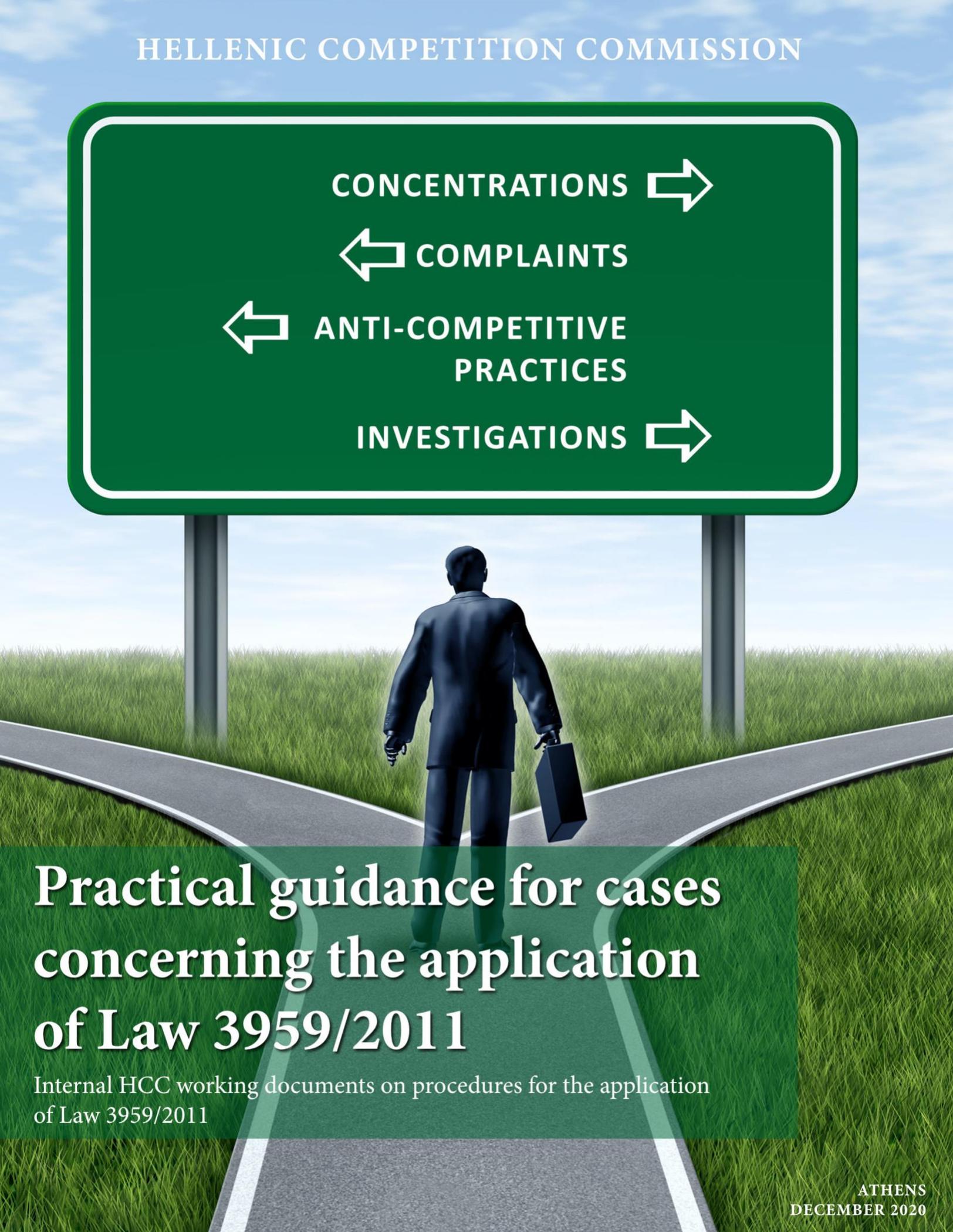


CONCENTRATIONS →

← COMPLAINTS

← ANTI-COMPETITIVE  
PRACTICES

INVESTIGATIONS →



**Practical guidance for cases  
concerning the application  
of Law 3959/2011**

Internal HCC working documents on procedures for the application  
of Law 3959/2011

## INTRODUCTORY NOTE

The primary purpose of this Manual of Procedures ("ManProc") is to provide practical guidance to the Hellenic Competition Commission's (HCC's) staff on the conduct of procedures relating to the application of the provisions of Law 3959/2011<sup>1</sup>, in line with the HCC Regulation on the Internal Operation and Management ("RIOM") [JMD 117/4.1.2013 (GG 54/B'/16.01.2013)]<sup>2</sup>, the Organisation of the HCC ("Organisation") [JMD 719/2020 (GG 4748/B'/27.10.2020)]<sup>3</sup>, the Council Regulation (EC) No 1/2003<sup>4</sup> and the case-law of the Administrative Courts and the European Court of Justice. In this context, the publication of this Manual seeks to provide a better insight of the HCC's case investigation procedure also to the public, ensuring therefore increased procedural transparency.

The present Manual does not constitute an HCC's decision, nor does it replace, amend or complement in any way the existing legal framework, it does not contain binding instructions for the HCC's staff or third parties, and the procedures set out herein may have to be adapted to the circumstances of the case at hand. The practical guidance given in the Manual does not purport to be complete or exhaustive and not every question that might arise is dealt with, or dealt with in the same level of detail.

The ManProc is intended as a practical working tool, which shall evolve through updates made on a regular basis to reflect new experience gained in applying the competition rules of the Treaty, and the Regulations, notices and other guidance adopted thereunder. In case of divergences between the existing legal framework and the ManProc, the former prevail.

The content of this ManProc does not create, alter or abolish any rights or obligations of any person arising from the provisions of Law 3959/2011, the TFEU or otherwise.

The HCC encourages the use of electronic means for correspondence between the administered and / or their representatives and the HCC and it invites the public to use the HCC's digital services, accessible through <https://epant.gr/digital/genika-erotimata.html>.

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<sup>1</sup> See, in this respect, <https://www.epant.gr/nomothesia/nomoi-diatagmata/prostasia-antagonismoy.html>.

<sup>2</sup> See, in this respect, <https://www.epant.gr/nomothesia/nomoi-diatagmata/kanonismos.html>.

<sup>3</sup> See, in this respect, <https://www.epant.gr/nomothesia/nomoi-diatagmata/organismos-ea.html>.

<sup>4</sup> Council 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, <https://eur-lex.europa.eu/legal-content/EL/ALL/?uri=celex:32003R0001>.

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## I. MERGER CASES

### I.1 Merger notification requirements – Duty of notification

1. A concentration shall be deemed to arise where a change of control on a lasting basis results as provided for in Article 5 of L. 3959/2011.
2. All concentrations of undertakings shall be notified to the HCC within thirty (30) days of the conclusion of the agreement or the announcement of the bid or the acquisition of a controlling interest (and in so far as the quantitative turnover thresholds provided for in Article 6 of L. 3959/2011) are met)<sup>5</sup>.
3. The persons subject to the duty of notification are specified in Article 6(3) of L. 3959/2011. In particular:
  - jointly the parties to a concentration which either consists in a merger of any type of two or more previously independent undertakings or parts of undertakings or in the acquisition of joint control which is the subject of an agreement between the undertakings participating in the concentration. This case also covers the mergers of independent companies as well as the creation (i.e. the establishment or acquisition or “qualitative” change in the control) of a joint venture, which permanently performs the functions of an autonomous economic entity (Article 5(5) L. 3959/2011).
  - in all other cases: the person or undertaking acquiring control of the whole or parts of one or more undertakings. It should be noted that, in the case of an acquisition of a controlling interest in a company, the notification is submitted by the acquirer, while in the case of a bid for the acquisition of a company, by the bidder.
4. The notification shall be signed by the aforementioned persons or their legal representatives or assigned lawyers. The legal representatives and assigned lawyers must present valid mandates in this respect together with the notification.
5. In case of a joint notification, a common representative must be appointed and authorised to transmit and receive documents on behalf of the notifying parties. If the headquarters of the notifying company is located outside the Prefecture of Attica, a representative of it must be appointed within the prefecture. If the notifying company is based outside the Prefecture of Attica, a procedural representative located in this Prefecture must necessarily be designated.

### I.2 Notification of a concentration between undertakings

6. In the context of the notification of a concentration between undertakings according to Article 5 of L. 3959/2011, as in force, the original of the special form as well as four (4) true copies shall be submitted to the Protocol Office of the HCC Directorate General for Competition (DGC), accompanied, under penalty of inadmissibility, by a fiscal stamp of 1,100 Euros<sup>6</sup>. These documents shall be sent also by email to:

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<sup>5</sup> See <https://www.epant.gr/nomothesia/nomoi-diatagmata/prostasia-antagonismoy.html>.

<sup>6</sup> Pursuant to Article 45(1) L. 3959/2011.

[mergers@epant.gr](mailto:mergers@epant.gr). The accompanying documents shall be submitted in original and / or exact copies of the original. In the second case, the notifying parties certify the completeness and accuracy thereof. Also, these documents shall be submitted in the language in which they were originally drawn up and, if this language is not Greek, in an official translation into Greek. The attorneys of the parties can attest to the accuracy and precision of the translation.

7. The notification must be submitted to the HCC before the intended concentration takes place and within thirty (30) days from the occurrence of the first act enabling its implementation (i.e. the conclusion of the agreement or the announcement of the public bid or exchange or acquisition of a controlling interest). The deadline starts on the next working day following the transaction.
8. The notification may be submitted to the HCC also at an earlier time, provided that there is proven intention on the part of the parties to enter into an agreement or, in the case of public bids, where an intention to make such a bid has been publicly announced, provided that the intended agreement or bid would result in a concentration falling under the rules on preliminary merger control. The document confirming the intention of the parties to carry out the concentration should include the terms of the agreement relating to competition issues.
9. The notification shall be drawn up on the basis of the merger notification forms (short notification form or full notification form) according to Article 5 of Law 3959/2011, as in force, by the persons subject to the obligation of notification, in accordance with the template available on the Authority's website<sup>7</sup>.
10. A concentration notification shall be submitted in a short notification form if one of the criteria of point 1.3 of the HCC Decision 558/VII/2013<sup>8</sup> is met, i.e.:
  - ✓ none of the parties to the concentration are engaged in business activities in the same product and geographic market (no horizontal overlap) or in a product market which is upstream or downstream from a product market in which any other party to the concentration is engaged (no vertical relationship),
  - ✓ two or more parties to the concentration are engaged in business activities in the same product and geographic market (horizontal relationships), provided that their combined market share is less than 15% and/or one or more parties to the concentration are engaged in business activities in a product market which is upstream or downstream from a product market in which any other party to the concentration is engaged (vertical relationships) and provided that either their individual or combined market shares in both levels are less than 25%,
  - ✓ a party is to acquire sole control of an undertaking over which it already has joint control.

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<sup>7</sup> See <https://www.epant.gr/nomothesia/nomothesia-antagonismou/gnostopoiisi-sigkentroseon.html>.

<sup>8</sup> Ibid.

11. The Directorate General for Competition (DGC) may request for the completion of additional points or sections of the full notification form or the in-depth investigation form where the above conditions do not appear to be met or where, although they are met, the DGC exceptionally deems their completion as necessary, in order to duly investigate potential competition concerns.
12. In all other cases, a full notification form shall be submitted.
13. Following the submission of the notification, the case shall be immediately assigned to the competent Directorate, according to the Organisation of the HCC, for immediate assignment to HCC officials-case handlers.
14. The persons subject to the obligation of notification must, immediately after the notification is submitted, announce the notified concentration in a daily financial newspaper, at their own expense, according the HCC's template<sup>9</sup>. The content of the public announcement is posted on the HCC's website<sup>10</sup>.

### **I.3 Examination of a notified concentration between undertakings**

15. Upon submission of the notification, the DGC must, within seven (7) working days from its submission, verify that the notification form has been duly completed and that it contains the information necessary for the assessment of the transaction in question.
16. The following shall, in particular, be taken into account:
  - a) the deadlines related to the notification shall not start until the HCC receives all the necessary information in order to be able to assess the notified concentration within the deadlines provided by law (Article 8(11) 11 et seq. L. 3959/2011).
  - b) all names, numbers (especially telephone numbers) and e-mail addresses provided to the HCC with respect to the contact persons must be carefully checked to ensure that they are accurate and relevant to the case as well as up-to-date<sup>11</sup>.

If the information, including the documents, contained in the notification, is inadequate, the DGC shall notify the notifying parties or their legal representatives or their assigned attorneys in writing, within seven (7) working days from the submission of the notification according to Article 8(11)(b) of Law 3959/2011, as in force.

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<sup>9</sup> Ibid.

<sup>10</sup> Posted on: <https://www.epant.gr/enimerosi/anakoynosi-sygkentroseon.html>.

<sup>11</sup> It is noted that after the notifying parties respond to the questionnaire within the 7-day deadline, the HCC checks the completeness of the answers to its questions. In case the questions have been fully answered, the notification is considered appropriate and the statutory deadlines start.

In case the questions have been answered partially or/not at all, DGC draws up a letter, within a mandatory time period of two (2) calendar days from the receipt of the response from the notifying companies, in which it informs the parties about the obligation to submit complete answers. As soon as the notifying party answers again, the same procedure of the 2-day time period to send the replies to the questionnaire is followed, until the questionnaire within the 7-day time period is fully answered.

In this case, the notification is considered appropriate and the new statutory deadlines start.

In this case, the notification shall be deemed appropriate and shall take effect on the date of receipt or collection of complete and accurate information by the HCC.

d) material changes in any facts included in the notification which become known after the notification submission and which the notifying parties know or are expected to know, as well as any new information which comes to their knowledge after the notification, which they know or are expected to know and which should have been notified if it had been known at the time of notification, must be notified without delay to the HCC. In such cases, where material changes or new information may have a significant effect on the assessment of the concentration, the notification shall take effect on the date on which the HCC received the information on the material changes.

In the case of data and information related to the notified concentration, which come to the knowledge of the HCC after the submission of the notification and prior to the issuance of an act by the President of the HCC or before it is brought before the HCC (Article 8(2, 3 and 5) of L. 3959/2011), which were known or were expected to be known by the notifying parties and should have been submitted together with the notification the latter shall be deemed, in these respects, erroneous or even misleading. In this case, the notification shall take effect on the date on which the HCC collects the complete and accurate information.

e) Vague or inaccurate information is considered incorrect and is treated accordingly, as explained immediately below.

f) In the event that the notifying parties provide intentionally or unintentionally incorrect or misleading information, the HCC may make use of the powers referred to in Articles 38 or 39 of the Competition Act and impose on the notifying parties the fines provided for in this respect.

Moreover, according to Article 8(14) (a) of the Competition Act, the HCC may revoke its clearance decision on a transaction notified under Article 6, provided that its decision was based on inaccurate and misleading information.

17. In any event, notifying parties can submit a written request to the HCC for acceptance of their notification, although they do not submit all the required information, if there is a good reason that this information is not available to them in whole or in part (for example, information about a company that is the target of a hostile takeover).
18. The HCC will consider the request, provided that the applicants clearly explain the reasons why not all relevant information is available to them and present their estimates for the missing information, while citing the sources on which these estimates are based. They should also provide information on how the HCC would be able to find the information that is not available to them. Any acceptance of the above request by the HCC does not automatically imply an acceptance of the notification as complete and accurate and does not entail the commencement of the statutory time period for the

issuance of a relevant decision. This notification shall take effect on the date of collection by the HCC of all information required for the assessment of the concentration.

19. Also, the persons subject to the obligation of notification may submit a written request to the HCC to consider the notification as lawful, even if they have not submitted some of the information requested in the form, if they do not deem it necessary for the examination of their case by the Authority. The HCC will consider the request, provided that the applicants submit documentation regarding any information not provided and the reasons why it is not relevant to the case or necessary for the examination of the notified transaction.
20. When the notification becomes appropriate, i.e. on the date of submission by the notifying parties to the DGC protocol of the complete and accurate data on the first questionnaire (7-day time period), the DGC makes a preliminary assessment to determine whether or not the notified transaction raises (or not) serious doubts as to its compatibility with the functioning of the market<sup>12</sup>.
21. In particular, the DGC examines whether:
  - a) the notified concentration falls within the scope of Article 6(1),
  - b) the notified concentration does not fall within the scope of Article 6(1), although it has been notified as such (the case provided for in par. 2 of Article 8),
  - c) the notified concentration, although falling within the scope of Article 6(1), does not give rise to any serious doubts as to its capacity to significantly restrict competition in the submarkets affected thereby (Article 8(3)), or
  - d) the notified concentration falls within the scope of the above Article and raises serious doubts as to its compatibility with the operating requirements of effective competition in the submarkets concerned (Article 8(4)).
22. If the examination of the content of the case file shows that the notified transaction:
  - does not fall within the scope of article 6(1) of Law 3959/2011, the DGC draws up, within one (1) month from the date of notification, an Information Note submitted to the President of the HCC<sup>13</sup> in which it states the reasons for which the notified transaction does not fall within the scope of the provisions of Articles 5 to 10 of Law

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<sup>12</sup> It is noted that the DGC can send a questionnaire to the undertakings concerned at any stage of the process, setting the statutory deadline (5 calendar days) in order to respond, in accordance with Article 38 of Law 3959/2011. In case the questions have not been fully answered or the deadline has elapsed with no reply by the undertakings concerned, the DGC draws up a letter, within an exclusive time period of two (2) calendar days from the receipt of the answer or the expiration of the deadline (in case of no answer) during the above procedure under the 2-day time period. By this letter, the DGC notifies the parties that they have not complied with the obligation to provide information under Article 38 of Law 3959/2011 and that therefore the prescribed deadlines are suspended.

Furthermore, the DGC has at its disposal, in order to assess the transaction in question, all the investigative measures such as request for information to other companies in the sector concerned according to Article 38 of Law 3959/2011, on-site inspections, unsworn statements according to Article 39 of Law 3959/2011, etc. Such measures shall not suspend the deadlines provided.

<sup>13</sup> Or to the Vice-President, according to the President's Empowerment Act.

3959/2011 and proposes the issuance of an Act according to Article 8(2) of Law 3959/2011. The President, if he/she so agrees, issues an Act according to Article 8(2) of law 3959/2011. This Act is notified to the notifying persons or undertakings.

