Merger Control in the Greek Banking Sector: The Example of the Incomplete Merger between the National Bank of Greece and Eurobank

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Over the past two years, while Greece witnessed the devastating impact of the financial crisis, various banking mergers, acquisitions and other alliances took place. The main aim of such restructuring was to create stronger and more flexible financial institutions and to satisfy their pressing recapitalisation needs. In this context, this article examines the role of merger control in the Greek banking sector and the arising issues by considering the example of the incomplete merger between the National Bank of Greece and Eurobank.

I. Introduction

During 2008 the world economy faced an unprecedented financial and economic crisis, as the result of various misplaced financial investments, important fiscal problems and the rapidly increasing unemployment. The biggest financial and insurance companies in Europe and in the USA considered themselves as 'too big to fail'[1] and proceeded to several risky lending transactions and other doubtful investments. Such actions actually led to huge deficits and forced the local governments to spend important amounts of public money for their rescue.[2] Despite the recent corrective

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[1] George Provopoulos and Panayiotis Kapopoulos, *The Dynamics of the Financial System* (Kritiki Publications, Athens 2010) 213.

[2] Various EU governments challenged the legitimacy of the EU financial aid to its distressed Member – States. Such actions were strictly prohibited by the Maastricht Treaty (Articles 123 and 124). However, the necessary liquidity has been provided, under the fear of the Eurozone's collapse. See Constantine Botopoulos, 'Different in the Difficulties: EU

actions that took place in the European Union (hereinafter "EU"),[3] the latter is still beset by the recent crisis. The main reason is that unlike corporate collapses, State insolvency does not occur within a set legal framework, and hence every State bailout tests new legal ground. The problem was particularly acute for EU Member States. Although the latter maintain a common currency, so far they have been reluctant to adopt a common policy against public debts, or create institutional mechanisms to deal with macroeconomic shocks, occurring especially when markets stop financing their deficits.[4]

Inevitably the ongoing financial crisis affected significantly the existing financial institutions. As a response to the crisis, the ailing banking sector in Greece was restructured through targeted mergers and acquisitions, with a view to create stronger financial institutions. However, banking mergers create a number of concerns from a competition law perspective, which this article aims to address. To this end, Part II describes the key features of the Greek financial crisis, illustrates the structure of the domestic banking industry and presents the main characteristics of the applicable recapitalisation schemes. Part III considers the special role for merger control in the banking sector. Then, Part IV sets out the key elements of the National Bank of Greece (NBoG) – Eurobank scheme, by underlining the exogenous factors which ultimately led to the failure of the specific merger. Finally, Part V concludes by synopsising the discussed issues and attempts to provide a brief insight into the broader role for merger control in the Greek banking sector.

II. The Effects of the Financial Crisis in Greece and the Domestic Banking Industry

The repercussions of the financial crisis affected the majority of the global economic sectors in various ways. Likewise, despite its continued high growth rates, the Greek banking system did not take long to be affected, too. The main reason was that the Greek governments forced local banks to acquire an important portfolio containing Greek bonds, in order to cover

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and USA in Crisis' in Sotirios Dalis (eds), *From Bush to Obama: The International Policy in a Changing World* (Papazisis Publications, Athens 2010) 299 – 308.

[3] The creation of the European Financial Stability Facility (EFSF) as a permanent rescue mechanism and the purchase of government bonds by the European Central Bank (ECB). See Constantine Stephanou, 'European Responses to the Sovereign Crisis: European and Greek Responses' (ECEFIL Working Papers 4/2012) 17 – 20.

[4] IOBE, 'The Greek Economy' (2011) Quarterly Report 4/2011, 7–10.

their increasing financial needs and curb the growing public debt. Such financial needs usually included the payment of huge wages in the public sector despite the latter's proven inefficiency, while the chosen investments in bonds were of doubtful profitability. Furthermore, another cause of the Greek financial crisis was the widespread tax evasion of the private sector, which the current tax system failed to prevent. The cumulative effect of those factors made markets react adversely and Greece started to face financial difficulties, since its regular borrowing through markets suddenly stopped. As a result and due to those fiscal imbalances, Greece lost part of its credibility. Although the scenario of bankruptcy became a real threat, the reaction and choices of the political parties of the country made the situation worse. The local connoisseurs proved unable to foresee the events to come. The facilitation of their governmental aspirations was more important than supporting the government bonds and looking out for a viable way to exit the crisis.[5]

