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LAW FIRM

COMPETITION & REGULATION REPORT

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HIGHLIGHTS

- Commission accepts commitments by Aspen to reduce prices for six off-patent cancer medicines by 73% addressing excessive pricing concerns
- C-595/18 P - The Goldman Sachs Group v Commission
- Commission prolongs and further expands Temporary Framework to support economy in context of coronavirus outbreak
- Commission approves €2.9 billion public support by twelve Member States for a second pan-European research and innovation project along the entire battery value chain
- Commission approves Greek public funding for construction and operation of North section of E65 motorway
- HCC : Initiation of the procedure referred to in Article 11 of Law 3959/2011 Regulatory intervention in the construction sector
- T-259/20 and T-238/20 - Ryanair v Commission

Editorial

Geo-blocking, Internet Sales & Competition Law

Developing e-commerce is essential for the functioning of the internal market and the welfare of consumers. To some extent restrictions to cross-border sales over the Internet were addressed under the Block Exemption Regulation (BER-[Regulation 330/2010](#)) and the [Guidelines](#) on Vertical Restraints. According to said Guidelines, some restrictions of active sales imposed to the Reseller by the Supplier are accepted, while restriction of passive sales (i.e. unsolicited sales effected outside the exclusive territory) is considered as hardcore restriction and results to the inapplicability of the BER. The Internet is generally considered as a passive tool, though, it is expressly stated that some forms of restrictions are per se anticompetitive, such as an agreement that the (exclusive) distributor shall terminate consumers' transactions over the internet once their credit card data reveal an address that is not within the distributor's (exclusive) territory or an agreement that the (exclusive) distributor shall prevent customers located in another (exclusive) territory from viewing its website or shall automatically re-direct its customers to the manufacturer's or other (exclusive) distributors' websites.

The [Regulation \(EU\) 2018/302](#) ("Geo-blocking Regulation") which entered into force on 3 December 2018 aims to provide consumers and businesses within the EU's internal market with more opportunities. In particular, it addresses the problem of some customers not being able to buy goods and services from traders located in a different Member State, even at the same conditions as locals, only because of their nationality, place of residence or place of establishment. There are some possible overlaps between Competition rules and Geo-blocking Regulation. Thus, black practices (clauses) such as the aforementioned under the Vertical Guidelines would probably fall also within the scope of the Geo-blocking Regulation (see for instance article 5 of the Geo-blocking Regulation concerning non-discrimination for reasons related to payment). Conversely, it is clearly stated in the Geo-blocking Regulation that lawful restriction of some forms of active sales (e.g. the sending of unsolicited e-mails to the customer located outside the territory) is not covered by the Regulation. Thus, lawful clauses under EU Competition Law restricting active sales fall outside the scope of Geo-blocking. However, Geo-blocking goes beyond competition rules to the extent that it is able to capture also situations in which the applied restriction is not (stricto sensu) the result of an anticompetitive contractual arrangement between the Supplier and the Reseller.

In a recent [case](#) the Commission fined several video-games publishers and Valve, a company which operates Steam, one of the world's largest online PC video gaming platforms. The publishers and Valve set forth a series of restrictions not allowing consumers having acquired their video game in a Member State other than that of their residence to activate properly their Steam key. Thus, they have unlawfully restricted cross-border passive sales on the basis of customer's location.

Antitrust

C-466/19 - Qualcomm and Qualcomm Europe v Commission

The Court of Justice dismissed the appeal against the General Court's judgment in Case T- 371/17, in its entirety. In particular, the Court of Justice held among other that the General Court's conclusions that the Commission's information request were both necessary and proportionate. The Court of Justice upheld the General Court's judgment that the Commission was entitled to seek necessary information to continue with its fact-finding after the adoption of the statement of objections, and to seek to clarify the evidence and arguments put forward by an undertaking in response to the statement of objections. To read the full judgement, click [here](#).

C-450/19 - Kilpailu- ja kuluttajavirasto

This case was initiated by a national reference from Finland seeking clarification as to whether Article 101 TFEU can be interpreted as meaning that, in a situation where a cartel participant has entered into a contract with a player outside the cartel, the competition infringement continues throughout the whole period in which contractual obligations arising from the contract are discharged or payments for the works are made (i.e. the point at which the last instalment is paid for the works, or at least up until the point at which the works in question are completed). The Court upheld the opinion of Advocate General Pitruzzella that the duration of the infringement period for a breach of Article 101 TFEU, in the form of cooperation in the submission of tenders in a procurement procedure for the execution of construction works, ends at the date of the signature of the contract concluded between the cartel participant and the contracting authority, and not the whole duration of the project. To read the full judgement, click [here](#).

