

KLC

LAW FIRM

COMPETITION & REGULATION REPORT

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- T 515/13 RENV, RENV Espagne v Commission and T 719/1 RENV, Lico Leasing, SA and Pequeños y Medianos Astilleros Sociedad de Reconversión, SA v Commission

Editorial

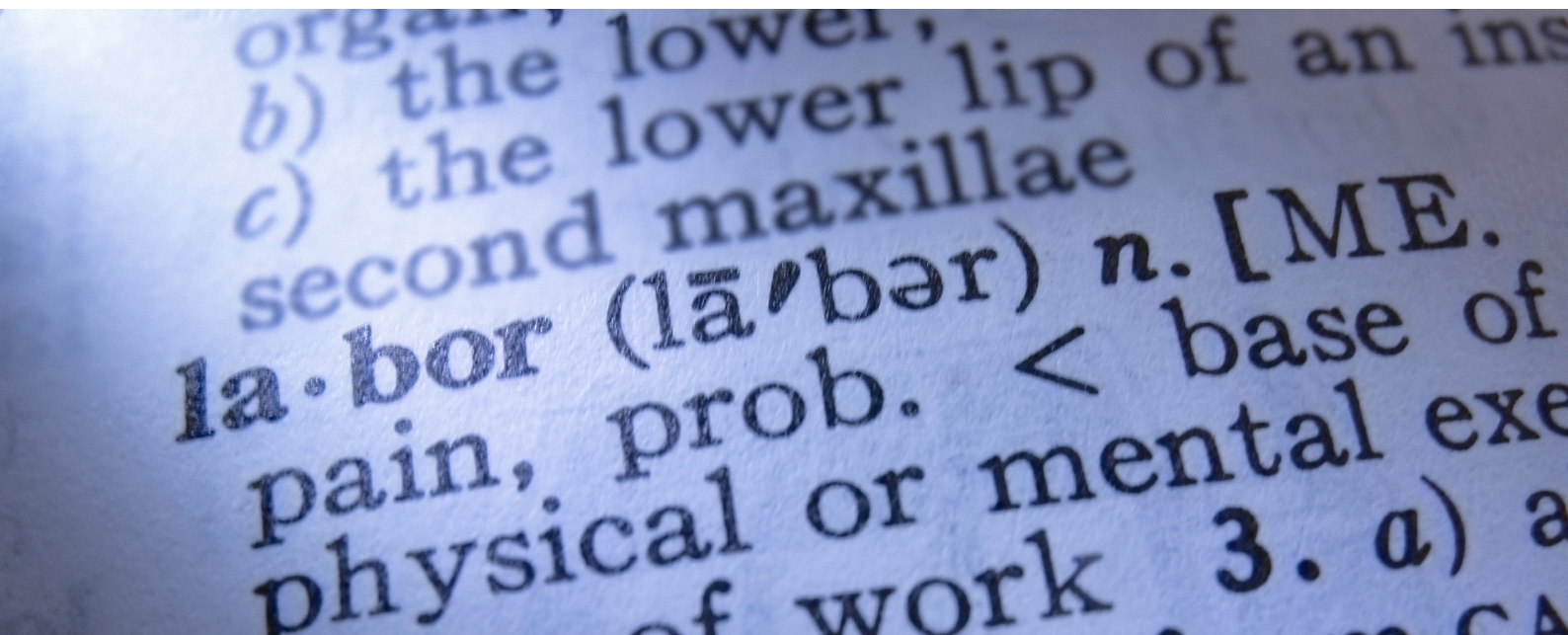
CJ, C-212/19, subsidizing employees' social contributions does not confer any competitive advantage to the employer

In September 2020, the CJ in an important preliminary judgment “Ministre de l’Agriculture et de l’Alimentation v. Compagnie des pêches de Saint-Malo”, ruled that reductions in employees’ social contributions applicable on a specific economic sector do not confer any advantage to the employer to the extent that are borne exclusively by the employees. The Court distinguished the employees’ part of the contribution to social security and the employers’ part. Obviously, a selective reduction to the latter, confers a competitive advantage to the undertaking beneficiary of the state measure, as this part of the social contributions must be normally borne by the employer.