- falls within the scope of Article 6(1) of Law 3959/2011 **and does not raise serious doubts as to its compatibility with competition requirements** in the submarkets concerned, the case is brought before the HCC in order to assign the case, by lot, to a Commissioner-Rapporteur (under Article 15 of Law 3959/2011) and, then, within one (1) month from the date of the appropriate notification to the HCC, the Commission shall adopt a Decision on the case<sup>14</sup>.
- falls within the scope of Article 6(1) of Law 3959/2011 **and raises serious doubts as to its compatibility with competition requirements** in the submarkets concerned (as provided for in Article 15 of Law 3959/2011) and, subsequently, an information note is prepared and submitted to the President of the HCC<sup>15</sup>, reporting the issues identified and the markets affected by the transaction, and suggesting an in-depth investigation of the concentration in question.

By Decision of the President of the HCC, issued within one (1) month from the notification, the process of full investigation of the notified concentration is initiated and the parties to the concentration shall be informed of the relevant decision (“Review of concentration under Phase II”).

23. In order to decide which category the notified concentration falls into, the DGC / HCC first assesses whether any of the cases referred to in the relevant Commission Notice (EC) No 2005/C 56/04 (Articles 5, 6 and 8) exists<sup>16</sup>. In particular:

- the HCC verifies whether all the information and data contained in the notification are established with sufficient clarity.

As market definitions may be a key element of the assessment, the parties should provide information on all plausible alternative market definitions. The notifying Parties shall be responsible for describing all relevant product markets and geographic markets affected by the notified concentration as well as for submitting data and information on the definition of such markets. In any case, the HCC reserves its discretionary powers to reach its final decision on the definition of the market, based on an analysis of the actual facts of the case. Where it is difficult to define the relevant markets or to determine the market shares of the parties, the HCC shall not apply the simplified procedure (Phase I),

- insofar as the notified concentration involves novel legal issues of a general interest, the HCC generally refrains from issuing a Phase I decision and proceeds with the application of the Phase II examination procedure,

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<sup>14</sup> In the cases of Phase I, the Report of the Commissioner-Rapporteur is not served on the notifying parties, unless they request a respective copy. The operative part of the HCC Decision on the concentration shall be served on the notifying parties within the same period (one month from the appropriate notification submission).

<sup>15</sup> Or to the Vice-President, according to the President’s Empowerment Act.

<sup>16</sup> See in this respect <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2005:056:0032:0035:el:PDF>.

- insofar as certain types of concentrations may increase the parties' market power, for example by combining technological, financial or other resources, even if the notifying parties are not active in the same market, the HCC may assess the notified concentration under the Phase II procedure,
  - concentrations where at least two parties are active in neighbouring closely related markets may also not fall under the simplified Phase I procedure, in particular if the market share of one of the two of the parties exceeds 25% in any product/services market where no horizontal or vertical relations between the parties exist, but which is neighbouring to a market where another Party is active. In other cases, it may not be possible to determine the exact market shares of the parties. This is often the case when the parties are active in new or underdeveloped markets.
  - concentrations in markets with high entry barriers, highly concentrated markets or in markets with identifiable competition problems may also be unsuitable for the simplified Phase I- procedure.
24. Once the procedure of full investigation of the notified concentration is launched (Phase II), and after the completion of the investigative measures, the Commissioner-Rapporteur to whom the case has been assigned proceeds with the drafting of a proposal and submits it to the Plenary of the HCC, within 45 days from the date of the full investigation procedure initiation. The parties are invited to a hearing at least 15 days before the date of the hearing [see also Section IX below].
25. It is noted that the proposal of the Commissioner's-Rapporteur's Report may, apart from being approving or rejecting, be approving under certain conditions and obligations which the parties to the notified concentration must meet with a view to rendering the concentration compatible with the requirements of effective market functioning [see par. 28 et seq. below].
26. Phase II concentration assessment procedure concludes with the issuance of an HCC Decision under Article 8(6) (Phase II), which may be a:
- ✓ Clearance decision
  - ✓ Conditional clearance decision [See par. 28 et seq. below]
  - ✓ Prohibition decision
  - ✓ The decision must be reached within ninety days from the date of the full investigation initiation or one hundred and five days, by decision of the HCC notified to the notifying parties, in the event of commitments, after the expiry of the statutory 20-day period from the date on which the case is brought before the Commission [See par. 28 et seq. below].
27. The expiry of the ninety-day period, without any adoption of a prohibition or clearance decision, is considered as a clearance decision by the HCC, which must issue a declaratory act in this respect.

#### **I.4 Commitment procedure in the context of notification of concentrations**

28. According to Article 8(8) of Law 3959/2011, in notified concentration cases examined under Phase II, the HCC may approve a concentration "under terms and conditions" (commitments), in order to render the concentration compatible with competition requirements.
29. The commitments proposed by the undertakings shall be submitted no later than twenty days from the date on which the case is brought before the HCC following submission of the relevant Statement of objections (SO) [see Article 8(8) second ind. of Law 3959/2011]. However, the HCC may, in exceptional cases, accept commitments after the expiry of the above time period. In this case, the deadline of ninety days provided for in Article 8(6) of Law 3959/2011 may be extended, upon decision of the HCC which is notified to the undertakings concerned, to one hundred and five days.
30. In this case, the Full Commitment Form shall be submitted<sup>17</sup>, signed by a legal representative (in confidential and non-confidential versions, and in editable word format). In case of divestiture commitments, the Standard Form for Divestiture Commitments shall be completed and submitted<sup>18</sup>.
31. In case the commitments are submitted before the hearing, during the hearing, the Commissioner's-Rapporteur's SO, the Forms submitted by the undertakings concerned as well as any comments from third parties are presented to the HCC(see below, par. 28 et seq.) and the Commissioner-Rapporteur describes the content of the proposed commitments and any comments from the parties and suggests their acceptance, modification or rejection. The interested parties who participated in the hearing express their views on the proposed commitments in their additional written submissions. The undertakings may propose a modification of the commitments by their additional written submissions.
32. If the commitments are submitted during/after the hearing the completed Forms submitted by the undertakings concerned as well as the comments from third parties (if any) are brought before the Commission during its deliberations. The Rapporteur describes the content of the proposed commitments and the comments of the parties (if any) and proposes their acceptance or rejection.
33. If the HCC adopts a conditional clearance decision, it describes in the relevant decision the commitments accepted. The decision includes:
  - the completed Commitment Form, as well as (any) Standard Form for Divestiture Commitments, which are attached as Annexes to the Decision of the HCC.
  - In case the HCC decides on the appointment of a Trustee, the completed Standard Divestiture Trustee Mandate and/or Monitoring Trustee Mandate.

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<sup>17</sup> See in this respect <https://www.epant.gr/apofaseis-gnomodotiseis/item/192-apofasi-524-2011.html>.

<sup>18</sup> Ibid.

34. Following the issuance of the HCC decision, the DGC monitors the commitments and regularly informs the HCC on their implementation and application (according to the relevant operative part of the decision).

#### **I.4.1 Market test**

35. Following the submission of the completed Commitment Form, the Commissioner-Rapporteur and the DGC examines the content of the proposed commitments and whether they are sufficient to remove the doubts expressed. If there have been any discussions with stakeholders, the Commissioner-Rapporteur and the DGC consider whether the proposed commitments reflect such discussions.

36. Subsequently, the Commissioner-Rapporteur (in collaboration with the DGC), draws up a press release in Greek and in English containing (in a non-confidential version):

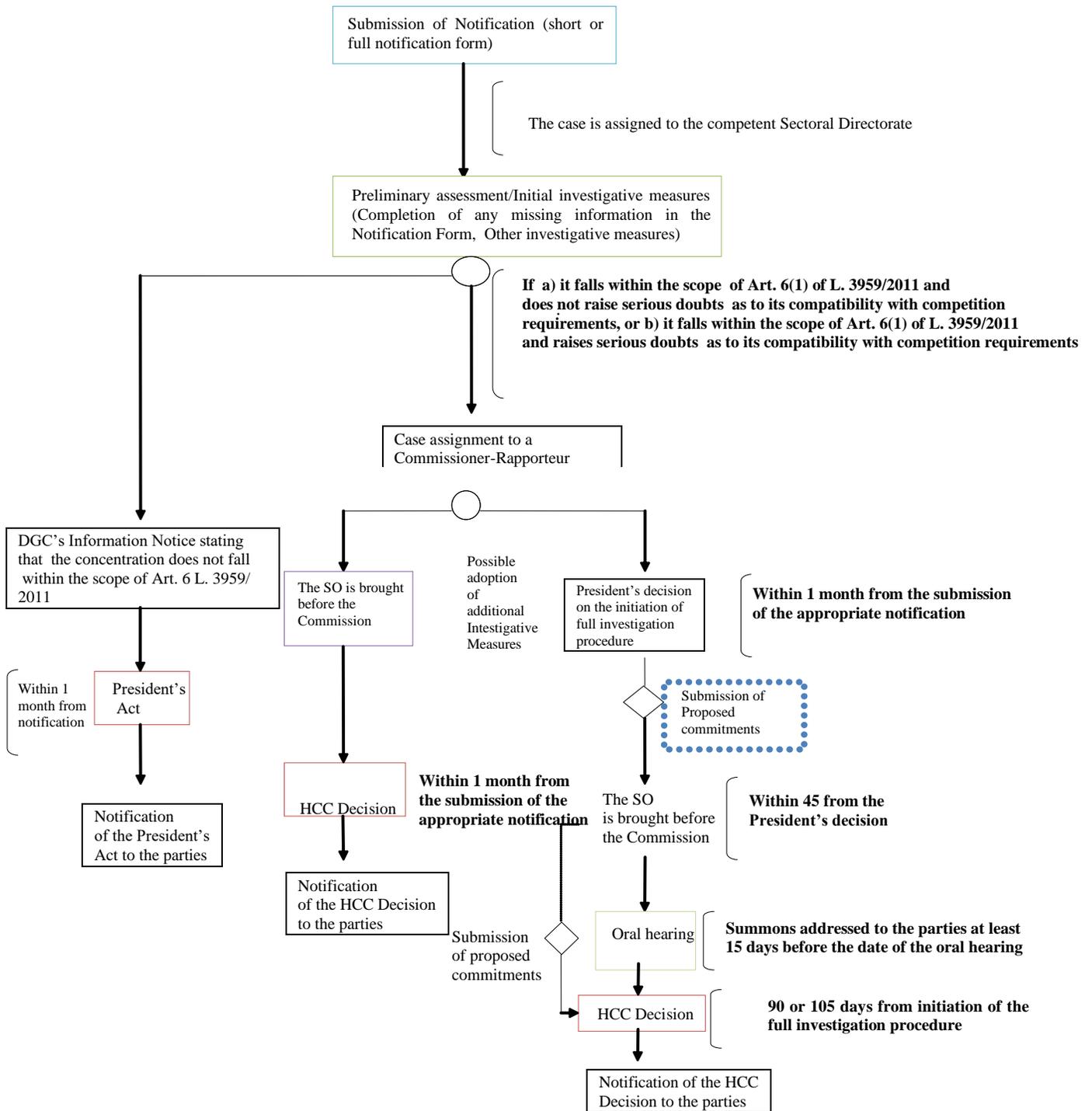
- a summary of the notified concentration and the parties thereto,
- the doubts expressed/possible competition concerns identified,
- description of the proposed commitments.

37. A deadline (of 5 or 7 working days) is set for the parties concerned to submit their comments. Comments are received in confidential and non-confidential versions, as well as in a processable Word format.

38. Alternatively (depending on the nature of the case and the proposed commitments, as well as the issues under consideration), the Commissioner-Rapporteur, in cooperation with the DGC, draws up a questionnaire containing the above information, which is sent to third parties (with a reply deadline of 5 or 7 working days), as well as questions regarding the sufficiency of the proposed commitments to eliminate the competition concerns raised. Answers are received in confidential and non-confidential versions, as well as in a processable Word format.

39. In both alternative cases described above, non-confidential versions of the comments submitted to HCC are notified to the notifying parties in order to enable them to make improvements to their proposed commitments. In the event that the modified commitments are substantially different from those originally proposed, it is assessed whether a second market test is required.

## CONCENTRATION NOTIFICATION FLOWCHART



## II. ANTI-COMPETITIVE CONDUCT

### II.1 Initiation of cases

40. The procedures on a case concerning an alleged infringement of Articles 1 and/or 2 of Law 3959/2011 (and/or 101 and/or 102 of the TFEU) may be initiated following a complaint lodged by undertakings or other natural or legal persons. The HCC may also initiate an ex officio procedure when certain facts or information come to its knowledge. Information obtained by citizens and businesses or the collection of information from the market is equally important for the initiation of ex officio investigations by the HCC. Therefore, the HCC encourages citizens and businesses to inform it about suspected infringements of competition rules. This may be done either by lodging a formal complaint or, simply, by providing the Authority with market information. In cartel cases, the procedure may also be initiated on the basis of an application for leniency (see in this respect Section V) by one or more of the cartel members.
41. The details on the complaint procedure to be followed are set out in the notice on the handling of complaints<sup>19</sup>.

### II.2 Initial case assessment

42. All cases, irrespective of their origin, are subject to an initial assessment phase. At this phase, the HCC examines whether the case merits further investigation and, in such a case, it provisionally identifies the critical points, in particular as regards the parties involved, the relevant markets and the conduct/practice to be investigated. At this stage, the HCC may use various investigative measures, such as requests for information according to Article 38 of Law 3959/2011. HCC initiates the investigation process of the case, when the complaint has become appropriate (see par. 79) or in cases of ex-officio investigation following a relevant Act of the President of HCC or following a relevant HCC decision and provided that the first investigative measure has been undertaken/carried out.
43. In practice, the system of initial assessment means that some cases will be discarded at a very early stage because they are not deemed to merit further investigation. In this regard, the HCC focuses its enforcement resources on cases where it appears likely that an infringement may be found, in particular on cases with the most significant impact on the functioning of competition in the internal market and risk of consumer harm, as well as on cases which are likely to contribute to defining HCC and EU competition policy and/or to ensuring the coherent application of Articles 1 and/or 2 of L. 3959/2011 (and 101 and/or 102 TFEU, respectively).

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<sup>19</sup> See in this respect <https://www.epant.gr/en/legislation/complaints.html>.

## II.3 Investigative measures

### II.3.1 Requests for information - Questionnaires

44. For the exercise of the powers defined by law, the President and the persons authorized by him (Vice President, DGC, the Director or the Head of Unit of the DGC) may request information in writing. Pursuant to Article 38 of Law 3959/2011, the Commission may request undertakings and associations of undertakings, other natural or legal persons, as well as public or other authorities, to provide all the necessary information. The above persons or authorities are required to provide information. Otherwise, the HCC may impose sanctions provided for in Article 38(3) of Law 3959/2011. It is for the HCC to define the scope and format of the request for information.
45. If the request for information-questionnaire is addressed to a legal or natural person who is considered a suspected infringer, the questions are formulated in such a way as to respect the right of non-self-incrimination.
46. If the information provided is incomplete, inaccurate or not respecting the time limit set out, it is possible to initiate the sanctioning procedure for providing incomplete, inaccurate or late reply or non-reply within a set deadline.
47. In that case, the fines are imposed by a decision of the HCC (following a relevant SO) on undertakings or associations of undertakings which intentionally or negligently:
  - (i) provide inaccurate or incomplete or misleading information in their reply to a request for information or
  - (ii) did not provide any information within the time period set
48. It is noted that, in any event, the addressees of the requests for information are given a reasonable time limit to respond, depending on the extent and complexity of the request, taking into account the purposes of the investigation. The initial deadline is, according to Law 3959/2011, at least 10 days from the receipt of the request/questionnaire. If, from the outset, it is considered that a longer period is required, the time limit to reply to the request will be set accordingly. When the scope of the request is limited, for example if it covers only a brief clarification of information previously provided or already available to the addressee of the request, the time limit may be shorter (10 days).
49. Furthermore, if it is difficult for them to reply within the set deadline, the addressees may request an extension thereof. A reasoned request or confirmation in writing (by letter or email) must be submitted well before the deadline. If the DGC considers the request to be justified, it provides additional time (depending, inter alia, on the complexity of the information requested). The HCC may agree with the addressee of the request that some of the requested information, which is of particular importance or is readily available to the addressee, will be provided sooner, while additional time may be given for the provision of the remaining information.

### **II.3.2 Statement procedure**

50. The DGC officials may take sworn or unsworn statements and ask the declarant for explanations on the facts or documents relating to the subject-matter and purpose of the investigation, as well as to record the relevant answers. Declarants may be
  - a natural person acting in his capacity as the legal representative of a legal person
  - any other natural person
51. During the statement, the declarant has the right to be assisted by his lawyer, who, however, may not answer questions on behalf of his client and may not intervene both during the statement and during the reading and signing of the statement by the declarant. In addition, competent employees/managerial staff members of the company may be present only to assist the declarant. No one else except for the declarant (and the DGC officials) is allowed to sign the statement.
52. The depositor is required to appear in person to make his statement, otherwise the consequences provided for in Art. 39(5) of Law 3959/2011 shall apply. In case of an unavoidable impediment preventing the declarant from appearing to the statement procedure, the President of the HCC may change the date of the statement, sending a new summons or requesting the declarant to make his statement before an official of the DGC at the place where he is located (in accordance with Article 328 of the Penal Procedure Code (PPC)).
53. Statements are conducted at the offices of the HCC and always with the physical presence of the declarant. No statement can be made by other means (telephone call, video call, etc.). The statement cannot be videotaped or recorded by any other means. The statement is included in the case file and no copy thereof is provided to the declarant.
54. The language in which the statement is made is Greek. In case the declarant does not speak or does not sufficiently understand the Greek language, he has the right to appoint an interpreter as well as to request for written translations of all the essential documents involved in the procedure (Art. 101 PPC). The language in which the statement is made is Greek.
55. Right of non-self-incrimination: the declarant enjoys the right of non-self-incrimination.

### **II.3.3 On-site inspection**

56. As part of an investigation, the HCC has the power to carry out on-site inspections at the premises of undertakings and, in certain circumstances, at other premises, including private properties, pursuant to Article 39 of Law 3959/2011. To this end, an inspection order shall be issued by the President or, upon the President's authorisation, by the Director General or Director. The inspection order shall include the subject-matter of the inspection and the consequences of obstructing or impeding it or refusing to present the requested books, records and other documents or providing copies or extracts

thereof. During the on-site inspection, the persons concerned are informed that they are subject to an investigation as well as the subject-matter and purpose thereof.

