

# Competition & Regulation Report

*May - June 2015*

## EDITORIAL:

The COSCO decision: the exception related to the logic of the tax system revisited?

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- CJEU ruled on cross-border follow on actions for antitrust damages
- GC rules for the first time on the relationship between the standard procedure and the settlement procedure
- European Commission opened formal investigation into Amazon's e-book distribution arrangements
- CJEU ruled that the Universal Service Directive does not lay down a social pricing obligation for mobile communications and mobile Internet subscriptions
- European Commission approved acquisition of Sigma-Aldrich by Merck, subject to conditions
- European Commission accepted commitments by SkyTeam members Air France/KLM, Alitalia and Delta on three transatlantic routes
- HCC approved the acquisition of sole control on the right to organize and operate mutual horseracing betting in Greece by OPAP S.A.

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**Editorial****State Aid: The COSCO decision: the exception related to the logic of the tax system revisited?**

On 23.03.2015, after a long adversarial procedure the European Commission reached its decision on the privileged tax regime of Piraeus Port and Cosco in the light of applications of Stated Aid rules (see also C&RR Issue 2015 - 2<sup>1</sup>). The text of [Commission's decision](#) was published on 12.06.2015.

The main question was whether a special tax regime of several benefits in favor of the concession holder of a part of the Port of Piraeus, the Piraeus Container Terminal S.A., a subsidiary of special purpose of COSCO Pacific Limited, constituted state aid measures. The Commission referred extensively to the exception of the logic of the Greek tax system.

Indeed, according to the jurisprudence of the CJEU a measure *prima facie* selective can be ultimately been considered as non-distortive, if it is in line with the basic or guiding principles governing the relevant tax system in question<sup>2</sup>. Let us point out preliminarily that this jurisprudentially accepted category of exception is rather opaque and its limits of application are not always of crystal interpretative clarity.

According to the argumentation of the Greek authorities the special tax regime in question was consistent with the basic principles of the Greek tax system since the special taxation rules imposed (a)

were intended to pursue a public policy objective consistent with the basic principles of the general tax system, in particular the principle of proportionality, the economy and the revenue raising objective of the tax system and key policies of Greece regarding the creation of public infrastructure, (b) aimed to ensure that objectively different situations are treated differently, thus applying the principles of equality and proportionality and ensuring that the results intended by the tax system are not distorted, (c) were applied upon the basis of objective criteria and (d) were designed specifically as the legislative mechanism addressing key financial concerns arising in the implementation of public infrastructure projects, which risk could jeopardize the private sector participation.

The Commission has not endorsed these arguments. The basic reason for that was the fact that, according to the Commission, the exception referring to the logic of the fiscal system could not admittedly refer to goals of public policy, such as these alleged by the Greek government (promotion of investments, mitigation of the risks of private participations to the implementation of important infrastructure projects etc.), but must refer rather to reasons inherent to the functioning of the tax system in question<sup>3</sup>.

Thus, the Commission proceeded in a restrictive way refusing to transform the

<sup>1</sup> SA.28876 Container terminal Port Piraeus & Cosco Pacific Limited.

<sup>2</sup> See inter alia CJEU, Joined Cases C-78/08 to C-80/08, *Paint Graphos and others* [2011] ECR I-7611, paragraph 69.

<sup>3</sup> See CJEU, Joined Cases C-78/08 to C-80/08 *Paint Graphos and others* [2011] ECR I-7611, paragraphs 69 and 70; Case C-88/03 *Portugal v. Commission* [2006] ECR I-7115, paragraph 81; Case C-279/08 P, *Commission v Netherlands (NOx)* [2011] ECR I-7671; Case C-487/06 P *British Aggregates v. Commission* [2008] ECR I-10515.

exception of the logic of the tax system to a “*mandatory requirements*” theory in the field of application of the rules of State Aid. One could expect that the decision of the Commission, especially if confirmed, would pave the way for contesting special tax regimes for other infrastructure investments, although some limits could be imposed, especially in terms of possible recovery, for reasons of legal certainty and protection of legitimate expectation of the beneficiaries. However, as these principles are, in the field of State Aid Law, interpreted constantly in a restrictive way, it is, in the first place, up to the discretion of the Commission to trace the limits.

To read the full decision of the Commission click [here](#).

