

Greece

The Control of Concentrations Between Undertakings Under the Recently Amended Anti-Trust Law

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Law 707/77 on the "control of monopolies and oligopolies and the protection of free competition" was recently amended by law 1934/91. Such amendment of the original Greek anti-trust law was badly needed to incorporate past experience and the parallel evolution of EEC competition law, in particular concerning concentrations of undertakings.

Article 4 of law 707/77 as amended refers to the "concentration" of undertakings and not to "mergers" of

undertakings, as was previously the case, while giving a very similar definition of "concentration" to the definition found in Article 3 of Council Regulation EEC 4064/89 "on the control of concentrations between undertakings". "Concentration" under Article 4 of Law 707/77 is deemed to arise where:

- (a) two or more undertakings merge in any way whatsoever;
- (b) one or more persons already controlling at least one undertaking or one or more undertakings, acquire, directly or indirectly, control of the whole or parts of one or more other undertakings.

Moreover, control is deemed to exist according to Greek law, when there is a possibility of determining the activity of an undertaking by acquiring assets or rights of participation in this undertaking.

Nevertheless, it remains open to speculation whether an operation, including the creation of a joint-venture, which has as its objective or effect the coordination of the competitive behaviour of independent

undertakings, constitutes a "concentration" within the meaning of Greek anti-trust law. Such an operation is specifically excluded from the scope of "concentrations" falling within the ambit of Council Regulation EEC 4064/89.

Notification

Under Article 4a of Law 707/77 as amended by Law 1934/91, concentrations of undertakings must be notified to the relevant service of the Ministry of Commerce (Directorate of Market Research and Competition) within the month following their conclusion.

Notification is not required when:

- (a) the aggregate turnover in the domestic market, or a substantial part of it, of the undertakings concerned is less than 10 per cent of the total turnover realised in that market; or

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(b) the aggregate turnover in the domestic market of the undertakings concerned is less than Ecu 10,000,000.

Failure to notify is subject to a fine which may reach 3 per cent of the total turnover of the undertakings concerned.

Preventive control

Under Article 4b of the anti-trust law, concentrations of similar undertakings operating in sectors where the increase in concentration may distort competition, in particular by creating or strengthening a dominant position, may be subject to prior control in accordance with appropriate joint decisions of the Ministers of National Economy and Commerce.

Any plan of concentration in a sector subject to such preventive, prior control must be notified in advance to the relevant anti-trust authorities when either:

- (a) the aggregate turnover, in the domestic market or in a substantial part of it, of the undertakings participating in the concentration is at least 35 per cent of the total turnover realised in that market; or
- (b) their aggregate turnover in the domestic market is at least the equivalent in drachmas of Ecu 75,000,000.

In accordance with article 4c of the anti-trust law, the Minister of Commerce, following an advisory opinion from the Competition Committee, may prohibit concentrations in sectors which are subject to prior control if they are likely to prevent, restrict or distort competition in the domestic market or in a significant part of it, in particular by creating or strengthening a dominant position.

To assess such a concentration's effect on competition, various factors including the following may be considered:

- (i) the concentration's market share;
- (ii) the concentration's financial and credit power;
- (iii) the concentration's access to sources of supply and to the relevant markets;
- (iv) the concentration's international competitive position;
- (v) the existence of barriers to entry in law or in fact;
- (vi) the development of supply and

demand relating to the relevant products or services.

If, however, a concentration serves important public interests or if there are compensating general economic benefits, such concentration may be declared permissible by appropriate decision of the Minister of Commerce following an advisory opinion from the Competition Committee. Such decision may impose conditions or obligations ensuring free competition.

The Minister's decision prohibiting a concentration which is subject to prior notification, must be issued at the latest within the first two months following its notification, unless an extension is granted under certain circumstances (incorrect, misleading or incomplete notification). If no decision is taken within the above period, the concentration is deemed permissible. The ministerial decision granting an exemption may be revoked if it was taken on the basis of incomplete, incorrect or misleading information, or if the obligations and terms imposed by the decision have been infringed.

Prohibited Concentrations

A concentration may not be put into effect until a ministerial decision is taken to this effect or until the period of two months mentioned above lapses. Otherwise, a fine is imposed by ministerial decision and such fine may reach 15 per cent of the gross turnover of the undertakings concerned. The Minister of Commerce following an appropriate opinion from the Competition Committee, may also order the divestiture of the concentration and the separation of the assets of the undertakings concerned. Alternatively, he may order any appropriate measure for the restoration of free and effective competition. Failure to comply with such ministerial decisions may attract a fine reaching 15 per cent of the aggregate turnover of the undertakings concerned. (Article 4d).

Calculation of Turnover

The calculation of the aggregate market share and the aggregate turnover of the undertakings participating in a

concentration provided for by Article 4e of the recently amended anti-trust law is almost identical to Article 5 of EEC Council Regulation 4064/89 "on the control of concentrations between undertakings".

Judicial Remedies

Under article 14 of law 707/77, the decisions of the Minister of Commerce are subject to appeal before the Athens Administrative Court of Appeal within the first twenty days following service on the parties concerned. Such appeal does not suspend the execution of the ministerial decision in question, unless special suspension is granted by the above Court's President where sufficient grounds exist.

Judgments of the Court of Appeal may be further appealed before the Council of State.

Imprisonment and Pecuniary Penalties

Under Article 29 infringement of the provisions of Articles 4, 4a, 4b, 4c and 4d mentioned above by persons acting on their behalf, or as representatives of legal entities, attracts a minimum pecuniary penalty of drs. 1,000,000 (or double in the case of repetition).

A minimum of three months imprisonment and the above mentioned pecuniary penalties may be imposed in the following cases:

- (a) obstruction of investigations;
- (b) refusal to supply information to the competition authorities;
- (c) intentional supply of false information or concealment of truth;
- (d) refusal to give a sworn or unsworn statement requested by the competition authorities, making false testimonies, refusal to disclose or concealment of truth.