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LAW FIRM

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- Commission opens in-depth investigation procedure into measures in favour of Béziers airport in France and Ryanair
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Editorial

Competition Law in the difficult times of the coronavirus outbreak – which response?

It is often suggested that the effective implementation of competition law requires (and preserves) the existence of economic normality. Thus, it is argued that if for whatsoever reason the economy does not function appropriately, it is purposeless for the authorities to try to apply competition law constraints. During the first crisis of the steel industry, the Commission took several decisions declaring that the prohibition of anticompetitive collusions should not apply in the agreements between steel undertakings aiming in facing the consequences of the crisis. That gave birth to the approach of “crisis cartels”.

However, when Europe faced the consequences of the 2008 global financial crisis, the Commission undertook a different approach : according to this new approach, the crisis is not considered as an appropriate justification for undertakings to engage in collusive or abusive practices. If Member States wish to tackle the consequences of the crisis, the EU provisions on State Aid offer the adequate possibility to adopt well targeted measures of public support for the enterprises affected by the crisis. The underlying idea is that collusions and abusive practices are per se inadequate to face the consequences of the crisis. Conversely, state aid offers a possibility of public support under a strict condition of observance of the proportionality principle. Thus, during the financial crisis the Commission issued soft law texts and authorized massively state aid measures in favor of credit institutions (recapitalization, impair assets, state guarantees etc.). The Commission based its approach on the legal basis of “serious disturbance in the economy of a Member State” [article 107 para 3, under b) of the TFEU].

In order to face the consequences of the going sanitary crisis the Commission follows the same ratio. It is not accepted that in principle the COVID-19 crisis could modify the application of competition law in private behaviors of undertakings – see however the Communication of the Commission allowing in a limited way business cooperation projects aimed at addressing the shortage of essential products and services during the COVID-19 outbreak (click [here](#)).

Conversely, it is accepted – under specific conditions – that Member States should be authorized to support aggrieved undertakings. As during the recent financial crisis, again the Commission based its analysis on article 107 para 3, under b) and the criterion of serious disturbance. According to the relevant Communication of the Commission as in force (click [here](#)) Member States have various options available outside the scope of EU State Aid control and which they may put in place without the involvement of the Commission. These include general measures applicable to all undertakings regarding wage subsidies, suspension of payments of corporate and value added taxes or social welfare contributions, or financial support directly to consumers for cancelled services or tickets not

reimbursed by the concerned operators. Moreover, Member States can always grant state aids without the involvement of the Commission on the basis of the Block Exemption and the de Minimis Regulations. In addition, Member States can adopt other state aid measures, but they have first to notify these measures to the Commission for approval. These measures comprise : a) aid in form of direct grants, repayable advances or tax advantages, b) aid in the form of guarantees on loans, c) aid in the form of subsidized interest rates for loans and d) aid in the form of guarantees and loans channeled through credit institutions or other financial institutions, e) aid in form of wage subsidies for employees to avoid lay-offs during the COVID-19 outbreak, f) aid in form of deferrals of tax and/or of social security contributions. Beyond these cases, the Commission will approve under conditions aid measures for R&D Projects related to COVID-19, investment aid for testing and upscaling infrastructures and investment aid for the production of COVID-19 relevant products. On the basis of the aforesaid communication, the Commission has already approved by urgent procedures several state aid measures against the Coronavirus outbreak in all Member States (they can be found [here](#)). It has to be noted that all state aid measures adopted by the Hellenic Republic have been notified to and approved by the Commission (see [SA.56839](#), [SA.56815](#), [SA.56857](#) and [SA.57048](#)). Furthermore, the Hellenic Competition Commission (HCC) has taken several focused actions for the application of anti-trust rules during the Coronavirus crisis: The HCC issued a Press Release (click [here](#)) stating that it will apply extra vigilance against restrictive practices during the crisis and announced the conduct of a targeted investigation into price increases and output restrictions in healthcare materials and other products (click [here](#)). These initiatives show that HCC as the European Commission will pay extra attention in the event that businesses try to use the pandemic as a pretext for distorting competition.

In conclusion, during the COVID-19 pandemic, application of competition law has a twofold dimension : on the one hand rigor against restrictive practices that have no real causal link to the mitigation of the consequences of the outbreak, but rather use the pandemic as a cover; on the other hand flexibility in order to allow genuine business practices and state measures who address properly the consequences of the outbreak in a proportionate manner.

