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LAW FIRM

COMPETITION & REGULATION REPORT

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SECTIONS

- Antitrust
- Mergers
- State Aid
- Energy
- Electronic Communications & Post
- Pharmaceuticals
- Transport

HIGHLIGHTS

- Commission fines Barclays, RBS, Citigroup, JPMorgan and MUFG €1.07 billion for participating in foreign exchange spot trading cartel
- Commission approves prolongation of Italian guarantee scheme for non-performing loans
- Obstruction of the investigation conducted by the Competition Directorate General through an on-the-spot check of the non-alcoholic beverages market (article 39 par. 5 of Law 3959/2011) by COCA COLA TRIA EPSILON ELLADOS A.V.E.E.
- Commission fines Canon €28 million for partially implementing its acquisition of Toshiba Medical Systems Corporation before notification and merger control approval
- Commission approves prolongation of Greek bank guarantee scheme
- Commission approves €5.4 billion support for production of electricity from renewable sources in Italy
- Commission approves introduction of stringent emission limits in Italian capacity mechanism

Editorial

GC judgment in Joint Cases T-624/15, T-694/15 and T-704/15. The Micula case revisited.

On 30 March 2015 the Commission issued a decision considering that an arbitral award issued by an arbitral tribunal established under the auspices of the International Centre for Settlement of Investment Disputes (ICSID) [Micula v. Romania] could be qualified as a prohibited state aid measure[1]. The decision of the Commission fed at that time many comments as per the extensive approach of the notion of state aid endorsed by the Commission covering potentially the judgements of tribunals instituted on the basis of international rules on commercial arbitration.

On 18 June 2019, further to an appeal of the beneficiaries of the measure, the GC annulled the decision of the Commission. The GC stated that the right to receive compensation arose at the time when Romania repealed the contested financial scheme (the EGO incentives) in 2005. Therefore, the right to receive the compensation awarded by the arbitral tribunal was not conferred on the applicants only after Romania's accession to the European Union, despite the fact that the arbitral award was issued in 2013. In fact, according to the GC, the arbitral tribunal confined itself to determining the exact damage suffered by the applicants on the basis of the infringements committed by Romania in 2005.

Thus, since the arbitral award was an ancillary element of the compensation at issue and was not, as such, severable from the earlier tax incentives, it could not be classified as new aid and serve as a basis for the competence of the Commission and the applicability of EU law for all the events occurring in the past, namely the events giving rise to the disputes which predate Romania's accession to the European Union.

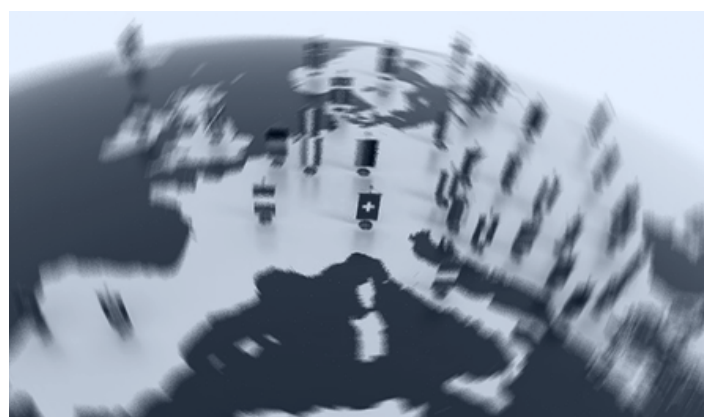
In the light of the foregoing, the GC concluded that, by adopting the contested decision, the Commission retroactively applied the powers which it held under Article 108 TFEU and Regulation No 659/1999 to events predating Romania's accession to the European Union. Therefore, the Commission could not classify the measure at issue as State aid within the meaning of Article 107(1) TFEU.

In the light of the foregoing, the GC concluded that, by adopting the contested decision, the Commission retroactively applied the powers which it held under Article 108 TFEU and Regulation No 659/1999 to events predating Romania's accession to the European Union. Therefore, the Commission could not classify the measure at issue as State aid within the meaning of Article 107(1) TFEU.

