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**Ex-Post Assessment of Merger Remedies – Contribution from Greece**

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More documentation related to this discussion can be found at: [oe.cd/eamr](https://oe.cd/eamr).

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## *Ex-Post Assessment of Merger Remedies*

### *- Contribution from Greece -*

#### **1. Hellenic Competition Commission<sup>1</sup> – Case of an ex post assessment review of a vertical merger remedies – partial waiving and modification. Environmental challenges.**

1. As a Background, in 2019, the Hellenic Competition Commission (HCC) addressed the issue of a proposed vertical merger between Mytilineos and EPALME<sup>2</sup>. The merger was cleared with remedies in order *to eliminate competition concerns* and *to render the concentration compatible with the common market*<sup>3</sup>. The markets defined were of, primary aluminum production, casted aluminum production, and recycling aluminum services from scrap as a complementary service (for 3rd parties/or for own use). Mytilineos is Greece's only producer of primary cast aluminum from bauxite. EPALME was the biggest foundry of Greece with a market share of 75-85%<sup>4</sup>. Ultra-dominant position for Mytilineos was identified in the 2 relevant markets. EPALME was operating primarily in the market, of recycling aluminum services from scrap. While the markets of primary and casted aluminum production were worldwide, HCC concluded that the recycling aluminum service was a market within Greek territory.

2. Mytilineos company claimed that through the purchase, specific efficiencies would be achieved<sup>5</sup>. Like the reduction of the energy required in all stages of the aluminum production process, through the recycling of aluminum products (scrap) from products that their use has been completed. Also the long-term planning of Mytilineos to become gradually a greener industry, with significantly reduced environmental footprint and substantial saving of natural resources through it maximizing the life of aluminum products by recasting them was highlighted. Existing client agreements of EPALME would not be terminated. The potential harm to competition was identified as vertical one with non-coordinated effects<sup>6</sup>. In that perspective, it had been identified as, local producers of

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<sup>1</sup> This contribution was drafted from Ioannis Stafatos, an Economist and a Rapporteur-Commissioner of the Hellenic Competition Commission however, it consists the effort of many people of the HCC.

<sup>2</sup> Under articles 4 to 10 of Greek Competition Law, L 3959/2011 implementing Directive 139/2004.

<sup>3</sup> HCC Decision 682/2019. See Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2008/C 265/07) par.2 and 5.

<sup>4</sup> See from HCC Decision 682/2019 par 88. Foundries produce secondary casting aluminum products. The scraps of the first processing (pure aluminum), as well as the aluminum scraps from recycling (end product recycling) are used as raw material for the production of the so-called secondary casting aluminum, which is supplied (like the original cast) by the production industries semi-finished products (of first processing), par 44.

<sup>5</sup> In alignment with Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2008/C 265/07) for the efficiencies of vertical merges par 13 and par 14.

<sup>6</sup> Substantive Horizontal effects of the merger were not recorded since local customers of EPALME were using imports of aluminum scrap.

secondary aluminum products (from scrap) could lose their most important supplier of recycling aluminum services. Since aluminum scrap as (up to 20%) was the most cost-effective method for local producers, to produce their products and to remain in business, according to them. Specifically, the danger was among others, the access to recycling aluminum services for 3rd parties from scrap to be offered by the new entity only as an affiliated / tying service together with the purchase of primary aluminum from Mytilineos<sup>7</sup>. Possible exclusivity issues were raised in supplying the EPALME's customers with original cast aluminum on the one hand of Mytilineos, by means of pressure the recasting services EPALME provides<sup>8</sup>. Also possible input foreclosure was identified<sup>9</sup>.

3. According to Decision no 682/2019 the proposed merger was cleared under the following proposed remedies<sup>10</sup>, specifically : (a) that the provision of recasting services of clean aluminum from scrap to EPALME's customers is not dependent on the condition of the supply of the customers with primary cast aluminum produced by Mytilineos, (b) that the supply of primary cast aluminum produced by Mytilineos does not depend on the condition of provision of clean aluminum scrap recasting services by EPALME, (c) to *maintain* the provision of recasting services to EPALME's existing and creditworthy customers, as long as the agreements between them are respected, (d) not to bind their customers with any term of exclusivity regarding the supply of recast aluminum and the provision of recasting services, in written or oral agreements they conclude, (e) to publish on their website a press release as well as to send informational letters to all traders who are their customers, informing them of the above commitments.