As far as the employee’s part, in a social security system as the French one, in which the employer deducts the corresponding amount from the gross amount of the wage payable to the employee and refunds it to the social security responsible body, said amount cannot be considered as a “charge being normally part of the budget” of the undertaking concerned. As the Court ruled: “Thus, in so far as the fisheries undertakings merely act as an intermediary between their employees and those social security bodies and, therefore, the measure reducing the employees’ contributions at issue in the main proceedings remains neutral in relation to them, it must be held that that measure does not relate to charges included in the budgets of those undertakings”. Consequently, said reductions even being selective are not conferring to the undertaking of the employee any advantage as they benefited directly to the employee and not to the employer.

The judgment of the Court is important to the extent that it confirms / clarifies the previous positions of the Court concerning similar issue that was raised in a similar context regarding the Greek social security system. Moreover, it leaves more discretion to national governments of the Member States to manage their social security system and especially set out direct subsidies or aids to employees that could contribute in facing more efficiently the consequences of the ongoing pandemic crisis. To read the full judgment of the Court click

[here](#).



Antitrust

Commission adopts guidance for national courts when handling disclosure of confidential information

The European Commission has adopted a Communication on the protection of confidential information by national courts in proceedings for the private enforcement of EU competition law. To read the full press release, click [here](#) and for the text of the Communication, click [here](#).

Commission fines ethylene purchasers € 260 million in cartel settlement

The European Commission has fined Orbia, Clariant and Celanese a total of € 260 million for breaching EU antitrust rules. Westlake was not fined as it revealed the cartel to the Commission. To read the full press release, click [here](#).

Commission fines car parts suppliers of € 18 million in cartel settlement

The European Commission has fined Brose and Kiekert a total of € 18 million for taking part in two cartels concerning supplies of closure systems for cars in the European Economic Area (EEA). Magna was not fined as it revealed both cartels to the Commission. To read the full press release, click [here](#).

Commission publishes findings of the evaluation of the Vertical Block Exemption Regulation

The European Commission published a [Staff Working Document](#) that summarises the findings of the evaluation of the Vertical Block Exemption Regulation ("VBER"), together with the Vertical Guidelines. To read the full press release, click [here](#).

C-606/18 P - Nexans France and Nexans v Commission

With this important judgement, the ECJ clarified certain aspects regarding the Commission's investigative powers in competition dawn raids. Nexans claimed that the Commission was not entitled to make copies of a hard drive and certain emails without carrying out a meaningful examination of these documents beforehand. The ECJ dismissed Nexans' appeal against a General Court judgment which had upheld the EUR 70.6 million fine imposed by the Commission and ruled pro Commission's autonomy to make mass copies of digital documents and to continue their inspection on its premises, subject to respect for the interests and rights of the undertaking visited. To read the full judgement, click [here](#).

C-601/18 P - Prysmian SpA, Prysmian Cavi e Sistemi Srl v Commission

In the same vein with the above-mentioned Nexans judgement, two months later, the ECJ, dismissing the appeal in its entirety, it reaffirmed Commission's power to make mass copies of digital documents and to continue their inspection on its premises, subject to respect for the interests and rights of the undertaking visited. To read the full judgement, click [here](#).

C-702/19 P - Silver Plastics and Johannes Reifenhäuser vv Commission

The case referred to an appeal to the Court of Justice against the General Court's judgment in Case T-582/15 which dismissed an action for annulment of the Commission's decision concerning a retail food packaging trays cartel (AT.39563), which was dismissed in its entirety. Among others, the Court considered that where the General Court of the EU finds that the Commission has established that an undertaking has participated in anti-competitive agreements, it is not obliged to grant a request for the hearing of a witness. To read the full judgement, click [here](#).

C - 611/18 P - Pirelli & Co. v Commission

The Court of Justice rejected the appeal brought by Pirelli on a cartel fine - seeking to set aside part of the General Court's ruling in T-455/14, based on grounds alleging the infringement of provisions of Regulation 1/2003, various general principles, and an error of law in the duty to state reasons.

To read the full judgement, click [here](#).

