



**HELLENIC REPUBLIC
HELLENIC COMPETITION COMMISSION**

Athens, 5th March 2015

Notice on the treatment of confidential information and on the submission of the non-confidential versions of documents

I. Introduction

1. According to Article 14 (2) (k) of Law 3959/2011, the Hellenic Competition Commission (hereinafter referred to as the “HCC”) may issue notices and guidelines on the implementation of its provisions.

2. This explanatory notice (the “Notice”) clarifies: (a) the meaning of confidentiality and the treatment of confidential information and (b) the submission of the non-confidential version of documents, pursuant to the Rules of Internal Procedure and Management of the HCC (hereinafter also referred to as the “Rules of Internal Procedure”)¹, in cases falling within the ambit of L. 3959/2011 (including merger cases). The Notice exemplifies the application of L. 3959/2011 and Article 15 of the Rules of Internal Procedure in this regard, taking into consideration recent national and EU legislation and jurisprudence² and codifying for the future the HCC’s best practices. The objectives of the Notice are the enhancement of efficiency in the administration of confidential information and consequently the saving of administrative resources, as well as the strengthening of legal certainty and transparency of the procedure.

3. The Notice deals with the notion and treatment of confidential information in the framework of the right of access to the HCC’s case file³. This right is distinct from the provision of documents in the context of other proceedings and from the general right of access to documents under Article 10(3) of the Hellenic Constitution, Article 5 of the Code of Administrative Procedure, L. 3448/2006 on the “*Further use of public sector information and the regulation of matters falling within the jurisdiction of the Ministry of Interior, Public Administration and Decentralization*”⁴ and Article

¹ Rules of Internal Procedure and Management of the Hellenic Competition Commission, GG 54/B’/16.01.2013.

² Without prejudice to the principle of procedural autonomy.

³ See also Article 41(3) of L. 3959/2011, Article 28 of the Council Regulation (EC) No 1/2003 of 16.12.2002, on the implementation of the rules on competition provided for in Articles 81 and 82 of the Treaty, OJ L 1 of 04/01/2003 pp. 1 – 25 (“Council Regulation (EC) 1/2003”) and Commission Notice on cooperation within the Network of Competition Authorities (2004/C 101/03), para. 28.

⁴ See also Article 3(1) of L. 3448/2006.

16 of L. 1599/1986 “*Relations between citizens and the State, introduction of a new type of ID card and other provisions*”, which pursue a different purpose and are subject to different criteria and exceptions on grounds of public or private interest.⁵

4. As a matter of general principle of law, 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 their disclosure⁶. Efficient and consistent application of national and European rules on competition requires that the disclosure of evidence does not unjustifiably restrict the efficient enforcement of competition law by competition authorities⁷. Moreover, the qualification of information as confidential does not prevent the Commission from disclosing and using information necessary to prove an infringement of Articles 1 and 2 of L. 3959/2011 or Articles 101 and 102 TFEU⁸. Where business secrets and confidential information are necessary to prove an infringement or for the purpose of applying competition rules in general, the Commission must assess for each individual document whether the need to disclose is greater than the harm which might result from disclosure⁹.

5. With regard to the time-frame, the Notice refers to the handling of confidential information during the period that the case is pending before the Commission and until the conclusion of the procedure by adoption of a decision or otherwise, whereas, with regard to the subject-matter the Notice refers to the information and evidence

⁵ See also, recital 11 of Regulation (EC) No 1049/2001 of the European Parliament, Council and Commission (EE L 145, p. 43), according to which certain public and private interests should be protected by way of exceptions and the institutions should be entitled to protect their internal consultations and deliberations where necessary to safeguard their ability to carry out their tasks. With regard to the exceptions to the right of access, see Article 4 of that Regulation.