C-308/19 - Consiliul Concurenței v. Whiteland Import Export

In its judgment, the Court considered that a strict interpretation of the national legislation, as adopted by the Bucharest Court of Appeal, prohibiting absolutely the interruption of the limitation period by acts adopted after the decision to open an investigation, appears liable to jeopardize the effective implementation of the EU Competition Rules. To read the full judgement, click [here](#).

C-595/18 P - The Goldman Sachs Group v Commission

In this case, the appellant's (The Goldman Sachs Group) holding in its subsidiary (Prysmian) was initially 100% of the shares. The level of that holding decreased, following two divestments, to 84.4%, while continuing to control 100% of the voting rights of the subsidiary. The European Court of Justice expanded the scope of the rebuttable presumption of decisive influence relating to the parental liability according to the Single Economic Unit (SEI) approach. The concept of parental liability makes a parent company responsible for antitrust infringements committed by its subsidiaries. Previous case law had established a rebuttable presumption in case a parent company holds, directly or indirectly, all or almost all of the capital in a subsidiary that has committed an anti-competitive infringement. In this interesting judgment, the ECJ for the first time applied this presumption in a case where the parent company held all the voting rights instead of all or almost all of the share capital in a subsidiary. To read the full judgement, click [here](#).

T-886/19 - Design Light & Led Made in Europe and Design Luce & Led Made in Italy v Commission

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

Commission opens formal investigation into possible trade restrictions by Mondelēz

The European Commission has opened a formal antitrust investigation to assess whether Mondelēz has restricted competition in a range of national markets for chocolate, biscuits and coffee by hindering the cross-border trade of these products between EU Member States, which would be in breach of EU antitrust rules.

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

Decision concerning the compliance of the company ARGOS SA Press Distribution Agency with the operative part of the HCC Decision no. 687/2019

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

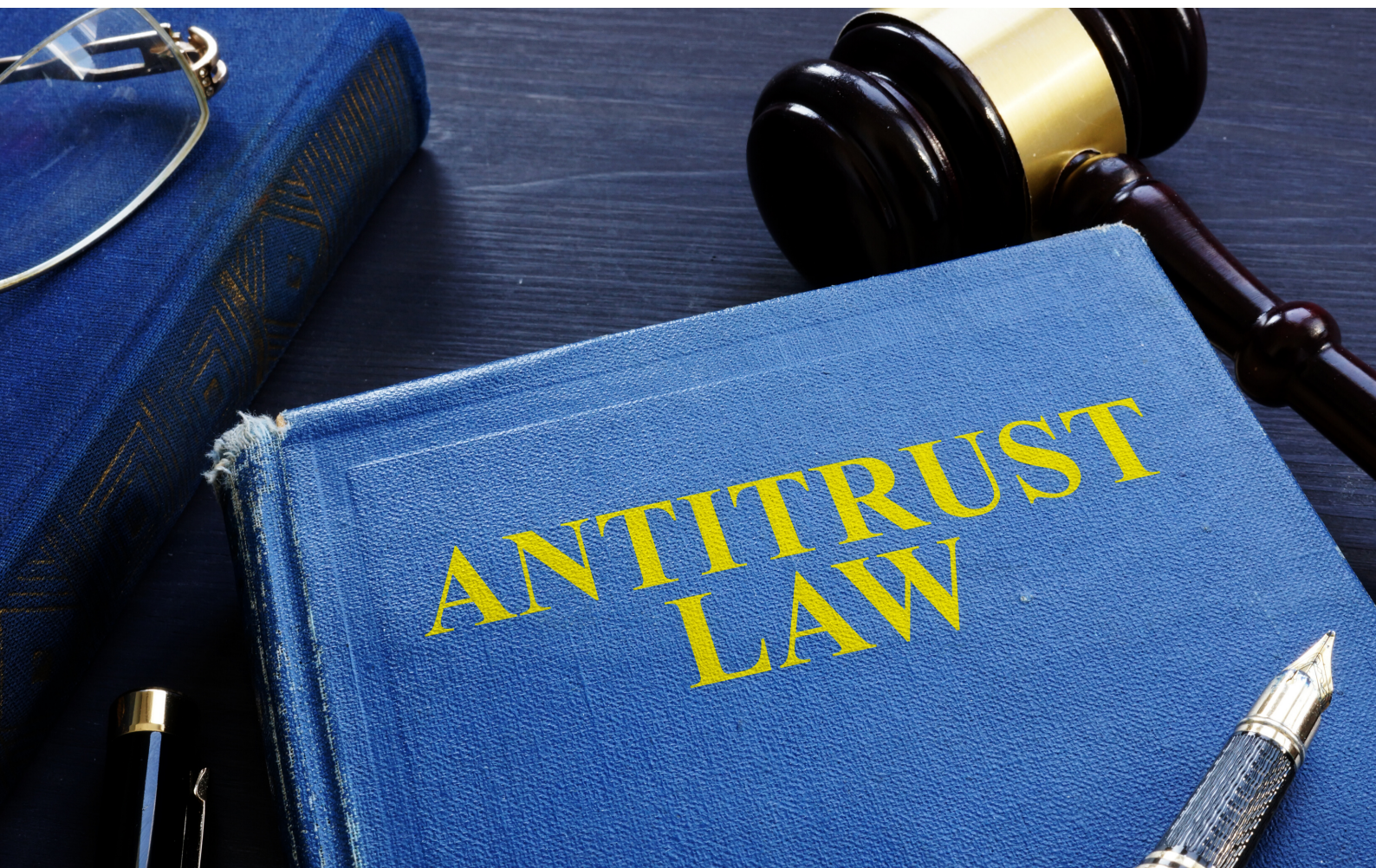
Statement of Objections in relation to alleged infringements in the Greek market for waste oils management

