EUROPEAN COMMISSION

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PUBLIC VERSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

CVC Capital Partners SICAV-FIS S.A.
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Grand Duchy of Luxembourg

Subject: **Case M.10301 – CVC / Ethniki**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 20 January 2022, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which CVC Capital Partners SICAV FIS S.A. ("CVC", Luxemburg) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of The Ethniki Hellenic General Insurance Company S.A. ("Ethniki" or the "Target", Greece) (the "Transaction"). The proposed concentration would be accomplished by way of purchase of shares. In the remainder of this Decision, CVC is referred to as the "Notifying Party" and together with Ethniki, the "Parties".

1 OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

2 OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

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1. THE PARTIES

(2) CVC and/or its subsidiaries manage investment funds and platforms. CVC controls a number of companies, including the Hellenic Healthcare Group ("HHG"). HHG offers private hospital services in Greece and in Cyprus.[3]

(3) Ethniki offers insurance services in Greece, Cyprus, and Romania. Ethniki is active in life and non-life insurance services, insurance distribution and, to a limited extent, reinsurance. Ethniki is currently owned by the National Bank of Greece ("NBG"). NBG is required to sell the Target as part of the commitments that Greece gave when the Commission approved State aid of EUR 2.71 billion to NBG in 2015.[4]

2. THE OPERATION AND THE CONCENTRATION

(4) On 26 March 2021, Ethniki Holdings S.à r.l. ("Lux HoldCo"), a special purpose vehicle ("SPV") indirectly owned and controlled by CVC's Fund VII, and the NBG entered into a share sale and purchase agreement (the "SPA") under the terms of which Lux HoldCo will acquire 100% of the shares in the Target. As a result, CVC will acquire sole control over Ethniki.

(5) Therefore, the Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(6) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (CVC: EUR […] million, Ethniki: EUR […] million) and the aggregate Community-wide turnover of each of the two undertakings concerned is more than EUR 250 million (CVC: EUR […] million, Ethniki: EUR […] million). While Ethniki derives more than two thirds of its EEA revenues in Greece, CVC does not. The Transaction thus has a Union dimension within the meaning of Article 1(2) of the EU Merger Regulation.

4. RELEVANT MARKETS

4.1. Introduction

(7) CVC controls today HHG, which offers private hospital services in Greece. Post-Transaction, CVC would also control Ethniki, which offers insurance services in Greece, including health insurance services.

(8) Health insurance policies in Greece, including those of the Target, typically provide coverage for a wide range of inpatient and outpatient medical services, offering a choice of hospitals and diagnostic centres.

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3 HHG controls six hospitals in Greece (Hygeia, Metropolitan Hospital, Mitera, Metropolitan General, Leto and Creta InterClinic) and one in Cyprus (Apollonion).

4 See Commission decision of 4 December 2015, SA.43365 - *Amendment of the restructuring plan approved in 2014 and granting of new aid to National Bank of Greece* and Commission decision of 10 May 2019, SA.43365 - *Amendment of the restructuring plan approved in 2014 and granting of new aid to National Bank of Greece*

(9) Health insurance schemes operate on the basis of premiums paid by insured customers. Premiums are not income-related and are calculated based upon the underlying level of risk. Risk-rated premiums take into account an individual's current health status and future risk of illness. They may vary based on the individual's age, occupation, medical history and family history of disease.

(10) Private health insurance in Greece comes in parallel to public health insurance. Public health insurance is provided to all through a unified health insurance fund which acts as a single purchaser for publicly funded health services ("EOPYY").[5] Private health insurance comes at a voluntary basis, on top of public health insurance. As a result, only [10-20]% of the Greek population is privately insured for health, in addition to their public health insurance. The vast majority ([70-80]%) of the health insurance policy holders lives in Attica, which represents ~35% of Greece's population.[6] This can also be explained by the fact that most of the private healthcare services are also located in the wider Attica region.[7]

(11) Although EOPYY offers a universal coverage for all health services, this is only to a certain extent. Therefore, there is a particularly significant share of private expenditure in the provision of health services, 90% of which comes directly from individuals (out-of-pocket) and 10% is covered by private insurance companies.[8] Private health insurance offers to privately insured customers a number of additional benefits, including faster access to treatment, wider choice of healthcare providers, and enhanced amenities.[9]

(12) There is a vertical relationship between private hospital services and private health insurance services, the former being an input to the latter.[10] In other words, an insured patient needs to receive treatment from a private hospital (upstream) for their health insurance provider to then process and issue a relevant payment for that hospital (downstream).

(13) Public and private hospitals in Greece are both active in the provision of inpatient and outpatient treatments. However, private hospitals offer faster access to treatment, a higher quality of overall services and more innovative solutions.

(14) The remainder of this Section discusses product and geographic definition in health insurance and private hospital services markets which are relevant for the analysis of the vertical relationships between the activities of HHG and Ethniki.

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5 State of Health in the EU, Greece, Country Health Profile 2021, p. 7, available at https://ec.europa.eu/health/system/files/2021-12/2021_chp_gr_english.pdf, last accessed on 21 February 2022 (Doc ID 1335).

6 Response of the Notifying Party to Request for Information I-9, submission dated 16 February 2022, Question 1.

7 Hellenic Competition Commission, Sector Inquiry into Health Services, Public Consultation of 26 October 2021, Panayotis Skavaras, Business Development and Communication Director, MedNet Greece.

8 Hellenic Competition Commission, Sector Inquiry into Health Services, available at https://www.epant.gr/en/enimerosi/health.html, last accessed on 21 February 2022 (Doc ID 1334).

9 Form CO, paragraph 180.

10 Form CO, paragraph 353.

4.2. Private Health Insurance

4.2.1. Product Market Definition

4.2.1.1. The Commission's decisional practice

(15) In previous decisions relating to the insurance sector, the Commission distinguished between three large categories of insurance product markets: life insurance, non-life insurance, and reinsurance.[11]

(16) In non-life insurance services, the Commission considered the classification in the EU Non-Life Insurance Directives[12] and distinguished the following types of insurance services: (i) accident and sickness; (ii) motor vehicle; (iii) property; (iv) marine, aviation and transport ("MAT"); (v) liability; (vi) credit and suretyship; and (vii) travel.[13]

(17) In *Case M.8010 – Irish Life/Aviva Health/Glohealth*, the Commission found that the class of "accident and sickness" insurance services (item (i) above) includes health insurance services, namely services whose principal purpose is to provide cover for the actual cost of medical services including, but not limited to, inpatient treatments and outpatient (non-hospital/day-to-day) treatments.[14] The Commission also concluded that health insurance services constitute a separate relevant product market.[15]

(18) The Commission left open the question whether the market for health insurance services also includes insurance products that offer cash payments separate from medical costs e.g., in case of an accident or critical illness.[16]

(19) Finally, the Commission noted that the relevant market for health insurance products should not be sub-segmented by customer type (i.e., individual consumer v. group

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11 See most recently, Case M.10326 – *Allianz Holding/Santander/Aviva Companies/Santander Aviva Companies*, decision of 6 August 2021, recital 17 and Case M.9796 – *Uniqa/Axa (Insurance, Asset Management and Pensions – Czechia, Poland, and Slovakia)*, decision of 29 July 2020, recital 7.

12 First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance (OJ L 228, 16.8.1973, p. 3–19); Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC (OJ L 172, 4.7.1988, p. 1–2); Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) (OJ L 228, 11.8.1992, p. 1–23); Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1–155).

13 See e.g., Case M.8010 – *Irish Life/Aviva Health/Glohealth*, decision of 8 June 2016, recital 11; Case COMP/M.6521 – *Talanx International/Meiji Yasuda Life Insurance/Warta*, decision of 4 April 2012, recital 19.

14 Case M.8010 – *Irish Life/Aviva Health/Glohealth*, decision of 8 June 2016, recitals 12-17.

15 Case M.8010 – *Irish Life/Aviva Health/Glohealth*, decision of 8 June 2016, recital 16.

16 Case M.8010 – *Irish Life/Aviva Health/Glohealth*, decision of 8 June 2016, recitals 18-19.

corporate policies), because supply-side substitutability exists between individual health insurance and group health insurance services.[17]

4.2.1.2. The Notifying Party's view

(20) The Notifying Party submits that a separate relevant market should be defined for health insurance services, excluding other types of non-life insurance services.[18] According to the Notifying Party, the market for health insurance services does not include insurance products that offer cash payments in case of accidents or critical illness.[19] The Notifying Party also submits that no separate markets should be defined for individual health insurance services and group health insurance services and that all these services belong to the market for health insurance services.[20]

4.2.1.3. The Commission's assessment

(21) The Commission's investigation confirms the conclusion in *Case M.8010 – Irish Life/Aviva Health/Glohealth*, namely, that a separate relevant market should be defined for health insurance services.[21] When determining whether to purchase the Target, CVC assessed growth trends, profitability and solvency specifically for Ethniki's health insurance business, separate from life insurance and other types of non-life insurance services.[22] Third-party reports on insurance services in Greece refer to market trends in health insurance services separately from other types of non-life insurance.[23] In the market investigation, one of Ethniki's rivals indicates: "*private health insurance in Greece was traditionally offered as an "add-on" to life insurance. However, this practice is gradually being abandoned in the market and health insurance policies are offered on a standalone basis*".[24]

(22) The Commission's investigation also shows that the market for health insurance services should not include insurance products that offer cash payments in case of accidents or critical illness.

(23) In particular, the vast majority of health insurer respondents in Greece confirm that from a demand-side perspective health insurance products are not substitutable with policies offering cash payments for accidents or critical illness.[25] For example, one of Ethniki's rivals notes that accident insurance policies *"are based on a different philosophy* [than health insurance policies, they] *are intended to meet other needs and generally,* [they] *are simpler and more economical in terms of premiums*".[26]

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17 This is because (i) the same competitors typically offer health insurance services to individuals and to groups and (ii) insurers rely on the same resources (i.e., IT systems and personnel) in order to service both customer types. See Case M.8010 – *Irish Life/Aviva Health/Glohealth*, decision of 8 June 2016, recitals 20-21.

18 Form CO, paragraph 128.

19 Form CO, paragraph 129.

20 Form CO, paragraphs 128 and 130.

21 Questionnaire Q1 to competitors in health insurance services, Questions 11 and 12.

22 Form CO, Annex 65, [CVC's INTERNAL DOCUMENTS], 4 March 2020, pp. 16 and 18.

23 E.g., Stochasis Report, Private Insurance, December 2020, p. 21 (Doc ID 82) and IOBE, «Ο Δείκτης Τιμών Υγείας της ΕΛ.ΣΤΑΤ. και το κόστος της Ιδιωτικής Ασφάλισης Υγείας», February 2017, pp. 13ff, available at http://iobe.gr/docs/research/RES_05_A_19042017_REP_GR.pdf, last accessed on 21 February 2022 (Doc ID 1327).

24 Minutes of call with Ethniki's competitor, 11 June 2021, paragraph 9.

25 Questionnaire Q1 to competitors in health insurance services, Questions 11 and 12.

26 Questionnaire Q1 to competitors in health insurance services, Questions 11.1.

Another health insurer respondent states that critical illness insurance products *"cover only specific serious (dread) diseases and pay a lump sum upon their occurence. They do not cover any treatment expenses and also they don't cover the majority of diseases*".[27] In addition, several health insurer respondents indicated that customers purchase insurance policies offering cash payments for accidents or critical illness as a complement to health insurance products.[28]

(24) From a supply-side perspective, the market investigation also confirms that health insurance services are not substitutable with accident and critical illness insurance policies.[29] For health insurance services, insurers often negotiate with healthcare providers regarding the fees of the various medical services and in case of treatment, the insurer pays directly the contracted healthcare provider.[30] By contrast, for accident and critical illness insurance policies, insurers make a lump sum payment directly to the policyholder.[31]

(25) As regards a possible segmentation of the relevant market for health insurance services by customer type, the Commission's investigation did not provide conclusive evidence:

a) On the one hand, all but one of the health insurer respondents submit that they offer both individual and group health insurance products, suggesting that these products are substitutable from a supply-side perspective.[32] In the same vein, the majority of health insurers indicate that they rely on the same resources (e.g., personnel and IT infrastructure) when offering individual health insurance products and group health insurance products, at least to a certain extent;[33]

b) On the other hand, there are indications that the competitive landscape and dynamics are different in individual and in group health insurance products, and that different players are stronger in the provision of each type of services.[34] For example, one of Ethniki's rivals notes: "*the competitive landscape is different in individual health insurance and group health insurance. Both Eurolife and Ethniki are focusing on individual health insurance products, while other competitors (e.g., Metlife) are more active in group health insurance*".[35] Another competitor of Ethniki adds: *"*[i]*ndividual health insurance products are designed in advance for all possible customers* [...] *group health insurance products are designed and priced based on the special characteristics of each account...* [our] *market position in group health insurance services is stronger than in individual health insurance services...*".[36]

(26) In light of the above, the Commission concludes that, for the purposes of this Decision, a separate relevant product market should be defined for health insurance

27 Questionnaire Q1 to competitors in health insurance services, Question 12.1.
28 Questionnaire Q1 to competitors in health insurance services, Question 8.
29 Minutes of call with third party, 16 July 2021, paragraph 6.
30 Form CO, paragraph 128.
31 Minutes of call with third party, 16 July 2021, paragraphs 5 and 6.
32 Questionnaire Q1 to competitors in health insurance services, Question 6.
33 Questionnaire Q1 to competitors in health insurance services, Questions 6.1 and 6.1.1.
34 Response of third party to Request for Information, submission dated 28 January 2022, Question 1.
35 Minutes of call with Ethniki's competitor, 11 June 2021, paragraph 8.
36 Minutes of call with Ethniki's competitor, 31 August 2021, paragraphs 10-11.

services. This market should not include insurance policies that offer cash payments in case of accidents or critical illness. The question whether the relevant market for health insurance services should be sub-segmented by customer type can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement, under any of the following plausible product market definitions: (i) all health insurance services; (ii) individual health insurance services; or (iii) group health insurance services.

4.2.2. Geographic Market Definition

4.2.2.1. The Commission's decisional practice

(27) The Commission generally considered the geographic scope of non-life insurance services markets as national in scope.[37] In Case M.8010 – *Irish Life/Aviva Health/Glohealth*, the Commission found that the relevant market for health insurance services was national in scope.[38]

4.2.2.2. The Notifying Party's view

(28) The Notifying Party agrees with the Commission's conclusion in Case M.8010 – *Irish Life/Aviva Health/Glohealth*. As such, the Notifying Party takes the view that the market for health insurance services should be defined as including the whole of Greece.[39]

4.2.2.3. The Commission's assessment

(29) The Commission's investigation confirms the conclusion in Case M.8010 – *Irish Life/Aviva Health/Glohealth* that the market for health insurance services is national in scope. In the present case, the Commission found that the health insurance services market (and its plausible sub-segments)[40] should be defined as including the whole of Greece for the following reasons:

a) All health insurance service providers and products in Greece are subject to the relevant provisions of Law 4364/2016;

b) Players who want to start offering health insurance services anywhere in Greece need to receive prior authorisation by the Bank of Greece, the competent national authority for all insurance products in the country; and

c) In the market investigation, the vast majority of health insurer respondents submit that they offer the same insurance products in all regions of Greece.[41]

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37 See most recently, Case M.10229 – *Allianz/Aviva Italia*, decision of 29 June 2021, recital 17 with further references. Only exceptionally, the Commission considered that the relevant markets are potentially wider than national for certain risk classes of non-life insurance (e.g., MAT insurance). Regarding insurance services in Greece, see, in the same vein, Hellenic Competition Commission, 732/2021, *Generali/AXA*, recital 66.

38 Case M.8010 – *Irish Life/Aviva Health/Glohealth*, decision of 8 June 2016, recitals 24-25.

39 Form CO, paragraph 133.

40 See recital (26) above.

41 Questionnaire Q1 to competitors in health insurance services, Question 13. In the same vein, Minutes of call with third party, 16 July 2021, paragraph 8.

(30) In light of the above, the Commission concludes that, for the purposes of this Decision, the plausible markets for all health insurance services, for individual health insurance services, and for group health insurance services are national in scope and cover the entire territory of Greece.

4.3. Private Hospital Services

4.3.1. Product Market Definition

4.3.1.1. The Commission's and the HCC's decisional practice

(31) In its past decisional practice, the Commission considered whether separate markets exist for public and for private hospital services. The Commission found that this depends on the way healthcare systems are structured, regulated, and funded in each Member State. For example, the Commission found that separate markets exist for private hospital services and for public hospital services in the UK[42] and Germany[43] but market investigation results did not support such a distinction in France.[44] The Hellenic Competition Commission (the "HCC") consistently found in its past decisions, that there are separate markets for public and private hospital services in Greece,[45] due to (i) the different characteristics of the two (e.g., the level of investment in medical equipment, the ability to select treating physicians by the patients, the speed in which the relevant services are executed, and the price) and (ii) the different treatment of the two by EOPYY, e.g., in terms of the level of reimbursement per treatment.[46]

(32) Within private hospital services, the Commission in the past considered whether separate markets exist for inpatient and outpatient hospital services.[47] The Commission also discussed whether within private hospital services, separate relevant markets should be defined for services in each medical specialisation.[48] The precise product market delineation was ultimately left open.