⁶ See, in that regard, ECJ Decision of 25.10.2011, C-110/10 P, *Solvay v. European Commission*, para. 47-49 [para. 49 “... the right of access to the case file means that the Commission must give the undertaking concerned the opportunity to examine all the documents in the investigation file which may be relevant for its defence. Those documents include both incriminating and exculpatory evidence, save where the business secrets of other undertakings, the internal documents of the Commission or other confidential information are involved”] and ECJ Decision of 29.3.2012, C-1/11, *Interseroh Scrap and Metals Trading*, para. 43, ECJ Decision of 14.2.2008, C-450/06, *Varec SA*, para. 47 et seq. and the case-law cited therein. See State Council Decision no 2365/2013, para. 11, and HCC Decision no 520/VI/2011 (TASTY FOODS) para. 9 and relevant Decision no 869/2013 of the Administrative Court of Appeal of Athens, para. 4-5.

⁷ See also, in that regard, EC Court of First Instance decisions of 29.04.2004, *Tokai Carbon v. European Commission*, T-236/01, T-239/01, T-224/01 to T-246/01, T-251/01 and T-252/01, [2004] ECR II-1181, para. 40, according to which the restriction on access to internal documents is justified by the need to ensure the proper functioning of the Commission when it deals with infringements of the EC Treaty competition rules.

⁸ Cf. Commission Notice on the handling of complaints by the Commission under Articles 81 and 82 of the EC Treaty (2004/C 101-05), para. 67.

⁹ *Ibid.* See Article 27 para. 2 Council Regulation (EC) 1/2003, Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (“Commission Regulation (EC) 773/2004”), Preamble para. 14 and Article 15 para. 3 and Commission Notice on the rules for access to the Commission file in cases pursuant to Articles 81 and 82 of the EC Treaty, Articles 53, 54 and 57 of the EEA Agreement and Council Regulation (EC) No 139/2004 (OJ 2005 C 325/07), paras. 24-25 (“Commission Notice on the rules for access to the Commission case file”).

which form part of the case file¹⁰. The complainants 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 submitted¹¹. 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. Third parties have no access to the files of cases pending before the Commission.

6. Similar provisions to those provided for in the Notice apply to the treatment of HCC Decisions for the purposes of their publication¹² according to Article 47 of L. 3959/2011, as well as the publication of court judgments that are issued under Article 32 of L. 3959/2011, taking however into account, in such cases, any specific conditions such as, in particular, the obligation of compliance with the procedure for the anonymisation of personal data of the persons referred to in the said decisions¹³.

7. **Provisions of the Rules of Internal Procedure:** According to Article 15(2) of the Rules of Internal Procedure, in all cases of submission or collection of information under the provisions of L. 3959/2011, the natural or legal persons¹⁴ who submit or by

¹⁰ With regard to the commitment procedure, see HCC Notice, HCC Decision No 588/2014 which defines the “Terms, conditions and procedure for the acceptance of commitments offered by undertakings and issues concerning the suspension of time-limits provided for in Article 15 (4) and (5) of L. 3959/2011”. With regard to the leniency procedure and the treatment which is appropriate for the material collected in the context of the leniency procedure due to the need to avoid any disclosure of information which could undermine the HCC's Leniency Programme, see HCC Decision No. 526/VI/2011 on the terms and conditions to qualify for immunity from or reduction of fines imposed on undertakings and natural persons who contribute with their cooperation in horizontal cartel investigations of Article 1 of the same law or Article 101 TFEU [“Leniency Programme”]. Cf. Europa, Resolution of the Meeting of Heads of the European Competition Authorities of 23 May 2012 – Protection of leniency material in the context of civil damages actions [http://ec.europa.eu/competition/ecn/leniency_material_protection_en.pdf]. The notion of legal professional privilege does not specifically apply to the present as the information in question is not part of the case file (cf. Article 15 (13) of the Rules of Internal Procedure).

¹¹ See HCC Decision No. 309/V/2006 (compliance of COCA COLA Hellenic Bottling Company S.A. with HCC Decision No. 207/III/2202) Chapter I. point 3., where reference to the HCC Decision on the request submitted by the complainant for access to confidential contents of the case file is made, by which the Commission held that: *“In any event, business secrets and other confidential information shall be excluded from the notification to the complainant or any other participant involved in the proceedings. The protection of business secrets is an evaluative pole which is equal to the right of defence of the respondents (recital 32 of the Council Regulation (EC) No 1/2003). However, the above balancing does not take place where the undertaking concerned is the complainant. In any case, confidentiality within the meaning of L. 703/77 or respectively of Council Regulation (EC) No 1/2003, which is now implemented by the HCC, is decided by the Hellenic Competition Authority at its discretion. [...]”*.