The prolonged recession of the Greek economy led to its dramatic downgrade to a 'selective default' status. The lack of liquidity and the coverage of the growing debt became increasingly pressing issues for Greece. At the European level, the adoption of the so-called Eurobonds was proposed as a common solution to the financial problem. Such bonds could alleviate the current sovereign debt crisis, improve the effectiveness of the adopted monetary policy and make the European financial system more resilient to future adverse shocks. Accompanied by stricter fiscal surveillance and budgetary discipline, these actions could limit the banks' exposure to toxic bonds, stimulate their liquidity and suspend any merger from taking place for those reasons. Nevertheless, although it was acknowledged that the proposed solution was appropriate to reassure the global capital markets and strengthen solidarity within the EU, its implementation became a thorny issue[6] causing strong debate among the European governments.[7]

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[5] Prodromos Daghtoglou, 'The Greek Crisis' (2011) 1 European State Legal Journal 5.

[6] An EU Treaty amendment may be required in case of issuing Eurobond, which is incompatible with the current 'no bailout' provision. See Opinion of the European Economic and Social Committee on the 'Green Paper on the Feasibility of Introducing Stability Bonds' COM (2011) 818 final.

[7] Ricardo Cabral, 'E – Bonds: Europe's Own Subprime Teaser Rates' (2010) <http://www.voxeu.org/article/e-bonds-europe-s-own-subprime-teaser-rates> accessed 9 December 2013.

In this climate of European scepticism, the Greek government and its foreign lenders desired more imminent solutions with immediate impact on market expectations and lower marginal funding costs. Therefore, they proposed the Private Sector Involvement (PSI) debt exchange as an alternative feasible solution. However, the implementation of the PSI would bring about significant losses for the banks which already faced unprecedented difficulties due to the shrinkage of their liquidity.[8] Thus, both parties started to realise that new recapitalisation plans should be put in place.[9] One option would be to satisfy the needs in capital through the issuance of common shares with no voting rights or with restrictions on the voting right. Alternatively, any loss derived from the PSI was proposed to be covered through the issuance of Contingent Convertible Bonds (CoCos).[10] In any case, the implementation of recapitalisation plans was deemed as vital prerequisite for the gradual restoration of local banks, the continuous supporting of the real economy and the enhancement of the business environment.[11] As a result, most banks started looking for alliances in order to ensure their sustainability. To that end, banking mergers were used as a mechanism to implement the scheduled recapitalisation procedures.

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[8] BoG, *Report on the Recapitalisation and Restructuring of the Greek Banking Sector* (2012) 13 <http://www.bankofgreece.gr/BogEkdoseis/Report_on_the_recapitalisation_and_restructuring.pdf> accessed 9 December 2013 (Eurosystem).

[9] Greek banks' capital adequacy ratios should be gradually increased (Core Tier 1), according to Basel Pillar 1 standpoint. Therefore, Bank of Greece (BoG) announced that an amount of approximately 50 billion Euros constitutes the appropriate backstop facility for the coverage of the respective needs and its related restructuring costs. See BoG (n 9) 10.

[10] Through this mechanism the government secures its legal rights as shareholder, preserves the current control arrangements in the respective banking institutions and values efficiently its ownership stake. This matter is quite important since always remains the risk for local banks to become nationalised and hence lose their competitiveness, if another recapitalisation procedure is adopted. Troika and the Greek government mutually agreed to demand a 10% private share subscription floor from the banks' shareholders over the new common equity capital. This was considered as the minimum threshold for the local banks to keep themselves privately run and their ownership structure intact. The remaining amount would be covered though by the Hellenic Financial Stability Fund (HFSF). See Stilpon Nestor and Daria Khalilulina, 'Governance Issues in Greek Bank Recapitalisations: A Comparative Overview' (2012) 3 Greek Financial Law Journal 342 – 346.

[11] Gikas A. Hardouvelis, 'The International Financial Crisis and Greece' (The Global Financial Crisis and Greece conference, Athens, 23 October 2008) <http://www.hardouvelis.gr/FILES/SPEECHES/IOBE_HARDOUVELIS_Oct_23.pdf> accessed 9 December 2013.