### **Antitrust**

#### **CJEU ruled on cross-border follow on actions for antitrust damages**

By its judgment dated 21.05.2015 in case C-352/13, the Court of Justice of the European Union (CJEU) ruled that victims of an unlawful cartel may claim compensation for their loss before the courts where one of the participants in the infringement is domiciled. Moreover the CJEU ruled that a victim’s withdrawal of its action against the sole participant domiciled in the same Member State as the court seized does not, in principle, affect the jurisdiction of that court to hear and determine actions brought against the other participants. To read the full press release of the CJEU (No 58/15) click [here](#) and the full judgment click [here](#).

**CJEU confirmed that Del Monte is liable for a single and continuous infringement of competition law for bilateral information exchanges between its subsidiaries in European banana market**

On 24.06.2015, the CJEU by its judgement in joined cases C-293/13 P and C-294/13 P dismissed an appeal by Fresh Del Monte Produce Inc. against the fines imposed upon it as a parent company and upheld an appeal by the European Commission against the reduction in fine granted to its subsidiary by the General Court. To read the full judgment of the CJEU click [here](#).

**GC ruled for the first time on the relationship between the standard procedure and the settlement procedure**

In the context of the cartel on phosphates, the General Court (GC) ruled for the first time on the relationship between the standard procedure and the settlement procedure, and upheld the fine of nearly €60 million imposed on the Roullier group. To read the full press release of the GC (No 57/15) click [here](#) and the full judgment of the GC in this case (T-456/10) click [here](#).

**GC found that documents exchanged between the Commission and a national competition authority in proceedings concerning an infringement of the competition rules are not, in principle, accessible to the public**

In its judgment in Case T-623/13 (Unión de Almacénistas de Hierros de España v Commission), the GC found that documents exchanged between the

Commission and a national competition authority in proceedings concerning an infringement of the competition rules are not, in principle, accessible to the public. According to the GC the disclosure of those documents could in fact undermine the protection of the commercial interests of the undertakings concerned as well as the protection of the purpose of investigations. To read the full press release of the GC (No 52/2015) click [here](#).

**GC partly upheld Pacific Fruit's appeal concerning Southern Europe bananas cartel and reduced fines**

On 16.06.2015, the GC by its judgement in Case T-655/11 FSL Holdings, Firma Léon Van Parys and Pacific Fruit Company Italy SpA v European Commission, partly upheld an appeal by FSL Holdings, Firma Léon Van Parys and Pacific Fruit Company Italy SpA against the Commission's decision finding that there was an illegal price-fixing cartel for bananas sold in Southern Europe. To read the full decision of the GC click [here](#).

**European Commission fined parking heaters producer €68 million in cartel settlement**

The European Commission found that two German producers of automotive parts, Eberspächer and Webasto, have breached EU antitrust rules prohibiting cartels and restrictive business practices. They coordinated prices and allocated customers with regards to fuel-operated parking heaters (which heat parked cars or trucks) and auxiliary heaters (which support the heating system of a running car or truck). To read the full press

release of the Commission (IP-15-5214) click [here](#).

**European Commission fined producers and distributors € 115 865 000 for operating retail food packaging cartels**

The European Commission has fined eight manufacturers and two distributors of retail food packaging trays a total of €115 865 000 for having participated in at least one of five separate cartels. The companies fixed prices and allocated customers of polystyrene foam or polypropylene rigid trays, in breach of EU antitrust rules. One company benefited from full immunity under the Commission's 2006 Leniency Guidelines as it revealed the existence of the cartels to the Commission. To read the full press release of the Commission (IP-15-5253) click [here](#).

**European Commission sent Statement of Objections to Riberebro alleging participation in canned mushrooms cartel**

The European Commission has informed Grupo Riberebro Integral S.L. and its subsidiary Riberebro Integral S.A.U. that it suspects the companies of having breached EU antitrust rules by colluding with competitors on both customer allocation and the pricing of canned mushrooms in the European Economic Area (EEA). The Commission has concerns that Riberebro may have colluded with other market participants within the EEA to allocate customers and coordinate prices of so-called "private label" canned mushrooms. To read the full press release of the Commission (IP-15-5065) click [here](#).

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**European Commission sent statement of objections to suspected participants in car battery recycling cartel**

The European Commission has informed five lead recycling companies that it suspects them of having participated in a purchasing cartel for scrap lead-acid batteries, in breach of EU antitrust rules. To read the full press release of the Commission (IP-15-5254) click [here](#) and the statement of EU Commissioner M. Vestager click [here](#).

