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The impact of the Eurozone crisis and its regulation on the decrease of European Bank Mergers

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Abstract

The paper shall begin with covering the main incentives of banks to engage in Mergers and Acquisitions. It will shortly present the current European Bank Union situation, with its goals and future agenda. Following that, the legal framework of the supervision of Bank M&As will be covered. Having analyzed the incentives of banks to merge, the past five years of the European Banking Union history and the current trends of the bank mergers, two relevant questions arise. Firstly, it is not clear which shall be considered the appropriate monitoring authority of a European Bank Merger from an efficiency point of view. Secondly, it is crucial to understand the underlying reasons of the failing of the European bank mergers and their potential relation to the regulatory strategies of the monitoring authorities. In order to approach the first research question, it is important to compare the duties, tasks, competences and toolboxes of both the European Commission and the European Central Bank when it comes to assess a domestic or cross-border bank merger. For the second question, we shall present an attempt of two banking institutions in Greece to merge and the reasons why the agreement fail through in the end. Other stories of failed or non-executed European bank mergers will be shortly mentioned. As a consequence, we will attempt to infer the general reasons why European bank mergers fail by remaining few and apprehend if this phenomenon it to be attributed to the inefficiency of the Merger Monitoring Authorities.

Key words: European Banks, Mergers and Acquisitions, Efficient Monitoring Authority, European Central Bank

1. Introduction

Banks are considered firms, i.e. they are a group of persons constituting a partnership that transacts business[i].The business that banks do conduct is extensive, complex but essential for the society's well-functioning. In short, a bank is a financial institution licensed to receive deposits and make loans. Banks may also provide financial services, such as wealth management, currency exchange and safe deposit boxes. There are two types of banks: commercial/retail banks and investment banks. In most countries, banks are regulated by the national government or central bank[ii] It is important to underline that banks lend and borrow to and from the State as well. Consequently, the stability of the banks and the state are correlated and interdependent in many countries.

However, banks also profit from conducting business. They realize business plans, they introduce innovative products and as a consequence, they compete for the relevant market share. We can say that banking is a sector where competition can flourish since the product is relatively homogeneous, i.e. credit, insurance, investment tools, and the information is relatively symmetrical and transparent. Concerning the players, however, it is evident that there are fewer providers/"producers" and almost the whole population is -or potentially will be- a consumer/"buyer". This rings an emergency bell for economists and banking policy advisors, as this environment can host distortions and/or facilitate collusions and as a result, anti-competitive/monopolistic behavior. Indeed, banks, as any other business entities are willing to merge or acquire another entity for various reasons. Some of the most characteristic incentives of banks to merge is the taxing benefits as a result of economies of scale and the liquidity and innovation synergies created after the merger.

In the recent years, post the 2008 financial crisis and the slow but steady recovery that the European Union undergoes, bank mergers continue to prevail but their motivation has evolved. Contrary to the past, bank entities do not seek exclusively synergies but an expansion of their bank size in order to sustain competitiveness in the highly intense European market[iii]. Essentially, this could lead to an overflow of mergers in the banking sector, not only domestic but also cross-border.

Cross-border bank mergers used to be not so successful in the past, mainly due to the incompleteness of the European Monetary Union and the adverse regulatory and supervisory structures between the Member States' legal orders according to Berger et. al (2001). This is bound to change due to the fact that a Banking European Union is set forth by the EU. Nevertheless, still in 2018, the European Bank Mergers have not reached the pre-financial crisis standards.

Figure 1: 2005-2018 Completed European Bank M&As in bln[iv]