(33) Finally, within private hospital services in Greece, the HCC defined three separate markets: (i) general private hospital services; (ii) maternity hospital services; and (iii) diagnostic centre services.[49]

4.3.1.2. The Notifying Party's view

(34) The Notifying Party agrees with the distinction between public and private hospital services in Greece. Following the HCC's decisional practice, the Notifying Party takes the view that there are separate relevant markets for general private hospital services; maternity hospital services; and, diagnostic centre services.[50] The Notifying Party submits that the market for general private hospital services should

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42 Case M.4367 – *APW/APSA/Nordic Capital/Capio*, decision of 16 March 2007, recitals 11-13.

43 Case M.8146 – *Carlyle/Schön Family/Schön Klinik*, decision of 15 November 2016, recital 11.

44 Case M.5805 – *3i/Vedici Groupe*, decision of 21 May 2010, recitals 10-12.

45 Hellenic Competition Commission, 667/2018, *HHG/Hygeia*, recital 36 with references to earlier cases.

46 Hellenic Competition Commission, 667/2018, *HHG/Hygeia*, recital 36 with references to earlier cases.

47 Case M.8146 – *Carlyle/Schön Family/Schön Klinik*, decision of 15 November 2016, recital 10.

48 Case M.8146 – *Carlyle/Schön Family/Schön Klinik*, decision of 15 November 2016, recital 12.

49 Hellenic Competition Commission, 667/2018, *HHG/Hygeia*, recitals 39 and 42 with references to earlier cases.

50 Form CO, paragraph 145.

not be segmented further (i.e., by medical specialisation or between inpatient and outpatient services).[51]

4.3.1.3. The Commission's assessment

(35) The Commission's investigation shows that public hospital and private hospital services in Greece do not belong to the same market. In the market investigation, the vast majority of private hospital respondents confirm that public hospital services and private hospital services in Greece are not interchangeable based on prices; quality of medical operations; patient comfort; or availability of beds.[52] Greek patients also seem to agree with this conclusion. A 2019 survey conducted for HHG shows that 58% of those who were treated in or visited public hospitals were satisfied, while in private hospitals, satisfaction rate was 85%.[53]

(36) The Commission's investigation also confirms that separate relevant markets should be defined for general private hospital services; maternity hospital services; and diagnostic centre services:

a) In the market investigation, the vast majority of private hospital respondents submit that it is appropriate to distinguish between private general hospital services and private maternity hospital services in Greece.[54] As one of HHG's rivals puts it, the two types of hospitals differ because "*the legislative requirements... the patients' needs... the doctors' needs...* [and] *the overall business models differ*".[55] Another private hospital operator explains: "[m]*aternity [c]linics are narrowly focused on the births and associated female medicine. Most maternity clinics are managed by gynaecologists and were set up by them as partnerships. The revenue is produced by the doctor there who easily decides to move to another maternity clinic. Private* [g]*eneral* [h]*ospitals are for all other cases and in most cases the patient comes through the hospital's reputation or because of their insurers agreement with the hospital".*[56]

b) In the market investigation, the vast majority of private hospital respondents also submit that it is appropriate to distinguish between general private hospital services and diagnostic centre services in Greece.[57] One of HHG's competitors notes: "[d]*iagnostic centres offer a different range of healthcare services than general clinics, targeting mostly outpatients (i.e. patients that will not stay in the hospital for inpatient treatment). Such centers offer a range of examinations such as blood tests, MRI scans, CT scans, as well as limited doctor specialties (pathologist, general surgeon, cardiologist)... Additionally, a diagnostic services network usually offers much more (and smaller) points of sale compared to a hospital group, as part of its business strategy...".*[58]

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51 Form CO, paragraph 141.

52 Questionnaire Q2 to private hospital services providers, Question 2.

53 Form CO, Annex 1023, ALCO HHG Healthcare Research Report 2019, p. 26.

54 Questionnaire Q2 to private hospital services providers, Question 10.

55 Questionnaire Q2 to private hospital services providers, Question 10.1.

56 Questionnaire Q2 to private hospital services providers, Question 10.1.

57 Questionnaire Q2 to private hospital services providers, Question 11.

58 Questionnaire Q2 to private hospital services providers, Question 11.1.

c) A third-party report also discusses market trends in private hospital services in Greece separately for (i) general private hospitals; (ii) maternity private hospitals; and (iii) diagnostic centres.[59]

(37) Finally, the Commission's investigation suggests that it is not necessary to segment further the relevant market for general private hospital services in Greece (i.e., by medical specialisation or between inpatient and outpatient services). This is the case for the following reasons:

a) From a supply-side substitutability perspective, the Commission notes that providers of general private hospital services already today offer both inpatient and outpatient services and for several medical specialisations. In the market investigation, all but one of the private hospital respondents submit that they offer both inpatient and outpatient services in their hospitals.[60] Moreover, the vast majority of private hospitals in Attica today offer several and comparable medical specialisations. In the market investigation, the majority of private hospital respondents submit that they expanded the specialisations offered in their hospitals in the past 3 years.[61] Most of the private hospital respondents estimate that they managed this expansion within 1-2 years.[62]

b) From a demand-side substitutability perspective, the Commission notes that the treatment of certain ailments may require involvement of doctors and equipment across specialities (e.g., treatment by a gastroenterologist following surgery in the hospital's general surgery department).[63]

c) As regards demand specifically from insurance companies, the Commission notes that many of them need to cooperate with private hospitals both on inpatient and outpatient services. For example, the top three health insurance players in Greece (NN, Ethniki, and Generali) offer insurance policies which cover both inpatient and outpatient services.[64]

(38) In light of the above, the Commission concludes that, for the purposes of this Decision, separate relevant product markets should be defined for general private hospital services; maternity hospital services; and diagnostic centre services. The Commission also finds that it is not necessary to segment further the relevant market for general private hospital services in Greece (by medical specialisation or between inpatient and outpatient services).

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59 Form CO, Annex 8, 2020 ICAP Report on Private Healthcare Services, p. 4.

60 Questionnaire Q2 to private hospital services providers, Question 2.

61 Questionnaire Q2 to private hospital services providers, Question 9.

62 Questionnaire Q2 to private hospital services providers, Question 9.1.

63 Form CO, paragraph 144.

64 I.e., Orange Health and Orange Cross by NN (as reported in NN's official website (Doc ID 1333)); Full Health by Ethniki (Form CO, paragraph 207(a)); Life On; Medical Prime; and Medical Select by Generali (as reported in Generali's official website (Doc IDs 1328, 1329, and 1330)). According to the Notifying Party, the majority of Ethnini's GWP in 2018, 2019, and 2020 […] (Form CO, Table 7).

4.3.2. Geographic Market Definition

4.3.2.1. The Commission's and the HHC's decisional practice

(39) In prior decisions, the Commission indicated that the market for private hospitals was not broader than national in scope.[65] The HCC found that the markets for general private hospital services, maternity hospital services, and diagnostic centre services are national in scope and thus, they cover the entirety of Greece.[66]

4.3.2.2. The Notifying Party's view

(40) The Notifying Party submits that the market for general private hospital services is national in scope because: (i) insurers in Greece negotiate with hospital groups on a national basis; (ii) patient demand for medical services is primarily based on doctor expertise and hospital reputation and it is less sensitive to location; (iii) the majority of Ethniki's insured patients residing outside the Attica region also select a private hospital in the Attica region; (iv) insurance policies typically do not vary according to geography; and (v) Attica is just the "centre" of a national market, because the majority of Greece's population lives in Attica.[67]

(41) The Notifying Party takes the view that the markets for maternity hospital services and diagnostic centre services are also national in scope.[68]

4.3.2.3. The Commission's assessment

(A) General Private Hospital Services

(42) The Commission's investigation shows that there is a separate relevant market for general private hospital services which is limited to Attica. This is the case for the following reasons.

(43) *First*, the vast majority of private hospital providers submit that in case of service quality decrease in a private hospital in Attica, patients would only consider alternatives in Attica.[69] One of the competitors of HHG states: "*the geographic market for private healthcare services* [is] *Attica-wide and not national* […] *the catchment area of private hospitals in Athens is the wider Attica region*."[70] Another rival adds: "*it is highly unlikely* [for] *citizens – patients to travel outside Attica for hospital care. Traditionally the best quality of care in terms of... private facilities and doctors are located in* [the] *Attica region*".[71]

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65 Most recently, see Case M.9044 – *CVC/Recordati*, decision of 4 December 2018, recital 22.

66 Hellenic Competition Commission, 667/2018, *HHG/Hygeia*, recitals 44-46 with references to earlier cases.

67 Form CO, paragraph 147 and Annex 1008, HHG – Market Shares in Athens dated 2018-2020, paragraph 1.14.

68 Form CO, Annex 1008, HHG – Market Shares in Athens dated 2018-2020, paragraph 1.17.

69 Questionnaire Q2 to private hospital services providers, Question 13. One of the private hospital respondents notes: "*patients will definitely exhaust their alternatives within the Attica region and then, if absolutely necessary, will most likely turn to alternatives abroad... instead of looking for healthcare options in other regions within Greece*" (Questionnaire Q2 to private hospital services providers, Question 13.2).

70 Minutes of call with HHG's competitor, 24 September 2021, paragraph 5.

71 Questionnaire Q2 to private hospital services providers, Question 13.

(44) *Second*, health insurance providers who often cover claims for general private hospital services also indicate that private hospitals do not compete across regions of Greece and that private hospitals in Attica compete with each other. One of Ethniki's competitors submits: "*customers based in Athens and Thessaloniki seek treatment in Athens and Thessaloniki respectively.* [Our] *customers who live in other parts of Greece without good public hospitals in close proximity may source healthcare services in Athens or Thessaloniki*".[72] Another rival of Ethniki adds: "*[p]olicyholders who reside in Athens or Thessaloniki will seek healthcare in Athens or Thessaloniki, respectively. Exceptionally, policy holders who reside in areas close to Athens... or in the islands will come to Athens for healthcare services*."[73]

(45) *Third*, when considering acquisitions of private hospitals in Attica in 2017-2020, CVC only took into account competition from other private hospitals in Attica. For example, when considering the purchase of Hygeia in 2018, CVC noted: "[…]".[74] In a different document prepared for the same investment opportunity, CVC identified […].[75] In September 2020, CVC noted that "[…]".[76]

(46) *Fourth*, the Notifying Party submits that [90-100]% of Ethniki's insured patients residing in the Attica region select a private hospital in the Attica region. [60-70]% of Ethniki's insured patients residing outside the Attica region also select a private hospital in the Attica region. The Notifying Party considers that this supports the existence of a "*national (albeit Attica-centric) market for private general hospitals*".[77] However, the fact that many patients travel to Attica from other regions of Greece to seek treatment does not mean that the relevant geographic market should be defined at national level. Instead, this fact confirms that private hospitals in Attica have *"... the highest level of care in Greece, have the most capacity, the shortest distance for the largest population in Greece, and the largest doctor selection*".[78] For these reasons, private hospitals in Attica do not compete with private hospitals in other regions of the country.

(47) *Fifth*, contrary to the Notifying Party's claims, most of the private hospital respondents in the Commission's market investigation indicate that they are active only in one region (and typically, in Attica).[79] But even considering the few competitors who operate hospitals in more than one regions, their activities do not support a national geographic market definition for general private hospital services. For example, HHG operates five hospitals in Attica and one in Crete (Creta Interclinic). In its internal strategy document for FY2021, HHG indicates that Creta Interclinic should focus on demand of tourists and local population in Crete[80] and thus, it would not compete with hospitals in Attica. Another example of a private hospital service provider which operates hospitals in and outside Attica is Athens

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72 Minutes of call with Ethniki's competitor, 7 June 2021, paragraph 10.

73 Minutes of call with Ethniki's competitor, 11 June 2021, paragraph 14. See also third party's Submission to the European Commission, 14 June 2021, p. 6.

74 Form CO, Annex 43, [CVC's INTERNAL DOCUMENTS], 4 July 2018, p. 5.

75 Form CO, Annex 41, [CVC's INTERNAL DOCUMENTS], 23 April 2018, p. 11. In the same vein, see Form CO, Annex 35, [CVC's INTERNAL DOCUMENTS], 8 February 2017, p. 18, [CVC's INTERNAL DOCUMENTS].

76 Form CO, Annex 47, [CVC's INTERNAL DOCUMENTS], 30 September 2020, p. 3 (emphasis added).

77 Form CO, paragraph 147(d).

78 Questionnaire Q2 to private hospital services providers, Question 13.2.

79 Questionnaire Q2 to private hospital services providers, Question 2.

80 Form CO, Annex 79, [CVC's INTERNAL DOCUMENTS], 21 January 2021, p. 38.

Medical Group ("AMG"). AMG operates five hospitals in Attica and one in Thessaloniki (Interbalkan Medical Centre). During the Commission's market investigation, AMG submitted: "*private hospitals outside Attica do not exert any competitive pressure on private hospitals in the Attica region... the catchment area of Attica-based hospitals still does not span beyond the Attica region...*".[81]

(48) In light of the above, the Commission concludes that the relevant market for general private hospital services is local in scope and for the purposes of this Decision, the Commission will focus on the market for general private hospital services in Attica.

(B) Maternity Private Hospital Services and Diagnostic Centre Services

(49) The Commission cannot exclude that the geographic scope of the markets of maternity private hospital services and diagnostic centres services is narrower than national for the reasons listed in paragraphs (42)*ff* regarding general private hospital services. In any event, the Commission concludes that, for the purposes of this Decision, it can be left open whether maternity private hospital services and diagnostic centre services are national or local markets, because they are not affected by the proposed Transaction under any plausible geographic market delineation.[82]

5. COMPETITIVE ASSESSMENT

5.1. Analytical Framework

(50) Article 2 of the Merger Regulation requires the Commission to examine whether notified concentrations are compatible with the internal market, by assessing whether they would significantly impede effective competition in the internal market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position.

(51) According to the guidance set out in the Non-Horizontal Merger Guidelines[83], a merger between undertakings operating at different levels of the supply chain may significantly impede effective competition if such a merger gives rise to foreclosure.[84] Foreclosure occurs where actual or potential competitors' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing those companies' ability and/or incentive to compete.[85] Such foreclosure may discourage entry or expansion of competitors or encourage their exit.[86]

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81 Questionnaire Q2 to private hospital services providers, Question 13.2. See in the same vein, Minutes of call with HHG's competitor, 24 September 2021, paragraphs 5-6.

82 The Commission notes that HHG's market shares in maternity private hospital services and in diagnostic centres services in Greece and in Attica are below 30% in 2020 (in terms of revenue and number of beds). Ethniki's share in the downstream market for health insurance services in Greece also remains below 30% across all plausible product market definitions (see Section 5.3 below). Therefore, the Transaction does not give rise to vertically affected markets involving HHG's maternity private hospital services or diagnostic centre services.

83 Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Non-Horizontal Merger Guidelines"), OJ C265, 18.10.2008.

84 Non-Horizontal Merger Guidelines, paragraphs 17-18.

85 Non-Horizontal Merger Guidelines, paragraph 18.

86 Non-Horizontal Merger Guidelines, paragraph 29.

(52) The Non-Horizontal Merger Guidelines identify two forms of foreclosure: input and customer foreclosure. Input foreclosure occurs where the merger is likely to raise the costs of downstream competitors by restricting their access to an important input. Customer foreclosure occurs where the merger is likely to foreclose upstream competitors by restricting their access to a sufficient customer base.[87]

(53) Pursuant to the Non-Horizontal Merger Guidelines, 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.[88]

(54) In assessing the likelihood of an anticompetitive input foreclosure scenario, the Commission examines, *first*, whether the merged entity would have, post-merger, the ability to substantially foreclose access to inputs; *second*, whether it would have the incentive to do so; and *third*, whether a foreclosure strategy would have a significant detrimental effect on competition downstream.[89]

(55) Pursuant to the Non-Horizontal Merger Guidelines, customer foreclosure may occur when a supplier integrates with an important customer in the downstream market. As a result 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 to profitably establish higher prices on the downstream market.[90]

(56) In assessing the likelihood of an anticompetitive customer foreclosure scenario, the Commission examines, *first*, whether the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from its upstream rivals; *second*, whether it would have the incentive to reduce its purchases upstream; and *third*, whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.[91] For customer foreclosure to be a concern, a vertical merger must involve a company which is an important customer with a significant degree of market power in the downstream market. If, on the contrary, there is a sufficiently large customer base, at present or in the future, that is likely to turn to independent suppliers, the Commission is unlikely to raise competition concerns on that ground.[92]

(57) The three conditions for assessing vertical effects are cumulative so that the absence of any of them is sufficient to rule out the likelihood of anti-competitive customer or input foreclosure.[93]

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87 Non-Horizontal Merger Guidelines, paragraph 30.