HCC'S Decision 711/2020 on the complaint of A.K. against the company MAVIZ SA

The HCC unanimously decided to reject the complaint of A.K. against the company MAVIZ SA, for possible violation of article 2 of Law 3959/2011 ("Protection of Free Competition") and article 102 TFEU in the market for the supply of fur animal feed in the Greek territory.

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

HCC's Decision on the ex-officio investigation in the furniture and professional equipment market (703/2020)

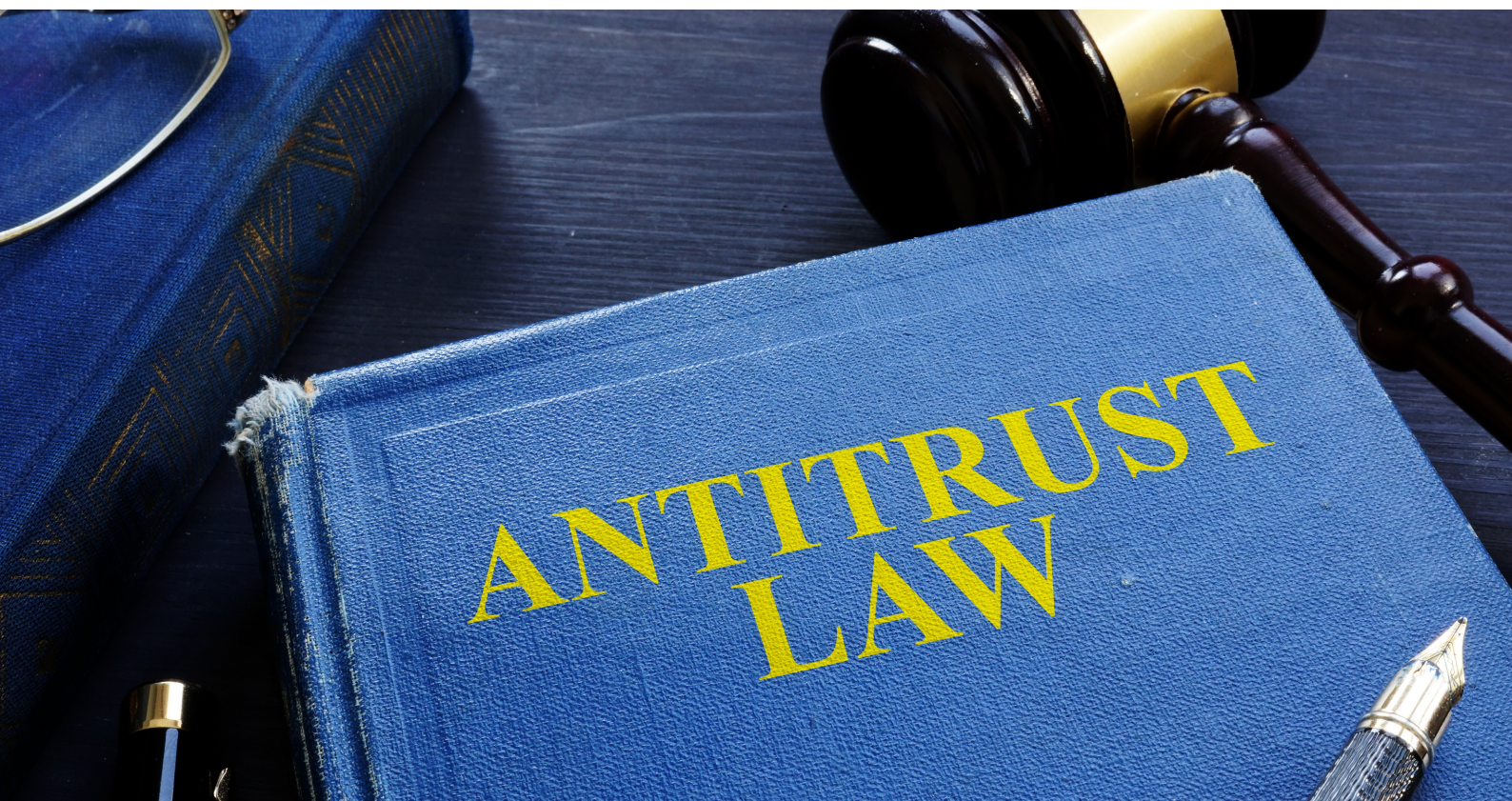
HCC adopted a unanimous decision following the simplified Settlement Procedure according to article 25a of Law 3959/2011 and Decision no. 628/2016, according to which, the company "K. PAPANASTASIOU OFFICE FURNITURE SA" obtained immunity from fines under the Greek leniency programme (Decision no. 526/2011, par. 47) and the company «MAR OFFICE FURNITURE MICHALIS PICHAS & SONS» was given a fine reduction according to the Settlement Procedure for the violation of article 1 of Law 3959/2011.

