical to influencing buyer preferences, depends on various factors such as, for example, the diversity of their application. However, some products may have the same function but not necessarily belong to the same market. The data used to define the relevant product market include elements of their restoration with other products in the recent past, various

[27] Kokkoris I., Papadakis K., Mergers in Greek banking system in light of Competition law, article , Business and Commercial law , 7/2013 (19 year) ,658.

quantification tests, customer and competitor questionnaires, consumer preferences, barriers and costs associated with changing demand to potential substitutes as well as different customer categories[28].

Retail banking is made up of sight deposits held by customers and savings deposits and time deposits as well as housing and consumer loans excluding consumer credit through credit cards.

Given the partial interchangeability of the above banking products due - inter alia- to the abolition of penalty payments in time deposits, the existence of payroll, current accounts at interest rates similar to those of time deposits and the absence of barriers to entry in time deposits, in combination with the strengthening of Internet and Mobile Banking, make the above sub-markets, if not a single market, strong sources of competitive pressure between them.

2) Geographic market.

The European Commission has, in many judgments[29], argued that due to differences in the conditions of competition between Member States including linguistic differences, transaction costs and the importance of a network of branches, consumer preference to domestic suppliers and the existence of services Internet and Mobile Banking focused on domestic services, the relevant geographic market is domestic. In

[28] "Commission Notice on the definition of the relevant market for the purposes of community competitionlaw , Official Journal , O.J.C 372/9-12-27.

[29] COMP/M4844-Fortis/ABN AMRO Assets, COMP/M5384-BNP Paribas/Fortis, COMP/M2567-Nordbanken/Postgirot.

the recent years there has been a significant increase in e-banking that has low operating costs and tends to replace the traditional retail banking model[30].

1.7.2 In Business banking

1) Product market

Business banking consists of a range of banking services provided to corporate clients whether they are large or small businesses. The European Commission[31] has not distinguished between individual markets according to the size of the companies. The product market includes distinct sub-markets for loans and deposits due to the different functions that these products perform.

2) Geographic Market

The European Commission has ruled[32] that the geographic market for the provision of business banking services to small and medium-sized enterprises is national. for larger corporations However, it is assumed that the market tends to internationalize. And in this case the definition has been left open. there is a clear tendency to globalize the market in the case of large and small-sized corporate structures.

1.8 Effects of the concentration on the market.

In the Greek banking market there are several large banks that offer other similar full-range banking products. Many consumers use both for their deposits and for their

[30] Kokkoris I., Papadakis K., Mergers in Greek banking system in light of Competition law, article , Business and Commercial law , 7/2013 (19 year) ,658.
[31] COMP/M4844-Fortis/ABN AMRO Assets.
[32] COMP/M.6168-RBI/EFG Eurobank/JV, COMP/M.3894-Unicredito/HVB , COMP/M4844-Fortis/ABN AMRO Assets

loans and cards, more than one bank. The banking sector is subject to many regulatory rules and close supervision by the bank of Greece, which allows consumers to make choices based on their specific needs and respective bank offers rather than on the brand or the credibility of the business.

A concentration may significantly impede effective competition in the market by eliminating significant competitive constraints on one or more of the sellers, who are therefore having increased market power. The most direct effect of the merger will be the restriction of competition between the participating undertakings, resulting to an increase of their prices or to the reduction of their production[33]. In addition, non-concentrated companies benefit from a reduction in competitive pressure. The prices of the merged companies or the decrease in their production may lead to increased demand for these products and consequently the remaining companies on the market may increase their prices. This tendency may be more pronounced in markets with differentiated products because the products of the companies are not perfect substitutes so consumers do not change the product even if the price of this product has increased. The degree of consumer change also depends on how much competitors have the merging companies. As mentioned in a study on non-coordinated results, these results not only include the future behavior of the merging companies but also the behavior of their competitors in the post-merger market.

The factors that need to exist to have uncoordinated effects from a merger in a market include [34] a)large mergers, b) merging companies are direct competitors ,c) consumers have limited capacity to change product and company, d) competitors will not significantly increase production if the prices of the products of the merging

[33] Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 5 February 2004.
[34] Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 5 February 2004.

companies increase, e) the merging companies may prevent the expansion of their competitors ,f) the concentration eliminates a meaningful and active competitive force[35]. As the guidelines for Horizontal concentrations mention : Incentives of the participating firms to raise prices are more likely to be constrained when rival firms produce close substitutes for the merging firms than if they offer less close substitutes. Concentration is therefore less likely to significantly impede effective competition, in particular through the creation or strengthening of a dominant position where there is much scope for substitution between the products of the participating undertakings and that offered by the opposing producer. Consumers do not have limited switching opportunities and, in combination with the intense activity of competitors, a concentration of two major Greek banks is not likely to restrict competition.

In terms of business banking, it consists of a series of banking services provided to corporate clients, whether these are major business issues or smaller ones. The European Commission[36] has not distinguished between individual markets according to the size of the companies. The product market includes distinct under markets for loans and deposits due to different functions that these products perform.

1.9 The impact of the concentration on the business banking market.

As the Greek Commission noted in the decision ALPHA/Eurobank, both retail and business banking products compete strongly against each other. The differentiation of these products is mainly the cost of the service (credit card rate) and the benefit of

[35] Kokkoris I., Lucas D., Chapter of merger control, Competition Law, Nomiki Vivliothiki, 2012.
[36] See COMP/M.4844- Fortis/ABN AMRO Assets.

deposit products (deposit rates). As noted by the Greek Competition Commission in line with the provisions of the Code of Conduct for Credit Institutions adopted by the banking industry in 2008, through self-regulation following a call by the European Commission to strengthen the mobility of individual account holders and entered into force by the Greek Association of Banks in November 2009 as well as with the Common Principles which it sets, the credit institutions are obliged to inform their clients through detailed guides and model with the ultimate goal of reducing the switching costs mainly the administrative burden for the beneficiaries and savings banks that want to discontinue their cooperation with the old credit institution and transfer their account to a new[37]. Banks publish charges for the provision of personal account / deposit management services as well as the deposit rates granted, which makes it possible to compare the financial terms of the payment service providers and the choice of the most advantageous user of these services, which significantly mitigates the asymmetry of information between providers and users.

The existence of dynamic competitors, and in particular the new lack of switching costs and the role of clients in those markets, their negotiating capacity and the use of multiple providers suggest the lack of competitive horizontal effects from a concentration of large banks in the banking sector.

1.10 Aquisition of non-controlling minority shareholdings.

Why does the Commission want to have jurisdiction to look at non-controlling Minority holdings?

[37] Kokkoris I., Papadakis K., Mergers in greek banking system in light of Competition law, article , Business and Commercial law , 7/2013 (19 year) .

Effective and efficient competition policy requires appropriate and well-designed means of dealing with all sources of damage at the expense of competition and, by extension, of consumers. Based on the current Merger Regulation, it only applies to "concentrations". They are defined as acquisition of control by one or more persons or undertakings to one or more other undertakings or divisions of undertakings. At present, when the acquisition of a minority interest is not linked to gain control, the Commission can not investigate or intervene to prevent it. The Commission can intervene only against pre-existing ones. Minority interest is held by one of the parties to the concentration at the time of acquisition of control[38].

1.11 Theories of Harm

When a minority interest is acquired, different kinds may arise competition concerns. These concerns are based on similar ones harmful effects such as acquisitions of control and, in general, require that the transaction significantly increases the Buy.

The acquisition of a minority stake in a competitor can lead to uncoordinated effects at the expense of competition because minority participation may increase the incentives and buyer's ability to unilaterally raise prices or limit its output. If an enterprise has a financial interest in the profits of its competitor, it can "internalize" the increase in these profits as a result of lowering its own production or increasing its own prices. This negative impact on competition may occur if minority participation, it is passive (it does not give it any influence on the decisions of the target company) or is active (it enables it to influence the decisions of the target company). A minority holding may also create competition concerns when the acquirer uses its position to

[38] White Paper, “towards more effective EU merger control”, COM (2014) 449 final, 2014.

restrict the competitive strategies at the disposal of the target company, thereby weakening its competitive strength. The Commission and the Member States have found that competition concerns are rather more serious when a minority stakeholder has a relative influence on the decisions of the target company, as in the case studies below[39].

The Siemens / VA case has demonstrated both the notion of harmful effects on the basis of 'financial incentives' and the risk created when an undertaking has influence and voting rights on a competitor. In that case, Siemens already had a minority stake in SMS Demag, a competitor of one of VA Tech's subsidiaries. The Commission considered that the merger would lead to a reduction in competition in the steel construction market due to the combination of economic incentives and information rights stemming from its minority participation in SMS Demag.

This theory of harm was the core of the research of United Kingdom in the Ryanair / Aer Lingus case. In Ryanair / Aer Lingus I, Ryanair had already acquired a significant minority shareholding in its competitor, Aer Lingus, when notified the Commission of the proposal to acquire control of the company in 2006. The Commission banned its redemption because of serious concerns that it would harm competition with the creation or reinforcement of Ryanair's dominant position on several routes.

However, it did not have jurisdiction to control Ryanair's minority shareholding in Aer Lingus, which was audited by the United Kingdom Competition Committee.

This theory of harm was also the central element in the Toshiba / Westinghouse case, in which the Commission found that the transaction could lead to the elimination of competition on the market nuclear fuel elements. When adopting its decision, the Commission considered that Toshiba could use the minority stake and veto rights to

[39] Commission Staff working document accompanying the White Paper "Towards more effective EU merger control.

GNF, a competitor of Westinghouse, so to prevent it from extending to areas in which it would compete Toshiba / Westinghouse.

Summarizing, the Commission does not currently have the right tools to handle properly anti-competitive minority share acquisitions. A *targeted transparency system* appears to be suitable for tracking of such acts and the prevention of harmful effects to consumers which derive from them.

Generally, according to the EU Commission and the prominent commentators reforming EU takeover law in order to achieve a level playing field across the EU is strongly desirable[40]

1.12 Procedural issues

In the field of mergers, notification and rules assume an imperative part in the understanding of the Merger Regulation. The Commission has additionally distributed "Best Practice Guidelines", which concern the connection between case group and gatherings/outsiders during the procedure (pre-notice contacts, gatherings, arrangement of reports). To give better direction to the gatherings with regards to offering duties, the Commission has likewise distributed model writings for divestiture responsibilities and for trustee commands.

The Council Regulation prohibits mergers and acquisitions which would fundamentally reduce competition in the Single Market, for instance if they would make mega organizations that are probably going to raise costs for consumers. In Article 11 of the Second Banking Coordination Directive with which those who are

[40] J. Mukwiri, "Reforming EU Takeover Law Remains on Hold", European Company Law, 12(4), 2015, pp. 186–187; PETER BÖCKLI AND PAUL DAVIES ET AL., "Response to the European Commission's Report on the Application of the Takeover Bids Directive", University of Cambridge Faculty of Law Research Paper No. 5/2014.

going to acquire a qualified participation in one of the credit institutions (, as defined in Article 2 (a) of Directive 77/780/EEC) must notify the competent supervisory authority ("*On becoming aware of them, credit institutions shall inform the competent authorities of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below one of the thresholds referred to in paragraphs 1 and 3 . They shall also, at least once a year, inform them of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by the information received at the annual general meetings of shareholders and members or as a result of compliance with the regulations relating to companies listed on stock exchanges"*)[41]. After the disclosure, the supervisory authority has a period of three months to oppose the request. For example, the supervisory authority may not allow a majority stake if not convinced of his solvency and ability to be sound and effective management. In the so-called post-BCCI Directive (on reinforcing prudential supervision in the financial services, sector adopted by the EU's Council of Finance Ministers in Luxembourg on 19 June 1995) which obliges supervisory authorities not to approve an Acquisition or Merger if the group is an obstacle to supervision on an individual or consolidated basis. In some EU Member States a takeover outside the EU requires approval. Home authorities can reject one such redemption for prudential reasons as when the acquiring institution will cause a negative effect on the organization and the buyer's financial position. The evaluation of a cross-border takeover remains in the hands of supervisory authorities of the host State. If the acquired institution becomes subsidiary of the purchaser, the host State authorities will maintain supervision and exchanging information between their national supervisory authorities, which shall be ensured by cooperation agreements. If

[41] Second Banking Directive of 15 December 1989, Official Journal of the European Communities.

the acquirer becomes a branch, its supervisory authority host country, is limited to liquidity control. However, the supervisory framework for financial groups and especially for financial cross - border complexes in EU level is weak, the practices followed in the member states of the EU are different. In the direction of strengthening their international and European supervisory model in the above cases, the Banking Supervision Committee of the ECB and others are already underway international committees.

On a fundamental level, the Commission evaluates bigger mergers with an EU measurement, implying that the combining firms achieve certain turnover limits.

There are two approaches to achieve turnover limits for EU measurement.

The first elective requires:

(I) a joined overall turnover of all the blending firms over €5 000 million, and

(ii) an EU broaden turnover for each of no less than two of the organizations over €250 million.

The second option requires:

(I) an overall turnover of all the merging firms over €2 500 million, and

(ii) a consolidated turnover of all the merging firms over € 100 million in each of no less than three Member States,

(iii) a turnover of over €25 million for each of no less than two of the organizations in each of the three Member States included under ii, and

(iv) an extensive turnover of each of no less than two firms of more than €100 million[42].

In both options, an EU measurement isn't met if each of the organizations files more than 66% of its far-reaching turnover within one and the same Member State. Around 300 mergers are ordinarily notified to the Commission every year. Smaller mergers which don't have an EU measurement may fall rather under the Member States' opposition specialists. There is a referral component set up, which permits the Member States and the Commission to exchange the case between themselves, both at the demand of the organizations included and of the Member States. This enables the organizations to profit by a one-stop-shop audit and to dispense the case to the most suitable specialist.

1.12.1 Mandatory pre-notification – investigation of the proposed merger.

Prior notification of concentrations.

