

# Competition & Regulation Report

*November - December 2016*

**EDITORIAL:** The CJEU ruled in favor of OPAP as regards its exclusive license to exploit 35.000 virtual lottery terminals

## HIGHLIGHTS

- The European Commission fined rechargeable battery producers € 166 million in cartel settlement
- The European Commission fined Crédit Agricole, HSBC and JPMorgan Chase €485 million for euro interest rate derivatives cartel
- The European Commission cleared acquisition of Yahoo by Verizon
- GC issued its Judgments in Cases T-169/08 and T-421/09 (DEI vs. European Commission)
- The European Commission approved revised French market-wide capacity mechanism
- The CJEU dismissed the European Commission's appeal in the case involving shareholder loans offered to France Télécom by the French authorities at a time when the telephone operator was undergoing a major crisis
- UK: The CMA fined pharma companies Pfizer and Flynn Pharma nearly £90 million for charging excessive prices to the NHS for an anti-epilepsy drug
- CJEU: Judgment issued in Joined Cases C 164/15 P and C 165/15 P (European Commission vs. Ryanair/Aer Lingus)

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**Editorial:**

**The CJEU ruled in favor of OPAP as regards its exclusive license to exploit 35.000 virtual lottery terminals**

Following a relevant appeal of seven Greek casinos, by its judgment in Case C-131/15 P (Club Hotel Loutraki AE and others v. European Commission), the Court of Justice of the European Union (CJEU) ruled that measures included in two agreements entered into between OPAP S.A. and the Hellenic Republic in 2011 regarding the extension of the exclusive right of OPAP to operate 13 games of chance and the granting of an exclusive license to operate 35.000 Video Lottery Terminals (VLT's) for a period of 10 years, respectively, are compatible with state aid rules.

More specifically, in 2012, the European Commission decided that OPAP paid adequate consideration for the granting of an exclusive license to operate 35.000 VLTs and the 10-year extension to the exclusive rights for the operation of 13 games of chance. In particular the Commission held that the relevant agreements did not confer any unfair advantage to OPAP. Further to this, in 2013, Greek casinos brought an action before the General Court of the European Union (GC) against the European Commission's decision and in 2015, the GC dismissed their action.

In the case at hand, the CJEU ruled on appeal that the agreements entered into in 2011 between OPAP and the Hellenic Republic, which brought about approximately 940 million euros to the Hellenic Republic do not constitute illegal state aid and, as such, that they do not violate EU competition law.

Moreover, according to the judgment of the CJEU, “[...] the General Court properly held that the appellants had not demonstrated the existence of errors of law when the Commission carried out a joint assessment of the VLT Agreement and the Addendum. [...] Having regard to all of the foregoing considerations, the appeal must be dismissed.”

Finally, OPAP issued on 22.12.2016 a relevant press release, through which it praised the judgment of the CJEU, mentioning, among others, that the CJEU's judgment confirms “OPAP's and European Commission's position with regard to the legality of its exclusive rights and in particular its exclusive license to operate 35.000 Video Lottery Terminals”. To read the full judgment of the CJEU in Case C-131/15 P click [here](#). To read the relevant press release of OPAP click [here](#).

**Antitrust**

**CJEU: Judgment issued in Joined Cases C 532/15 and C 538/15 - Eurosaneamientos and Others**

In Joined Cases C 532/15 and C 538/15 (Eurosaneamientos and Others) the CJEU ruled on questions referred by a Spanish court on the compliance of legislation which applies a mandatory tariff scale to the fees charged by "procuradores" in Spain, with Article 101 TFEU read in conjunction with Article 4(3) TEU. Article 4(3) TEU requires Member States not to deprive the competition rules of their effectiveness. The Court held that the Spanish legislation was in line with Article 101 TFEU read in conjunction with Article 4(3) TEU. To read the full judgment of the CJEU in Joined Cases C 532/15 and C 538/15 click [here](#).

**GC: Judgments in Cases T 762/14 Philips (Netherlands) and Philips (France), T-758/14 Infineon Technologies vs. European Commission (Smart card chip market cartel)**

In Cases T 762/14 (Philips (Netherlands) and Philips (France), T-758/14 Infineon Technologies vs. European Commission) the General Court of the European Union (GC) ruled on actions for annulment of a Commission decision of 2014 fining several companies for their participation in a cartel in the market for smart card chips. Infineon and Philips brought actions for annulment of that decision before the General Court. The Court dismissed the actions and entirely upheld the Commission's findings and the fines imposed on Infineon and Philips in 2014. To read the full press release of the GC (No. 136/2016) click [here](#).