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<sup>7</sup> According to the Decision, see document OECD Policy Roundtables "Vertical Mergers" DAF/COMP(2007)21), section 2.4.3 Vertical Merger and Tying Complements.

<sup>8</sup> See Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2008/C 265/07) par. 58: Customer foreclosure may occur when a supplier integrates with an important customer in the downstream market. Because of this downstream presence, the merged entity may foreclose access to a sufficient customer base to its actual or potential rivals in the upstream market (the input market) and reduce their ability or incentive to compete. In turn, this may raise downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger. This may allow the merged entity profitably to establish higher prices on the downstream market. Any efficiencies resulting from the merger, however, may lead the merged entity to reduce price, so that there is overall not a negative impact on consumers. For customer foreclosure to lead to consumer harm, it is thus not necessary that the merged firm's rivals are forced to exit the market. The relevant benchmark is whether the increased input costs would lead to higher prices for consumers.

<sup>9</sup> See Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2008/C 265/07) par. 31: Input foreclosure arises where, post-merger, the new entity would be likely to restrict access to the products or services that it would have otherwise supplied absent the merger, thereby raising its downstream rivals costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger. This may lead the merged entity to profitably increase the price charged to consumers, resulting in a significant impediment to effective competition. As indicated above, for input foreclosure to lead to consumer harm, it is not necessary that the merged firm's rivals are forced to exit the market.

<sup>10</sup> Proposed from the undertakings in accordance with the Article 8 par. 6 and 8 of Greek competition Law 3959/2011. See also Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 par 6. It is then for the parties to the concentration to put forward commitments; the Commission is not in a position to impose unilaterally any conditions to an authorization decision, but only on the basis of the parties' commitments.

4. The duration of the above commitments was set at three (3) years from the issuance of the decision of the HCC. After the end of the three years, the HCC could *potentially review* the commitments and decide on possible extension. In full or partial. It was noted that in the event of a change in competitive conditions, in the markets under consideration, the notifying company could request the HCC to review the remedies before the end, of the initially defined three-year period<sup>11</sup>. The above remedies of a behavioral nature, according to the HCC, were deemed to be sufficient, proportionate, and appropriate measures in order to resolve the potential competition problems. That were identified in the relevant markets (supply of primary/recast aluminum and provision of recasting services for 3<sup>rd</sup> parties) during the evaluation of the notified concentration. The remedies would ultimately make the concentration compatible with the requirements for the functioning of competition in the relevant markets, and thus prevent effective competition from being impeded.

5. Further, with respect to the commitment under (e) the decision noted, that, by posting the commitments on the online website of the merging companies and information letters sent to all those who are their customers, timely and comprehensive information of the sector is ensured. Both to the companies' customers, but also to any other interested party that might be affected (competing suppliers, foundries, etc.). It was noted that the communication and announcement of commitments was an essential behavioral measure, as informing both customers and the market in general ensures one imperative for the competition process and consumers, that is, of information, especially when it concerns this type and degree of critical commitments undertaken by companies with a significant presence and position in the market.

6. It should be noted that the HCC investigation back then did not review other potential competition aspects of the vertical merger like pricing or discounts and in general trading policies. The quantities overall for the 3 relevant markets were observed to calculate market shares in total but as well for the merging parties. Therefore, exact quantities of recycled aluminum delivered from EPALME to the 3<sup>rd</sup> parties despite the ultra-dominant position of Mytilineos in the relevant market were not observed. The HCC qualified only the measurement of market shares of the merged entities. At that time, the environmental efficiencies raised from the merging entity were not taken into account. And as such no environmental perspective was addressed in the 682/2019 decision of the merger approval with remedies. During the past 3 years the notifying entity did not request the waiving of the remedies despite the specific clause in the decision. It should be also noted that no complaints from any undertakings for abuse of the dominant position of Mytilineos was raised in respect to the remedies during the ongoing monitoring of the remedies from HCC.

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<sup>11</sup> More specifically the Decision stated “*The 3-year duration of the remedies and the possibility of reviewing them after the end of that period for the purpose of extension or termination (review clause) enables the HCC to re-evaluate the remedies in question, as well as the conditions of the competition and its structure market in the near future. At the same time, the possibility is reasonably provided to the notifier in the event of a change of competitive conditions in the markets under consideration, to be able to apply to the Competition Commission the review of the relevant commitments before the end of the initially defined three years*”.