Antitrust

C-228/18, *Gazdasági Versenyhivatal v Budapest Bank and Others*

The case referred to a national reference from Hungary seeking clarification around the distinction between object and effect restrictions under Article 101(1) TFEU. The Court first held that the same conduct can infringe Article 101(1) TFEU by having both the object and the effect of restricting competition, with the use of the term “or” in the article. The Court continued, holding that a finding of restriction by object needs to be supported by “robust and reliable” experience demonstrating that the practice in question will generally have an adverse effect on competition; in the absence of such experience a by effect assessment will be required. The Judgment also confirms that a restriction by object can never be established in the abstract; each inquiry is case-specific and the agreement must be assessed in its legal and economic context. Lastly, the Judgment indicates that the counterfactual (but-for occasion) is relevant when considering the existence of a by object restriction. To read the full judgement, click [here](#).

T 531/18, *LL-Carpenter v Commission*

The judgement concerned a request for the annulment of the decision rendered by the EC on 26 June 2018, on the basis of which it dismissed the complaint brought by the applicant, a Czech automobile agent denouncing various practices implemented by companies of Subaru Group in the field of motor vehicle distribution. The appeal was finally dismissed. To read the full judgment of the General Court click [here](#).

Commission prolongs the validity of block exemption for liner shipping consortia

The European Commission has prolonged for another four years the [Consortia Block Exemption Regulation](#) outlining the conditions under which liner shipping consortia can provide joint services without infringing EU antitrust rules that prohibit anticompetitive agreements between companies. To read the full press release, click [here](#).

Additional press release by the HCC regarding application of competition rules to supply contracts and distribution agreements (vertical agreements)

The HCC highlighted that it is possible that the imposition of maximum resale prices or recommended resale prices does not contravene EU and national competition law when they apply to vertical agreements (i.e. agreements between different stages of the supply and distribution chain) concerning the sale of goods and services of all kinds, even where the suppliers or the buyers have market shares of more than 30%, provided that the suppliers or buyers can justify these restrictions in accordance with paragraphs 227-229 of the [EU Commission's Vertical Restriction Guidelines](#). Thus, it announces that it will not take action against practices which relate to the imposition of maximum resale prices or recommended prices on supply contracts and distribution agreements, provided that the conditions set out above are fulfilled. To read the full HCC press release, click [here](#).

HCC imposes a fine on COCA COLA TRIA EPSILON

The HCC imposed a fine totaling € 800,000 on COCA COLA TRIA EPSILON for obstructing an on-site inspection in the context of an investigation by the HCC in the non-alcoholic beverage market. To read the full HCC press release, click [here](#).

HCC's Publication of Interim Report of Sector Inquiry into Basic consumer goods

The HCC published its Interim Report for the sector inquiry in the field of production, distribution and marketing of basic consumer distributed by supermarkets. To read the full HCC press release, click [here](#), for the Report [here](#) and for its Executive Summary [here](#).

Extension by the HCC of specific commitment terms proposed by "DELTA SA" and "MEVGAL SA"

By its unanimous decision No. 697/2019 the HCC extended the commitment terms proposed by "DELTA SA" and "MEVGAL SA" so as to address competition concerns according to 650/2017 Decision of HCC in the market of fresh cow milk. Among them, the two companies undertook the commitment to procure (directly or through third parties) fresh cow milk from each of their milk producers, until 20.10.2020, in 12 prefectures of Greece under a minimum guaranteed price, based on a specific mathematical formula. To read the full HCC press release, click [here](#).

Dawn raids in the food sector by HCC

In the context of the Covid-19 pandemic, the Hellenic Competition Commission has carried out on the April 22nd, with the assistance of Prefecture Units, dawn raids at undertakings and associations of undertakings active throughout Greece in the food sector, and particularly in the production of citrus products, due to press releases regarding significant price increases of specific citrus products and/or restrictions of their distribution in the domestic market. To read the full HCC press release, click [here](#).



Merger

C-10/18 P, Marine Harvest v Commission

The case was based on the interpretation of the term 'single concentration' and the ne bis in idem principle in competition proceedings.

By this ruling, the Court of Justice dismissed the appeal lodged by Mowi ASA (formerly Marine Harvest ASA) against the judgment of the General Court in *Marine Harvest v Commission* (T-704/14), by which the General Court dismissed Mowi's action for annulment of European Commission Decision C(2014) 5089 final of 23 July 2014. Both EU Courts rejected the appellant's claim that Article 7(2) of the Merger Regulation, read in the light of recital 20 of that Regulation, should be interpreted broadly, so that it is applicable to both an acquisition and a public offer as if those two transactions were steps in a single concentration.

