

KLC

LAW FIRM

COMPETITION & REGULATION REPORT

C&RR, ISSUE 2021/5 November- December 2021

BY VASSILIS KARAGIANNIS, DR.JURA, PARTNER,
VASSILIS ZIOGAS, LL.M, ASSOCIATE



HIGHLIGHTS

- Antitrust
- Mergers
- State Aid
- Energy
- Transport

- C-306/20 - Visma Enterprise
- Commission invites comments on draft Guidelines about collective agreements regarding the working conditions of solo self-employed people
- Commission fines UBS, Barclays, RBS, HSBC and Credit Suisse € 344 million for participating in a Foreign Exchange spot trading cartel
- HCC: Dawn Raids of the Hellenic Competition Commission in the market for the provision of cadastral survey services
- HCC Decision on the imposition of a fine on ELTEPE SA (currently ENDIALE SA) for violation of articles 2 of Greek Law 3959/2011 and 102 TFEU
- HCC : Dawn Raid of the Hellenic Competition Commission in the markets for sunflower, cotton and maize seeds and the markets for plant protection products
- Commission approves acquisition of Nuance by Microsoft
- T-678/20 - Solar Electric and Others v Commission
- Commission adopts revised State aid rules on Important Projects of Common European Interest
- Commission approves €2.27 billion Greek aid scheme to support electricity production from renewable energy sources and high efficiency combined heat and power
- Commission endorses the new Guidelines on State aid for Climate, Environmental protection and Energy
- Commission invites comments on proposed revision of Guidelines on State aid for railway companies

Editorial

T-612/17 - Google and Alphabet v Commission (Google Shopping) – a new episode in chasing techno-giants

By this much anticipated ruling, the General Court dismissed to a large extent the action brought by Google and Alphabet and uphold the pecuniary penalty of €2.424.495.000 that the Commission imposed to said undertakings by its decision of 27 June 2017. The Commission found that Google abused its dominant position on the market for online general search services provided in Belgium, Czech Republic, Denmark, Germany, Spain, France, Italy, Netherlands, Austria, Poland, Sweden, United Kingdom and Norway, having been found to implement practices favouring its own specialized comparison shopping service, over competing comparison shopping services.

The General Court verified the anticompetitive nature of the practice in question, finding that Google, while relegating the results from competing comparison services using ranking algorithms, was not competing on the merits, and so confirmed that the practice at issue was liable to lead to a weakening of competition on the market. The General Court dismissed Google's arguments claiming conditions similar to those applicable to the refusal to supply set out in Bronner, ruling that not every practice relating to access to an essential facility means that it must be assessed under those conditions, underlying the difference in treatment, rather than the refusal of supply, on behalf of Google, for the sole benefit of its own comparison service, as the basis of the practice in question.

Also, the General Court confirmed that the Commission, relying on specific traffic data and the correlation between the visibility of results and the traffic to the website from which results come, correctly found, standing on a sufficient basis, harmful effects on competition.

The Commission's market analysis about specialised search comparison shopping services was also confirmed. Google's argument, that competition on this market remained strong given the presence of merchant platforms, was rejected, as the General Court confirmed Commission's assessment that those platforms and comparison shopping services are on different markets, noting however that even in the presence of the platforms, the effect identified would have still been sufficient for Google's practice to be ruled as abusive, since in all countries concerned, a significant share of the comparison shopping services market would still have been affected. However, the General Court considered that the Commission did not establish that Google's conduct had anticompetitive effects on the market for general search services, thus annulling the respective infringement finding.

The General Court ruled out all procompetitive and technical objective justifications alleged by Google. The algorithms used may represent pro-competitive service improvements, but that does not justify the unequal treatment of results from Google's comparison shopping service and results from competing comparison shopping services as a practice, to which the General Court diagnosed no demonstrated efficiency gains to counterbalance the harm on competition. The General Court confirmed the amount of the penalty imposed by the Commission, rejecting all Google's relevant arguments.