88 Non-Horizontal Merger Guidelines, paragraph 31.

89 Non-Horizontal Merger Guidelines, paragraph 32.

90 Non-Horizontal Merger Guidelines, paragraph 58.

91 Non-Horizontal Merger Guidelines, paragraph 59.

92 Non-Horizontal Merger Guidelines, paragraph 61.

93 See Case T – 370/17 *KPN BV v European Commission*, Judgment of the General Court of 23 May 2019, EU:T:2019:354, paragraph 119.

(58) Finally, a merged entity may, by vertically integrating, gain access to commercially sensitive information regarding the upstream or downstream activities of rivals. The Commission will examine whether based on this information, the merged entity would compete less aggressively in the upstream or downstream market or put rivals at a competitive disadvantage, dissuading them from entering or expanding in the upstream or downstream markets.[94]

5.2. Overview of affected markets

(59) HHG is active in private hospital services in Attica and Crete and Ethniki is active in health insurance services in Greece.[95] There is a vertical relationship between these activities of the Parties as private hospital services are an important input for insurance companies who wish to offer health insurance services.[96]

(60) The Transaction results in vertically affected markets[97] in:

a) general private hospital services in Attica[98] (upstream); and,

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94 Non-Horizontal Merger Guidelines, paragraph 78.

95 HHG offers private hospital services and Ethniki offers health insurance services also in Cyprus but their share does not exceed 30% in the relevant upstream or downstream markets (Form CO, paragraphs 157ff). Therefore, the proposed Transaction does not give rise to vertically affected markets in relation to these activities of the Parties.

96 In the same vein, see Hellenic Competition Commission, Sector Inquiry into Health Services, available at https://www.epant.gr/en/enimerosi/health html, last accessed on 21 February 2022 (Doc ID 1334). The Commission's market investigation confirmed that the relationship between private hospital services and health insurance services is vertical (see HHG's competitor, Preliminary note on the anti-competitive effects of the proposed acquisition of Ethniki Insurance by CVC Capital Partners' Fund VII, 10 September 2021, paragraph 12 and HHG's competitor, Report on ToH, 27 September 2021, paragraph 1.20). One third party which had pre-notification contacts with the Commission and participated in the market investigation acknowledged that the relationship between private hospital services and health insurance services is vertical but in the alternative, also considered that the relationship between these markets could give rise to a conglomerate merger (third party's Submission to the European Commission, 14 June 2021, pp. 12ff and Minutes of call with third party, 16 July 2021, paragraph 21). This is not discussed further in this Decision, as the Commission considers the relationship between private hospital services and health insurance services to be vertical.

97 The Notifying Party submits that CVC does not intend to integrate HHG and the Target, but will continue operating them on an arm's length basis as two independent businesses under separate fund ownership. According to the Notifying Party, given that the businesses will be run independently by their respective management teams and Boards of Directors, and held in different funds, there is no mechanism by which the proposed Transaction may result in vertically affected markets or create foreclosure concerns (Form CO, paragraphs 60ff). However, it is in the Commission's general practice to consider horizontal overlaps and vertical relationships irrespective of the corporate structure of the entities post-Transaction. See, for example, Case M.7058 – *EQT VI/Terveystalo Healthcare*, decision of 3 December 2013; Case M.8274 – *Cinven/Permira/Allegro/Ceneo*, decision of 21 December 2016; Case M.8341 – *Lone Star Fund/Xella International*, decision of 29 March 2017. For this reason and for the purposes of this Decision, HHG and Ethniki are together referred as "the combined entity".

98 The Commission notes that HHG also operates a hospital in Crete. According to the local geographic market definition concluded for the purposes of this Decision above, Crete would need to be assessed as a separate market. However, according to the Notifying Party's best estimates, HHG's market share in general private hospital services in Crete does not exceed 30% in 2020 (based on revenues or number of beds). In addition, the Notifying Party confirms that HHG's hospital in Crete (i) does not offer private maternity services and (ii) has a market share that is lower than 30% in the private diagnostic centre services (Response of the Notifying Party to Request for Information I-7, submission dated 4 February 2022, Question 1). Ethniki's share in the downstream market for health insurance services in Greece also remains below 30% across all plausible product market definitions (see Section 5.3 below). Therefore, the

b) health insurance services in Greece (downstream).

5.3. Market Shares in Affected Markets

(61) Table 1 below provides an overview of the 2020 market shares of Ethniki and its competitors in private hospital services in Greece (including both individual and group health insurance services). Table 2 below provides Ethniki's 2020 market shares in private individual health insurance services and in private group health insurance services in Greece.

Table 1: Private health insurance market shares (Greece, 2020)[99]

Private Health Insurance in Greece (2020)		
Entity	**GWP (EUR 000)**	**Market Share**
NN + Metlife[100]	[…]	[20-30]%[101]
Ethniki	***[…]***	***[20-30]%***
Generali/AXA	[…]	[10-20]%
Interamerican Life	[…]	[10-20]%
Eurolife Life	[…]	[5-10]%
European Reliance	[…]	[5-10]%
Allianz	[…]	[0-5]%
Groupama	[…]	[0-5]%
Ergo	[…]	[0-5]%
Others	[…]	[0-5]%
Total	**[…]**	**100.0%**

Transaction does not give rise to vertically affected markets involving HHG's private hospital services in Crete.

99 Form CO, Table 21. One third party which had pre-notification contacts with the Commission and participated in the market investigation notes that Ethniki had a share of approximately [20-30]% in life insurance services but this could be considered a good proxy for Ethniki's share in health insurance services in Greece (Response of third party to Request for Information, submission dated 28 January 2022, Question 2 and Annex 1).

100 See Case M.10447 – *NN/Metlife Greece/Metlife Poland*, decision of 8 December 2021. The transaction was completed on 31 January 2022 (as announced at https://www.nnhellas.gr/Portals/0/PDFs/PressReleases-GR/2022/MetLifeAcquisition_31012022_GR.pdf, last accessed on 21 February 2022 (Doc ID 1332)). The Commission has aggregated the market shares that the Notifying Party provided separately for NN and Metlife in Form CO, Table 21.

101 Gross Written Premiums. The Notifying Party confirms that Ethniki's share in health insurance services would be [20-30]% in 2020 if it were estimated on the basis of the number of insured customers (Form CO, Annex 277, Ethniki market shares – Individual and Group (2018-2020), Table 2).

Table 2: Private individual and private group health insurance market shares (Greece, 2020)[102]

Private individual health insurance and Private group health insurance in Greece (2020)				
Entity	Private individual health insurance (Greece)		Private group health insurance (Greece)	
	GWP (EUR 000)	Market Share	GWP (EUR 000)	Market Share
Ethniki	[…]	[20-30]%[103]	[…]	[10-20]%[104]
Total[105]	[…]	100.0%	[…]	100.0%

(62) Table 3 below provides an overview of HHG's market shares in the private hospital services market and its relevant segments in Attica.

Table 3: Private Hospital Services Market Shares (Attica 2019/2020)

Private Hospital Services[106]				
General Private Hospital services in Attica (2019/2020)				
Entity	Revenues		Private Hospital Beds	
	EUR '000 (2020)	Market Share	Number of beds (2019)	Market Share
HHG	***[…]***	***[40-50]%***	***[…]***	***[30-40]%***
AMG	[…]	[10-20]%	[…]	[10-20]%
Imithea S.A. (Henry Dunant)	[…]	[5-10]%	[…]	[10-20]%
Euroclinic of Athens	[…]	[5-10]%	[…]	[0-5]%
Draginis S.A. (Mediterraneo)	[…]	[0-5]%	[…]	[0-5]%
Athens Bioclinic S.A.	[…]	[0-5]%	[…]	[0-5]%
IASO S.A.	[…]	[0-5]%	[…]	[0-5]%
Others	[…]	[10-20]%	[…]	[30-40]%
Total	***[…]***	***100%***	***[…]***	***100%***

5.4. Total or partial input foreclosure relating to health insurance services in Greece

(63) In this Section, the Commission assesses whether the proposed Transaction would result in foreclosure of Ethniki's rivals in the downstream market for health insurance services in Greece, if HHG limited access to its general private hospital services upstream.

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[102] The Notifying Party [EXPLANATIONS ON MARKET SHARE ESTIMATION].

[103] The Notifying Party confirms that Ethniki's share in individual health insurance services would be [20-30]% in 2020 if it were estimated on the basis of the number of insured customers (Form CO, Annex 277, Ethniki market shares – Individual and Group (2018-2020), Table 2).

[104] The Notifying Party confirms that Ethniki's share in group health insurance services would be [20-30]% in 2020 if it were estimated on the basis of the number of insured customers (Form CO, Annex 277, Ethniki market shares – Individual and Group (2018-2020), Table 2).

[105] According to the Notifying Party, since there are no public data on the split of competitors' GWP between individual and group health products, the Target was unable to provide competitor shares on this basis. The Notifying Party submits that Ethniki considers its top competitors in private individual health insurance services in Greece and in private group health insurance services in Greece in 2020 to be: NN, Metlife, Interamerican, Generali/AXA and Eurolife (Form CO, Annex 277, Ethniki market shares – Individual and Group (2018-2020), paragraph 3).

[106] Form CO, Tables 12-14 and 16-18.

(64) On the basis of the submissions from respondents to the market investigation, the Commission identified three key sets of potential input foreclosure practices:

a) total foreclosure, whereby HHG would offer general private hospital services in Attica only to policyholders of Ethniki and not to policyholders of any other health insurer in Greece;

b) price-based partial foreclosure, whereby HHG would increase the prices that it offers to Ethniki's rivals for general private hospital services in Attica;

c) non-price-based partial foreclosure, whereby (i) HHG would make it harder for policyholders of Ethniki's rivals to receive reimbursement for the fees of general private hospital services in HHG hospitals in Attica or (ii) HHG would withdraw the benefits it offers from policyholders who are not insured with Ethniki and maintain them only for policyholders of Ethniki.

5.4.1. The Notifying Party's view

(65) The Notifying Party submits that the Transaction would not give rise to input foreclosure concerns related to health insurance services in Greece. This is because HHG and Ethniki would not have the incentive to engage in input foreclosure by limiting access to HHG's general private hospital services for Ethniki's rivals. According to the Notifying Party, HHG would not risk engaging in an input foreclosure strategy because: (i) [70-80]% of HHG's revenues from private insurers come from Ethniki's rivals; (ii) the profit margins downstream in health insurance services are much lower than the profit margins upstream in private hospital services; (iii) customers of Ethniki's rivals would switch away from HHG to one of the many hospitals that exist in the very close vicinity of an HHG hospital; (iv) doctors at HHG hospitals would also switch away from HHG following their patients.[107]

5.4.2. The Commission's assessment

5.4.2.1. Ability to Foreclose

(66) As regards the combined entity's ability to engage in customer foreclosure to the detriment of private health insurers in Greece, the Commission notes the following.

(67) *First*, the Commission's investigation suggests that private hospital services is an important input for health insurance services in the downstream market. The Commissions' market investigation confirms that the reimbursement of private hospital services represents a significant cost factor relative to the price of the downstream products.[108] The vast majority of health insurer respondents estimates that this represents more than 50% of the total cost base for their health insurance products.[109] Moreover, all health insurer respondents indicate that cooperation agreements with hospitals are very important as regards the offering of health

[107] Form CO, p. iv.

[108] Non-Horizontal Merger Guidelines, paragraph 34.

[109] Questionnaire Q1 to competitors in health insurance services, Question 23.

insurance products.[110] HHG hospitals today have a cooperation agreement with all the main health insurers in Greece.[111]

(68) *Second*, as reflected in Table 3 above, HHG holds a market share of [40-50]% in general private hospital services in Attica in terms of revenues and [30-40]% in terms of number of beds. The second largest competitor in general private hospital services in Attica is AMG, with a market share of [10-20]% in terms of revenues and [10-20]% in terms of number of beds. In the Commission's market investigation, private hospital respondents score the majority of HHG hospitals among the most competitive private hospitals in Athens.[112]

(69) However, the Commission's market investigation did not provide any evidence that by reducing access to its own upstream services, HHG could negatively affect the overall availability of inputs for the downstream market in terms of price or quality:[113]

a) The majority of private hospital respondents to the Commission's market investigation rates AMG's hospitals among the most competitive private hospitals in Athens, alongside HHG's hospitals;[114] and

b) There are several private hospitals in the Attica region that provide a comparable range of treatments and services as HHG's hospitals,[115] which is also evident by the fact that health insurer respondents to the Commission's market investigation do not only have cooperation agreements with HHG's hospitals but also with most of the major hospitals in Attica.[116]

(70) Apart from HHG's strong position in the market of general private hospital services in Attica, which however comes alongside AMG's strong position as well, the Commission's market *investigation* did not provide any further elements supporting that HHG hospitals offer treatments or services that other competitors do not.

(71) *Third*, the Commission also considers effective and timely counter-strategies that Ethniki's rivals could deploy if the combined entity engaged in customer foreclosure.[117] The results of the Commission's market investigation with regard to health insurer counter-strategies are mixed.

(72) On the one hand, private health insurance respondents confirm that they "*could do certain actions to react and potentially these actions could be a deterrent counter-strategy*", such as the "*design of new products in cooperation with other hospitals*", "*steering away from HHG, exiting the cooperation with HHG, seeking improved*

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110 Questionnaire Q1 to competitors in health insurance services, Question 25.

111 Questionnaire Q1 to competitors in health insurance services, Questions 3 and 24.

112 Questionnaire Q2 to private hospital services providers, Question 15. See in the same vein, Response of HHG's competitor to Request for Information, submission dated 22 September 2021, Question 20; Minutes of call with Ethniki's competitor, 9 June 2021, paragraph 19; Minutes of call with Ethniki's competitor, 11 June 2021, paragraph 17 (a).

113 Non-Horizontal Merger Guidelines, paragraph 36.

114 Questionnaire Q2 to private hospital services providers, Question 15.

115 Form CO, Annex 7, Comparative Table of Hospital Services. See in the same vein, Hellenic Competition Commission, 667/2018, *HHG/Hygeia*, recitals 68-69.

116 Questionnaire Q1 to competitors in health insurance services, Question 24.1.

117 Non-Horizontal Merger Guidelines, paragraph 39.

rates with other hospitals".[118] However, virtually all health insurer respondents are not certain whether these strategies would be effective, given the strong market position of HHG.[119]

(73) On the other hand, the majority of health insurer respondents also indicate that designing (i) health insurance products whereby the insured customer has to pay different co-payments or deductibles based on the private hospital they choose, or (ii) customised health insurance products where the prospective insured customer has access to a basic network of hospitals with the standard premium but can also have access to a wider network of hospitals with a higher premium can work as a counter-strategy in case HHG increased the prices of private hospital services.[120] Such health insurance products exist already in Greece[121] and Ethniki's competitors currently represent […] of HHG's revenues from private health insurers.[122]

(74) In light of the above, the Commission considers that post-Transaction, it is unclear whether the combined entity would be able to engage in customer foreclosure to the detriment of private health insurers in Greece.

5.4.2.2. Incentive to Foreclose

(75) The Commission considers that the combined entity would not have the incentive post-Transaction to foreclose private health insurers in Greece.

(76) *First*, the evidence in the Commission's file indicates that Ethniki's margins in the downstream market of health insurance services are significantly lower than HHG's margins in the upstream market of general private hospital services. In more detail:

a) HHG had […] profit margins in the upstream market of general private hospital services, namely […]% on average for the years 2018-2020;[123]

b) On the contrary, Ethniki shows lower profitability in the downstream market of health insurance services. Ethniki's health insurance products that are currently open to new members[124] have a margin of […]% on average for the years 2018-2020. The Commission notes that the lower profitability of health insurance policies is also confirmed by other measures of margins.[125]

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118 Questionnaire Q1 to competitors in health insurance services, Question 40.2.

119 Questionnaire Q1 to competitors in health insurance services, Question 40.2.

120 Questionnaire Q1 to competitors in health insurance services, Questions 26.2 and 27.2.

121 See, for example, Interamerican's BEWELL health insurance product, available at https://www.interamerican.gr/eksyphrethsh/ygeia/nosokomeia, last accessed on 21 February 2022 (Doc ID 1326) and Minutes of call with Ethniki's competitor, 11 June 2021, paragraph 5.

122 Questionnaire Q1 to competitors in health insurance services, Question 40.2. See also recital (100) below.

123 Form CO, Annex 1090, RFI 4 – 11 October 2021 – Second Submission, Question 3, Table 2.

124 Form CO, Annex 1091, RFI 5 – 29 October 2021 – First Submission, Question 25; Form CO, Annex 1090, RFI 4 – 11 October 2021 – Second Submission, Question 3, Table 1; Form CO, Annex 1027, Input for Q25.