However, banking mergers are not a new phenomenon in Greece. The establishment of a major Greek bank, the so-called 'national champion', has always been the dream of every successful banker making business in the country. The first strategic alliances emerged in the early 1990s after the decision of the Greek government to privatise part of its banking sector. In this way, the domestic institutions overcame their local and international competitors and coped with the institutional changes that arose after the Maastricht Treaty and the implementation of the common market.[12] Following those developments, the Greek banking industry comprised only a few major banks playing a vital role in the local economy.

In the subsequent years the picture of the banking sector remained largely unchanged, although new banks were established in the territory. The already merged banks turned their focus on their internal restructuring, the adoption of common internal procedures, the reduction of overstaffing and the rationalisation of their operating costs. However, a number of important developments caused a change of scenery as marked by the establishment of the Eurozone, the enactment of a more flexible EU legal framework and the deregulation of the Greek financial market. In this new context, foreign financial institutions showed interest in collaborating with local banks and in taking over part of the latter's control.[13]

The most recent wave of banking mergers took place as a reaction to the current financial crisis, and drastically changed the structure of the domestic banking sector. 'Piraeus Bank' played a starring role in the recent developments. In the last couple of years, it absorbed the 'Agricultural Bank of Greece', which was the largest publicly-owned bank, and it acquired the entire stake of 'Société Générale' in 'Geniki Bank'. Moreover, in the aftermath of the Cypriot banking crash, 'Piraeus Bank' further strengthened its position in the market by acquiring the Greek branches of the leading Cypriot banks, including their loans and deposits. Finally, 'Piraeus Bank' agreed with 'Millennium BCP' to acquire the entire share capital of 'Millennium Bank Greece'.[14] Besides 'Piraeus Bank', another Greek bank

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[12] John Tolios, *Capital Accumulation, Banking and Insurance Groups within the Greek Society* (Sakkoulas Publications, Athens – Komotini 1998) 78 – 99.

[13] George Pagoulatos and Lucia Quaglia, 'Turning the Crisis on its Head: Sovereign Debt Crisis as Banking Crisis in Italy and Greece' in Iain Hardie and David Howarth (eds), *Market – Based Banking & The International Financial Crisis* (Oxford University Press, 2013) 182.

[14] Piraeus Bank official website <http://www.piraeusbank.co.uk> 9 December 2013.

with a prominent presence in the last wave of banking mergers was Eurobank. Eurobank absorbed the so-called 'healthy side' of the 'Hellenic Post Bank' which was resolved in 2012, while its 'bad side'[15] had been cleared out by the Bank of Greece (BoG). Moreover, after the completion of its restructuring in May 2013, Eurobank also acquired the 'New Proton Bank'.[16]

The historical evolution of mergers in the Greek banking sector transformed its picture. The various banks that have been established in Greece during the last decades offer a variety of similar products, are subject to the local regulatory framework and are strictly supervised by the BoG. However, the recent concentrations which took place as a consequence of the financial crisis and the need to realise the recapitalisation of Greek banks led to a banking sector which comprises only a small number of active core financial institutions. Therefore, the danger of oligopoly within the domestic financial services market is significant. For that reason, it is crucial to also consider banking mergers from a competition law perspective. To that end, the following section will examine the role of merger control in the banking industry.

III. Merger Control in the Banking Sector

Due to their nature, banking mergers are subject to both sector-specific and competition review, prior to their implementation. Indeed, merger control aims to ensure that the intended transaction will not significantly impede effective competition in the market concerned, thereby resulting in excessive concentration and a reduction in consumer welfare. Therefore, besides the need to obtain regulatory approval, banking mergers are additionally subject to the competition rules, particularly where the banking industry presents oligopolistic features, as for example currently in Greece. The outcome of the merger analysis will determine whether the merging parties are allowed to proceed with their transaction or not.

For the purposes of merger control it is important to consider the market power of the various financial institutions. To that end, defining the relevant

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[15] It refers to consisting from bad loans portfolio.