**European Commission opened formal investigation into Amazon's e-book distribution arrangements**

The European Commission has opened a formal antitrust investigation into certain business practices by Amazon in the distribution of electronic books (e-books). The Commission will in particular investigate certain clauses included in Amazon's contracts with publishers. These clauses require publishers to inform Amazon about more favourable or alternative terms offered to Amazon's competitors and/or offer Amazon similar terms and conditions than to its competitors, or through other means ensure that Amazon is offered terms at least as good as those for its competitors. To read the full press release of the Commission (IP-15-5166) click [here](#).

**European Commission launched e-commerce sector inquiry**

The European Commission has launched a competition inquiry into the e-commerce sector in the European Union in the context of the Digital Single Market Strategy. The sector inquiry will focus on those goods and services in which e-commerce is most

widespread such as electronics, clothing and shoes, as well as digital content. It will cover all EU Member States. The inquiry will allow the Commission to identify possible competition concerns affecting European e-commerce markets. To read the full press release of the Commission (IP-15-4921) click [here](#). To read the relevant factsheet (MEMO-15-4922) click [here](#).

**European Commission published an Ex-post economic evaluation of competition policy enforcement**

In June 2015 the European Commission (DG COMP) published an Ex-post economic evaluation of competition policy enforcement "A review of the literature". To read the full report click [here](#).

**Competition policy brief on ex post evaluation of competition policy enforcement**

The European Commission (DG COMP) has published a policy brief (2015-4 - Competition Policy Brief) on ex post evaluation of competition policy enforcement ("What can we learn from the literature and from the experience of Competition Authorities?"). To read the full brief click [here](#).

**Competition policy brief on the Interchange Fees Regulation**

The European Commission (DG COMP) has published a Competition policy brief (Issue 2015-3) on the Interchange Fees Regulation. To read the full brief click [here](#).

**Report of European Commission on competition policy 2014**

The European Commission has published the report on competition policy 2014. To read the Report of the Commission click [here](#).

**UK: CMA closed MasterCard and Visa investigations following EU regulation**

The CMA has decided to close its investigations of MasterCard's and Visa's multilateral interchange fees after it was confirmed that an EU regulation that will cap these fees will soon come into force. To read the full press release of the CMA click [here](#).

**UK: CMA published a short guide to what super-complaints are and who can make them to the CMA**

This document summarizes what super-complaints are, who can make them to the CMA and the actions that can be taken following a complaint. To read the full press release of the CMA click [here](#).

**OECD published Annual Report on Competition Policy in Greece for the year 2014**

To read the full Annual Report of the Organization for Economic Co-operation and Development dated June 12, 2015 click [here](#).

**Mergers****European Commission published Best Practices on how to disclose confidential information in antitrust and merger investigations**

On 02.06.2015 the European Commission published guidance on how to disclose business secrets or

other confidential information gathered in the course of antitrust or merger investigations. Addressees of a statement of objections have a right to access the evidence in the Commission's file, except confidential information, in order to prepare their defence. A data room is an exceptional tool used for making available such confidential information in a way that safeguards the legitimate interest for confidentiality of the information provider while respecting the rights of defence of the company under investigation. The best practice document gives guidance on when and how to use data rooms in this context, with the aim of increasing the transparency and predictability of antitrust and merger investigations within the existing legal framework. To read the Best Practices guide click [here](#).

**European Commission approved coffee joint venture between DEMB and Mondelēz, subject to conditions**

Following an in-depth investigation, the European Commission has approved under the EU Merger Regulation the proposed creation of a joint venture between two of the world's leading coffee manufacturers - D.E. Master Blenders 1753 B.V. (DEMB) of The Netherlands and Mondelēz International Inc. of the US. The approval is conditional on implementation of commitments to address the Commission's concerns. To read the full press release of the Commission (IP-15-4915) click [here](#).



**European Commission approved acquisition of TSB by Sabadell; major step in restructuring plan of Lloyds Banking Group**

The European Commission has approved under the EU Merger Regulation the acquisition of TSB Banking Group plc, a British retail and commercial banking services provider, by Banco de Sabadell, S.A. of Spain. TSB is a spin-off of Lloyds Banking Group (Lloyds). With the complete divestment of TSB, Lloyds has fulfilled a key measure under its restructuring plan to limit distortions of competition created by the public aid Lloyds received during the financial crisis. To read the full press release of the Commission (IP-15-4993) click [here](#).