The Plenary Session of the HCC convened on 8 March 2021 to examine, upon the relevant Statement of Objections, alleged infringements by the companies ELTEPE SA (now ENDIALE SA), CYCLON HELLAS (now LPC SA), ELTEPE Kinopraxia as well as G.D., of Articles 1 and 2 of Law 3959/2011 ("Greek Competition Act") and Articles 101 and 102 of the TFEU in the Greek markets for the collection, treatment, disposal and remediation/ recycling of waste lubricating oils, following complaints by the companies GREEN OIL AEVE, ESK OIL AEVE as well as the Association of Collectors of Waste Oils.

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

Decision for the initiation of a regulatory intervention procedure (market investigation) in the press distribution sector, in accordance with Article 11 of Law 3959/2011

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



Initiation of the procedure referred to in Article 11 of Law 3959/2011 Regulatory intervention in the construction sector

The HCC decided to initiate this procedure in order to examine the construction industry, focusing on economic activities related to the development of building and infrastructure projects (including concessions), as well as to assess whether conditions of effective competition prevail in the specific industry.

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

Obstructions to the investigation of the General Directorate of Competition during the on-site inspection of the printed press distribution market (article 39 par. 5 of Law 3959/2011 as in force) by the company ALTER EGO BUSINESS OF THE MEDIA SA and natural persons.

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

Merger

Commission adopts final measures to preserve the divestment of former Aleris plant in Belgium following Novelis' acquisition of Aleris

The European Commission has adopted final measures to preserve the divestment of the former Aleris plant in Duffel, Belgium, by Novelis under the EU Merger Regulation. To obtain clearance of its acquisition of Aleris in 2019, Novelis offered to divest the plant in binding commitments but failed to close the sale within the deadline set in those commitments, despite extensions granted. Therefore, the decision and the commitments became inapplicable and thus, the Commission adopted provisional interim measures to preserve competition.

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

Commission clears acquisition of Belchim by Mitsui, subject to conditions

The European Commission has approved, under the EU Merger Regulation, the proposed acquisition of Belchim by Mitsui, which both distribute third-party crop protection products and supply their own formulated products for high-value crops such as potatoes, vegetables and vines. The approval is conditional on full compliance with a commitments package offered by Mitsui.

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

T-691/18 - KPN v Commission

The case referred to a competitor's (KPN BV) action before the General Court seeking the annulment of the Commission's decision to conditionally approve (for the second time) the acquisition by Liberty Global of Ziggo. The General Court handed down its judgment in which it dismissed the appeal in its entirety, upholding the European Commission in declaring the merger of two main Dutch cable operators compatible with the internal market.

