ΚΥΠΡΙΑΚΗ ΔΗΜΟΚΡΑΤΙΑ

ΕΠΙΤΡΟΠΗ ΠΡΟΣΤΑΣΙΑΣ ΤΟΥ ΑΝΤΑΓΩΝΙΣΜΟΥ

Decision CPC: 15/2022

Case Number: 08.05.001.022.012

THE CONTROL OF CONCENTRATIONS BETWEEN ENTERPRISES LAW No. 83(I)/2014

<u>Notification of a concentration regarding the acquisition by Hellenic Bank Public Company Limited of part of the loan portfolio and a small number of deposits, relating to the collateral of certain loans, from RCB Bank Ltd</u>

Commission for the Protection of Competition:

Mrs. Loukia Christodoulou	Chairperson
Mr. Andreas Karydis	Member
Mr. Panayiotis Oustas	Member
Mr. Aristos Aristeidou Palouzas	Member
Mr. Polynikis-Panagiotis Charalambides	Member

Date of Decision: 23 March 2022

SUMMARY DECISION

On 21/03/2022, the Commission for the Protection of Competition (hereinafter the "Commission") received notification of a proposed concentration on behalf of Hellenic Bank Public Company Limited (hereinafter "Hellenic Bank"), filed according to Section 10 of the Control of Concentrations between Enterprises Law 83(I)/14 (hereinafter the "Law").

The notification concerns the acquisition by Hellenic Bank of part of the loan portfolio and a small number of deposits, relating to the collateral of certain loans, from RCB Bank Ltd (hereinafter the "Target").

The business activities of the undertakings concerned are as follows:

- **Hellenic Bank** is a public limited liability company duly registered under the laws of the Republic of Cyprus and constitutes a licensed credit institution supervised by the Central Bank of Cyprus. The Hellenic Bank group of companies is engaged in the provision of a wide range of banking and financial services including financial investment and insurance services, custodial and third-party business claims agency services, as well as real estate management and sales.

- **The Target** is constituted by part of the portfolio of loans and a small number of deposits, which relate to the collateral of certain loans granted by RCB Bank Ltd. **RCB Bank Ltd** (hereinafter "RCB") is a licensed credit institution supervised by the Central Bank of Cyprus engaged in the provision of a wide range of everyday banking products and services to corporate as well as private customers.

Pursuant to a Business Transfer Agreement (hereinafter the "BTA") signed on 21/03/2022 by RCB (as the Seller) and Hellenic Bank (as the Purchaser), the latter will acquire part of RCB's loan portfolio of up to €555.9 million in gross book value and may acquire a small portfolio of deposits, relating to the collateral of certain loans, amounting to c. €29 million.

In view of the above, the Commission found that the proposed transaction constitutes a concentration within the meaning of Article 6 (1)(a)(ii) of the Law, as a result of which the Target will be solely controlled by Hellenic Bank.

The Commission further concluded that the proposed concentration is of major importance within the meaning of Article 3(2)(a) of the Law, as the criteria set by section 3 (2) (a) of the Law were satisfied.

The relevant product/services markets in this case were defined as: a) the lending services market, (b) the deposits' services market, (c) the life insurance market and (d) the general insurance market. The geographic market for the said relevant markets was defined as national in scope and thus constituted of the territory of the Republic of Cyprus.

<u>Horizontal Overlaps</u>

(a) Lending services: The proposed transaction results in a horizontally affected market since both participating entities are active in the provision of loans in the Republic of Cyprus. The parties' market shares in the area of loans, as at December 2020, was 1,74% for the Target and 21,4% for Hellenic Bank. Therefore, post-merger, Hellenic Bank's market share will slightly increase to approximately 23,14%.

(b) Deposits' services: The proposed transaction results in a horizontally affected market in the deposits' services area since both entities provide these services in Cyprus. The deposits' portfolio to be acquired by Hellenic Bank from RCB will be €29

million, i.e. 0,06% of total deposits in Cyprus in 2020. Drawing on the publicly available Financial Statements of various credit institutions, Hellenic Bank's market share for 2020 was 29,45%, thus leading to a combined market share of 29,51%.