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

Release of the interim results of HCC's investigations on health and hospital equipment during covid-19 pandemic

The HCC launched an investigation in the markets of a) healthcare materials, b) other appropriate means of individual or collective protection against the spread of coronavirus and c) special hospital equipment for the treatment of coronavirus cases. Unsurprisingly, for most of the product categories investigated, the median price increased, while in most cases the fluctuations also increased.

To read the full press release of the HCC and to see the detailed results of the investigation, click [here](#).



HCC's in-depth investigation into the effects of COVID-19 pandemic on the markets for basic food commodities

Following relevant media reports, especially during the crucial period of COVID-19 pandemic outbreak in Greece, concerns were raised on potential shortages and/or price increases of particular agricultural and food products. The initiation of ex officio investigations, among other actions, in the markets and supply chains for milk, cereals and flower was therefore deemed necessary to establish possible infringements of Articles 1 and 2 of Law 3959/2011 and/or Articles 101 and 102 TFEU. The review of the data collected showed that at a first level, there is no significant increase in the median prices of white milk and flour-meal in supermarket chains during the outbreak of the Covid-2019 pandemic (Jan-May 2020) in Greece. To read the full press release of the HCC, click [here](#).

HCC - Complaint against «MEGA SPRINT GUARD S.A.», «MONDIALPOL HELLASSECURITY SERVICES S.A.» and «ISS SECURITY S.A.» («ESA SECURITYSOLUTIONS S.A.») and ex officio investigation of the General Directorate for Competition into alleged infringements of competition in the relevant market of security services.

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

HCC's review of compliance of the company "ATTICA GROUP"

The Competition Commission, as part of an ex officio investigation into ATTICA GROUP's compliance with the commitments imposed by Decision no. 658/2018, unanimously decided that: the company ATTICA GROUP did not comply with the operative part of Decision no. 658/2018

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

Entry into force of the new Organisation of the HCC – Presentation of the new Organisational Chart

The new Organisation introduces a new structure for the internal organisation of the HCC and the Directorate-General for Competition (DG). The aim of this new structure is to strengthen the functionality and flexibility of the HCC, based on international standards of other Competition Authorities.

To read the full press release of the HCC, click [here](#) and to find the new Organisational Chart of the HCC [here](#).

Competition Law and Sustainability" among the HCC initiatives in relation to sustainable development in the context of effective competition

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

HCC's Digital Conference about Competition Law & Sustainability

The HCC in the context of its innovative initiatives in relation to sustainable development has successfully organized a teleconference on September 28th, 2020 with the participation of prominent specialists of the field. The purpose of the teleconference was to launch a public debate on this issue. The teleconference aimed to better prepare Greece for the implementation of the goals of sustainable development by respecting the rules of competition. The HCC has published [a Staff Discussion Paper](#), where it analyses convergence areas and conflicts between sustainable development and competition law in all its aspects.

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

Merger

Commission clears AMS' acquisition of OSRAM

Both AMS and OSRAM are global suppliers of optical sensors, including certain light sensors and laser diodes for the consumer electronics, automotive, industrial, medical and other markets. The transaction would combine the companies' optical semiconductor solutions and technologies.

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

Commission approves acquisition of Nets' account-to-account payment business by Mastercard, subject to conditions

The European Commission has approved, under the EU Merger Regulation, the proposed acquisition of Nets' account-to-account payment business by Mastercard. The decision is conditional on the transfer of a license for Nets' "Realtime 24/7" technology for account-to-account core infrastructure services as well as of the relevant personnel and other assets.