[16] Eurobank Economic Research, 'Greece Macro Monitor - Focus Notes: Greece' (2013), Weekly Report 1/2013, 6 <http://www.eurobank.gr/Uploads/Reports/GREECE%20Macro%20Monitor%20-%20October%2031%202013.pdf> 9 December 2013.

market is a crucial step of the analysis.[17] Typically, banking services are categorised into retail banking, corporate banking and other financial market services, which may be further sub-divided. For instance, retail banking services usually include (saving) deposits, mortgages and consumer loans. For the purposes of market definition, the traditional criterion of product interchangeability applies to banking mergers as well. On that basis, the various products will be deemed to comprise a single market or several markets depending on the circumstances of the particular concentration. Generally, the Greek financial institutions operate across the whole territory, while the market is not characterised by product differentiation. Indeed, Greek banks offer similar products and services with the same characteristics. Obviously the actual market definition exercise is case-specific. However, it remains an important step for the determination of the competitive relations among the various banks in the market.

Having determined the banking services which constitute the relevant market, the second step is to examine the market power of the merging entities as well as of their competitors. Typically large market shares constitute a useful first indicator regarding the market power of the merging institutions, as they reveal the way the particular banking services market is allocated and allow us to draw useful inferences as to the competitive dynamics among the existing players. Nonetheless, the existence of large market shares is not conclusive. Barriers to entry are also to be taken into consideration.

Indeed, examination of the barriers to entry with a view to determine the real market power of the merging entities constitutes a significant aspect of merger analysis with respect to concentrations in the banking sector. First, the so-called cost of money may be proved a significant hurdle for new entrants, but also for the existing financial institutions. The said cost in the deposit accounts is controlled by Euribor, the demand for further deposits from the banks' side, and the offer of respective banking products. Lately, this cost has increased for Greek deposits in real terms. Additional direct or

[17] The 'relevant market' includes all products or services which are considered as consumable or substitutable by the customers, according to their characteristics, price and usage. The 'relevant geographic market' includes the area where the subject entities sell their products or provide their services, under sufficiently homogeneous conditions. See 'Commission Notice on the Definition of the Relevant Market for the Purposes of Community Competition Law' [1997] O.J. C372/5, [1998] 4 Common Market Law Review 177.

indirect costs and risks, such as the commitment period, the interest rest, the potential for early withdrawals, any cost deriving from covering the current liquidity conditions and the clients' rating, should not be disregarded.

Moreover, the switching costs for consumers are another consideration to take into account. Nowadays consumers take advantage of the introduction of internet and phone banking services and of the banks' seasonal promotions. Normally they do not maintain long-term relationships with only one bank. Instead, they benefit from the periodical information that they receive from their banks,[18] by weighing all the involved fees and charges. A slight diversity in the interest rates of loans, credit cards and deposits or the offer of more attractive funding procedures can make them switch to a different institution with a better offer for maximization of their expected value. Thus, switching costs remain relatively low, although they may depend on the type of offered products.[19]

Furthermore, the existence in place of regulatory laws is a crucial parameter to consider when examining the effect of barriers to entry with respect to banking mergers. Such regulatory laws may significantly affect the possibility for new competitors, and particularly foreign institutions, to enter the market. For this reason, national competition authorities examine carefully related arguments relied upon to oppose potential mergers on the ground that they might limit competition.[20] On the other hand, market deregulation reduces the regulatory burdens for potential entrants. Over the last decades there has been a tendency to alleviate regulatory barriers with a view to promote competition among undertakings. Although the BoG keeps closely supervising foreign banks, which desire to expand their network in the local market, Greece has generally stayed aligned with this trend.

In the case of merging entities with significant market power, the fear is that competition on the market will be significantly impeded post-merger. The number of competitors will be inevitably reduced, while the most powerful entities may no longer feel any competitive pressure. A banking merger may

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[18] According to the ECIB Common Principles of Bank Account Switching, which have been adopted by the Hellenic Bank Association.

[19] Hans Dergyse and Steven Ongena, 'Competition and Regulation in Retail Banking' (2007) OECD (Background Note) 15–58 <www.oecd.org/dataoecd/44/18/39753683.pdf> accessed 1 November 2012.

[20] Alistair Lindsay, Emanuela Lecchi and Goeffrey Williams, 'Econometrics Study into European Merger Decisions since 2000' (2003) 24 European Competition Law Review 673–682.

significantly impede effective competition if the merged entities may unilaterally increase their prices, or reduce their productivity. Moreover, the risk of coordinated effects cannot be ruled out either. Since consumers may turn to their products or services, even the non-merged entities may coordinate to increase their prices if the other features of the market allow so.[21] Generally, the risk of anti-competitive effects is greater in the case of limited competition between the merging entities and limited consumer choice for alternative products. In any case though, if the banking merger generates efficiencies which outweigh any anticompetitive effects, then the specific transaction will be allowed. As usual, such efficiencies may be allocative, productive or dynamic.