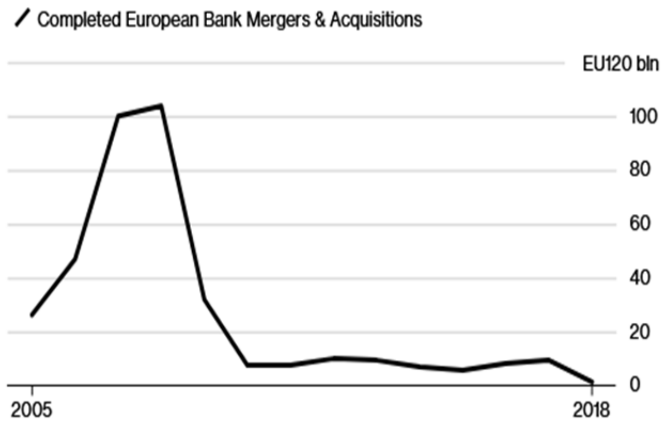
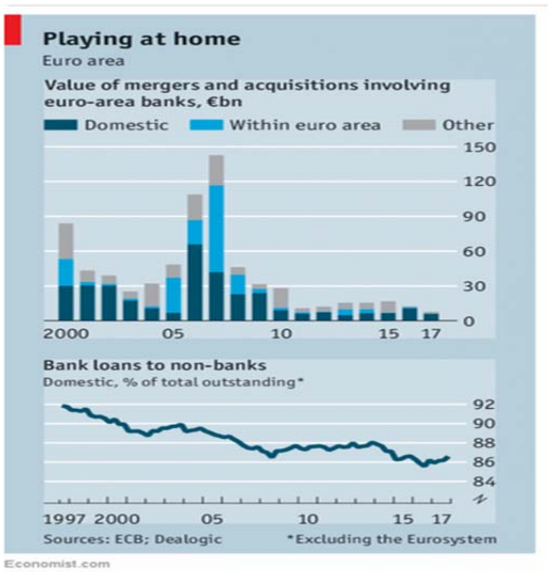


Figure 2: Comparison between domestic and cross border bank M&As in the Euro Area 2000-2017[v]



In Section 2 we will present shortly the history of the European Banking Union as well as its current agenda and goals. Following that, Section 3 will analyze the legal framework of the merger control in the European Union as well as the role of the European Central Bank as the Bank Monitoring Authority. A comparison between the two monitoring authorities and their tools and methods in order to reach efficient judgments will be held under Section 4. Section 5 and 6 shall deal with the Greek merger case; first, the legal framework of the Greek merger control will be analyzed and following that, we will follow the procedure, the discussions and the ultimate abortion of the said merger deal. Lastly, under section 8 other European merger attempts will be briefly discussed and the paper shall resume with policy recommendations in Section 9.

2. European Banking Union and New Banking Sector Agenda

Having absorbed the negative effects of the banking fail of 2008 which started with the Lehman Brothers scandal, the European Union experienced a deeper financial and fiscal crisis around 2010. The economies of the South (Greece, Italy, Spain, and Portugal) suffered from instability and their respective banking sector exhibited an immense lack of liquidity and credibility. The EU currency was still new at the time and the Member States, applied different policies and strategies to tackle with the problems of liquidity and risk, since there was no precedent unified legal framework for addressing a financial shock. This led to a non-stable approach that put more burden on the lending market and affected severely the single market and the inter-European services and products trade. This situation called for an emergency common E.U. resolution of which many European States disapproved.

Consequently, it was in 2012 when the EU institutions agreed upon a new agenda, i.e. to further strengthen the Economic and Monetary Union by creating a Banking Union. The latter would be achieved with the help of four institutions, namely the Single Supervisory Mechanism (SSM), the combination of a Single Rescue Mechanism and a Single Resolution Mechanism and two others that are not fully in force yet which, in turn, shall detach the bank bailing from the public economy of a Member State. These pillars will conclude to be the features and driving forces of the European Banking Union. Among the four pillars, the Single Rule Book can be found that will unify all the regulatory standards of the financial sector such as the Basel III Agreement. The Single Supervisory Mechanism (Regulation EU 1024/2013) is also worth-mentioning as it is monitored by the European Central Bank and it shall monitor the systematically important banking institutions.

The future Banking Union agenda holds for all Member States the heated discussion of a single European Deposit Insurance Scheme (EIDS) which has not been accomplished yet due to the fiscal problems and the non-performing loans that certain Member States' banks have to address. Additionally, the need of an efficient backstop is underlined, as the Single Resolution Mechanism necessitates a common measure to enforce bank resolutions. Lastly, risk reduction through legal framework reforms is a goal that shall combine and possibly enhance the former two goals.

3. Legal Framework of EU Bank Merger Control

a. European Commission as the Anti-Trust Authority

When it comes to the Anti-Trust Authority of the European Union, it is easy to agree upon the fact that the European Commission embodies and serves this purpose. The quintessential legal rules concerning anti-competitive behavior of enterprises (Article 101, 102, 103 TFEU) are found in the Treaty of Function of the European Union, the guardian of which is the E.C. More specifically, it is the European Commissions' main scope to ensure the implementation, not only of the two founding treaties of the E.U. (TEU and TFEU), but also the secondary legislation adopted in order for the treaties to be introduced in the Member States' legal orders. In this sense, the E.C., empowered by the Article TFEU 258[vi], can invoke the procedure against any Member State that infringes one of the legal duties/responsibilities.