The GC went on and examined further whether the arbitral award conferred to the applicants any undue advantage according to article 107 paragraph 1 of the TFEU. To that effect, as the compensation at issue covered, at least in part, a period predating accession of Romania (from 22 February 2005 to 1 January 2007) and as the Commission did not draw a distinction, among the amounts to be recovered, between those falling within the period predating accession and those falling within the period subsequent to accession, the decision by which it classified the entirety of the compensation as aid was, according to the GC, necessarily unlawful.

Despite the annulment of the Micula decision, it should be noted that the GC did not contest by principle the possibility to qualify an arbitral award as unlawful state aid. Based on the previous jurisprudence of the Court that could be the case if the compensation awarded has the effect of compensating for the withdrawal of unlawful or incompatible aid[1].

To read the full judgement of the General Court click **here**.



Antitrust

Commission fines Barclays, RBS, Citigroup, JPMorgan and MUFG €1.07 billion for participating in foreign exchange spot trading cartel

In two settlement decisions, the European Commission has fined five banks for taking part in two cartels in the Spot Foreign Exchange market for 11 currencies - Euro, British Pound, Japanese Yen, Swiss Franc, US, Canadian, New Zealand and Australian Dollars, and Danish, Swedish and Norwegian crowns. To read the full press release of the Commission click [here](#).

Commission fines AB InBev €200 million for restricting cross-border sales of beer

The European Commission has fined AB InBev €200 409 000 for breaching EU antitrust rules. AB InBev, the world's biggest beer company, has abused its dominant position on the Belgian beer market by hindering cheaper imports of its Jupiler beer from the Netherlands into Belgium. To read the full press release of the Commission click [here](#).

Commission opens investigation into Insurance Ireland data pooling system

In the case of Insurance Ireland, the Commission's investigation will assess, in particular, whether the conditions imposed on companies wishing to participate in and access the Insurance Link database may have had the effect of placing these companies at a competitive disadvantage on the Irish motor insurance market in comparison to companies already having access to the database. To read the full press release of the Commission click [here](#).

Commission confirms unannounced inspections in the grocery retail sector in France

The Commission has concerns that two grocery retail companies may have violated EU antitrust rules that prohibit cartels and restrictive business practices (Article 101 of the Treaty on the Functioning of the European Union). The Commission officials were accompanied by their counterparts from the French competition authority. To read the full press release of the Commission click [here](#).

Obstruction of the investigation conducted by the Competition Directorate General through an on-the-spot check of the non-alcoholic beverages market (article 39 par. 5 of Law 3959/2011) by COCA COLA TRIA EPSILON ELLADOS A.V.E.E. as well as by persons

The Plenary Session of the Competition Committee will meet on 24 July 2019 to examine, on a recommendation, whether there is a violation of the provisions of article 39 par. 5 of Law 3959/2011 regarding the obstruction of investigation by COCA COLA TRIA EPSILON ELLADOS A.V.E.E. in the course of an unannounced on-the-spot check carried out by employees of the General Directorate of the Competition Committee on 6.9.2016 and 7.9.2016 at the headquarters of the company COCA COLA TRIA EPSILON ELLADOS A.V.E.E., as well as to its branch office. To read the full press release of the Greek HCC click [here](#).



Merger

Commission clears the creation of a joint venture by Tenaris and Severstal

The European Commission has approved, under the EU Merger Regulation, the creation of a joint venture by Tenaris S.A. of Luxembourg and PAO Severstal ("Severstal") of the Russian Federation. To read the full press release of the Commission click [here](#).

Commission clears acquisition of joint control over Cadent by Macquarie, China Investment Corporation, Allianz, Dalmore, and INPP

The European Commission has approved, under the EU Merger Regulation, the proposed acquisition of joint control over the gas distribution business of National Grid ("Cadent") of the UK by Macquarie Group of Australia, China Investment Corporation ("CIC") of China, Allianz SE of Germany, Dalmore Capital Limited ("Dalmore") of the UK and International Public Partnerships Limited ("INPP") of the UK. To read the full press release of the Commission click [here](#).