The Commission must be *notified* of any merger with an EU measurement before its execution. Organizations may contact the Commission in advance to perceive how to better set up their notice. There are pre-arranged formats used to advise the mergers, in light of the intricacy of the case. To guarantee successful control, endeavors ought to be obliged to give earlier warning of fixations with a Community dimension following the finish of the assertion, announcement of the public bid or the acquisition of a controlling interest. Notification ought to likewise be conceivable where the endeavors concerned, notify the Commission of their expectation to go into an assention for a proposed goal and analyze to the Commission that their arrangement for that proposed concentration is adequately concrete, for instance on the premise of

[42] Merger control procedures, europa.eu.

an understanding on a basic level, a memorandum of understanding, or a letter of intent, marked by all endeavors concerned, or, on account of an open offer, where they have freely declared an intention of making such an offer, given that the planned assention or offer would bring about a concentration with a Community dimension. The use of concentrations ought to be suspended until the point that an official choice of the Commission has been taken. In any case, it ought to be conceivable to distinguish from this suspension at the demand of the undertakings concerned, where suitable in choosing whether or not to give a disagreement, the Commission should assess every single apropos factor, for example, the nature and gravity of harm to the undertakings concerned or to outsiders, and the danger to competition postured by the fixation. In light of a legitimate concern for lawful sureness, the legitimacy of exchanges should -all things considered- be ensured as much as possible.

As the EU Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) defines:

"Concentrations with a Community dimension defined in this Regulation shall be notified to the Commission prior to their implementation and following the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest. Notification may also be made where the undertakings concerned demonstrate to the Commission a good faith intention to conclude an agreement or, in the case of a public bid, where they have publicly announced an intention to make such a bid, provided that the intended agreement or bid would result in a concentration with a Community dimension. For the purposes of this Regulation, the term 'notified concentration' shall also cover intended concentrations notified pursuant to the second subparagraph. For the purposes of paragraphs 4 and 5 of this

Article, the term 'concentration' includes intended concentrations within the meaning of the second sub-paragraph." (article 4 of the No 139/2004 of 20 January 2004)

If the merging firms are not working in the same or related markets, or if they have just little pieces of the overall industry, not achieving indicated piece of the pie limits, the merger will ordinarily not offer ascent to huge rivalry issues: the merger audit is in this manner done by an improved methodology, including a normal check. The piece of the overall industry edges are: 15% consolidated pieces of the overall industry on any market where they both contend, or 25% pieces of the overall industry on vertically related markets. We have to note that occasionally a 'market' can include moderately limit business territories, both as far as items and geographic territory ranges. Over those piece of the overall industry limits, the Commission completes a full investigation.

Phase I investigation

The Commission has 25 working days, after notice, to investigate the deal during the first stage of investigation. Over 90% of all cases are settled in Phase I, ordinarily without legal remedies.

A phase I investigation may include the accompanying[43]:

Solicitations for data from the merging organizations or outsiders, investigations to contenders or clients looking for their perspectives on the merger, and additionally different contacts with showcase members, went for illuminating the conditions for rivalry in a given market or the part of the combined organizations in that market. The Commission keeps the combining organizations informed about the development of its analysis. Towards the finish of stage I, a "condition of-play meeting" is normally

[43] Europa.eu/competition/mergers/legislation.

held, where the Commission illuminates them about the aftereffects of the stage I examination. On the off chance that there are competition concerns, organizations can offer remedies, which broadens the stage I due date by 10 working days.

There are two primary decisions of a stage I investigation:

The merger is cleared, either genuinely or subject to acknowledged remedies or the merger still raises competition concerns and the Commission opens a stage II examination. In INTEL/McAfee, for exemple , the remedies helped preserve innovation in security software and ensure that competitors were not foreclosed[44].

Otherwise on the off chance that the Commission has worries that the merger may fundamentally influence competition, the consolidating organizations may offer remedies ("commitments"), for example, propose certain alterations to the task that would ensure continued competition. Organizations may offer remedies in stage I or in stage II. Commitments are crucial instruments of merger control , since the large majority od cases that raise competition concerns are cleared with commitments rather than being annulled[45].

Despite the fact that the banking industry is quite sensitive, concerns regarding competition in credit cards were essentially removed in the merger of Amro/Fortis. The commission’s response was quick in granting derogation from the suspension obligation. In this manner, it ensured that Bnp Paribas could give the necessary financial support to the acquired firm, in order to keep it operating. In addition, in the case of Amro/Fortis, the commission approved instantly the implementation of the

[44] COMP/M.5984- Intel/McAfee, decision of 26 -1-2011, White paper, towards more effective EU merger control, (text with EEA relevance), COM 2014 449 FINAL.

[45] Commission Staff working document accompanying the White Paper "Towards more effective EU merger control.

crisis-related remedies, in an effort to promote stability and competition in the NL market.[46]

The Commission investigates whether the proposed remedies are practical, and adequate to dispose the rivalry concerns. It, addition, it considers the perspectives of market members in a market test. If the remedies are acknowledged, they end up noticeably official upon the organizations. An autonomous trustee is then named to supervise in relation with these responsibilities. For instance, the Commission's endorsement of EMI's recorded music business by Universal Music Group in 2012 was contingent upon the divestment of EMI's Parlophone and various other music resources. The proposed merger would unite two of the four widely known as "major" record organizations and likely have empowered Universal to force higher costs for computerized music. The divestment guarantees that a free organization can keep on competing.

Another important case , relating to Commission’s remedies is Case COMP/M.5658 - Unilever/Sara Lee[47] which delineates the Commission's way to deal with structural/non-structural remedies I.n order to mitigate the Commission's concerns, the consolidating parties offered a few non-structural remedies that the Commission did not consider to be powerful, incorporating re-branding in certain Member States. Finally, the sense of duty regarding Sara Lee's Sanex image and related business in Europe was acknowledged as this offered an unmistakable and workable remedy, adequate to reestablish competition in all business sectors where the Commission had concerns.

Phase II investigation

[46] Commission Staff working document accompanying the White Paper "Towards more effective EU merger control.
[47] Commission decision of 17/11/2010.

Phase II is an inside and out investigation of the merger's consequences for competition and requires additional time. It is opened when the case can't be resolved in Phase I, for example, at the point when the Commission has worries that the exchange could limit competition in the interior market. A Phase II examination regularly includes more broad data gathering, including organizations' inward archives, broad financial information, more itemized surveys to advertise members, and additionally site visits.

In the Phase II, the Commission additionally examines guaranteed efficiencies which the organizations could accomplish when consolidated. On the off chance that the beneficial outcomes of such efficiencies for purchasers would exceed the mergers' negative impacts, the merger can be cleared. Keeping in mind the final goal to be considered, efficiencies must satisfy strict conditions and it is a duty for the consolidating organizations to demonstrate that they are met.

To start with, the asserted efficiencies must be *undeniable*, (for example, that the Commission can be sensibly sure that they will appear and be sufficiently significant). Second, the efficiencies must be *merger particular* (i.e. they can't be accomplished by different means than by a merger). Third, the efficiencies must be likely passed-on to customers, and not just recapped by the consolidating organizations alone.

The Commission notifies the organizations regularly about the procedure. In the event that, after such a market examination, the Commission presumes that the arranged merger will probably block rivalry, it sends a statement of objections (SO) to the informing gatherings, advising them of the Commission's preparatory decisions. Gatherings (parties) at that point have the privilege to react to the SO in composing, inside a specific period. They have the privilege to counsel the Commission's case document and to ask for an oral hearing which is led freely by the opposition Hearing Officer.

As for the timing, from the opening of a Phase II examination, the Commission has 90 working days to settle on an official conclusion on the compatibility of the arranged exchange with the EU Merger Regulation. This can be stretched out by an extra 15 working days if the advising parties offer responsibilities later in stage II. Expansions of up to 20 working days can be allowed on ask for by, or with the declaration of, the telling gatherings. In the event that the advising parties don't give a critical piece of data, which the Commission has asked for from them, the clock can be halted until the point that such missing data is provided. The Commission tries to adjust the planning of the examinations to different specialists overall at whatever point conceivable. It is coordinating effectively with different offices, for example, the US Federal Trade Commission and US Department of Justice.

Following the Phase II examination, the Commission may either:

a) Genuinely clear the merger or
b) Endorse the merger subject to remedies or forbid the merger if no sufficient solutions for the opposition concerns host been proposed by the consolidating gatherings. Every official conclusion - in both stage I and stage II - are distributed on the opposition site, after references to the organizations' classified business data has been evacuated.

Legal survey .

All decisions and procedures direct of the Commission are liable to survey by the General Court and eventually by the Court of Justice. The organizations or different gatherings showing an intrigue can appeal inside 2 months of the decision. This ensures an autonomous legal oversight and guarantees that all privileges of safeguard accessible to the organizations are completely regarded.

Four distinct sorts of M&As have been recognized: residential and universal bank M&As and M&As prompting residential and global mixture. The main part of M&A movement did in the EU, includes residential bank M&As and, among these, M&As between smaller foundations. It is essential that most operations (around 80%) were packed in four Member States (DE, IT, FR and AT) amongst the perception time frame. The advancement in the quantity of M&As among the perception time frame demonstrates a reasonable increment in 1998 and 1999 showing the inclusion of bigger foundations.

The Merger Regulation has established a 'one stop shop' system, under which , concentrations with a Community dimension (as defined by the the turnover thresholds set out in Article 1) are exclusively dealt with by the Commission, thereby avoiding multiple screening procedures at Member State level. Experience has shown that the current referral procedure by the Member State to the Commission prior to notification by the notifying parties in accordance with Article 4 (5) tends to be complicated and time-consuming. This is due to the fact that a "reasoned submission" is required in principle to refer the case to the first instance and then the notification when the application is approved. Given the small number of applications under Article 4 (5) of which a Member State has vetoed from 2004 to , the Commission suggests the abolition of the existing two - stage procedure (submission of reasoned petitions and subsequent notification). This change will speed up the referrals under Article 4 (5) and would make them more efficient, while maintaining their capacity Member States to prevent an application in the rare case they will judge it necessary.

In the event that at least one competent Member State opposes the Commission's jurisdiction, the Commission will wholly waive its jurisdiction and the Member States will retain their jurisdiction.

Article 4 (4) of the Merger Regulation: pre-notification referral from the Commission to a Member State allows the merging parties to request the refferal of a case to the Commission before notification[48].

In order to encourage the use of this provision, the Commission proposes adaptation of the substantive criterion set out in Article 4 (4) so that the parties no longer have to claim the act may "significantly affect competition in a market" to be possible to refer a case.

Adoption of “simplification package” .

The Commission Staff Working Document accompanying the White Paper , examines these proposals thoroughly, but it is worthwhile to mention two points:

- The Merger Regulation could be amended by the way of creating a functionally autonomous joint venture which is established and operates wholly outside the EEA (and which would have no effect on EEA markets). To further simplify procedures in the field of mergers and acquisitions, the Commission could be authorized to exclude from the obligation to prioritize certain categories of transactions which usually do not create competition concerns (eg transactions which do not involve horizontal or vertical relationships between them merging companies and which are currently under examination with a simplified procedure).

According the Commission staff working document, “executive summary of the impact assessment”, accompanying the document Towards more effective EU merger control, *post –notification referral from member states to the commission (art.22)*

[48] Commission staff working document , executive summary of the impact assessment , accompanying the document Towards more effective EU merger control.

allows one or several member states to request a referral of a case to the Commission and if accepted the Commission only takes jurisdiction for the territory of the member states requesting the referral request.

1.13 Case studies – mergers and acquisitions of banking institutions.

Starting from the first case, I would like to highlight the way in which the European Commission takes its decision and what steps it takes to shape its judgment.
The first case demonstrates the way and means to be taken into consideration from the European Commission when deciding whether to approve a merger or not, so i examine it more analytically.
Case No. COMP/M.4484 Danske Bank / Sampo Bank[49]

On 15 December 2006, the Commission got a notification of a proposed concentration compliant with Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Danske Bank A/S ("Danske Bank", Denmark) obtains -inside the importance of Article 3(1)(b) of the Council Regulation- control of the entire Sampo Bank plc ("Sampo Bank", Finland) by method of a buy of offers.

The parties:

Danske Bank was a financial administrations organization recorded on the Copenhagen Stock Exchange. The organization is dynamic in retail and discount saving money, protection, contract back, resource administration, financial, land and renting administrations. Danske Bank is the biggest bank in Denmark with operations likewise in other Scandinavi Sampo Bank is a completely claimed auxiliary of Sampo

[49] Case search on the EUR-lex site.

plc ("Sampo", Finland), an insurance organization. Sampo Bank is dynamic in the arrangement of managing an account and venture administrations to retail, corporate and institutional clients. The organization is mainly dynamic in Finland yet, in addition offers retail and corporate managing an account administration through backups in Estonia, Latvia and Lithuania and by means of a branch office situated in Sweden.

THE OPERATION

As indicated by a Share Purchase Agreement finished up by Danske Bank and Sampo, Danske Bank will obtain from Sampo, all offers in Sampo Bank and certain minority premiums in Sampo Bank's backups. Danske Bank will increase full responsibility for banking, common reserve administration, resource administration, securities financier, corporate fund, private value and land organization operations of Sampo Bank and its auxiliaries. Danske Bank would purchase all offers in Sampo Bank. The informed operation in this way concerns the procurement of sole control of Sampo Bank by Danske Bank.

The Commission reasons that the proposed exchange constitutes a concentration inside the significance of Article 3(1) of the Merger Regulation.

The parties have a consolidated total overall turnover surpassing a 5 billion (Danske Bank a 15.5 billion, Sampo Bank a 1.1 billion) and each of the gatherings' Group wide turnover is bigger than a 250 million (Danske Bank a 14.2 billion, Sampo Bank a1.1 billion). None of the undertakings concerned accomplish more than two thirds of their total far reaching turnover inside one and a similar Member State. The advised yoperation along these lines has a Community measurement according to Article 1(2) of the Merger Regulation.

Commission examines ,first of all, the related markets of the banks that are about to merge.