Especially for competition rules, the Commission can summon the TFEU Article 105 (ex Article 85 TEC) according to which *"1. Without prejudice to Article 104, **the Commission shall ensure the application of the principles laid down in Articles 101 and 102.** On application by a Member State or on its own initiative, and in cooperation with the competent authorities in the Member States, which shall give it their assistance, the Commission shall investigate cases of suspected infringement of these principles. If it finds that there has been an infringement, it shall propose appropriate measures to bring it to an end.*

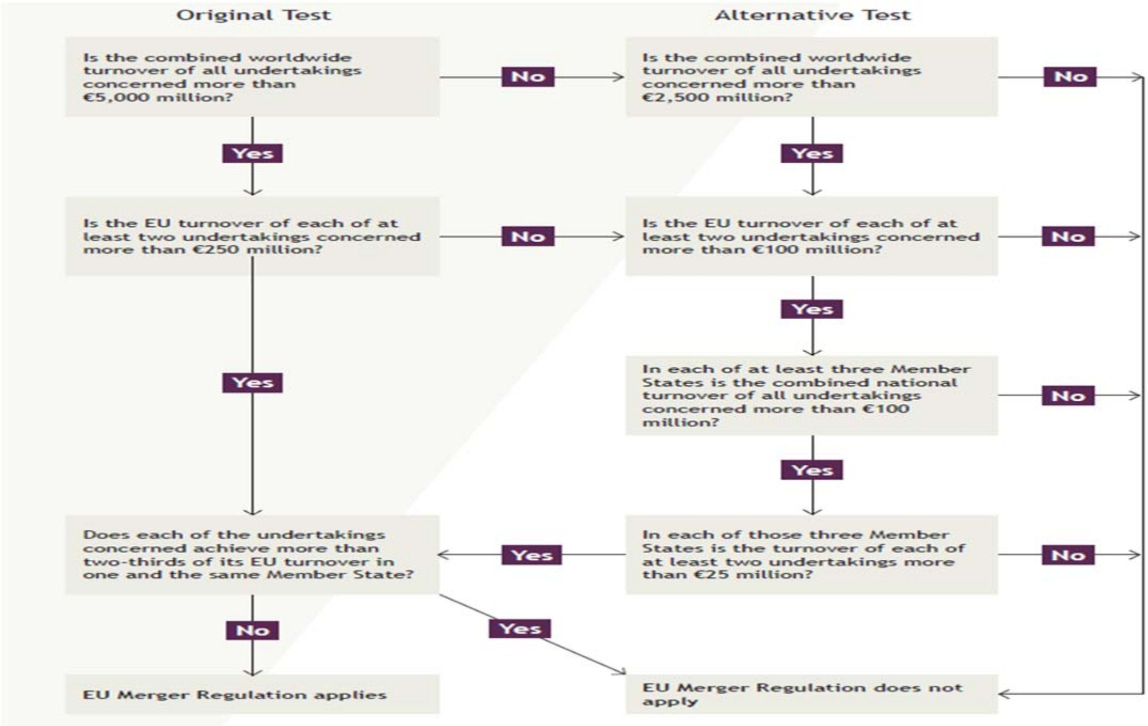
2. If the infringement is not brought to an end, the Commission shall record such infringement of the principles in a reasoned decision. The Commission may publish its decision and authorize Member States to take the measures, the conditions and details of which it shall determine, needed to remedy the situation.
3. The Commission may adopt regulations relating to the categories of agreement in respect of which the Council has adopted a regulation or a directive pursuant to Article 103(2)(b)."

In other words, the abovementioned article calls for the cooperation between the European Commission and the respective Anti-Trust Authorities of each Member State in case of a domestic competition infringement. Shall the situation escalate without resolution on the part of the Member State's Anti-Trust authority, the E.C. will then publish a decision and authorize Member States to take specified measures.