Commission clears the acquisition of joint control over VTG by OMERS Infrastructure and Morgan Stanley

The Commission concluded that the proposed acquisition, which was examined under the simplified merger review procedure, would raise no competition concerns because of the limited impact on the market. To read the full press release of the Commission click [here](#).

Commission clears non-UK part of Onex's and AEG's acquisition of control over a joint venture

The European Commission has approved under the EU Merger Regulation the acquisition of joint control over a newly created joint venture by Onex Corporation ("Onex") of Canada and Anschutz Entertainment Group, Inc. ("AEG") of the US. The joint venture, ASM Global, will be active worldwide in the management of live entertainment venues. To read the full press release of the Commission click [here](#).

Commission prohibits proposed merger between Tata Steel and ThyssenKrupp

The European Commission has prohibited the creation of a joint venture by Tata Steel and ThyssenKrupp under the EU Merger Regulation. The merger would have reduced competition and increased prices for different types of steel. The parties did not offer adequate remedies to address these concerns. To read the full press release of the Commission click [here](#).

Commission approves acquisition of L3 Technologies by Harris Corporation, subject to conditions

Both L3 Technologies and Harris Corporation are suppliers of intelligence, surveillance and reconnaissance, communications and electronic systems for military, law enforcement, civil government and commercial customers. To read the full press release of the Commission click [here](#).

Commission fines Canon €28 million for partially implementing its acquisition of Toshiba Medical Systems Corporation before notification and merger control approval

The European Commission has fined Canon, the Japan-based imaging and optical products manufacturer, €28 million for implementing its acquisition of Toshiba Medical Systems Corporation (TMSC) before notification to and approval by the Commission, in breach of EU Merger control rules. To read the full press release of the Commission click [here](#).

Merger

The European Commission has approved unconditionally, under the EU Merger Regulation, the proposed acquisition of Red Hat by IBM, both information technology companies based in the US. The Commission concluded that the transaction would raise no competition concerns

Red Hat and IBM both sell information technology ("IT") solutions to enterprise customers. Red Hat's main activities relate to open-source software and support services, while IBM is active in a wide variety of IT solutions, namely enterprise IT software, hardware and services. To read the full press release of the Commission click [here](#).

Commission clears the creation of a joint venture between the Mapfre Group and the Santander Group

The newly created joint venture will provide certain categories of non-life insurance, mainly to commercial entities and small and medium-sized companies in Spain. To read the full press release of the Commission click [here](#).

Commission approves acquisition of Red Hat by IBM

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State aid

CJ's judgement in Case C-706/17 on measures intended to compensate providers of public interest services in the electricity sector

The Court decided on request for a preliminary ruling under Article 267 TFEU from the Lietuvos vyriausiosios administracinės teisėsaugos (Supreme Administrative Court of Lithuania). The request has been made in proceedings between, on the one hand, AB 'Achema', AB 'Orlen Lietuva' and AB 'Lifosa' and, on the other hand, the Valstybinė kainų ir energetikos kontrolės komisija (National Commission for Energy and Price Control; 'the NCECP') relating to NCECP Decision No O3-442 of 11 October 2013 concerning the determination of monies and prices for public interest services in respect of 2014. To read the full judgement of the Court of Justice click [here](#).

CJ's judgement in Case C-505/18 on the marketing programs implemented by the French Republic in the fruit and vegetables sector

This reference for a preliminary ruling concerns the interpretation of Commission Decision 2009/402 / EC dated 28.01.2009 concerning the marketing programs implemented by France in the fruit and vegetables sector (OJ 2009 L 127, p. 11). This reference was made in the course of proceedings between Copebi SCA and the French National Agency for Agricultural and Fishery Products concerning the cancellation of a security of revenue received by the abovementioned agency for the recovery of an amount corresponding to the repayment of the state aid paid to it between 1998 and 2002 and the corresponding interest. To read the full judgement of the Court click [here](#).