57. Usually, the HCC carries out such inspections itself. However, it may request in writing (through the President or the authorised General Director or Director of the DGC) for the assistance of public authorities and services, first and second level local authorities (e.g. Local Authorities include Municipalities, Communities, Prefectures, etc.) as well as legal entities governed by public law for conducting on-site investigations (see Article 38(3)).
58. According to Article 39 of law 3959/2011, the assigned officials of the DGC (or the officials of other public authorities assisting the HCC) having powers of a tax inspector, can, in particular:
  - a) check all kinds and categories of books, records and other documents of undertakings and associations of undertakings, as well as the electronic business correspondence of entrepreneurs, directors, managing directors, managers and chief executive officers or persons appointed to the administration and management in general, as well as the staff of undertakings or associations of undertakings, regardless of the form or the medium on which they are stored, and the location of their storage and take copies or extracts thereof,
  - b) seize books, documents and other pieces of evidence, as well as electronic storage and data transfer media and, which constitute business information,
  - c) check and collect information and mobile terminal data, mobile devices, as well as servers in cooperation with the competent authorities concerned, located inside or outside the premises of the inspected undertakings or associations of undertakings,
  - d) carry out inspections at the offices and other premises and means of transport of the undertakings or associations of undertakings,
  - e) seal any business premises, books or documents, during the inspection and to the extent of its necessity,
  - f) carry out inspections at the residences of entrepreneurs, directors, managing directors, managers and chief executive officers or persons appointed to the administration and management in general, as well as the staff of undertakings or associations of undertakings, if there are reasonable grounds for suspecting that books or other documents related to the undertaking under investigation and its subject-matter are kept there,
  - g) take, at their discretion, sworn or unsworn statements, without prejudice to the provisions of Article 212 of the Code of Criminal Procedure, and to ask any representative or staff member of the undertaking or association of undertakings for explanations related on facts or documents related to the subject-matter and purpose of the investigation and to record the respective answers.

59. In the exercise of their powers, in accordance with cases a) to g) above, the officials of the Directorate-General for Competition shall observe the provisions of Article 9 of the Constitution on the inviolability of residence.
60. The procedure for the collection, storage and processing of electronic files and correspondence, collected for the purposes of Law 3959/2011, is determined by decision of the HCC.
61. The undertakings, according to Article 39 of Law 3959/2011, have the obligation to cooperate with the HCC, so they must not only present to the officials assigned by the HCC and any persons assisting them, the documents they request, but also allow them to search and check themselves books and documents the existence of which has not come to their knowledge in advance.
62. If the undertaking consents to the inspection, it is required to actively cooperate with the officials of the HCC. In case of failure to cooperate, the HCC may, on the one hand, request for its assistance by the prosecuting or any other public authority in carrying out the on-site inspection or decide to withdraw the DGC's inspectors and then impose on the company, by a decision of the HCC, a fine under of Article 39.
63. The records that will be searched for by the inspectors may be a) in printed form, b1) stored on the terminal of the investigated person or b2) on the network (server) and / or the undertaking's computing cloud (cloud).
64. Regarding the electronic files, the search is carried out in any way deemed appropriate by the DGC, i.e., indicatively, by searching the files and texts either by using a combination of "keywords", or by folder/file, etc.
65. The undertaking is required to cooperate fully and actively with the inspectors of DGC. This means that the undertaking may be required to facilitate inspectors' work by appointing its appropriate representatives or staff members to assist the inspectors to facilitate their work, not only by providing clarifications regarding the undertaking's organisation and IT environment, but also for specific actions, indicatively the temporary blocking of individual e-mail accounts, the temporary disconnection of computers from the network, the removal and reinstallation of hard drives from computers, and their assistance by providing "administrator access rights". When inspection measures are taken, the undertaking concerned should not interfere in any way with these measures and is responsible to inform the employees affected thereby. Inspectors may request the use of computer hardware (e.g. hard disks, CD-ROMs, DVDs, USB flash drives, connection cables, scanners, printers) to be provided by the undertaking, but they do not have to use the undertaking's equipment.
66. The DGC usually receives copies of those printed and electronic files that are evaluated as relevant to the investigation scope.
67. When deemed necessary, the authorised HCC's inspectors may seize books, documents, calendars as well as electronic storage and data transfer media related to business information. In this case:

- the files are placed in an envelope, where possible, otherwise in a bag or box, and they are sealed,
  - A seizure document is drawn up, signed by the head of the inspection team and the undertaking's legal representative or the person authorised thereby and the company stamp is affixed thereto.
68. Next, the seized material is transferred to the premises of the HCC,
- The printed files are photocopied in duplicate and a copy thereof together with the originals is returned to the undertaking investigated,
  - In case of files in electronic form, those falling under the subject-matter of the inspection order are identified and copied on a DGC's hard disk, and then the hard disk is sealed as described above and the process of unsealing and file is carried out as it would be carried out at the offices of the undertaking concerned (see par. 72 et seq. below).
69. In some cases, it is deemed appropriate for inspectors to fill out a questionnaire or take an unsworn statement during the inspection. A statement may be taken by any undertaking's staff member at the discretion of the Head of the Inspection Team. Both in the context of the questionnaire and the unsworn statement, the inspectors may be asked for clarifications and explanations, inter alia, on specific documents, which are attached to the end of the questionnaire or statement, as relevant documents. No copy of the completed questionnaire or statement shall be given to the undertaking's manager or the declarant.
70. Officials and other assisting persons authorised by the HCC to carry out an on-site inspection may seal any professional premises and books or documents for as long as and to the extent necessary to carry out the inspection, due to a possible failure to complete the inspection within one day. The sealing is done by use of the HCC's stamp. In the event of seal breakage, the HCC may impose a fine for such a breakage by a decision adopted under Article 39.
71. An inspection report is drawn up for each inspection as soon as possible (see Article 39(4) of law 3959/2011). This report must describe the facts as objectively as possible, stating exactly what has happened during the inspection and, in particular, the written explanations given by members of the undertaking concerned. The report is then notified to the undertaking concerned.

### **II.3.3.1 *Unsealing of electronic files***

72. The undertaking under investigation is invited to the offices of the HCC in order to attend the unsealing of the hard disk, identify any confidential data contained in the electronic files and e-mails, e.g. personal information/legal secrets and the possible removal of any relevant data. The unsealing and sorting of the above may be conducted in the presence of the undertaking's representatives.

73. The finalised data (after removal of the above information) is stored in an external hard drive, which is placed in an envelope which is then resealed and kept in the premises of the Authority. An unsealing protocol is drawn up in this regard.

### **II.3.3.2** *Obstruction of on-site inspection*

74. The provision of Article 39(5) of Law 3959/2011 provides that a fine may be imposed, upon decision of the HCC, on undertakings, associations of undertakings or those that in any way obstruct or hinder the investigations provided in the respective article, as well as on undertakings, associations of undertakings or on those refusing to be inspected, present the requested books, records and other documents and provide copies or extracts thereof.

75. Respectively, according to Article 38(3) in case of refusal, recalcitrance or delay in providing the requested information or in case of providing inaccurate or incomplete information, the HCC may fine the undertaking concerned.

76. Undertakings, associations of undertakings or those who in any way obstruct or hinder the investigations provided for in the relevant article, may be fined by the HCC at least 15,000 Euros and up to 1% of the turnover of the preceding financial year.

77. Furthermore, when calculating the amount of the fine, particular account shall be taken of the gravity of the case under consideration, how reprehensible the acts were and their impact on the outcome of the investigation, as well as any special circumstances of each case. When calculating the fine, account shall be taken of the fact that the gravity of the obstructing behavior is heightened in cases where it consists in interfering with the electronic records of an undertaking under investigation, due to the growing use of electronic storage and communication media which are easily destructible by their nature.

## **II.4 Point system – Prioritisation of cases**

78. The HCC, acting within its powers, in accordance with Article 14(2) indent (n) sub-indent (aa) and indent (o) of Law 3959/2011, determines the criteria for case prioritisation and the setting of its strategic objectives, quantifies, on the basis of a point system, the criteria set by it and determines the details of its application. In particular, according to Article 14(2), indent n), sub-indent (aa) and indent (o) of Law 3959/2011, the HCC, taking into account its previous Decisions No. 525/VI/2011 and 616/2015 on this matter, as well as the need for an update thereof, adopted the Decision No. 696/2019<sup>20</sup>. The latter decision updates the HCC's case prioritisation criteria and strategic objectives, on the basis of the Point System and determines the details of its application.

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<sup>20</sup> See <https://www.epant.gr/apofaseis-gnomodotiseis/item/447-apofasi-690-2019.html>.

79. The updated point system, which covers both complaints and ex-officio investigations, is usually applied within four (4) months from the appropriate lodging of the complaint or the evaluation of the first investigative measure on an ex-officio investigation. It is noted that the complaint is given a priority rating according to the above, provided that the complaint form has been properly completed.
80. The case prioritisation puts forward a new methodology for measuring efficiency (based on a cost-benefit analysis) taking into account the efficiency in terms of time, cost and human resources achieved against the value of the relevant evidence available. With the new point system, high-efficiency cases are prioritised and investigated, i.e. cases that maximise the possible benefits and minimise at the same time the costs for such action..
81. The Point System applies to the case prioritisation for their examination by the DGC. The provisions of Article 15(2-10) of Law 3959/2011 shall apply to the assignment of cases to a Commissioner-Rapporteur of the HCC and their examination.
82. The following cases ***shall not be scored and shall be prioritised***, irrespective of the sub-criteria for case prioritisation:
- compliance of the HCC with the Administrative Courts' decisions
  - referral of cases from the Administrative Courts back to the HCC for reconsideration
  - preliminary reference from the HCC to the DGC for reinvestigation/completion of the investigation
83. The following cases ***shall not be scored and shall be considered/ examined within a reasonable timeframe***, as provided in the relevant provisions (even if the human resources available to investigate them necessarily affect the handling of other cases):
- manifestly unfounded complaints or complaints not falling within the competence of the HCC under Article 37 of Law 3959/2011
  - cases referred to in Articles 5-10 of Law 3959/2011 (mergers)
  - interim measures pursuant to Article 25(5) of Law 3959/2011
  - cases of non-compliance of undertakings or associations of undertakings with structural or behavioral measures or commitments imposed by a previous relevant decision of the HCC
  - cases of refusal to cooperate or obstruction of HCC's investigations, pursuant to Articles 38 and 39 of Law 3959/2011
  - opinion issuing pursuant to Article 23 of Law 3959/2011
  - regulatory interventions pursuant to Article 11 of Law 3959/2011
  - sector inquiries pursuant to Article 40 of Law 3959/2011
84. The following cases ***shall not be scored and shall not be considered/examined by HCC***:

- inappropriate complaints (i.e. complaints for which the complaint form has not been submitted or has not been completed correctly)
- letters, in general, regardless of the time of their submission and their characterisation as complaints by the sender, which are not accompanied by a minimum of evidence that contributes to substantiating the alleged infringement prima facie
- simple letters (in written or electronic form) from third parties (e.g. individuals, other administrative authorities, etc.)
- simple notifications of documents from third parties (e.g. individuals, other administrative authorities, etc.)

*(Especially in case the submitted complaint form has not been filled in correctly, the DGC can inform the sender of the need for resubmission of a correctly completed complaint form)*

- cases relating to agreements within the meaning of *de minimis* agreements
85. If the Case Score exceeds **3**, the case is examined in its scoring order. The highest score a case can get under the updated point system is **14**<sup>21</sup>.
86. If the Case Score is equal to or lower than **3**, the case is dropped according to Article 14(2) indent (o) of Law 3959/2011 on grounds of low score by the President, or upon authorization, by the Vice President of the HCC, following a relevant Proposal from the DGC [see below Section VII]. The rejection of a complaint due to a low score does not prevent the Authority from launching an ex-officio investigation in the future in order to investigate the complainant's allegations.

## **II.5 Possible outcomes of the investigation phase**

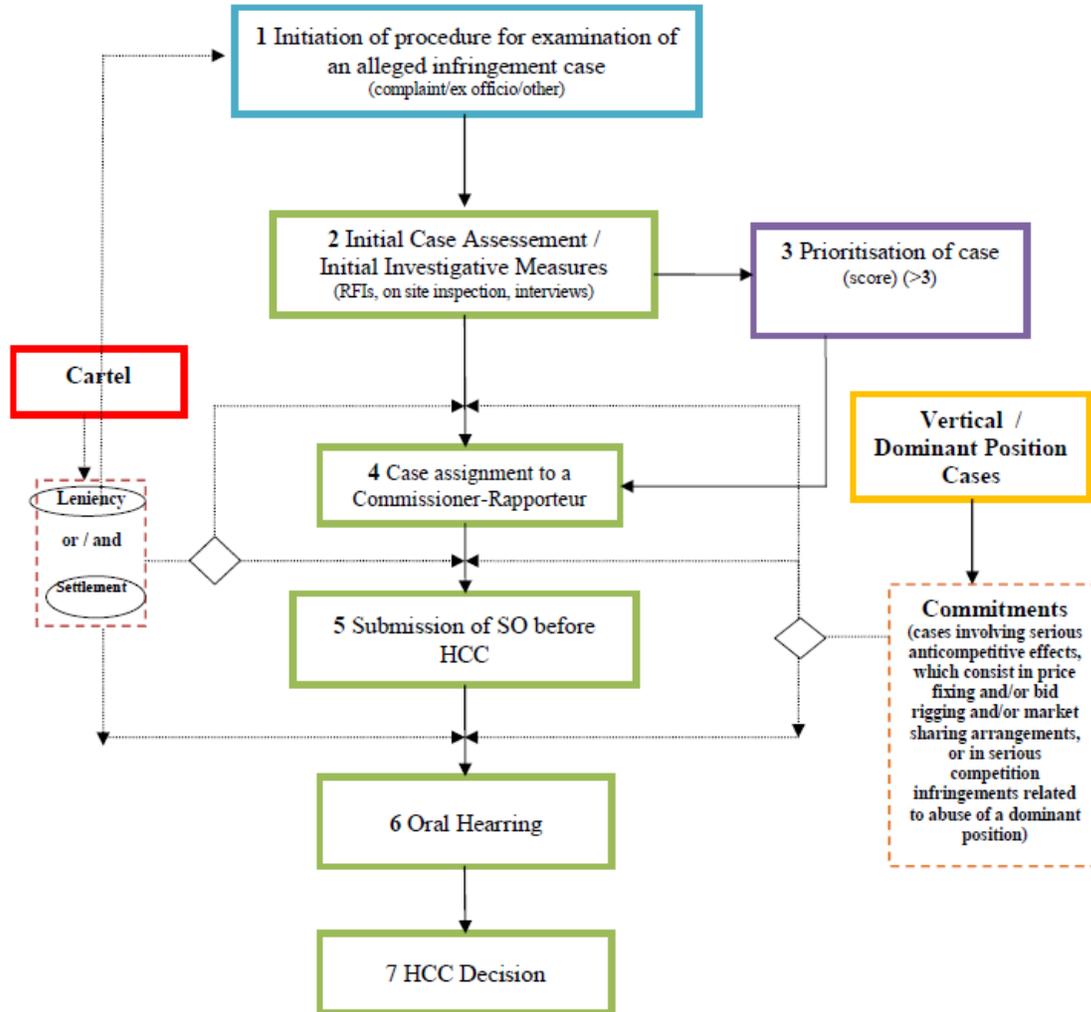
87. Once the DGC has scored a case and formed a preliminary view on the key issues to be considered, the following ways are provided for the completion of the investigation procedure:
- The DGC may assign the case by lots in order to issue a Notification of the Statement of Objections with a view to the adoption of an infringement decision in relation to any of the issues identified at the time the procedure was initiated as presenting sufficient evidence of infringement (see Section IX).
  - The parties subject to the investigation may consider offering commitments which address the competition concerns arising from the investigation, or at least show their willingness to discuss such a possibility; in that case, the DGC may decide to engage in discussions with a view to a commitment decision (see Section 4 below).
  - The DGC may decide that there is no reason to continue the procedure for all or some of the parties involved and to terminate the procedures accordingly, either due

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<sup>21</sup> In case of application of the Impending Expiration Factor, the higher score is 28.

to low prioritisation (scoring) or due to insufficient indications of infringement (see Section VII).

## CASE INVESTIGATION FLOW CHART



## **II.6 Access to the case file**

88. The addressees of the Statement of Objections/Report notification are granted access to the case file, so as to allow them to effectively express their views on the conclusions reached of the Statement of Objections/Report.
89. The practicalities of access to the file, as well as detailed information on the type of documents that will be accessible and confidentiality issues, are covered by Article 15 of the Regulation on the Internal Operation and Management of the HCC as well as by a separate notice on access to file<sup>22, 23</sup>.
90. The right of access to the file of a case pending before the HCC but also to the documents kept by the HCC, in general, depends on and is limited by the nature of the documents to which access is requested (e.g. business secrets, internal documents, etc.), the time of the access requested (i.e. before or after the notification to the relevant party), the extent of the applicant's right of access in accordance with the law and the existence of any requests for confidential treatment of the information submitted/presented to the HCC, during the provision of information or collected by the Authority in the context of on-site inspection.

### **II.6.1 Qualification of confidential documents/restricted information**

91. Assessment of the confidential nature of information requires balancing the requirements for due exercise of the right of defence against the need to safeguard the confidentiality of certain information, as well as any legal interests prohibiting its disclosure. The qualification of information as confidential removes, in principle, the right of access to it.
92. However, this qualification does not prevent the HCC from using the information and disclosing it, whenever this is necessary to establish a violation of Articles 1 and 2 of Law 3959/2011 or 101 and 102 TFEU.  
In particular, the following are considered as confidential information and access to them is not provided:

#### **(a) Preparatory/internal documents**

93. Preparatory documents and internal documents of the HCC's Directorate-General, the European Commission and other EU national competition Authorities (such as notes, drafts or other working papers and communication) shall be considered confidential and accordingly non-accessible.

#### **(b) Documents and information referred to in Articles 11 and 14 of Regulation (EC) 1/2003**

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<sup>22</sup> See <https://www.epant.gr/en/legislation/treatment-of-confidential-information.html>

<sup>23</sup> See also Commission Notice on the rules for access to the Commission file in cases [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC1222\(03\)&from=EL](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC1222(03)&from=EL)

94. All documents and information exchanged for the application of Articles 11 and 14 of Regulation (EC) 1/2003[21] (including any observations made by the European Commission or other competition Authorities within the European Competition Network on a particular case) are considered as confidential information and access to them is not provided.

**(c) Correspondence between the HCC and other public authorities etc. or the European Commission**

95. Correspondence between the HCC and other public authorities or services or other competition authorities or the European Commission or between those authorities is considered as confidential and access to it is, in principle, not provided. In certain exceptional circumstances, access is granted to such documents after deletion of any business secrets or other confidential information as referred to the HCC Notice on the treatment of confidential information. Prior to granting access to the case file, the HCC shall request the Authority which has provided the document to identify the aforementioned business secrets or other confidential information.