According to the EU Merger Regulation N.139/2014, *"The undertakings concerned should be granted the possibility of requesting referrals to or from the Commission before a concentration is notified so as to further improve the efficiency of the system for the control of concentrations within the Community. In such situations, the Commission and national competition authorities should decide within short, clearly defined time limits whether a referral to or from the Commission ought to be made, thereby ensuring the efficiency of the system."*

The criteria that form the **EU dimension** which decisively yields the jurisdiction to the European Commission as the Anti-Trust Authority in charge for the merger control are turnover criteria of the involved entities but are many and too complex. The following graph provides an overview;

Figure 3: Original and Alternative Test to qualify for the EU dimension[vii]



b. _European Central Bank as the Bank Authority

Following the European Bank Union movement, the European Central Bank is the leading monitoring authority of all the Member states' Central Banks. The latter refer to the ECB for necessary information, are supervised and controlled by it and, all in all, are expected to conform to its guidelines and recommendations. While the ECB existed before the change of the EU agenda with the furthering of the Banking Union, its primary purpose used to be the maintenance of the price stability in the single internal market.

From 2014, the ECB is equipped with additional roles and challenges, as it is responsible for the prudential supervision of credit institutions within the framework of the Single Supervisory Mechanism, according to the Council Regulation (EU) No 1024/2013. Lastly, it operates as a banking supervisor, meaning that it assesses the resolution plans of credit institutions[viii], as this duty has been delegated to the ECB, following the Regulation (EU) No 806/2014. From a first glance, it seems that the ECB is heavily burdened with supervising the Member States' Central Banks, i.e. 27 Central Banks and the resolution plans of credit institutions –not just the Central Banks- around the E.U. To this end, there has been a division since 2014 between **systemically** important **bank** (SIB) and non-systemically important banking institutions so that the former are in direct monitoring of the ECB, as they define as a **bank**, insurance company, or other financial institution whose failure might trigger a financial crisis. They are referred to as "too big to fail"[ix]. Systemically important banks are the banks which fulfil certain criteria, e.g. size, substitutability, complexity and cross-jurisdictional activity.

Following the above mentioned division, the ECB is responsible for the monitoring of the largest/SIB banks, while the Member States' Central Banks continue to monitor the non-systemically important financial institutions. The main tasks of the ECB and the national supervisors consist of checking that banks comply with the EU banking rules and to tackle potentially arising problems early on.

4. European Commission v. European Central Bank

Bank mergers are a sui generis type of legal case, they contain an **element of competition**, since their concentration requires some level of market assessment and an **element of banking policy**, since the fusion of two independent financial institutions requires attention to the detail and careful management. In this section, we will explore the capabilities of the two most suitable European Institutions that can assess a bank merger, the European Commission in the role of the European Anti-Trust Authority and the Central Bank of Europe in the role of the overall supervisor of all European Central and Systemic Banks.

The European Commission, being the Anti-Trust Authority of the E.U. has naturally a lot of experience in the market structure analysis which is very useful when it comes to assessing an M&A in every industry. It holds the methodological tools and the know-how to assess the concentration suggested, to calculate market shares and to predict dominant positions. As far as the negative unilateral effects that mergers can produce, the E.C. is the best judge for these kinds of effects, as they repeat themselves in every industrial sector and the repetitive occupation with them has led the European Commission to acquire a high level of skills to deal with them.

On the contrary, when it comes to coordinated effects that need to be investigated before approving a merger, the deep knowledge of a sector is mandatory. And while on could argue that the E.C. can learn the banking sector's market, the players, the products and the pricings, it wouldn't be an efficiency loss, had there not been the European Central Bank. In our point of view, it is redundant for an authority to train, hire experts and professionals, invest in methodologies, tools and know-hows when there exists another Authority in place that already possesses all the above and puts them into use regularly. It is simply an unnecessary raise in transaction costs and time investment that the heavy bureaucratic scene of the European Union does not need to add up.

To be fair, the European Commission would be ideally suitable for the initial assessment of a merger, the assessment that requires the examination of unilateral effects on competition and is expected to be delivered relatively soon after the submission of the merger notification. Additionally, it has at its disposal all the tools to calculate demand elasticities, cross market elasticities etc. For this role, the E.C. would not only perform qualitatively, but it would also lift the burden off the E.C.B. that deals with different agendas every day.

Another two areas of the bank merger assessment that we think should be left for E.C.B. to conduct are the following; the evaluation of entry characteristics which would be easier for the ECB to deliver since they already gather this type of information when examining the well-functioning of the financing market. Similarly, the efficiency considerations are difficult to be assessed anyway, but we share the opinion that the E.C.B. possesses more relevant information about the different countries' banking and finance market than the E.C. itself. Lastly, the sliding scale approach used to calculate efficiencies is hard to be implemented by anyone other than the Central Bank of the E.U. due to the high degree of technicalities and insider information needed and the failed firm defense will be better assessed by the E.C.B.