125 The downstream margin of […]% is the variable profit margin for Ethniki's health insurance products open to new members in Greece. When restricting to the Attica region, the variable profit margin of Ethniki for health insurance products open to new members would be even lower at […]% (Form CO, Annex 273, Ethniki Health Insurance Profit Margins (2020)). In addition, the variable profit margins for Ethniki's health insurance policies (i.e., including all contracts currently in place) are also lower in the P&L accounts: […]% in 2020 ([…]% for individual health policies and […]% for group life & health

(77) Therefore, for each EUR of revenue that is lost by HHG in the upstream market of general private hospital services, Ethniki would need to gain […] EUR of revenue in the downstream market of health insurance services in order to recoup the lost upstream margin. In other words, as margins downstream are significantly lower than margins upstream, an input foreclosure strategy would only be profitable if the switching of customers from rival insurers to Ethniki for health insurance services were significantly higher than the switching of patients away from HHG hospitals to other rival hospitals. Based on the switching patterns observed in the downstream market of health insurance services, as further explained in the following recital, it is unlikely that the combined entity would gain sufficient customers downstream to compensate for the loss profit upstream.

(78) In particular, the Commission notes that policyholders do not often switch among health insurers. The low degree of switching observed in the downstream market of health insurance services in Greece suggests that policyholders have a strong preference in remaining with their current health insurer, making it unlikely for the combined entity post-Transaction to capture a large number of health insurance customers following an input foreclosure strategy. The Commission's investigation showed the following:

a) According to Ethniki's estimates, switching rates in the downstream market of health insurance services in Greece are […]% per year;[126]

b) Internal documents of CVC confirm that "[…]".[127]

c) The Commission's market investigation also confirms that insured customers do not often switch private health insurers in Greece.[128] The majority of health insurer respondents indicates that switching rate is below 10% in the health insurance market.[129] As one health insurer respondent puts it, "[i]*n case a customer switches to another insurer, there is no transferability of rights in the health segment; therefore consumers are more reluctant to waive acquired rights in order to obtain a new policy*".[130] This is also confirmed by the Commission's pre-notification contacts, where one insurer explained that "*it is difficult to switch for individual health insurance services as every time the customer decides to switch to a new company and a new plan, a new underwriting process has to be activated taking into consideration the current health status of the*

policies), […]% in 2019 ([…]% for individual health policies and […]% for group life & health policies), […]% in 2018 ([…]% for individual health policies and […]% for group life & health policies) (Response of the Notifying Party to Request for Information I-2, submission dated 31 January 2022, Question 1; Form CO, Annex 1005, Ethniki – Q1). Finally, Ethniki's variable profit margin for all products that include a health insurance policy is […]% on average for the period 2018-2020 (Response of the Notifying Party to Request for Information I-1, submission dated 28 January 2022, Question 4 and Table 5). The low profitability of health insurance products overall is also confirmed by Ethniki's rivals (Minutes of call with Ethniki's competitor, 11 June 2021, paragraph 11).

126 Form CO, paragraph 197 and Table 4.

127 Form CO, Annex 64, [CVC's INTERNAL DOCUMENTS], 29 January 2020, p. 6.

128 Questionnaire Q1 to competitors in health insurance services, Question 17.

129 Questionnaire Q1 to competitors in health insurance services, Questions 17.2 and 17.3.

130 Questionnaire Q1 to competitors in health insurance services, Question 17.1.

customers, which means that possibly a number of pre-existing conditions will not be covered from the new plan".[131]

(79) In light of the above, the Commission considers that even a small proportion of customers switching away from HHG hospitals would be sufficient to make a foreclosure strategy unprofitable for the combined entity post-Transaction.

(80) *Second*, the Commission considers that the combined entity would lack the incentives to engage in an input foreclosure strategy post-Transaction because, contrary to the downstream market for health insurance services, switching rates in the upstream market for general private hospitals are likely to be high. As regards the usage patterns of patients in hospitals, the Commission notes that patients "multi-home" across several hospitals (i.e., use several hospitals over time), which indicates that patients do not have a strong preference for a particular hospital, including for HHG hospitals. In particular, Ethniki's provided data indicates that multi-homing of patients across hospitals is relatively common:

a) Over the period 2012-2021, [60-70]% of patients with two hospitalisation claims or more have used more than one hospital for their treatment;[132]

b) At the level of hospital groups (for example, a patient using several hospitals of the HHG group but no hospital of any other group is not considered as multi-homing), over the 10-year period 2012-2021, [50-60]% of patients with two or more admissions have visited more than one hospital group;[133]

c) In the analysis of patients having attended at least one HHG hospital over the period 2012-2021, [50-60]% of patients with two or more admissions have also used at least one rival hospital.[134]

(81) *Third*, doctors themselves do not have exclusivity agreements with hospitals. As a rival of HHG explained, "*doctors in Greece multi-home across hospitals*".[135] This is also confirmed from the Commission's market investigation, where private hospital respondents indicate that doctors that are employed and are actively practicing at their hospital are also practicing at other private hospitals.[136]

(82) Moreover, doctors direct their patients towards any of the hospitals they cooperate with.[137] This is confirmed from the Commission's market investigation by both health insurer respondents and private hospital respondents. In particular, the vast majority of health insurer respondents indicate that they do not influence the patient's choice of private hospital because freedom of choice is key in the market of

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131 Minutes of call with Ethniki's competitor, 31 August 2021, paragraph 11.

132 Response of the Notifying Party to Request for Information I-2, submission dated 31 January 2022, Question 2, and Annex 1.

133 Response of the Notifying Party to Request for Information I-6, submission dated 3 February 2022, Question 1 and updated Annex 1.

134 Response of the Notifying Party to Request for Information I-6, submission dated 3 February 2022, Question 1 and updated Annex 1.

135 HHG's competitor, Report on ToH, 27 September 2021, paragraph 3.40.

136 Questionnaire Q2 to private hospital services providers, Question 19. See in more detail, recital (175) below.

137 See in more detail, recitals (115)ff. below.

health insurance services in Greece and because patient's choice is doctor-driven.[138] As one health insurer respondent explains, "[k]*nowing the Greek clients are driven mainly by their doctors, we consider open networks and freedom of choice as a key criterion for customer choice*".[139] Private hospital respondents also confirm that the advice received by the patient's doctor is by far the most important criterion when choosing a private hospital.[140]

(83) It is thus relatively easy for HHG to risk losing both patients and doctors in the upstream market for general private hospital services in case it engaged in commercial practices that are less favourable for Ethniki's rival insurers and their customers. In fact, with an input foreclosure strategy, HHG would risk putting in danger the relation it has today with Ethniki's competitors, who represent approximately [70-80]% of HHG's revenues from private insurers in 2020.[141]

5.4.2.3. Effect on Competition

(84) In general, a merger will raise competition concerns because of input foreclosure when it would lead to increased prices in the downstream market thereby significantly impeding effective competition. Anticompetitive foreclosure may occur when a vertical merger allows the merging parties to increase the costs of downstream rivals in the market thereby leading to an upward pressure on their sales prices.[142]

(85) During the Commission's market investigation, health insurers were asked whether they consider that HHG hospitals would engage in foreclosure strategies, such as increasing their services' prices for rival insurers, making the compensation claims process more burdensome for insured customers of rival insurers or limiting certain benefits only to Ethniki's customers. The results of the Commission's market investigation are not conclusive[143] as the majority of health insurer respondents are not in a position to know, assume or predict such conduct.[144]

(86) However, several health insurer respondents indicate that the proposed Transaction would not lead to increased prices in the downstream market as the combined entity is more likely to decrease prices in its relation to Ethniki than to increase prices in its relation to rival insurers. As one health insurer respondent explains, "[i]*t is more*

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138 Questionnaire Q1 to competitors in health insurance services, Questions 30 and 30.3.

139 Questionnaire Q1 to competitors in health insurance services, Question 30.3.

140 Questionnaire Q2 to private hospital services providers, Question 16.

141 Form CO, Annex 998, [CVC's ECONOMIC PAPER PREPARED IN THE CONTEXT OF THE TRANSACTION], paragraphs 8, 20 and 81.

142 Non-Horizontal Merger Guidelines, paragraphs 47 and 48.

143 Questionnaire Q1 to competitors in health insurance services, Question 38.

144 A small majority of health insurer respondents replied positively only in the scenario of HHG limiting certain benefits to Ethniki's insured customers. However, the merger specificity of such conduct is not clear, in light of the fact that such strategies are already existent in the market pre-Transaction both between HHG and Ethniki (as reported in Metropolitan Hospital's official website on 21 February 2022 (Doc ID 1320)) but also among other private hospitals and health insurers. In particular, as one health insurer respondent explains, "[t]*his happens already in the Greek market. Several companies have certain benefits based on distinct agreements with hospitals*". Another health insurer respondent indicates that post-Transaction, HHG would "*increase benefits for Ethniki insurance customers, keeping however the benefits of other insurers stable*" (Questionnaire Q1 to competitors in health insurance services, Question 38.3.1).

possible HHG to reduce prices for Ethniki instead of increase them for rivals".[145] Another one adds: "[t]*he concern is not primarily the increase of billing other insurers higher, but rather decreasing the cost for Ethniki while maintaining the same prices for the rest*".[146] A third one indicates that "[i]*t is more probable that HHG is going to reduce prices or provide additional benefits to Ethniki*".[147]

(87) In terms of impact, health insurer respondents indicate that if post-Transaction, the combined entity discriminates against them, this would affect their ability to effectively compete in the market.[148] In addition, health insurer respondents characterises the overall impact of the proposed Transaction on their companies as negative.[149]

(88) However, the Commission's market investigation does not show that the proposed Transaction would have a negative impact on effective competition on the downstream market overall. The majority of health insurer respondents submit that the impact of the proposed Transaction on prices of health insurance services in Greece and on consumer choice for health insurance services in Greece will be neutral.[150]

(89) In its assessment of the overall likely impact on effective competition, the Commission also assesses whether there remain sufficient credible downstream competitors whose costs are not likely to be raised, for example because they are capable of switching to adequate alternative inputs. In the affirmative, competition from those firms may constitute a sufficient constraint on the combined entity and therefore prevent output prices from rising above pre-merger levels.[151]

(90) As noted above, there are several general private hospitals in the Attica region that provide a comparable range of treatments and services as HHG's hospitals, including AMG's hospitals, which the majority of private hospital respondents to the Commission's market investigation rates among the most competitive ones.[152]

(91) Finally, the Commission notes that the market for private health insurance services in Greece is competitive, characterised by the presence of several strong competitors and low barriers to entry. In more detail:

a) Ethniki's market share in the downstream market for health insurance services in Greece is [20-30]% in terms of GWP and [20-30]% in terms of insured customers. Ethniki is competing against NN/Metlife with an aggregate market share of [20-30]% in terms of GWP, Generali/AXA with [10-20]%, Interamerican with [10-20]%, Eurolife with [5-10]%, and European Reliance with [5-10]%.[153]

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145 Questionnaire Q1 to competitors in health insurance services, Question 38.1.1.

146 Questionnaire Q1 to competitors in health insurance services, Question 38.1.1.

147 Questionnaire Q1 to competitors in health insurance services, Question 39.1.

148 Questionnaire Q1 to competitors in health insurance services, Question 40.

149 Questionnaire Q1 to competitors in health insurance services, Question 41.

150 Questionnaire Q1 to competitors in health insurance services, Questions 42.1 and 42.2.

151 Non-Horizontal Merger Guidelines, paragraph 50.

152 Questionnaire Q2 to private hospital services providers, Question 15.

153 See Table 1 above. Ethniki's market shares in individual health and group health insurance services do not differ substantially (see Table 2 above).

b) According to the Hellenic Association of Insurance Companies, the market for health insurance services is characterised by a large number of competitors of both small and medium size, with low concentration levels.[154] More than 20 players offer health insurance services in Greece, according to a third-party report.[155]

c) In the Commission's market investigation, the majority of health insurer respondents submit that barriers to entry in the market of health insurance services in Greece are low.[156] According to one health insurer respondent, "[t]*he competition continuously grows*".[157] Another rival of Ethniki explains that "[a]*n extended range of companies is already available taking into account Greece's market size*".[158] One insurance company entered the health insurance market recently, namely, Ydrogios in June 2021.[159]

(92) In light of the above, the Commission considers that the overall impact on effective competition in the private health insurance market in Greece is not likely to be negative post-Transaction.

5.4.3. Conclusion

(93) In light of the above, the Commission concludes that the Transaction does not give rise to serious doubts regarding its compatibility with the internal market as a result of total or partial input foreclosure, in particular due to the lack of incentive of the combined entity to foreclose health insurance services in Greece[160] and because such foreclosure strategy would not have a significant detrimental effect on effective competition, post-Transaction.

5.5. Total or partial customer foreclosure relating to general private hospital services in Attica

(94) In this Section, the Commission assesses whether the proposed Transaction would result in foreclosure of HHG's rivals in the upstream market for general private hospital services in Attica, if Ethniki limited access to its policyholder customer base downstream.

(95) On the basis of the submissions from respondents to the market investigation, the Commission identified three key sets of potential customer foreclosure practices:

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154 Hellenic Competition Commission, Sector Inquiry into Health Services, Public Consultation of 26 October 2021, Margarita Antonaki, General Manager of Hellenic Association of Insurance Companies.

155 Stochasis Report, Private Insurance, December 2020, p. 28 (Doc ID 82).

156 Questionnaire Q1 to competitors in health insurance services, Question 22.

157 Questionnaire Q1 to competitors in health insurance services, Question 17.1.

158 Questionnaire Q1 to competitors in health insurance services, Question 16.1.

159 Response of the Notifying Party to Request for Information I-9, submission dated 16 February 2022, Question 3.

160 The Commission's assessment and conclusion in this Section also applies to input foreclosure strategies of the combined entity in the alternative plausible relevant markets for individual health insurance services and group health insurance services in Greece. The Commission's market investigation did not reveal any substantiated concerns regarding input foreclosure in these plausible relevant markets (Questionnaire Q1 to competitors in health insurance services, Question 43).

a) total foreclosure, whereby Ethniki would only offer "closed network" health insurance products covering policyholders for general private hospital services received by HHG;

b) partial foreclosure based on health insurance policy terms, whereby Ethniki would (i) impose higher co-payment or deductible amounts to Ethniki policyholders when they go to a hospital of HHG's rivals or (ii) require pre-approval for medical operations when a policyholder decides to go to a hospital of HHG's rivals; and

c) partial foreclosure not based on health insurance policy terms, whereby Ethniki would steer its policyholders towards HHG's hospitals in Attica (i) through its call center or through its exclusive insurance agents and/or (ii) by advertising more prominently the benefits offered by HHG compared to similar benefits offered by HHG's rivals and/or (iii) by offering direct reimbursement for robotic operations only to HHG hospitals and not to rival hospitals.

5.5.1. The Notifying Party's view

(96) The Notifying Party submits that the Transaction would not give rise to customer foreclosure concerns related to general private hospital services in Attica. This is because the HHG and Ethniki would not have the ability or the incentive to engage in customer foreclosure by steering Ethniki policyholders to HHG hospitals:

a) Ethniki would not have the *ability* to foreclose HHG's rivals because it does not have market power in the downstream market for health insurance services in Greece. Moreover, most of Ethniki's policyholders have long-term contracts whose terms cannot be changed unilaterally by the Target. In any event, patients' choice of hospital is generally determined by their doctor or by previous experiences – not by their insurer.

b) Regulatory sanctions and penalties would significantly reduce Ethniki's *incentive* to foreclose HHG's rivals. If Ethniki steered its policyholders in such a way as to act against their best interests, it could be subject to sanctions/penalties by the Bank of Greece. Ethniki would also suffer significant reputational damage which further reduces any incentive to engage in customer foreclosure behaviour against HHG's rivals.[161]

5.5.2. The Commission's Assessment

5.5.2.1. Ability to Foreclose

(A) Lack of ability concerning all customer foreclosure theories of harm

(97) The Commission considers that post-Transaction HHG and Ethniki would not have the ability to foreclose general private hospital services providers in Attica.

(98) For customer foreclosure to be a concern, the concentration must involve a company which is an important customer with a significant degree of market power in the downstream market. This does not appear to be the case for Ethniki. Ethniki and its

[161] Form CO, p. iii.

policyholders do not represent a significant customer base for general private hospital services today for the following reasons.