## 1.1. What are the best practices for conducting ex-post assessments of merger remedies?

7. With the expiry of the 3-year duration of the remedies the HCC decided to evaluate the “effectiveness”<sup>12</sup> of the remedies on competition. The case as an ex-post assessment one was selected due to the ongoing monitoring<sup>13</sup> of the behavioral remedies and the importance of aluminum products for the Greek economy. The ex-post assessment review was also explicitly clausured from the initial Decision 682/2019. The challenge that dictated the assessment was the issue of termination or extension of the remedies. The involvement of the original case member team was nominated. To assess the effect of the commitments, an extensive market inquiry from HCC took place. Questionnaires (RFI’s) were sent to all affected EPALME’s customers, local producers of casted aluminum from scrap. The questions raised were if competitive conditions and the geographic scope of the market had remained the same during the past 3 years. HCC asked if local producers remained dependent on Mytilineo’s foundry or other alternative solutions were found. They were also asked if the relevant market’s competitive conditions had changed during the past 3 years. Also, if, given the worldwide increase of aluminum as a raw material, casting scrap aluminum service from a 3<sup>rd</sup> party foundry remained the most cost-effective method instead of using primary aluminum as a raw material. Prices and costs for production methods were asked. Moreover, if establishing an own foundry would be a viable option for the affected customers in order to identify future trends. If a 3<sup>rd</sup> party foundry was established or could be established in the near future or other solutions such foundries in neighboring countries like Turkey had become an alternative solution. It is noted that appropriately with the merger case and the investigation in 2019, the new investigation of HCC did not focus on pricing or discount details of the ongoing trade agreements of the customers protected with the remedies. Finally local producers were asked to provide exact figures on the quantities of aluminum scrap casted in Mytilineo’s foundry.

8. Also extensive questionnaires were sent to the merged entity. They were asked to provide exact figures on aluminum quantities deriving from the remedies. They were also asked to provide figures on their actual and potential capacity. From their part they claimed that all remedies were fulfilled and requested when asked from the HCC the full waiving of all remedies. The extension of the remedies would no longer serve the purpose. Mytilineos claimed that beyond the initial period of 3 years the remedies would become a disincentive to invest for the whole market. Due to significant change of the worldwide market conditions of aluminum production. The merger entity challenged the definition of the markets<sup>14</sup>. According to Mytilineos, the fact that there is no distinct aluminum recasting services market, but it belongs to the same market as that of casted aluminum was confirmed by the interchangeability of the two (markets) both in terms of supply substitutability and from demand side as a demand substitutability. Substantial prices increases of primary aluminum dictated the change of the competitive conditions.

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<sup>12</sup> See page 23 of OECD Competition Policy Roundtable Background Note. As merger remedies seek to preserve competition that is expected to be lost from a merger, the remedy will be effective if this is the case. If competition is lost, it will not, with ineffectiveness being both a binary concept, if competition is not preserved, as well a question of degrees, with different levels of lost competition possible. In this sense, a natural counterfactual is to compare competition prior to the merger with that which results from the merger.

<sup>13</sup> As a separate procedure, the undertakings were asked if to their opinion Mytilineos had fulfilled the remedies. Also the remedy under e) was thoroughly reviewed from HCC.

<sup>14</sup> See HCC decision 812/2023, par. 20-40.

Therefore change on the definition of the relative market of the decision no 682/2019 should be introduced. In that respect Mytilineos would cease to possess strong market shares of ultra-dominance. In Mytilineo's view recycling aluminum services for 3rd parties from scrap no longer remained as a separate market. Due to price increases of aluminum worldwide EPALME customers had other more profitable options. Like selling the collected (or produced) aluminum scrap in order to buy primary aluminum as a raw material. Also, broader environmental needs of Mytilineos were raised again as a major aluminum producer of Greece. The necessity emerged to increase the use of recycled aluminum to reduce emissions (with the substitution of production of primary aluminum with recycled aluminum) therefore to invest and to extend the capacity of the foundry. The extension of the remedies would not serve the environmental purpose. Mytilineos claimed that especially the extension of remedy c) would be a particularly burdensome obligation.