5. Bank Mergers in Greece

The situation in Greece is more or less widely known. The heavily burdened state and the government could not guarantee the stability and the avoidance of a potential state insolvency and thus entered into an agreement first with the International Monetary Fund and later with the Troika to come up with a rescue and stabilization plan (Memoranda). The result of the deliberations on Greece's case was to enhance a credit support while accepting Greek state bonds as a collateral. Additionally, the Troika body agreed to transfer 110 billion EUR to the Greek state in exchange for the latter to sign an agreement containing reforms that would help the Greek economy recover and reach its old financial stability and standards. Among the different reforms, Greece was requested to ensure a sound level of bank equity with the creation of a Financial Stability Fund for the banking sector.

Lastly and due to the emergency situation of Greece, Troika feared a liquidity crisis in the banking sector and for that reason, it stressed out the necessity of the banks creating a liquidity buffer, i.e. to strengthen and focus on their safe assets and to limit their business risk. As seen above, these goals can be confidently achieved with the help of mergers. Indeed, from 2012 onwards, the Greek banking sector underwent a tempest of mergers, acquisitions and absorptions of smaller, incompetent and lacking market share banks and from a moderate banking sector with many banks but low market shares, it ended up with four "too big to fail" systemic banks[x] and some international banks operating in the margins.

Table 2: Efficiency and concentration indicators, end-2017, Greece in the last row[xi]

Countries	CR-5 (in %)			# of employees (per thousand inhabitants)			# of branches		
	2017	1999-2007	2010-2017	2017	1999-2007	2010-2017	2017	1999-2007	2010-2017
Austria	36.4	1.9	0.5	8.2	0.2	-1.1	0.43	-0.06	-0.07
Belgium	68.8	7.8	-6.1	4.7	-1.1	-1.0	0.28	-0.27	-0.08
Bulgaria	56.5	n.a.	1.3	4.2	n.a.	-0.4	0.43	n.a.	-0.36
Croatia	72.8	n.a.	n.a.	4.9	n.a.	n.a.	0.27	n.a.	n.a.
Cyprus	84.1	4.4	19.9	9.1	0.7	-2.3	0.39	-0.23	-0.43
Czech Republic	64.1	0.6	1.6	3.9	-1.1	0.3	0.18	-0.01	-0.01
Denmark	65.7	-6.7	1.2	7.4	0.1	-1.2	0.18	-0.03	-0.12
Estonia	90.3	-3.2	-2.0	3.7	1.5	-0.4	0.07	-0.01	-0.08
Finland	48.4	-26.4	-11.2	3.8	-0.1	-0.5	0.18	0.02	-0.10
France	45.4	9.2	-2.0	6.0	0.2	-0.3	0.56	0.18	-0.04
Germany	29.7	3.1	-2.9	7.5	-1.0	-0.7	0.39	-0.23	-0.08
Greece	97.0	0.7	26.3	3.9	0.4	-1.8	0.20	0.08	-0.16

6. Legal Framework of Greek Bank Merger Control

a. Greek Anti-Trust Authority

The Anti-Trust Authority ("Epitropi Antagonismou") in Greece guards and warrants the corresponding competition rules found under the national corporate and anti-trust law. More specifically, the Authority functions under the relatively new Law for the Protection of the Free Competition (N.3959/2011). In its first two articles, the law repeats the provision of the 101, 102 Articles of the TFEU, which help harmonize the Greek with the European approach towards collusive practices and abuse of dominant position.

At the same time, Greece belongs to the European Union and has signed the E.U. Treaties (TEU, TFEU), to whose legal rules it must conform. It is, therefore, the duty of the Anti-trust Authority of Greece as it is every Member States as well, to work closely in cooperation with the European Commission and shall give it their assistance, in order for the Commission to investigate cases of suspected infringement of the European principles of Competition. The above statement is included in the text of the Article 28 of the Law for the Protection of the Free Competition (N.3959/2011).

Domestically, the Greek Anti-Trust Authority functions under the regime of prior notice and the relevant criteria for a merger to be investigated is the worldwide joint turnover to be exceeding the 150 million euros and that at least two parties to have a turnover in Greece exceeding 15 million euros. This regime enables the authority to take action in international cross border mergers that involve the Greek economy to some extent.

b. Bank of Greece

According to the Article 55A of its Charter, the Bank of Greece supervises all financial institutions of Greece. Its main goals are the maintenance of stability of the financial system and sector and as a following consequence, the normal functioning of the markets and the economic development in total. Two of the objectives of the close supervision of the Bank of Greece on all banks are the transparency of the business conduct and the terms and conditions of the business conducting parties. It is clear from the latter sentence that the term of transparency can be interpreted in a way relevant to competition law, as the banks need to perform in transparent means both on their own and when they collaborate or even decide to merge.