**(d) Professional and business secrets<sup>24</sup>**

96. This is information relating to an undertaking's business activity, of which not only disclosure to the public but also mere transmission to a person other than the one who provided the information might seriously harm the latter's interests. Therefore, such information is considered as confidential and accordingly non-accessible. Examples of information that may qualify as professional/business secrets include: technical and/or financial information relating to an undertaking's know-how, methods of assessing costs, production secrets and processes, supply sources, quantities produced and sold, market shares, customer and distributor lists, marketing plans, cost and price structure and sales strategy.

**(e) Other confidential information<sup>25</sup>**

97. This category includes information other than professional and business secrets, which may be considered as confidential, insofar as its disclosure would significantly harm a person or undertaking. Depending on the specific circumstances of each case, this may apply to information provided by third parties about undertakings which are able to

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<sup>24</sup> The assessment on whether a piece of information constitutes a professional / business secret or other confidential information, shall be made on case-by-case basis. For any information to qualify as confidential, it is necessary that such information be known only to a limited number of persons, while its disclosure might seriously harm the person who has provided that information or third parties. Moreover, the interests that may be harmed by disclosure must be worthy of protection. Moreover, the interests that may be harmed by disclosure must be worthy of protection. The assessment on whether disclosure of such information referred to in paragraphs d) and e) is required shall be established on the basis of the Rules of Internal Procedure and the criteria set out in the relevant HCC Notice.

<sup>25</sup> Ibid.

place considerable economic or commercial pressure on their competitors or on their trading partners, customers or suppliers. Therefore, the notion of “other confidential information” may include information that would enable the parties to identify complainants or other third parties who reasonably wish to remain anonymous and any information which, while being, in principle, related to a business activity, are also linked to personal data or private life information of the natural person concerned. The category of other confidential information also includes military secrets, as well as any correspondence concerning classification of information as confidential, as it is generally so closely linked to confidential information itself that its disclosure would be equivalent to disclosing confidential information.

## **II.6.2 Information normally not considered as business secrets or other confidential information**

98. All other information and documents submitted or collected by undertakings which are not covered by the above definitions of “business secrets” and “other confidential information”, and in particular information already publicly available, will not be considered confidential. For a piece of information to lose its confidential nature, it is sufficient for it to be available to specialist circles (even small ones) or capable of being inferred from publicly available information.
99. By way of example, the following type of information shall not, unless duly justified, be considered confidential:
  - i) Data which is already known outside the undertaking (e.g. commercial policy announced by letters or circulars to wholesalers)
  - ii) The names and positions of managers and employees of the companies participating in cartel meetings
  - iii) General terms of transactions, as well as any similar contractual clauses included in agreements signed with a number of counterparties on the basis of standard agreements /framework or pilot contracts (such as terms applicable to a distribution/franchise network
  - iv) Corporate acts and information subject to publication by law
  - v) Protocol numbers of administrative documents
  - vi) Legal remedies, appeals and any judicial documents in general, as well as extra-judicial statements against the litigants concerned. Unpublished court decisions and minutes of court hearings against the litigants concerned.
  - vii) Notices and minutes of public or private tenders and other information about the tenderers after completion of the relevant evaluation process by the competent authority, provided that the applicant for access to such information is one of the tenderers

viii) Circulars issued by public organisations and bodies, periodicals and other printed material published by associations of undertakings distributed to their members, information available on the Internet.

ix) Information that has lost its commercial importance, for instance due to the passage of time. As a general rule, information that is more than five years old is no longer confidential. In that case, relevant information is considered confidential only if it is established, on specific grounds, that despite its historical nature, it continues to be an essential element of the commercial position of the undertaking concerned.

x) Ranking of the various competitors in the relevant market, based on their respective market shares.

xi) Data from and about another undertaking which has been provided by or collected from the respondent/investigated undertaking (for example, price announcements, sales data etc.). Exceptionally, however, data received pursuant to a confidentiality agreement or an agreement including a confidentiality clause, may be considered confidential.

xii) Findings of a study commissioned in connection with initiated proceedings, together with the general conditions and methodology of the study, provided that the protection of any intellectual property rights is safeguarded.

## **II.6.3 Submission of confidentiality claims (CC)**

### **II.6.3.1 General information**

100. In all cases of submission or collection of information under the provisions of L. 3959/2011, the natural or legal persons who submit or by whom the information is collected, specify in a reasoned confidentiality claim the information, documents and parts of documents containing confidential information and provide a separate non-confidential version thereof.

101. Confidentiality claims must relate to information which is within the scope of the above descriptions of “*professional and business secrets*” or “*other confidential information*” and the parties are required to:

a) justify their confidentiality claim in relation to each individual document or part of a document, statement or part of a statement,

b) provide the HCC with a non-confidential version of their submissions/documents in which information regarded as confidential is redacted,

c) provide a meaningful non-confidential concise description of each piece of redacted information,

- d) identify the undertakings with regard to which such information/documents are to be considered confidential.
102. The parties shall provide the HCC with a separate non-confidential version of the documents, in which information regarded as confidential is redacted and replaced by the indication [CONFIDENTIAL]. The non-confidential version of documents must mirror the confidential version of documents also in format<sup>26</sup>.
103. In general, confidentiality claims for the entire document will not be accepted since it is normally possible to protect confidential information with limited redactions. As a minimum, titles and headings of documents/ tables/ pictures should not be deleted. However, if the submitting parties claim confidentiality for specific sections/paragraphs of a document, they are requested to provide a non-confidential version of the entire document, which must mirror the confidential version thereof in format. In that case, in addition to the indication [CONFIDENTIAL] referred to above; the submitting parties shall also provide a meaningful non-confidential summary description of each section/paragraph which has been redacted.
104. For easier reference, the undertaking providing the information must also submit a non-confidential description of the information for which it claims a confidentiality treatment, in such a way as to outline the specific meaning of that information. The non-confidential version and the concise descriptions replacing the confidential parts of documents in general should provide all relevant details in order to enable the parties having access to them to assess if the information deleted is likely to be relevant for their defence. Entirely blank pages will not be accepted.
105. Where percentage market shares are deleted, they must be replaced by a range from 5% to 15%, and beyond that, by a range of 10% as follows: [0-5%], [5-10%], [10-15%], [15-25%] and so on, up to [95-100%].
106. Standard confidentiality stamps with the indication [BUSINESS SECRETS] or [CONFIDENTIAL] or other similar indication and automatic disclaimers in e-mails, are not regarded as a reasoned request for confidential treatment. Such documents will be made accessible, unless confidentiality has been claimed in accordance with all the criteria set out herein.
107. The parties must ensure that the properties of documents submitted electronically do not disclose any confidential information. Non-confidential versions of submissions/documents, descriptions and summaries may become accessible to the parties involved in the above proceedings and, therefore, they must not contain business secrets or confidential information.

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<sup>26</sup> For administrative efficiency, the HCC may ask the submitting parties to provide first a draft non-confidential version of the submissions/documents in which the information considered confidential is highlighted in a way that it remains legible. In that case, the final non-confidential version in which any confidential information is blackened-out will only be submitted after the HCC has provisionally accepted the confidentiality claims there for.

108. The parties must properly substantiate their claim for a confidential treatment of information, explaining why it constitutes business secrets or other confidential information and how this information could cause serious harm to the submitting undertaking or a third natural or legal person. They are also required to provide the HCC with all relevant details in order to enable the Authority to balance (a) the need to preserve (other) parties' rights of defense by granting as much access as possible to the file and (b) the need to protect confidential information and the identity of the person submitting the information or of any third party.
109. In case of non-compliance with the procedure set out above, the information, documents and parts of documents for which a reasoned confidentiality claim has not been submitted or they have not been submitted in a separate non-confidential version, will be considered by the HCC non-confidential and it will be assumed that the submitting undertaking has no objections to the disclosure of that information.
110. In the event of a disagreement regarding the confidentiality claim, the Directorate-General for Competition or the appointed Rapporteur, as the case may be, shall inform the claimant in writing of the Authority's intention to disclose information, state the relevant reasons and set the time frame within which the claimant may submit his arguments in writing.
111. If, following submission of those arguments, a disagreement on the confidentiality claim persists, the President of the HCC shall decide on the classification of a document or a piece of information.

### **II.6.3.2 Removal of confidentiality**

112. Whenever the use of documents containing business secrets is deemed necessary by the Rapporteur, in order to establish whether or not an infringement has been committed, such information is included in the Statement of Objections without it being necessary to follow the procedure for informing the party thereof, and it loses its confidential nature from that point.

### **II.6.3.3 Procedure for access to the case file**

113. The right of access to the HCC's case file is governed by specific rules, which distinguish it, both in terms of its content and the manner in which it is exercised, from the case of providing documents under other procedures and from the general right of access to documents as provided for in Article 5 of the Code of Administrative Procedure, Law 3448/2006 and Article 16 of Law 1599/1986, which pursue a different purpose and are subject to different criteria and exceptions on grounds of public or private interest<sup>27</sup>.

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<sup>27</sup> See Recital 11 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (EC L 145, p. 43), according to which certain public and private interests should be protected by way of exceptions and the

114. Furthermore, the right of access to the file is delimited not only in relation to the persons entitled to exercise it and its subject-matter, but also to the confidentiality requests submitted by the person concerned when providing information and data, which ultimately identify the subject-matter to which this person has access.
115. The persons against whom the proceedings before the HCC were initiated (either following a complaint or ex officio) or who notified a concentration or the settlement applicants or the leniency applicants have the right of access to the non-confidential information following the summons notification.
116. The complainants (natural or legal persons) have the right to access any non-confidential information following notification of the Statement of Objections, however they may not claim right of access to the case file to the extent recognized for the parties against which the complaint is submitted. The complainants' access to confidential information is restricted to what is absolutely necessary in order to ensure the protection of public interest, in the sense of protecting competition.
117. Third parties have no access to the files of cases pending before the Commission. Otherwise, the provisions of the Code of Administrative Procedure apply<sup>28</sup>.
118. The parties acquaint themselves with the information contained in the administrative file, after the notification of the summons so that they can effectively express their views on the objections raised by the Statement of Objections.
119. Prior to the notification of the summons, a copy of the non-confidential version of the complaint may be provided to the persons against which the complaint is lodged, upon their relevant written request and following submission of all the necessary documents authorizing the representatives and/or their attorneys submitting the request (e.g. notarised power of attorney, otherwise by a power of attorney with authenticated signature), provided that this does not impair the investigation carried out by the Directorate-General for Competition.
120. The right of access to the information contained in the case file is exercised upon a written request of the interested party:
- a) by reviewing this information at the offices of the Directorate-General (upon relevant invitation) or
  - β) by receiving a copy, in printed or – preferably – in electronic form (CD-ROM or any other electronic data storage device),

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institutions should be entitled to protect their internal consultations and deliberations where necessary to safeguard their ability to carry out their tasks. For exceptions to the right of access, see Article 4 of the Regulation.

<sup>28</sup> This also applies to the (natural or legal) person for whom, pursuant to Article 23 of the HCC Regulation on the Internal Operation and Management (RIOM) Code of Civil Procedure, the HCC decides, at its discretion, to participate in the hearing on the case. Although this person does not become a "directly concerned party" (party to the proceedings) nor does he have access to the documents of the relevant case file, he can nevertheless take procedural steps (written submission, examination of witnesses, etc.) following a relevant HCC decision [cf. Article 23 RIOM, as well as par. 19-20 of HCC Decision 495/VI/2010].

after the parties have submitted the necessary representation documents. The DGC may opt for a combination of both ways.

121. To facilitate access to a case file, the parties receive a list of the documents included therein (List of Documents). A request for access to information contained in the file, which has been considered by the GDA as non-accessible to a party involved, must be specifically reasoned and arguments must be put forward to demonstrate that access to the particular information and documents is necessary for the exercise of the right to participate in the administrative procedure of case examination before the HCC. The request is subject to approval or rejection, in part or in full, by the President of the HCC.
122. Documents to which access is granted under Article 15 of the RIOM shall only be used for the purposes of judicial or administrative proceedings for the application of the provisions of L. 703/1977, now L. 3959/2011, and Articles 101 and 102 TFEU.
123. With respect to Leniency applications, access to any recording of the applicant's oral statements shall not be granted to the parties involved prior to the serving of the Statement of Objections (SO) to the parties. The right of access to the above statements after the serving of the SO is exercised by assessment of any such statements at the premises of the HCC<sup>29</sup>. During the above assessment, the parties shall refrain from making copies by mechanical or electronic means of any information contained in the applicant's statement. Access to the applicant's statements is not granted to third parties (e.g. complainants)<sup>30</sup> (see also Section V below).
124. Expressions of interest for the Settlement Procedure, technical notes submitted by the undertakings involved during the bilateral meetings, any minutes of the bilateral meetings considered internal documents, the summons from the case Rapporteur to the extent that it reproduces the outcome of the bilateral meetings, the settlement proposals, settlement declarations and minutes of any bilateral meetings before the HCC are considered confidential information, and shall not be disclosed to third parties, including natural or legal persons which have filed a complaint under Article 36 of Law 3959/2011. Access to such documents shall be granted only to the undertakings concerned, which have not been subject to the settlement procedure, although under strict conditions. Violations of access and/or use restrictions, incur administrative sanctions (according to the provisions of Directive 2014/104/EU on Compensation of Damages). Upon a reasoned request, complainants are informed of the nature and subject matter of the settlement procedure and may submit their views in writing within a specified time frame. Complainants shall not receive a non-confidential version of the settlement proposal and shall not have any right to an oral hearing before the HCC, while they obtain access to the confidential information of the case file upon the

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<sup>29</sup> See HCC Decision No. 526/IV/2011, par. 45.

<sup>30</sup> See Commission Notice 2006/C 298/11, par. 33, on Immunity from fines and reduction of fines in cartel cases.

serving of the settlement decision to the undertakings concerned (see also Section VI below).

125. Access to a case file involving Commitments aiming at terminating an alleged infringement shall not be provided, according to Article 15 of the Regulation on the Internal Operation and Management of the HCC<sup>31</sup>.

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<sup>31</sup> See HCC Decision No. 588/2014, par. 20.

### **III.INTERIM MEASURES**

#### **III.1 General information**

126. According to Article 25(5) of Law 3959/2011, the HCC shall be exclusively competent for taking interim measures on its own initiative where an infringement of Articles 1, 2 or Articles 101 and 102 TFEU is suspected and there is an urgent need to prevent an imminent risk of irreparable harm to the public interest.

#### **III.2 Procedure for Interim Measures**

127. The DGC addresses an Information Note to the President in cases of a suspected infringement<sup>32</sup> of Articles 1, 2 or 101 and 102 TFEU and there is an urgent need as referred above. If she/he agrees with the content of the Information Note, the President brings the case before the Plenary for prioritisation.

128. If approved by the Plenary, the case is assigned to a Rapporteur for drafting a Statement of Objections (SO), as the case may be, in accordance with Article 12(2) of the RIOM.

129. The SO is notified to the parties complained about (in case of a complaint) or investigated (in case of an ex-officio investigation) and a hearing date is set –the summons time frame is set by the President of the HCC (see Article 13 HCC RIOM).

130. The deadlines for the submission of comments by the parties or third parties and for the parties' rebuttals shall be determined, as the case may be, by the President of the HCC, subsequently notified to the parties by any appropriate means and posted on the HCC's website [cf. Article 14 (5) HCC RIOM].

131. There is no specific deadline for adopting a decision on interim measures. However, any such measures should be taken within a reasonably short period of time in order to avoid the urgent risk of serious and irreparable harm to the public interest. The HCC adopts a decision on interim measures after deliberation.

#### **III.3 Possibility of Interim Injunction**

132. As specified above, according to Article 16 of HCC RIOM, the HCC may issue an interim injunction in the context of interim measures.

133. The order is issued by an HCC decision of its own motion and it is valid until the issuance of the decision on the interim measures at the latest. The HCC summons the natural or legal person against whom the interim injunction is directed at least 24 hours in advance. In all other respects, the provision of Article 6 of the Code of Administrative Procedure (Law 2690/1999) shall apply.

134. If a temporary order is issued, the relevant application for interim measures is brought forward to the competent chamber or the Grand Chamber, according to par. 6 of Article

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<sup>32</sup> i.e. in the main case, which may concern the cases of ongoing ex-officio investigation or investigation that is initiated ex officio in the context of interim measures.

15, within thirty (30) days otherwise the validity of the interim injunction is automatically terminated.

#### **III.4 Possibility to offer commitments**

135. In cases of examination of interim measures, Commitments may be proposed by the parties until the date of the hearing. The Rapporteur prepares an Information Note on the appropriateness or inappropriateness of the commitments within five (5) calendar days from the receipt of the commitment proposal.
136. It is noted that the deadlines and the procedure adopted by Decision 588/2014 regarding the commitment procedure shall not apply.

## IV. COMMITMENT PROCEDURE

### IV.1 General information

137. Article 25 par. 6 of Law 3959/2011, provides for the possibility for the HCC, to accept, by its decision, commitments offered by undertakings or associations of undertakings to cease the alleged infringement(s) in the event of a suspected infringement of Articles 1 and 2 of Law 3959/2011 and/or Articles 101 and 102 TFEU, in the context of a relevant investigation initiated either ex officio or at the request of the Minister of Development and Investments or following a complaint, and to make these commitments binding on the undertakings or associations of undertakings concerned<sup>33</sup>. The decision of the HCC may be adopted for a specified period if it is deemed that there are no reasons for it to remain in effect. The HCC may, at the request of any interested party or of its own motion, reopen the proceedings where there has been a substantial change in the facts on which the decision was based, or if the undertakings concerned have failed to fulfill their commitments, or the decision was based on incomplete, inaccurate or misleading information from the undertakings concerned.
138. Commitment decisions are intended to restore conditions of effective competition in the market in which the HCC weighs ensuring the deterrent effect of competition rules through the imposition of a fine against the benefits resulting from the commitments. In general, in cases of hardcore restrictions of competition, the imposition of a fine is considered more effective in terms of competition policy if an infringement is found.
139. **As a general rule, the HCC shall not accept commitments:**
- in cases involving serious anticompetitive effects, which consist in price fixing and/or bid rigging and/or market sharing arrangements, or in serious competition infringements related to abuse of a dominant position.
  - where the relevant Statement of Objections has already been notified to the undertakings concerned
140. The HCC **shall not accept commitments:**
- a) in cases of horizontal agreements under the leniency programme, or if the commitments are
  - b) vague or subject to conditions, or
  - c) are proposed for dilatory purposes, or
  - d) do not serve the effectiveness of the process,
  - e) the alleged infringements have already ceased.
141. When assessing cases, the HCC takes into account certain factors, such as:
- the nature of the product or service concerned
  - the market structure
  - the market share of the undertakings concerned

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<sup>33</sup> See in this respect <https://www.epant.gr/en/legislation/commitments.html>.