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

Commission opens in-depth investigation into the proposed acquisition of Fitbit by Google

The European Commission has opened an in-depth investigation to assess the proposed acquisition of Fitbit by Google under the EU Merger Regulation. The Commission is concerned that the proposed transaction would further entrench Google's market position in the online advertising markets by increasing the already vast amount of data that Google could use for personalisation of the ads it serves and displays.

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

Commission approves Worldline's acquisition of Ingenico, subject to conditions

The European Commission has approved, under the EU Merger Regulation, the proposed acquisition of Ingenico by Worldline, both active in the payment services sector. The approval is conditional on full compliance with a commitments package offered by the parties.

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

The Hellenic Competition Commission clears the concentration between "SIDMA S.A." ("SIDMA") acquiring sole control over part of "BITROS Steel S.A." ("BITROS") through the acquisition of assets.

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

HCC's clearance of the FARALLON CAPITAL MANAGEMENT/PIRAEUS BANK/EUROMEDICA concentration

On 1/10/2020, by its unanimous Decision No. 718/2020, the HCC approved, pursuant to Art. 8(3) of Greek Law 3959/2011, the proposed transaction notified to it on 27/7/2020, which concerns the acquisition of joint control by the companies (a) FARALLON CAPITAL MANAGEMENT LLC, through the company "HEALTHCARE INVESTORS II (GREECE) LLC" and (b) PIRAEUS BANK SA, over parts of the assets and liabilities of the company EUROMEDICA SA. The proposed concentration concerns the markets of private general clinics, private obstetric clinics, private diagnostic centres, private recovery and rehabilitation centres and private neuropsychiatric clinics.

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



HCC's examination of specific commitment terms proposed by "DELTA SA" and "MEVGAL SA"

In the HCC's preliminary assessment of the practices under scrutiny, "DELTA SA" and "MEVGAL SA" took on, inter alia, the commitment to procure (directly or through third parties) fresh cow milk from each of their milk producers, until 21.10.2017, in 12 prefectures of Greece under a minimum guaranteed price, based on a specific mathematical formula. This commitment concerns all the milk producers which supplied "DELTA SA" and/or "MEVGAL SA" with fresh cow milk until 21.10.2017. In any case, "DELTA SA" and/or "MEVGAL SA" maintain the right to offer higher prices. Given the assessment of the effectiveness of the above mentioned commitment terms and the competitive conditions of fresh cow milk market in Greece, the Rapporteur suggested the extension of commitment terms A.1 – A.1.1 as accepted by its decision no. 650/2017 for one more year. To read the full press release of the HCC, click [here](#).

State Aid

Commission approves State financing granted by Spain for Correos's universal postal service obligation

State-owned Correos is the biggest postal operator in Spain. The European Commission has found the compensation granted by Spain to Correos to fulfil its public service mission (so-called "universal service obligation" or USO) during the 2011-2020 period to be compatible aid under EU State aid rules. To read the full press release, click [here](#).

Commission recommends not granting financial support o companies with links to tax heavens

The European Commission has today recommended that Member States do not grant financial support to companies with links to countries that are on the EU's [list of non-cooperative tax jurisdictions](#). Restrictions should also apply to companies that have been convicted of serious financial crimes, including, among others, financial fraud, corruption, non-payment of tax and social security obligations. The aim of the recommendation is to provide guidance to Member States on how to set conditions to financial support that prevent the misuse of public funds and to strengthen safeguards against tax abuse throughout the EU, in line with EU laws. To read the full press release, click [here](#).

Commission prolongs EU State aid rules and adopts targeted adjustments to mitigate impact of coronavirus outbreak

The European Commission has prolonged the validity of certain State aid rules which would otherwise expire at the end of 2020. To read the full press release, click [here](#).

Commission prolongs and expands Temporary Framework to further support companies facing significant turnover losses

The European Commission has decided to prolong and extend the scope of the [State aid Temporary Framework](#) adopted on 19 March 2020 to support the economy in the context of the coronavirus outbreak. All sections of the Temporary Framework are prolonged for six months until 30 June 2021, and the section to enable recapitalisation support is prolonged for three months until 30 September 2021. To read the full press release, click [here](#).