**European Commission cleared acquisition of certain INEOS chlorovinyls businesses by ICIG and approves ICIG as buyer of divested assets linked to approval of INEOS / Solvay joint venture**

The European Commission has approved under the EU Merger Regulation the proposed acquisition of a group of chlorovinyls businesses belonging to the chemical group INEOS by International Chemical Investors Group ("ICIG"). In parallel with Commission's clearance decision, the Commission has also approved ICIG as suitable purchaser for the divestitures offered by INEOS and Solvay to obtain the clearance of their joint venture in the S-PVC market. To read the full press release of the Commission (IP-15-5147) click [here](#).

**European Commission approved joint venture for cross-border licensing of online music between PRSfM, STIM and GEMA, subject to commitments**

Following an in-depth investigation, the European Commission has approved under the EU Merger Regulation the proposed creation of a joint venture for multi-territorial online music licensing and copyright administration services by three music collecting societies. The approval is conditional upon the proposed joint venture implementing commitments that will enable other players to compete with the joint venture in the provision of copyright administration services. To read the full press release of the Commission (IP-15-5204) click [here](#).

**European Commission cleared acquisition of APPE by Plastipak**

The European Commission has approved under the EU Merger Regulation the acquisition of APPE by Plastipak of the USA, the winning bidder in the insolvency procedure of La Seda de Barcelona of Spain, the mother company of APPE. To read the relevant press release of the Commission click [here](#).

**European Commission cleared joint venture by eBook.de and Hugendubel for online sale of books and e-books**

The European Commission has approved under the EU Merger Regulation the creation of a joint venture by eBook.de NET GmbH ("eBook.de") and Heinrich Hugendubel GmbH und Co. KG Buchhandlung und Antiquariat ("Hugendubel"), both of Germany. eBook.de and Hugendubel sell books, e-books and other products such as e-book readers,

audio books, CDs and DVDs to consumers mainly in Germany. While Hugendubel sells those products online and through brick and mortar shops, eBook.de operates an online platform. The two companies will transfer their online sales activities into the newly created joint venture. To read the relevant press release click [here](#).

**European Commission approved acquisition of rotating equipment manufacturer Dresser-Rand by Siemens**

The European Commission has approved under the EU Merger Regulation the proposed acquisition of rotating equipment manufacturer Dresser-Rand of the US by Siemens of Germany. Both companies supply turbo compressors as well as the engines which drive these compressors. To read the full press release of the Commission (IP-15-5272) click [here](#).

**European Commission cleared acquisition of RTI by Alcoa in titanium sector**

The European Commission has approved under the EU Merger Regulation the acquisition of RTI International Metals by Alcoa, both of the U.S. RTI produces titanium mill and melted products, and extruded and machined components, mainly for the aerospace industry. Alcoa purchases such titanium products as inputs for its casting and forging activities. To read the relevant press release of the Commission click [here](#).

**France: The Autorité de la concurrence cleared the acquisition of Libération, on the one hand, and L'Express on the other hand, by Mr. Patrick Drahi**

The Autorité de la concurrence cleared the acquisition by Mr. Patrick Drahi of the daily newspaper Libération (held by NewsCo Group and PMP Holding), on the one hand, and of the magazines L'Express, L'Expansion, Côté Maison, L'Etudiant (Express-Roularta Group) and A Nous Paris, Lille, Lyon and Marseille, on the other hand (A Nous Paris company). To read the full press release of the Autorité dated 03.06.2015 click [here](#).

**Greece: HCC approved the acquisition of sole control on the right to organize and operate mutual horseracing betting in Greece by OPAP S.A.**

The Hellenic Competition Commission (HCC) approved the notified concentration concerning the acquisition of sole control on the right to organize and operate the mutual horseracing betting in Greece by the company OPAP S.A. To read the full press release of the HCC click [here](#).

**Greece: Public announcement of concentration of the companies I. & S. SKLAVENITIS ANONYMI EMPORIKI ETAIRIA and ADELFOI VEROPOULOI ANONYMOS EMPORIKI KAI BIOMIXANIKI ETAIRIA**

On 14.05.2015 was notified to the HCC the concentration, by which the company SKLAVENITIS is going to acquire the 100% of the shares of the company in which they will be contributed the activities of the company ADELFOI VEROPOULOI S.A. in Greece. To read the full press



release of the HCC dated 20.05.2015 click [here](#).