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

Antitrust

Commission fines UBS, Barclays, RBS, HSBC and Credit Suisse € 344 million for participating in a Foreign Exchange spot trading cartel

The Commission has adopted a decision imposing a total fine of € 261 million on the four banks that decided to settle the case, namely UBS, Barclays, RBS and HSBC. The Commission has also fined Credit Suisse € 83 million under the ordinary procedure.

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

Dawn Raids of the Hellenic Competition Commission in the market for the provision of cadastral survey services

On 11 November 2021, officials of the HCC carried out unannounced inspections, at the premises of cadastral survey and support services undertakings regarding potential anti-competitive practices in the context of a bid-rigging investigation.

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

Ex officio investigation in the tender for the public infrastructure project "Northern Road of Crete, Gournes - Chersonissos Part"

The HCC adopted Decision No 748/2021 following the settlement submission by the undertaking MESOGEOS S.A. Following the settlement procedure, the HCC imposed a reduced fine amounting to € 4.954.

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

HCC Decision on the imposition of a fine on ELTEPE SA

With its Decision No. 741/2021, the HCC imposed upon the company ELTEPE SA (currently ENDIALE SA) a fine amounting to €111.600 for infringing Articles 2 of Greek Law 3959/2011 (the Greek Competition Act) and 102 TFEU in the Greek market for waste oils management.

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

Dawn Raid of the Hellenic Competition Commission in the markets for sunflower, cotton and maize seeds and the markets for plant protection products

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

The HCC's Annual Report for the year 2020

The Hellenic Competition Commission's Annual Report for the year 2020, presents the Commission's work and actions for an extremely demanding year marked by the onset of the pandemic.

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

Decision following the ex-officio investigation in the tender for the public infrastructure project "Northern Road of Crete, Gournes - Chersonissos Part"

The company "ATHONIKI" violated Article 1 of Law 3959/2011 and Article 101 TFEU and was fined €5.828,55.

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



Merger

Commission opens in-depth investigation into the proposed acquisition of Recticel by Greiner

The Commission is concerned that the proposed acquisition may reduce competition in the supply of certain technical foam products, as the initial market investigation identified a number of preliminary concerns in relation to the combination of Greiner's and Recticel's technical foams businesses.

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

Commission approves acquisition of Nuance by Microsoft

The European Commission has approved unconditionally, under the EU Merger Regulation, the proposed acquisition of Nuance by Microsoft, having concluded that the transaction would raise no competition concerns in the European Economic Area ('EEA').

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

Commission clears Derichebourg's acquisition of Groupe Ecore, subject to conditions

The European Commission has approved, under the EU Merger Regulation, the proposed acquisition of Groupe Ecore by Derichebourg. The approval is conditional on full compliance with a commitments package offered by Derichebourg.

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

Commission approves the acquisition of Suez by Veolia, subject to conditions

The European Commission has approved, under the EU Merger Regulation, the proposed acquisition of Suez by Veolia. The approval is conditional on full compliance with a commitments package offered by Veolia.

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

Clearance of the proposed acquisition by TEMES and AUTOHELLAS of joint control over SPORTSLAND

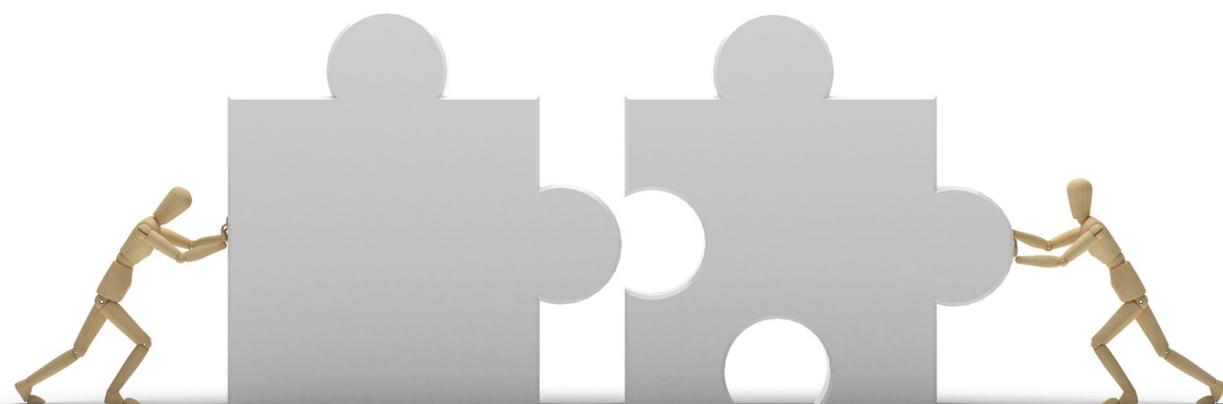
To read the full press release of HCC, click [here](#).