PRODUCT MARKETS

In past decisions, the Commission has recognized the business sectors for retail banking, corporate banking and monetary market administrations with conceivable further segmentation. The Commission has beforehand considered that corporate keeping money administrations could be encouraged into discrete item showcases for the arrangement of stores, advances (with a potential sub-section for land financing) and outside exchange fund. Most of the respondents to the Commission's market examination concurred with the qualifications settled on in past choices. In the present case it isn't essential for the Commission to portray precisely the extent of the important item advertises, since the exchange does not prompt competition concerns under any conceivable item showcase definition.

GEOGRAPHIC MARKETS

The Commission has beforehand considered that the applicable markets for retail banking institutions are national in scope.

As respects corporate banking institutions - specifically benefits given to SMEs - the Commission has already taken the view that geographic markets are prevalently national, however that specific corporate managing have a solid worldwide measurement, specifically for vast corporate clients. The Commission's market examination has affirmed the refinements made beforehand for banking. As for the business sectors for money related market benefits, the Commission found in the past cases that the applicable geographic market could be either national or universal in scope. The correct geographic extent of the significant markets might be left open for the current situation, since the exchange does not prompt rivalry worries under any conceivable meaning of significant geographic markets.

DECISION

The exercises of the gatherings cover Finland and to a limited degree Sweden. Since the exchange would have the biggest effect in the Finnish market for corporate banking , the Commission concentrated its market examination on this market and its subsegments.

1) Finland

Overall market

The joined piece of the overall industry of the gatherings in the general Finnish market for corporate saving money administrations market would add up to 21% (Sampo Bank 19%, Danske Bank 2%). After the exchange, the joined element would turn into the third biggest corporate bank in Finland. Danske Bank/Sampo Bank would confront rivalry from two bigger contenders (Nordea, assessed piece of the overall industry 35%, OP Bank Group, evaluated showcase share 25%) and other huge contenders, (for example, Svenska Handelsbanken with an evaluated piece of the pie of 15%). Remembering Sampo Bank's moderately humble piece of the pie, the little addition included by Danske Bank, the nearness of a few vast contenders and also the reaction to the market examination in which the exchange was overwhelmingly viewed as procompetitive ,the Commission, presumes that the informed exchange won't fundamentally hinder successful rivalry in a conceivable Finnish market for the arrangement of corporate managing an account administration.

2) Sweden

Overall market

Danske Bank's aggregate offers of corporate managing an account benefit in Sweden ,added up to a 14.2 million , while the exercises of Sampo Bank in Sweden created a turnover of a 489,000. In Sweden, Sampo Bank has 13 corporate customers, every one of whom are Finnish organizations or Swedish-based backups of Finnish organizations. The gatherings express that the joined piece of the pie of the two elements in the general Swedish market for corporate saving money administrations would be well beneath 15%.

The exercises of the gatherings don't cover as they are dynamic in various national markets (Danske Bank in Denmark, Sweden and Norway and Sampo Bank in Finland, Estonia, Latvia and Lithuania).

For the above reasons, the Commission has chosen not to contradict the told operation what's more, to proclaim it compatible with the basic market and with the EEA Agreement. This choice is embraced in utilization of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

Case No COMP/M.5613 - PIRAEUS BANK/ BNP PARIBAS/ GREEK JV/ SWISS JV

On 25 August 2009, the Commission got a notice of a proposed concentration according to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Piraeus Bank SA ("Piraeus Bank", Greece) and BNP Paribas SA ("BNPP", France) gain -inside the significance of Article 3(1)(b) of the Council Regulation- joint control of the undertakings Piraeus Wealth Management AEPEY ("Greek JV", Greece) and Piraeus Riches Management (Switzerland) SA ("Swiss JV", Switzerland) by method of buying of shares in a recently made organization constituting a joint wander.

After examination of the warning, the Commission has inferred that the informed operation falls inside the extent of Council Regulation (EC) No 139/2004 and of section 5(c) of the Commission Notice on a streamlined method for treatment of specific concentrations under Council Regulation (EC) No 139/20042. For the reasons set out in the Notice on an improved technique, the Commission has chosen not to contradict the advised operation and to announce it perfect with the basic market and with the EEA Agreement. This choice is embraced in use of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

Case No COMP/M.3894 - UNICREDITO / HVB

On 13/09/2005, the Commission got a notice of a proposed concentration as per Article 4 of Council Regulation (EC) No 139/2004 (the Merger Regulation) by which the undertaking Unicredito Italiano S.p.A. (UCI, Italy) gets inside the significance of Article 3(1)(b) of the Merger Regulation control of the entire of the undertaking Bayerische Hypo-und Vereinsbank AG (HVB, Germany) by method for open offer declared on 12/06/2005. After examination of the notice, the Commission has inferred that the advised operation falls inside the extent of Council Regulation No 139/2004 and does not raise genuine questions as to its similarity with the regular market and the EEA Aggreement. Concerning the Community dimension, the undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion [UCI 20,203 EUR million and HVB 21,821 EUR million]. Each of UCI and HVB have a Community-wide turnover in excess of EUR 250 million [UCI 18,930 EUR million and HVB 20,851 EUR million], but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension. This case, as well, is a case in which the European Commission did not oppose the forthcoming merger of the two banks and declared it compatible with the common market and with the EEA Agreement, being adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

Case No COMP/M.5384 – BNP Paribas / Fortis

On October 29, 2008, the Commission got a notification of a proposed concentration in accordance with Article 4 of Council Regulation (EC) No 139/2004 (" or "ECMR"), by which BNP Paribas S.A. ("BNP Paribas", France) obtains inside the importance of Article 3(1)(b) of the Council Regulation control of Fortis Bank S.A./N.V. ("Fortis Bank Belgium"), Fortis Bank Luxembourg S.A. ("Fortis Banque Luxembourg") and Fortis Insurance Belgium S.A./N.V. ("Fortis Insurance Belgium"), on the whole the "Fortis Entities", by method for trade and buy of shares. According to European Commission, following the proposed transaction, BNP Paribas will exercise sole control over the Fortis Entities. Therefore, the transaction qualifies as a concentration within the meaning of Article 3 (1) b of the EC Merger Regulation and has a Community dimension. In that specific case European Commission has asked for “commitments”, which have been provided by BNPP, in order to enable the European Commission to declare the acquisition of certain Fortis entities by BNP Paribas, compatible with the common market and the EEA Agreement by its decision pursuant to Article 8(2) of the Merger Regulation .

Fortis ABN/AMRO Assets (M.4844)[50].

On 14 August 2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("the Merger Regulation") by which Fortis acquire within the meaning of Article 3(1)(b) of the Merger Regulation control of parts of ABN AMRO Holding N.V. ("ABN AMRO assets", the Netherlands) by way of public bid announced on 29 May 2007.

The Fortis/ABN AMRO case gives a fascinating contextual analysis of the Commission's evaluation of mergers in the banking sector. In the two fundamental main product areas influenced, the examination prompted inverse conclusions — genuine competition worries in business banking, but without worries in retail banking. To touch a base at this conclusion, the Commission gathered broad empirical evidence in Phase I, before inferring that there were competition worries in business banking, but, not in retail banking. The generous divestiture commitment accepted by the Commission incorporates various protections, counting an in advance purchaser provision and stringent buyer prerequisites, to guarantee that the competitive conditions of the pre-merger are reestablished[51]. The main horizontal overlap between Fortis and ABN AMRO assets was in the supply of financial services to commercial customers and private individuals in the Netherlands .The Fortis/ABN AMRO case concerned one of the few banking mergers with a Community dimension. The main Phase II case in the sector, the proposed merger, in 2001, of the Swedish banks SEB and Föreningssparbanken, was pulled back by the notifying parties after the Commission had issued a Statement of Objections. We are along these lines, taking

[50] EUR-Lex website under document number 32007M4844.

[51] Fortis/ABN AMRO: When do bank mergers raise competition concerns? Adriaan BROUWER, Kay PARPLIES, Elisa ZAERA-CUADRADO, ELKE GRAEPER, and Erika JAKAB, Directorate-General for Competition, units 02, D-1 and D-4, Competition Policy Newsletter .

this chance to plot the analytical approach taken in the conditional clearance decision on Fortis/ABN AMRO. Consequently, the commission suggests that the proposed merger may raise concerns regrarding the competition issues in the Dutch banking industry. In an effort to address such concerns, Fortis proposed to divest ABN AMRO's subsidiary Hollandsche Bank Unie (HBU), along with a number of AMRO's banking offices. In essence, the divesture fulfils all the requirements for competitive overlap, ensuring that the divested companies would continue to be viable in the Dutch market. In fact, in order to guarantee this term, Fortis proposed a remedy pack under which the acquirer of the divested firms should be a well recognized bank, with comparable reputation with Fortis.

The European Commission in this decision has argued that due to the differences in the conditions of competition prevailing among Member States, including differences, transaction costs and the importance of having a branch network, consumers' preference to domestic suppliers and the existence of services Internet and Mobile Banking focused on domestic services, the relevant geographic market is domestic.

1.13.1 Case studies- mergers and acquisitions of non-banking institutions.

M&As are not confined only to the banking industry. They take place also in other industries, like, for instance, the media and entertainment sectors, the automobile industry, and the telecommunication sector. Furthermore, the pursuit of development in electronic distribution channels has led to alliances being announced between banking organizations, as well as telecommunication, software and internet companies; some alliances have involved ownership elements.

The case COMP/M.4439 — Ryanair/Aer Lingus concerned the proposed acquisition by Ryanair, of an Irish-based airline, Aer Lingus's competitor. Both companies provide scheduled air transport services. Their activities overlap, in particular at Dublin airport. The proposed acquisition, under which Ryanair acquires sole control of Aer Lingus, constitutes a concentration within the meaning of Article 3 (1) (b) of the Merger Regulation. The concentration has a Community dimension under Article 1 (3) of the Merger Regulation. The decision states, in agreement with previous cases in the air transport sector, that the relevant product market includes point-to-point scheduled air services where each route between a point of departure and a point of destination is defined as a separate market (departure and destination approach). The market investigation also concluded that some airports covering similar geographical areas (eg, main airports served by Aer Lingus and secondary airports served by Ryanair) belong to the same relevant product market. The decision emphasizes that the merger will combine two low-cost airlines with a significant presence, particularly at Dublin airport where, after the merger, they will account for around 80% of European short-haul flights. The decision has identified a total of 35 routes in which the parties' activities overlap. From these routes, the transaction will create monopoly positions on 22 routes and very high combined market shares, over 60%, on other 13 routes. Ryanair and Aer Lingus are also the most likely potential competitor on the routes currently served by only one of the parties to the concentration. The Commission's investigation has confirmed that there are significant barriers to entry, which make it very difficult to re-enter the routes where the activities of the parties to the concentration overlap. The commitments submitted by Ryanair were to a large extent insufficient to address the substantial barrier to effective competition identified by the Commission. The Decision therefore concludes that the notified concentration will significantly impede effective competition on the routes identified to / from Ireland and declares the concentration to be incompatible with the common market and the EEA Agreement.

Furthermore, there are two important decisions on merger control in the sector of telecommunications.

Today, the conditions, between national telecoms markets vary considerably. There is no single approach and the Commission always takes account of the different particularities in its analysis.

Following a thorough investigation, the Commission prevented, under the Merger Regulation the proposed acquisition of Telefónica UK's O2 by Three of Hutchison 3G UK, from which a new leader in the mobile phone market in the United States would be created. The Commission expressed strong concern that the significant reduction in competition in the market would lead to higher prices and fewer options for consumers in United Kingdom. In addition, the takeover would probably hamper innovation and innovation network infrastructure in the UK, which is a serious source of concern especially for rapidly evolving markets. The remedies proposed by Hutchison did not managed to cope with the concerns created by the takeover. In September the Commission approved, on the basis of the EU Merger Regulation, one proposed joint venture between Hutchison and VimpelCom in Italy, subject to conditions. Following an in - depth investigation, the Commission concluded that the the structural measures proposed by Hutchison and VimpelCom have been eliminated the Commission's concerns about competition. The parties will ensure the entry of a French telecommunications operator Iliad as a new network operator of mobile market in the Italian market. This means that the two operators can develop and reap the benefits of pooling their assets, while Italian mobile phone operators will continue to benefit from innovative services mobile phones at fair prices and high-quality networks. This case shows that telecoms companies in Europe can grow both within the same country as and cross-border, provided that effective competition is maintained.

In October, the Commission launched an inquiry into a network sharing agreement between two Czech mobile operators, O2 CZ / CETIN and O2 CZ / CETIN T-Mobile CZ23 (Case AT.40305 Network sharing between O2 CZ / CETIN and T -Mobile CZ in the Czech Republic , see IP/16/3539 of 25 October 2016). O2 CZ / CETIN and T-Mobile CZ are both major players in the field of telecommunications in the Czech Republic and serve together about three quarters of the Czech retail mobile telephony market. The Commission is investigating especially if the cooperation between O2 CZ / CETIN and T-Mobile CZ threatens to slow down the improvement of the quality of existing infrastructure and delay or to block the development of new technologies and services, in particular in densely populated areas. The Commission will also investigate its potential improvement in efficiency that could arise from the common use of he network. On the basis of this assessment, the Commission will verify whether the cooperation is in breach of Article 101 TFEU, which prohibits business practices which are anti-competitive. In order to ensure a competitive telecoms framework, on September 2016 the Commission submitted a proposal for a Directive establishing the European Code of Electronic Communications and a proposal for a Regulation establishing the Body European Regulators for Electronic ommunications (BEREC).

A landmark decision in the field of road transport: In July, the Commission found that MAN, Volvo/Renault, Daimler, Iveco and DAF broke EU antitrust rules, and imposed a record fine of EUR 2.9 billion(Case AT.39824 Trucks , Commission decision of 19 July 2016).

The Commission 's decision specifically concerns the market for the manufacture of medium (weight between 6 and 16 tonnes) and heavy goods vehicles (weighing more than 16 tonnes). The companies MAN, Volvo / Renault, Daimler, Iveco and DAF (AT.39824) together represent about 9 out of 10 medium and heavy goods vehicles manufactured in Europe. Instead of competing with each other, the companies engaged in a cartel on the pricing for more than 14 years, from 1997 to 2011, until the Commission carried out unannounced inspections on companies. Over the years the discussions among the companies concerned the same issues, namely the relative increases in gross list prices, the timetable for the introduction of new emission technologies ,the passage of the cost of emission technologies to customers. All companies admitted their participation and agreed to settle the dispute. A procedure was also initiated in relation to Scania, which was not included in the decision arrangement. Consequently, for this company, the search continued in line with the usual one procedure (not in the framework of a settlement) followed in cartel cases. This decision also emphasizes the importance of a competitive one market to promote the deployment and dissemination of cost-effective low-technology technologies.