In addition to the traditional elements of merger analysis, merger control in the banking sector needs also to take account of some further parameters. As we explained, the economic crisis shrank the local banking sector and reduced the liquidity of its institutions. Because of this, the stability of the banking market should be preserved at all costs in order for Greece to avoid bankruptcy.[22] For that reason, the competent regulatory authorities may often facilitate the takeover or merger of a failing bank, instead of going through a potentially costly public liquidation.[23] In this light, a banking merger involving the acquisition of an institution with insurmountable financial problems is unlikely to be prohibited as anticompetitive, if the failing bank would in any case exit the market in the near future.[24] In other words, the major priority for a vulnerable banking sector is the avoidance of systemic risks rather than the prohibition of mergers which may lead to the creation of a dominant position or to substantial lessening of competition.[25] Regarding Greece, such mergers should be welcomed by the local governments and national authorities. Following this approach is crucial, since Greece has a significant number of operating financial institutions whose balance sheet value often exceeds the domestic GDP.

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[21] John Kokkoris and Kyriacos Papadakis, 'Competition Implications of Merger in the Greek Banking Sector' (2013) 7 Greek Business and Company Law Journal 659.

[22] OECD, *Competition and the Financial Crisis* (2009) 32 <ww.oecd.org/dataoecd/52/24/42538399.pdf> accessed 1 November 2012.

[23] In case general social or economic objectives must be considered.

[24] Elena Carletti, Philipp Hartmann and Steven Ongena, 'The Economic Impact of Merger Control: What is Special about Banking' (2007) ECB Working Paper Series 786/2007.

[25] Xavier Vives, 'Competition and Stability in Banking' (2010) IESE Business School Working Paper 852/2010.

Generally, the banking sector has been characterised by competition among its economic actors, despite the business failures that may have at times arisen from the adoption of profit–maximizing strategies. However, competition policies have recently become less suspicious towards the financial sector by mitigating the applicable tight regulation, and hence sponsoring national ownership. In fact, concentrations of financial institutions are mainly decided upon other variables, such as the merging parties' balance sheets and the actual value of their assets, parameters which are not at the core of competition law analysis. Moreover, the fact that a bank failure entails the risk of spillover effects is not to be taken lightly.[26] In this light, the competent regulatory authorities should interpret the EU competition law principles with greater flexibility in order to also alleviate the parties' onerous burdens.[27] To that effect, they should be concerned with the functioning of the banking markets, the incentives of the banks and the impact of the banking mergers. Such a flexible and comprehensive analysis is necessary to ensure that the national authorities will facilitate potential mergers which are primarily associated with encouraging the systemic stability of the local banking industry.

However, this is not to say that merger control in the banking sector should be overly simplified in times of uncertainty for the European economy. Competition policy always remains a supporting tool to ensure the good functioning of the markets. Therefore, it cannot be sacrificed on the altar of short-term gains. Besides, anticompetitive effects usually stem from individual cases rather than from generalised practices. At first glance, relaxing competition law enforcement may relieve the ailing industries and may produce short–term benefits. Nevertheless once the crisis is done, the outcome may be more costly for consumers and various inequalities may remain.[28]

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[26] John Fingleton, 'Competition Policy in troubled Times' (presented to OFT, London 2009) <http://www.oft.gov.uk/shared_oft/spe...09/spe0109.pdf> accessed 1 November 2012.

[27] Michael Reynolds, Sarah Macrory and Michelle Chowdhury, 'EU Competition Policy in the Financial Crisis: Extraordinary Measures' (2011) 33 Fordham International Law Journal 1670.

[28] Alexis Walckiers, 'Competition Law in Times of Economic Crisis: In Need for Adjustment?' (GCLC 8th Annual conference, Brussels, November 2012) <https://www.coleurope.eu/sites/default/files/uploads/event/alexis_walckiers.pdf> accessed 9 December 2013.

