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The Hellenic Competition Authority clears a supermarket merger subject to store divestments and the termination of franchise agreements (*Masoutis / Kritikos*)

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Vasileios Christodoulou

cvasilis18@gmail.com

Junior Associate

Dryllerakis (Athens)

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The Hellenic Competition Commission (HCC) approved the acquisition of ANEDIK Kritikos (the “target”) by Diamantis Masoutis SA (“Masoutis” or the “notifying party”).

1. Details of the transaction

1.1. Change of control

The merger was notified ¹ following the conclusion of a Preliminary Share Purchase Agreement (SPA) which provided for the transfer of the total number of the target shares to the notifying party. The Preliminary SPA provided *inter alia* that failure to achieve various financial targets may lead to a price reduction “*or even unilateral termination of the agreement by either party without liability prior to the closing of the transaction*”.

HCC found that the agreement was “*final, binding, and fully integrated in the sense that each party may rely on the terms agreed upon. Consequently [...] there will be a permanent/lasting change of control*”, therefore it constituted a merger.

The (practical) rule that derives from the foregoing is that in case a preliminary SPA offers the right to unilateral termination without liability before closing, the undergoing transaction still falls under the merger assessment legal framework.

1.2. Franchise

Both parties have a network of partner shops with franchise agreements. HCC in principle treated such partner stores in a manner similar to company-owned ones, i.e.:

- stores of the franchise network are also taken into account in order for HCC to define the local markets;

- when calculating the market share of the parties, HCC takes into consideration both the sales of company-owned stores and the sales of partner stores within franchise networks;
- for partner stores whose retail sales data were not feasible to collect, HCC calculated the respective data on the basis of the wholesale sales of the parties to such partner stores; and
- part of the commitments specifically addressed anti-competitive concerns related to the market share of the partner shops; said commitments consist of the discontinuation of the franchise agreement.

On the contrary, in order to establish that no coordinated effects arise in a market which will be rendered oligopolistic, HCC states that partner stores constitute independent undertakings and cannot be considered as a single entity for the purposes of assessing the likelihood of coordination.

In my opinion, treating partner shops like being company-owned is in accordance with the principle of effectiveness in the sense that HCC is able to examine the actual economic effects of the merger as well as the principle of legal certainty since it constitutes a well-established HCC practice. However, requiring commitments (discontinuation of some franchise agreements) in order to address non-coordinated effects, while finding that in oligopolistic local markets the existence of partner stores (instead of company-owned ones) guarantees that no coordinated effects arise appears contradictory and shall be further justified.

2. The relevant markets

2.1. Retail sale of supermarket goods

In order to duly define the relevant market, HCC answered three questions: (a) what constitutes supermarket goods? (b) which distribution channels belong to the same market? and (c) what is the geographic scope of the relevant market?

1. The parties entered into a pre-notification period of approximately one and a half months.

As to the notion of supermarket goods, HCC:

- found that food and non-food (detergents, mass-market cosmetics, etc.) daily consumer products belong to the same product market;
- left open whether “non-grocery products” such as textiles, tools, toys, household appliances, etc. belong to the said market.

As to the distribution channels belonging to the same relevant market:

- the market consists of modern distribution channels, i.e. hypermarkets, supermarkets, mini-markets, and discount stores;
- traditional grocery stores may be considered in part competitors of hypermarkets, supermarkets, etc.;
- the following do not belong to the aforementioned market:
 - cash and carry stores (given that they mostly engage in wholesale to SMEs);
 - specialised stores (bakeries, butcher shops, appliance stores, etc.)
 - gas stations;
- this approach followed by HCC is based on recent European Commission practice and overturns previous HCC practice (according to which supermarkets/hypermarkets, discount stores and traditional grocery stores constitute three distinct markets). This change is to be welcomed, as it takes into consideration the full incorporation of discount stores in the Greek market for supermarket goods.

As to the geographic delineation of the market, the relevant market is developed in two levels: *firstly*, each regional unit constitutes a distinct market; in cases of islands, each island constitutes a distinct market; and *secondly*, local markets within a drive time of up to 10 minutes from each target store, when located in municipal units with a population over 10,000 residents, and within up to 30 minutes from the target store when located in municipal units with a population under 10,000 residents are identified.