1.14 Entry barriers and consumer switching to the banking market.

The idea of barriers to entry is essential in numerous zones of competition law and arrangement, yet the question of precisely what constitutes an entry barrier has never been all around settled.

Entry barriers[52] are vital on the grounds that they are important in basically every sort of competition case that does not include a fundamentally offense. While examining the possible impact of mergers, it is important to evaluate whether entry barriers may discourage firms from taking an interest in the market. In fact, entry barriers may empede the landing of the new contenders in the exiting market. In the event of a merger, an opposition organization could be worried about anticompetitive impacts, since entry barriers would prevent other firms from entering the market and increase competition. Hence, regulators that try to disapprove a proposed merger, should prove that when a firm acquires the lion's share of a market, then it imposes its byusiness model or even manipulates the market for its own benefit (OECD , barriers to entry, policy roundtables[53].

In line with the guidelines on the assessment of horizontal mergers [54], the possibility of re-positioning or expanding the product line by competitors or participating parties may affect the incentives of the merged entity to increase prices. On the assessment of any barriers to entry, the guidelines for the assessment of horizontal mergers refer to the likely, valid and adequate entry.

It is a valid argument that a merger creates a significant restriction of competition and must be accompanied by a careful analysis of barriers to entry in order to confirm the likelihood and possibility of such entry[55]. This is the practice followed by Competition Authorities in merger cases. If entry into such a market is likely, there can be no restriction of competition.

[52] Kokkoris I., Papadakis K., Mergers in greek banking system in light of Competition law, article , Business and Commercial law , 7/2013 p.665.

[53] DAF/COMP(2005)42 ,Directorate for financial and enterprise affairs competition commitee.

[54] The horizontal merger guidelines do not detail the importance of the entry of competitors in a market refer to the corresponding analysis in the horizontal merger guidelines eg paragraph 55 of the horizontal merger guidelines and corresponding section 6 of the horizontal merger guidelines.

[55] Kokkoris I., Papadakis K., Mergers in greek banking system in light of Competition law, article , Business and Commercial law , 7/2013 p.665.

Lindsay, Lecchi and Williams (2003)[56], examined the factors taken into account by the European Commission in the merger assessment, as well as the main criteria that led the European Commission in merger approval. According to the analysis of a large number of mergers, if there are low entry barriers and even mergers leading to companies with significant market shares, will be approved. Therefore, although the criteria for assessing the entry capability of the guidelines are rigorous, the European Commission has attached great importance to the possibility of new entrants, as such entry is likely to prevent anticompetitive behavior of the newly established company as well as existing competitors.

The banking system in several countries has always been under strict regulation, which in some cases reduce the intensity of competition in the banking market. Over the last two decades, there has been a tendency to reduce strict regulation so as to reduce entry barriers and make competition more intense. Several studies have found a small negative impact on the deposit product market, which suggests the widened geographical scope of competition in the banking market (Radecki (1998), Heitfield (1999), Biehl (2002)[57].

1.15 State aid in the EU.

State aid, thus the control of direct and indirect aid granted by the Member States of the European Union to companies is also one of the areas of competition policy. The State aid rules are provided by Article 107 of the Treaty on the functioning of the

[56] Lindsay A., Lecchi E., Williams G, Econometrics study into European Commission Merger Decisions Since 2000, ECLR,24(12),p.673-682.

[57] Radecki, L.j., 1998, The expanding Geographic Reach of Retail Banking markets FRBNY Economic Policy Review 15-34, Heitfield ,E.A. 1999, What do interest rate data say about geography of retail banking markets , antitrust bulletin 44, Biehl, A.R., 2002, The extent of market for retail banking deposits , antitrust bulletin 47, 91-106.

European Union .As far as state aid is concerned, it is worth noting that it is a unique feature of the system of European Community competition law as the European Union is consisted by independent Member States ,so the competition policy in the creation of the single European market would be remained ineffective if Member States were free to support their national enterprises, so they considered it appropriate. The Commission and the Directorate-General for Competition have the primary power to implement Community competition law, although State aid in some areas such as transport, is being addressed by other Directorates-General.

On 1 May 2004, a decentralized cartel regime , entered into force to increase the application of EC competition law by national competition authorities and national courts.

For example, Fallimento Traghetti del Mediterraneo (ECJ C-140/2009).

'*In order to qualify an aid, all the following must be fulfilled conditions. First, there must be intervention by the State or through State resources. Secondly, such interference must be capable of affecting trade between Member States. Thirdly, it must grant a certain advantage to the beneficiary. Fourthly, it must distort or threaten to distort competition ... "*

Competition in the common market may be distorted not only by the actions of companies but also by the interventions of the Member States. In most cases, state authorities intervene in economic life on both political and social criteria in order to prevent, for example, bankruptcy of companies. It is evident that a state intervention involves a conflict of interest between economic operators who benefit from it and their competitors in other Member States of the European Union, who believe that they are affected and are pushing their governments for remedies; therefore, state initiatives that are unilaterally detained and executed can only cause conflicts between other member states. Thus, in order to avoid conflicts between Member States and waste of resources, it was necessary to regulate State intervention.

"All Member States provide aid to their businesses but the proportion of aid within each country's GDP varies from 2 to 4%. National aids even if they are useful, they can distort competition between businesses as some of them receive aid or tax exemptions while others do not. This impact on competition is forcing the European Commission to intervene, in particular when the aid runs counter to the cohesion objective, since it works to the detriment of the least regions of the Union[58]."

The provisions governing the State aid regime are covered by Article 107 of the Treaty on the Functioning of the European Union. This Article is divided into three parts. The first paragraph establishes the general principle that State aid is incompatible with the common market, whereas the second paragraph of the same article, provides those specific exemptions where State aid is considered to be compatible with the common market. Finally, the third and final paragraph of the article, lists specific types of cases where the aid can be considered compatible with the common market. The conditions laid down in Article 107 of the Treaty on the Functioning of the European Union must be cumulative in order for aid granted by a Member State to be regarded as State aid. In accordance with the objectives of that Article[59], the objective of State aid control, as provided for in the founding treaties of the European Communities, is to ensure that State interference does not distort competition and trade within the European Union[60].

The prohibition of State aid.

[58] N.Moussis, European Union Law , economy, policy, Papazizi Publications ,Athens 2008, p.314-315
[59] Paul P.Craig, Grainne De Burca , EU Law, Texts, Cases and Materials ,Oxford University Press, 4th Edition ,2008,p.1086-1087
[60] europa.eu/competition/stateai

In accordance with Article 107 (1) of the Treaty of the Functioning of the European Union, aid granted in any form by States with State resources and which distorts or threatens to distort competition by favoring certain undertakings or the production of certain goods is incompatible with the internal market, unless otherwise specified by the Treaties. It should be noted that Article 107 (1) of the Treaty on the Functioning of the European Union, does not provide a general definition of State aid, but concludes from the context that, it is sufficient that State aid confers an advantage on the recipient. This ambiguity with regard to the exact definition of state aid, has been overcome by both the case-law of the European Court of Justice and the relevant European Commission decisions. Thus, for example, the European Commission has included State aid, direct tax exemptions, parafiscal charges, preferential interest rates on favorable loan guarantees, preferential terms for public orders, compensation for damages and postponement of recovery and tax contributions .In any case this list is indicative and not exhaustive.

On the other hand, the European Union court has made it clear that the concept of aid covers not only positive benefits such as subsidies but also measures that relieve the burdens of an enterprise that they would normally have to bear, such as the supply of goods or services at a preferential price, a reduction in social security contributions, or tax deductions[61].

Subsidies granted to individuals or general measures open to all undertakings are not covered by Article 107 of the Treaty on the Functioning of the European Union and consequently do not constitute State aid. In addition, for the application of Article 107 (1) of the Treaty on the Functioning of the European Union, it is necessary for the aid to be attributed by a Member State of the Union or by a State source. Only the

[61] Paul P.Craig, Grainne De Burca , EU Law, Texts, Cases and Materials ,Oxford University Press, 4th Edition ,2008,p.1087.

advantages directly or indirectly attributable to State resources constitute State aid. It is clear that this may come either from a regional local authority or from a central government authority. State aid may also include advantages awarded by a public or private body designated or established by a Member State. In addition, another condition for the application of Article 107 (1) of the Treaty on the Functioning of the European Union is that the aid could distort or threaten to distort competition by favoring certain undertakings or the production of certain products and must affect trade between Member States. If the aid strengthens the financial position of an enterprise compared to other enterprises in the European Union, then intra-Community trade will be affected. The relatively small amount of aid or the relatively small size of the recipient firm, does not exclude the possibility that intra-Community trade may be influenced, for example, by the fact that the aid is granted to an undertaking providing only local transport services, does not exclude the possibility of effects on intra-Community trade within the European Union, as the aid may make it more difficult for businesses to penetrate the market. It is not necessary for the European Commission to prove that trade will be affected, it is sufficient to prove that trade may be affected[62].

Given the high degree of integration of the European economy, most of the state aid is considered to affect trade, even when it concerns products not exported to other Member States, if they compete on the national market with imports from other Member States. The Commission has devised a mechanism for defining and revising the reference rates used to calculate the intensity of State aid. In this way, for example, low-interest loans, tax exemptions, the supply of goods or services at a

[62] Paul P.Craig, Grainne De Burca , EU Law, Texts, Cases and Materials ,Oxford University Press, 4th Edition ,2008,p.1090.

lower cost, are subject to European control of aid”[63]. In any case under the “de minimis Regulation” [64] which is part of the State Aid Commission's Action Plan and complements the guidelines for venture capital and support for research aid to growth and innovation, the Commission considers that an aid which does not exceed EUR 200 000 [65] over three years (3economic years) or guarantees not exceeding EUR 1,5 million[66], is not capable of affecting intra-Community trade and therefore does not need to be notified to the European Commission.

Summarizing the four key elements for a State aid to be incompatible with the common market in accordance with Article 107 (1) of the Treaty on the Functioning of the European Union are as follows:

- the aid is granted by a State or by State resources.
- the aid is given in order to favor certain undertakings or the production of certain products.
- the aid distorts or threatens to distort competition and
- the aid affects trade between Member States and these elements should be cumulative.

Authorized State aid.

State aid compatible with the internal market.

Article 107 (2) of the Treaty on the Functioning of the European Union lists three types of aid compatible with the common market. According to the provisions of that Article, aid of a social character to individual consumers is compatible with the internal market, provided that they are granted without distinction to the origin of the

[63] N.Moussis, European Union,Law, economy, policy, Papazizi Publications ,Athens 2008, p.314-315.
[64] Commission Regulation 1998/2006 of 5 December 2006 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid EC L 379 of 28.12.2006 ,p.5-10.
[65] Commission Regulation 1998/2006 of 5 December 2006 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid EC L 379 of 28.12.2006 ,p.6.
[66] Commission Regulation 1998/2006 of 5 December 2006 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid EC L 379 of 28.12.2006 ,p.7 ,para 15.

products. The aid is legalized only in the case where there is no discrimination as to the origin of the products. This restricts the cases where a State will be able to use this provision since most State aid is directed exclusively at a particular undertaking in the Member State granting the aid.

The second case of permitted State aid in accordance with Article 107 (2) always concerns aid for the repair of damage caused by natural disasters or other extraordinary events; the rationale for these exceptions is almost self-evident, but its limits are vague[67].

The third and last paragraph of Article 107 of the Treaty, lists those cases of State aid which may be considered compatible with the internal market. In contrast to the second paragraph of Article 107, the third paragraph refers to wider areas of the general exemptions. Thus, aid to promote the economic development of areas , where the standard of living is abnormally low or there is serious underemployment and the areas referred to in Article 349, can be regarded as compatible with the internal market having regard to their structural economic and social situation. This article permits state aid or regional aid for the socially and economically disadvantaged regions of the European Union [68].On the other hand, any economic advantages gained from State aid must compensate for the distortions that competition may undergone[69]. It is worth mentioning, that this article is interpreted at a European level as a whole and not strictly at a national level as the European Commission examines. Thus, it occurs not in the national levels of employment and income but to those which follow

[67] Paul P.Craig, Grainne De Burca , EU Law, Texts, Cases and Materials ,Oxford University Press, 4th Edition ,2008.
[68] Paul P.Craig, Grainne De Burca , EU Law, Texts, Cases and Materials ,Oxford University Press, 4th Edition ,2008.
[69] European commission guidelines on National Regional Aid Brussels, 1998 OJ C74/6.eurlex.europa.eu.

the standards of the European Union as a whole[70]. The second part of Article 107 of the Treaty on the Functioning of the European Union contains two separate exemptions for State aid. The first concerns aid for the promotion of major projects of common European interest, whereas the second one is the aid to remedy serious disturbances in the economy of a Member State. As regards the first case, the European Court of Justice has stated that a project can not be described as a European program, unless it is part of a transnational European program that is jointly supported by a number of governments of the Union's member states to combat a threat such as pollution (Department of Environment)[71]. Therefore only coordination of assistance between European governments is described as aid under this provision. It is noteworthy that the use of this article has increased due to the economic crisis which started already in mid-2008. The European Commission has acknowledged that the seriousness of the crisis justifies the granting of State aid under Article 107 (3) (B). This Article allows State aid in those sectors of the economy that have a Systematic Failure or Crisis.

It is still necessary to examine the impact of State aid on intra-Community trade and its sectoral impact at Community level. Regional aid must be part of the clearly defined regional policy of the Member State and be in line with the principles of geographical concentration.