Such considerations are crucial with respect to problematic mergers. In practice, these transactions are carried out at the expense of consumers and their business partners. Therefore, the competition conditions in the relevant market should be examined carefully.[29] In this way, the national authorities will be able to prevent any unfair competition among banks and to guarantee that, recapitalisation plans will prevent aggressive commercial behaviours from the beneficiaries' side. In this way, competition law contributes to the crisis management, while unnecessary distortions of competition are generally avoided.[30]

IV. The Failure of the NBoG – Eurobank Scheme

An illustrative example of the particularities of merger control in the Greek banking industry is the recent scheduled NBoG–Eurobank merging scheme, whose completion has unexpectedly failed.

The parties to this deal were the NBoG and Eurobank. More specifically, the NBoG has been a well-known institution with substantial history and pivotal contribution to the national financial life over the past 170 years. Established in 1841, it is the oldest bank currently operating in Greece. Quite soon, the NBoG has become the largest and strongest financial institution of the country, while it also maintained a strong presence in Southeast Europe and Eastern Mediterranean.[31] In 1880 it became a listed entity and proceeded to various mergers and acquisitions of its subsidiaries.[32] On the other hand, Eurobank is a newly formed financial institution, established in December 1990 under the trade name 'Euromerchant Bank SA'. Initially, Eurobank focused on investment and private banking services. However, its strategic objectives were redefined in the mid-90s in view of the new perspectives that had arisen. In addition to the autonomous development of its network, Eurobank has also pursued to

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[29] Joaquin Almunia, 'The Role of Competition Policy in Times of Crisis' (28th Annual AmCham EU Competition Policy Conference, Brussels, December 2012) <http://europa.eu/rapid/press-release_SPEECH-12-917_en.htm> accessed 9 December 2013.

[30] Damien Gerard, 'Managing the Financial Crisis in Europe: Why Competition Law is Part of the Solution, Not the Problem', (2008) 1 The Online Magazine for Global Competition Policy Release, 2-14.

[31] NBoG controls the ¼ of retail banking, maintains the largest deposit base in Greece, includes 1,184 units and serves a market of 125 million residents (data as of 31.12.2012).

[32] NBoG official website, <http://www.nbg.gr/wps/portal/el/Home> accessed 9 December 2013.

participate into several mergers and acquisitions, in order to obtain a systemic presence in Greece and internationally.[33]

Amidst the financial crisis, the ongoing recapitalisation plans and the dire need for liquidity speeded up the merging process between the two banks. By the end of 2012, the NBoG had completed a public offer to Eurobank shareholders regarding the acquisition of the majority of shares in their possession. In essence, the NBoG intended to absorb Eurobank after the completion of the necessary legal proceedings. Therefore, the NBoG had committed to pay for every 100 common, registered and bearing voting rights shares of Eurobank, 58 new, common, registered and bearing voting rights shares issued by itself. The main shareholders of Eurobank had committed to accept the NBoG proposal.

Following the NBoG proposal, the Eurobank Board of Director provided a reasoned opinion on this issue.[34] Indeed, Eurobank concluded that the offer was quite fair from a financial point of view, fell within the range of the exchange ratios and satisfied the local law and the requirements of the Hellenic Capital Market Commission (HCMC). Moreover, it was understood that Eurobank shareholders shall have a unique opportunity to become part of an enlarged scheme with systemic international presence. Additionally, they shall receive all benefits[35] that may derive from the intended merger. The newly established group would be expected to utilize the comparative advantages of the two banks, capitalise the experience and the abilities of their personnel and make every possible effort to minimize the possible social impact of the scheduled changes. A most recent announcement from the Eurobank side confirmed the initiation of the merger process in accordance with the Greek law requirements.

To that effect, the NBoG filed a relevant submission to the BoG on 5 October, 2012, requesting the approval of its qualifying holding in the Eurobank Group. At the same time, the NBoG also informed the Hellenic Financial Stability Fund (HFSF) requesting approval for this issue, referring to the terms and conditions of the Subscription Agreement, as was in force.

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[33] Eurobank official website <http://www.eurobank.gr/online/home/> accessed 9 December 2013.

[34] Eurobank, *Reasoned Opinion* (2013) <http://www.eurobank.gr/online/home/viewNews2.aspx?id=1781&code=PRESS&lang=en> accessed 9 December 2013.

[35] Such as the resulting synergies, the funding costs' rationalisation, the consolidation of infrastructures and systems.