See also, Commission Notice on the rules for access to the Commission file. para. 29 et seq. and Court of First Instance decisions in cases T-17/93, Matra-Hachette SA v Commission, [1994] ECR II-595, para. 34 and T-64/89 Automec v Commission (Automec), [1990] ECR ((-367. para. 46.

¹² See L. 3861/2010 (A' 112), and in particular Art. 5.

¹³ See Article 32(7) of L. 3959/2011: *“The Hellenic Competition Commission shall make the court decisions published under this article available on its website, ensuring the protection of any personal data and business secrets of the parties”*.

¹⁴ In the remainder of this Notice, the term ‘person’ includes both natural and legal persons and any reference to “person” covers both undertakings and associations of undertakings, unless otherwise specified.

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 thereof¹⁵. According to Article 15(3) of the Rules of Internal Procedure, in the event of a disagreement regarding the confidentiality claim, the Directorate-General for Competition or the case 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. 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. According to Article 15(4) of the Rules of Internal Procedure, any information, documents or parts of documents for which a reasoned confidentiality claim has not been submitted or which have not been provided in a separate non-confidential version, shall be considered non-confidential. The Directorate-General for Competition or the case Rapporteur, may exceptionally classify information, documents and parts of documents as confidential. Article 15 para. 5 of the Rules of Internal Procedure provides, inter alia, that when drafting the Statement of Objections¹⁶, the number of the different versions thereof is established depending on the number of the parties involved in the case and the information, documents and parts of documents that are considered to be confidential and from each version of the Statement of Objections the information considered confidential vis-à-vis each addressee is omitted. According to Article 15 para. 6 of the Rules of Internal Procedure, whenever the use of documents containing business secrets is deemed necessary by the Rapporteur, when drafting the Statement of Objections, in order to establish whether or not an infringement has been committed, such information is included therein without it being necessary to follow the procedure referred to in paragraph 3 of Article 15 of the Rules of Internal Procedure, and, it loses its confidential nature from that point¹⁷. Furthermore, according to Article 15 paras. 7

¹⁵ See also Article 41(3) of L. 3959/2011 and HCC Notice of 11.09.2012 "On the form and manner of submission of complaints pursuant to Article 36 of L. 3959/2011", para. 17.

¹⁶ The reference to the term "Statement of Objections" or "Report" is provided for in Article 15 para. 4 of L. 3959/2011 and Article 14 para. 1 of the Rules of Internal Procedure.

¹⁷ Of the totality of confidential information that are included in the Statement of Objections, those being deemed, at the Rapporteur's discretion, necessary to the effective exercise of the rights of defence of the undertakings, lose their confidential nature, as set out in the above section of the Rules of Internal Procedure. See Council of State Decision No. 2365/2013, para. 11, Council of State Decision No. 2007/2013, para., where it is stated that: "[...] However, the above right of access, far from being absolute, is limited by the need to safeguard, in particular, business secrets of other undertakings which are also protected under the European Union law, at a general principle level", and the aforementioned Decision No 869/2013 of the Administrative Court of Appeal of Athens, para. 5, where it is stated that: "It follows from the foregoing that the applicant was not given access to all evidence and information, also including copies of non-confidential versions of the [...] documents [...], with the exception of confidential information containing business secrets or personal identity details of third parties, legitimately not accessible [...] to him, by reason of their classification as confidential information and given that it is clear that such information is not necessary for the applicant's defence". See also HCC Decision No 369/V/2007 para 68,75, 76 et seq. where inter alia it is noted that safeguarding confidential information is a value equal to the right of defence of the undertakings under investigation and it should be an ad hoc a matter of balancing whether disclosing