In relevance to the duties within the Eurosystem, the Bank of Greece is in line with its charter:

> *"responsible for supervising credit institutions and certain categories of enterprises in the financial sector. Supervision is conducted in accordance with the new Basel II framework, as transposed to Greek law, and the rules established by the Bank of Greece, mainly regarding authorisation and control of solvency, liquidity, capital adequacy and concentration risk of supervised institutions, adequacy and efficiency of*

corporate governance and internal control systems, including Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) procedures. The Bank of Greece also establishes rules on transaction transparency and the clarity of transaction terms. Its supervisory tasks also include monitoring the implementation of the relevant institutional framework, recommending corrective measures and imposing administrative sanctions, including withdrawal of authorisation of credit institutions."

Additionally, and due to their relative relation with the financial sector, the Greek-based insurance and reinsurance firms are subject to the supervision and monitoring of the Bank of Greece.

In general, the duties of the Bank of Greece are broadly described and can use some interpretation as to whether the merger control lies within them. As we shall see later in a specific bank merger case, the Bank of Greece indeed takes part in the screening and processing of a bank merger.

7. An individual case of a failed Greek bank merger

a. The Background of the Merger

As mentioned before, the Greek banking factor faced many changes in the course of the financial crisis. Relevant to our research, the rather non-concentrated banking market had transformed into a concentrated one with four remaining systemic banks, which had undergone various M&As to reach their final form in 2012. On the 14th of February 2012, the Financial Stability Agreement was signed between the European Financial Stability Fund, the Greek State and the Bank of Greece. The main purpose of the financing agreement was for the four systemic banks to use the funds to recapitalize and ensure their liquidity. A deadline for the recapitalization was set for the 30th of April 2013, which was later modified to include any other future date that the Parties will agree upon with the banks (Long Stop Date).

On the 5th of October 2012, the National Bank of Greece (1st largest Greek bank) made a public offer to acquire the stocks of Eurobank (3rd largest Greek bank). The response of the latter came on the 14th of January 2013, after having review the detail business plan of the merger. Namely, Eurobank stressed out not only the benefits that would be produced after a successful merge with regards to the synergies created but also the uncertainty, under which the agreed recapitalization shall take place for the newly merged entity.

Nevertheless, the supervising authorities, i.e. the Greek Anti-Trust Authority, the Bank of Greece, the European Financial Stability Fund and the Directorate General for Competition (European Commission) agreed on the 14th of February 2013 both on the content of the public offer and the business plan of the merger for the same reasons, meaning the joint benefits that it would create for the two entities. It is interesting to quote the reasoning of the European Commission:

"That preliminary analysis has confirmed the following elements: Compared to a standalone restructuring, the <u>merger</u> seems to accelerate and enhance the return to long-term viability and profitability of NBG and Eurobank, as the merger will create significant synergies for the combined entity….Compared to a standalone restructuring, the <u>merger</u> will not trigger additional needs for State aid for the two banks…..Therefore, on the basis of the information presently available, I would not consider the acquisition to be an obstacle to the restructuring of the combined entity and, consequently, to the approval of the restructuring plan at a later stage, provided that the envisaged integration is implemented and all other criteria for the compatibility of the restructuring aid with the internal market under State aid rules are met."

b. The Fail of the Bank Merger

From then on, the process for the merger was accelerated, both for market stability reasons and because the deadline of the recapitalization was approaching. The Financial Stability Fund sent letters to both banking entities reminding them of the deadline for recapitalization, but both banks received reassuring information by the Ministry of Finance that the deadline would definitely be extended. Upon the decision of the acceleration of the merger, representatives of the F.S.F. were present and did not raise any objections.