(99) *First*, among health insurers, Ethniki does not seem to have a significant degree of market power. As explained in recital (91) above, the market for health insurance services in Greece is competitive, characterised by the presence of many and strong competitors and low barriers to entry. Ethniki's share in this market was [20-30]% in each of the years 2018, 2019, and 2020.[162] Following the completion of the acquisition of Metlife by NN,[163] Ethniki is no longer the leading player in the market. Post-Transaction, Ethniki will face strong competition from several players, including NN/Metlife (holding an aggregate share of [20-30]% in 2020); Generali ([10-20]%); Interamerican ([10-20]%); Eurolife ([5-10]%) and Evropaiki Pisti ([5-10]%).[164] Post-Transaction, private hospitals will be able to continue offering services to each of these players and to any other companies that enter the health insurance market in Greece.[165]

(100) The Commission's investigation confirms this. For HHG's hospitals in Attica, Ethniki represents less than [20-30]% of the revenues from health insurers in 2018, 2019, and 2020, as shown in Table 4 below. The market investigation also shows that for private hospital respondents, Ethniki always represented less than [20-30]% of the revenues from health insurers in 2018, 2019, and 2020.[166]

Table 4: Revenues of HHG Hospitals in Attica originating from Ethniki

HHG Hospitals in Attica **Percentage of Revenues from Ethniki[167]**			
HHG Hospitals in Attica	**Percentage of Revenues from Ethniki compared to Revenues from all Health Insurers**		
	2020	**2019**	**2018**
Hygeia	[20-30]%	[20-30]%	[20-30]%
Metropolitan	[30-40]%	[30-40]%	[30-40]%
Metropolitan General	[20-30]%	[20-30]%	[20-30]%
Mitera	[20-30]%	[30-40]%	[20-30]%
Leto	[30-40]%	[30-40]%	[40-50]%

162 Form CO, Table 21.

163 Case M.10447 – *NN/Metlife Greece/Metlife Poland*, decision of 8 December 2021. The transaction was completed on 31 January 2022 (see https://www.nnhellas.gr/Portals/0/PDFs/PressReleases-GR/2022/MetLifeAcquisition_31012022_GR.pdf, last accessed on 21 February 2022 (Doc ID 1332)).

164 [ETHNIKI'S INTERNAL DOCUMENTS] (Form CO, Annex 27, Ethniki report on annual health insurance plans, June 2020, p. 1).

165 Regarding barriers to entry in the market for health insurance services in Greece, see recital (91) above. The Commission's assessment also applies to Ethniki's position in the alternative plausible relevant markets for individual health insurance services and group health insurance services in Greece (see Table 2 above).

166 Questionnaire Q2 to private hospital services providers, Question 5.

167 Form CO, Annex 272, [HHG ECONOMIC INTERNAL DATA PREPARED IN THE CONTEXT OF THE TRANSACTION].

(101) *Second*, health insurers do not constitute the only source of revenues for general private hospital services providers in Attica or in Greece. There are two other sources of revenue which represent the majority of turnover for private hospitals in Greece: out of pocket payments by individuals and the National Health Organization. According to the Notifying Party, health insurance payments represented less than [40-50]% of the turnover of HHG's hospitals in Attica in 2018, 2019, and 2020.[168] The Commission's market investigation shows that for HHG's competitors, health insurers never represent more than [10-20]% of total revenues in 2018, 2019, or 2020.[169] The Commission notes that several private hospital respondents highlight the importance of health insurance companies as a revenue source.[170] However, the majority of private hospital respondents indicates that all three sources of revenue are important and that out of pocket payments from individuals is the most profitable.[171]

(102) *Third*, when assessing the ability of a combined entity to engage in customer foreclosure, the Commission also considers whether there are effective and timely counter-strategies, sustainable over time, that the rival firms would be likely to deploy.[172] The Commission considers that such counter-strategies exist. For example, in November 2021, HHG's largest competitor, AMG, concluded a memorandum of strategic cooperation with Vioiatriki, a provider of diagnostic services. One of the stated purposes of this cooperation is to create "*common synergies vis-a-vis insurance companies for the creation of new health insurance policies that would create a wider network and more attractive products for the customer*".[173] In December 2021, another competitor of HHG, IASO, concluded a cooperation agreement with Brokers Union, an insurance broker in Greece. Based on this agreement, all customers who purchase health insurance policies from Brokers Union (regardless of the insurer) can benefit from advantages when they visit IASO's private hospitals.[174]

(103) One competitor of HHG claims that the combined entity would have the ability to engage in customer foreclosure strategies to the detriment of private hospital service providers, because health insurers (including Ethniki) are bound to become much more important customers of private hospitals in Attica in the future. This competitor notes: "[t]*he (private) health insurance market is a growing market in Greece... more and more Greek citizens opt for private health insurance and more and more companies offer group insurance to their employees...*"[175] and "*private*

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168 Form CO, Table 24. An internal document prepared by CVC in 2020 before the purchase of Ethniki estimates that Ethniki "[…]" (Form CO, Annex 63, [CVC's INTERNAL DOCUMENTS], 7 January 2020, p. 4).

169 Questionnaire Q2 to private hospital services providers, Question 5.

170 Questionnaire Q2 to private hospital services providers, Question 26; Response of HHG's competitor to Request for Information 2, submission dated 9 November 2021, paragraph 5.3.

171 Questionnaire Q2 to private hospital services providers, Question 26.

172 Non-Horizontal Merger Guidelines, paragraph 39.

173 See https://www.iatriko.gr/el/article/stratigiki-synergasia-metaxy-ton-omilon-vioiatrikis-kai-iatrikoy-athinon?cl=609, last accessed on 21 February 2022 (Doc ID 1319).

174 See https://www.brokersunion.gr/%ce%b4%ce%b5%ce%bb%cf%84%ce%b9%ce%bf-%cf%84%cf%85%cf%80%ce%bf%cf%85-17-12-2021/, last accessed on 21 February 2022 (Doc ID 1325).

175 HHG's competitor, Preliminary note on the anti-competitive effects of the proposed acquisition of Ethniki Insurance by CVC Capital Partners' Fund VII, 10 September 2021, paragraph 41 and Minutes of call with HHG's competitor, 24 September 2021, paragraphs 13-14.

hospitals will increasingly rely on health insurances".[176] The Commission's investigation confirms that the size of the market for health insurance services in Greece has been growing in recent years and is expected to continue in the same trajectory.[177] However, there is no indication that Ethniki would be the player exclusively or predominantly benefiting from the growth in the market for health insurance services in Greece. Rather, the Commission notes the following:

a) In an internal document prepared in 2020, before the purchase of Ethniki, CVC confirmed […].[178] CVC also assumed that […].[179] In this context, CVC estimated that in 2024 […][180] [A LEVEL WHICH IS NOT INDICATIVE OF SIGNIFICANT DEGREE OF MARKET POWER]. Similarly, Ethniki itself projected in its 2020-2023 Business Plan that […];[181]

b) Post-Transaction, Ethniki will continue to face competitive constraints from more than 20 players in the market for health insurance services in Greece,[182] including by several key competitors (e.g., NN, Generali, Interamerican, Eurolife, and Evropaiki Pisti which all held shares above 5% in 2020). In the Commission's market investigation, health insurer respondents confirm that a customer who wishes to purchase a health insurance policy in Greece for the first time would consider not only Ethniki but also NN, Generali, Interamerican, and Eurolife.[183]

c) The Commission's market investigation suggests that insurers providing other types of insurance in Greece are generally capable of entering and competing in the market for health insurance services.[184] Such players (and not just Ethniki) would also benefit from the increase in size of the relevant market in the coming years.

(104) One competitor of HHG also submits that post-Transaction, Ethniki's power in health insurance services in Greece will increase significantly because it is bound to distribute more health insurance policies through NBG's branches ("bancassurance").[185] However, the Commission's investigation shows that Ethniki's future bancassurance agreement with NBG is unlikely to afford Ethniki market power downstream for the following reasons:

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176 Response of HHG's competitor to Request for Information, submission dated 25 August 2021, paragraph 13.3.

177 Questionnaire Q1 to competitors in health insurance services, Question 15.

178 Form CO, Annex 64, [CVC's INTERNAL DOCUMENTS], 29 January 2020, p. 9.

179 Form CO, Annex 6, CVC's 5.4 Documents – [CVC's INTERNAL DOCUMENTS], 7 December 2020, p. 6; Form CO, Annex 64, [CVC's INTERNAL DOCUMENTS], 29 January 2020, p. 7.

180 Form CO, Annex 64, [CVC's INTERNAL DOCUMENTS], 29 January 2020, p. 9. The Notifying Party submits that this projection was [EXPLANATIONS ON CVC'S INTERNAL DOCUMENTS] (Response of the Notifying Party to Request for Information I-9, submission dated 16 February 2022, Question 4).

181 Form CO, Annex 89, Ethniki Business Plan, 2020-2023, p. 14.

182 Stochasis Report, Private Insurance, December 2020, p. 28 (Doc ID 82).

183 Questionnaire Q1 to competitors in health insurance services, Question 14.1.

184 Questionnaire Q1 to competitors in health insurance services, Question 16.

185 This will be thanks to an exclusive bancassurance agreement between Ethniki and NBG, which will enter into force after the completion of the Transaction (HHG's competitor, Preliminary note on the anti-competitive effects of the proposed acquisition of Ethniki Insurance by CVC Capital Partners' Fund VII, 10 September 2021, paragraph 40, sixth bullet-point).

a) In Greece, new health insurance policies are rarely sold through banks. An internal CVC document prepared in 2020 prior to the purchase of Ethniki estimates that [CVC's INTERNAL DOCUMENTS].[186] In 2018-2020, new health insurance policies sold through the bancassurance channel accounted for [0-5]% of Ethniki's total health insurance revenues. By contrast, tied agents accounted for [60-70]% of Ethniki's total health insurance revenues over the same period.[187] In the market investigation, none of the health insurer respondents submits that the bancassurance channel is key for the distribution of their health insurance products. Rather, the majority of respondents identify tied agents and brokers as the most important distribution channels.[188] In particular for group health insurance, health insurer respondents also submitted that they distribute their products through independent insurance intermediaries who have access to the procurement departments of large employer customers.[189]

b) In its internal documents, Ethniki does not seem to expect that distribution through the bancassurance channel [ETHNIKI'S INTERNAL DOCUMENTS].[190] Moreover, in the minutes of a discussion at the Board of Directors of Ethniki in 2020, it is recognized that "[ETHNIKI'S INTERNAL DOCUMENTS]".[191]

c) Post-Transaction, Ethniki will not be the only health insurer that will be able to distribute policies through the bancassurance channel. Ethniki's top four competitors also have concluded bancassurance agreements with banks in Greece, which allow them to distribute health insurance and other policies through bank branches. This is illustrated in Table 5 below.

186 Form CO, Annex 65, [CVC's INTERNAL DOCUMENTS], 4 March 2020, p. 6.

187 Form CO, Annex 1030, Health Insurance New Business by Channel.

188 Questionnaire Q1 to competitors in health insurance services, Questions 19.1 and 19.2.

189 Questionnaire Q1 to competitors in health insurance services, Question 19.3.

190 Form CO, Annex 89, Ethniki Business Plan, 2020-2023, p. 15. The Notifying Party submits that NBG today does not sell group health insurance policies via the bancassurance channel (Form CO, footnote 114).

191 Form CO, Annex 113, Ethniki Board of Director Minutes, Meeting 2266, 3 February 2020, p. 11.

Table 5: Bancassurance Agreements by Health Insurance Providers in Greece

Health Insurance Services Providers in Greece Bancassurance Agreements[192]			
Competitors in Health Insurance Services in Greece	**Bancassurance agreement with...**	**Number of branches in Greece**	**Number of branches in Attica**
Ethniki	NBG	355	120
NN/Metlife	Piraeus Bank	415	157
Generali/Axa	Alpha Bank	303	127
Interamerican	Attica Bank	48	15
Eurolife	Eurobank	300	134

(105) The remainder of this Section discusses additional reasons why the combined entity would not have the ability to foreclose HHG's competitors in general private hospital services in Attica, looking separately into each of the customer foreclosure mechanisms set out in recital (95) above.

(B) Additional elements on the lack of ability related specifically to total foreclosure

(106) To engage in total customer foreclosure, Ethniki would have to amend all its health insurance policies and limit the coverage to one or more HHG hospitals in Attica. This would effectively convert these insurance policies from "open network" products to "closed network" products.

(107) However, "closed network" health insurance policies are not preferred by insurance customers[193] and there are only a few of them available today in the health insurance market in Greece.[194] This means that if Ethniki decided to amend its existing health insurance policies to limit coverage only to HHG hospitals, it would likely lose a significant part of its customers. Similarly, if Ethniki decided to offer new insurance policies that would only offer coverage at HHG hospitals, it would be difficult to attract customers.

(108) As a result, if Ethniki started offering only "closed network" policies, this would weaken the company's position in the market for health insurance services in Greece, eventually limiting its ability to engage in customer foreclosure. The market investigation confirms this. The majority of health insurer respondents do not consider likely that Ethniki would offer only "closed network" policies post-

[192] Response of the Notifying Party to Request for Information I-9, submission dated 16 February 2022, Question 2. Information from the official websites of Piraeus Bank; Alpha Bank; Attica Bank; and Eurobank largely confirms the figures submitted by the Notifying Party (Doc IDs 1336, 1337, 1338, and 1339).

[193] In the market investigation, health insurer respondents identify the "*number of hospitals where the patient can go under the health insurance product*" as one of the top two criteria for the selection of a health insurance policy in Greece (together with price). See Questionnaire Q1 to competitors in health insurance services, Questions 18.3 and 28. In the same vein, HHG's competitor, Outline of Theory of Harm, 10 June 2021, paragraph 4.10.

[194] For example, the vast majority of health insurance policies offered by Ethniki are open-network (Form CO, Table 5).

Transaction.[195] One of Ethniki's competitors notes: "[we are] *not concerned that the combined entity would, post-Transaction, introduce capitation "closed network" products offering coverage only in HHG hospitals... HHG hospitals are currently very attractive among patients in Athens and they are rarely involved in "closed network" capitation products...*".[196]

(C) Additional elements on the lack of ability related specifically to partial foreclosure based on health insurance policy terms

(109) The Commission's investigation shows that there are additional reasons why Ethniki would not have the ability to engage in partial customer foreclosure based on the terms of health insurance policies at least for some of its customers.

(110) Ethniki's health insurance policyholders have two types of policies today: (i) long-term and (ii) yearly renewable policies. Long-term health insurance policies are sold as "riders" to life insurance policies and have the same duration (i.e., the entire life of the policyholder). Yearly renewable health insurance policies are products provided on a standalone basis and they are renewed on an annual basis.[197]

(111) In 2020, long-term health insurance products represented [70-80]% of Ethniki's individual health insurance GWP and were held by [60-70]% of individual health insurance policyholders. The typical duration of a long-term insurance contract is […] years.[198] Moreover, in each of the years 2021-2025, less than [0-5]% of Ethniki's long-term health insurance policies are set to expire.[199] Therefore, the majority of Ethniki's individual health insurance policyholders have long-term life-long products and they will maintain them in the coming years. For these customers, Ethniki could not impose higher co-payment or deductible amounts when the policyholder chooses a hospital competing with HHG's. Nor could Ethniki modify the long-term contracts to require pre-approval or pre-verification before the policyholder visits a non-HHG hospital.[200]

(D) Additional elements on the lack of ability related specifically to partial foreclosure not based on health insurance policy terms

(112) The Commission's investigation shows that there are additional reasons why Ethniki would not have the ability to engage in partial customer foreclosure that would not be based on the terms of health insurance policies.

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195 Questionnaire Q1 to competitors in health insurance services, Question 38.4.

196 Minutes of call with Ethniki's competitor, 11 June 2021, paragraph 20(c).

197 Form CO, Annex 1088, RFI 3, 19 August 2021, Question 7.

198 Response of the Notifying Party to Request for Information I-1, submission dated 28 January 2022, Question 3.

199 Both based on number of policies and based on annual GWP (Response of the Notifying Party to Request for Information I-1, submission dated 28 January 2022, Question 3).

200 Form CO, Annex 1014, Apoliti Prostasia, Articles 1, 6, and 10; Form CO, Annex 1015, Oloklirómeni Prostasia, Articles 1, 10, and 14; Form CO, Annex 1016, Pleonektiko, Articles 1, 10, and 14. These three policies are among the most popular long-term insurance policies of Ethniki (see Form CO, Table 5).

(D.i) Policyholder steering through Ethniki's call centre and/or exclusive insurance agents

(113) The Commission's investigation shows that Ethniki would not have the ability to steer its policyholders towards HHG hospitals through its call centre or through its exclusive insurance agents.

(114) In the Commission's market investigation, several private hospital respondents claim that Ethniki could use its call centre[201] and exclusive agents post-Transaction and influence the choice of private hospital for its policyholders.[202] A private hospital respondent adds that according to its own market research, Ethniki already steers patients to HHG hospitals through its call centre, and in particular, paediatric cases in Attica are referred to Mitera.[203] Another private hospital respondent claims that Ethniki has been steering its policyholders to HHG's Metropolitan for years.[204] These respondents, however, did not provide evidence to substantiate their claims.

(115) Even if Ethniki had engaged in such practices, the Commission's investigation does not show that they would be able to influence the decision-making procedure of patients regarding private hospitals. The Commission's investigation indicates that patients in Attica select private hospitals based on advice of their doctor and not following the insurer's call centre or the insurance agents.