- the barriers to entry into the market
- the extent and intensity of plausible adverse effects on competition and consumers
- the duration and scope of the infringement
- the complexity and multiplicity of the infringement.

142. The HCC **deems, in principle, appropriate** to accept commitments in cases where the existing competition concerns:

- a) are readily identifiable, and
- b) are fully addressed by the commitments offered and no new competition issues arise; and
- c) may be efficiently resolved and, where possible, within a short period of time; and
- d) the commitments contribute to saving resources, accelerating the procedure and making it more efficient. These objectives are served when the undertakings concerned express their interest in discussing commitments at the earliest possible stage of the investigation.

143. The process of assessing and undertaking the proposed commitments can be interrupted at any time at the initiative of either the HCC or the undertakings concerned. In this case, the HCC may continue the relevant investigation to determine whether or not a breach exists.

#### **IV.2 Preliminary meetings**

144. The undertakings concerned may propose commitments at any stage of the HCC investigation and, in any case, **no later than the deadline for written Submissions** provided for in Article 14(2) of HCC RIOM, following the notification of the SO.

145. The undertakings concerned may contact the DGC or the Rapporteur (where the case has been assigned to a Rapporteur) to investigate their possibility to offer commitments. The DGC or the Rapporteur (where the case has been assigned to a Rapporteur) may inform the parties of their possibility to offer commitments on a particular case, either orally or in writing by e-mail.

146. The undertakings concerned may request for a Preliminary Meeting with the GDA or the Rapporteur (where the case has been assigned to a Rapporteur) in which they state the reasons why they intend to offer commitments to the GDA or the Rapporteur (where the case has been assigned to a Rapporteur). More Preliminary Meetings may be required to clarify potential competition issues and improve any commitments offered.

#### **IV.3 Initiation of the Commitment Procedure**

147. If the provisional proposals for commitments in the context of the Preliminary Meetings have been submitted before the assigning of the case and the DGC deems it adequate/appropriate to initiate the Commitment procedure and the provisional proposals submitted by the companies are appropriate to address potential competition

concerns, the case is brought before the Plenary to be assigned to a Rapporteur. Then, and if the HCC deems that the state of the proceedings so permits, the case is assigned to a Rapporteur.

148. After the assignment of the case, the intention of the company, the appropriateness of the case for acceptance of commitments and the appropriateness of the provisional commitment proposal are re-evaluated (now by the Rapporteur). Where the Rapporteur deems that the case **is not** appropriate for initiating the Commitment procedure or the commitments offered are not **suitable to effectively and efficiently address the competition concerns identified**, the procedure is not initiated and the investigation of the case continues in order to establish or not establish the infringement.
149. If the Rapporteur deems that the case **is appropriate** for initiating the commitment procedure, the Rapporteur invites the undertakings concerned by letter to submit a final Commitment Proposal **within 30 calendar days**. The invitation summarizes the alleged infringements and the competition concerns under investigation.
150. The notification of the Invitation to Submit Commitments suspends the timeframes of paragraphs 4 and 5 of Article 15 of Law 3959/2011 (timeframes for issuing SO and Decision respectively). In case of non-submission of a Commitment Proposal within the above timeframe, the process of investigating the case in order to establish the existence or non-existence of an infringement resumes. If some of the undertakings concerned do not submit a Commitment Proposal within the set timeframe, the process for investigating the case to establish the existence or non-existence of an infringement may be continued only for them, while for the other companies that have submitted a Commitment Proposal, the relevant Commitment procedure may be followed, provided that the criterion of administrative efficiency is still met.
151. In case of SO notification and subsequent submission by the parties concerned of a Commitment Proposal (**no later than the deadline set for a written Submission** provided for in Article 14(2) of the RIOM), the case Rapporteur prepares a SO on the admissibility and appropriateness of the Commitments offered, which is served on the parties two (2) days before the set hearing, without a new summons.
152. During the relevant hearing, the HCC decides on the initiation of the procedure for evaluating and accepting the commitments proposed by the undertakings concerned (without the need for another SO to be drawn up) through a deliberation procedure or whether the case will be brought before the HCC for examination. In case of initiation of the Commitment Evaluation Procedure, the timeframes for the issuance of the Decision are suspended (par. 5 of Article 15 of law 3959/2011).

#### **IV.4 Content and Types of Commitments**

153. The Commitments Offered must be:
  - ✓ clear and explicit, capable and appropriate to put an end to the alleged infringements and to restore the conditions of competition

- ✓ enforceable by the undertakings that undertake them
  - ✓ capable of being fully and readily implemented or within a reasonable period of time
  - ✓ not depending on the will of third parties, who are not bound by them, otherwise evidence should be provided by the companies concerned that third parties agree to the implementation of the proposed commitments. Any such evidence must be provided together with the commitment proposal.
154. The monitoring the implementation of the Proposed Commitments must be easy. The undertakings concerned may propose mechanisms for monitoring the implementation of the Commitments (e.g. appointing independent monitoring trustees and bearing the relevant costs).
155. The Commitments Offered may include: behavioural remedies, structural remedies or a combination of both.

#### **IV.5 Market test**

156. If deemed appropriate at any stage of the procedure (i.e. before the assignment of the case to a Rapporteur), the HCC may conduct a Market Test with market participants.
157. The Market Test may be carried out by sending market test documents including a specific deadline, interviews with market participants and undertakings active in the market concerned (including the complainant), or launching of a public consultation.
158. During the Public Consultation, a concise summary of the competition concerns under investigation and the commitments proposed is published on the HCC's website. Interested parties are invited to submit comments within a specified period of at least ten (10) calendar days.
159. The DGC or the Rapporteur, as the case may be, may request clarifications on the information submitted by the stakeholders - undertakings in the context of the Public Consultation. During the Consultation, all the necessary steps are taken to protect any personal data and the observance of professional secrecy. In light of the analysis and evaluation of the observations expressed during the Public Consultation, further clarifications may be requested from the undertakings concerned and/or modifications to the Commitments. Any modification to the Commitments may be subject to a Consultation.

#### **IV.6 Proposal to accept commitments offered**

160. If the above criteria are met with regard to the suitability of the case and the content and types of commitments, the Rapporteur prepares a Statement of Objections on the acceptance of the Commitments, otherwise he moves towards further case investigation, after informing the undertakings concerned accordingly by letter.
161. The SO is notified, together with a summons for a hearing, to the undertakings offering the commitments and also to the complainant, **within three (3) months from the submission of the Commitment Proposal, in case the timeframes of**

**paragraphs 4 and 5 of Article 15 of Law 3959/2011 have been suspended.** The timeframe can be extended if the Commitment Proposal needs clarification and/or is incomplete so that the Rapporteur cannot proceed with its evaluation.

162. The procedure for the hearing, including the deadlines for summons and submissions of observations by the parties and any third parties, shall be regulated in accordance with the provisions of the RIOM (i.e. at least 45 calendar days before the hearing).
163. In Commitment cases, access to the case file according to article 15 of the RIOM is not provided.

#### **IV.7 HCC Decision**

164. According to the SO on the Commitment Proposal, the HCC may request further clarifications from the undertakings concerned and/or modification of the Commitments. If the Commitment Proposal at hand is accepted by the HCC, the HCC makes the commitments binding on the undertakings concerned and decides that there are no grounds for further action. The HCC issues a relevant decision only in case of acceptance of the Commitments.
165. In case of non-acceptance of the Commitments,
  - the relevant decision is preliminary in nature and is without prejudice to the final decision in the case and is included therein,
  - the process of investigating the case and determining whether or not there is a breach shall be continued
166. In case of rejection of the Commitments offered by some of the parties involved, the procedure of acceptance of the Commitments continues for the other undertakings. The timeframes of paragraphs 4 and/or 5 of Article 15 of Law 3959/2011 shall begin from the date of issuance of the HCC decision on the acceptance or non-acceptance of the commitments.
167. The HCC decision shall state the time of entry into force and the duration of the Commitments. The HCC may, upon request submitted by any interested party and/or on its own initiative, reopen the proceedings:
  - where there has been a material change in any of the facts on which the decision was based;
  - where the undertakings concerned act contrary to their commitments; or
  - where the decision was based on incomplete, incorrect or misleading information provided by the parties.

#### **IV.8 Compliance with the Commitment Decision**

168. By its decision, the HCC may threaten to impose a fine for failure of the undertaking concerned to meet the undertaken Commitments.
169. The HCC may impose a fine in case of non-compliance of the undertakings concerned with the Commitments. In this regard, the infringement consists in the non-

compliance of the undertaking with the Commitment decision, without it being necessary to establish anew an infringement of Articles 1 and 2 of Law 3959/2011 and/or 101, 12 TFEU.

## V. LENIENCY PROGRAMME

### V.1 General Information

170. According to Law 3959/2011, Articles 14 par. 2 ind. n sub-ind. bb and 25 par. 8, undertakings and natural persons that contribute to the detection and establishment of horizontal agreements of Article 1 of Law 3959/2011 and 101 TFEU are exempted from the payment of fines or they can benefit from a reduction of such fine (Leniency Programme-LP)<sup>34</sup>.
171. The LP only applies to horizontal cartels laid down by Article 1 of Law 3959/2011 and 101 TFEU and to specific legal and natural persons involved in cartels which are liable to a fine under Article 25 par. 1 ind. d and par. 2 ind. c of Law 3959/2011.
172. According to the LP, a firm which coerced other firms to participate in a cartel are *ab initio* excluded from immunity from fines. This exception does NOT apply to individuals having acted on behalf of the said undertaking.
173. The LP provides for 3 types of leniency:
- i. Immunity from fines – Type 1A<sup>35</sup>
  - ii. Immunity from fines – Type 1B<sup>36</sup>

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<sup>34</sup> With respect to the Leniency Programme, see: <https://www.epant.gr/en/legislation/leniency-programme.html> (HCC Decision No. 526/VI/2011 on the conditions and requirements for granting immunity from or reduction of fines to undertakings and natural persons contributing to the detection and establishment of horizontal cartels laid down in Article 1 of Law 3959/2011 and 101 TFEU).

<sup>35</sup> Conditions for immunity, which must be met cumulatively:

- The undertaking or legal person must be the first to submit evidence enabling the HCC to initiate a targeted inspection with regard to a suspected cartel.
- The HCC must not already possess, at the time of the application, sufficient evidence which would allow it to initiate a targeted inspection or take any other investigative measure concerning the suspected cartel.
- The HCC must not have already carried out an on-site inspection or taken any other investigative measure.
- The undertaking or natural person must cooperate with the HCC fully, genuinely and on a continuous basis throughout the procedure.
- The undertaking must have put an end to its participation in the infringement before the submission of its application for leniency (unless the HCC finds it necessary to let this participation continue).
- The undertaking or natural person must not have destroyed any evidence and must have kept its intention to apply for leniency as well as the content of the relevant application confidential.

<sup>36</sup> If the conditions for immunity from fines-Type 1A are not fulfilled, the HCC may grant to an undertaking or natural person an immunity from fines-Type 1B pursuant to Article 25 of Law 3959/2011, provided that:

- a) The undertaking or natural person is the first to submit evidence which enables the HCC to establish an infringement under Article 1 of Law 3959/2011 and/or Article 101 TFEU with respect to the suspected cartel;
- b) The HCC did not already possess, at the time of the application, sufficient evidence which would allow the initiation of the investigation procedure under Article 1 of Law 3959/2011 and/or Article 101 TFEU with respect to the suspected cartel; and
- c) The conditions for the Leniency Programme provided in section V of the HCC Decision No. 526/IV/2011 are met.

The application for a Type 1B-immunity shall be accompanied by the evidence and information required for a Type 1A-immunity.

iii. Reduction of fines – Type 2<sup>37</sup>

## V.2 Submission of Leniency Application

174. An undertaking or natural person wishing to benefit from the LP must submit an application together with a relevant statement (see below), the evidence and information referred to in paragraph 8 of the HCC Decision No. 526/VI/2011<sup>38</sup>.
175. The application shall be made in writing and be submitted to the President of the HCC<sup>39</sup>, who shall then inform the Director-General and the case Rapporteur (if the case has been assigned to a Rapporteur).
176. In case the application is submitted by a legal person, it must be signed by the legal representative of the undertaking or by a person legally authorised for this purpose. In the latter case, the submission of the leniency application requires the presentation of a specific mandate, which may be either the minutes of a board meeting with an authenticated signature of the legal representative or the person authorised to issue copies of minutes or a special notarial document.
177. At the request of the undertaking or natural person, the Director-General, by order of the President, issues an acknowledgment of receipt of the application and the information submitted in which the date and time of submission of the application shall be attested.
178. Upon request by the applicant (undertaking or legal person), the HCC may allow an oral statement including the information provided for in paragraph 8 of the HCC

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<sup>37</sup> In the case of applications from undertakings and natural persons which do not qualify for immunity from fines of types 1A and 1B, the undertakings and natural persons may receive a reduction of the fine that would otherwise have been imposed on them (Type 2). In order for a business and/or natural person to be granted the benefit of a reduction of fine, the undertaking and the natural person must provide the HCC with evidence of a suspected cartel, which should have significant probative added value with respect to the evidence the HCC already has to prove the cartel's existence.

<sup>38</sup> See above. In order for the HCC to be able to carry out a targeted on-site inspection, the applicant, undertaking or natural person, must fill in the application form for leniency with a detailed description of the alleged cartel conduct, in particular, with the following details and information:

A) A statement of the undertaking or natural person, including: aa) The name and address of the legal person or the name and address of the natural person applying for immunity, bb) The identity (in particular, name and address) of the other members of the alleged cartel, cc) The name, position, office address of all persons known to the applicant who might provide information/evidence of the cartel under investigation, dd) A detailed description of the alleged cartel, in particular: its aims, nature, scope and operation, the affected products or services, the affected geographical territory(-ies) as well as its duration, the estimated market volumes affected by the alleged cartel as well as all relevant explanations in connection with the pieces of evidence provided in support of the application.

B) Any evidence for the alleged cartel being at the disposal or control of the applicant at the time of submission of the application, in particular any evidence that is contemporaneous to the infringement.

C) Any information on already submitted or possible future leniency applications submitted to other competition authorities, either inside or outside the European Union, in relation to the alleged cartel.

<sup>39</sup> Before submitting a formal application for immunity from the fines, the undertaking or the natural person may approach the HCC without revealing any identification details in order to request clarification on the applicability of the Leniency Programme to the particular case. In this case, the undertaking or natural person must present the required information and evidence on a hypothetical basis.

Decision No. 526/VI/2011. «Statement» shall mean any corporate statements submitted by duly authorised representatives.

179. These statements are recorded by any means deemed appropriate by the HCC (e.g. by electronic recording media). The applicant is still required to provide the HCC with copies of all the pre-existing evidence of the alleged cartel as laid down in par. 8 of HCC Decision No. 526/IV/2011.

### **V.3 Marker system**

180. Before submission of a leniency application, the undertaking or natural person may apply in writing for a “marker”. The granting of a marker protects the applicant’s place in the queue for a given period of time, thus allowing him to gather, within that period, the information and evidence necessary in order to meet the conditions and the relevant minimum exemption requirements as set out in the HCC Leniency Decision<sup>40</sup>.

181. To this end, the undertaking or natural person submits a relevant application for a marker and asks for a deadline for the submission of the necessary evidence and information.

182. In case the application is submitted by a legal entity, it is signed by the undertaking’s legal representative. The granting of a marker is at the discretion of the President of the HCC.

### **V.4 Provisional immunity from fines**

183. Once the HCC has verified that the evidence and information submitted are sufficient and meet the conditions and the relevant minimum reporting requirements for immunity from fines, the President of the HCC grants in writing to the applicant undertaking or natural person a provisional immunity from fines. Usually, this is done after the case is assigned to a Rapporteur.

184. Otherwise, the President shall inform the undertaking in writing that its application for immunity from fines has been rejected. The undertaking or natural person reserves the right to:

- either request that its/his application be examined in accordance with the provisions for the reduction of fines,
- or withdraw its/his leniency application.

185. In case of rejection of the leniency application by the President of the HCC and of its revocation by the applicant, the evidence provided shall not be used by the HCC unless

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<sup>40</sup> The applicant must justify his marker application and provide the HCC, at the same time as the application submission, with his/her name and address as well as information on: a) The members of the alleged cartel, b) The affected product(s), (c) The affected geographical territory (d) The duration of the potential cartel; (e) The nature and operation of the alleged cartel and (f) Any information on already submitted or possible future leniency applications submitted to other competition authorities, either inside or outside the European Union, in relation to the alleged cartel.

If the applicant completes his application within the prescribed period, the information and evidence provided by him shall be deemed to have been submitted on the date of issue of the marker.

it was already in its possession before the submission of the leniency application. Immunity from the fine is granted by a final leniency decision adopted by the HCC on the case.

#### **V.5 Summary application for immunity from fines**

186. In case a legal or natural person has already submitted an application or intends to submit an application for immunity from fines to the European Commission, he may at the same time submit a summary application for leniency of Type 1A and 1B<sup>41</sup> to the HCC if he considers that the latter is “well placed” to act on the basis of the Commission Notice on Cooperation within the Network of Competition Authorities.

187. Upon receipt of the summary application, the Director-General provides, by order of the President of the HCC, following a relevant request from the undertaking concerned, an acknowledgement of receipt of the application, attesting the date and time of submission.

#### **V.6 Access to the case file**

188. Access to any recording of the leniency applicant's oral statements before the notification of the Rapporteur's SO is not granted under this procedure. This right is exercised after the notification of the SO, through verification of the recordings carried out at the offices of the HCC. In case of a settlement procedure, similarly, no access is provided to any recording of the leniency applicant's oral statements to the parties of the settlement procedure before the settlement SO is served on them. This right is exercised after the notification of the SO by verification of the recordings carried out at the offices of the HCC.

189. Any leniency statements of undertakings or natural persons may be exchanged between the Competition Authorities of the Commission and the EU Member States, in accordance with Article 12 of Regulation (EC) No 1/2003 and paragraphs 40 and 41 of the Commission Notice on Cooperation within the Network of Competition Authorities.