The Court of Justice has also rejected the appellant's argument that the General Court failed to apply the principle ne bis in idem when it held that the Commission was entitled to impose separate fines on the appellant, one for breach of Article 4(1) of the Merger Regulation and the other for breach of the standstill obligation laid down in Article 7(1) of that Regulation. Finally, the Decision imposes a fine for putting into effect a concentration in breach of Article 4(1) and Article 7(1) of the Merger Regulation 139/2004. To read the full judgement, click [here](#).

Commission approves acquisition of Raytheon by UTC, subject to conditions

The two companies are both global suppliers of military systems and equipment to aircraft and guided munition producers, as well as armed forces. The wish to combine UTC's aerospace businesses and Raytheon's defense business. The European Commission has approved, under the EU Merger Regulation, the proposed acquisition of Raytheon by United Technologies Corporation (UTC), conditional on the divestiture of a remedy package. To read the full press release, click [here](#).

Commission opens in-depth investigation into proposed acquisition of Tachosil by Johnson & Johnson

The European Commission has opened an in-depth investigation to assess the proposed acquisition of Tachosil by Johnson & Johnson, under the EU Merger Regulation. The Commission is concerned that the merger may reduce potential competition and innovation for the supply of dual haemostatic patches. To read the full press release, click [here](#).



Merge

Clearance by HCC of the proposed acquisition by the cooperative "Crete Consumer's Supply Cooperative Limited Liability Partnership"

The HCC cleared by its unanimous Decision No. 701/2020 the proposed acquisition by the cooperative "Crete Consumer's Supply Cooperative Limited Liability Partnership" regarding the acquisition of the 75% of the shares of the companies "Galaxia Shops Dimitra Markets Limited Liability Company" and "Markato super markets Société Anonyme" that operate on the island of Corfu.

To read the full HCC press release, click [here](#).

Clearance of the VENILIA INVESTMENTS/ D MARINAS concentration by the HCC

The HCC by its unanimous Decision No. 705/2020 approved the concentration concerning the acquisition of 99% of the shares in D MARINAS HELLAS SA by VENILIA INVESTMENTS S.A.R.L. and, consequently, the acquisition of sole control by the latter over the former. To read the full HCC press release, click

[here](#).

Clearance of the ANDROMEDA/PERSEUS concentration by the HCC

The HCC by its unanimous Decision No. 706/2020 approved the concentration concerning the change from joint to sole control by the company ANDROMEDA SEAFOOD SOCIEDAD LIMITADA over the company PERSEUS SPECIALTY FOOD PRODUCTS. To read the full HCC press release, click [here](#).

Clearance of OCEAN/PEARL Ltd concentration by the HCC

The HCC by its unanimous Decision No. 707/2020 cleared the concentration between «OCEAN RAIL LOGISTICS S.A.» (OCEAN) (part of COSCO group) and A. Panagopoulos acquiring joint control over «PIRAEUS EUROPE ASIA RAIL LOGISTICS LIMITED» (PEARL Ltd). To read the full HCC press release, click [here](#).

The HCC clears the concentration of DoValue/ Eurobank FPS

The HCC by its unanimous Decision No. 709/2020 cleared the concentration between doValue S.p.A." (either itself or a subsidiary designated by doValue SpA) acquiring sole control over "Eurobank Financial Planning Services (FPS) Loan and Credit Claim Management Company SA" and (if do Value SpA exercises the relevant option right) over "REAL ESTATE MANAGEMENT SA". To read the full HCC press release, click [here](#).

Clearance of Creta Farm/ Teto Farma/ Bella Bulgaria concentration by the HCC

The HCC decided unanimously the clearance of the notified concentration of Creta Farm/ Teto Farma/ Bella Bulgaria. To read the full HCC press release, click [here](#).

State aid

C-244/18 P, Larko v Commission

Larko filed an appeal of the General Court judgment in Case T- 423/14 dismissing an action for annulment of the Commission decision (SA.34572) which declared that numerous guarantees given to Larko amounted to illegal State aid. The Court partially quashed the decision of the General Court concerning the part related to a guarantee granted by the Greek State in 2008 to Larko for a loan of 30 million euros, granted by Agricultural Bank of Greece in this company. To read the full judgement, click [here](#).