**GC: Judgment issued in Case T-95/15 (Printeos and others vs. European Commission)**

On 13.12.2016, in Case T-95/15 (Printeos and others vs. European Commission) the GC ruled on Tompla/Printeos' action for annulment of the fine the Commission had imposed on the company for its participation in a cartel in the market for envelopes. The Court annulled Tompla/Printeos' fine. To read the full judgment of the GC in Case T-95/15 click [here](#).

**The Insurance Block Exemption Regulation expires on 31 March 2017**

As foreseen in a sunset clause, the European Commission's Insurance Block Exemption Regulation (IBER)

will lapse on 31 March 2017. The IBER exempts certain types of co-operation between insurers from antitrust scrutiny under Article 101 of the TFEU, which prohibits anticompetitive business practices. To read the relevant press release of the European Commission click [here](#).

**The European Commission fined rechargeable battery producers € 166 million in cartel settlement**

The European Commission fined Sony, Panasonic and Sanyo a total of € 166 million. The companies and Samsung SDI coordinated prices and exchanged sensitive information on supplies of rechargeable lithium-ion batteries, used for example in laptops and mobile phones, in breach of EU antitrust rules. Samsung SDI was not fined as it revealed the existence of the cartel to the Commission under the 2006 Leniency Notice. Sony, Panasonic and Sanyo benefited from reductions of their fines for their cooperation with the Commission's investigation under the 2006 Leniency Notice. All companies acknowledged their involvement in the cartel and agreed to settle the case. Therefore, under the Commission's 2008 Settlement Notice, the Commission applied a reduction of 10% to the fines imposed in view of the parties' acknowledgment of their participation in the cartel and of their liability in this respect. The cartel contacts took place mainly in Asia and occasionally in Europe. The cartel started in February 2004 and lasted until November 2007. To read the full press release of the European Commission (IP-16-4356) click [here](#).

**The European Commission fined Crédit Agricole, HSBC and JPMorgan Chase € 485 million for euro interest rate derivatives cartel**

The European Commission fined Crédit Agricole, HSBC and JPMorgan Chase, a total of € 485 million for participating in a cartel in euro interest rate derivatives. The banks colluded on euro interest rate derivative pricing elements, and exchanged sensitive information, in breach of EU antitrust rules. To read the full press release of the European Commission (IP-16-4304) click [here](#) and to read the full press release of Commissioner Vestager (STATEMENT-16-4307) click [here](#).

**Greece: Ex-officio investigation of the HCC regarding construction tender processes in the Pella Prefecture**

The Grand Chamber of the Hellenic Competition Commission (HCC) convened on the 28th of December 2016 to examine, following a relevant statement of objections, whether certain undertakings active in the construction sector in Greece<sup>1</sup>, committed an infringement of Art. 1 of the Greek Competition Act (currently, L. 3959/2011). The ex-officio investigation by the General Directorate for Competition (DG) was initiated in 2011, following an anonymous complaint against certain construction undertakings in relation to an alleged collusion of a tender process in the Prefecture of Pella. To read the full press release of the HCC please visit the website of the [HCC](#).

**Greece: HCC to examine complaints against the company “ROMA PIZZA” concerning the breach of competition rules in relation to the franchising system of the company**

The Plenary of the HCC to convene on 30 January 2017 in order to examine the company “ROMA PIZZA” has breached article 1 para. 1 of Law 703/1977, as in force (presently, article 1 para. 1 of Law 3959/2011, as in force), as regards the terms of the franchising agreements said company enters into as franchisor, with the members of its network, as well as the methods it uses vis-à-vis its franchisees. To read the full press release of the HCC please visit the website of the [HCC](#).

**The CMA imposed fines totaling £1,533,500 on 5 model agencies and their trade association for breaking competition law by colluding on prices**

The CMA found that the agencies – FM Models, Models 1, Premier, Storm and Viva – and their trade association, the Association of Model Agents (AMA), colluded instead of competing on prices for modelling services. This took place from at least April 2013 until March 2015. The parties regularly and systematically exchanged information and discussed prices in the context of negotiations with particular customers. In some cases, the agencies agreed to fix minimum prices or agreed a common approach to pricing. To read the full press release of the CMA click [here](#).