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<sup>41</sup> Summary applications are considered "leniency applications" within the meaning of paragraph 41(1) of the Commission Notice on Cooperation within the Network of Competition Authorities [OJ C 101, 27/04/2004, pp. 43-53 ].

## VI. SETTLEMENT PROCEDURE

### VI.1 General Information

190. According to the provisions of Article 25a of Law 3959/2011, the HCC may impose a reduced fine on undertakings under investigation for participation in a horizontal cartel and against which evidence has been collected and an infringement of Article 1 of the Greek Competition Act and/or Article 101 TFEU has been established, which have clearly and unequivocally acknowledged their participation in the infringement and their liability for such infringement (Settlement Procedure - SP)<sup>42</sup>.
191. The SP applies only to horizontal cartel cases of Art. 1 Law 3959/2011 and 101 TFEU and the HCC retains a broad margin of discretion to determine which cartel cases may be suitable for submission to SP, the initiation or not of this procedure, its termination, at any time, or its completion upon issuance of a decision establishing an infringement or imposing a fine. It is pointed out that the SP may also be applied - under the same terms and conditions - to undertakings on which the power of the HCC to impose a fine has become time-barred in accordance with Article 40 of Law 3959/2011.
192. The HCC shall not initiate the SP if, either cumulatively or alternatively:
- ✓ The case does not concern horizontal cartel.
  - ✓ The prospect for achieving procedural efficiency is not served.
  - ✓ The comments made by the undertakings concerned in the context of their formal settlement proposal are not in line with the current national and EU theory and case law.
193. The HCC may decide to discontinue the SP at any time if, either cumulatively or alternatively:
- ✓ During the process, the above factors arise that make the initiation of the SP inappropriate.
  - ✓ The interest of the undertakings concerned to be subject to the SP is expressed in a dilatory manner or the undertakings withdraw from it.
  - ✓ There are reasonable grounds for considering that the undertakings concerned are acting with a view to completely or partially falsifying or destroying any evidence relating to the infringement of competition rules or to the calculation of the fine to be imposed by the HCC.
  - ✓ It emerged that the undertakings concerned have breached the obligation of confidentiality, as follows, and have disclosed to any third party the content of the meetings with the HCC or of any documents to which they have been granted access under the SP.

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<sup>42</sup> See in this respect: <https://www.epant.gr/en/legislation/settlement-procedure.html> as well as <https://www.epant.gr/en/imerosi/dimosieyseis/erotiseis-apantiseis/item/597-diefthetisi-diaforon.html>.

## VI.2 Type of HCC Decision

194. Where not all undertakings that participated in the infringement are subject to the SP, neither from the beginning nor due to withdrawals from the settlement procedure after its initiation, the HCC issues two decisions, one decision addressed to the undertakings that accepted their participation in and liability for the infringement, according to the SP, and another decision addressed to the undertakings that decided not to accept their participation in and liability for the infringement, according to Articles 15 and 25 of Law 3959/2011 (hybrid cases).
195. Where the SP applies, the infringement decision of the HCC is issued following a simplified procedure, and a fine is imposed on the undertakings concerned, according to Articles 25a, last subparagraph and 25 par. 1 to 3 of Law 3959/2011 and in accordance with the HCC's Guidelines<sup>43</sup>, reduced by 15% due to the submission of the case to the SP.

## VI.3 Preparatory actions

196. The initiative for submission to the SP lies with the companies concerned, which can express their interest in writing no later than 35 days before the hearing on the case before the HCC. In particular: Prior to the case assignment to a Rapporteur, the parties-undertakings concerned may contact the DGC and express their interest for placement under the SP. Following the case assignment to a Rapporteur, the undertakings concerned may contact the Rapporteur and express their interest for submission to the SP.
197. Following an expression of interest by one or more of the undertakings concerned as above, where the DGC or the competent Rapporteur considers that a case is, in principle, eligible for the SP, it/he shall inform all the undertakings concerned in writing of the possibility for expression of interest for their submission to the SP with regard to the particular case and set a deadline of at least 10 days to express their intention in writing.
198. In their written expression of interest in the SP, the undertakings concerned should state the names of:
- the natural person/persons who will represent them during the bilateral meetings with the DGC or the competent Rapporteur,
  - any lawyers representing them.
199. The DGC or the Rapporteur then informs the Plenary the HCC of:
- the written expressions of interest submitted by the undertakings concerned and the prospect of applying the SP
  - the basis on which bilateral meetings with interested parties may be conducted, stating the substance of the objections against the undertakings concerned, the main

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<sup>43</sup> See Guidelines for setting fines: <https://www.epant.gr/nomothesia/nomothesia-antagonismou/ypologismos-prostimon.html>

evidence supporting those objections and the range of potential fines (minimum and maximum percentage of the value of the sales connected with the infringement) according to the relevant Guidelines of the HCC.

#### **VI.4 Commencement of the SP before a Statement of Objections is notified to the parties concerned**

200. The above components shall be assessed by the Plenary of the HCC at the stage of the preparatory actions and, after considering at its discretion the need to ensure the subject-matter of the ongoing investigation and its progress in general:

##### **Before the assignment of the case to a Rapporteur**

201. Prioritizes the case, assigns it to a Rapporteur according to the provisions of Article 15 par. 2 of Law 3959/2011 and authorises the Rapporteur to hold bilateral meetings with the interested undertakings concerned towards a possible settlement of the case.

##### **After the assignment of the case to a Rapporteur and before the notification of the SO**

202. Authorises the Rapporteur to whom the case has already been assigned according to the provisions of Article 15 par. 2 of Law 3959/2011 to hold bilateral meetings with the undertakings concerned towards a possible settlement of the case.

203. In both cases, i.e. a) failure to reach a settlement, the case investigation procedure shall continue according to Article 25 of Law 3959/2011 and b) the time limits referred to in Art. 15 par. 4 and 5 of Law 3959/2011 for all parties involved in the case shall be suspended.

204. Each undertaking subject to the SP shall be informed by the case Rapporteur, during bilateral meetings, on the key elements of the case, namely:

- The alleged facts and their legal assessment in the context of finding the infringement,
- The gravity and duration of the cartel under investigation,
- The participation and attribution of liability to each undertaking,
- Evidence pointing to violation of competition law,
- An estimation of the range of the likely fine to be imposed on each undertaking (according to the relevant Guidelines of the HCC).

205. During the bilateral meetings, the case Rapporteur decides, at his discretion, the time at which specific information will be disclosed to the undertakings participating in the bilateral meetings, including non-confidential versions of the main evidence available at each time, on the basis of which evidence is established and possible fines are imposed.

206. During the bilateral meetings the Rapporteur may, at his discretion, present to the undertakings participating in these meetings non-confidential versions of any document included in the case file at that specific time, on the basis of which the attributed objections are substantiated and potential fines are imposed.

207. The undertakings concerned may submit to the Secretariat of the HCC a reasoned request for access to the file. The Rapporteur, at a time that he deems appropriate, taking into account the progress made in the bilateral meetings, may grant access to the main evidence of the case file which has been taken into account, up to the specific time, to substantiate the alleged infringements, by application *mutatis mutandis* of the provisions of Article 15 of the HCC RIOM, in order to allow the parties concerned to decide whether or not to proceed with the settlement of the dispute.
208. Any information and documents related to the case shall be Confidential. Access to the case file is granted through an on-the-spot examination of the data and documents carried out at the offices of the HCC (Data Room) and provided that the applicants-undertakings concerned with their attorneys have previously signed a relevant confidentiality agreement.
209. It is noted that the information obtained from the above documents may be used by the party having access to the case file only where it is necessary for the exercise of the rights of defense in proceedings before the administrative courts in cases that are directly connected to the case to which access has been granted, and which concerns the review of an HCC decision finding an infringement of Articles 1 of Law 3959/2011 and/or 101 TFEU.

#### **Submission of Settlement Proposals**

210. When substantial and sufficient progress is achieved through the bilateral meetings, the case Rapporteur informs the participants in such meetings of the outcome thereof and invites them to submit, within 30 days, a formal Settlement Proposal which also takes into account and reflects such outcome. The Settlement Proposal shall be submitted to the Secretariat of the HCC. The above deadline may be extended by the case Rapporteur up to 15 days upon reasoned request by the undertakings concerned.
211. Before the time limit is set for submission of a Settlement Proposal, the undertakings concerned have the right to access the information listed above. Access to the case file is granted through an on-the-spot examination of the evidence and documents carried out at the offices of the HCC (Data Room) and provided that the applicants-undertakings with their attorneys concerned have previously signed a relevant confidentiality agreement.

#### **VI.5 Commencement the SP after a Statement of Objections is notified to the parties concerned**

212. In case the the SO has been notified to the parties, the undertakings concerned may express their interest in writing to investigate the possibility of their submission to the SP, no later than 35 days before the date of the hearing on the case before the HCC.
213. For reasons of procedural efficiency and acceleration of the relevant procedure, the Plenary of the HCC may decide to initiate the SP in a specific case and before the expiry of the above time limit for submission of the relevant requests, provided it is

justified by the number and/or the degree of involvement in the infringement of the undertakings that submitted a relevant request.

214. In this case, with regard to the other companies concerned that submit a relevant request until the expiration of the above time limit, the Settlement Procedure initiated shall be automatically followed, without requiring a new decision by the Plenary of the HCC.
215. In this case, i.e. where the SP is initiated after the notification of an SO to the parties, the bilateral negotiations are conducted before the HCC. In particular, in the event that the HCC decides to initiate the SP, it shall inform the parties accordingly, set a date for the commencement of bilateral meetings with each requesting undertaking, which shall be summoned for that purpose, and adjourn the hearing on the case with respect to any undertakings concerned that did not submit any such request.
216. Generally, bilateral meetings to settle the case with each of the undertakings concerned at this stage are determined at intervals of a few days, in order to clarify, during the second bilateral meeting at the latest:
- The alleged facts and their legal assessment in the context of the finding of the infringement,
  - The duration and gravity of the cartel under investigation,
  - The participation and attribution of liability to each undertaking,
  - The main evidence used to establish the potential objections,
  - An estimation of the range of likely fine to be imposed on each undertaking.

#### **Submission of Settlement Proposals**

217. When substantial and sufficient progress is achieved through the bilateral meetings, the HCC shall inform the participants of the outcome of those meetings and invite them to submit, within the time limit set by it, a formal Settlement Proposal that takes into account and reflects these results, which shall be submitted to the Secretariat of the HCC.
218. Before a deadline for submission of a Settlement Proposal is set, the undertakings have the right of access to the information listed above. Access to the case file is granted through an on-the-spot examination of the evidence and documents carried out at the offices of the HCC (Data Room) and provided that the applicants-undertakings concerned have previously signed a relevant confidentiality agreement with their attorneys.

### **VI.6 Content of Settlement Proposal**

219. It is noted that the procedure described below is uniform in nature regardless of whether or not an SO has been served on the parties.
220. The Settlement Proposal is submitted by each interested company and shall contain:
- a) An acknowledgement in clear and unequivocal terms of the participation of each undertaking in the infringement (s) of Article 1 of Law 3959/2011 and/or 101 TFEU as

well as of the liability such participation entails, summarily described as regards its object, its possible implementation, the main facts, their legal assessment, including the role of the undertaking in question, and the duration of its participation in the infringement, in accordance with the outcome of the bilateral meetings conducted for the settlement of the dispute

b) Acceptance of the maximum amount of the fine that may be imposed by the HCC in the framework of the SP, according to the outcome of the bilateral meetings. c) The parties' confirmation that they have been sufficiently informed of the HCC's finding of an infringement and that they have been given sufficient opportunity to make their arguments, legal and factual, known to the authority.

d) The parties' confirmation that, in view of the above, they waive their right to obtain further and/or full access to the HCC's file or to be heard in an oral hearing before the HCC, unless the Settlement SO does not reflect the Settlement Proposal or the HCC has not accepted this Proposal by its decision. e) The parties' statement that they waive the right to challenge HCC's competence and/or the validity of the procedure followed for the imposition of fine (s) on them within the framework of the settlement procedure.

221. In case a Settlement Proposal is not submitted by a particular undertaking(s) according to the above within the time limit set, the case investigation process shall continue pursuant to Article 25 of Law 3959/2011. In this case, the time limits of paragraphs 4 and/or 5 of Article 15 of Law 3959/2011 commence from the notification of the HCC decision, according to the last subparagraph of Article 25a of law 3959/2011, to the undertakings concerned that were subject to the SP.

## **VI.7 Settlement Statement of Objections**

222. Once the Settlement Proposals are submitted, the HCC assigns to the case Rapporteur to prepare a Settlement Statement of Objections. The Settlement Statement of Objections shall take into account the content of the Settlement Proposals and propose their acceptance by the Plenary of the HCC, while the discretionary power of the Rapporteur to propose to the HCC to discontinue the SP is retained.

223. The Settlement Statement of Objections shall contain all the necessary information, which will allow the undertakings involved to confirm that it actually reflects the Settlement Proposals, and shall be served on the parties within two (2) months from the last Settlement Proposal, in submission chronological order. The time limit may be extended, by one (1) month, if the Settlement Proposals need clarification and/or are not complete, so that the case Rapporteur cannot proceed with their evaluation.

224. Following the notification of the Settlement SO, the undertakings concerned are invited, to confirm, irrevocably, unreservedly and clearly, within 10 days, with their relevant declaration (Settlement Declaration), that the Settlement SO reflects the

Settlement Proposals and that their commitment to be subject to the Settlement Procedure is therefore valid.

225. If a Settlement Declaration is not submitted by a particular undertaking(s), or is not properly submitted, the SP is discontinued and the case investigation procedure shall continue in relation to this (these) undertaking(s) according to Article 25 of Law 3959/2011.
226. The time limits of paragraphs 4 and 5 of Article 15 of Law 3959/2011 shall begin to run:
- either upon the notification to all the undertakings involved of the procedural action to discontinue the SP, in the event that no appropriate Settlement Declaration has been submitted,
  - or upon the notification of the HCC Decision according to the last subparagraph of Article 25a of Law 3959/2011 to the undertakings involved that were subject to the SP, in case appropriate Settlement Declarations have been submitted.
227. If, for any reason, the undertakings concerned do NOT submit a Settlement Declaration, the Settlement Proposals:
- ✓ are all considered withdrawn,
  - ✓ have no binding effect on the undertakings concerned, and
  - ✓ shall not be used to prove the alleged infringement against any of the undertakings involved, neither by the HCC nor by the competent courts.

## **VI.8 HCC's Final Settlement Decision**

228. Where the undertakings concerned submit Settlement Declarations, the HCC shall issue a final settlement decision under the simplified procedure.
229. The Settlement SO is not binding on the HCC, which has a broad discretion to reassess, from a factual and legal point of view, the content of the case file, the Settlement Proposals and the Settlement Declarations and to discontinue the SP.
230. *NON-ADOPTION OF THE SETTLEMENT SO*: In case the HCC does NOT adopt the Settlement SO, it shall inform the parties accordingly. In this case, the investigation procedure on the case according to Article 25 of Law 3959/2011 shall continue and the time limits of paragraphs 4 and/or 5 of Article 15 of Law 3959/2011 commence from the relevant notification to the parties. The Settlement Proposals and Settlement Declarations shall all be considered withdrawn, have no binding effect on the undertakings concerned and may not be used to prove the alleged infringement against any undertaking concerned, neither by the HCC nor by the competent courts.
231. *ADOPTION OF THE SETTLEMENT SO*: In case the HCC adopts the Settlement SO, a final settlement decision is issued under the simplified procedure.
232. The infringement(s) is(are) established, the relevant factual/legal matters are described and the main evidence on which the Decision is based, the object of the infringement(s), its(their) duration, its(their) possible implementation, the duration and

participation of each company therein, while the settlement procedure applied in the particular case with the cooperation of the particular undertaking is indicated and sanctions are imposed according to Articles 25a last subparagraph and 25 par. 1 of Law 3959/2011. The same decision shall reduce by 15% the amount of the fine that would be imposed in case of non-settlement.

## **VI.9 Access to the SP documents**

233. Access to the SP documents (i.e. statements to explore the possibility of inclusion to the SP, technical memoranda submitted by the undertakings concerned during the bilateral meetings, any minutes of the bilateral meetings as internal documents, passages or parts of the case Rapporteur's summons that present the outcome of the bilateral meetings, the Settlement Proposals, the Settlement Declarations, the minutes of the bilateral meetings before the HCC and the citation of the original passages of the above-mentioned documents contained in others) shall be granted only to the undertakings concerned, which are not subject to the SP, in accordance with the provisions of the HCC's RIOM, and provided that they commit, as their attorneys who gain access on their behalf, that any such documents and the information contained therein will be used exclusively for the purposes of the procedure before the HCC, by way of derogation from Article 15 par. 14 of the HCC's RIOM<sup>44</sup>.
234. Access to the case file is granted through an on-the-spot examination of the data and documents carried out at the offices of the HCC (Data Room) after the adoption of a Settlement Decision by the HCC and, in any event, at least 45 days before the hearing on the SP before the HCC Plenary, pursuant to Art. 13 par. 3 of the RIOM, and provided that the applicants-undertakings concerned with their attorneys have previously signed a relevant confidentiality agreement.
235. Complainants, natural or legal persons, according to Article 36 of Law 3959/2011, do not have access and are not notified of the above confidential information of the SP. Access to the non-confidential information of the case file is granted to the above persons after the notification of the HCC Decision according to the last subparagraph of Article 25a of Law 3959/2011 to the companies concerned that were subject to the SP.

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<sup>44</sup> It is noted that the information drawn from the above documents may be used by the party who has access to the file only when it is necessary for the exercise of the rights of defense in proceedings before the administrative courts in cases directly related to the case in which access has been granted, and which concern the review of a decision of the HCC that has found a violation of Articles 1 of Law 3959/2011 and/or 101 TFEU [see Article 16a Commission Regulation (EC) No 773/2004 of 7 April 2004, as in force, Commission Notice on the conduct of settlement procedures (2008 / C 167/01), par. 35, as well as, inter alia, Judgment of the Court in Case C-365/12 P EnBW, par. 99 and HCC Decision No. 647/2017 on the ex-officio investigation in the construction sector, par. 79, where it is provided that the investigations of the competition authorities are not considered completed for the purposes of granting access to third parties, for as long as appeals against a decision of the competition authority are pending before the competent courts].

236. The natural or legal persons that have submitted a complaint according to Article 36 of Law 3959/2011, during the investigation of which the SP is applied, are informed, upon a reasoned request, about the nature and the subject-matter of this procedure.