(116) *First*, in the Commission's market investigation, the majority of private hospital respondents (including those who raise foreclosure concerns about Ethniki's call centre) acknowledge that patients always give weight to their doctor's advice when selecting private hospital.[205] In the same vein, the vast majority of health insurer respondents indicates that doctor advice is the most important parameter that a patient takes into account when choosing a private hospital.[206] As one of Ethniki's competitors puts it, "[t]*he most critical parameter is considered the advice received from the doctor".*[207] Another health insurer notes: *"[t]he main factor is the doctor for scheduled operations. In case of emergencies, critical factor is the distance from hospital. In all other instances the "family doctor" has significantly more influence than the broker or the* [insurer] *over the policy holder.* [...] *where the doctor works is a very important factor".*[208]

(117) *Second*, this conclusion is confirmed by internal documents of CVC and HHG prepared in their ordinary course of business:

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201 Questionnaire Q2 to private hospital services providers, Question 41.1 and Minutes of call with HHG's competitor, 25 October 2021, paragraph 21(iii).

202 Questionnaire Q2 to private hospital services providers, Question 42.2; Minutes of call with HHG's competitor, 25 October 2021, paragraph 21(ii) and Minutes of call with HHG's competitor, 22 November 2021, paragraph 10.

203 Questionnaire Q2 to private hospital services providers, Question 41.1.

204 Questionnaire Q2 to private hospital services providers, Question 41.1.

205 Questionnaire Q2 to private hospital services providers, Question 16.10. A competitor of HHG notes: "[d]*octors are the primary patient choice factor in choosing a hospital, enabling hospitals and insurers to attract customers*" (HHG's competitor, Outline of Theory of Harm, 10 June 2021, paragraph 4.10).

206 Questionnaire Q1 to competitors in health insurance services, Questions 18 and 34.

207 Questionnaire Q1 to competitors in health insurance services, Question 34.8.

208 Questionnaire Q1 to competitors in health insurance services, Question 34.8.

a) An internal document prepared by CVC prior to the acquisition of Hygeia Group in 2018 confirms that [CVC's INTERNAL DOCUMENTS].[209]

b) Based on information collected on all incidents, HHG estimates that for its hospitals in Attica, [HHG'S INTERNAL DATA].[210]

c) A third-party market survey conducted for HHG in 2019 suggests that the main source of information for patients regarding hospital selection is [HHG'S INTERNAL DATA].[211]

(118) *Third*, as regards call centres, this is in line with Ethniki's estimate that [10-20]% of patients making a Life and Health Insurance claim contacted its call centre before filing a hospitalisation claim in 2018, 2019 and 2020,[212] and that even then, in the large majority of cases the hospital would already have been decided by the patient's attending doctor who determined the need for a hospitalisation.[213] Moreover, according to Ethniki's estimates, the overall amount of incoming calls to its call centre in 2020 were […], of which only […] concerned requests for pre-verification of hospitalisation ([0-5]% of overall amount of calls) and therefore only a small fragment of patients could have been steered to an HHG hospital through Ethniki's call centre.[214]

(D.ii) Policyholder steering through advertising of HHG's benefits

(119) The Commission's investigation shows that Ethniki would not have the ability to steer its policyholders towards HHG hospitals through advertising HHG's benefits more prominently compared to HHG's competitors through letters to its policyholders.

(120) In the Commission's market investigation, several private hospital respondents submit that Ethniki could, post-Transaction, advertise more prominently the benefits offered by HHG compared to similar benefits offered by HHG's competitors.[215] A respondent submits that the likelihood of Ethniki engaging in such practices is further corroborated by the fact that it has already engaged in this exact practice even before the proposed Transaction, and more specifically during the time that CVC was being widely reported as a prime candidate for the acquisition of Ethniki, by sending a letter to its enrollees, describing and actively promoting the latter's

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209 Form CO, Annex 43, [CVC's INTERNAL DOCUMENTS], 4 July 2018, p. 11.

210 Form CO, Annex 1077, RFI 5 Q3, Table 1 – [HHG ECONOMIC INTERNAL DATA PREPARED IN THE CONTEXT OF THE TRANSACTION], 29 October 2021, p. 3.

211 Form CO, Annex 1023, [CVC's INTERNAL DOCUMENTS], 2019, p. 23. One of HHG's competitors submits that it had a survey conducted showing that "*roughly 77% of respondents consider that their insurance contract is 'very influential' in their choice of hospital*" (see Minutes of call with HHG's competitor, 22 November 2021, paragraph 9 and Appendix 2). However, the Commission notes that this statement relates to the terms of the insurance contract (e.g., the range of hospitals covered by an open-network health insurance product) and not steering through a call centre or an insurance agent.

212 For instance, according to Ethniki's estimates for 2020, the overall amount of incoming calls that its call centre received for "claims notification or admittance to hospital" were […], whereas in the same year, Ethniki received […] relevant claims (Response of the Notifying Party to Request for Information I-8, submission dated 14 February 2022, Question 6).

213 Form CO, paragraph 364(d).

214 Form CO, Annex 1075, RFI 4 Q22, Table 1 – Life & Health incoming calls, p. 2.

215 Questionnaire Q2 to private hospital services providers, Question 40.

benefits at HHG hospitals.[216] Moreover, another respondent submits that recently, there have been announcements by Ethniki for new collaborations and privileges for the HHG hospital network.[217] These respondents however did not substantiate their claim of non-prominent advertising with underlying evidence.

(121) *First*, private health insurance respondents confirm that they generally advertise private hospitals with which they have cooperation agreements with,[218] through among others, their sales network, leaflets, website and commercials,[219] and in the same way for all contracted hospitals.[220]

(122) *Second*, this is confirmed by evidence from the Commission's file, which suggest that between 2019-2021, Ethniki advertised several benefits offered by private hospitals in Attica to its policyholder, including non-HHG through "Benefits leaflets". In particular, in 2019, Ethniki issued "Benefits leaflets", not only for HHG, but also for Henry Dunant Hospital, which is a competitor of HHG. Moreover, more recently in 2021, Ethniki issued "benefits leaflets" for HHG and Mitera, but also for Athens Bioclinic, Euroclinic of Athens, IASO, IASO Maternity and AMG, all of which are private hospitals in Attica that compete with HHG. [221]

(123) *Third*, even if Ethniki had engaged in such practices, the Commission's investigation does not show that they would be able to influence the decision-making procedure of patients regarding private hospitals. The Commission's investigation indicates that patients in Attica select private hospitals based on advice of their doctor and not following the insurer's advertising leaflets. In particular, the results of the Commission's market investigation confirm that hospital benefits (which is the context of insurers' advertising material) are not a major factor for a patient's choice of a private hospital.[222] In this context, private hospital respondents acknowledge that the most decisive factor for patients is their doctor's advice.[223] In the same vein, the vast majority of health insurer respondents indicates that doctor advice is the most important parameter that a patient takes into account when choosing a private hospital.[224]

(124) *Fourth*, this conclusion is also confirmed by internal documents of CVC and HHG prepared in their ordinary course of their business:

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216 Questionnaire Q2 to private hospital services providers, Question 40.1; Minutes of call with HHG's competitor, 25 October 2021, paragraph 17 and Minutes of call with HHG's competitor, 22 November 2021, paragraph 15.

217 Questionnaire Q2 to private hospital services providers, Question 40.1.

218 Questionnaire Q1 to competitors in health insurance services, Question 32.

219 Questionnaire Q1 to competitors in health insurance services, Question 32.1.

220 Questionnaire Q1 to competitors in health insurance services, Question 33.

221 Form CO, Annex 1034, Ethniki – HHG – Benefits Leaflet, 2021; Form CO, Annex 1035, Ethniki – Mitera Hospital – Maternity Benefits Leaflet, 2021; Form CO, Annex 1036, Ethniki – Viokliniki – Benefits Leaflet, 2021; Form CO, Annex 1037, Ethniki – Henry Dunant Hospital – Benefits Leaflet, 2019; Form CO, Annex 1038, Ethniki – Euroclinic – Benefits Leaflet, 2021; Form CO, Annex 1039, Ethniki – IASO – Benefits Leaflet, 2021; Form CO, Annex 1040, Ethniki – IASO – Maternity Benefits Leaflet, 2021; Form CO, Annex 1046, Ethniki – Athens Medical Group – Benefits, 11 October 2021; Form CO, Annex 1047, Ethniki – HHG – Benefits Leaflet, 2019; Form CO, Annex 1048 - Ethniki – Athens Medical Group – Benefits Letter, 2021; and, Form CO, Annex 1049, Ethniki – HHG – Benefits Letter, 2019.

222 Questionnaire Q1 to competitors in health insurance services, Question 34.

223 Questionnaire Q2 to private hospital services providers, Question 16.10.

224 Questionnaire Q1 to competitors in health insurance services, Questions 18 and 34.

a) An internal document prepared by CVC prior to the acquisition of Hygeia Group in 2018 confirms that [CVC's INTERNAL DOCUMENTS].[225]

b) Based on information collected on all incidents, HHG estimates that for its hospitals in Attica, [HHG'S INTERNAL DATA].[226]

c) A third-party market survey conducted for HHG in 2019 suggests that the main source of information for patients regarding hospital selection is [HHG'S INTERNAL DATA].[227]

(D.iii) Direct reimbursement for robotic operations only/mainly to HHG

(125) One competitor of HHG submits that post-Transaction, "*another means of disadvantaging* [HHG's] *rivals would be an exclusive cooperation between Ethniki and HHG for* [robotic medical procedures] *to be covered by Ethniki only at HHG's clinics*".[228]

(126) Robotic medical procedures are expensive, modern procedures which ensure precision during surgery and minimize the patients' pain and general discomfort. Already today, Ethniki has an agreement with HHG for the direct reimbursement of several categories of robotic medical procedures.[229] No other private hospital in Attica has a direct reimbursement agreement with Ethniki covering as many categories of robotic medical procedures as is the case with HHG.[230]

(127) However, the Commission's investigation does not support the finding that Ethniki would have the ability to foreclose HHG's competitors by not offering them direct reimbursement for robotic medical procedures:

a) Robotic medical procedures only represent a sub-set of the inpatient medical activities that a private hospital can offer in Attica. In particular, HHG estimates that in 2020, […]% of its total revenues came from robotic medical procedures.[231] Moreover, HHG estimates that in 2020, patients undergoing robotic medical procedures represented […]% of its total patients receiving inpatient services.[232] Even assuming that Ethniki's policyholders would switch to

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225 Form CO, Annex 43, [CVC's INTERNAL DOCUMENTS], 4 July 2018, p. 11.

226 Form CO, Annex 1077, RFI 5 Q3, Table 1 – [HHG ECONOMIC INTERNAL DATA PREPARED IN THE CONTEXT OF THE TRANSACTION], p. 3.

227 Form CO, Annex 1023, [CVC'S INTERNAL DOCUMENTS], 2019, p. 23

228 HHG's competitor, Preliminary note on the anti-competitive effects of the proposed acquisition of Ethniki Insurance by CVC Capital Partners' Fund VII, 10 September 2021, paragraph 36, second and third bullet-points.

229 See https://www.ethniki-asfalistiki.gr/default2.aspx?page=newsdetails&ListID=4&RowID=635&from=pressreleases, last accessed on 21 February 2022 (Doc ID 1317).

230 Form CO, Annex 1022, Ethniki – Robotic Surgery Agreements.

231 Namely, […]% for Metropolitan, […]% for Hygeia, and […]% for Metropolitan General. Leto and Mitera do not offer robotic medical procedures. These percentages do not materially differ for the period 2018-2019 (Response of the Notifying Party to Request for Information I-8, submission dated 14 February 2022, Question 1).

232 Namely, […]% for Metropolitan, […]% for Hygeia, and […]% for Metropolitan General. Leto and Mitera do not offer robotic medical procedures. These percentages do not materially differ for the period 2018-2019 and would be significantly lower if estimated as a share of total patients receiving inpatient and

HHG hospitals for robotic medical procedures, HHG's competitors could continue to compete effectively in the market offering other types of inpatient services and also outpatient services. In fact, in the market investigation, several private hospital respondents indicate that they do not offer robotic medical procedures;[233]

b) As explained in Section 5.5.2.1 above, Ethniki is not an important customer for general private hospital services in Attica nor does it have market power in the downstream market for health insurance services. HHG's rivals can continue to compete in the upstream market, including offering robotic medical procedures, given that several insurers cover such procedures in various private hospitals;[234] and

c) Ethniki already today offers direct reimbursement to AMG and Euroclinic of Athens for robotic prostatectomy,[235] which is one of the oldest and most common types of robotic medical procedures conducted in Greece today.[236]

(128) In light of the above, the Commission considers that the combined entity will likely not have the ability post-Transaction to foreclose general private hospitals in Attica.

5.5.2.2. Incentive to Foreclose

(129) The Commission considers that post-Transaction, HHG and Ethniki would likely have the incentive to foreclose general private hospital services providers in Attica.

(130) *First*, as explained in Section 5.4.2.2 above, the evidence in the Commission's file suggests that:

a) Ethniki's margins in the downstream market of health insurance services are significantly lower than HHG's margins in the upstream market of general private hospital services;

b) The risk of losing customers in the downstream market of health insurance services is low, as policyholders do not often switch among health insurers;

c) Contrary to the downstream market for health insurance services, switching rates in the upstream market for general private hospitals are likely to be high, as patients often "multi-home" across several hospitals. In addition, doctors themselves also "multi-home" indicating that HHG could gain a significant number of customers;

d) In light of the above, it is likely that the benefit of gaining profit upstream for general hospital services for the merged entity would outweigh the risk of losing

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outpatient services (Response of the Notifying Party to Request for Information I-8, submission dated 14 February 2022, Question 2).

233 E.g., Questionnaire Q1 to competitors in health insurance services, Question 29.

234 E.g., Metlife (now controlled by NN); Eurolife; Interasco; Groupama; and Ergo. See HHG's competitor, Preliminary note on the anti-competitive effects of the proposed acquisition of Ethniki Insurance by CVC Capital Partners' Fund VII, 10 September 2021, footnote 31.

235 Form CO, Annex 308, [ETHNIKI'S INTERNAL DOCUMENTS].; Form CO, Annex 365; [ETHNIKI'S INTERNAL DOCUMENTS]; Form CO, Annex 1022, [ETHNIKI'S INTERNAL DOCUMENTS].

236 Response of the Notifying Party to Request for Information I-8, submission dated 14 February 2022, Question 3. […].

profit downstream for health insurance services. Therefore, a customer foreclosure strategy would likely be profitable.

(131) *Second*, the Notifying Party itself submits, "[g]*iven the same balance of margins between* [private hospital] [services] *and* [health insurance services] *that contributes to the implausibility of profitable foreclosure of rival insurers, it is of course plausible that a hypothetical combined entity might have an incentive to engage in strategies that would steer Ethniki customers towards the use of HHG hospitals".*[237]

(132) *Third*, the Commission's market investigation confirms the above findings, as the majority of private hospital respondents consider that the combined entity would likely have the incentive to engage in customer foreclosure conduct.[238]

5.5.2.3. Effect on Competition

(133) The Commission considers that the Transaction is unlikely to have a negative impact on effective competition in general private hospital services, as the effect of the combined entity's possible customer foreclosure strategies would not be enough to reduce the ability of upstream rivals to compete effectively in the foreseeable future.

(134) *First*, the Commission notes that the combined entity can only deny to HHG's rivals competitive access to Ethniki's policyholders. Ethniki's health insurance policyholders in 2020 were […], representing [20-30]% of all health insurance policyholders in Greece.[239] Therefore (and for the reasons explained in Section 5.4.2.1 above), Ethniki does not have a significant degree of market power in health insurance services in Greece. In the market investigation, private hospital respondents submit that in 2018, 2019, and 2020 Ethniki represented [20-30]% of their total revenues in 2018, 2019, and 2020.[240] Even if steered to HHG, Ethniki's pool of health insurance policyholders would be too small to prevent other private hospitals in Attica from competing in the upstream market.[241]

(135) *Second*, even if Ethniki engaged in customer foreclosure seeking to direct its policyholders towards HHG, the impact of these strategies on the decision-making of the patients is questionable. As explained in Section 5.4.2.2 above, the Commission's investigation shows that patients in Attica typically choose private hospitals based on the advice of their doctors. Among the parameters that a patient takes into account when choosing a private hospital, respondents rank advice from doctors as the most important (higher than advice from the insurer or the insurance agent).[242] So do health insurer respondents.[243] One health insurer respondent notes: "*advice from the attending doctor is the single most decisive factor*" for patients

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[237] Form CO, Annex 998, [CVC'S ECONOMIC PAPER PREPARED IN THE CONTEXT OF THE TRANSACTION], 13 October 2021, paragraph 33.

[238] Questionnaire Q2 to private hospital services providers, Questions 38-42.

[239] Form CO, Annex 277, Ethniki Market Shares Individual and Group Health Insurance Based on GWP – Greece (2018 – 2019), p. 4.

[240] Questionnaire Q2 to private hospital services providers, Question 5.

[241] This is confirmed by internal documents of CVC, which indicate that HHG [CVC'S INTERNAL DOCUMENTS] (Form CO, Annex 63, [CVC'S INTERNAL DOCUMENTS], 7 January 2020, p. 4). The Commission's assessment also applies to Ethniki's position in the alternative plausible relevant markets for individual health insurance services and group health insurance services in Greece (see Table 2 above).