Particularly as reffered in Part 1 of this thesis, even tax exemptions could constitute state aid mesures. In case law SA 38373, The Commission found that two tax decisions issued by Ireland on the Apple has significantly and artificially reduced the tax paid by Apple to Ireland by in 1991. These decisions adopted a method of

[70] Josephine Steiner, Lorna Woods ,Christian Twigg-Flesner ,EU Law ,Oxford University Press ,9nth Edition, 2006,p.656.

[71] Judgement of the court (sixth chamber) of 8th March 1988 ,executif Regional Wallon and SA Glaverbel v Commission of he European Communities ,Joined cases 62/87 and 72/87.

determining taxable profits for two Irish Apple Group companies (Apple Sales International and Apple Operations Europe) in Ireland, which did not correspond to the economic reality: almost the total of the two companies' profits from sales, was credited internally outside Ireland to a "head office" that existed only on paper, with no physical presence or employees nowhere in the world, and which could not have produced these profits. As a result, of the profit attribution method adopted in tax decisions, Apple paid significantly less tax on its commercial profits than other companies in Ireland .That selective treatment allowed Apple to pay corporation tax with a real 1 per cent rate of European profits in 2003, which fell to 0.005 percent in 2014. Apple's selective tax treatment in Ireland is illegal under the rules of state aid, because it gives Apple a significant advantage over the other companies subject to normal national tax rules. The Commission can order the recovery of unlawful State aid for the preceding 10 years of the first request for information submitted by the Commission in 2013. Ireland must now recover from Apple unpaid taxes in Ireland for between 2003 and 2014, amounting to EUR 13 billion plus interest. Thus, In August 2016, the Commission has come to the conclusion that Ireland has unjustifiably granted tax advantages, unlawful under the EU State Aid rules, in Apple. In September, the Commission also launched a thorough tax investigation treatment accorded by Luxembourg to the GDF Suez (now Engie).

The Commission is concerned that various tax judgments issued by the Luxembourg may have granted GDF Suez an unfair advantage over others companies in breach of the EU State Aid rules. The committee also investigated tax decisions issued by the Luxembourg for McDonald's, as well as on a price agreement approved by Luxembourg for Amazon[72].

[72] SA 38945, SA 38944.

State aid rules are an integral part of banking sector as well, and ensure equal treatment between the participating Member States to the banking association and those not involved. The role of state aid is to ensure that the choices of the national government are not borne unjustifiably the public budget nor distort the competition in the EU. In 2016, the Commission took several decisions on stabilization of the banking sector in various Member States[73].

The Commission has also launched a thorough investigation to assess, under the Regulation of mergers, if the proposed merger between Deutsche Börse AG (DB) and the London Stock Exchange Group (LSE) will lead to a reduction of competition in different areas of the financial market infrastructure[74]. With the merger of the German, United Kingdom and Italian stock exchanges, as well as several of the largest European clearing houses, will be set up by far the largest European stock operator. Transparency in the financial derivatives sector is also strengthened priority of the Commission. In July, the Commission accepted the commitments proposed by International Swaps and Derivatives Association Inc. (ISDA) and Markit's information service provider, on the granting of a license intellectual property rights required for the provision market trading services for credit default swap contracts (CDS)[75]. CDS is a contract, whose function is to transfer credit risk, or default risk associated with a debt liability such as government and corporate bonds. CDS are used by investors for both hedging and investing.

With the application of the fundamental rules through a series of legislative acts providing for certain exceptions, the European Commission has created a unique global system of rules under which State aid is monitored and evaluated in the

[73] Annex of the Staff Working Document accompanying the Report, COM(2017) 285 final, report from the Commission to the European parliament , the council , the european economic and social committee and the committee of regions ,Report on Competition Policy 2016.
[74] Case M.7995 Deutsche Börse / London Stock Exchange Group.
[75] Case AT.39745 CDS - Information market, Commission decision of 20 July 2016.

European Union. This legal framework is regularly reviewed in order to improve its effectiveness and respond to the call of the European Councils for fewer but better targeted state aids to strengthen the European economy.

While new legislation is adopted in close cooperation for Member States, the application of the exemptions from the General State Aid Binding Act rests solely with the European Commission, which has a strong power of investigation and decision-making on this matter. Only after approval by the European Commission, a state aid measure can be implemented.

Through these instruments, three Directorates-General carry out effective State aid control. There is a special Directorate for Fisheries operating in the areas of competition law enforcement services, the special Agriculture Directorate and the Directorate-General for Competition dealing with all other areas. The aim of the Committee is to ensure that all European businesses operate at equal conditions. Moreover, the European Commission is ensuring that State interference does not affect the proper functioning of the internal market or harms the competitiveness of European companies.

Companies and consumers in the European Union are also important actors that can lead to investigations addressing their complaint to the European Commission. Furthermore, the Committee invites interested parties to submit observations through the Official Journal of the European Union when it has doubts about the compatibility of the proposed aid measure and initiates a formal investigation procedure[76].

The powers of the Commission in the field of State aid.

The state aid sector is one of the few areas where the Committee has autonomous supranational authority, and besides the role of its own initiative, it has the task of

[76] europa.eu/stateaid.

taking direct decisions under the control of the European Court. The Committee is creating a European competition law that frames the national justice system. In order to carry out this task, the Committee has a wide range of control and implementation, for example, conducting business inquiries, holding hearings and granting exemptions. Member States are obliged to notify in advance any planned support to companies (State aid)[77]. The powers of the Commission on State Aid are laid down both by the relevant provisions of the Treaty on the Functioning of the European Union and by the European Council's Regulation 659/99.

Article 108 (1) of the Treaty on the Functioning of the European Union provides that the Commission, in cooperation with the Member States, shall continuously examine the aid schemes existing in those States[78] proposing them the appropriate measures ,required by the Progressive Development and the functioning of the Internal Market.

Article 108 (3) of the Treaty on the Functioning of the European Union provides that the Committee is informed in due time of the plans to adopt or modify the aid in order to be able to submit its observations. If it considers that the aid scheme is incompatible with the internal market in accordance with Article 107, the procedure laid down in the previous paragraph shall be initiated. The Member State concerned shall not be able to implement the measures envisaged before the Commission reaches a final decision. They are therefore required to notify the Commission of any state aid they intend to grant [79].

Under these circumstances, Article 108 (2) of the Treaty on the Functioning of the European Union shall apply. That article provides that if the Commission finds that

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[77] europa.eu/competition/consumers.

[78] On the definition of existing aid See Council Regulation No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the Treaty establishing the European Community (now Article 108 of the Treaty on the Functioning of the European Union) L 83/3 Art. 1.

[79] On the notification procedure, see Commission Regulation 794/2004 of 21 April 2004 implementing Council Regulation No 659/1999 laying down detailed rules for the application of Article 93 of the Treaty of European Communities, Official Journal L140 of 30 / 4/2004 pp. 0001-0134, article 2-3.

the aid is granted by a State or by State resources, after having first given the parties concerned the opportunity to submit their observations, is incompatible with the internal market pursuant to Article 107 . If it considers such aid as abusive, it shall decide that the State concerned shall abolish or amend it within such period as it may determine. The Commission or any other State concerned may bring an action directly before the Court of Justice of the European Union by way of derogation from Articles 258 and 259. A Specific issue raised by State aid theory and case law, concerns the remedy of State aid granted to an enterprise. The Committee may, after giving the Member State concerned the opportunity to submit its observations, adopt a decision requiring the Member State to temporarily recover any unlawfully granted aid until it has decided on the compatibility, of the aid in question, with the common market (recovery order), provided that according to normal practice there is no doubt as to the nature of the aid measure, that there is an urgent need for action and that there is a risk of a serious and irreparable damage to a competitor. The Commission may authorize the Member State to accompany the repayment of the unlawful aid.

Finally, the Commission is assisted by an Advisory Committee on State Aid, composed of representatives of the Member States and chaired by a representative of the Commission. The Commssion should, inter alia, give its opinion before any implementing provision on the format of the content and other notification details or the annual reports is adopted.

Illegal State aid.

As already mentioned above, Article 108 (3) of the Treaty on the Functioning of the European Union stipulates that the Committee is informed in adequate time of plans to adopt or modify the aid, in order to be able to submit its comments. It can implement the planned measures before the European Commission comes to a final decision. Aid granted in breach of Article 108 (3) of the Treaty constitutes "illegal aid". Any interested party may inform the committee of suspected unlawful aid and alleged abuse of aid[80].

The European Commission may, after inviting the Member State concerned to submit its comments, adopt a decision requiring the Member State to recover any unlawful aid temporarily until it has been taken. Where the Commission considers that an aid scheme is no longer compatible with the common market, it shall inform the Member State concerned of its preliminary opinion and invite it to submit its observations within a month. In a second phase, the European Commission shall issue a recommendation with the appropriate measures to the Member State concerned. The recommendation may propose a substantive change to the aid scheme or the imposition of certain procedural conditions or, finally, the abolition of the aid scheme. After the examination of the possible existence of unlawful aid, a decision is taken by the European Commission. In the event of a negative decision on illegal aid, the Committee decides that the Member State concerned takes all necessary measures to recover the aid from the beneficiary (recovery decision). The European Union Court of justice , has stressed that it is a matter of principle to restore (repayment) unlawful State aid [81].

In particular, the European Court of Justice by its ad hoc case-law , examining the question of the suspension of aid granted in contravention of a law procedure under its decision No 0148/2004, the recovery of aid granted in contravention of the procedure laid down in article 88(3), constitutes a foreseeable risk for the trader who received it, so that the trader can not rely on the protection of legitimate expectations in order to

[80] Council Regulation No 659/1999 laying down detailed rules for the application of Article 93 of the Treaty of European Communities.

[81] Paul P.Craig, Grainne De Burca , EU Law, Texts, Cases and Materials ,Oxford University Press, 4th Edition ,2008.

avoid repayment of the aid. In addition, the undertakings to which the aid is unlawfully granted, generally take into account the amount of the aid. The recovery of the amount, as a rule, has an effect on their financial situation.

Furthermore, if it was accepted that this would exclude recovery, then the aid would remain definitively in the possession of the beneficiaries in almost all cases and the Community control of State aid would be totally ineffective.

According to the same decision, the abolition of unlawful aid by its retaliation is the logical consequence of the finding of its illegality. That recovery, which is intended to restore the former situation, can not, a priori, be regarded as disproportionate to the objectives of the Treaty provisions on State aid. With the refund of the aid, the recipient loses the advantage which it enjoyed on the market of its competitors and things revert to the situation prior to the grant of the aid and this does not conflict with the principles of legitimate expectation of legal certainty and proportionality[82].

Transparency is important because it promotes the proper use of money taxpayers, while being a key pillar of the initiative modernization of the EU State Aid rules, which was launched in 2012 in order to provide legal certainty and reduce bureaucracy for public authorities and companies[83]. Under the new rules, the granting authorities at all levels are obliged to provide information on each individual aid payment exceeding the amount of EUR 500 000. Transparency is inextricably linked to the simplified application of the State aid rules, making it easier for the member States to grant aid measures without requiring ex ante notification to the Commission[84] .

[82] case-law 0148/2004 of ECJ.
[83]Europa.eu/competition/stateaid/modernisation.
[84] Com 2017 ,285 FINAL , report from the commission to the European Parliament , the Council , the European economic and social committee and the committee of regions , Report on Competition Policy 2016.

1.16 Compatible and incompatible aid in the EU.

Article 107 of the Treaty on the functioning of the EU (ex Article 87 Detective) stipulates that ""any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favoring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, **be incompatible** with the internal common market".

The Commission has devised a mechanism for fixing and revising the reference rates used to calculate "the grant equivalent of aid". The type of the guide is superfluous: for instance grants, delicate advances, impose concessions, ensures, the supply of products or administrations at not as much as they cost, are largely subject to European State aid control. Be that as it may, under the "de minimis Regulation", aid of not as much as EUR 200 000 more than three years and assurances of up to EUR 1,5 million are judged not to influence exchange between Part States and subsequently require not be told to the Commission (Regulation 1407/2013).

Some cases of eligible state aid:

ECJ*13.03.2001, 379/98, PreussenElektra AG.*

Electricity undertakings are obliged to purchase energy produced in their RES supply area at minimum pre-established minimum prices and higher than the real economic value of this type of energy.

1) The financial burden resulting from this obligation is distributed between

Electricity supply undertakings and network operators.

2) Zero State aid is not an advantage granted directly or indirectly through State resources.

3) The provisions on prohibited state aid are not combined in an interpretative manner with the provisions on community loyalty so as to broaden the concept of State aid including support measures which are decided by the state but financed by private Businesses.

In case Commission finds that aid granted by a State or through State assets isn't compatible with the internal market or that such aid is being abused, it should choose that the State concerned might annul or modify this specific aid inside a timeframe to be dictated by the Commission. If the State concerned does not conform to this choice inside the endorsed time, the Commission or any other intrigued State may allude the issue to the Court of Justice of the European Union directly. On application by a member state, the Council ,in a three month period, may, acting consistently, decide weather that aid is compatible or not with the internal market. With a specific goal to increment lawful certainty and straightforwardness in the Commission's basic leadership process, a Council Regulation sets down point by point rules for the utilization of Article 108 § 2 TFEU) (Regulation 2015/1589) and the Commission Regulation sets out the shape, content and different subtle elements of notices and yearly reports concerning State aid (Regulation 794/2004, last revised by Direction 2015/2282).

A judgment of the Court of Justice of 14 February 1990 provides important clarification on the State aid control system, and in particular: the procedural rules of Article 93 (3) (EEC, Article 108 § 3 TFEU) requiring Member States to notify State aid at the project stage, in order to enable the Commission to decide on their compatibility before implementation; and on the obligation on Member States to require the recovery of aid which can not benefit from an exemption provided by Article 92 EEC (Article 107 TFEU) and is therefore incompatible with the common market (Case C-301/87). In another judgment, the Court stated that only advantages granted directly or indirectly from State resources are regarded as aid within the meaning of Article 92 (1) of the EEC Treaty (Case 82/77). In another Court's case, since the Commission has declared aid incompatible with the common market, the Council has no power to consider it compatible (Case C-110/02).