C56/18 P, Commission v Gmina Miasto Gdynia and Port Lotniczy Gdynia Kosakowo

The Commission had appealed against the judgment of the General Court in case T-263/15, Gmina Miasto Gdynia and Port Lotniczy Gdynia Kosakowo v European Commission, which partly annulled Commission decision 2015/1586 on the grounds that the Commission had switched the legal basis of assessment between the opening and closing of the formal investigation procedure. The Commission argued that the General Court misapplied the right conferred on interested parties by Article 108(2) TFEU to submit comments. The Court, set aside the General Court's judgement and referred the case back to it, to deal with the issues it did not examine in its judgment.

This outcome follows the well-established principle that when the Commission exercises its discretion in assessing the compatibility of aid, an interested party cannot successfully challenge the Commission's findings by simply showing that a different outcome is possible. It is necessary to demonstrate either a procedural error or a logical error in the Commission's analysis. To read the full judgement, click [here](#).

C576/18 P, Commission v Italy (Aides illégales au secteur hôtelier en Sardaigne)

The case was based in an action brought by the Commission against Italy for failure to comply with the Court of Justice's 2012 judgment in Case C- 243/10 which affirmed a Commission decision concluding that State aid had been illegally granted to the hotel industry in Sardinia (SA.14895). The Court held that Italy failed to fulfil its obligation to recover the unlawful aid immediately and effectively from the beneficiaries. Consequently, the judgment imposes on Italy a pecuniary penalty in the form of a lump sum (€ 7,500,000) and of a daily penalty payment in case of delay (€ 80,000). To read the full judgement click [here](#).



State aid

T-732/16, Valencia Club de Fútbol v Commission

Between 2009 and 2010, the Instituto Valenciano de Finanzas ('the IVF') - the financial establishment of the Generalitat Valenciana (Regional Government of Valencia, Spain)- granted a number of guarantees to associations linked to three Spanish professional football clubs from the Autonomous Community of Valencia, Valencia CF, Hércules CF and Elche CF. Those guarantees were intended to cover the bank loans taken out by those associations in order to participate in the increase in the capital of the three clubs to which they were linked.

By its decision of 4 July 2016, the Commission found that those measures constituted unlawful State aid incompatible with the internal market in favour of the three football clubs, and consequently it ordered their recovery. The three clubs each brought an action before the General Court with a view to annulling the Commission's decision. Regarding the Valencia Club, The Court annulled the Commission's decision based on the finding that the evidence on which the Commission's conclusions on that point were based were partly incorrect and that the Commission made a manifest error of assessment in that respect. To read the full judgement of the General Court, click [here](#).

T-901/16, Elche Club de Fútbol v Commission

Under the same factual background with the Valencia Club decision above, The General Court annuls the Commission's decision on aid measures implemented in favour of the Spanish football club Elche CF as well, finding that the Commission's assessment of the existence of an advantage from which Elche CF benefits is vitiated by manifest errors of assessment. To read the full judgement of the General Court click [here](#).

Commission opens in-depth investigation procedure into measures in favour of Béziers airport in France and Ryanair

The European Commission has opened an in-depth investigation to assess whether operating aid granted to Béziers airport and marketing and airport services agreements concluded between Ryanair and the Béziers airport operators are in line with EU State aid rules. To read the full press release, click [here](#).

C606/18 P, Nexans France and Nexans v Commission

As part of the investigation of the high-voltage cable cartel, the appellants sought the annulment of the General Court's ruling in Nexans France and Nexans v Commission (T-449/14), which dismissed the action brought by Nexans against Commission Decision of 2 April 2014. By this Decision, adopted against the background of a cartel proceeding relating to power cables, the Commission imposed penalties on the main European, Japanese and South Korean producers of high and extra high voltage submarine and underground power cables for their participation in an almost worldwide cartel.

According to the appeal, the General Court erred in law in interpreting the Commission's powers of inspection. The legal question posed to the Court of Justice is, specifically, whether the Commission is allowed, during an inspection conducted in cartel proceedings pursuant to Article 20 of Regulation 1/2003, to take copies of data at an undertaking without examining beforehand whether those data are relevant to the subject matter and purpose of the inspection concerned. On this matter, Advocate General Kokott proposed a wide interpretation of the Commission's powers of inspection in cartel proceedings. To read the full Opinion of the Advocate General, click [here](#).

Commission accepts commitments by Transgaz to facilitate natural gas exports from Romania

The European Commission has made commitments offered by Transgaz legally binding under EU antitrust rules. The company will make available to the market significant firm capacities for natural gas exports from Romania to neighbouring Member States, in particular Hungary and Bulgaria. To read the full decision of the Commission click [here](#).