Furthermore, the approval of the Hellenic Competition Commission (HCC) was also sought after. The HCC approved, subject to commitments, the scheduled voluntary public offer of NBoG to the Eurobank shareholders, by issuing a decision in February 2013.[36] More specifically, the HCC approved the commitments that were proposed by the involved parties to address competition concerns with regard to the markets for card merchant acquiring, mortgage loans and the provision of non-life insurance. According to the above, the parties agreed to divest Eurobank's participation in the Cardlink joint venture. In the meantime, both parties decided to proceed with the necessary security measures, in order to prevent the dissemination of any confidential business information from and/or through Cardlink to third parties and its parent entities. Moreover, both parties committed to respect their customers' right to freely choose any non-life insurance products, by blocking any discrimination practices. In case of non-compliance with the above terms and conditions, HCC could impose various fines.

Last but not least, the NBoG requested the European Commission's approval from a state-aid perspective. On 26 October 2012 the Commission informed the NBoG that, according to the European legislation, Eurobank and NBoG should file a joint restructuring plan for the newly established entity, due to the fact that both of these institutions had benefited from state–aid measures in the past. In addition and after the prior commitment of the Greek government, the Commission informed the NBoG that the latter may exceptionally acquire stakes in various companies, and not only in those of minor importance, as long as the approval period lasts.

In stark contrast with the promising climate that had been generated following the obtained approvals, the investors were suddenly informed about the suspension of the intended merger. Although various explanations have been proffered so far,[37] it seems that the outcome of the recapitalisation procedure of the new to-be entity was actually dictated by political and economic factors and choices. Indeed, such transaction

[36] Resolution No. 562/VII/2013. Until September 2013, the full content of the specific decision was not publicly available, and hence not published in the Government Gazette. Some initial HCC thoughts have been included into the pertinent press release.
[37] Troika raised several concerns regarding the time required for the completion of the specific transaction and the technical obstacles that may arise in the process.

required a significant amount of money to proceed.[38] However, concentrating this money proved a thorny challenge, particularly following the sharp deterioration of the economic climate in Greece. In addition, it appears that the result reflects Troika's desire that Eurobank remains independent and free to carry out its systemic role, by potentially absorbing the remaining banks whose presence was not as systemic. The idea was that in this way both the NBoG and Eurobank would become more attractive to foreign investors and their privatisation procedure would be accomplished more easily, without the risks of having a huge merged financial institution with assets exceeding the whole Greek GDP.

V. Conclusion

The recent financial crisis confirmed once again that market failure and market correction are nothing new. Indeed, these phenomena are integral parts of the capitalist system. With this in mind, the various participants in the formation and enforcement of competition policy, such as governments, regulators and market operators, are entrusted with balancing long-term competition and micro-economic goals, while keeping the system clear of individualistic political aspirations and other exogenous considerations that may distort the process. The newly launched banking policy framework, based primarily on the Single Supervisory Mechanism[39] and the Single Resolution Mechanism[40] are moving in the right direction, to the extent that they seek to establish a well-regulated banking sector with stable and strong institutions. However, competition law concerns should not be disregarded. Merger control in the banking sector complements banking regulations and ensures that post-merger competition among financial institutions remains vivid. The relatively distinct steps of traditional merger analysis minimises

[38] Initially, it was expected to require a share capital increase of 10.9 billion Euros. After the cancellation of the specific merger, NBoG approved a recapitalisation plan worth of 9.76 billion Euros, intending to raise some money from private investors. However, most of the required cash came from the bailout – supported bank rescue facility and the HFSF. On the other hand, Eurobank failed to raise the minimum 10% of the money needed in order to remain privately run. When the respective share capital increase was concluded, the full value of Eurobank recapitalisation was borne by the HFSF only. See BoG, Monetary Policy 2012 – 2013 (2013) 92 – 97.

[39] Operated since 01.01.2011 and managed directly by the ECB. See Christos Gortsos, 'The 'Single Supervisory Mechanism' a Major Building Block towards a European Banking Union' (2013) 1 Greek Financial Law Journal 14 – 17.

[40] Commission, 'Commission proposes Single Resolution Mechanism for the Banking Union (Press Release)' COM (2013) 520 final, <http://europa.eu/rapid/press-release_IP-13-674_en.htm> accessed 9 December 2013.

the discretionary elements of the regulatory process and potentially contributes to enhance the transparency and predictability of the regulatory outcome.