and 8 of the Rules of Internal Procedure, after notification of the Statement of Objections to the parties¹⁸, the persons against whom the proceeding before the HCC was initiated or those who have lodged a complaint, as well as the persons who have notified a merger, have the right of access to all non confidential information contained in the case file under the conditions laid down therein. According to Article 15 para. 7 of the Rules of Internal Procedure, where access to documents containing business secrets is absolutely necessary for the exercise of the rights of defence of one or more persons against whom the proceeding before the HCC was initiated or who have notified a merger, the President, by reasoned decision, grants access to such documents, in whole or in part, only to the persons for whom it has been deemed necessary for the exercise of their right of defence. Besides, prior to the notification of the Statement of Objections, a copy of the non-confidential version of the main text of the complaint may be granted to the persons against which the complaint is filed provided that this does not impair the investigation carried out by the Directorate-General for Competition. Paragraph 9 of the same Article provides that third parties have no access to the cases files pending before the HCC. According to paragraph 11 of that Article, confidential information also includes any internal documents of the HCC's Directorate-General, the European Commission and other national competition authorities, as well as any correspondence exchanged between the Directorate-General and other services or competition authorities. Paragraph 12 of Article 15 provides that questionnaire replies and depositions in the course of case proceedings may be accessible solely as to their content, without prejudice to the relevant confidentiality rules, and may be non-accessible as to the identity of the persons who have submitted a reply or made a statement, particularly in view of the risk of adoption of retaliatory measures.

8. Documents to which access is granted under Article 15 of the Rules of Internal Procedure 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 TFEU¹⁹.

II. Content of business secrets/other confidential information

9. The following are considered as confidential information and access to them is not provided:

the identity of a witness at a preliminary stage and before the issuance of the decision of the Competition Commission, would create the risk of pressure on the witness and as a result important witnesses would be discouraged from testifying before the Commission, see also Tokai Carbon v. Commission, T-236/01, T-239/01, T-244/01 to T-246/01, T-251/01 and T-252/01 ECR [2009] II-1181)

¹⁸ See Article 13 of the Rules of Internal Procedure.

¹⁹ Article 15 para. 14 of the Rules of Internal Procedure, see also Article 41 para. 1 of L3959/2011.

(a) All preparatory documents and documents for internal use (such as notes, drafts or other working papers and communication) **of the HCC**, the European Commission and other EU national competition authorities²⁰.

(b) All documents and information exchanged for the application of Articles 11 and 14 of Regulation (EC) 1/2003²¹ (including any observations made by the European Commission or other competition Authorities within the European Competition Network on a particular case²²).

The following are considered as confidential information and access to them is, in principle, not provided:

(c) Correspondence between the HCC and other public authorities or services or other competition authorities or the European Commission²³ **or between those authorities.** In certain exceptional circumstances, access is granted to such documents after deletion of any business secrets or other confidential information as referred to herein. 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. By way of an exception, the above documents shall be accessible, in a way similar to documents obtained from private parties, in particular if and to the extent that those documents contain allegations against the parties which the HCC must examine, or form part of the evidence of the investigation. These considerations apply, in particular: a) in the context of exchange and use, as evidence, for the purpose of applying Articles 101 and 102 TFEU, of documents and information, between the European Commission and EU Member States' competition authorities according to Article 12 of Regulation (EC) 1/2003²⁴, b) in the context of collection of information and evidence from public or other authorities for the exercise of HCC's powers under Article 38 of L. 3959/2011.

²⁰ See Article 15 para. 11 of the Rules of Internal Procedure. See Article 27 para. 2 of Regulation (EC) *op. cit.*: *"The rights of defence of the parties concerned shall be fully respected in the proceedings. They shall be entitled to have access to the Commission's file, subject to the legitimate interest of undertakings in the protection of their business secrets. The right of access to the file shall not extend to confidential information and internal documents of the Commission or the competition authorities of the Member States. In particular, the right of access shall not extend to correspondence between the Commission and the competition authorities of the Member States, or between the latter, including documents drawn up pursuant to Articles 11 and 14. Nothing in this paragraph shall prevent the Commission from disclosing and using information necessary to prove an infringement"*.

²¹ See Article 27 para. 2 of Regulation (EC) 1/2003, *op. cit.* and Commission Notice on cooperation within the Network of Competition Authorities, *op. cit.*, in particular para. 43 et seq.