**Germany: Fine proceedings for vertical price fixing in the German food retail sector concluded**

The Bundeskartellamt concluded its last three pending proceedings concerning vertical price fixing in the food retail sector. The authority imposed fines totalling 18.3 million euros on EDEKA Handelsgesellschaft Nord mbH, Neumünster, and EDEKA Handelsgesellschaft Hessenring mbH, Melsungen. The authority's findings showed that between 2006 and 2009 the two regional retailers were involved in price fixing agreements on the shop prices for beer products. The fines can still be appealed to the Düsseldorf Higher Regional Court. With these last fines, a total of approx. 112 million euros has been imposed on eleven companies on account of price fixing agreements between the brewery Anheuser Busch InBev Germany Holding GmbH, Bremen, and various retailers. To read the full press release of the Bundeskartellamt click [here](#).

**Mergers****The European Commission approved acquisition of St Jude Medical by Abbott Laboratories, subject to conditions**

The European Commission approved under the EU Merger Regulation the proposed acquisition of St Jude Medical by Abbott Laboratories, both US based companies that develop and market medical devices. The approval is conditional on Abbott divesting two devices used in cardiovascular treatments. The Commission's investigation focused on the two areas of cardiovascular devices where Abbott and St Jude compete: vessel closure devices and devices used in

electrophysiology procedures, in particular transseptal introducer sheaths. To read the full press release of the European Commission (IP-16-3941) click [here](#).

**The European Commission cleared acquisition of Yahoo by Verizon**

The European Commission approved under the EU Merger Regulation the acquisition of Yahoo Holdings, Inc. by Verizon Communications Inc., both of the US. Verizon (through AOL) and Yahoo are both active in a number of content, search, communication services and advertising services. To read the relevant press release of the European Commission click [here](#).

**The European Commission alleged Facebook provided misleading information about WhatsApp takeover**

The European Commission sent a Statement of Objections to Facebook alleging the company provided incorrect or misleading information during the Commission's 2014 investigation under the EU Merger Regulation of Facebook's planned acquisition of WhatsApp. The Commission took the preliminary view that, contrary to Facebook's statements and reply during the merger review, the technical possibility of automatically matching Facebook users' IDs with WhatsApp users' IDs already existed in 2014. The current investigation is limited to the assessment of breaches of procedural rules. As the Commission's October 2014 decision to clear Facebook/WhatsApp was based on a variety of factors going beyond the possibility of matching user accounts, the current investigation will not have an impact on that decision which remains effective. Facebook now has

now until 31 January 2017 to respond to the Statement of Objections. To read the full press release of the European Commission (IP-16-4473) click [here](#).

**The European Commission approves acquisition of LinkedIn by Microsoft, subject to conditions**

The European Commission approved under the EU Merger Regulation the proposed acquisition of LinkedIn by Microsoft. The decision is conditional on compliance with a series of commitments aimed at preserving competition between professional social networks in Europe. Microsoft and LinkedIn are mainly active in complementary business areas, except for minor overlaps in online advertising. To read the full press release of the European Commission (IP-16-4284) click [here](#).

**The European Commission cleared acquisition of Computer Sciences Corporation by Hewlett Packard Enterprise Services**

The European Commission approved, under the EU Merger Regulation, the acquisition of Computer Sciences Corporation by Hewlett Packard Enterprise Services, both of the United States. Computer Sciences Corporation is a provider of information technology services. Hewlett Packard Enterprise Services provides technology consulting, information technology outsourcing and support services in traditional and enterprise services offerings. To read the relevant press release of the European Commission click [here](#).

**The European Commission approved acquisition of WhiteWave by Danone, subject to conditions**

The European Commission cleared under the EU Merger Regulation the proposed acquisition of WhiteWave, a US-based manufacturer of packaged foods and beverages, by the French Danone group. The clearance is conditional upon the divestment of Danone's "growing-up milk" business in Belgium. To read the full press release of the European Commission (IP-16-4438) click [here](#).