Electronic Communications & Post

C338/19, Telecom Italia Spa v. Regione Sardegna

The case is based upon a reference for a preliminary ruling under Article 267 TFEU, relating two questions. First, if Article 16 of Regulation (EC) No 659/1999/EC of 22 March 1999, can be interpreted as meaning that a preliminary decision to recover aid must be adopted by the European Commission also in cases involving misuse of aid and second, whether Article 9(1) and (2) of Commission Regulation (EC) No 794/2004 of 21 April 2004 shall be interpreted as meaning that the interest rate stipulated in that provision for the recovery of incompatible and unlawful State aid also applies in the case where State aid authorised by a conditional decision and misused is to be recovered because the condition laid down therein was satisfied. To read the full order click [here](#).

Commission clears acquisition of joint control over INWIT by Telecom Italia and Vodafone, subject to conditions

The European Commission has approved, under the EU Merger Regulation, the proposed acquisition of joint control over INWIT by Telecom Italia and Vodafone. The approval is conditional on full compliance with a commitments package offered by Telecom Italia and Vodafone. To read the full Press Release of the Commission click [here](#).



Transport

C-587/18 P, CSTP Azienda della Mobilità v Commission

By this judgment, the Court of Justice has dismissed in its entirety the appeal lodged by CSTP Azienda della Mobilità SpA, a limited liability company providing local public transport services on the basis of regional and municipal concessions, against the judgment of the General Court in CSTP Azienda della Mobilità v Commission (T-186/15), which declared the aid granted by Italy to the company contrary to Articles 107(1) and 108(3) of the TFEU.

The Court of Justice has confirmed that the General Court was right to hold, relying on the cumulative nature of the Altmark conditions (C-280/00), that, as the first of those conditions was not satisfied, there was no need to examine the Commission's assessment concerning the second Altmark condition. The Court of Justice has recalled in this regard that the General Court has exclusive jurisdiction to find and appraise the relevant facts and assess the evidence.

The Court of Justice has also endorsed the General Court's interpretation according to which the measure at issue constituted an obstacle to competition, in so far as undertakings, including foreign undertakings, might wish to provide their public transport services on the Italian market, in particular local or regional markets.

Likewise, the Court of Justice has confirmed the General Court's view that the application of the rules on State aid is based on an obligation of sincere cooperation between, the national courts and the Commission and the EU Courts, as per each one's role assigned by the TFEU. To read the full judgement, click [here](#).

C-586/18 P, Buonotourist v Commission

On the same factual background, exactly the same reasoning with the above case C-587/18 P, was followed by the Court to Buonotourist v Commission case, again, dismissing the appeal brought by the former, (another company providing local public transport services on the basis of regional and municipal concessions in the Regione Campania in Italy). To read the full judgment, click [here](#).

Commission clears public support for several ferry services in Italy; finds other measures to the former Tirrenia Group to be incompatible aid

The European Commission has concluded that the public service compensation granted since 2009 to Tirrenia di Navigazione ('Tirrenia') and later to its acquirer Compagnia Italiana di Navigazione ('CIN') for the operation of ferry services in Italy is in line with EU State aid rules. However, it found that other measures in favour of Tirrenia are incompatible with EU State aid rules. The Commission also concluded that the public service compensation granted between 1992 and 2008 to companies of the former Tirrenia Group (Adriatica, Caremar, Saremar, Siremar and Toremar) is in line with EU State aid rules, with the exception of aid for one specific route, which is incompatible and thus, Italy must now recover €15 million of illegal aid. To read the Press Release of the Commission click [here](#).

Commission approves acquisition of the European catering business of LSG by Gategroup, subject to conditions

The European Commission has approved, under the EU Merger Regulation, the proposed acquisition of the European business of Lufthansa Service Group ("LSG") by Gategroup, by way of purchase of shares and assets. The approval is conditional on full compliance with commitments set by Gategroup. To read the full press release, click [here](#).

Pharmaceuticals

Commission approves the merger of Mylan and Pfizer's Upjohn division, subject to conditions

The European Commission has approved, under the EU Merger Regulation, the proposed merger between the global pharmaceutical company Mylan and Upjohn, a business division of Pfizer, which operates Pfizer's off-patent branded and generic established medicines. The decision is conditional on the divestment of Mylan's business for certain generic medicines. To read the full press release, click [here](#).



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