**Greece: Public announcement of concentration of the companies Ixthiotrofeia Selonta AEGE and DIAS Anonymos Biomixaniki KAI Emporiki Etaireia Paragogis KAI Ekmataleysis Ixthiokaliergia**

To read the full press release of the HCC dated 05.06.2015 click [here](#).

**Greece: Public announcement of concentration relating to the establishment of the joint venture ECO RECOVERY ANONYMI ETAIREIA ANAKTISIS APOVLITON**

On 11.06.2015 the concentration in which the company “INTERMPETON BUILDING MATERIALS S.A.”, a member of TITAN Group and the company POLYEKO S.A., member of the TPP Group will set up a joint venture under the name ECORECOVERY S.A. was notified to the HCC. To read the full press release of HCC click [here](#).

### **State Aid**

**The CJEU confirmed that the agreement between the Hungarian State and the oil company MOL relating to the exploitation of hydrocarbon fields does not constitute State aid**

In its judgment in Case C-15/14 P (Commission v MOL Magyar Olaj- és Gázipari Nyrt) the CJEU, like the General Court, confirmed that the agreement between the Hungarian State and the oil company MOL relating to the exploitation of hydrocarbon fields does not constitute State aid. Moreover the CJEU held that the combination of that agreement and the increase in the

rate of mining fees resulting from the amendment of the Mining Act did not confer a selective advantage on MOL. To read the full press release of the CJEU (No 59/2015) click [here](#).

**European Commission fined Portuguese shipyard operator ENVC received €290 million of incompatible aid; orders recovery from ENVC but not from new operator WestSea**

After an in-depth investigation, the European Commission has concluded that around €290 million of public support granted by Portugal to Estaleiros Navais de Viana do Castelo, S.A. (ENVC), the former operator of shipyards located in Viana do Castelo in Portugal, was not compatible with EU state aid rules. The Commission also found that the aid needs to be paid back by the ENVC and not the new shipyard operator WestSea, which has purchased part of ENVC's assets. To read the full press release of the Commission (IP-15-4940) click [here](#).

### **Energy**

**CJEU replied to Finanzgericht Hamburg that German duty on nuclear fuel does not constitute State Aid**

Following a Reference for a preliminary ruling by the Finanzgericht Hamburg (Finance Court, Hamburg, Germany), the CJEU in its judgment in case C-5/14 (Kernkraftwerke Lippe-Ems GmbH v Hauptzollamt Osnabrück) replied that German duty on nuclear fuel is compatible with EU law. As to the background, in 2010, Germany adopted a law on excise duty on nuclear fuel (Kernbrennstoffsteuergesetz). That law introduced, for the period from 1 January 2011 to 31 December 2016, a duty on the use of nuclear fuel for the

commercial production of electricity. To read the full press release of the CJEU (No 62/2015) click [here](#).

**European Commission cleared creation of a joint venture for the analysis of oil and gas resources**

The European Commission has approved under the EU Merger Regulation the creation of a joint venture by Compagnie Générale de Géophysique SA ("CGG") of France and Wood Mackenzie Limited ("Wood Mackenzie") of the United Kingdom. The joint venture will develop and sell software for the evaluation of the likely value of undeveloped oil and gas resources. To read the relevant press release of the Commission click [here](#).

**European Commission cleared acquisition of E.ON Italy by EPH**

The European Commission has approved under the EU Merger Regulation the acquisition of E.ON Italia's coal and gas business by Energetický a průmyslový holding ("EPH") of the Czech Republic. To read the relevant press release of the Commission click [here](#).

**European Commission cleared acquisition of Tonopah Solar Energy by PSP, OTTP and TSI**

The European Commission has approved under the EU Merger Regulation the acquisition of Tonopah Solar Energy Holdings I LLC of the US by Tonopah Solar Investments, LLC ("TSI") of the US and Public Sector Pension Investment Board ("PSP") and Ontario Teachers' Pension Plan Board ("OTPP"), both of Canada. To read the relevant press release of the Commission click [here](#).