On the 28th of March 2013, all four systemic banks received an open letter from the Bank of Greece, which reminded once again of the deadline for the recapitalization and explained the process of it in detail. This led both banks to ask for an extension of the deadline in order for them to merge firstly and then recapitalize as a new merged entity. The extension of the recapitalization deadline was in the end declined, both by the Bank of Greece and the European Commission/Financials Stability Fund. On the 8th of April 2013, both National Bank of Greece and Eurobank announced their individual recapitalization and the cease of the merging process. The final decision on the permanent cease of the merger was announced on the 26th of June 2013 by the representative of the Financial Stability Fund. It is noteworthy, however, that the deadline of the recapitalization had been indeed extended simply because the other systemic banks could not manage the process in time for the 30th of April 2013.

c. Why the Merger failed

It is possible to speculate what led to the dismissal of the merger between the National Bank of Greece and Eurobank, two systemic banks that would acquire a very big market share but would, on the other hand, secure risks and guarantee liquidity. It is important to highlight that the public offer and the business plan of the merger were widely accepted and even praised by the lenders, the European Commission and the main shareholder of the banks, i.e. the Financial Stability Fund.

Bearing in mind that Greece is a special case due to the need of a financial stability Fund and the already once recapitalized systemic banks, we observe many players involved in the decision to merge. It is not only the main shareholder (F.S.F.) but also the Greek Anti-Trust Authority, the European Commission, the Bank of Greece that took part in the deliberations of the planned merger. The plurality of views, ideas and suggestions led to the result of the merger being dismissed. The main reason for the merger dismissal was the fact that the two systemic banks had been bound to recapitalize separately within a short period of time after the public offer. Once they asked for an extension of the deadline so that they could proceed with the merger and recapitalize as a joint venture, their request was denied by both the main shareholder and the Bank of Greece.

Based on our hypothesis, we would argue that having many authorities to deliberate and contact with, ultimately creates high transaction costs. Indeed, the Board of both banks in the beginning, and of the National Bank of Greece after the public offer was accepted, had to transact with many non-communicating parties and cater to their needs. Additionally, the other parties themselves had differentiating agendas and requests from the Boards of the banks concerning the merger regulation. Nevertheless, all agreed on a merger that, judging from the ex post situation, was deemed to fail.

Both the Bank of Greece and the F.S.F were in the position to know the obligations stemming from the recapitalization but they communicated it to the authority rather late. This could be attributed to miscommunication. On the other hand, the Anti-Trust Authority and the E.C. had to incur high information costs in order to be aware of this commitment to recapitalize. All in all, it ended up as a lack of coordination between the different authorities and the involved entities. We will shortly propose a solution to the problem of high coordination costs and lack of efficiency in dealing with merger cases.

8. Other European mergers

Aside from Greece, it is worth mentioning other attempts of European banks to merge, either within or between European Member States. Before the short presentation of the main attempts to merge, we need to stress out the fact that solely the presence of more and more merger announcements or merging discussions is viewed positively by the European institutions and the banking industry.

Starting with the Netherlands, the Dutch bank ABN Amro was offered an acquisition by the Swedish Nordea Bank during the summer of 2016, a move that set off all future discussions and aspirations of cross border European mergers. Ultimately, the offer was rejected by the ABN’s larger shareholder, the NFLI on behalf of the Dutch government which created a wave of disappointment among the banking system. The main reasons of the acquisition denial were both political and regulatory, as on the one hand, the government did not want to take up this responsibility for fear of voters’ condemnation and on the other hand, the regulatory implications of creating a banking unit of a large, cross border market share would yield fines and problems with the anti-trust authorities, once it gained more momentum. It was, to put it simply, not worth the risk.

The next big merger deal advocated by few but mostly fought against is the Anglo-Spanish bank deal between Santander, the largest Spanish bank and possibly a bank champion and Barclays. Santander, being one of the Eurozone’s biggest lenders would be a great fit to merge with Barclays and create the third pan-European bank with great representation[xii]. Nevertheless, the uncertainty with the Brexit referendum and now the hardship of drafting, signing and ratifying a Brexit plan with the E.U. has ceased the talks between the two banks.

Germany has held many discussions of a regional merger deal, namely a deal between Deutsch Bank, a bank that has been in the negative spotlight for quite some time and could potentially use a consolidation and Commerzbank. The negotiation is no longer on the table, since both banks decided that it is best for them to part ways and reach stability on their own.