237. The HCC may set, at its discretion, a specific time limit within which the natural or legal persons which have lodged a complaint shall submit their views in writing. The above persons shall not receive a non-confidential version of the Settlement SO and shall not have the right to an oral hearing before the HCC.

#### **VI.10 Relation between SP, Leniency Programme and Commitments**

238. The two procedures, i.e. LP and SP, may be complementary. In this case, the cumulative granting of the provided benefits is justified.

239. Where undertakings that have applied for leniency are also involved in cases subject to the SP, by its relevant settlement decision, the HCC grants the benefit of leniency, if it finds that the conditions and requirements of the Leniency Programme are met.

240. In the event that the leniency benefit is granted to an undertaking concerned, which has also been subject to the SP, the fine reduction under the SP increases the fine reduction under the LP.

241. The settlement procedure cannot be cumulatively applied to the commitment procedure, because these two procedures are completely distinct from each other. The settlement procedure necessarily implies the finding of an infringement by the HCC and a consequent imposition of fines for serious infringements of competition law (cartels), while the commitment procedure simply implies a merely suspected infringement and a consequent remedial action (without a finding of an infringement and an imposition of fines), in particular for non-hardcore restraints of competition according to the existing enforcement practice and case-law.

## VII. CASE CLOSURE – REJECTION OF COMPLAINT

242. (Complete) Complaints are an important means of enforcing competition rules and shall therefore be carefully considered by the HCC. However, after a proper assessment of the factual and legal elements of the particular case, the HCC may reject a complaint on the grounds of and in line with the procedure set out below.

### VII.1 Rejection of complaint under Art. 14(2) (o) of L. 3959/2011

243. As mentioned above (see Section II.4), on the basis of the HCC Decision No. 696/2019 adopted under Article 14 par. 2 case (n) sub-case (aa), and case (o) of Law 3959/2011, as in force, the case prioritisation according to the updated point system which covers both complaints and ex-officio investigations, is generally carried out within four (4) months from the proper submission of the complaint or the evaluation of the first investigative measure on an ex-officio investigation. It is noted that complaints are given priority according to the above, provided that the complaint form has been duly completed<sup>45</sup>.

244. In case a complaint receives a low ranking order, pursuant to the provisions of Decision 696/2019 of the HCC, a relevant proposal is prepared and submitted to the President of the HCC. The President issues a relevant rejection decision pursuant to Article 14 par. 2 o) within one (1) month from the submission of the relevant proposal by the DGC. This decision is notified to the complainant by a bailiff.

245. The complainant has the right to challenge the above decision in accordance with the applicable provisions within 60 days from the service of the President's decision.

### VII.2 Closure of complaint due to withdrawal under Art. 26 of the HCC Regulation on the Internal Operation and Management<sup>46</sup>

246. A) In case of withdrawal of a complaint according to the provisions of Article 26 of the Regulation on the Internal Operation and Management of HCC (RIOM), **before the**

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<sup>45</sup> See HCC's NOTICE ON THE HANDLING OF COMPLAINTS PURSUANT TO ART. 36 OF LAW 3959/2011 (<https://epant.gr/en/legislation/complaints.html>).

<sup>46</sup> Article 26 of the Regulation on the Internal Operation and Management of the HCC: "1. A withdrawal of a complaint before the Commission is allowed at any stage of the proceedings and until the end of the case examination. The withdrawal procedure requires a written declaration, which is submitted to the General Protocol of the HCC's Directorate-General for Competition. The withdrawal declaration may also be submitted orally or in writing to the HCC, after the commencement of the case examination. The declaration is submitted by the complainant in person or through his attorney, who has been appointed by a special power of attorney. If the withdrawal declaration is submitted after the notification of the summons to the hearing, the consent of the person against whom the complaint is directed is required. 2. The withdrawal declaration submitted shall not automatically terminate the investigation of the case or the initiation of proceedings before the HCC. 3. If the withdrawal declaration is submitted following the assignment of a case to the Rapporteur, the HCC shall decide whether or not to proceed with the proceedings. If the withdrawal declaration is submitted before the assignment of a case to the Rapporteur, the President of the HCC may, by issuing a relevant act, file the case without further action. 4. Revocation of the withdrawal is not allowed. Any conditional or provisional withdrawal shall be void. 5. The provisions of this Article shall not prevent the President of the HCC or the HCC from reopening a case which has been closed."

**assignment of the case to a Rapporteur**, a relevant information note/proposal is prepared by the DGC and submitted to the President.

247. **A.1** ) The President may close the case by issuing a relevant Act, without further action. The relevant Act is notified to the complainant.

**A.1a)** The President, despite the above withdrawal, may decide to continue the investigation of the case using the information at his disposal.

- The evidence submitted in the context of the complaint by the complainant can be used in its entirety.
- In this case, the case continues as an ex-officio investigation and further investigative measures are taken in the context of an ex-officio investigation (the evidence of the complaint, both from the complainant and any third parties can be used as evidence by the Authority to launch an ex-officio investigation).
- Case closure without further action does not require the issuing of a President's Act to this effect.
- The complainant, after the withdrawal of his complaint, is not a party to the proceedings.

**A.1b)** The President may reopen a closed case due to the withdrawal of the complainant. In this event, the case is initiated as a new ex-officio investigation and further investigative measures are taken in the context of ex-officio investigation.

248. **B)** In case of withdrawal of a complaint according to the provisions of Article 26 of the Regulation on the Internal Operation and Management of the HCC (RIOM), **after the case is assigned to a Rapporteur**, a relevant information note/proposal is prepared by the Rapporteur and submitted to the HCC, which shall receive a protocol number and include a section with a proposal to the Commission on whether or not further investigation of the case is needed.

- The HCC, by issuing a Decision, may close the case/complaint without further action and the relevant Decision (extract of the Minutes) is also notified to the respondent party.

249. The HCC may decide to pursue the investigation of the case using the information already available to it.

- The information provided in the context of the complaint by the complainant can be used in its entirety (cf. above).
- In this case, the case continues as an ex-officio investigation and further investigative measures are taken in the context of ex-officio investigation.
- Case closure does not require the issuing of a Decision to this effect.

- The complainant, after the withdrawal of his complaint, is not a party to the proceedings.

250. **B.1)** If the declaration of withdrawal is submitted **after the notification of the summons to the hearing**, a relevant information note/proposal is prepared by the Rapporteur and submitted to the HCC, on whether or not further investigation of the case is needed. The issuing of a closure decision requires the consent of the respondent party and the hearing procedure is then terminated.

### **VII.3 Rejection of complaint under Art. 37 of L. 3959/2011**

#### **VII.3.1 Rejection due to lack of competence (Art. 37(1) of L. 3959/2011)**

251. If the complaint does not fall within the remit of the HCC, but falls within the remit of another administrative or judicial authority, a relevant proposal is drawn up under Article 37 and, after the issuance of the President's Act to this effect within five months from the submission of the complete complaint, this Act is served on the complainant by a bailiff. By the same accompanying letter, the complainant is informed about the forwarding of the particular complaint to another public service.

- The complainant has the right to appeal against the above Act, in accordance with the provisions in force.

#### **VII.3.2 Rejection of a complaint which is manifestly unfound (Art. 37(2) of L. 3959/2011)**

252. In case the complaint is manifestly unfound, as it results after any preliminary investigation measures: A relevant proposal shall be prepared under Article 37 and the relevant President's Act of the President shall be issued within nine months from the submission of the complete complaint. The President's Act is served on the complainant by a bailiff. The complainant has the right to appeal against the above Act, in accordance with the provisions in force. After the service of the President's Act, a period of 60 days commences, within which the complainant may file an action for annulment/appeal against it.

### **VII.4 Negative proposal after the case assignment to a Rapporteur**

253. In the event that the investigation of the complaint is advanced, but after conducting additional investigative measures (the collection and processing of which requires a significant time or, at least, a period of 4 months from the prioritisation of the complaint), the complaint is deemed unfound, it is assigned to a Rapporteur and a negative proposal shall be drafted.

## VIII. OTHER HCC CASES

### VIII.1 Sectoral Regulatory Intervention

254. According to Article 11 of Law 3959/2011, the HCC may initiate a Regulatory intervention procedure in sectors of the economy. This procedure is initiated either at the request of the Minister of Development and Investments or ex officio by the HCC. In the absence of a relative request from the Minister, the commencement of the procedure is marked by an HCC Decision, which instructs the Directorate General of Competition to examine a specific sector of the Greek economy falling within the competence of the HCC in order to determine whether:
- ✓ there are no conditions for effective competition in this sector and, at the same time,
  - ✓ the application of Articles 1, 2 and 5 to 10 is not sufficient to create conditions for effective competition
255. The HCC assigns the case to a Rapporteur either at the beginning of the procedure (in case it has taken the decision to initiate this procedure ex officio) or as soon as possible from the submission of the Minister's request.
256. If the investigation shows that there are no conditions for effective competition in the sector and the application of Articles 1, 2 and 5 to 10 is not sufficient for the creation of such conditions, the HCC, no later than ninety (90) days from the initiation of the procedure, shall make public its reasoned views on the non-existence of conditions of effective competition in the specific sector of the national economy under examination, defining the sub-markets concerned.
257. The views of the HCC regarding the non-existence of conditions of effective competition and the inadequacy of articles 1, 2 and 5 to 10 for addressing these competition concerns are published, in the form of summary notices, in at least two (2) financial newspapers distributed nationwide and on the HCC's website and are put forward for public consultation for a period of 30 days.
258. If the HCC finds, after the end of the public consultation, that there are still no conditions for effective competition in the specific sector of the economy, it announces specific measures as deemed absolutely necessary, appropriate and in accordance with the principle of proportionality in order to create conditions for effective competition. These measures, likely to be imposed by the HCC, are, in particular, the compliance with the principles of transparency, non-discrimination, accounting separation and the obligation of cost orientation of prices.
259. The views of the HCC regarding the proposed measures are published, in the form of summary notices, in at least two (2) financial newspapers distributed nationwide and on the HCC's website and are put forward to public consultation for a period of 30 days.

260. After the conclusion of the public consultation and after taking into account the results thereof, the HCC, by adopting a Plenary decision, which is the only decision enforceable, imposes the specific measures as deemed absolutely necessary, appropriate and in accordance with the principle proportionality to create conditions for effective competition. It should be noted that, where the HCC finds that the lack of conditions of effective competition is also due to legal provisions, it issues an opinion, according to Article 23, their repeal or amendment. (see also OPINIONS)
261. Within two (2) years (at the latest) from the issuance of the decision, the HCC<sup>47</sup> must re-launch the process of reviewing the relevant sector of the economy in order to assess the restoration or not of the conditions of effective competition. In any event, the re-launch of the process is carried out upon submission of a relevant request by the Minister of Development and Investments before the completion of two(2)-year period and, in any case, at least one (1) year from the issuance of the decision.
262. In case of non-compliance with the decisions of the companies, to which they relate, fines shall be imposed by decision of the HCC (of at least fifteen thousand (15,000) Euros, up to ten percent (10%) of the aggregate undertakings' turnover of the year preceding the issuance of the relevant decision).

## **VIII.2 Opinion**

263. Article 23 of Law 3959/2011 provides the HCC with advisory powers. In particular, the HCC exercises its capacity to issue opinions, following a relevant Proposal from the DGC, in the following cases:
- Opinion issuing on draft laws / proposals for amending the competition law (opinion on a legislative initiative) or shall recommend amendments, where appropriate (opinion on a legislative initiative to be undertaken).
  - Opinion issuing, upon request by a competent Minister on draft laws and other regulatory interventions that are likely to impede the functioning of free competition. In this case, the HCC shall issue its opinion within a determined time frame, which cannot exceed forty five (45) days from the receipt of the relevant notification. After the expiration of the above time frame, any lack of a relevant opinion does not prevent the continuation of the process on the adoption of the above arrangements. The HCC's opinion shall be forwarded to the competent governmental body.
  - Opinion issuing, after finding, by application of Article 11, that the lack of conditions of effective competition is due, inter alia, to legislative provisions. In this case, the HCC issues an opinion proposing their repeal or amendment. The

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<sup>47</sup> The HCC Decisions may be contested by means of an action for annulment before the Council of State, by any person having a legitimate interest therein.

HCC's opinion shall be submitted to the competent Minister and notified to the Minister of Development and Investments. It is held that, in the light of the combined interpretation of the provisions of Articles 11 and 23, the HCC, as the authority responsible to safeguard effective competition, may give an opinion on the repeal / amendment of the above legislative provisions even without having previously applied the procedure provided for in Article 11.

264. Also in case of request for issuing an opinion submitted by an interested citizen, undertaking or any public or private body, the HCC bears no obligation to accept it or, in general, to rule on it.

### VIII.3 Sector Inquiry

265. According to Article 40 of Law 3959/2011, the HCC may conduct investigations in different sectors of the economy or types of agreements. The initiation of the procedure is marked by a relevant HCC's Plenary Decision which, taking into account any suspected possible restriction or distortion of competition, may instruct the Directorate-General for Competition to carry out an investigation in a specific sector of the economy or in certain types of agreements in various sectors, following a relevant information note from the DGC.

266. In the context of the investigation, the HCC may request from the undertakings or associations of undertakings referred to above the information required (Articles 1 and 2) or conduct any necessary inspection to this effect. In particular, the HCC may ask the above undertakings or associations of undertakings to communicate to it any agreement, decision or concerted practice.

267. The relevant investigation procedure includes the following steps:

- DGC's **Information Note** on the need to launch a sector inquiry, due to suspicions raised, in specific sectors of the economy or specific types of agreements in various sectors
- **HCC's Decision** on the initiation of the sector inquiry
- **First Public Consultation:** publication of a call to any interested party for submission of written remarks and comments (within 30 days), as well as for expression of interest for participation in a video conference with HCC's officials
- **First teleconference**
- **Sending questionnaires** to industry representatives, on the basis of GDC's suspicions, the conclusions drawn from the first teleconference and the comments submitted by the interested parties.

- After the completion of the investigation measures by the DGC, the case is brought before the Plenary of the HCC. Then, the first draft of the sector inquiry is published (**Interim Report**)
- **Second Public Consultation:** publication of a call to any interested party for submission of written remarks and comments on the Interim Report (within 30 days), as well as for expression of interest in participating in a relevant teleconference on the Interim Report with HCC's officials.
- **Second teleconference**
- **Sending questionnaires** to industry representatives, on the basis of the comments and conclusions drawn from the second teleconference.
- After the completion of the investigation measures by the DGC, the case is brought before the Plenary of the HCC. Then, the **Final Report** on the sector inquiry is published.

## IX. PROCEDURE FOLLOWED AFTER A CASE IS BROUGHT BEFORE THE HCC<sup>48</sup>

268. In order to increase transparency during the proceedings before the HCC, the Authority usually issues a press release pointing out the key elements included in the notified SO, immediately upon its receipt by the addressees. In cases with a possible broader economic impact on a specific sector, a more detailed press release with more details on the SO is drawn up by the case Rapporteur and published. The SO expresses only the views of the Rapporteur, and not of all the HCC's Plenary members. It is explicitly noted in the press release that the Statement of Objections is not binding on the HCC, which will decide on the case after it has taken into consideration all evidence, as well as the arguments put forward by all implicated parties.

### IX.1 Hearing date and summons to the parties

269. After completion of the drafting of the SO, the date of the hearing before the HCC (in Plenary or in Chamber) is set. The President of the HCC sets the time and place for the discussion on each case. Subsequently, he convenes a meeting of the HCC, in Plenary or in Chamber, as provided in Articles 3 and 4 of the RIOM. The Secretary of the HCC summons the parties to the hearing at which their case will be discussed and enters the details (subject, place and time of the Plenary or Chamber meeting) in the electronic meeting record, posted on the HCC's website (see Meeting Schedule: <https://epant.gr/enimerosi/programma-synedriaseon.html>)<sup>49</sup>. The summons time limits, depending on the type of case, are set for:

- ✓ complaints – ex officio investigations (cases dealt under Articles 1, 2 and 11 of L. 3959/2011)<sup>50</sup>: **45 days** before the hearing,
- ✓ mergers (cases dealt under Articles 8 and 9 of L. 3959/2011): **15 days** before the hearing,

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<sup>48</sup> For more information, see HCC Regulation on the Internal Operation and Management (RIOM) (<https://epant.gr/nomothesia/nomoi-diatagmata/kanonismos.html>).

<sup>49</sup> Article 13 par. 7 of the HCC RIOM stipulates that *"In case of omission, inappropriate or untimely summons, the party that did not appear at the hearing of the case, is entitled to submit a request for review to the HCC. The request shall be submitted within an exclusive period of fifteen days from the date following the notification of the decision"*.

<sup>50</sup> Article 15 par. 9 of L. 3959/2011: *"In the discussions before the Competition Commission regarding applications and complaints submitted under this Law, the persons who submitted the application or the complaint may appear in person or together with or represented by an attorney-at-law and they shall be summoned to attend forty-five days before the discussion, as will the undertakings and associations of undertakings against which the proceedings before the Competition Commission were initiated, and those provided for in the Rules of Procedure and Management of the Competition Commission. The time-limit for summons in the circumstances under Articles 8 [(Preventive control of concentrations)] and 9 [(suspension of implementation of concentration)] may be no less than fifteen (15) days. The parties summoned may waive or request to reduce the time-limits. Where there are several summoned parties, a waiver or a request to reduce the legal time limit shall be required from all parties."*

Article 13 par. 3 of the HCC RIOM: *"The summons shall be in writing and served on the parties at least 45 days before the meeting, or 15 days in the cases referred to in Articles 8 and 9 of Law 3959/2011."*

- ✓ interim measures (cases dealt under Article 25 par. 5 of L. 3959/2011)<sup>51</sup>: the summons time limit is set, on a case-by-case basis, by the President of the HCC.

270. The summoned parties may waive the (above) time limits or request their reduction. In case of more summoned parties, waiver of the statutory time limit or request for a reduction thereof is required from all the parties<sup>52</sup>. In this case, the parties, at the request submitted to the Secretariat (Directorate of Coordination and HCC Secretariat) waive the time limits or request for their reduction. The **Request** is forwarded to the President to decide on it and the parties are informed by letter of the outcome of their request.<sup>53</sup>.