**European Commission approved amendments to German renewable energy law EEG 2014**

The European Commission has found amendments proposed by Germany to the Renewable Energy Act (EEG 2014) to be in line with EU state aid rules, in particular the 2014 Energy and Environmental Aid guidelines. To read the relevant press release of the Commission click [here](#).

**European Commission market tests commitments by Bulgarian Energy Holding (BEH) concerning Bulgarian wholesale electricity market**

The European Commission invited comments from interested parties on commitments offered by the State-owned Bulgarian Energy Holding EAD (BEH) to address competition concerns about BEH's behavior on the non-regulated wholesale electricity market in Bulgaria. The Commission has expressed concerns that BEH, the incumbent vertically-integrated energy company, has been preventing competition on the non-regulated wholesale electricity market in Bulgaria. To read the full press release of the Commission (IP-15-5234) click [here](#).

**European Commission found that electricity contracts between state-owned Romanian electricity generator Hidroelectrica and certain customers did not involve state aid**

Following an in-depth investigation, the European Commission has concluded that electricity supply contracts signed by the state-owned Romanian electricity generator Hidroelectrica with certain electricity traders and industrial customers did not involve state aid within the meaning of the EU rules.

The Commission found that the contracts were either concluded on market terms or, where tariffs were below market level, that the Romanian state could not be held responsible for the tariffs granted. To read the full relevant press release of the Commission click [here](#).

#### **European Commission approved support package for gasification plant in Finland**

The European Commission has concluded that Finnish plans to grant around €10 million of public investment to Vaskiluodon Voima Oy, the operator of a gasification plant in Vaasa, are in line with EU State aid rules. The plant will convert forest biomass (mainly wood chips and a small amount of peat) into gas for electricity generation and district heating instead of using coal. To read the full press release of the Commission (IP-15-5255) click [here](#).

#### **ACER finds still existing contractual congestion in European Gas Networks**

The main outcome of the annual congestion report of the Agency for the Cooperation of Energy Regulators (ACER) is reflected in a list specifying at which interconnection points the so-called Firm Day-Ahead Use-It-Or-Lose-It (FDA UIOLI) mechanism will have to be applied as a congestion management procedure (CMP) from July 2016 on, if congestion is still found in next year's report. Contractual congestion, a situation where gas capacity demand exceeds the technical capacity, has been detected at about 15% of entry and exit sides at interconnection points (IPs) across the EU. The report analyses transport, Congestion Management Procedures

and capacity booking data from ENTSOG's Transparency Platform (TP) for the period 2014 until 2016, as well as 2014 auction data from the PRISMA capacity booking platform. To read the full press release of the ACER click [here](#).

#### **France: Acquisition of Totalgaz by UGI (Antargaz)**

The Autorité de la concurrence cleared, subject to conditions, the acquisition of Totalgaz by UGI France, the parent company of Antargaz. Among the commitments discussed and negotiated with the Autorité, UGI shall, in particular, be obliged to divest its stakes in the capital of several LPG import and storage depots. To read the full press release of the Autorité dated 18.05.2015 click [here](#).

#### **Greece: RAE published annual report on the written reports of energy consumers**

On 21.05.2015 the Regulatory Authority for Energy of Greece (RAE) published within the framework of its responsibilities for the protection of energy consumers published an annual report on the written reports of energy consumers which were submitted to RAE in 2014 aiming at informing all the stakeholders and individuals in the energy market. To read the full press release of RAE and the report click [here](#).

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**Electronic Communications**

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**CJEU ruled that the Universal Service Directive does not lay down a social pricing obligation for mobile communications and mobile Internet subscriptions**

In a judgement dated 11.06.2015 (Case C-1/14 Base Company NV and Mobistar NV v Ministerraad) the CJEU ruled that the Universal Service Directive does not lay down a social pricing obligation for mobile communications and mobile Internet subscriptions. By contrast, according to the CJEU the social tariffs must be offered to certain categories of consumers for fixed telephone and Internet subscriptions. To read the full press release of the CJEU (No. 68/2015) click [here](#).

**European Commission cleared the acquisition of Jazztel by Orange, subject to conditions**

The European Commission has approved under the EU Merger Regulation the proposed acquisition of Jazztel plc, a telecommunications company registered in the UK but mainly active in Spain, by rival Orange SA of France. The approval is conditional upon the full implementation by Orange of a number of commitments that will ensure effective competition on the fixed internet access services markets after the takeover. Throughout the previous investigation the Commission has cooperated closely with the Spanish competition authority and telecoms regulator CNMC (*see also C&RR 2015 Issue 1*). To read the full press release of the Commission (IP-15-4997) click [here](#) and the Commission's factsheet (MEMO 15-4998) click [here](#).