**Greece: Clearance by the HCC of the proposed acquisition by RAVAGO DISTRIBUTION S.A. of PENTAPLAST SA PLASTIC RAW MATERIALS**

By its unanimous Decision No. 634/2016, the Chamber of the Hellenic Competition Commission (HCC) approved, under Greek merger control rules, the proposed acquisition of sole control over the operations in Greece of PENTAPLAST SA PLASTIC RAW MATERIALS, a distributor of plastic products, by RAVAGO DISTRIBUTION S.A., a distributor & producer of chemical and plastic products. To read the full press release of the HCC please visit the website of the [HCC](#).

**Greece: Clearance by the HCC of the proposed acquisition by HOME HOLDINGS HOLDING SOCIETE ANONYME of IONIKI HOTEL BUSINESSES S.A.**

By its unanimous Decision No. 633/2016, the Chamber of the HCC approved, under Greek merger control rules, the proposed acquisition of sole control over the operations in Greece



of IONIKI HOTEL BUSINESSES S.A., owner of the Athens Hilton Hotel, by HOME HOLDINGS HOLDING SOCIETE ANONYME. To read the full press release of the HCC please visit the website of the [HCC](#).

**France: The Autorité de la concurrence cleared the acquisition of Bazarchic by the Galeries Lafayette group**

The Galeries Lafayette group notified the Autorité de la Concurrence on 27 September 2016 of its intention to acquire the Bazarchic Company. After considering the transaction's effects on the end of line products and travel services markets, the Autorité gave its clearance to the acquisition. The Galeries Lafayette group, which runs numerous department stores and retail websites, is a key player in the fashion, luxury, beauty, leisure and home interior retail sectors in France. Bazarchic is specialized in selective sales events of high-end products of fashion, home interior, wine, spirits via Bazarchic.com and major travel brands via Mytravelchic.com. To read the full press release of the Autorité de la Concurrence click [here](#).

**Germany: Bundeskartellamt cleared merger of titanium dioxide companies**

The Bundeskartellamt cleared the acquisition of Sierra Rutile Limited by Iluka Resources Limited. Both companies are active in opencast mining in Australia and Sierra Leone and achieve a joint turnover in the three digit million range with the worldwide sale of the extracted raw materials. Among the products extracted by the companies are the minerals ilmenite and rutile. The acquisition had to be notified to the Bundeskartellamt

because the companies also sell the raw materials to well-known pigment manufacturers with business locations in Germany and achieve significant turnover here. To read the full press release of the Bundeskartellamt click [here](#).

**State Aid**

**The CJEU held that the GC erred in law in setting aside the European Commission decisions declaring a Spanish tax scheme incompatible with the internal market**

By its judgment in Joined Cases C-20/15 P, C-21/15 P (European Commission v World Duty Free Group) the Court of Justice of the European Union (CJEU) fully upholding two Commission decisions of October 2009 and January 2011, regarding the tax amortization of financial goodwill for foreign shareholding acquisitions in Spain. In doing so, the CJEU set aside an earlier ruling by the General Court of the European Union (GC) from November 2014. As a result of the judgment, the Commission decisions of October 2009 and January 2011 are reinstated, including Spain's obligation to recover the aid granted under the measure. To read the full press release of the CJEU (No. 139/2016) click [here](#).

**CJEU: Judgment in Case C-76/15 (Preliminary judgement, Vervloet and others)**

In Case C-76/15 (Vervloet and others), the CJEU ruled on preliminary questions referred by the Belgian Constitutional Court, asking, among others, whether the Commission was right to conclude in a 2014 decision that a Belgian guarantee scheme for

shareholders of financial cooperatives was incompatible with EU state aid rules. The Commission's 2014 decision found, in particular, that the public guarantee makes the financial cooperatives that benefit from it more attractive for investors as compared to their competitors, who have to operate without such a guarantee. The guarantee thus conferred a selective advantage to the Belgian financial cooperative ARCO, the only beneficiary of the scheme, who has to pay back the undue advantage it received. The Court now confirmed the Commission's findings that the guarantee scheme entailed illegal state aid. To read the full judgment of the CJEU in Case C-76/15 click [here](#).

**The European Commission found Hungarian advertisement tax in breach of EU rules**

The European Commission found that Hungary's 2014 Advertisement Tax Act is in breach of EU state aid rules because its progressive tax rates grant a selective advantage to certain companies. Furthermore, the Commission found that it also unduly favors companies that did not make a profit in 2013 by allowing them to pay less tax. To read the full press release of the European Commission (IP-16-3606) click [here](#).