## **IX.2 Written submissions (Initial submissions) / addenda in rebuttal**

271. The parties concerned submit to the Secretariat of the HCC their written submissions (each in duplicate), on penalty of inadmissibility, before the discussion of the case, in compliance with the time limits provided for (Article 14 of the RIOM), which are entered in the electronic protocol of the Secretariat. The parties must include in their submissions their arguments, state whether they wish to exercise their right to an oral hearing, indicate the name of their legal representative and the number of witnesses<sup>54</sup>, and state the subject matter on which they will be examined, as well as specifically justify the need for their examination before the HCC. The written submission and the documents attached thereto shall be submitted each in duplicate, while the separate non-confidential versions thereof shall be provided in as many copies as the number of parties to the proceedings. The number of witnesses may not exceed the number of three for each party. However, the HCC, reserves the right to limit the number of witnesses proposed by the parties by a decision adopted during the hearing. Within the same period, the parties must provide, on penalty of inadmissibility, all evidence and

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<sup>51</sup> Article 13 par. 4 of the HCC RIOM: *"In the case of an application for interim measures according to the provisions of Article 25 par. 5 of Law 3959/2011, the summons time limit shall be determined, on a case-by-case basis, by the President of the HCC."*

<sup>52</sup> Article 15 par. 9 of Law 3959/2011, as mentioned above, stipulates that *"The parties summoned may waive the time limits or request for their reduction. In the case of more parties summoned, a waiver of the statutory time limit or a request for time-limit reduction by all parties is required."*

See also in this respect Article 13 par. 5 of the HCC RIOM: *"The parties summoned either in person or through the attorneys acting on their behalf may waive the summons time limit or request its reduction by submitting a written request to the Secretariat of the HCC, even before the summons is served on them. In case of more than one party to be summoned, a waiver of the statutory time limit or a request for reduction thereof from all parties is required. The relevant request may be submitted jointly. The President of the HCC shall decide on the request for reduction of the time limit. The new hearing date, in case of a waiver from the summons time limit or the date for acceptance of the request for reduction of the time limit, shall be notified to the parties by any appropriate means and shall be posted on the website of the HCC."*

<sup>53</sup> It is noted that, in the case of a time-limit reduction, a new summons for the hearing before the HCC is not required.

<sup>54</sup> See Article 20 of the HCC RIOM on the hearing of witnesses and experts.

procedural documents<sup>55</sup> they rely on to support their arguments. In any case, the HCC reserves the right to decide on the need to conduct an oral hearing.

272. The parties concerned are required, under Article 15 of the HCC RIOM, to provide separate non-confidential versions of the written submissions and the documents attached to thereto, otherwise documents not submitted in a separate non-confidential version are considered non-confidential<sup>56</sup>. The separate non-confidential versions are submitted in as many copies as the number of parties to the proceedings. The written submission receives the protocol number by the HCC Secretariat as an incoming document, is sealed and signed by the Secretary confirming by endorsement the date of the submission. Confidential and non-confidential versions receive different protocol numbers.

273. The parties either send to the e-mail of the Secretariat (secretaryea@epant.gr) the written submissions and the relevant documents in electronic form or submit them through the online digital services platform of the HCC (<https://epant.gr/en/enimerosi/press-releases/item/1129-press-release-hcc-digital-services.html>). The party, if it so wishes, submits a request to the Secretariat Unit of the HCC, which is given a Secretariat protocol number, for the receipt of the submissions of the other parties to the case. The parties receive from the Secretariat Unit of the HCC Coordination Directorate the non-confidential versions of the other parties' submissions electronically (on their own portable storage device or optical disc - CD). The submission time limits for a written Submission are defined as follows:

- ✓ no later than **20 days** before the meeting - hearing, on penalty of inadmissibility<sup>57</sup>
- ✓ for interim measures (cases dealt under Article 25 par. 5 of Law 3959/2011)<sup>58</sup>, as well as for the aforementioned cases concerning time-limit reduction or waiver of

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<sup>55</sup> See HCC RIOM Article 19 on the ways of representation in the proceedings before the HCC and the powers of attorney required.

<sup>56</sup> It is noted that although in some cases separate versions shall be submitted, either confidential or non-confidential, in most cases only one version of the written submission is submitted from which the Secretaries remove any confidential information, so that it can be provided to the other parties.

<sup>57</sup> Article 14 par. 2 of the HCC RIOM stipulates that: *“The parties are required, on penalty of inadmissibility, to submit to the Secretaries of the HCC, no later than twenty (20) days before the hearing, a submission in written and electronic form, expressing their arguments, whether they wish to exercise their right to an oral hearing, state the name of their legal representative and the number of witnesses as well as the subject matter of their examination, and specifically justify the need for their appearance before the HCC. The written submission and the documents attached thereto shall be submitted each in duplicate, while the separate non-confidential versions thereof shall be provided in as many copies as the number of parties to the proceedings. The number of witnesses may not exceed the number of three for each party. However, the HCC, reserves the right to limit the number of witnesses proposed by the parties by a decision adopted during the hearing. Within the same period, the parties must provide, on penalty of inadmissibility, all the pieces of evidence and procedural documents they rely on to support their arguments. In any case, the HCC reserves the right to decide on the need to conduct an oral hearing.»*.

In addition, par. 3 of the same article stipulates that *“The submission is made to the Secretaries of the HCC, who confirm by endorsement the date of the submission. Each Party shall be entitled to receive copies of the other Party’s arguments and of the relevant documents submitted by the latter, without prejudice to Article 15.”*

the summons time limit: the **time limit** for submissions is **determined**, on a case-by-case basis, **by the President** of the HCC.

274. The summoned parties have the possibility to request, on serious grounds, by a sufficiently reasoned written request, an extension of the above submission and rebuttal time limits. The decision on the request shall be taken by the President of the HCC. In case of acceptance of the request, the time limits set for providing a written submission and / or for rebuttal shall be notified to the parties by any appropriate means.

275. With regard to the parties' Addenda in Rebuttal, the procedure described relating to the initial submissions shall be followed. The respective submission time limits are set (by the summons) as follows:

- ✓ **10 days** before the hearing on the case, at the latest<sup>59</sup>
- ✓ For the extension of the time limits, the above procedure shall be followed.

### **IX.3 Interventions by third parties<sup>60</sup>**

276. The President, the Chairperson, the Plenary or the Chamber of the HCC before which the case is being discussed may summon any third party, including the persons referred to in the following paragraph, as witnesses, if his participation is deemed to contribute to the examination of the case.

277. In addition to the possibility of summoning third parties as witnesses, Article 23, par. 2 of the HCC RIOM enables third parties to intervene in the procedure at the stage of the examination of the case before the Plenary. The intervening third party submits to the Secretariat of the HCC his written Submission within the time limits mentioned in the HCC RIOM. By its Submission, the intervening third party may request his participation in the oral hearing, where a legitimate interest thereof is sufficiently substantiated. The intervener sends his Submission by e-mail to the Secretariat Unit (secretaryea@epant.gr) in electronic form or submits it through the digital services platform of the HCC (<https://epant.gr/en/enimerosi/press-releases/item/1129-press-release-hcc-digital-services.html>).

278. EA decides on the above request for participation (as a third party) in the oral hearing at the first hearing of the case. The time limits for filing a third party intervention are defined as follows:

- ✓ submission to the HCC (for all cases), no later than **15 days before the hearing**<sup>61</sup>

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<sup>58</sup> Article 14 par. 5 of the HCC RIOM “*With regard to the interim measures referred to in par. 5 of Article 25 of Law 3959/2011, as well as in the cases of waiver or reduction of the summons time limit at the request of the parties, the time limits for lodging a defence by the parties or third parties and for rebuttal by the parties shall, on a case-by-case basis, be determined by the President of the HCC, notified to the Parties by any appropriate means and posted on the HCC 's website.*”.

<sup>59</sup> Article 14 par. 4 of the HCC RIOM stipulates that: “*Rebuttals by the parties are made by supplementary submissions, which shall be submitted no later than ten (10) days before the hearing on the case.*”.

<sup>60</sup> See Article 23 of the HCC RIOM.

- ✓ service on the parties, at least **10 days** before the hearing (and **5 days** before the hearing in merger cases)

279. It is noted that, prior to the adoption of the HCC’s decision the above request for participation in the hearing, the third party is not entitled to any access to the case file (see also above, par. 117, Section).

280. The HCC may decide, at its discretion, during the first hearing on whether or not the attendance of the third party contributes to establishing the truth, and, where appropriate, allows it: a) to ask questions to the parties and other participants in the proceedings, according to the provisions of paragraph 5 of Article 22 on the parties, and/or (b) to receive copies of proceedings minutes with a view to present a written submission thereafter, and/or (c) to receive copies of the non-confidential versions of the parties' submissions. However, under the current legal status, a third party is not entitled to receive the Statement of Objections.

281. According to the provision of Article 23 par. 3 of the HCC RIOM, the intervener is responsible for ensuring the notification of his submission to the parties concerned and for filing the relevant service reports to the Secretariat of the HCC.

#### **IX.4 Adjournment of case hearing<sup>62</sup>**

282. The hearing date laid down in the summons may not be adjourned, unless the HCC decides otherwise, on its own initiative or on serious grounds following a duly substantiated request from any party concerned, which can be submitted only once, before the hearing. The party concerned must submit a duly reasoned request for adjournment, before the hearing. The HCC shall decide, in the context of a scheduled meeting, to postpone the hearing on the case for which the summons procedure has been applied. After the adoption of the relevant decision by the HCC, all parties are informed by letter of the outcome of their request.<sup>63</sup>.

283. Adjourned hearings shall be rescheduled within one month from the first hearing date<sup>64</sup>.

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<sup>61</sup> Article 23 par. 2 και 3 of the HCC RIOM stipulates that: “[Any] third party, natural or legal person, may file a submission in a case being discussed before the HCC at least fifteen (15) days before the hearing. The third party's submission shall be submitted to the Secretaries of the HCC, shall form part of the case file and shall be served, by direction of the submitting third party, on the parties concerned, at least ten (10) days before the hearing on the case, on penalty of inadmissibility and, in merger cases, at least five (5) days before the hearing.”

<sup>62</sup> See Article 18 of the HCC RIOM.

<sup>63</sup> It is noted that in both cases of time-limit extension, a new summons is not required.

<sup>64</sup> See Article 18 par. 1, 2 and 3 of the HCC RIOM:

par. 1 “The hearing set by the summons at a fixed date shall not be adjourned, unless the HCC decides on its own initiative or after receiving a duly substantiated request on serious grounds by an interested party, which may be submitted only once, before the hearing. Adjourned hearings shall be scheduled within one month of the first scheduled hearing.”

par. 2 “The hearing must be adjourned if any of the parties has not been duly summoned, unless he attends the hearing and consents in this respect.”

284. Requests for hearing adjournment may also include requests for extension of the time limits for submissions. The relevant (reasoned) requests for extension may be submitted separately and the President of the HCC shall decide on them.<sup>65</sup> The new time limits shall be notified to the parties by any appropriate means.

### **IX.5 Hearing before the HCC**

285. Prior to the hearing before the HCC, the HCC Plenary Secretariat prepares the cause list to be displayed at the entrance of the HCC's offices.<sup>66</sup> The Secretary in charge, before the beginning of the hearing, invites the parties to complete any incomplete legalization documents and powers of attorney at any stage of the procedure, setting a relevant deadline.

286. The hearing shall be chaired by the President or the Chairperson, who may give the floor, address questions to the Rapporteur, the case handlers-DGC officials assisting the Rapporteur as well as to the parties, witnesses, representatives and legal representatives, cut them off, seek clarification from the same persons and examine witnesses and experts. After the presentation of the case, the floor is given to the Rapporteur, who summarizes his Statement of Objections (SO). After the presentation of the SO referred to in paragraph 3, the Parties shall take the floor, in the order specified by the President or the Chairperson, summarizing their arguments and responding to the arguments of the other Parties. The party against whom the procedure before the HCC was initiated has the right to be the last to take the floor.

287. The HCC Board Members are entitled, with the permission of the President, to ask questions to the parties or their legal representatives as well as to the witnesses. The parties, with the permission of the President, are also entitled to ask questions to the legal representatives and witnesses of the other parties. The HCC officials assisting the Rapporteur may address questions, provide or request clarifications in the course of the above procedure, through the President or the Chairperson.<sup>67,68</sup>

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par. 3 *"In any case of adjournment of a hearing, the HCC shall set a new hearing date, which shall be notified by any appropriate means to the parties that did not attend the hearing. The parties that were not duly summoned are summoned for the new hearing date, according to the provisions of Article 48 par. 1 of Law 3959/2011, only if they did not attend the hearing adjourned."*

<sup>65</sup> See RIOM, Article 14 par. 6.

<sup>66</sup> Article 17 of the HCC RIOM stipulates that:

par. 1 *"The cases brought before the Commission under Article 13 shall be listed in cause list for each HCC meeting, which shall be prepared by the Secretary and displayed at the entrance of the boardroom on the day of the meeting."*

par. 2 *"Any failure of a cause list display or omission of any mention in it of a particular case or any change brought, at the discretion of the HCC, in the order of case examination shall not entail the nullity of the procedure"*.

<sup>67</sup> It is noted that the HCC may, at any stage, both in the course of the oral procedure and after its completion, request from the parties to provide affidavits or new information on a specific matter. A time limit is set for this purpose, which must be shorter than the time limit for filing any supplementary submissions. The parties are entitled, subject to Article 15, upon request, to take cognizance of any document submitted under this paragraph.

<sup>68</sup> Where the case is brought before an HCC Chamber, it can refer the case to the Plenary at any stage of the procedure, if it finds that a matter of major importance is raised.

288. At the end of the hearing, the interested parties may request the President, who may grant following their request, a time limit for the submission of supplementary submissions after the hearing on the case<sup>69</sup>. The time limit starts from the day after the notification of the minutes to the parties and is set on a case-by-case basis (Article 15 par. 10 of Law 3959/2011).
289. At the end of the hearing, the President declares the sitting closed. The Secretariat Unit of the Directorate of Coordination of the HCC prepares a transcript of the recorded Minutes and notifies it to the parties. Then, the parties (including any third parties, according to par. 280 above) may submit supplementary submissions within the set time limit. With regard to the receipt, the qualification of information as confidential, the communication of the supplementary submissions to the HCC Board members, the receipt by the parties of the submissions of the other parties, etc., the procedure described in relation to the filing of the initial submissions shall apply (see above).
290. An oral hearing on a particular case, in consultation with the parties, may take place in whole or in part by use of technical means (teleconferencing), due to emergency circumstances or for any other compelling reason.<sup>70</sup>

## **IX.6 Deliberation and Decision Making<sup>71</sup>**

291. The first deliberation of the HCC in the context of decision making takes place in a meeting, within a reasonable period and, in any case, not later than thirty (30) days from the submission of the supplementary submissions of the parties or, in any other event, from the date of the hearing at which the examination of the case was completed. The decision shall be reached within a time limit of 30 days from the last deliberation.
292. The HCC decides on the basis of the above and calculates the amount of the fine in the context of same decision ruling on the substance of the case.
293. After the end of the deliberation resulting in the HCC's final decision on the case, the Secretary assigns a number to the decision and enters its operative part in the Register of Decisions and Opinions of the HCC.

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<sup>69</sup> Article 25 of the Regulation of the Internal Procedure and Management of the HCC stipulates that:

- par. 1 *“At the request of the parties, the President or the Chairperson may authorise the filing of additional submissions after the hearing, which shall be submitted in printed and electronic form. The supplementary submission and the documents attached thereto shall be submitted each duplicate, while the separate non-confidential versions of these shall be produced in as many copies as the number of parties to the proceedings, in accordance with the provisions of Article 14.”*
- par. 2 *“The supplementary submissions shall be submitted to the Secretaries of the HCC no later than three (3) working days from the day following the notification, under the responsibility of the Secretaries of the HCC, of the minutes to the parties, unless otherwise specified by the President or the Chairperson.”*

<sup>70</sup> See amendment of Article 22 of the HCC RIOM (GG/B/3917/14.09.2020), <https://epant.gr/nomothesia/nomoi-diatagmata/kanonismos.html>. It is noted that, in any case concerning administrative issues or deliberations, the HCC may meet by use of electronic means (teleconferencing), as defined in paragraph 13 of Article 14 of the Code of Administrative Procedure.

<sup>71</sup> See article of the HCC RIOM.

294. The Rapporteur / Author (s) of the decision shall prepare its drafting in cooperation with the President and the Secretary. After the transcription, the text of the Decision is signed by the President or the Chairperson, the Author(s) of the decision and the Secretary, and the number of its versions is determined, depending on the number of parties to the proceedings and the information qualified as confidential as against the other parties and any third parties. Each version omits those information, which are confidential as against the specific recipient, as long as they are not considered necessary for the grounds of the decision.
295. The Secretary shall communicate a certified copy of the appropriate version of the decision to each party concerned, forward one of the versions for publication in the Government Gazette, and post it on the Internet, as provided for in Article 47 of Law 3959/2011. In addition, the decision shall be forwarded to the competent authorities for further action.<sup>72</sup> This version does not contain any business secrets.
296. Following the notification of the decision to each party concerned, a Press Release (both in Greek and in English) concerning the decision is posted on the HCC's website and sent to the media.

#### **IX.7 Appeals against HCC Decisions<sup>73</sup>**

297. The HCC's decisions are subject to appeal before the Administrative Court of Appeal of Athens within sixty days from their notification.
298. The time limit for filing appeals and the filing of appeals shall not suspend execution of the decision of the HCC. However, where there is sufficient cause, following a petition by the interested party, the Athens Administrative Court of Appeal may suspend the decision at appeal in whole or in part or under certain conditionsexecution, in application *mutatis mutandis* of the provisions of Articles 200 et seq. of the Code of Administrative Procedure (CAP, L. 2717/1999, A' 97).
299. The following shall have a right of appeal:
- a) the undertakings or associations of undertakings against which the decision was issued;
  - b) the person(s) who filed a complaint for infringement of the provisions of this law;
  - c) the State, through the Minister of Development and Investments;
  - d) any third party having a legitimate interest.

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<sup>72</sup> See Article 43 of Law 3959/2011, according to which: “*The Competition Commission, when it finds a violation of the provisions of Articles 1, 2, and 5 to 10, or obligations imposed on companies in accordance with Article 11, in relevant notifications to the competent public prosecutor's office, no later than ten days after the issuance of its relevant decision*”.

<sup>73</sup> See Article 30 of L. 3959/2011.

## **IX.8 Collection of fines<sup>74</sup>**

300. The fines provided for by the provisions of Law 3959/2011, are established as public revenue after the publication of the decision in the Government Gazette and are collected according to the Code of Collection of Public Revenue by the competent Tax Authority, which must immediately inform the HCC of the collection or non-collection of any fine.

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<sup>74</sup> See Article 49 of L. 3959/2011.