State aid

GC decided in Case T-791/16 on aid granted by the Spanish authorities to the professional football club of Real Madrid Club de Fútbol

Under an urban development agreement concluded in September 2011 between Madrid City Council and the applicant, the applicant undertook to transfer back certain immovable property. In connection with that transaction, that city council and the Autonomous Community of Madrid altered the land use plan of Madrid. In the contested decision, the Commission examined, among others, the valuation of the land made by the technical departments of Madrid City Council, that contained in a 2011 report by the Spanish Ministry of Finance, that of the report communicated by the applicant and commissioned from a property consultancy office and that of the report ordered by the Commission from a property valuation office. To read the judgement of the General Court click [here](#).

GC judgment in Joint Cases T-836/16 and T-624/17 on state aid SA.44351 implemented by Poland for the retail tax

The General Court decided regarding Poland's application for annulment of Commission Decision C dated 19.09.2016 on state aid on the Polish retail tax, which initiated the formal investigation procedure under Article 108 (2) TFEU in relation to that measure and, second, Commission decision dated 30.06.2017, on state aid implemented by Poland for the retail tax, which concluded the procedure and held that the measure in question constituted State aid incompatible with the internal market and was unlawfully put into effect. To read the full judgement of the General Court click [here](#).

GC judgment in Case T-353/15 regarding individual aid in favor of the Nürburgring complex for the construction of a leisure park, hotels and restaurants as well as for the organization of motor races

The General Court upheld the Commission which had taken the view that the tender process had been conducted in an open, transparent and non-discriminatory manner, that that procedure had resulted in a sale price consistent with the market and that there was no economic continuity between the sellers and the buyer, contrary to the applicant's claims. To read the full judgement of the General Court click [here](#).

GC judgment in Joint Cases T-624/15, T-694/15 and T-704/15 concerning the payment of compensation granted to certain economic operators

The applicants, European Food SA, Starmill SRL, Multipack SRL and Scandic Distilleries SA, in Case T-624/15, Mr Ioan Micula, in Case T-694/15, Mr Viorel Micula, European Drinks SA, Rieni Drinks SA, Transilvania General Import-Export SRL and West Leasing SRL, in Case T-704/15, were named in Commission Decision (EU) 2015/1470 of 30 March 2015 on State aid SA.38517 (2014/C) (ex 2014/NN) implemented by Romania — Arbitral award Micula v Romania of 11 December 2013 as the beneficiaries of the compensation granted by an arbitral award made on 11 December 2013 in Case ARB/05/20 Micula and Others v Romania, by an arbitral tribunal established under the auspices of the International Centre for Settlement of Investment Disputes (ICSID). To read the full judgement of the General Court click [here](#).

GC judgment in Case T-20/17 in respect of the Hungarian tax on the turnover from the broadcasting or publication of advertisements

Hungary raises three pleas in law in support of its action, the first alleging an error in the legal characterization of the measures at issue as State aid, within the meaning of Article 107(1) TFEU, the second alleging the failure to comply with the obligation to state reasons and the third alleging a misuse of powers. To read the full judgement of the General Court click [here](#).

State aid

Commission approves prolongation of Italian guarantee scheme for non-performing loans

Under the scheme Italian banks meeting certain conditions will continue to be able to request a State guarantee on the lower-risk senior notes issued by private securitization vehicles that help them to finance the sale of their non-performing loan portfolios. The more risky funding tranches of the securitization vehicles are to be sold to private investors and will not be guaranteed by the State. To read the full press release of the Commission click [here](#).

Commission opens in-depth investigation into Slovakia's tax on the food retail sector

The European Commission has opened an in-depth investigation into a tax on the food retail sector in Slovakia. The Commission has concerns that certain exemptions from the tax give some retailers a selective advantage over their competitors, in breach of EU State aid rules. To read the full decision click [here](#).