HCC clears the acquisition by «BC Partners» of indirect sole control over Pet City Group

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

Clearance of the proposed acquisition by VIVARTIA S.A. of sole control over the companies HELLENIC DOUGH and ALESIS S.A.

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



State Aid

C-933/19 P - Autostrada Wielkopolska v Commission and Poland

The Court of Justice dismissed Autostrada Wielkopolska SA's appeal against the judgment of the General Court (T-778/17), in which company's action against the Commission's Decision ordering Autostrada to repay the aid received back to the Polish State had been dismissed. In support of that action, the appellant raised, in essence, six pleas alleging (i) infringement of the right to be involved in the administrative procedure; (ii) infringement of Article 107(1) TFEU owing to the use of an incorrect criterion to determine whether there was an economic advantage and a manifestly incorrect use of that criterion; (iii) infringement of Article 107(1) TFEU due to an incorrect application of the private investor test and an inadequate statement of reasons; (iv) that the Commission based its conclusion as to the incompatibility of the aid on incorrect findings; (v) a manifest error of assessment in the calculation of the amount of State aid; and (vi) a failure to state reasons in the decision at issue. In its judgment, the Court dismissed the appeal, ruling that the Commission did not infringe any essential procedural requirement, that the General Court did not misapply the private investor test, and applied the rules of evidence correctly.

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

T-565/19 - Oltchim v Commission

The applicant claimed that the Court should annul the Decision of the European Commission of 17 December 2018 on State aid SA.36086 (2016/C). In the contested decision, the Commission examined the classification as State aid and the compatibility with the internal market of (i) the non-enforcement and further accumulation of the applicant's debts by the Romanian privatisation agency ('AAAS') between September 2012 and January 2013 ('Measure 1'); (ii) the support for Oltchim's operations in the form of continued unpaid supplies between September 2012 and January 2013 ('Measure 2'); (iii) the cancellation of debt in 2015 under the reorganisation plan by AAAS, the National Administration of Romanian waters ('ANE'), Salrom, Electrica and CET Govora ('Measure 3'), ruling that they were unlawfully put into effect by Romania in breach of Article 108(3) TFEU, and that they, together and separately, constitute state aid. The Court concluded that Measures 1, 2 and 3 be regarded as three distinct interventions for the purposes of the application of Article 107(1) TFEU, that the Commission had failed to demonstrate to the requisite legal standard that Measures 1 and 3 constituted State aid, without examining the rest of the applicant's pleas regarding those measures, and rejected all applicant's pleas on Measure 2, as unfounded. The contested decision was annulled in so far as it concerns Measures 1 and 3.

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

T-209/15 - Gmina Kosakowo v Commission

The applicant claimed that the Court should partially annul the Decision of the European Commission of 26 February 2015 on the measure SA.35388 (2013/C), pleading: (i) erroneous determination of the facts; (ii) breach of Article 107(1) TFEU by reason of the baseless assumption that the applicant, contrary to that provision, granted public aid; (iii) breach of Article 107(3)(a) and (c) TFEU by reason of the assumption that the making of the investments was not justified in terms of regional development and was not in proportion to the disadvantages which it was intended to alleviate thereby, and by reason of the assumption that the aid was incompatible with the conditions governing the operation of the internal market; (iv) breach of the first subparagraph of Article 108(2) TFEU on the ground that the European Commission misused the power granted to it by reason of the disregard for, and inappropriate classification of, the applicant's activity, incorrect classification of the aid measure, failure to carry out the legally required analysis of the 'private-investor test' to appraise the project and by reason of a defective and incomplete analysis of the market for local and regional airports in Poland; (v) breach of procedural provisions. The Court, upon review of the pleas in law set out by the applicant, either rejected or considered them unfounded, and the action was dismissed.