Also, the ABN AMRO decision on state aid underlines the way that the Commission does not embrace a "one size fits all" approach, yet is always endeavoring to modify its necessities as accurately as conceivable not just to the measure of aid granted but additionally to the particular subjective highlights of the case as appeared by its Appraisal[85].

In 2001, in order to increase transparency in the area of State aid policy, the Commission established the State Aid Register and State Aid Scoreboard [86].

On the basis of Article 89 TEC (new Article 109 TFEU), the Council has authorized the Commission to adopt block exemption regulations for certain horizontal aids (in favor of small and medium-sized enterprises, research and development, environmental protection, employment and training) and for aid not exceeding a certain amount (Regulation 2015/1588). Against this background, a new Commission General Block Exemption Regulation (GBER) consolidates into a single text and harmonizes the exemption rules previously contained in five separate Regulations ,while broadening the categories of State aid that meet the compatibility criteria referred to in Article 87 (3) of the EC Treaty (Article 107 (3) TFEU) (Regulation 800/2008, last amended by Regulation 1224/2013). Exemption from notification means the Commission's automatic approval of aid, research, innovation, regional development, education, employment and venture capital. The Regulation also allows

[85] The ABN AMRO restructuring decision by Bruno Zanghellini, Koen Dierckx, Christophe Galand and Michele Lanotte, Competition Policy Newsletter.
[86] COM /2001/ 412 and COM /2001/782.

aid for environmental protection, aid measures to promote entrepreneurship, such as aid for new innovative enterprises, aid for start-ups in assisted areas and measures to address problems such as the difficulties faced by female entrepreneurs in finding funding. The GBER applies to transparent aid in all sectors of the economy[87]. By allowing Member States to grant the above aid without prior notification to the Commission, the Regulation encourages the governments of the Member States to focus their own resources on aid which genuinely benefits employment creation, environmental protection and competitiveness Europe, in line with the objectives of the Europe 2020 strategy.

Guidelines on State aid granted to promote risk capital investments in small and medium-sized enterprises define the criteria applied by the Commission in assessing the compatibility of such measures in accordance with Article 87 (3) of the EC Treaty (Article 107 3 TFEU) . In addition, venture capital investment aid is included in the GBER.

Finally, under the existing Community guidelines on State aid for rescuing and restructuring firms in difficulty, Member States may also grant aid to companies justified on grounds of regional or social policy, in particular because of the need to take into account the beneficial role of small and medium-sized enterprises for the economy, or even exceptionally, because it is appropriate to maintain a competitive market structure when the disappearance of certain undertakings can lead to a monopoly or tight oligopolistic situation.

[87] europa.eu/competition/state_aid/legislation/gber_practical_faq_en.

PART 2 - Case of Greece - free competition issues.

2.1 Greek legislative framework in the sector of bank mergers.

The application of European Union law is generally entrusted to the Member States in addition to the Article 291 para 1 of the TFEU. It further adds that Member States are required to take all necessary national legislative measures for the implementation of legally binding acts of the Union. The European Union court has repeatedly stressed that all Member States are required to comply with European law and that a provision of domestic law cannot justify non-compliance. From the point of view of the European Union, many laws of the Member States are essentially implementing European Union law, in particular this applies to national legislation implementing EU directives. The same obligation is also subject to Greece, as it is a member of the Union. It is therefore, advisable to look at the legal framework of mergers of the side of Greek law, with emphasis on the rules that apply to national mergers and the current case law of national courts in order to investigate whether it is in the right direction and complies with the EU guidelines.

The merger of public limited companies has beneficial effects both for the private economy of their members and for the national economy, because large companies are viable and also able to cope with the competition of foreign large companies. The merger of companies also leads to the intensity of competition which benefits consumers and the general public. It also contributes to business restructuring in times of financial distress. The merger of public limited companies was governed by the Law 2190/1920. Presidential Decree 498/1987 replaced the law previously in force (Articles 68-80 of Law 2190/1920) and the Greek legislation was harmonized on the basis of the guidelines of Directive 78/855/ EEC, the Third Corporate Directive of the European Economic community concerning the merger of public limited liability companies[88] .In the light of the guidelines of the abovementioned Community Directive, all the rules of the new law aimed at establishing a system of adequate protection for the interests of corporate lenders and the minority shareholders . Law 3604/2007 also introduced some necessary amendments to the provisions of Article 69 on the merger of public limited liability companies[89].

In our country, according to the law 2243/1959, bank merger activity was pursued in the name of the reorganization of our bank system. This has been a decisive step in the development of oligopolistic structural framework of the Greek banking system. According to the same law, deliberate merger of bank limited companies was also facilitated with specific provisions, in relation to Law 2190/1920, which governs the merger system of public limited liability companies.

In Greece over the past years, we are experiencing an intense merger activity in the banking sector which seems to change the banking map in Greece and leads to a more concentrated industry.
The existing legislative framework was amended by Law 2515/1997, which includes ,in relation to those specified in Law 2076/1992, a series of favourable provisions applicable to merger of Greek banking institutions, which have their headquarters in European Union and have not been explicitly excluded from Community directives[90].

A merger of credit institutions can be achieved either by absorption of one another or by the creation of a new. In both cases, the acquirer or the new credit institution constituted by the merger is the universal successor of the merging companies as explicitly provided for by Law 2076/1992. After the merger, the properties of the

[88] See Michalopoulos, “foreseen in the new law of the merger of public limited liability companies”, review of commercial law ,1988.
[89] Alexandridou E., Law of commercial companies, capital companies, volume B , version C, p.297, Nomiki Vivliothiki (2009).
[90] I.Velentzas “Banking law” , 1992 ,Publications Stamoulis.

participating companies are united, without prior settlement and liquidation and without observing the rules of special succession, but by succession quasi-universal.[91]

Particularly, in accordance with the opinion of the State Legal Council 58/2002 of 6 February 2002 on the question whether the merger by absorption of the National Bank of Greece as a joint-stock company with its subsidiary in France was possible and in which regime, the State Legal Council had the opinion that, the merger is not precluded by this law and that the law of each company's registered office will be enforced. Article 16 of Law 2515/1997, on the merger of credit institutions defines that, the merger is realized according to the provisions of Articles 69 to 80 of Law 2190/1920, unless otherwise specified in this Article. This article does not provide the instance of the absorption of a credit institution by another holding 100% of its shares. Consequently, if the absorption is affected by a bank limited company holding 100% of the shares of the absorbed bank limited company, article 78 of Law 2190 of 1920 applies.

Further, article 16 of Law 2515/1997 was considered to be fully compatible with the Third Corporate Directive, in accordance with Decision 3069/2004 of the Athens Court of First Instance, in which the main issue was whether, in accordance with the Third Corporate Directive of the European Economic Area, there is the obligation to draw up a report by experts and whether this is covered by a report by statutory auditors. Accordingly, as a condition of the merger there is neither the verification of the assets of the merging companies, nor the submission of a report by a committee similar to that provided for in Article 9 of Law 2190/1920. In particular the provisions of Article 10 of the Corporate Directive provides for an expert examination of the

[91] M.Minoudis, “Bank mergers by acquisition” ,review of hellenic banks unit , September 1995, p.49.

draft terms of merger and a report drawn up for the shareholders, to establish the abuse.

Additionally, our national law has been adapted to the rules of the Directive by the adoption of the prefecture 2578/1998 "tax regime for mergers of divisions, contributions of assets and exchange of securities between companies of different Member States of the European Union and other provisions".

It is apparent from the above-mentioned provisions, that both Community law and the basic principles for the establishment and effective functioning of the internal market and the economic union as well as national laws ,provide a common legal framework for the merger of public limited liability companies by absorption and in particular the issue of absorption of a public limited company by another 100% of its shares, as provided for in Article 78 of Law 2190/1920 (which was examined in opinion 59/2002 of State legal council). This rule, in the absence of the contrary, also applies to the banking limited companies, on which it also applies law 2076/1992 by which is incorporated the Greek banking legislation into Council Directive 89/646 / EEC.

Concerning the protection of free competition, it is at the core of modern market justice and the economic public order. The liberalization of the market by all kinds of government interventions, and the creation of mechanisms to defend the good of free competition, was a central choice and at the same time a Community principle. In our country the law of free competition acquired a legislative framework with the adoption of Law 703/1977. Merger control arrangements were not initially included in this county ,on the one hand, because of the respective gap in European Community law and on the other hand because of the tendencies to strengthen low competitiveness of Greek businesses. Law 703/1977 on the “Protection of Free Competition”, provides the obligation to notify the concentration of undertakings within one month of its being submitted to the Competition Committee, if the market share of the products concerned, represents on the National Market, a substantial part of at least 10% work, carried out on products or services deemed to be alike by the Consumer, or where the total turnover of all the participating companies is at a minimum of EUR 10 million. However, where the market share amounts to 25% of the total turnover of EUR 50 million, while at the same time at least two of the undertakings involved, each separately, has a total turnover in the national market of over EUR 5 million, the notification must be made within 10 working days of the conclusion of the agreement or the publication of the offer/exchange or the acquisition of a controlling interest of another firm.[92]

At this point, a distinction between conventional control and acquisition control which is not the subject of a contract, must be done. In the first case the agreement must be disclosed but should not be made prior to the issue of one of the decisions referred to in Article 4e(1). In the other case, for example, when the acquisition of control is not the subject of agreement or even when it is achieved in the context of stock exchange transactions, where notification is not possible before the merger takes place, law provides later notification[93].

For banking institutions, instead of turnover, we use a different measure. In fact, one tenth of their assets at the year-end prior to the merger is taken into account, and for each of the separately participating undertakings, one tenth of the assets multiplied by their ratio claims arising from transactions with banks, other credit institutions and

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[92] G. Papaioannou, "Mergers of credit institutions and the competition committee", article ,Hellenic bank association(HBA), 1998.
[93] I. K . Dryllerakis , "The new competition committee" , Review of labor law , 1995 , p.527.

customers who have their place of business or residence in Greece, on the total amount of these claims[94].

The problem of the adverse effects of mergers on free competition was dealt with, by the amendment made to law 703/1977, Laws 1934 and 2000/1991 .The amendment of Law 703/1977 was the consequence of the adoption of the Community Regulation 4064/1989. With the recent law 2296/1995, the role of the Competition Committee changed through its upgrade to an independent administration authority with its own departments and by introducing the preventive control of the large-scale Concentrations.

Referring to the Greek commercial law, there are provisions that regulate only the merger of limited liability companies (LLCs), thus, the articles 54-55 of the law No 3190/1955 and also the merger of public limited companies (PLCs) mentioned in articles 68-80 of the law No 2190/1920. These cases of mergers regulated explicitly by law, are called genuine mergers. All other cases whose process is not regulated by law are the so-called non-genuine and abusive mergers.

In particular according to the Greek legal framework there are three ways of absorbing a company[95]:

i) With absorption of a company absorbed by the absorber.

ii) With liquidation of the merging companies and the set up of a new Company

iii) With the acquisition of a company (or more) from another public limited company.

[94] G. Papaioannou , "Mergers of credit institutions and the competition committee", article ,Hellenic bank association (HBA), 1998.

[95] Sakkelis E.,(2001), Mergers, disruptions, transformations of companies and evaluation of value of a business from a legal, tax, accounting point of view , publications Sakkelis.

In those three forms of merger, we observe the phenomenon of the expiry of the legal person of one or more companies, without their being liquidated, and the transfer of the assets of the disappeared companies (assets and liabilities) to the public limited company which exists or is constituted for the first time. Furthermore, the process followed for realizing this merger is common, regardless the way of merging. Decisions of general meetings, conclusion of a notary agreement, approval of the supervisory authority, registration of the approval of the contract and the decisions of the general meetings in the register and publication of a notice in the Government Gazette are required.

Briefly, therefore, some provisions governing the business mergers are:

a) Articles 68-80 of the Codified Law 2190/20, as amended in accordance with Presidential Decree 498/87, which concern only mergers of public limited companies in the above three ways.

b) The Legislative Decree 1297/72 and articles 1-5 of the law 2166/93, which refer on mergers of any corporate formations and individual companies to public limited company or limited liability company.

c) The articles 54-55 of law 3190/55 on the merger of limited liability companies, either by setting up a new Limited Liability Company or by absorbing a limited liability company from another or other limited liability companies.

d) The article 16 of law 2515/97, regulating mergers of credit institutions.

e) The article 9 of law 2992/2002, on tax incentives to merging companies.

f) the article 29 of law 3091/2002 ,regulating the amortization of goodwill on the acquisition market in the case of undertakings, which have absorbed other undertakings according to the provisions of laws 2166/93and 2517/97.

2.2 Nullity of the merger of public limited liability companies by absorption.

For reasons of legal certainty, the law defines the reasons for nullity of the merger of public limited companies. The merger may be declared void: (a) Firstly, if no decision has been taken to approve the merger by the general meeting of shareholders or the special meeting of any class of shares of one of the merging companies or if the decision taken by them was voidable or void under Articles 35a and 35b. Also, the merger may be declared null and void if all the formalities laid down by the law have not been complied. In particular, (a) if no merger agreement has been drawn up or if it has been drawn up without a notary (b) if no affirmative statement has been made that the corporate lenders have raised no objections to the merger (c) if there is no approval of the merger by the competent administrative authority ,derived from the legality review of the relevant decisions of the general meetings of the merging companies and the merger agreement d) if it was not registered in the public limited company register. The nullity of the merger does not apply automatically, but must be declared by court order[96].

2.3 The legal consequences of completing the merger with absorption process.

The merger by absorption is completed after the approval of the merger by the management and registration of the approval decision together with the other documents in the register of public limited companies. the following results are achieved: Firstly, only the acquiring company in which the assets of each absorbed company are transferred in a quasi-universal succession and the absorbed ceases to

[96] Alexandridou E., Law of commercial companies, capital companies, volume B , version C, p.297, Nomiki Vivliothiki (2009).

exist, secondly, one or more of the absorbed companies ceases to exist (Article 75 (1) (c), so the acquiring company substitutes automatically and without any wording for all the rights and obligations of the acquired company including administrative authorizations have been issued for the acquired companies. (Article 75 (1) (a).