Commission publishes results of evaluation of EU State aid rules

The European Commission has published a [Commission Staff Working Document](#) summarising the results of an evaluation of the State aid rules adopted as part of the [State Aid Modernisation](#) package. The evaluation concludes that, overall, the State aid control system and rules are fit for purpose. However, individual rules will need some adaptation, also in the light of the recent [European Green Deal](#) and the EU's [Industrial](#) and [Digital](#) Strategies. To read the full press release, click [here](#).

C-817/18 P - Vereniging tot Behoud van Natuurmonumenten in Nederland vs. Vereniging Gelijkberechtiging Grondbezitters

The case referred to an appeal of the General Court judgment in Case T-79/16 upholding an action against the Commission's decision in SA.27301 regarding an alleged illegal State aid in connection with the subsidised acquisition or free granting of land for nature conservation in the Netherlands. The ECJ dismissed the appeals, upheld the General Court's judgment and essentially ruled that competitors may challenge the European Commission's refusal to initiate formal investigation procedure without having to show that the aid in question is likely to have a concrete impact on their situation.

To read the full judgement, click [here](#).

C-516/19 - NMI Technologietransfer GmbH v EuroNorm GmbH (HL)

The case was initiated with a request for a preliminary ruling seeking clarification as to whether, amongst other things, the Block Exemption Regulation (Regulation No 651/2014) must be interpreted as precluding national legislation which excludes an enterprise (90% owned by a trust, although not involved in its day-to-day management and comprised mainly of persons representing public bodies) from being regarded as an SME. The Court ruled (amongst other things) that the Block Exemption Regulation (does not preclude an entity from being regarded an SME if it has a capital holding body mainly composed of members representing public bodies.

To read the full judgement, click [here](#).

C-608/19 - Istituto nazionale per l'assicurazione contro gli infortuni sul lavoro (INAIL) v Zennaro Giuseppe Legnami Sas di Zennaro Mauro & C.

The case was initiated by a request for a preliminary ruling seeking clarification on whether, amongst other thing, the 'de minimis' State-aid rules allow for an applicant for State aid to avoid exceeding the maximum amount of support permitted by modifying a project or forgoing previous financial assistance. On 28 October 2020, the Court of Justice issued its judgment in which it confirmed that an undertaking receiving aid may request a modification of aid up to the point at which aid is granted or renounce previous aid to ensure it remains below the de minimis ceiling; however, aid is granted when a decision to award aid is made, not when payment is made.

To read the full judgement, click [here](#).

C-556/19 - Eco TLC v Ministre d'État, ministre de la Transition écologique et solidaire and Ministre de l'Économie et des Finances,

The case was initiated by a request for a preliminary ruling seeking clarification as to whether, amongst other things, a system whereby a private, non-profit eco-body (approved by the public authorities) receives contributions from those who place on the market a particular category of product and who enter into a contract with it to that effect, in return for a service consisting in the organisation on their behalf of the treatment of the waste from those products, and redistributes to operators responsible for the sorting and recovery of that waste, subsidies the amount of which is set out in the approval, in the light of environmental and social targets—should be regarded as illegal State aid. The Court concluded that a French textile waste recovery scheme did not constitute State aid.

To read the full judgement, click [here](#).

T-778/16, Ireland v Commission and T-892/16, Apple Sales International (ASI) and Apple Operations Europe (AOE) v Commission

The General Court of the European Union annuls the decision taken by the Commission regarding the Irish tax rulings in favour of Apple, because the Commission did not succeed in showing to the requisite legal standard that there was an advantage for the purposes of Article 107(1) TFEU. The Commission was also wrong to declare that ASI and AOE had been granted a selective economic advantage and, by extension, State Aid.

To read the full judgement of the General Court, click [here](#).

T-745/17 - Kerkosand v Commission

The General Court upheld the appeal, thereby annulling, in its entirety, the Contested Decision which had found that Slovakia's €5m direct grant to NAJPI concerning an investment in a new plant for the extraction of glass sand did not constitute unlawful State aid (Case SA.38121). It held that the EU Commission failed to verify that a beneficiary undertaking was indeed a SME within the meaning of the Block Exemption Regulation No. 651/2014 and that it should have had doubts in that regard which gave rise to serious difficulties concerning the compatibility of the aid in question with the internal market, obliging it to open investigation procedure.