9. Policy Recommendations and Conclusion

Before answering the main research question, i.e. the most efficient body to tackle European bank mergers, it is essential to evaluate the failed mergers throughout the European Union, as they were presented above. It becomes clear that overregulation, following emergency situation's measures after the Eurozone crisis, has created and sustained uncertainty among the bankers and the governments. Big cross border bank mergers are not allowed under the present anti-trust levels and market share criteria, despite their big advantages for the EMU. Moreover, the work of the European Banking Union is unfinished, since the single European Deposit Insurance Scheme (EIDS) is not achievable in the near future. Lastly, political instability and the Euroscepticism momentum create barriers for an equal, unified Banking Union. These factors are crucial not only to understand the low movement of bank mergers in the E.U. but also to set forth ways of dealing with them. If they are not substantially downsized, there shall be no bank mergers for the most efficient Authority to assess.

So far, neither in the legal framework nor in practice are there clear-cut rules that delegate duties and assignments to the Central Bank when it comes to a European bank merger. Since we are currently in the era of the European Banking Union, it is obvious that every bank merger attempt within the Member States shall be deemed to have an EU dimension, a necessary criterion for the European Bodies to take action. This does not mean that the National Monitoring Agencies will be of no assistance, since they are not only obliged to by the TFEU Treaty to assist the E.C. but also because in case of a domestic merger, their approval is requested.

The analysis above provided us with some interesting and revealing insights. We concluded that as far as competences go, the ECB has a larger knowledge set of the relevant market and its specific characteristics. Additionally, when it comes to the banking sector, the Anti-Trust Authorities necessitate larger budgets to gather all the relevant information referring to other secondary obligations of the proposed merged entities. With that being said, the European Commission and especially the Directorate General for Competition has dealt with many merger notifications and approval procedures that do not fall within the realm of activities of the ECB. Mergers concerning big pan-European banks have not been experienced by neither those authorities.

However, the one true connoisseur of the banking related issue is the Monitoring Authority of the banks, i.e. the Central Bank. Naturally, it can fall within its own trap, like in the case of Greece, when it accepted an ex ante failing bank merger. However, we believe that having the Central Bank monitor almost to the full extent the ongoing procedure of a bank merger with an occasional aid from the Commission is the most efficient way to eliminate sector-specific errors and transaction costs and supervise the merger process with a high-level competence. A potential scheme of cooperation would be for the **European Commission to conduct the first assessment** and then, if needed, the **ECB to take over and perform the in-depth market analysis of the banking sector**.

These policy recommendations are based on a theoretical efficiency analysis and a case from the Greek legal order. In order to draw efficiency solutions, further research and modelling is welcome, as well as some further empirical findings, possibly with the realization of a cross-border bank merger.

To conclude, according to the European Parliament,

> *"The dialogue between the Commission and the ECB is particularly important in view of the European Commission's role in the coordination of economic policies and its tasks relating to Economic and Monetary Union. As regards legislation, and in particular financial legislation, the ECB is regularly consulted on legislative proposals or other initiatives by the Commission. One member of the Commission may attend the meetings of the ECB's Governing Council, though without the right to vote."*

We can therefore understand that these two European Bodies were meant to be cooperating with one another and in mutual understanding and communication regarding policies that are both monetary and involve the core activities of the E.U., as described by the Treaties. Therefore, when the next big bank merger will be proposed, both European bodies will act together in the profit of the Common Market and the Member States. It is only a matter of deregulating them and appoint one of the two as the main authority in charge that stands in the way of yielding the most efficient results in the merger process.

Short bio of the author

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[i] Definition according to https://thelawdictionary.org/firm/
[ii] Definition under https://www.investopedia.com/terms/b/bank.asp

[iii] Tinev (2014)

[iv] Source: Bloomberg; https://www.bloomberg.com/news/articles/2018-06-17/european-banks-eyeing-mergers-face-gridlock-on-friendlier-rules; accessed on the 1st of December 2018

[v] Source: The Economist; https://www.economist.com/finance-and-economics/2018/07/12/why-the-euro-zone-hasnt-seen-more-cross-border-bank-mergers; accessed on the 1st of December 2018

[vi] Article 258(ex Article 226 TEC) If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union.

[vii] Source: Slaughter and May, the EU Merger Regulation, 2018

[viii] Source: http://www.europarl.europa.eu/factsheets/en/sheet/13/the-european-central-bank-ecb-

[ix] http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/574406/IPOL_BRI%282016%29574406_EN.pdf

[x] National Bank of Greece, Piraeus Bank, Eurobank, Alpha Bank

[xi] Source: Patty Duijm, Dirk Schoenmaker 21 June 2018 calculations based on ECB Structural Financial Indicators 2018

[xi] First and second "pan-European" banks being BNP-Paribas and Unit Credit

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