2.4 Tax incentives for M&As in Greek law system.

Providing that the merger is based on laws 1297/72 and 2166/93, the following tax exemptions are granted for mergers of public limited companies and limited liability companies.

a) Exemption from any tax or fee in favor of the public or third parties of the conversion contract or merger, of the transfer and fee for the assets and any other related agreement and acts.

b) Exemption of the contributed immovable property (from the absorbing company to the absorbed one) from the transfer tax.

c) Exemption (at the time of transformation) from the income tax on goodwill arising from the merger or transformation.

d) In the case of a merger between the two companies, potential balance sheet losses for the current or the previous years will be transferred in the new company. Further, such losses may offset future earnings of the combined entity for the next 2 years after the merger.

In order to encourage mergers, the legislator also provided incentives and tax exemptions.

As stated in opinion 186/2004 (plenary) in which – among others- it is clearly defined the nature of affiliated companies in order to be entitled with reduced tax:

Article 68 of the Law 2190/20 provides as follows:

1. The merger of public limited liability companies takes place either by absorption or by setting up a new company.

2. Merger by absorption is a transaction iny which one or more public limited companies (absorbed), which are dissolved without going into liquidation, transfer to the absorbing public limited company all their assets and liabilities. The shareholders of the absorbed companies get in return shares issued by the acquiring company and, when appropriate, the payments in cash to offset the shares traded. This amount may not exceed 10% of the nominal value of the shares attributable to the shareholders of the absorbed companies and cumulatively with the value of those shares the value of the net position of the contributed assets of these companies. Also ,In Article 72o (1) it is stated that :"The merger shall require a decision of the general meeting of each of the merging companies, which shall concern the adoption of the draft merger contract and, where appropriate, the amendments to the statutes required for the merger to take place." Also, according to article 74(1) of the same law, "The decisions of the general meetings for merger, taken in accordance with article 72, along with the relevant contract, drawn up by a notary document ... and with the approval of the Minister are subject to the disclosure requirements of Article 7b for each of the merging companies ". Pursuant to Article 75 (1) of the same law, "the registration of the merger approval decision provided for in Article 74 by the registration of limited companies is automatically and simultaneously realized without any other formality , both for the merging companies and has the following results: (a) the acquiring company substitutes in its entirety for the rights and obligations of the company (s)

absorbed and the transfer is assimilated to a universal succession; (b) the shareholders of the acquiree or of the acquiree shareholders of the acquiring company and c) the absorbed or merging companies cease to exist. "

From the combination of the above provisions it follows that, tax incentives are provided to merge those companies in order to create strong economic enterprises on the one hand and to increase their competitiveness in order to allow their survival and further development within the growing international business competition .Tax incentive is, in principle, provided to unrelated companies but in a reduced form to affiliated companies as well, provided that such a link occurred before 1-1-1997, in this particular case. The explanatory reason for the above discrimination was the explanations given by the former Minister for Economic Affairs and Finance to the Parliament, which responded to a remark by a deputy of the Opposition[97]. Segregated business sectors have been able through the capital market to collect enough capital for their growth. Consequently, according to the opinion of the competent Minister, what was needed was to provide incentives to companies which were subsidiaries of other companies before that period.

Another crucial issue that emerges from this opinion is the definition of the term "affiliated undertakings" by expressly referring to the provision in paragraph 5 of Article 42e of law 2190/1920, which stipulates that affiliated companies are:

(a) That company who has a majority of the capital or of another (subsidiary) undertaking, (b) the parent undertaking has a parent subsidiary; " .

Accordingly, the acquisition by a public limited-liability company, irrespectively of the nature of its business activity, such as banking, industrial, etc., of the majority of

[97] see Proceedings of the House of C on 19-2-2002 p. 107.

the shares of another public limited company, establishes between them a parent company relationship (acquired) to a subsidiary; gives those companies the status of "affiliated undertakings".

It is a fact that wide tax exemptions arise when a company merges with another. The same phenomenon applies to the banking industry also. In particular, in the case Unicredito Italiano SpA –Agenzia delle Entrate , Uffizio Genova 1, the Court of justice of the European Union (CJEU) in its decision No C-148/04 (second chamber) examines the case of State aid and particularly if it consists a tax measure favouring exclusively banking companies (as a tax exemption), carrying out certain transactions. This specific case-study refers to an application for a preliminary ruling and analyses whether it relates to the validity of the Commission's decision 20022/581/EC of 11/12/01, concerning the State aid scheme which Italy has adopted in favour of the banks and, in particular, to the tax advantage which Unicredito bank has received in tax years 1998, 1999 and 2000. The court has ruled that it is prohibited a tax reduction that reinforces the position of the banks that received the aid in relation to the banks of the intra community trade. Among others, in this decision it is pointed out whether there is compatibility of aid measures or if an aid scheme is compatible with the common market and falls within the exclusive competence of the Commission, is subject to review by the Court. As it is stated in the decision, “Article 87(1) EC prohibits aid which 'favours certain undertakings or the production of certain goods', that is to say, selective aid. Aid may be selective in the light of that provision even when it concerns a whole economic sector[98]”. In the present case, the tax reduction applies to the banking sector. It does not benefit undertakings in any other economic sectors. The result is that, aid must be found to be incompatible with the common

[98] See in particular, Case C-75/97 Belgium v Commission [1999] ECR I-3671, paragraph 33.

market if it has or is liable to have an effect on intra-Community trade and to distort competition within such trade. In particular, when aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by that aid[99]. In that case, thus, the question which was raised was whether such tax reductions are compatible with the European Union law and with intra-Community trade. According to the proposal of the Advocate General Stix-Hackl of 8th September 2005, in the present case, it must be borne in mind that, the aid scheme at that issue, intended to provide the Banks with an incentive for mergers and that the retroactive recovery of the advantage of the merger would fundamentally alter the economic relations between private entrepreneurs and the stability of the merger financial sector. It also states that the abolition of unlawful aid through the search for the entire aid is the logical consequence of its finding as unlawful and can not therefore be regarded as disproportionate to the objectives of the Treaty provisions on State aid. Consequently, there is no conflict with the principle of proportionality, neither with the article 87 EC, nor even with the principle of legitimate expectation. Otherwise, the effectiveness of the Community ban on aid would be derogated. In addition to this, regarding the procedural issues ,the Advocate General states that it is not for the Court of Justice of the European Union to determine whether or not a State aid should be considered to be compatible with the common market but it falls within the exclusive competence of the European Commission[100].

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[99]See in particular, Case 730/79 Philip Morris v Commission [1980] ECR 2671, paragraph 11; Case C-53/00 Ferring [2001] ECR I-9067, paragraph 21; and Case C-372/97 Italy v Commission, paragraph 52.

[100] See C-148/04 , points 43-44 of the proposal of Advocate General .

2.5 The Competition Commission

The Competition Commission is the body, to which the legislator has given exclusive competence to implement the law 703/2977 “on the control of monopolies and oligopolies and the protection of free competition”. By law 2996/1995, the committee, which until then functioned as a body of the ministry of commerce, has acquired the form of an independent administrative authority with administrative autonomy. With the law 2837/2000, the committee also gained economic autonomy. The Commission has the obligation to keep accounts and records including the profit and loss account and its balance sheet. Its budget is annexed to the Ministry of Development's budget. Its internal functioning and the way its resources are managed are regulated by “ the Financial Regulation and its financial management”.

The Commission is composed of nine members and is appointed by the Development Minister for a three-year term. It is composed of persons with knowledge and experience in competition matters, by the Supreme Judge or Councillor of the State Legal Council as well as by representatives of the bodies. Its members enjoy functional and personal Independence and in the exercise of their responsibilities are bound by the law and their conscience. Its chairman is appointed by the Minister of Development among its members, after the opinion of the competent committee of the Parliament.

The Competition Commission is assisted in its work by the Secretariat, which employs 26 secretariat staff, in particular having the power to carry out either on-the-spot or on-demand business inquiries to monitor disclosure of mergers and cartels submitted to it, to monitor the implementation of Commission decisions and of relevant court rulings and to make recommendations to the Committee. The way in which both the members of the committee and the staff of the secretariat are to perform their duties is governed by a code of conduct.

The commission is mainly responsible for:

-Finding out the existence of agreements between undertakings which have as their object or effect the restriction of competition pursuant to Article 1 (1) of Law No 703/1977.

- Deciding to exempt restrictive anti-competitive agreements which however have positive economic outcomes for the consumer, do not create conditions for the elimination of competition and do not over-engage the undertakings concerned as provided for in Article 1 (3) of Law 703/1997.

-Finding out the abusive behaviour of undertakings in a dominant position on the market pursuant to Article 2 of Law No 703/1977.

-To proactively control the impact on competition of concentrations (mergers and acquisitions) of Enterprises as provided for in Article 4 of Law 703/1977.

-to impose sanctions in cases of violation of the provisions of law 703/1977.

- To give an opinion on competition issues either on its own initiative or when it is asked addressed to the Minister of Economy and Finance, to associations of chambers of industrial and trade associations.

- To take provisional measures when there is a violation of Articles 1 and 2 of Law 703 /1977.

The Commission is not responsible for controlling restrictions of competition which are not the object or effect of a cartel or do not originate from a dominant undertaking. In addition, it not it responsible for complying with the provisions of

Law No 146/1914 on unfair competition , the enforcement of which falls within the jurisdiction of civil courts[101].

The procedure before the Committee in the examination of the cases dealt with, is governed by the rules of procedure and financial management and its decisions are subject to appeal before the Athens Administrative Court of Appeal.

The Committee works with the authorities responsible for monitoring the operation of specific sectors of the economy such as the National Telecommunications and Post Commission and the Energy Regulatory Authority. As a National Competition Authority, cooperates with the European Competition Commission and with international organizations to prepare new regulations or review existing ones.

Going further the analysis on the mergers, a merger of banks has multiple product and geographic markets in the Greek banking system. In the Alpha / Eurobank decision the Greek Competition Commission has identified the following markets[102]:

1. of banking products and services (financial sector)
2. of mutual funds
3. of the insurance business
4. of finance leases
5. of factoring
6. of stock brokerage and real estate activities.

In particular, "the plenary session of the Competition Commission, with unanimous decision No. 534 / VI / 2012, approved the merger of" ALPHA BANK SA "and" EFG

[101] www.epant,gr/about
[102] Kokkoris I., Papadakis K., Mergers in greek banking system in light of Competition law, article , Business and Commercial law , 7/2013 (19 year) ,657.

EUROBANK ERGASIAS SA" , in accordance with the provisions of Article 8 of Law 3959/2011. In particular, after completing the hearing, where the parties presented their views, the Commission considered that there were no serious doubts as to its ability to significantly restrict competition. For the individual factoring markets, for which doubts have been raised regarding the compatibility of the notified merger with the competition requirements, the Competition Commission has accepted the commitments set out by the parties and considered them conditions of effective competition.

According to the established practice of the European Commission, the basic classification of classical banking services will include:

- Services to Private / Retail Banking

- Business Services (Business Banking)

- and financial market services.

Each of the aforementioned categories can be further distinguished in sub-markets on the basis of the substitution of individual banking products in terms of supply and demand.

2.6 Cases of mergers in the Greek banking system.

At this point of the research, we have to distinguish between two types of mergers in the Greek banking system realized in the past, thus the mergers of independent credit institutions and the mergers of credit institutions belonging to the same group.

A) Starting from the first category we can refer to the case of merger between "Eurobank and Interbank".

The facts:

On 30/7/1996, the Competition Committee was notified of the 19/7/1996 takeover agreement as well as the share transfer protocol according to which Banque Worms sold and transferred 95% of the shares of its subsidiary Interbank Greece SA to consolidated Eurofinance Holdings Ltd, which controls Euro-investing SA as the latter owns 75% of Private Financial Holdings LTD and 25% of the buyer, but holds 100% of the share capital of Private Financial Holdings Ltd.

The relevant market in the banking sector, according to a consistent position of the European Commission as it appears in a vast number of its decisions, is distinguished in several segments, including retail banking, the provision of services to individuals, the provision of innovative capital and the provision of investment credit and services, and the provision of banking services to large companies. Regarding the geographical market, it can be considered the Greek territory for retail banking business, as well as, the international market in terms of foreign exchange and derivative products markets.

With regard to their sizes, Eurobank EFG, with its 6 branches, had in the national market in 1995 a total turnover as calculated in accordance with Article 4f (4a) of 50,039,505 ECU, Interbank Greece SA with 19 branches and windows, a total turnover of 116,868,581 ECU. Consequently, the two commercial banks were participating in the merger with a total turnover of 166,829,076 ECU representing, 1.5% of the total assets of the banks operating in Greece, absorbing 1.3% of the deposits and allocating 1.4% of credit and 1.3% of the total number of employees. Finally, 0.1% of the branches and windows all over the country belong to the two banks. From the above and from the positions in the commercial banks ranking list based on the asset criteria of the deposits of the advances received by the banks, shows that, although the conditions for the application of the provisions of Law No 703/1977 were not met, there was no reason to prohibit the merger since it was not expected to create or strengthen a dominant position on the market resulting in a significant restriction of competition.

The Committee also considered that the secondary restrictions on competition contained in the contract and imposed a two-year commitment to prohibit the vendor against the buyer and its group regarding the use or disclosure of confidential information for competition, the provision of services to the same or another related object. The attraction of a client or employee are restrictions directly related to that concentration and they are necessary to achieve it, without violating the necessary and logic measure, to protect the interests of the purchaser and are therefore not subject to the prohibition laid down in Article 1 (1) of Law No 703/77. The Competition Commission's decision No 41/1996 imposed a financial penalty for violation of the prohibition, which was concerning the realization of concentration until the adoption of one of the decisions provided for, by the same law as expressly is stated in Article 4 (1) of the Act, given that the notification was possible before the realization of the concentration, while the participating undertakings were certainly aware of the fact that they met the thresholds of Article 4e (1) (B). However, the committee merely imposed a reduction of fines, by accepting that the concentration was not in a position to significantly restrict competition in the national market or a substantial part of it by creating risks which the legislature intended to prevent by the prohibition of Article 4e (1)[103].