**The European Commission published the non-confidential version of the final negative decision concluding that Ireland granted undue tax benefits of up to €13 billion to Apple**

The Commission has published the non-confidential version of the final negative decision adopted on 30 August 2016 concluding that Ireland gave illegal tax benefits to Apple worth up to

€13 billion. This is illegal under EU state aid rules, because it allowed Apple to pay substantially less tax than other businesses. The decision is available under the case number SA.38373 on the competition website. To read the relevant press release of the European Commission click [here](#).

**The European Commission approved amendments to Greek regional aid map for the period of 2017-2020**

The European Commission found amendments to Greece's regional aid map for granting state aid between 2017 and 2020 to be in line with EU state aid rules. The map defines the Greek regions that are eligible for regional investment aid under EU state aid rules and establishes the maximum levels of aid (so-called "aid intensities") that can be granted. To read the relevant press release of the European Commission click [here](#).

**The European Commission approved prolongation of Greek bank guarantee scheme**

The European Commission authorized the prolongation of the Greek guarantee scheme for credit institutions until 30 June 2017 under EU state aid rules. Whilst the liquidity situation of the Greek banks is gradually improving, the Commission has found that the 6-month prolongation of the guarantee scheme is in line with the rules on state aid to banks during the crisis, in particular because the prolonged measure is targeted, proportionate and limited in time and scope. To read the relevant press release of the European Commission click [here](#).



**Energy**

**GC issued its Judgments in Cases T-169/08 and T-421/09 (DEI vs. European Commission)**

In Cases T-169/08 RENV and T-421/09 RENV DEI vs. European Commission, the General Court of the European Union (GC) gave two judgments concerning two Commission decisions of 2008 and 2009 regarding access to lignite in Greece. The two decisions found that by granting the state owned power supplier Public Power Corporation (DEI), privileged access to lignite Greece had maintained or reinforced DEI's dominant position and created an inequality of opportunity between competitors. This had restricted competition in breach of Article 106 TFEU read in conjunction with Article 102 TFEU. To read the full judgment of the GC in Case T-421/09 click [here](#). To read the full judgment of the GC in Case T-169/08 click [here](#).

**The European Commission cleared RON 447.8 million Romanian support for closing coal mines**

The European Commission found Romania's plans to provide RON 447.8 million of support to alleviate the social and environmental impact of closing two uncompetitive coal mines by 2018 to be in line with EU state aid rules. The Commission concluded the support would not unduly distort competition. To read the full press release of the European Commission (IP-16-3981) click [here](#).

**The European Commission cleared Czech support scheme for renewable energy**

The European Commission approved a support scheme for installations producing renewable energy built in the Czech Republic between 2006 and 2012 under EU state aid rules. The Commission found that, in line with the applicable 2001 and 2008 Commission environmental guidelines, the support takes the form of a preferential prices (feed-in tariffs) and premiums on top of the market price (green bonuses). The measure also incorporates a review mechanism which ensures that installations are not overcompensated and aid is limited to the minimum necessary to achieve the scheme's objectives. To read the full press release of the European Commission (IP-16-4083) click [here](#).

**The European Commission approved four support measures for renewable energy in France**

The European Commission confirmed that four French support schemes for renewable energy are in line with EU State aid rules, concluding that the measures in question will help promote EU objectives in the field of energy and climate without unduly distorting competition. To read the full press release of the European Commission (IP-16-4355) click [here](#).

**The European Commission approved supplementary electricity capacity auction in UK**

The European Commission found that UK plans to hold a supplementary electricity capacity auction are in line with EU state aid rules. The auction will bridge the gap before the Great Britain

Capacity Market becomes operational at the end of 2018. To read the relevant press release of the European Commission click [here](#).

**The European Commission approved revised French market-wide capacity mechanism**

The European Commission approved French plans for a capacity mechanism under EU state aid rules. During the investigation France agreed to amend the measure. The Commission concluded that the revised measure improves the security of electricity supply whilst maintaining competition. To read the full press release of the European Commission (IP-16-3620) click [here](#).