2.2. Procurement of daily consumer goods

The procurement market is examined on the demand side; i.e. competition authorities examine whether the merger will enhance the parties’ buyer power towards their suppliers. Two points are critical for defining the respective market: (a) each product category constitutes a different market segment,

therefore there are distinct procurement markets for meat and cured meats, for poultry and eggs, for bread and bakery products and so on, given that producers in each category cannot produce other category’s products; (b) as to the distribution channels, there is a distinction between retail stores procurement and wholesale stores and large customer procurement; cash & carry in principle falls under the first category, while in this specific case HCC duly pointed out that since the parties operate both retail stores and cash & carry stores, their negotiation power derives from both these store types.

The market is national in scope, as the enhancement of the entity’s market position will affect its overall bargaining power throughout Greece.

2.3. Wholesale of daily consumer goods

HCC examined the wholesale market of daily consumer goods as a single market; however, it identified (a) that a distinction between wholesale trade of food, beverages and tobacco and wholesale trade of household goods (grocery items) shall be made (a further distinction as per product category is not precluded); and (b) that the traditional wholesale warehouses and the cash & carry stores in principle belong to the same market.

The relevant market was defined as national, although further segmentation was not precluded.

3. The substantive assessment of the merger

As an introductory point, it is worth noting that HCC relied on the most recent available market shares data, i.e. 2024 data for retail and procurement markets and 2023 data for the wholesale market.² In the affected local markets, 2025 data were provided.

3.1. Market segments where no anti-competitive concerns arise

1st step – non-affected markets. HCC found that some markets are not affected at all, since the combined market shares of the parties do not exceed 15%; this is the case for the overall procurement market and for each segment thereof (e.g. procurement of beverages, procurement of health and beauty products, etc.) as well as for the wholesale market where the increment did not exceed 5%.

2. The 2023 data originated from HCC market mapping.

2nd step – markets with overlapping activities. As to the affected markets, HCC identified the regional units in which the parties' activities overlap and defined the local markets based on each target store.³ The regional units where there is no activity overlap were not further examined.⁴

3rd step – increase up to 5%. The next step was for HCC to exempt the local markets where the market share increase did not exceed 5%. A case of a target store where the increase slightly exceeded 5% was considered to fall under that case, because parties' market shares had been overestimated given that the market shares of smaller market stores were not calculated. Regardless of the increase level, HCC noted that (a) in some cases the combined market share does not exceed 25%, (b) in other cases the combined market share ranges from 25% to 55% but other nation-wide supermarket brands are also active with important market share; (c) in one case, the target already had super-dominant position (85%-95%) but the market share of the only competitor left post transaction was double the increase's share and (d) in one case, a competing hypermarket was operating within an 11-minute drive time.

4th step – combined market share below 50%. At the next level, HCC found that no competitive concerns arise in relation to local markets where (despite the increase exceeding 5%) the combined market share of the parties:

- does not exceed 40%. As per previous national and European decisions, a combined market share up to 40% does not create anti-competitive concerns unless under special circumstances; in this case no such circumstances exist as efficient competitors (nationwide market brands with individual or market shares of 40% approximately) are active in the markets;
- ranges between 40% and 50% as long as other competitors which are able to exert competitive pressure are active in the local markets;
 - HCC found that the combined market share of the merged entity's three larger competitors will exceed the merged entity's market share in all

such local markets, while in most of them the share of the merged entity will not exceed the largest competitor's market share by 20 percentage points;

- in five cases the local markets will be rendered oligopolistic as the main players with equally high market shares (40-50%) will be the merged entity and one of its competitors; despite the oligopolistic market structure, no coordinated effects arise, because (a) while for the determination of the market share of the merged entity the share of the target's partner stores is taken into account, these stores are independent undertakings and cannot be considered as a single entity for the purposes of assessing the likelihood of market coordination, and (b) both the new entity and its competitor are nationwide supermarket chains following a commercial and pricing policy at national instead of local level. *In my opinion*, the two arguments are contradictory; if franchise stores are effectively independent, they will not be affected by nation-wide policies; if nation-wide policies affect franchise stores, they are not effectively independent. However, the argument on the national level is by itself quite persuasive.