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

Commission adopts revised State aid rules on Important Projects of Common European Interest

The revised IPCEI Communication sets the criteria for the Commission to assess Member State support to cross-border IPCEIs that overcome market failures and enable breakthrough innovation in key sectors and technologies and infrastructure investments.

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

Commission invites comments on proposed revision of EU State aid rules for deployment of broadband networks

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

Commission sets out future of Temporary Framework to support economic recovery in context of coronavirus outbreak

The European Commission has decided to prolong until 30 June 2022 the State aid Temporary Framework, previously set to expire by 31 December 2021.

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

Commission adopts revised Guidelines on State aid to promote risk finance investments

The European Commission has adopted revised Guidelines on State aid to promote risk finance investments (the 'Risk Finance Guidelines'). They clarify and simplify the rules under which Member States can support and facilitate access to finance by European start-ups, small and medium-sized enterprises ('SMEs') and companies with a medium capitalization ('mid-caps'), while ensuring a level playing field in the Single Market.

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

Commission adopts revised Short-term export-credit insurance Communication

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



Energy

T-678/20 - Solar Electric and Others v Commission

In this case, the General Court dealt with the question of whether Article 24(2) of Regulation 2015/1589, laying down detailed rules for the application of Article 108 TFEU, confers on the beneficiary of new, unlawfully granted aid an individual right to submit a complaint to the Commission in order to obtain from it a decision declaring aid, which has not been notified by the Member State concerned, to be compatible with the internal market. The Court dismissed the action, ruling that the recipients of unlawful aid cannot rely on these provisions to lodge a complaint concerning unlawful aid which they directly or indirectly receive, with the aim of having the Commission adopt a decision declaring that aid to be compatible with the internal market. To accept the opposite, would allow that recipient to substitute the Member State concerned, which would question the fundamental and imperative obligation to notify aid measures and the prohibition on their implementation under Article 108(3) TFEU, as well as the penalty of repayment of that aid. Subsequently, the Court ruled that the Commission's failure to adopt a position on a complaint does not create a legal vacuum, which Articles 107 to 109 TFEU, as well as the regulation laying down detailed rules for the application of Article 108 TFEU, seek to avoid, recalling that EU law does not impose an obligation upon the Commission to carry out an assessment of the compatibility of aid which has not been notified, as soon as it is informed of that aid by a complaint submitted by a recipient such as the applicant.

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

Commission approves €2.27 billion Greek aid scheme to support electricity production from renewable energy sources and high efficiency combined heat and power

The measure will help Greece reach its renewable energy targets, without unduly distorting competition, and will contribute to the new European objective of achieving climate neutrality by 2050. To read the full press release, click [here](#).

Commission endorses the new Guidelines on State aid for Climate, Environmental protection and Energy

The new rules involve an alignment with the important EU objectives and targets set out in the European Green Deal and with other recent regulatory changes in the energy and environmental areas and cater for the increased importance of climate protection. The new rules create a flexible, fit-for-purpose enabling framework to help Member States provide the necessary support to reach the European Green Deal objectives in a targeted and cost-effective manner.

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

Transport

Commission invites comments on proposed revision of Guidelines on State aid for railway companies

The European Commission has launched on 22 December 2021 a public consultation on EU Survey inviting all interested parties to comment on a proposed revision of the 2008 Guidelines on State aid for railway undertakings (the 'Railway Guidelines'). Interested parties can respond to the consultation until 16 March 2022.

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



KLC Law Firm

10 Kapsali Str. 10674 Athens, Greece
T. +30 210 7264500
F. +30 210 7264510 www.klclawfirm.com