**Sector Inquiry report gave guidance on capacity mechanisms**

The European Commission published the final report of its capacity mechanism sector inquiry. It concludes that Member States need to better assess the need for such mechanisms and gives guidance on how to make their design deliver on security of supply while minimizing competition distortions. The report concludes that Member States have often failed to adequately assess the need for a capacity mechanism before introducing one. Furthermore, many Member States have yet to implement market reforms that are indispensable to deliver on security of supply issues. Where a capacity mechanism is necessary the report gives practical guidance to Member States on which types of capacity mechanisms may be most suitable to solve the problem identified. To read the full press release of the European Commission (IP-16-4021) click [here](#), and to read the full

factsheet of the European Commission (MEMO-16-4023) click [here](#).

**The European Commission approved Greek support scheme for renewable electricity and cogeneration**

The European Commission found the new Greek support scheme for renewable electricity and high efficiency cogeneration to be in line with EU state aid rules. The scheme will help Greece to reduce CO2 emissions, in line with EU energy and climate goals, without unduly distorting competition. To read the full press release of the European Commission (IP-16-3707) click [here](#).

**The European Commission approved auction scheme for electricity from renewable sources in Germany**

The European Commission found amendments to the German renewable energy scheme to be in line with EU state aid rules. As of 2017 support will mainly be granted through auctions. This will promote the steady deployment of renewable energy whilst maintaining competition in the German energy market. To read the full press release of the European Commission (IP-16-4471) click [here](#).

**The European Commission cleared German Network Reserve for ensuring security of electricity supply**

The European Commission approved under EU state aid rules German plans to put in place for four years a reserve to ensure sufficient electricity capacity in Southern Germany (the Network Reserve). The measure maintains security of supply without unduly distorting competition in the Single Market. Under the scheme, German transmission system operators pay

operators of power plants that have notified their intention to close down but that are relevant to keep the electricity system in balance, for remaining available to the network. To read the full press release of the European Commission (IP-16-4472) click [here](#).

**Greece: Announcement of RAE concerning the results of its Public Consultation regarding the pilot tender process for photovoltaic facilities to be included in an operating aid support regime**

To read the full press release of the Regulatory Authority for Energy (RAE) click [here](#).

**Greece: Results of RAE's public consultation for the methodology for the calculation of the starting price for the auctioning of amounts of natural gas published**

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

**Greece: RAE published the amendment to its decision No. 592/2014 regarding the methodology for the calculation of the starting price of DEPA S.A.'s auctions**

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

**Greece: RAE published the responses to questions submitted to RAE within the Context of the Pilot Tender Process (Government Gazette B' 3627/09.11.2016)**

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

**Greece: RAE announced that on 22.11.2016, 28 electronic applications**

**were submitted (regarding a total capacity of 60MW), within the context of RAE's Announcement of the Pilot Tender Process for the submission of photovoltaic facility offers**

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

**Greece: RAE, within the context of its Pilot Tender Process for the submission of offers for P/V facilities informed the public as regards its decision No. 513/2016**

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

**Greece: RAE published the results of its public consultation on the proposal of the ESFA Operator for the conducting of auctions for the binding of Transmission Capacity at the Interconnection Point Kulata/Sidirocastro**

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

**Greece: RAE announced the conclusion of the first Pilot Tender Process for the submission of offers for photovoltaic facilities**

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

**Greece: Announcement of RAE concerning the provisions of the Ministerial Decision No Δ1/Τ/400 (Government Gazette Issue Β' 33/19.1.2007), entitled «Determination of the procedure applied to collect and process the data required to calculate the weighted average import price of natural gas»**

RAE, within the framework of its competence regarding monitoring of the energy market, following the provisions of par. 1 of article 5 in Law 2773/1999, publicized for the first time on 3.8.2011 the data on the calculated weighted average import price (WAIP) of Natural Gas in the NNGS of Greece, on a monthly basis. Publicized data on WAIP prices were the result of calculations performed on the data provided by importers according to the provisions of the aforementioned Ministerial Decision, and for the period of March 2008-March 2011. The relevant chart published by RAE was updated with the monthly data on WAIP for the period of October 2013 - September 2016 and presents the trend of the monthly data on WAIP against the trend of the monthly data on daily price of balancing gas (HTAE), as announced on the internet site of the Transmission System Operator (DESFA). To read the full press release of RAE click [here](#).