9. The ex-post assessment of the remedies did not review issues of pricing, discounts and the specifics of the agreements of EPALME, based in the rationale of the Decision of 2019. But to evaluate the arguments of Mytilineos prices of scrap aluminum or overall costs of producing casted aluminum from scrap were calculated. The solution of casting aluminum scrap remained the most cost effective method. But price of aluminum had indeed risen globally. Trends of market players to become independent from Mytilineos were identified and the yearly capacity of the foundry had risen significantly. Current competitive conditions, however, had not changed substantially to dictate a change in the definition of the market on a permanent basis. The supplementary market of the service on behalf of 3rd parties remains a distinct market, mainly because of the different competitive conditions and the distinct object, since it is addressed to different users and with different needs compared to producers of primary aluminum, in relation to the worldwide trends. Trends for local customers to cooperate with foundries outside Greece were recorded. The HCC concluded that the market definition had not changed<sup>15</sup>. The geographic scope of the market for 3<sup>rd</sup> parties remained national one despite the worldwide effects of aluminum price to primary aluminum production. Market shares remained actually the same. It should be noted however from the analysis of the responses of the producers of casted aluminum products from scrap, clear conclusions regarding the need or not to extend remedies were not drawn. Of the 16 companies active in casted aluminum production from scrap, six (6) companies answer that they believe there is a need to continue the commitments in the future for the proper operations of their companies, eight (8) companies did not provided a clear answer if there is a need of continuity of the remedies and the remaining two (2) did not respond<sup>16</sup>.

## **1.2. How do these reviews relate to ongoing remedies? What actions can authorities take if they find remedies are not working well?**

10. Regarding the views of Mytilineos on the effects of the remedies on the potential environmental negativities, the HCC has to address these concerns<sup>17</sup>. Due to the limited investments on its part, Mytilineos claimed that the remedies became ultimately anti-

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<sup>15</sup> See HCC Decision 812/2023, par 55-63, par 98.

<sup>16</sup> See HCC Decision 812/2023, par 153.

<sup>17</sup> See case T-712/16, Deutsche Lufthansa AG v EC par 50. Lastly, it must be stated that it is the parties bound by the commitments who must adduce sufficient evidence to demonstrate that the conditions for waiving the commitments are fulfilled. However, where those parties do provide evidence that is such as to establish that the conditions laid down in the review clauses of the commitments are fulfilled, it is for the Commission to show how the evidence is insufficient or unreliable and, if necessary, carry out an investigation to verify, supplement or refute the evidence adduced by those parties.

competitive<sup>18</sup>. The HCC concluded that there was no causal connection on implementation of the remedies. As regards to specific under c) commitment, to maintain the provision of services to the third party customers on competitive terms indeed de facto led to part of some of the capacity being “occupied” from the remedies. The connection claimed by Mytilineos due the existing remedy was servicing as a lack of motive to not carry out new investments. New investments would increase the total capacity of the foundry and therefore the relative environmental benefit was not substantiated. The argument was not a valid one since according to the research the overall capacity of the foundry had expanded by 57%<sup>19</sup>. However it was monitored that two important clients of EPALME turned to or are planning somewhat different business solutions. Showing a trend of de-dependence from EPALME which may in this case release up to 50% of the captive production capacity of the foundry which up to previous one was intended to cover the commitments under assessment. It was also recorded for in the year 2021 and for the first half of 2022 a significant trend of decreasing quantities of the clean aluminum scrap that third interested parties were interested to recycled to EPALME.

11. Moreover a practical issue was raised during the process of revaluation of the remedies. The under c) remedy of the initial decision regarding the maintenance of provision of casted aluminum quantities to existing customers did not provide enough background of what the appropriate quantitative limit should be. In order to review the practical scope and the effectiveness of the remedies for the future. In that respect regarding the issue of benchmarking the HCC estimated that the safest benchmark are its levels of EPALME's actual production of casted aluminum during the initial reporting year as a supporting basis and adoption of EA 682/2019 commitments, i.e. in this case the year 2018. The HCC decided not to use the current productive capacity of 2022 which had risen substantially during the past three years. The above benchmark would provide as a safe legal basis as a clear pathway. For the assessment should be made ultimately of the exact remedies in question. In order to decide for the removal or extension or modification of the remedies as well as the smooth monitoring for the future. Any other approach could have the effect of “free riding” protective scheme for quantities of cast aluminum beyond the levels of 2018, benchmark year, the remedy was initiated when the potential harm to competition had been identified, at that time.