3.2. Anti-competitive concerns and commitments

5th step – anti-competitive concerns. In light of the abovementioned, the local markets where HCC identified competition concerns are markets where the merged entity's market share exceeds 50% and the increase due to the merger exceeds 5%. This includes both markets where the parties are already dominant and their dominant position is further enhanced by the merger as well as markets where the merged entity will become dominant post-transaction.

HCC recognised that in most of these local markets, it was a partner store that acquired or enhanced its dominant position; however, it found that despite the lack of total control over these partner stores by the notifying party anti-competitive effects arise vis-à-vis the final consumers. In order to establish its position, HCC pointed out that the franchise system entails (a) the use of common trademarks, (b) participation in common promotional leaflets and joint promotional activities and (c) placement of shared private-label items.

3. The isochrone traveltime app was used.

4. For the purpose of completeness, HCC clarified that even if the wholesale market was examined at regional unit level, there is no horizontal overlap at any regional unit between the parties.

6th step – commitments. In order to address HCC concerns, the parties ⁵ proposed commitments consisting of (i) the transfer of specific company-owned stores, (ii) the termination of trademark license agreements with specific partner stores and (iii) the appointment of a *monitoring* trustee, independent of the parties and approved by HCC. In particular, the commitments only concerned stores in local markets where the parties acquired or enhanced their dominant position; for instance, regarding one store for which the concerns were addressed due to the imposition of commitments on other stores, it was deemed that no divestment is required. The duration of the commitments was set at 10 years.

Commitment no.1. As to the transfer of company-owned stores, said transfer is to be completed within six months starting from the notification of HCC decision (the “first period”); in case the transfer agreement for said company-owned stores is not completed within six months, the notifying party will appoint a *divestment* trustee, independent of the parties and approved by HCC, to whom it will give an exclusive mandate to transfer the business operations of the stores within six months starting from the end of the first period. The transfer was deemed feasible in lack of legal barriers, since (a) the transfer of licenses constitutes a fast-track procedure; (b) the property where the businesses operate may be transferred, leased, or subleased ⁶ and (c) personnel and movable and immovable property may be transferred by means of an agreement and any administrative actions. ⁷

Commitment no. 2. As to the termination of the trademark license agreements, said termination shall be completed within three months from the notification of the HCC decision; in fact, the only relationship between the partner stores and the merged entity will be the wholesale procurement of

the partner stores (if they wish so) given that the wholesale market is not affected. On the contrary, partner stores and the merged entity may **not** (a) enter into an exclusive cooperation/supply relationship; (b) cooperate under target discounts including special offers to the partner stores for procuring all or the majority of their products from the merged entity; (c) maintain common advertising strategies (e.g. inclusion of the partner stores in offer flyers or catalogs/flyers of the merged entity; joint advertising promotion and joint promotional actions; joint use of customer loyalty cards; agreements regarding triangular sales, agreements regarding the placement of private label products).

Final step – clearance following structural remedies. HCC approved the transaction following the commitments. It stated that in general structural remedies more effectively address anti-competitive effects in the market. In this specific case, the commitments resulted in combined market share not exceeding 50% and increase of the competitive restraints because of the company-owned stores’ transfer (to competitors) and the operation of the partner stores on an independent basis or under an agreement with competitors of the merged entity.

Conclusion

The decision offers an illustrative example as to the definition of supermarket-related markets and as to the steps for assessing a merger, i.e. definition of relevant markets, identification of affected markets, identification of markets with overlapping activities, definition of markets where the increase of the market shares does not exceed 5%, delineation of markets where the combined market share does not exceed 50%, summary of markets where the combined market share exceeds 50% and the increase thereof exceeds 5% and finally the provision of commitments (structural remedies).

Other than that, the decision includes an effective assessment of the franchise networks of the parties despite any concerns as to the consistency of the approach.

5. The target co-signed the commitments proposal.

6. HCC examined the existing lease agreements in order to examine whether sublease is indeed permitted.

7. In my opinion, it is critical that greek law recognises the transfer of business as a whole.

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