**Greece: RAE announced the issuance of its decision No. 410/2016, as well as the results of its Public Consultation regarding the amendment of its decision No. 1599/2011, entitled "Meter specifications and measurements of quantities pursuant to the Ministerial Decision No. Δ6/Φ1//Οικ.8786/6-5-2010, Application of the System of Guarantee of the Source of Electricity from APE**

**and SITHYA and the mechanisms of safeguarding thereof"**

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

**Greece: RAE published its decision No. 574/2016 regarding the determination of the values and limits of tolerance and the coefficient of variation for the determination of Imbalances for the year 2017.**

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

**Greece: RAE published its decision No. 575/2016 regarding the determination of unit charges, accretion rates and other parameters for the calculation of Charges of Non-Compliance due to non-valid offers and declarations for the year 2017**

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

**Greece: RAE published its decision No. 573/2016 regarding the Approval of the Loss Factor for the Interconnected Distribution Network for the year 2017**

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

**Greece: RAE announced the issuance of the decisions No. 618/2016, 619/2016, and 620/2016 of its plenary regarding the application of the Mechanism for the distribution of forward electricity products through the delivery thereof via sale auctions for the year 2017**

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

Greece: Results of RAE's public consultation on drafts of Contracts for the operational aid to differential increments and Contracts for the operational aid to standard prices of energy generated by APE and SITHYA, according to the provisions of articles 9, 10, para. 3 of law 4414/2016

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

Greece: RAE published its decision No. 518/2016 regarding the "Process for auctions for the binding and allocation of capacity at the Interconnection Point Kulata-Sidirocastro for the transitional period from 1.1.2017 until 30.09.2017".

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

Greece: RAE announced that it published its decision No. 628/2016 regarding the approval of Template Agreements (i) for the maintaining of an alternative fuel reserve and the operational availability of power plants and (ii) for the funding of a financing mechanism for the management of the demand for natural gas

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

Greece: RAE announced the issuance of its decision No. 621/2016, regarding the new charges for Special Duty for the Reduction of Air Pollution Emissions, in force from January 1 2017

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

Greece: Amendment to the provisions of the Market Clearance Manual for the

Management of the Greek Electricity Transmission System published in the Government Gazette, as regards the application of the Transitional Compensation Flexibility Mechanism

To read the full amendment as published in the Government Gazette (Issue B', 3784/23.11.2016) click [here](#).

**First ACER report on the implementation of the Balancing Network Code available online**

The Agency for the Cooperation of Energy Regulators (ACER) published its first Report on the implementation of the Balancing Network Code ('Code'). The Report describes the status of the implementation and application of the Code across the EU Member States. The Code is applicable since 1 October 2015. The Report's main objective is to assess progress in the Code implementation and the effectiveness of the balancing regimes, based on the best information available to the Agency during the compilation of the Report. To read the full press release of ACER click [here](#).

**ACER decided on the electricity TSOs' proposal for Capacity Calculation Regions**

ACER issued a Decision on the electricity Transmission System Operators' proposal for the determination of the Capacity Calculation Regions (CCRs Proposal) in accordance with Article 9(11) of EU Regulation 2015/1222 on Capacity Allocation and Congestion Management (CACM Regulation) and Article 8(1) of Regulation (EC) No 713/2009 (the Agency's Founding Regulation). In this context, ACER confirmed also the TSOs' proposal to



create a new bidding zone border between Germany and Austria. To read the full press release of ACER click [here](#).

### **Electronic Communications**

**The CJEU confirmed that the financing of the Spanish public television system (RTVE) is compatible with the EU rules regarding State aid**

On 10.11.2016 the Court of Justice of the European Union (CJEU) issued its judgment in Case T-449/14 P DTS (Distribuidora de Televisión Digital) vs. European Commission, which fully confirmed the Commission decision of July 2010 approving state aid granted by Spain to the Spanish public broadcaster RTVE. It follows a judgment by the General Court of the European Union (GC), which also upheld the Commission decision. The judgment confirmed the Commission's findings that a tax levied for financing the state aid was not an integral part of the aid measure. This is in particular because the aid amount is determined by the cost of fulfilling RTVE's public service obligations and not by the revenue from the tax. Moreover, the surplus from the tax revenues may be used for other purposes. The Commission was therefore entitled to approve the aid scheme under the state aid rules and was not obliged to assess the conformity of the tax with other provisions of EU law. To read the full press release of the CJEU (No. 121/2016) click [here](#).