²² See Article 27 para. 2 of Regulation (EC) 1/2003, *op. cit.* and Commission Notice on cooperation within the Network of Competition Authorities, *op. cit.*, para. 46 and Antitrust Manual of Procedures of the European Commission, Section 3 para. 26, which provides that: *"Any observations are to remain internal to the Network and are not disclosed to the parties"*.

²³ See Article 15 para. 11 of the Rules of Internal Procedure and Article 27 para. 2 of Regulation (EC) 1/2003 *op. cit.* See, for example, ECJ judgement of 06.04.1995, BPB Industries plc and British Gypsum Ltd v. European Commission, C-310/93 P, ECR I-865, para. 25.

²⁴ Cf. also Article 22 of Regulation (EC) 1/2003, *op. cit.* See also Commission Notice on cooperation within the Network of Competition Authorities, *op. cit.*, para. 26 et seq.

(d) Professional and business secrets, i.e. the documents or parts of documents containing business secrets. Professional/business secrets deserve special protection²⁵. They are confidential information in relation 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 interests²⁶. 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 strategy²⁷.

(e) Other confidential information²⁸. 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 place considerable economic or commercial pressure on their competitors or on their trading partners, customers or suppliers²⁹. 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 anonymous³⁰ 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

²⁵ Judgement of the Court of First Instance of 24.06.1986, Case 53/85 Akzo Chemie v. European Commission, para. 28, Regulation (EC) 1/2003, Article 27 para. 2.

²⁶ Judgement of the Court of First Instance of 18.09.1996, Case T-353/94 Postbank NV v. European Commission, para. 87.

²⁷ See Commission Notice on the rules for access, op. cit., para. 18. Cf. also Judgement of the Court of First Instance, Case T-383/03, Hynix Semiconductor Inc. v. Council of the European Union (paras. 62-67, 86).

²⁸ Regulation (EC) 1/2003, Article 27, para. 2.

²⁹ See also in this respect Article 15 para. 12 of the Rules of Internal Procedure, Commission Notice on the rules of access, para. 19 and judgements of the Court of First Instance of 25.10.2002, Case T-5/02 Laval v. European Commission, para. 98 et seq., judgement of the Court of First Instance of 28.04.1999, Endemol Entertainment Holding BV v. European Commission, T-221/95, ECR II-01299, para. 69, ECJ judgement of 06.04.1995, BPB Industries plc and British Gypsum Ltd v. European Commission, C-310/93 P, ECR I-865, para. 16 et seq. and para. 28 stating that control reports drawn up following on-the-spot checks at third parties' premises and judgement of the Court of First Instance of 01.04.1993, BPB Industries plc and British Gypsum Ltd v. European Commission, T-65/89, ECR II-389, para. 33. Cf. Regulation (EC) 773/2004, op. cit. Preamble paras. 13 and 14 and Articles 15, 16 and Commission Regulation (EC) 802/2004 of 07.04.2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, Preamble para. 16 and Articles 17, 18.

³⁰ See also HCC Decision No 369/V/2007, para. 73: "Where there is a risk that an undertaking which is able to place very considerable economic or commercial pressure on its competitors or on its trading partners, customers or suppliers, will adopt retaliatory measures against those, as a consequence of their collaboration in the investigation carried out by the Commission, the Commission will protect the anonymity of the authors by providing access to a non-confidential version or summary of the responses in question".

linked to confidential information itself that its disclosure would be equivalent to disclosing confidential information.

10. In relation to the cases of paragraphs d) and e) above, 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 protection³¹. 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 above³².

III. Information normally not considered as business secrets or other confidential information

11. 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 information³³.

12. By way of example, the following type of information shall not, unless duly justified, be considered confidential:

- Data related to the respondent undertaking/undertaking concerned or the corporate group to which it belongs (such as, foreseeable price increases, dates of implementation of such increases, customer names, credit duration), which is already known outside the undertaking (in case of a group of undertakings, outside the group) or outside the association to which it has been communicated by that undertaking. An example in this respect is an undertaking’s announcement of its commercial policy, such as by sending letters and circulars to its wholesalers or distribution network.
- The names and positions of managers and employees of the companies involved in an infringement.