12. The HCC by its Decision no. 812/2023, following the relevant Statement of Objections and the conclusion of the oral hearing, decided to: waive the Commitments referred to in points A), B), D) and E) of the HCC’s earlier Decision no 682/2019. According to the grounds of the Decision, following the assessment of the effectiveness of the existing commitments and the conditions of competition, the HCC decided to waive the Commitments under A), B), D) and E) of HCC Decision no. 682/2019, as the commitments under A), B), D) relate, in any event, to a pure cessation of abusive practices, which are in any event prohibited by Articles 2 of Law 3959/2011 and 102 TFEU and, therefore, do not have an independent binding effect<sup>20</sup>. Moreover, such abusive behavior had not been

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<sup>18</sup> See HCC Decision 812/2023, par 122.

<sup>19</sup> See HCC Decision 812/2023, par 185.

<sup>20</sup> It is noted that in HCC’s questionnaire reply, Mytilineos declared to maintain EPALME's clients and not to connect the supply of primary aluminum with secondary markets related to recycling of scrap and refrain from exclusive practices for a period of three years. See Decision 812/2023, par 130.

identified from the remedies review as well the monitoring the previous years. Regarding commitment E), no further assessment was deemed necessary<sup>21</sup>.

13. As regards remedy c), Mytilineos, was required to maintain the provision of clean aluminum waste (from scrap) recasting services to meet the needs of EPALME's existing and solvent customers. As long as the trade agreements between them are honored, at a rate of 50% of the initial smelting production provided in the reference year 2018, under HCC Decision no. 682/2019 (i.e., 12,859 tons). The reformulated remedy c) shall be valid for 2 years, following HCC Decision no. 682/2019 expiry date, a period which is deemed appropriate and proportionate for the purposes of this case while, upon expiry of the above period, the commitment shall automatically and definitively cease to have effect.

14. Regarding remedy c), the HCC took into account: i) the absence of a significant and definitive change in market conditions as meaning the absence of an actual and definitive entry of a new competitor-foundry into the market and the creation of an alternative solution for extruders, ii) the emerging future activity of an EPALME's major customer, iii) the gradual switch of another EPALME's major customer to possible alternative solutions such as foreign companies/foundries as a market-expanding trend and iv) the expressed intention of Mytilineos to expand the overall capacity of the specific aluminum foundry. In order to meet the relevant objectives of reducing direct and indirect emission of pollutants in aluminum production for reasons of environmental protection. Therefore, the maintenance of half of the production of the reference year in the relevant commitment under c) for a period of 2 years was considered proportionate and appropriate compare to the alternative solution of 3 years.

15. Correspondingly, of course, on the other hand, Mytilineos was encouraged from the decision to maintain the provision of the recasting service of clean aluminum scraps for 3<sup>rd</sup> parties to the undertakings with which it already trades. Under a case-by-case commercial conditions rationale under of course what the global economic conditions of the aluminum market indicate. When in fact these commercial transactions with the aforementioned companies cover a significant percentage of its turnover and may be profitable for the 2 parties.

### **1.3. What are the benefits of conducting ex-post assessments of merger remedies? How can these be maximised, and lessons incorporated into future practices?**

16. The ex-post assessment provided substantial benefits. The assessment of the effectiveness of merger remedies is a challenging task. Concerns raised from the merging entities regarding the remedies should always be addressed. It was concluded that any extension or modification of the remedies on behalf of HCC must observe the principle of proportionality. After the expiration not to excessively and indefinitely restrict the financial freedom of the investor to channel its economic activity in various directions. In the light of course of respecting and maintaining competition (in the complementary market, on the specific case). The HCC concluded, the relevant argumentation from the parties, even if it was proved, cannot be equated with a substantial change in market conditions. And neither, in general, makes it possible to demonstrate the elimination of competition problems which were established by the original decision, which constitute the original supporting as a legal

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<sup>21</sup> As the obligation to inform the clients of Mytilineos /EPALME was observed from HCC and no complaints from EPALME customers had been received that the required important briefing of the Market did not take place.

reference basis for remedies<sup>22</sup>. Also even though no major changes in the competitive structure were identified expanding trends of the market were recorded<sup>23</sup>. The geographic scope of the relative market remained national for the services for 3rd parties. Local undertakings needed the foundry, but this dimension cannot overlook the major changes that happened in the worldwide market of aluminum production. Since some undertakings had already turn to alternative long lasting viable solutions. HCC acknowledged and was able to quantify these alternatives in order to identify in the market the exact expanding trend and waive appropriately (where possible) the remedies for a near future expiry period.