Considering the aforementioned market shares under the scope of Annex I of the Law, which sets a minimum limit of 15% for horizontal concentrations, the Commission concluded that there is a horizontally affected market in both the lending services and deposits' services markets.

Other Closely Related Markets

The transaction results in a neighboring market as Hellenic Bank is active in the insurance products' market and the Target in the lending market. The provision of insurance products and the provision of loans are considered complementary and belong in a spectrum of products which are usually purchased by the same group of clients. The parties submitted that clients who are granted a loan will, in most cases, and certainly in the case of housing loans, need to also purchase life insurance and/or general insurance to secure their loan.

As submitted by Hellenic Bank, drawing on the information provided by the Association of Cyprus Insurance Companies, the market share of Hellenic Alico in 2020 in the life insurance market was approximately 6,4% and the market share of Pancyprian Insurance in the general insurance market was approximately 7,2%. As mentioned above, Hellenic Bank's post-merger market share in the lending market will be c.23,14%, following a slight increase.

Considering the above market shares under the scope of Annex I of the Law, which sets a minimum limit of 25% for concentrations leading to neighboring markets, the Commission found that there are no other markets in which the notified concentration may have significant implications.

Pursuant to the provisions of articles 20 and 21 of the Law, the criterion on the basis of which a concentration is declared compatible or not with effective competition is based on whether it may seriously imped effective competition in the Republic, especially as a result of the creation or strengthening of a dominant position. The criteria set forth by article 19 of the Law are also taken into consideration.

Since the proposed transaction would lead to horizontally affected markets, i.e. in the lending services and deposits' services markets, a competitive assessment was carried out by the Commission so as to examine whether and to what extent serious doubts are being raised as to the compatibility of the concentration with the competitive market.

Horizontally affected markets in (a) lending services and (b) deposits' services

The assessment was carried out in accordance with the European Commission's Guidelines (hereinafter the "Guidelines") on the assessment of horizontal mergers[1].

According to the Guidelines, market shares and concentration levels provide useful first indications of the market structure and the competitive importance of the merging parties and their competitors.

The Commission noted the various changes that took place in the banking sector in recent years, and specifically the Decrees of 2013 in regard to the Sale of Certain Operations of the Cyprus Popular Bank Public Co Ltd (hereinafter "Laiki Bank"), the insured deposits and the majority of assets and loans of which were absorbed by the Bank of Cyprus Public Company Ltd (hereinafter "Bank of Cyprus").

The parties submitted that the proposed concentration is not likely to affect competition in the lending and deposits' services markets, as Hellenic Bank would not acquire a dominant position in an already competitive market: in Cyprus there are at least 11 credit institutions active in the lending services' market, notwithstanding the credit institutions established in EU Member States that provide such services.

The Commission noted the value of loans granted as well as the market shares of the credit institutions in question, with the exception of loans granted from abroad, pertaining to Fiscal Year (FY) 2020.

The Commission measured concentration levels by applying the Herfindahl-Hirschman Index (hereinafter "HHI"), which, post-merger, exceeded 2000. However, since the delta was below 150, no competition issues were detected.

The Commission further considered the value of deposits and market shares of said credit institutions for FY 2020. Again, the post-merger HHI index exceeded 2000 but the delta was negligible, thus not giving rise to any competition concerns.

Results of Uncoordinated Behavior

The Commission further assessed the possible effects of non-coordinated conduct in the light of certain factors which considered separately are not necessarily decisive. An essential factor is the likelihood for restriction of competition as the direct result of the concentration, as the parties are active in the provision of loans and deposits,

[1] European Commission Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2004/C31/03).

activities which, post-merger, would be transferred to Hellenic Bank raising its respective market shares to 23,14% and 29,51%.

The possible effects of an uncoordinated conduct was considered in the light of the following factors:

A) <u>Merging firms have large market shares</u>

As submitted by the notifying parties, after implementation of the concentration, Hellenic Bank would still rank second in the area of loans. The combined market share of Hellenic Bank and the Target is considerably lower than that of the Bank of Cyprus which would still continue to hold the largest market share. RCB ranks third while the rest institutions have small market shares.

With regard to the deposits' market, following implementation of the concentration, Hellenic Bank would still rank second, with merely a negligible increase in its market share. Eurobank Cyprus Ltd is third while the other institutions have small market shares. The Bank of Cyprus would continue to hold the largest market share.