³¹ Judgement of the Court of First Instance of 30.05.2006, Case T-198/03 Bank Austria Creditanstalt AG v. European Commission, para. 71 and Judgement of the Court of First Instance of 12.10.2007, Case T-474/04, Pergan Hilfsstoffe für industrielle Prozesse GmbH v. European Commission, paras. 65 and 72 which state that the interest of an undertaking which the Commission has fined for breach of competition law in the non-disclosure to the public of details of the offending conduct of which it is accused, does not merit any particular protection.

³² See, in particular, above (Introduction).

³³ Order of the Court of First Instance of 29.05.1997 in Case T-89/96 British Steel v. European Commission, paras. 26 and 27. See also judgement of the Court of First Instance, Case T-383/03, Hynix Semiconductor Inc. v. Council of European Union (paras. 54-60, 75, 88, 90).

- 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).
- Corporate acts and information subject to publication by law^{34, 35}.
- Protocol numbers of administrative documents.
- Legal remedies, appeals and any judicial documents in general, as well as extra-judicial statements against the litigants concerned³⁶. Unpublished court decisions and minutes of court hearings against the litigants concerned.
- 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.
- 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.
- 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 confidential³⁷. In that case, relevant information is considered confidential only if it is

³⁴ See, for example, Articles 7a and 7b of C.L. 2190/1920 with regard to Public Limited Liability Companies (Sociétés Anonymes), in particular, Management decisions on the formation of public limited liability companies and approval of any amendment or codification of their statutes, the content of their statutes, information on the appointment and removal of a company's managers or persons being authorized to represent it, decision of revocation of authorization and statutes approval, or decision to increase or decrease share capital and information on the new capital, the number and nature of the shares issued, the conditions for their issue, the total number of the company's shares, the minutes of the Board Meeting certifying the freeing-up of shareholders' capital, the annual financial statements, both initial and amended by the General Meeting (balance sheet, profit and loss account, profit distribution table and appendix), relevant reports of the Board of Directors and Auditors, the winding up of the company, any declaration of nullity or bankruptcy of the company by the courts, as well as any court decisions declaring general meeting decisions null and void or annul such decisions, the appointment of liquidators and any particulars concerning them, liquidation balance sheets, company removal from the Registry of Public Limited Liability Companies.

See also Article 8 L. 3190/1955 on Limited Liability Companies (in particular: company contract, name, registered office, company duration and capital, fund managers' particulars and particulars of the persons who are authorised to represent the company or authorised to accept service of documents notified to it, annual financial statements of Limited Liability Companies).

It is explicitly stated that the statutes of undertakings and associations of undertakings, as well as the relevant numbers of undertakings on the Registry of Public Limited Companies, the General Electronic Commercial Registry and their Tax Registration numbers shall not be considered confidential.

³⁵ See L. 3419/2005 on "General Electronic Commercial Registry-Modernisation of Chamber Legislation", in particular Articles 1 and 6. See also L. 4250/2014, Article 2.

³⁶ Also including similar documents submitted to the courts of other states or of the EU.

³⁷ Order of the Court of First Instance in Case T-271/03, *Deutsche Telecom v. European Commission*, [2006] ECR II-1747, para. 45, judgement of the Court of First Instance, Case T-383/03, *Hynix Semiconductor Inc. v. Council of the European Union*, para. 60.

established, on specific grounds, that despite its historical nature, it continues to be an essential element of the commercial position of the undertaking concerned.

- Ranking of the various competitors in the relevant market, based on their respective market shares.
- 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 contract or a contract including a confidentiality clause, may be considered confidential.
- 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.

VI. Way of submission of confidentiality claims

13. 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.

In particular:

14. 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. 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 therefor.

15. 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.

16. 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 information³⁸. 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.

17. 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%].

18. 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.

19. The parties must ensure that the properties of documents submitted electronically do not disclose any confidential information.

20. 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.

21. 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 defence 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.

22. 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.

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For example, with regard to a sales strategy – time period and region concerned.