17. So lessons taken from the ex-post assessment, was that merger remedies, either cannot be altered or should not be waived in full, until the potential anti-competitive problems are solved. The above conclusion must be based however on a thorough ex-post assessment review. The remedies must always adopt to the broader economic environment and context, if possible. Vertical and conglomerate mergers tend to provide substantial scope for efficiencies. As known, a characteristic of vertical mergers and certain conglomerate mergers is that the activities and/or the products of the companies involved are complementary to each other. The integration of complementary activities or products within a single firm may produce significant efficiencies<sup>24</sup>. Competition Authorities must always explore where possible quantification of remedies even in an ex-post assessment basis. The ex-post assessment approach allowed HCC to monitor specific quantification easing that could be attributed to the merged entity without affecting the overall scope of remedy c). Protection of the remedy c) for the undertakings that needed such protection from the potential harm to competition remained valid despite the substantial efficiencies recorded<sup>25</sup>.

18. Regarding the question of the evaluation of the commitments in the light of sustainable development and the potential environmental benefit, it is pointed out, that in principle such approach is not provided in the European's Commission soft law on merger control<sup>26</sup>. However, undoubtedly in the modern light, the correlation should not be overlooked, of the objectives of environmental sustainability and sustainable development in the economic activity during the competition assessment (of merger remedies)<sup>27</sup>. If the

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<sup>22</sup> The above approach is in an alignment with the Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 par 74. Exceptional circumstances justifying a waiver, modification or substitution may, first, be accepted for such commitments if parties show that market circumstances have changed significantly and on a permanent basis. See also case T-712/16, Deutsche Lufthansa AG v EC.

<sup>23</sup> From that perspective HCC did not draw any conclusion if the expanding trends of the market could be related with the effectiveness of the remedies.

<sup>24</sup> See Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2008/C 265/07) par. 13.

<sup>25</sup> See Decision 812/2023 footnote 115. The combined costs of the merging parties in terms of carbon emissions amounted to €61 million in 2019. The vast majority of these costs is due to primary aluminum production activities, given the proportionally lower CO2 emissions associated with secondary aluminum production. For example, in 2020 EPALME carbon emission payments amounted only to € 50,377. Mytilineos claimed that is committed to achieve a 30% carbon emission reduction in all its activities by 2030 and climate neutrality target in year 2050.

<sup>26</sup> See Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004.

<sup>27</sup> The issue was raised by the HCC in the Draft Paper on Discussion on Sustainability and Competition Law in September 2020 see <https://www.epant.gr/enimerosi/ygiis-antagonismos-viosimi-anaptyksi.html>

case-by-case environmental issues as well as sustainability issues can be addressed both by from a positive as well as a negative point of view for the provision or acceptance of remedies during the evaluation of a proposed merger can become a necessity in our days. Especially when it comes to Non-horizontal mergers that are generally less likely to significantly impede effective competition than horizontal mergers.

19. However the positive environmental externalities of a merger as such can be taken as a decisive factor to waive merger remedies. Due to the present or future efficiency improvements related to sustainability. While the negative external consequences may lead to the prohibition of a concentration in case they arise from restrictions of competition. For example, they can be seen as negative effects on parameters of competition deemed desirable by consumers (public interest), such as, among others, quality, innovation, variety while they could also to serve as an argument for giving and accepting commitments in case of course that these commitments face the limitations of competition.

20. The business decisions of the affected undertakings to exclusively use EPALME's foundry throughout the 3 plus an extra 2 year period and not to explore other possibilities or fail to do so or to turn to other foundries were evaluated as a real condition of relevant market, but no longer as a sufficient condition to maintain remedies in an indefinite period since abusive practices, are in any event prohibited by Articles 2 of Law 3959/2011 and 102 TFEU. The remedies may serve as a significant haven “*to render concentration compatible to the common market*” for the undertakings that might be affected by the merger. But this protection cannot be without compromises or indefinite or remain isolated from market trends. The modification of remedy c) served that purpose.