B) <u>Merging firms are close competitors</u>

According to the Guidelines, the concentration of two producers offering products that constitute the first and second choice for a significant number of customers may lead to a price increase. A concentration is less likely to significantly impede effective competition when there are many possibilities of substitutability between the products of the parties and of those offered by their competitors.

In the case at hand, there is a slight strengthening of Hellenic Bank's market share in the two aforementioned relevant markets. However, since there are possibilities for substitution with the services of competitors, it is unlikely for the merged entity to significantly impede effective competition in the market.

C) <u>Customers have possibilities of switching supplier</u>

According to the Guidelines, the parties' customers may face difficulties in finding other suppliers due to few suppliers or to significant adjustment costs. The Commission took into consideration that there is a number of banking institutions in the lending and deposits services' market which provide several options from which to choose. Also, due to recent developments in the banking sector, customers are quite informed and able to seek alternative sources. It therefore appears to be quite easy for customers to switch suppliers.

As far as the repayment of loans through transfer to another bank is concerned, from the information provided by the parties it ensues that Hellenic Bank customers, in the event of an abusive behavior, have the option of turning to other banks.

D) Competitors are likely to increase supply if prices increase

Pursuant to the Guidelines, when market conditions are such that rival firms have enough capacity and find it profitable to expand output sufficiently, the European Commission is unlikely to find that the merger will create or strengthen a dominant position or otherwise significantly impede effective competition. In the case at hand, it appears that competitors are not impeded from increasing their output in the provision of lending and deposits' services.

E) Merged entity able to hinder expansion by competitors

According to the Guidelines, some proposed mergers, if allowed to proceed, would significantly impede effective competition by leaving the merged firm in a position where it would have the ability and incentive to make the expansion of smaller firms and potential competitors more difficult or otherwise restrict the ability of rival firms to compete. From the evidence before it, the Commission found that Hellenic Bank did not appear to be in a position to hinder expansion of the activities of its competitors.

F) Merger eliminates an important competitive force

Some firms have more of an influence on the competitive process than their market shares or similar measures would suggest, like for instance when innovation is an important competitive factor, or where the participating entities constitute recent entrants in the market. In the case at hand, innovation does not constitute an important factor in the lending and deposits' services, and the parties are not new entrants so as to expect them to exert significant competitive pressure in the future on the other firms in the market.

Uncoordinated Effects

In view of the new entity's market shares, which gives it second place in the relevant markets and its ability to exert competitive pressure, as well as the largest bank's competitors but also the other competitors' ability to exert competitive pressure on the new entity, considering the close substitutability between the products of the relevant markets, the Commission found that the proposed concentration was not expected to lead to uncoordinated effects on the horizontally affected markets. It therefore ensued that the concentration would not result in Hellenic Bank having the ability and incentives to impede the expansion of other firms' activities and was thus not highly likely to significantly distort competition.

Coordinated Effects

According to the Guidelines, in some markets the structure may be such that firms would consider it possible, economically rational, and hence preferable, to adopt a course of action in the market that involves selling at increased prices. The Commission assessed the possibility of coordinated behavior and its chances of sustainability by taking into consideration the characteristics of the relevant market.

Reaching terms of coordination

Coordination, according to the Guidelines, is more likely to occur if oligopoly members can easily reach a common understanding of how coordination works. In general, the less complex and more stable the economic environment, the easier it is for firms to reach a common agreement on the terms of coordination.

As it ensues from the market shares of competing firms in the lending market, the Bank of Cyprus dominates the market with a share greater than that of Hellenic Bank. RCB Bank is third with the rest institutions having lower market shares.

With regard to deposits, the negligible increase in Hellenic Bank's market share post-merger does not significantly differentiate the current situation. The asymmetry of market shares in the deposits market, aside the Bank of Cyprus and Hellenic Bank, does not facilitate coordination.

The concentration will not reduce the number of service providers in the lending and deposits' markets. Hellenic Bank will acquire part of the lending and deposits portfolio of RCB, but the latter will continue to provide its services. The Bank of Cyprus holds a much larger market share than Hellenic Bank does and it is therefore quite difficult for any coordination to occur between competitors in the lending market.