[242] Questionnaire Q2 to private hospital services providers, Question 16.

[243] Questionnaire Q1 to competitors in health insurance services, Question 34.

when they decide on a private hospital.[244] Another health insurer adds: "[insurers] *have very limited power to steer clients to any direction... the power is in the hands of the 'family doctor'*".[245]

(136) *Third,* in the Commission's market investigation, private hospital respondents submit that they have a wide network of cooperation agreements with health insurers other than Ethniki. Most of the private hospital respondents note that they have cooperation agreements with 10 or more health insurers in Greece.[246] All private hospital respondents submit that cooperation agreements are important or very important for their ability to compete in general private hospital services.[247] Post-Transaction, private hospitals would be able to continue competing effectively in the upstream market also on the basis of those cooperation agreements.

(137) In the Commission's market investigation, the majority of private hospital respondents submit that the proposed Transaction would have a negative impact on the market for general private hospital services in Attica, in terms of higher prices, lower service quality, and limited choice for patients.[248] However, the claims of these private hospital respondents have not been sufficiently substantiated taking into account the parameters set out in Section 7.1 above.

(138) The main concern put forward by private hospitals in the Commission's market investigation is that "[t]*he higher the number of patients visiting a hospital, the more the fixed costs of equipment and infrastructure can be spread over a larger patient base and the average cost per patient can be reduced. Losing even a limited number of patients may... have a significant impact on the hospital's ability and incentive to invest and innovate (and as such, to compete)".*[249]

(139) However, the results of the Commission's investigation do not appear to confirm these concerns:

a) None of HHG's rivals submit that post-Transaction, they would be altogether unable to cover their fixed costs or make investments in their hospitals, e.g., even if they were to accept lower profitability rates for a limited period of time. Instead, one of HHG's rivals notes: "*hospitals respond dynamically to occupancy decreases and a deterioration in services and postponement of investments would manifest before 'breaking even'*";[250]

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244 Questionnaire Q1 to competitors in health insurance services, Question 34.8.

245 Questionnaire Q1 to competitors in health insurance services, Question 40.2.

246 Questionnaire Q2 to private hospital services providers, Question 29.

247 Questionnaire Q2 to private hospital services providers, Question 28.

248 The majority of private hospital respondents indicate that the proposed Transaction would not have an impact on innovation in the market for private hospital services in Attica (Questionnaire Q2 to private hospital services providers, Questions 45.1- 45.4). One competitor of HHG submits that following CVC's binding offer for Ethniki, there was a significant decline in the number of Ethniki's policyholders visiting its hospitals (compared to pre-Transaction levels) (HHG's competitor, Report on ToH, 27 September 2021, paragraph B.6). However, no evidence is provided showing that this trend continued in the following months. In any event, the decline concerns only one medical specialisation and not all or most types of general hospital services.

249 HHG's competitor, Preliminary note on the anti-competitive effects of the proposed acquisition of Ethniki Insurance by CVC Capital Partners' Fund VII, 10 September 2021, paragraph 41, second bullet-point and Minutes of call with HHG's competitor, 22 November 2021, paragraph 19.

250 Questionnaire Q2 to private hospital services providers, Question 7 (emphasis added).

b) The Commission's market investigation does not reveal that any of the private hospital respondents expects to become loss-making and/or exit the market following the Transaction. In fact, one competitor of HHG submits: "[we do] *not expect, as a result of the proposed Transaction to suffer a financial hit that will be so severe as to effectively force* [us] *to go out of business... the foreclosure ability of the merged entity would diminish* [our] *incentives to invest in cutting edge technology...*";[251] and

c) In the past two years, HHG's competitors designed and are currently implementing several investment programmes. For example, this is the case for AMG,[252] Euromedica,[253] and IASO[254].

(140) Another concern put forward by HHG's rivals is that "*with access to a more limited patient base,* [our] *hospitals will have less incentive to invest in state-of-the-art equipment, which also affect* [our] *ability to attract good doctors... if there are fewer good doctors practising at* [our] *hospitals, the hospitals will be less attractive to patients*".[255] However, the Commission's investigation does not confirm that lower incentives to invest result necessarily in the loss of good doctors for private hospitals in Greece for the following reasons.

a) Only exceptionally do some doctors have exclusivity arrangements with private hospitals. As explained in recital (175) below, less than [10-20]% of all doctors in HHG hospitals in Attica have exclusive arrangements with HHG's hospitals in Attica.[256] One of HHG's rivals submits that it did not have any exclusive contracts with doctors until 2020 and that "*doctors in Greece multi-home across hospitals*". In the Commission's market investigation the majority of private hospital respondents submit that more than 30% of their doctors actively practice in several private hospitals;[257]

b) In any event, state-of-the-art equipment is not the only parameter that doctors consider when they decide to collaborate exclusively with a private hospital. A competitor of HHG explains that this collaboration "*is likely based on significant 'perks' i.e., the support/infrastructure that a hospital provides to its doctors (including administrative staff..., slots in surgery rooms, nursery staff, etc)... Besides these 'perks', the other main criterion for a top doctor to choose a hospital to 'single-home' is the clientele/pipeline offered by the hospital*

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251 Response of HHG's competitor to Request for Information 2, submission dated 9 November 2021, paragraph 8.2.

252 AMG, 6-month financial report 2021, p. 5, available at https://www.iatriko.gr/sites/default/files/pdf/examiniaia_oikonomiki_ekthesi_2021.pdf, last accessed on 21 February 2022 (Doc ID 1321).

253 Investment programme of approximately EUR 50 million. See https://www.euromedica.gr/%CE%BD%CE%AD%CE%B1-e%CF%80%CE%BF%CF%87%CE%AE-%CE%B3%CE%B9%CE%B1-%CF%84%CE%B7-euromedica/, last accessed on 21 February 2022 (Doc ID 1322).

254 See https://www.iaso.gr/news/details/2022/01/12/rompotiko-systima-da-vinci-xi, last accessed on 21 February 2022 (Doc ID 1323).

255 HHG's competitor, Preliminary note on the anti-competitive effects of the proposed acquisition of Ethniki Insurance by CVC Capital Partners' Fund VII, 10 September 2021, paragraph 41, sixth bullet-point and Minutes of call with HHG's competitor, 24 September 2021, paragraph 24.

256 Form CO, Annex 270, [CVC'S INTERNAL DOCUMENTS] 2020, p. 2.

257 HHG's competitor, Report on ToH, 27 September 2021, paragraph 3.40.

itself...".[258] Another competitor of HHG notes: "[h]*ospitals can incentivise doctors by offering the best possible compensation package, including salaries, a share of the hospital's revenue, and other perks*".[259] An internal CVC document prepared in 2017 prior to the acquisition of Metropolitan General reads: "[CVC'S INTERNAL DOCUMENTS]".[260]

5.5.3. *Conclusion*

(141) In light of the above, the Commission concludes that the Transaction does not give rise to serious doubts regarding its compatibility with the internal market because of total or partial customer foreclosure, in particular due to the lack of ability of the combined entity to foreclose private hospitals in Attica and because such foreclosure strategy would not have a significant detrimental effect on effective competition post-Transaction.

5.6. Other non-coordinated effects based on access to commercially sensitive information

(142) In this Section, the Commission first illustrates the type of commercially sensitive information respondents to the market investigation identified as giving Ethniki a competitive advantage over rival health insurers, namely, HHG patients' health data and rival hospital doctors' billing data. Subsequently, the Commission evaluates whether post-Transaction the combined entity would have the ability and incentive to use such information to favour Ethniki over rival health insurers, and whether such behaviour would harm competition.

5.6.1. Access to commercially sensitive information on HHG's patients' health data

5.6.1.1. The Notifying Party's view

(143) The Notifying Party submits that post-Transaction, HHG and the Target would not have the ability or the incentive to use patients' health data in order to give Ethniki a competitive advantage over rival health insurers. The Notifying Party notes that this would be unlawful under the Regulation (EU) 2016/679, namely the General Data Protection Regulation ("GDPR").[261] The Notifying Party adds that patient data from HHG would not be to the benefit of Ethniki because hospital patients are not part of the healthy population that insurers typically target.[262]

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[258] HHG's competitor, Preliminary note on the anti-competitive effects of the proposed acquisition of Ethniki Insurance by CVC Capital Partners' Fund VII, 10 September 2021, footnote 46.

[259] HHG's competitor, Outline of Theory of Harm, 10 June 2021, paragraph 4.13.

[260] Form CO, Annex 39, [CVC'S INTERNAL DOCUMENTS], 4 October 2017, p. 22. Financial incentives are also considered important for doctors to establish an exclusive relationship by one rival of HHG in Questionnaire Q2 to private hospital services providers, Question 35.1.1.

[261] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1.

[262] Form CO, p. 6.

5.6.1.2. The Commission's assessment

(A) Patients' health data as commercially sensitive information

(144) On the basis of the submissions from respondents to the market investigation,[263] the Commission identified patients' health data as commercially sensitive information that the combined entity may use post-Transaction in order to grant Ethniki a competitive advantage over rival health insurers in Greece.

(B) Ability to use patients' health data to put rival health insurers at a competitive disadvantage

(145) The evidence in the Commission's file does not enable the Commission to conclude that the combined entity will have the ability post-Transaction, to put rival health insurers in Greece at a competitive disadvantage by using the patients' health data stored at HHG hospitals.

(146) *First*, from a technical point of view, it is not clear whether [STATEMENT REGARDING THE NOTIFYING PARTY'S STRATEGY ON DIGITALISED MEDICAL REPORTS]. The Notifying Party submits that HHG does not [STATEMENT REGARDING THE NOTIFYING PARTY'S STRATEGY ON DIGITALISED MEDICAL REPORTS]. The Notifying Party further explains that entry forms for each patient are completed in written format by the medical personnel, including the reason of admission and medical history, and anything considered necessary for the admission (e.g., allergies, other health conditions, etc.). […]. The data can only be accessed by those with requisite permissions, which is tracked.[264]

(147) In addition, the Notifying Party submits that HHG uses patients' data purely for clinical purposes and does not [STATEMENT REGARDING THE NOTIFYING PARTY'S DATA STRATEGY].[265]

(148) The Commission's market investigation contradicts the Notifying Party's submission. Overall, the results of the Commission's market investigation show that all private hospital respondents keep electronic records of treated patients' health status and their insurance companies.[266] One private hospital respondent explains that "[p]*ursuant to Article 14 of Law 3418/2005, medical doctors are required to keep medical files"*[267] but adds that these medical records can be kept either *"in electronic (or non-electronic) form. Clinics and hospitals are also obliged to keep files and results of all clinical and para-clinical examinations. Furthermore, patients need to fill out standard forms ("Patients' Information Forms") during the hospital admission process, while* [the respondent's] *hospitals also keep patient report cards, which include information regarding the place of residence of the patient, as well as their insurance affiliation/coverage*".[268] One health insurer respondent also notes

263 Questionnaire Q1 to competitors in health insurance services, Question 37.
264 Form CO, paragraph 458.
265 Form CO, paragraph 459.
266 Questionnaire Q2 to private hospital services providers, Question 36.
267 Questionnaire Q2 to private hospital services providers, Question 36.1.
268 Questionnaire Q2 to private hospital services providers, Question 36.1.

that certain hospitals, including Hygeia, have invested to develop personal health files for patients, with full medical history data.[269]

(149) *Second*, even though EU rules dealing with data protection and privacy do not in themselves eliminate the risks that the Parties' process such data in a way to impede effective competition,[270] the Commission notes that there appear to be certain enhanced legal limitations on the use of patients' data by Ethniki post-Transaction.[271]

(150) In particular, the legal framework applicable to the collection, processing and sharing of patients' data is governed by the GDPR and the national implementing Law 4624/2019 "*on measures for implementing Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data, and transposition of Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016, and other provisions*" (the "Law 4624/2019").

(151) Pursuant to GDPR, personal data concerning health should include all data pertaining to the health status of a data subject which reveal information relating to the past, current or future physical or mental health status of the data subject.[272] This type of data is considered falling into one of the special categories of personal data, the processing of which shall be prohibited, unless the data subject has given explicit consent to such processing for a specified purpose or the processing is necessary for one or more of the purposes described under GDPR.[273]

(152) According to GDPR, personal data is "*any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an* identification *number, location data […]*".[274] In this respect, the Commission notes that, to the extent that the combined entity's processing of patients' health data allows for the identification of those patients that are healthy and insured or healthy and uninsured, such data could qualify as personal data and would be thus subject to the enhanced protection of the special categories of personal data under GDPR.

(153) If HHG sought consent allowing it to disclose patient data to Ethniki (or any other insurance company) for use for purposes other than administration of claims, it is likely that it would be refused in a large majority of cases. Seeking such consent would be a material departure from normal hospital practice in Greece and would likely damage HHG's reputation amongst patients and prospective patients, as well as doctors who might not want their patients to be hassled for data unrelated to their treatment.[275]

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269 Questionnaire Q1 to competitors in health insurance services, Question 29.2.

270 Case M.9660 – *Google/Fitbit*, decision of 17 December 2020, recital 412.

271 Case M.8788 – *Apple/Shazam*, decision of 6 September 2018, recital 225.

272 GDPR, recital 35.

273 GDPR, Article 9.

274 GDPR, Article 4.

275 Form CO, paragraph 462.

(154) The Commission's market investigation also suggests that GDPR poses a serious limitation in such a processing of personal data.[276] One health insurer respondent explains: "*... one needs to be very cautious how it cross-sells considering GDPR and other relatively strict provisions prohibiting or limiting such efforts*".[277] Another health insurer respondent says that "[s]*uch a practice would be inconsistent with applicable laws, in particular GDPR*".[278]

(C) Incentive to use patients' health data to put rival health insurers at a competitive disadvantage

(155) The Commission considers that the combined entity would not have the incentive to use HHG's patients' health data to put rival health insurers at a competitive disadvantage.

(156) *First*, in the Commission's market investigation, the majority of health insurer respondents explains that they target all healthy customers with no chronic medical conditions, irrespective of age or of having been admitted to a hospital.[279] In that sense, identifying patients that have been admitted to an HHG hospital does not provide Ethniki with a particular advantage in marketing. In addition, this cannot be considered as a competitive disadvantage for rival health insurers that already indicate that they target all healthy customers without the need to be assured that those customers have never been treated to a hospital.[280]

(157) *Second*, reaching out directly to customers to sell health insurance products is not common in Greece. Marketing of health insurance products in Greece typically takes place through advertising, insurance agents, and bancassurance networks.[281] This is also confirmed in the Commission's market investigation.[282] It is not thus clear why 'cold-calling' an HHG patient is better than the above distribution channels. Instead, such a strategy could have negative reputational effects on Ethniki.

(D) Effect on competition

(158) Most importantly, on the basis of the evidence in its file, the Commission considers that even if the combined entity were to have the ability and the incentive to use HHG's patients' health data, the related practices, such as targeted marketing, are

[276] The Commission's assessment is without prejudice to the assessment of the relevant issues by the competent data protection authorities. In the remainder of this Section, the Commission, while mindful that legal constraints may limit the combined entity's possible future use of patients' health data, will assess the effects of the Transaction on the assumption that such use could be achieved in a lawful manner.

[277] Questionnaire Q1 to competitors in health insurance services, Question 37.2.

[278] Questionnaire Q1 to competitors in health insurance services, Question 37.3.1.

[279] Questionnaire Q1 to competitors in health insurance services, Question 37.

[280] Questionnaire Q1 to competitors in health insurance services, Question 37.1.

[281] Stochasis Report, Private Insurance, December 2020, p. 18 (Doc ID 82).

[282] Questionnaire Q1 to competitors in health insurance services, Question 37.2.

unlikely to have a negative impact on effective competition for health insurance in Greece.[283]

(159) *First*, marketing of health insurance products in Greece typically takes place through advertising, insurance agents, and bancassurance networks.[284] Ethniki's competitors would be able to continue competing on the basis of these distribution channels. In fact, in the Commission's market investigation, the majority of health insurer respondents indicated that brokers is the most popular distribution channel for individual health insurance products.[285] As explained by one health insurer, "[m]*ost important channels are tied agents and brokers*".[286]

(160) *Second*, health insurers in Greece compete at a national basis, whereas HHG hospitals have a particular focus on an Attica-based local market. While it is true that the majority of health insured customers *also* comes from the Attica region, HHG hospitals in Attica only received […] patients in 2020 out of a total population of 10,718,565 inhabitants in Greece (of which 3,738,901 are located in the Attica Region).[287]

5.6.1.3. Conclusion

(161) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of non-coordinated effects in respect of health insurance services in Greece due to access to HHG's patients' health data.[288]

5.6.2. Access to commercially sensitive information on doctors of HHG's rivals

5.6.2.1. The Notifying Party's view

(162) The Notifying Party submits that post-Transaction, HHG and the Target would not have the ability to harm providers of general private hospital services in Attica by allowing HHG to access commercially sensitive data of its rivals through Ethniki. The Notifying Party notes that, sharing doctor data without their consent, would be unlawful under Article 4 of the GDPR (see recital (152) above) and that there is a high likelihood that such breach would either be detected through the exercise of the Bank of Greece's supervisory powers or through information exchanged between the Bank of Greece and the Greek Data Protection Authority.[289] The Notifying Party adds that data on the best-performing doctors in HHG's rivals is not of material

[283] The Commission's assessment and conclusion in this Section also applies to the alternative plausible relevant markets for (i) individual health insurance services and (ii) group health insurance services in Greece. Especially for the latter, patients' data would be even less relevant for product marketing.