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

State Aid

Commission approves investment aid for Czech orchards and irrigations; opens in-depth investigations into Czech measures in favor of large agricultural companies

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

Commission prolongs and further expands Temporary Framework to support economy in context of coronavirus outbreak

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

Commission approves €2.9 billion public support by twelve Member States for a second pan-European research and innovation project along the entire battery value chain

The Commission has approved, under EU State aid rules, a second Important Project of Common European Interest ("IPCEI") to support research and innovation in the battery value chain. The project, called "European Battery Innovation" was jointly prepared and notified by Austria, Belgium, Croatia, Finland, France, Germany, Greece, Italy, Poland, Slovakia, Spain and Sweden.

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

Commission approves Greek public funding for construction and operation of North section of E65 motorway

The European Commission has approved, under EU State aid rules, Greek public funding of €442 million for the construction of the North section of the Central Greece Motorway (E65). The Commission also approved support estimated at €38 million to cover the operating and maintenance expenses of the section, in case the toll revenues are not sufficient.

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

Commission approves €1.25 billion German measure to recapitalise TUI

The European Commission has approved German plans to contribute up to €1.25 billion to the recapitalisation of TUI AG (TUI), the parent company of the TUI Group, as part of a wider support package. The measure was approved under the State aid Temporary Framework.

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

Commission approves €254 million Romanian aid to support rehabilitation of district heating system in Bucharest

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

Commission invites stakeholders to provide comments on revised State aid rules on Important Projects of Common European Interest

Stakeholders can respond to the consultation for eight weeks, until 20 April 2021.

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

T-478/18 - Bezouaoui and HB Consultant v Commission

An action for annulment before the General Court of the European Commission's decision of 10 April 2018 finding that French aid, granted in the form of financing for training courses in the use of construction machinery, was not unlawful State aid (SA.46897). The appeal was dismissed and the General Court held that the Commission made no error in finding that the aid financing training courses in the use of construction machinery did not constitute State aid under Article 107 TFEU.

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

T-161/18 - Braesch and Others v Commission

An action for annulment before the General Court of the European Commission's decision of 4 July 2017 finding that Italy's plan to support the recapitalisation of Banca Monte dei Paschi di Siena was compatible with the State aid rules (SA.47677). The General Court issued a preliminary judgment in which it dismissed the Commission's plea of inadmissibility and held that the bondholders (a representative and holders of FRESH bonds) have standing to challenge the Commission's 2017 decision because State aid approval was conditional on the bondholders also bearing significant costs.

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

Energy

Commission opens in-depth investigation into Romanian support measures in favour of CE Oltenia

CE Oltenia, a Romanian majority state-owned lignite-fired electricity producer, has been experiencing financial difficulties. The European Commission has opened an in-depth investigation to assess whether Romanian support measures in favour of Complexul Energetic Oltenia SA ('CE Oltenia') would be in line with EU rules on State aid to companies in difficulty.

To read the full Press Release of the Commission, click [here](#).



Electronic Communications & Post

C-857/19 - Slovak Telekom a.s. v. Court

The Court held that Slovak Telekom, found liable by the Commission for abuse of a dominant position on the market for certain telecommunications services, could also be subject to sanctions imposed by the Slovak authorities for such abuse on the market for other telecommunications services. The Court confirmed that where the Commission initiates proceedings examining infringements which are identical to those for which proceedings have been brought by the national authorities, those authorities lose their competence in that matter.

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

C-689/19 P - VodafoneZiggo Group v Commission

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

Transport

T-259/20 - Ryanair v Commission

The General Court held that the deferral of the payment of taxes introduced by France to support airlines which hold a French license amid the Covid-19 pandemic is consistent with EU law. That aid scheme is appropriate for compensating the economic damage caused by the Covid-19 pandemic and does not constitute discrimination.

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

T- 238/20 - Ryanair v Commission

Similarly with the above-mentioned case, the General Court ruled that the loan guarantee scheme put in place by Sweden to support airlines holding a Swedish operating license amid the Covid-19 pandemic and intended to remedy the serious disturbance to the economy of that Member State is compatible with EU law. The scheme at issue is presumed to have been adopted in the interest of the European Union

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



Pharmaceuticals

Commission accepts commitments by Aspen to reduce prices for six off-patent cancer medicines by 73% addressing excessive pricing concerns

The European Commission has made commitments offered by Aspen legally binding under EU antitrust rules. Aspen has to reduce its prices in Europe for six critical cancer medicines by 73% on average. In addition, Aspen has to ensure the continued supply of these off-patent medicines for a significant period. To read the full press release, click [here](#).



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