To read the full judgement of the General Court, click [here](#).

Energy

Commission clears Lotos' acquisition by PKN Orlen, subject to conditions

PKN Orlen and Grupa Lotos ("Lotos") are two large Polish integrated oil and gas companies, both active in Poland, where they both own refineries, and also have activities in several other Central and Eastern European and Baltic countries. The European Commission has approved, under the EU Merger Regulation, the acquisition of Grupa Lotos by PKN Orlen. The approval is conditional on full compliance with a commitments package offered by PKN Orlen.

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

Commission approves support for production of electricity from renewable sources in Ireland

Ireland intends to introduce a new aid measure, called the Renewable Electricity Support Scheme ("RESS"), to support electricity production from renewable sources, including solar photovoltaic and wind. The Commission concluded that the Irish RESS is in line with EU State aid rules, as it promotes the generation of electricity from renewable sources, in line with the European Green Deal, without unduly distorting competition.

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

T-143/19 - Solar Ileias Bompaina (based in Athens) v Commission

The applicant, Solar Ileias Bompaina AE, is a producer of electricity from renewable energy sources, active on the electricity market in Greece. The case was regarding an action brought by Solas Ileias on the basis of Article 263 TFEU seeking, in essence, the annulment in part of Commission Decision C(2018) 6777, final of 10 October 2018, concerning State aid SA.38967 (2014/NN-2) regarding a national operating aid scheme in favour of installations using renewable energy sources and highly efficient combined power and heat installations. The action was dismissed as inadmissible.

To read the order of the General Court, click [here](#).



Electronic Communications & Post

Commission opens in-depth investigation into allocation of mobile radio frequencies by Poland to telecoms operator Sferia

Sferia is a Polish telecommunications operator, controlled by the Cyfrowy Polsat capital group, which is active in the telecommunications and broadcasting markets in Poland. The European Commission has opened an in-depth investigation to assess whether the allocation by the Polish authorities of a frequency block for the provision of 4G services to Sferia S.A ("Sferia") is in line with EU State aid rules.

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

C-376/20 P – Commission v CK Telecoms UK Investments

The Court held reaffirmed in this order that where a party is requesting, vis-à-vis a party that intervened before the General Court, confidential treatment in respect of material produced before the Court of Justice which has already been treated as confidential vis-à-vis that same party in the proceedings at first instance, that same confidential treatment must, in principle, be maintained for the purposes of the proceedings before the Court of Justice.

To read the full order of the Court, click [here](#).

T - 69/20 - Tele Columbus AG v Commission, T-64/20 - Deutsche Telekom AG v Commission and T - 58/20, Net Cologne Gesellschaft für Telekommunikation mbH v Commission

Cases upon requests based on Article 263 TFEU and seeking annulment of Commission Decision C (2019) 5187 final of 18 July 2019, declaring the transaction compatible with the internal market and the EEA Agreement concentration aimed at the acquisition by Vodafone Group Plc of certain assets of Liberty Global Plc (case COMP / M.8864 - Vodafone / Certain Liberty Global Assets. Applications to intervene were dismissed.

To read the full orders of the General Court, click [here](#), [here](#) and [here](#).

Transport

Commission clears Alstom's acquisition of Bombardier, subject to conditions

Alstom and Bombardier are global leaders in rail transportation. Both companies have a wide product portfolio and compete in the manufacture and supply of very high speed, mainline and urban rolling stock (trains) and mainline and urban signaling solutions. The European Commission has approved, under the EU Merger Regulation, the acquisition of Bombardier Transportation by Alstom. The approval is conditional on full compliance with a commitments package offered by Alstom.

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

HCC's dawn raids in the ferry boat connections sector

The unannounced inspections, which were carried out at the premises of the undertakings and conglomerates in the regions of Attica, Epirus and the Ionian Islands, were part of the preliminary stage of an extensive investigation into anti-competitive practices, pursuant to the provisions in Greek Competition Law 3959/2011.

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

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