Case of Piraeus-Chase Manhattan

[103] G. Papaioannou , "Mergers of credit institutions and the competition committee", article ,Hellenic bank association (HBA), 1998

On 7.11.1996 the Competition Commission was notified of the sale and purchase agreement by which Chase Manhattan Bank transferred and conceded the sale of the two branches it held in Greece to Piraeus Bank SA, which had 27 stores across the country.

For the relevant market it applies the same as those mentioned in the previous case. Regarding the figures, for the first the turnover reaches the 23.752.440 ECU in 1996, while the figure for the second, the 62.457.537 ECU. Given the positions held by the banks in the table ranking of commercial banks on the basis of their deposit, lending and assets criteria and the fact that these banks account for 0.9% of the total assets of banks in Greece, they absorb 0.8% of deposits, sponsors 0.9 % of credit and employing 1.1% of the total number of employees, it is easy to conclude that this concentration will not have an impact on competition in the national market, nor is there a risk of creating a dominant position. Consequently, there is no compliance, according to Article 4c (1) of Law 703/1977, with a legitimate reason for banning the merger. On that basis, the Competition Commission ruled its Decision No 97/1997 of non prohibiting the above mentioned merger.

B) Mergers of credit institutions belonging to the same group.

Case of National Mortgage bank and Housing bank (Ktimatiki- Stegastiki Bank).

On 3.9.1997 the Competition Commission was notified of the draft merger agreement with the absorption of the limited company under the name "National Housing Bank SA" by the same limited liability banking company under the name "Limited Company of National Mortgage Bank of Greece SA". It is worth noting that the Group of National Bank of Greece participated in the share capital of the former with

84% , of the latter with a percentage of 41% .These shares were distributed between the National Bank of Greece and other companies belonging to the above group. Relevant market in this merger is the market and mortgage lending where the two merging credit institutions are mainly active and geographically determined by the whole of the Greek market on this market, the former having a market share of 6% and the second 43% basing on their evaluation. In addition, 1/10 of the assets of the former, amounted in 1996, to 41.050.003 ECU and of the latter to 687.536.085 ECU.

In this specific case, Law No 703/1977 does not apply because of the lack of financial autonomy and the impossibility of taking autonomous decisions on the part of the two credit institutions which are in question. In particular, with the merger being carried out, the control of the acquirers of a company was not ensured because it already existed before the critical time of the merger. This derives from the participation rates of the National Bank Group in the share capital of the two banking companies as well as from the fact that the National Mortgage Bank of Greece has been established by the National Bank, participates in the consolidated balance sheet of the National Bank Group, and its participation in the decision making of the first is crucial, given the small share of the remaining shareholders and finally its effective participation in the selection procedures and the assignation of the administrative bodies of the National Mortgage Bank of Greece.

For the above reasons, despite the fact that the merging companies fulfilled the conditions for control by the Competition Commission, they did not fall within the scope of the Law on the Protection of Free Competition because the agreement between the absorbing company and the absorbed company is an agreement between two subsidiaries that can not act independently of their mother company. Accordingly, the two undertakings are not independent as required for the implementation of Law 703/1977 pursuant to Article 4 (2). By Act No 13 of the Chairman of the Competition Committee issued, pursuant to Article 4d (2) of Law 703/1977, the notification has been filed by finding that a notified concentration does not fall within the scope of the same law.

Case of National Bank- Mortgage Bank.

On 2/6/1998 was notified to the Competition Committee by National Bank of Greece SA and the limited company National Mortgage Bank of Greece, the draft merger agreement with absorption of the second from the first. As already mentioned above, group of the first participated in 44% of the share capital of the latter without any substantial change. One tenth of the assets of the former was 316.428.000.000 in drachmas, while one tenth of the second is 251.576.134.340 in drachmas.

Similarly, Law No 703/77 does not apply here since there is no financial autonomy and the possibility for independent merger credit institutions to take autonomous decisions from the reasons mentioned in the previous case, which demonstrate that the former may have a decisive impact on the composition, the decisions of the second institutions and hence the possibility of control, it follows that the absorption of the subsidiary by its parent because of the special link already existing prior to the relevant time of the merger, does not fall within the scope of the Law on the Protection of Free Competition as set out in Article 4 (2). This was established by the 15th act of the Competition Committee President, adopted pursuant to Article 4d (2) of Law No 703/1977.

3. Effectiveness of EU merger regulation. Is there a need for reform?

The enactment on merger control is an essential instrument through which rivalry approach is actualized. This enactment has the eccentricity of being connected ex-ante to anticipate mergers among competitors, that are probably going to significantly change the structure of the influenced market in a way that may prevent rivalry. Practically speaking, the primary assignment of merger control legislation is to assess mergers in light of their feasible welfare impacts and to permit or prohibit them based on this assessment. This task requires recognizing the relevant, and regularly covering, gatherings of residents (i.e.consumers, investors, representatives, etc) whose welfare will be influenced by the merger and ought to be considered in its assessment[104].

The Commission concludes that, overall, the jurisdictional limits and the corrective mechanisms provided in the Merger Regulation, they provide an appropriate legal framework for the allocation of cases between the Community level and Member States. This framework has been effective in most cases as regards the distinction of cases with a Community dimension to those of a national nature based on the "one-stop-shop" and the principle of the "more appropriate authority" objective and the principle of the most appropriate competent authority, despite its success, there are issues to improve the current system of allocation of cases in various aspects[105].

Referring to the case referrals to the Commission , which is an issue that raised concerns to the European Commission in the field of policies, we have to review the current status of case referrals before reviewing the issue.

[104] EX-POST REVIEW OF MERGER CONTROL DECISIONS A study for the European Commission prepared by Lear – Laboratorio di economia, antitrust, regolamentazione, Paolo Buccirossi, Lorenzo Ciar,i Tomaso Duso Sven-Olof Fridolfsson, Giancarlo Spagnolo ,Cristiana Vitale.

[105] Communication from the Commission to the Council: Report on the functioning of Regulation No 139/2004, 2009.

More viable and effective EU merger control suggests a lessening in the managerial weight for existing techniques and improvement of existing methods, especially for case referrals between Member States and the Commission. The Merger Regulation uses a bright-line test in view of certain turnover limits to recognize concentrations with an EU measurement from those subject to national merger investigation. The turnover edges incorporate the supposed "2/3 rule", leaving cases to Member States' jurisdiction where every one of the endeavors concerned accomplish 2/3 of their turnover in a single Member State.

The 2004 reform of the Merger Regulation permitted Member States to reffer cases to the Commission and vice versa before notification. It additionally permitted a few Member states to jointly reffer a case to the Commission after warning. The 2009 Report featured that, in spite of the fact that the referrals set down in the Merger Regulation functioned admirably ,generally speaking, there remained opportunity to get better. It found that the pre-notification and post-notification referral components had considerably improved the productivity and jurisdictional adaptability of merger control in the EU by improving the allocation of cases between Commission and member states in the EU by enhancing the assignment of cases between the Commission and Member States as indicated by the standards of "one-stop-shop" and the "more appropriate authority".

The Commission has already proposed the following improvements :

- improving the strategy for pre-notification referral of cases from Member States to the Commission in accordance with Article 4(5) of the Merger Regulation, particularly by nullifying the requirement for merging parties to file a contemplated submission for referral before filling a notification. This will create investment funds both in terms of time and expenses;

- enhancing the viability of the strategy for post-notification referral of cases from Member States to the Commission, in accordance with Article 22 of the Merger Regulation, and fortifying the "one-stop-shop" standard by guaranteeing that the Commission is situated to examine the impacts of the merger on competition for the entire domain of the EEA following a referral [106].

3.1- Pre-notification referral reform.

Under the present framework, if the Commission acknowledges referrals under Article 22, it will just acquire jurisdiction for the region of the Member State(s) that have asked for the referral or explicitly joined another Member State's ask. This implies, despite the fact that such cases have cross-border impacts, the Commission can't examine the impacts of the merger for the whole EEA. The present framework is thusly not founded on the "one-stop-shop" rule that largely governs case allocation under the Merger Regulation. This deficiency can prompt a complexity of capabilities, where the Commission investigates the impacts of an exchange for some Member States while some NCAs examine the impacts of an exchange in their individual regions. The framework likewise undermines the guideline of legitimate certainty. Some examples in case –law show us the need that the referral system needs to move towards “one-stop-shop” principle and the “more appropriate authority”.

For example, in case COMP/M.5675 - Syngenta/Monsanto, Spain alluded the case to the Commission and was joined by Hungary. The Commission analyzed the European wide upstream market for sunflower mixture licenses and the firmly related national markets for crossover distribution in Spain and Hungary. Be that as it may, since

[106] Commission Staff working document accompanying the White Paper "Towards more effective EU merger control.

France had not joined the referral request, the Commission couldn't investigate the French distribution market, which may have raised similarly genuine rivalry concerns.

COMP/M.5828 - Procter and Gamble/Sara Lee was comparable. Despite the fact that the exchange was notifiable in ten Member States (Bulgaria, Italy, Austria, Poland,Portugal, the Slovak Republic, Spain, Hungary, Cyprus and Germany), Procter and Gamble ruled against pre-notification referral compliant with Article 4(5) of the Merger Regulation and had notified the concenration to the Bundeskartellamt, and also to different NCAs. Following Germany's Article 22(1) referral ask for, which seven other Member States later joined, the Commission acknowledged the solicitations of Belgium, Germany, Portugal, Spain and the United Kingdom[107].

Surely, experience has demonstrated that the present procedure for pre-notification referrals from Member States to the Commission under Article 4(5) by notifying parties has a tendency to be bulky and time-consuming. This is on the grounds that it includes first the recording of a "reasoned submission" to ask for a referral in the first instant, and a resulting notification once a referral has been approved. Thus, parties may have chosen not to influence a referral to ask for now and again that may have been great possibility for referral to the Commission. The Commission in this manner recommends rearranging Article 4(5) referrals by canceling the present two-step procedure[108].

In accordance with the reforms set out in the Consultation Paper (which had a very positive feedback), the Commission proposes revising the post-notification referral method under Article 22 as follows:

[107] Commission Staff working document accompanying the White Paper "Towards more effective EU merger control.

[108] White Paper, "towards more effective EU merger control", COM (2014) 449 final, 2014.

− at least one Member State(s), be able under their national law to survey a merger, would have the capacity to ask for a referral to the Commission inside 15 working days.

− Unlike the present framework, just Member States that are initially capable could ask for referrals.

− If a referral is requested, any other competent Member State can restrict the referral. The Member State would not need to legitimize its veto, in perspective of the way that it has purview to look at the merger.

− If no competent Member State vetoes the referral, the Commission has discretion to acknowledge or deny the referral. The purpose behind the Commission to deny the referral would be that the merger has no European scope (i.e. it influences absolutely national markets and has no cross-outskirt impacts), in accordance with the Notice on Case Referral.

− The Commission's decision to acknowledge a referral would give it jurisdiction for the whole EEA and it would in this manner end up pointless for Member States to join the demand.

− If any competent Member State restricts the referral, all Member States would hold their jurisdiction[109].

Summarizing the results of the merger regulation in so far are quite positive but there is room for improvement in the regulation, particularly in the field of case referral to the Commission in order to create a more targeted and time effective scene.

[109] White Paper, "towards more effective EU merger control", COM (2014) 449 final, 2014.

4. Conclusion

Mergers and acquisitions are viewed today as something inevitable, as a necessary choice or as a “necessary evil” in the face of the challenges and opportunities of European integration and international competition .The volume of mergers and acquisitions is a key feature of modern markets in a period of unprecedented increase in capital concentrations.

The Merger Regulation has genuinely prevailing at evening the odds and giving one-stop-shop examination to mergers with an EU measurement. However, Member States also consist important parts in merger control implementation in the European Union. From 2001 until 2007, the NCAs (National Competent Authorities) addressed approximately 4,000 merger deals on an annual basis. A genuinely useful framework for investigating mergers throughout the EU, requires productive work-sharing, participation, and meeting between the Commission and the 27 Member State practicing merger control.

Merger regulation created regulatory burden on businesses and may also have a negative impact on internal market. In a survey carried out for 2009 report from the Commission to the Council that is responsible for the Merger Regulation ("the 2009 Report"),several stakeholders expressed the concerns regarding the regulatory burden of merger regulation in EU.

Regarding the minority shareholdings as analysed above , a targeted transparency system would be well suited to prohibit problematic transactions and prevent negative impacts to consumers which can result from their merger , and which the Commission is not sufficiently equipped to address under the current Merger Regulation.

Generally speaking, the modified Merger Regulation, embraced in 2004, gives a decent framework to adequately protecting competition and along these lines, customers from aggressive impacts of mergers and acquisitions in the inner market. The structure provides for such assurance while permitting the vast majority of unproblematic exchanges to be cleared rapidly. The presentation of the SIEC test in 2004 additionally empowered the Commission to audit non-coordinated impacts of exchanges where the consolidated substance would not gain a predominant position.

In an effort to encourage the application of this test, the Commission proposes adapting the substantive test in Article 4(4) so that the merging firms cannot claim ex nunc that the transaction "may significantly affect competition in a market".

At last, enhancements to the case referral framework have essentially added to assigning cases to the more appropriate authority.

In any case, as set out above, there is space to additionally enhance EU merger control. Specifically, the White Paper proposes growing the Commission's jurisdiction to review potential anticompetitive impacts coming about because of acquisitions of non-controlling minority shareholdings using a focused and non-intrusive framework, and making the case referral framework more efficient by streamlining the Article 4(5) technique and reforming Article 22 with the goal that it improves adherence to the one stop shop principle.

For these reasons the Commission suggests several reforms to improve the efficiency of the merger regulation. In particular these changes focus on the case referral system, and the protection of minority shareholders. However, it is a fact that merger regulation it is quite complex in its application. Simplifying the procedures would add to the economic integration in the Union and to the efficient function of the capital markets. For example, a cross border merger where the resulting entity operates outside the European Economic Area, should not concern EU regulators , given that its impact will not influence markets within the EEA. To this regard, I propose that merger regulation should be amended in a more simplified way, in an effort to lessen the administrative burdens on EU corporations.

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