**European Commission approved € 3 billion aid scheme in Germany to support high speed internet roll-out**

The European Commission has found that the main elements of Germany's proposal for a national support scheme for the roll out of next generation access (NGA) broadband networks are in line with EU state aid rules. The € 3 billion scheme aims at providing high speed internet access throughout the country, including in rural areas. To read the full press release of the Commission (IP-15-5168) click [here](#).

**France: The Autorité de la concurrence obtained from TDF an improvement of the hosting contracts binding it to the mobile operators that use its pylons**

In the scope of proceedings initiated before the Autorité de la concurrence by FPS Towers (hereinafter FPS), TDF committed to limiting the duration of new hosting contracts to 10 years, and giving them more flexibility to terminate a quota of the sites prior to the term of the contract. To read the full press release of the Autorité dated 04.06.2015 click [here](#).

**France: The Autorité fined TDF 5.6 million euros for practices aimed at foreclosing its competitors from the Eiffel Tower site**

After the adoption of interim measures in 2007, the Autorité de la concurrence fined on 11.06.2015 TDF 5.6 million euros for distortion of competition in the market for the renewal of the national occupancy contract of the Eiffel Tower site and in the sector relating to FM radio terrestrial broadcasting from the same site. To read the full press release of the Autorité click [here](#).

**Greece: Assignment of domain names with two characters by HTPC**

On 04.05.2015 the HTPC announced the initiation of the assignment of the domain names with two characters (for example aa.gr and aa.com.gr) according to the new regulation of HTPC for the management and the assignment of .gr domain names. To read the full press release of the HTPC click [here](#).

**Greece: HTPC published the unbundling Reference Offer 2015**

The Hellenic Telecommunications & Post Commission (HTPC) published the unbundling Reference Offer 2015. The said offer for the unbundling access to the local loop, which specifies OTE's obligation to provide fully unbundled and shared access to the local loop and fully unbundled access to the sub-local loop, the related services and the relevant facilities, is issued in implementation of HTPC's decision 614/13/28.7.2011 (Hel. Gaz 1908/B/30.8.2011). To read the full unbundling Reference Offer click [here](#).

**Greece: Amendment of the Regulation on Management and Assignment of .gr Domain Names and other provisions**

To read the HTPC's amendment decision of Article 23 of the Regulation on Management and Assignment of .gr Domain Names click [here](#).

**Greece: HTPC's decision on Provision by OTE of the new wholesale product VPU light for the transitional period**

To read the full decision of the HTPC click [here](#).

**Greece: Public Consultation on the amendment of the EETT Decision 677/03/2013 "Regulation on the management and allocation of numbering resources of the National Numbering Plan", as it applies**

The HTPC launched a public consultation on proposals for the formulation of accessible prices within the framework of the universal service. The consultation period is from June 30 to September 14 2015. To read the full press release of the HTPC click [here](#).

**Pharmaceuticals****European Commission approved acquisition of Sigma-Aldrich by Merck, subject to conditions**

The European Commission has approved the proposed acquisition of Sigma-Aldrich by Merck under the EU Merger Regulation. Both companies are active world-wide in the life science sector. The decision is conditional on the divestment of certain Sigma-Aldrich assets, including manufacturing assets in Germany, the rights to certain brands and a sales force. To read the full press release of the Commission (IP-15-5194) click [here](#).

**Transport****The General Court dismissed the actions brought by the airline Niki Luftfahrt against Lufthansa's acquisition of Austrian Airlines and the restructuring aid granted by Austria to Austrian in that regard**

In its judgments in Cases T-511/09 and T-162/10 (Niki Luftfahrt GmbH v Commission) the GC dismissed the actions brought by the airline Niki



Luffahrt against Lufthansa's acquisition of Austrian Airlines and the restructuring aid granted by Austria to Austrian in that regard. The GC held that none of the arguments put forward by Niki is capable of casting doubt on the Commission's authorization of that concentration and that aid, which it granted subject to conditions. To read the full press release of the GC (No 54/2015) click [here](#).