Commission approves prolongation of Irish credit union restructuring scheme

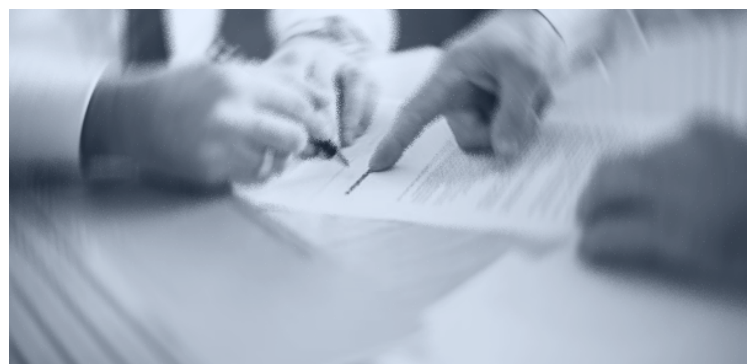
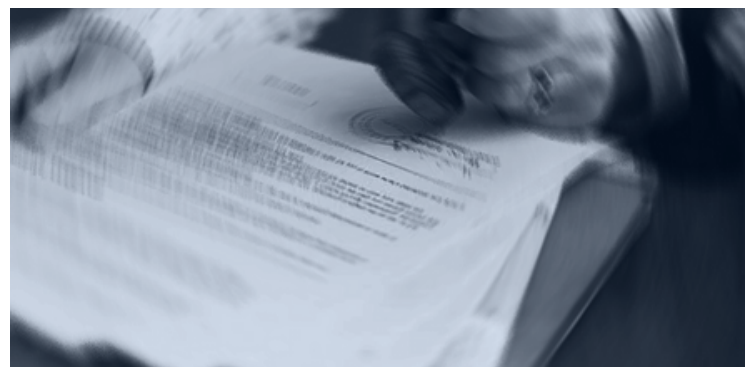
The scheme was initially approved in October 2014 and last prolonged in November 2018. The objective of the scheme is to underpin the stability and long-term viability of credit unions and the credit union sector in Ireland at large. To read the full press release of the Commission click [here](#).

Commission invites comments on simplified rules for State aid combined with EU support

The European Commission is inviting Member States and other stakeholders to comment on its proposal to exempt from prior Commission scrutiny under EU State aid rules aid granted through national funds for projects supported under certain EU centrally managed programmes. To read the full press release of the Commission click [here](#).

Commission approves prolongation of Greek bank guarantee scheme

The Commission has found that the prolongation of the guarantee scheme is in line with EU State aid rules, i.e. the 2013 Banking Communication, in particular because the prolonged measure is targeted, proportionate and limited in time and scope. To read the full press release of the Commission click [here](#).



Energy

The GC decided in Case T-222/17 on application pursuant to Article 263 TFEU for a reduction of the amount of the fine imposed on Recylex SA, established in Paris, Fonderie et Manufacture de Métaux SA, established in Brussels, Harz-Metall GmbH, established in Goslar in Commission Decision dated 08.02.2017 relating to a proceeding under Article 101 TFEU (Case AT.40018 — Car battery recycling)

The General Court held that the Commission did not err in declining to grant Recylex a reduction of 30 to 50% pursuant to the first indent of the first paragraph of point 26 of the 2006 Leniency Notice. Even if Eco-Bat had failed to fulfil its duty to cooperate fully with the Commission, the fact remains that Recylex was the second undertaking to provide evidence that had significant added value. To read the full judgement of the GC click [here](#).

Commission approves provisional measure ensuring security of local electricity supply in Slovakia

Slovakia notified the Commission of its plans to entrust electric utility company Slovenské Elektrárne a.s. with a temporary public service obligation to ensure security of supply in the geographical area around the Bystričany electricity system node, which is insufficiently connected with the rest of the Slovak electricity grid. To read the full press release of the Commission click [here](#).

Commission approves €5.4 billion support for production of electricity from renewable sources in Italy

The European Commission has approved, under EU State aid rules, a scheme to support electricity production from renewable sources in Italy. The measure will contribute to the EU environmental objectives without unduly distorting competition. To read the full press release of the Commission click [here](#).

Commission approves introduction of stringent emission limits in Italian capacity mechanism

The European Commission has approved under State aid rules the introduction of stringent CO2 emission limits in the Italian capacity mechanism. The measure will contribute to ensuring security of supply and increase the level of environmental protection without unduly distorting competition in the Single Market. To read the full press release of the Commission click [here](#).