From the evidence before it, the Commission found that there are no structural links between the companies active in the relevant markets so as to facilitate the alignment of incentives between coordinated companies.

Monitoring deviations

As pointed out by the Guidelines, firms that coordinate their conduct are often tempted to increase their market share by deviating from the terms of coordination, for example by lowering prices, offering "secret" discounts or trying to win new customers. Thus, the degree of transparency in the market is a decisive factor for monitoring such possible deviations.

The parties submitted that, considering the uncertainty characterizing the banking sector in Cyprus, in terms of demand, it can be difficult for a firm to know whether a loss in loans or deposits is caused by low demand in general or by the fact that a competitor offers more favorable trading terms. Also, despite the fact that banking institutions publish their transaction terms, transparency may, to some extent, still be limited as transactions take place on a bilateral basis.

Deterrent mechanisms

Coordination is not sustainable under the Guidelines if the consequences of violations are not sufficiently severe to convince coordinating undertakings that it is in their best interest to adhere to the terms of coordination. Thus, the threat of future retaliation is what allows coordination to remain viable.

The Commission noted that it might not be in the interest of the two big banks (Hellenic and Bank of Cyprus) to coordinate their behavior in the market in order to achieve increased prices, considering that the banking market is volatile, due to the high level of non-performing loans, and consumers, who are aware of this fact, seem to be prepared to resort to alternative sources if they need to. These market conditions make coordination between businesses difficult.

Third party reactions

Countervailing buyer power

As provided by the Guidelines, even undertakings with very high market shares may not be able, post-merger, to significantly impede effective competition by acting independently of customers who possess countervailing purchasing power.

In the case at hand, Hellenic Bank and Bank of Cyprus' customers will be able to resort to alternative sources for lending and deposits' services should Hellenic Bank increased its prices and lending rates, reduced its deposit rates, or applied less favorable terms for services, as a result of an abusive conduct or concerted practice.

The parties suggested that the lending market is a mature one where product research and development do not play a significant role and claimed that no significant changes would take place post-merger in the structure of supply and demand with respect to lending and deposit services.

Furthermore, due to the complexity of the banking sector and the fact that consumers are well informed on matters related thereto, it can hardly be argued that any coordination between banks is possible. Customers have the possibility of choosing between many other banking institutions in case where the Bank of Cyprus or Hellenic Bank, as the two leading institutions, decided to coordinate their activities. It therefore ensues that customers do have countervailing power considering they have at least 11 banking institutions in Cyprus from which to choose.

Entry barriers

There are legal barriers for entry in the banking sector. The Central Bank of Cyprus is the competent authority for the supervision of banking institutions, including the granting of licenses, and banking institutions in Cyprus with their subsidiaries and branches in Cyprus and abroad are subject thereto. These are the usual entry barriers for firms wanting to operate in the provision of loans and deposits' services in Cyprus. However, they do not constitute a deterrent for new firms that wish to enter the relevant markets

It is noted that credit institutions providing lending services licensed in other Member States may, under the freedom of services principle, provide such services in the Republic of Cyprus.

There are no entry barriers for new credit institutions (beyond their legal obligations) so as to consider that the proposed transaction will prevent new credit institutions from entering the market.

Conclusion

The Commission found that the proposed concentration is not likely to significantly impede competition, in particular as a result of the creation and/or strengthening of a dominant position in the affected markets within the Republic and can be declared compatible with the requirements of the competitive market, in accordance with the provisions of article 11 of the Law. The Commission also found that no other markets arise on which the notified concentration may have significant effects.

Therefore, the Commission, acting in accordance with section 22 of the Law, unanimously decided not to oppose the notified concentration and declared it compatible with the operation of competition in the market.

Mrs. Loukia Christodoulou
Chairperson of the Commission for the Protection of Competition

Mr. Andreas Karydis
Member of the Commission for the Protection of Competition

Mr. Panayiotis Ousta
Member of the Commission for the Protection of Competition

Mr. Aristos Aristeidou Palouzas
Member of the Commission for the Protection of Competition

Mr. Polynikis-Panagiotis Charalambides
Member of the Commission for the Protection of Competition