**European Commission accepted commitments by SkyTeam members Air France/KLM, Alitalia and Delta on three transatlantic routes**

The European Commission has adopted a decision that renders legally binding commitments offered by Air France/KLM, Alitalia and Delta, members of the SkyTeam airline alliance, to lower barriers to entry or expansion on three transatlantic routes. The Commission had concerns that the cooperation between these airlines may harm competition for all passengers on the Amsterdam-New York and Rome-New York routes and for premium passengers on the Paris-New York route, in breach of EU antitrust rules. Commitments are legally binding on these airlines for a period of ten years. To read the full press release of the Commission (IP-15-4966) click [here](#).

**European Commission gave conditional authorization for SNCF to acquire sole control of Eurostar**

Under the EU Merger Regulation, the European Commission has approved the planned merger involving the acquisition of sole control of Eurostar International Limited by the French rail operator SNCF MOBILITES. The Commission's decision is conditional on compliance with commitments

designed to facilitate the entry of new rail operators onto the London - Brussels and London - Paris routes, on which Eurostar is currently the only operator. The Commission was concerned that the deal as originally notified might hinder the entry of competitors into these markets. To read the full press release of the Commission (IP-15-4976) click [here](#).

**UK: CMA's statement on Court of Appeal judgment in Eurotunnel case**

The CMA noted judgment dated 15.05.2015 by the Court of Appeal upholding a challenge to its ability to bar Eurotunnel from running its MyFerryLink service out of Dover. The CMA stated that it will study the judgment carefully and consider its next steps. To read the full press release of the CMA click [here](#). In a next step, on 19.05.2015 the CMA announced that it will seek permission to appeal in the Eurotunnel case. To read the full press release of the CMA click [here](#).

**News of the Markets**

**Termination of contract between VIAMAR S.A. and SKODA AUTO a.s. on May 30, 2017 in automotive industry**

On 09.06.2015 VIAMAR S.A. announced that on May 29, 2015, the SKODA AUTO a.s. terminated the contract with VIAMAR SA disclosing the same time that their contractual relationship will end on May 30, 2017. VIAMAR S.A. was the exclusive representative/distributor and importer of SKODA, for 35 consecutive years.



**Russia's Gazprom has been given a two-month extended deadline in the antitrust investigation**

According to press information, Gazprom has been given a two-month extended deadline in the antitrust investigation of mid-September to respond to European Union antitrust charges of over-charging in eastern and central Europe and blocking competitors from entering the market. The deadline to submit the response to the Commission is now mid-September 2015.

**EU Commissioner M. Vestager said that Commission sent questions to SOCAR related to DESFA**

According to press information, M. Vestager, the commissioner in charge of competition policy, stated that the European Commission within the framework of its investigation sent on 21.05.2015 questions to SOCAR concerning the procedure for the sale of DESFA (National Natural Gas System Operator S.A.). According to the commissioner this means that is quite early to talk about the outcome of Commission's investigation.

**The deal for the acquisition of NIKAS in countdown**

According to press information the optimistic estimations put the signing of a preliminary agreement between banks and consortium Chipita - Impala Invest for the acquisition of a majority stake in NIKAS which operates in cured meat products industry.

**M&M GAS submitted final offer in the open tender of DEFA (Cyprus)**

M&M Gas Co. S.A., a subsidiary company of MYTILINEOS HOLDINGS S.A. and MOTOR OIL HELLAS (CORINTH REFINERIES) S.A., announced that on 02.06.2015 it submitted a final and best financial offer in the tender process "SUPPLY OF NATURAL GAS TO DEFA FOR POWER GENERATION" of the Natural Gas Public Company of Cyprus (DEFA). M&M Gas leads a consortium, in which Trafigura and Metka S.A. are also involved. This consortium is one of the two selected by DEFA to participate in the final bidding. According to the tender procedure the successful bidder is expected to be announced within the next period.

**Frigoglass announced agreement for divestment of its Glass Operations**

Following an extensive strategic review process, on 22.05.2015 Frigoglass SAIC ("Frigoglass") announced that it has entered into an agreement to sell its Glass Operations to GZI Mauritius Limited ("GZI"). GZI is the holding company of GZ Industries Limited, the largest beverage can manufacturer in West Africa with manufacturing operations in Nigeria, which is now expanding into Kenya. The operations being sold consist of all of Frigoglass' glass container operations in Nigeria and Dubai as well as the complementary plastic crates and metal crowns businesses in Nigeria.

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