Electronic Communications & Post

GC judgement in Case T-370/17 regarding the application for annulment of the Commission Decision C(2016) 5165 final declaring the concentration involving the acquisition by Vodafone Group and Liberty Global Europe Holding of joint control of a full-function joint venture to be compatible with the internal market and the EEA Agreement

According to the contested decision, the proposed transaction would combine the notifying parties' activities in the Netherlands. It is apparent from that decision that the Commission took the view that the proposed transaction gave rise to certain horizontal overlaps and vertical relationships between the parties' activities in a number of markets along the chain for the distribution of television content and the provision of telecommunications services (fixed and mobile telephony and broadband Internet) in the Netherlands. To read the full judgement click [here](#).

Commission opens in-depth investigation into Telia Company's proposed acquisition of Bonnier Broadcasting

The European Commission has opened an in-depth investigation to assess the proposed acquisition of Bonnier Broadcasting by Telia Company under the EU Merger Regulation. The Commission is concerned that the merged entity may shut out competitors from the audio-visual sector in Finland and Sweden. To read the full press release of the Commission click [here](#).

Commission opens investigation into Broadcom and sends Statement of Objections seeking to impose interim measures in TV and modem chipsets markets

The European Commission has opened a formal antitrust investigation to assess whether Broadcom may be restricting competition through exclusivity practices, in breach of EU rules. The Commission intends to impose interim measures during the investigation with regard to TV and modem chipsets markets. To read the full press release of the Commission click [here](#).

The European Commission authorized the acquisition of SecureLink by Orange

The European Commission has approved under the European Merger Regulation the acquisition of SL Bidco B.V. ("SecureLink"), a company based in the Netherlands, by Orange S.A., based in France. To read the full press release of the Commission click [here](#).

Transport

Commission clears acquisition of a joint venture by VW Group, Intel and Allied Holdings

The European Commission has approved, under the EU Merger Regulation, the acquisition of joint control of a newly created joint venture by Volkswagen Finance Luxembourg S.A. ("VWFL") of Luxembourg, Mobileye Vision Technologies Ltd. ("Mobileye") and Champion Motors Ltd., both of Israel. The joint venture will operate a ride hailing service based on a fleet of self-driving vehicles in Israel. To read the full press release of the Commission click [here](#).

Commission opens in-depth investigation into public financing of Fehmarn Belt fixed rail-road link

The Fehmarn Belt fixed rail-road link is a key element to complete the main North-South route connecting central Europe and the Nordic countries. It includes an undersea tunnel between Rødby on the island of Lolland in Denmark and Puttgarden in Germany and the corresponding rail and road connections on land. The tunnel will be approximately 19 kilometres long and consist of an electrified, double-track railway and a four-lane motorway. To read the full press release of the Commission click [here](#).

Transport

Commission approves €431 million public support for cleaner transport in German cities

The European Commission has found German plans to support the retrofitting of municipal and commercial diesel vehicles to be in line with EU State aid rules. The measure should contribute to reducing nitrogen oxides emissions by 1,450 tons per year, while limiting distortions of competition. To read the full press release of the European Commission click [here](#).

Commission approves support for JC Decaux "Villo" bike rental system in Brussels; orders recovery of up to € 2.5 million of incompatible aid granted to JC Decaux

In March 2015, following a complaint by advertising company Clear Channel Belgium, the Commission opened an in-depth investigation to assess whether two measures granted by the Brussels authorities in favour of the advertising company JC Decaux were in line with EU State aid rules. The first measure concerned the "Villo" bike rental system in Brussels. To read the full press release of the European Commission click [here](#).

Commission clears acquisition of P&O Group by DP World

P&O Group provides cargo and passenger ferries in the European Economic Area, freight forwarding and logistics services and road and rail transport services. DP World is a worldwide operator of marine terminals and other port infrastructure and provides cargo handling and container shipping services. To read the full press release of the European Commission click [here](#).

CFinland needs to recover incompatible State aid from bus company

The European Commission has found that Finnish bus transport company Helsingin Bussiliikenne Oy ("HelB") received €54.2 million of incompatible State aid from Finland. The Commission received a complaint alleging that the conditions of loans granted to HelB by the Finnish authorities were not on market terms. To read the full press release of the European Commission click [here](#).

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