[284] See recital (157) above.

[285] Questionnaire Q1 to competitors in health insurance services, Question 19.

[286] Questionnaire Q1 to competitors in health insurance services, Question 19.2.

[287] Response of the Notifying Party to Request for Information I-9, submission dated 16 February 2022, Question 1.

[288] The Commission's assessment and conclusion in this Section also applies to the alternative plausible relevant markets for individual health insurance services and group health insurance services in Greece.

[289] Form CO, paragraphs 470ff.

value for future recruitment – the Attica market is small and the names of "rain maker" or "rising star" doctors are common knowledge.[290]

5.6.2.2. The Commission's assessment

(A) Doctor data as commercially sensitive information

(163) The Notifying Party does not dispute the fact that Ethniki stores data on doctors of private hospitals in its IT systems.[291] This is also confirmed by the results of the Commission's market investigation where the majority of private hospital respondents confirm that they share non-public information with health insurance providers, including Ethniki.[292] Respondents submit that "*sharing billing and overall treatment cost information (…) is a standard and mandatory procedure with all* [health insurance] *providers",* adding that this information includes the doctor's name and invoices issued to patients.[293]

(B) Ability to use doctor data to put HHG's rivals at a competitive disadvantage

(164) The Commission considers that, post-Transaction the combined entity would not have the ability to use doctor data to put HHG's rivals at a competitive disadvantage for the following reasons.

(165) *First*, evidence from the Commission's file as well as internal documents linked to Ethniki's databases, confirm that Ethniki holds data […].[294] On the one hand, the doctors' data stored in […].[295] On the other hand, […]. As such, no conclusions can be drawn on doctor-specific fees regarding doctors of different specialties who collaborated in the treatment of the patient.[296]

(166) *Second*, the results of the Commission's investigation do not show that billing data from doctors of rival hospitals would make an important difference in HHG's recruitment decisions or that it would allow HHG to put rivals at a competitive disadvantage for the following reasons:

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[290] Form CO, paragraph 475.

[291] Form CO, paragraph 474.

[292] In this context, the vast majority of respondents believe that post-Transaction HHG will have access to more and better data from Ethniki, concerning doctors practicing in their hospital and that this would allow HHG to poach doctors from them in a targeted manner. According to the private hospital respondents, this information may offer no value to the insurance company but can offer tremendous value to rival hospital operators that wish to develop strategies to attract doctors and patients, or to launch marketing strategies. See Questionnaire Q2 to private hospital services providers, Questions 34.1, 35 and 37.1.

[293] Questionnaire Q2 to private hospital services providers, Question 34.1. See also Questionnaire Q2 to private hospital services providers, Question 37, where respondents submit that, other information shared between private hospitals and health insurance providers include cost data regarding medical materials, medical devices or other equipment that hospitals purchase to be used in operations, hospital fees for any and by each type of service, hospital KPIs.

[294] Form CO, paragraph 474.

[295] Form CO, Annex 229, […]; Form CO, Annex 230, […]; Form CO, Annex 231, […]; and Form CO, Annex 232, […].

[296] Form CO, Annex 229, […]; Form CO, Annex 230, […]; Form CO, Annex 231, […]; and Form CO, Annex 232, […].

a) In the market investigation, private hospital respondents indicate that market intelligence is the main tool they use to identify and recruit the best doctors.[297] One of HHG's rivals submits that "*the main source of information is the medical community*" and that the doctor's excellence and expertise are determined by "*the doctor's work, published papers, unique treatment operations, certifications by independent parties etc. (…). To some extent, word of mouth may help to try to predict or estimate the level of patient flow (…)*". Other private hospital respondents consider "*market research of health visitors, the internet(…)*", "*referrals from other doctors*". One competitor of HHG adds: "*information from other sources (suppliers of materials, insurers, etc.)*" is only a "*secondary*" tool;[298]

b) Among private hospitals, market intelligence is also considered an effective tool for doctor recruitment in Attica. The majority of private hospital respondents confirm this in the Commission's market investigation;[299]

c) The Commission's market investigation also reveals that private hospitals have been recruiting successfully doctors in the past few years,[300] even without having access to information from health insurers. Private hospital respondents indicate that they have each recruited from 20 to 255 doctors per hospital each year in 2018-2020;[301] and

d) Evidence from the Commission's file, and in particular HHG's internal documents suggest that […].[302] [303]

(167) *Third*, the Commission notes that there appears to be certain legal and/or contractual limitations on the use of the doctors' data by Ethniki post-Transaction, which might limit the combined entity's future use of doctors' data (on the assumption that the combined entity would act in a lawful manner):

a) The processing of personal data, including the transmission of doctors' data to the Notifying Party and its subsequent processing, is subject to the applicable European rules dealing with data protection, notably the GDPR (and the Greek Law 4624/2019 incorporating the provisions of the GDPR in Greece),[304] and thus, the absence of the doctors' consent in Ethniki sharing their respective existing data with HHG would entail breach of law, and likely significant

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297 Questionnaire Q2 to private hospital services providers, Question 21.

298 Questionnaire Q2 to private hospital services providers, Question 21.

299 Questionnaire Q2 to private hospital services providers, Question 21.1.

300 Minutes of call with HHG's competitor, 25 October 2021, paragraph 25.

301 Questionnaire Q2 to private hospital services providers, Question 20.

302 Form CO, Annex 36, [CVC'S INTERNAL DOCUMENTS], 15 March 2017, p. 10; Form CO, Annex 35, [CVC'S INTERNAL DOCUMENTS], 8 February 2017, p. 29; Form CO, Annex 76, [CVC'S INTERNAL DOCUMENTS], January 2019, pp. 5-6; Form CO, Annex 78, [CVC'S INTERNAL DOCUMENTS], 14 January 2020, pp. 8-9; and Form CO, Annex 79, [CVC'S INTERNAL DOCUMENTS], 21 January 2021, p. 22.

303 Form CO, Annex 998, [CVC'S ECONOMIC PAPER PREPARED IN THE CONTEXT OF THE TRANSACTION], 13 October 2021, pp. 12-13.

304 The Commission's assessment is without prejudice to the assessment of the relevant issues by the competent data protection authorities. In the remainder of this Section, the Commission, while mindful that legal constraints may limit the combined entity's possible future use of doctors' data, will assess the effects of the Transaction on the assumption that such use could be achieved in a lawful manner.

administrative fines from the Greek Data Protection Authority and reputational damage of Ethniki; [305] and,

b) The relationship between Ethniki and private general hospitals is governed by legally binding contractual agreements, whose terms and conditions ensure confidentiality of information and protect personal data. In particular, these terms read: "[CONTRACTUAL TERMS]".[306] Evidence from the Commission's file suggests that this is a standard contractual term that is included in all contracts between Ethniki and private hospitals.[307] The existence of the above contractual term, which serves as an additional protective mechanism towards potentially unlawful conducts by Ethniki, is also referenced by private hospital respondents in the Commission's market investigation.[308]

(C) Incentive to use doctor data to put HHG's rivals at a competitive disadvantage

(168) The evidence in the Commission's file does not enable the Commission to conclude that the combined entity will have the incentive, post-Transaction, to use doctor data to put HHG's rivals at a competitive disadvantage for the following reasons.

(169) On the one hand, the results of the Commission's market investigation suggest that the combined entity could possibly have the incentive to use doctor data,[309] in order to be in position to poach the best doctors and attract more patients.[310]

(170) On the other hand, large-scale poaching of doctors from rival hospitals, by offering them more benefits compared to their rivals, could have a negative impact on HHG hospitals.

(171) *First*, incumbent HHG doctors would pressure to match the new doctors' pay, leading to a spiralling of HHG's doctor costs (which, according to the Notifying Party, already account for approximately […]% of HHG's operating costs).[311] This is also supported by an internal document of HHG prepared in 2019 which reads: [HHG'S INTERNAL DOCUMENTS]".[312]

(172) *Second*, newly recruited doctors in HHG hospitals would compete with incumbent doctors (e.g., for operating rooms or beds).[313] The reaction of incumbent doctors could discourage HHG from engaging in large-scale poaching of doctors from rival

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[305] Form CO, paragraph 471. Moreover, the Notifying Party submits that even if Ethniki obtained the relevant doctors' consent to share their data with HHG, Ethniki would not have an incentive to engage in such strategy, […] (Form CO, paragraph 477).

[306] Form CO, Annex 476, Ethniki – Private Hospital Contract Template, Article 9 (1) and (2).

[307] Form CO, Annex 322, […]; Form CO, Annex 325, […]; Form CO, Annex 366, […]; Form CO, Annex 375, […]; Form CO, Annex 369, […]; Form CO, Annex 393, […]; Form CO, Annex 404, […]; Form CO, Annex 409, […]; Form CO, Annex 425, […]; and, Form CO, Annex 447, […].

[308] Questionnaire Q2 to private hospital services providers, Question 34.1.

[309] Questionnaire Q2 to private hospital services providers, Question 35.

[310] Minutes of call with HHG's competitor, 24 September 2021, paragraph 25.

[311] Form CO, Annex 998, [CVC'S ECONOMIC PAPER PREPARED IN THE CONTEXT OF THE TRANSACTION], 13 October 2021, footnote 30.

[312] Form CO, Annex 76, [HHG'S INTERNAL DOCUMENTS], January 2019, p. 4.

[313] Form CO, Annex 998, [CVC'S ECONOMIC PAPER PREPARED IN THE CONTEXT OF THE TRANSACTION], 13 October 2021, p. 13; Form CO, Annex 1089, RFI 4, 11 October 2021 – First Submission, p. 9.

hospitals. In the Commission's market investigation, the vast majority of private hospital respondents submit that before taking recruitment decisions, they take into account possible reactions of incumbent doctors with the same specialisation,[314] not only when these concerns "*emanate from professional and scientific criteria*" but also with the intention of "*creat[ing] a cohesive well functioning team of doctors who complement each other and work well together*" and of avoiding "*conflict between doctors*".[315]

(D) Effect on Competition

(173) The Commission considers that, even if post-Transaction the combined entity had the ability and incentive to use data of HHG's rivals and poach doctors, it is unclear whether this strategy would have any effect on competition for the following reasons.

(174) In the Commission's market investigation, all private hospital respondents consider that, if HHG poached doctors from their hospital in a targeted manner, this would affect their ability to compete effectively in the market.[316]

(175) However, the Commission's investigation also indicates that there are reasons why even if doctors are successfully poached by HHG using Ethniki's data, it is not clear that they would have an exclusive relationship with HHG. In particular, doctors in Greece can be employed by multiple hospitals and their contracts may be terminated without cause at short notice, meaning they are generally mobile and not attached to specific hospitals.[317] In this context, the Notifying Party submits that within HHG, doctors with exclusivity contracts represent, on average, [10-20]%[318] of all doctors employed by HHG.[319] One of HHG's rivals notes that it did not have any exclusive contracts with doctors until 2020 and that "*doctors in Greece multi-home across hospitals*".[320] In the Commission's market investigation, the vast majority of private

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314 Questionnaire Q2 to private hospital services providers, Question 22.

315 Questionnaire Q2 to private hospital services providers, Question 22.1.

316 Questionnaire Q2 to private hospital services providers, Question 35.1. See also HHG's competitor, Outline of Theory of Harm, 10 June 2021, paragraph 4.17. One competitor of HHG claimed that the combination of the largest insurer (Ethniki) with the hospitals of HHG would create a strong patient-steering effect which would be reinforced by the possibility for HHG hospitals to poach doctors due to data sharing with Ethniki (a feedback-loop effect). This would lead to a decline in occupancy rates and revenues, which would lower the quality of the services offered due to a decrease of investments and result in further long-term declines in occupancy due to decreased demand, creating a vicious circle (see HHG's competitor, Report on ToH, 27 September 2021, paragraph 4.6 and Minutes of call with HHG's competitor, 22 November 2021, paragraph 12). However, the Commission notes the following. *First*, Ethniki would face significant competitive constraints in health insurance services in Greece post-Transaction (see recital (91) above) and following the acquisition of Metlife by NN it would no longer be the largest player in this market (see Table 1 above). *Second*, the Commission already concluded that the combined entity would not have the ability to engage in customer foreclosure post-Transaction against HHG's rivals (see Section 5.5.2.1 above) and in any event, it is unlikely that the proposed Transaction would have a negative impact on effective competition in private hospital services (see Section 5.5.2.3 above and the present Section). Thus, the Commission considers that it is unlikely that a patient-steering effect would occur in the first place due to lack of ability of the combined entity, and in any event, the Commission considers that the combined entity's behaviour would not have any significant impact on occupancy rates and revenues of HHG's rival hospitals.

317 Form CO, paragraph 250.

318 [HHG'S INTERNAL DATA] (Form CO, Annex 270, [HHG'S INTERNAL DATA], p. 2).

319 Form CO, Annex 270, [HHG'S INTERNAL DATA], p. 2.

320 HHG's competitor, Report on ToH, 27 September 2021, paragraph 3.40.

hospital respondents confirm that a meaningful percentage of their doctors multi-home in various hospitals. More specifically, 40% of private hospital respondents suggest that over 50% of their doctors multi-home, 30% that 30-50% of their doctors multi-home and 20% indicate that 0-30% multi-home.[321]

(176) One private hospital respondent explains that "*the doctors that are not in the "top-tier" group usually multi-home, (...) which means that they can practice freely in multiple hospitals, looking for e.g. cheaper alternatives, availability of operation rooms, and location closer to the patient (...)*",[322] whilst on the contrary, the respondent mentions that "*top-tier*" doctors, that according to the private respondents generate a significant percentage of a private hospital's yearly revenue,[323] *"generally do not practice elsewhere (i.e. they do not "multi-home")"*.[324]

(177) However, this is contradicted by evidence in the Commission's file, which suggests that on average less than [HHG'S INTERNAL DATA][325] [326]

5.6.3. Conclusion

(178) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of non-coordinated effects in respect of general private hospital services in Attica, in particular due to the lack of ability of the combined entity to foreclose private hospitals in Attica by accessing their commercially sensitive information (doctors data).[327]

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321 Questionnaire Q2 to private hospital services providers, Question 19.

322 Questionnaire Q2 to private hospital services providers, Question 19.1.

323 Questionnaire Q2 to private hospital services providers, Question 18.

324 Questionnaire Q2 to private hospital services providers, Question 19.1.

325 [HHG'S INTERNAL DATA] (Form CO, Annex 270, [HHG'S INTERNAL DATA], p. 2).

326 Form CO, Annex 270, [HHG'S INTERNAL DATA], p. 2.

327 Respondents to the Commission's market investigation indicate that private hospitals also share other possibly sensitive commercial information with health insurers in the context of compensation claims processing, such as cost data on special materials (e.g., implants), hospital fees for medical treatments, and hospital KPIs (e.g., occupancy rates, lists of doctors, future equipment acquisition plans) (Questionnaire Q1 to competitors in health insurance services, Question 36; Questionnaire Q2 to private hospital services providers, Question 37). However, the respondents to the Commission's market investigation do not substantiate how this could impact competition on the market for general private hospitals in Attica. The Commission also notes the following. *First*, with regard to cost data on special materials, Ethniki's cooperation agreements with private hospitals show that [CONTRACTUAL TERMS] (Form CO, Annex 476, […]; Form CO, Annex 366, […]; Form CO, Annex 425, […]; Annex 447, […]). In any event, special materials represent [5-10]% of private hospitals' revenues (Form CO, Annex 79, [HHG'S INTERNAL DOCUMENTS], 21 January 2021, p. 3). *Second*, private hospitals already make publicly available the price lists for their medical treatments in their official websites. *Third*, there appears to be already today at least some transparency […] (Form CO, Annex 36, [CVC'S INTERNAL DOCUMENTS], 15 March 2017, p. 9 and Annex 39, [CVC'S INTERNAL DOCUMENTS], 4 October 2017, p. 6). *Fourth*, several private hospitals publicly announce the arrival of new equipment and provide a list of all their doctors, including new doctors, in their official websites (e.g., AMG, IASO, and Mediteranneo (Doc IDs 1316, 1325, and 1331). *Fifth*, the cooperation agreements between Ethniki and private hospitals include [CONTRACTUAL TERMS RELATED TO CONFIDENTIALITY OBLIGATIONS] (Form CO, Annex 476, […]; Form CO, Annex 366, […]; Form CO, Annex 447, […]; in the same vein, see Case M.8960 – *Adient/Boeing/JV (Aircraft Seats)*, decision of 5 October 2018, recital 97).

6. CONCLUSION

(179) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President