**The CJEU dismissed the European Commission's appeal in the case involving shareholder loans offered to France Télécom by the French authorities at a time when the telephone operator was undergoing a major crisis**

On 30.11.2016 the CJEU ruled in Case C 486/15 P European Commission vs. French Republic and Orange (formerly France Télécom) on the European Commission's appeal against a 2010 GC ruling that had annulled a Commission decision of 2004. The Commission's 2004 decision had found that a shareholder loan offered by France to France Télécom (now Orange) constituted incompatible state aid. The CJEU dismissed the appeal. To read the full press release of the CJEU (No. 130/2016) click [here](#).

**GC: Judgment issued in Cases T 808/14 (Spain vs. European Commission) and T-37/15 (Abertis Telecom vs. European Commission)**

In Cases T 808/14 (Spain vs. European Commission) and T-37/15 (Abertis Telecom vs. European Commission) The General Court of the European Union (GC) ruled on two actions for annulment of a Commission 2014 decision ordering Spain to recover incompatible state aid from Telecom CLM and Abertis (now Cellnex Telecom). In particular, the 2014 decision had found that the public financing for digital terrestrial television (DTT) infrastructure in Castille-La Manche selectively favoured the DTT platforms, in breach of the principle of technological neutrality. Spain and Abertis Telecom had brought actions before the General Court. The Court dismissed the actions and entirely upheld the Commission's 2014 decision. To read the full judgment of



the GC in Case T-37/15 click [here](#). To read the full judgment of the GC in Case T 808/14 click [here](#).

**The European Commission endorsed French broadband scheme "Plan Très Haut Débit"**

The European Commission found the French national broadband scheme to be in line with EU state aid rules. The French national broadband scheme "Plan Très Haut Débit" aims to connect all households and businesses to very high speed broadband by 2022. The scheme will fund local authorities' infrastructure projects, mainly to deploy Next Generation Access (NGA) networks. These are networks that ensure connection speeds of at least 30 megabits per second (Mbps). The scheme involves investments of €13 billion. To read the full press release of the European Commission (IP-16-3610) click [here](#).

**European Commission: New Competition merger brief published**

The European Commission published a new Competition merger brief (Number 3/2016) reporting about recent developments in telecoms mergers. To read the full Competition Merger Brief of the European Commission click [here](#).

**Greece: the HTPC published its plan of measures for wholesale markets for the local and central access to fixed positions and for the retail market for the access to the public telephony network**

To read the full press release of the Hellenic Telecommunications and Post Commission (HTPC) click [here](#).

**Greece: the HTPC published the responses to its public consultation with regard to the proposal of "OTE S.A." of July 2016 regarding the amendment of Annex 24 of the Reference Proposal for the Unbundled Access to the Local Loop and the Relevant Services RUO 2012, as amended and in force**

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

**Greece: Conclusion of the Public Consultation of the HTPC regarding the use of the band 1785-1800 MHz and the alternatives for the transmission of radio programs**

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

**Greece: HTPC published draft amendment to the Decision No. 2010/166/EU of the European Commission concerning the mobile communications services for ships (MCV services)**

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

**Greece: Public consultation of HTPC concerning the amendment proposed by OTE of the Reference Offer for the unbundled access to the local loop**

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

**Greece: Public Consultation on the amendment of the HTPC Decision "Regulation on General Authorization"**

The HTPC launched a public consultation on the amendment of the EETT Decision "Regulation on General Authorization" as it applies. The consultation period is from 20

December 2016 to 13 February 2017.  
To read the full press release of the HTPC click [here](#).

**Greece: Amendment of Article 24 of the Reference Offer for the Unbundled Access to the Local Loop and Relevant Services RUO 2012, issued by HTPC**

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

**Greece: Decision of the HTPC issued concerning the determination of national wholesale local access to a fixed position and the determination of businesses with an important presence in said market and the obligations thereof**

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

**Greece: Decision of the HTPC concerning the deregulation of the markets for retail access to the public telephony network at a fixed position in Greece through the access lines: (a) PSTN, ISDN BRA and managed VOIP, for domestic and non-domestic users, and (b) ISDN PRA.**

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

**Greece: Decision of the HTPC issued concerning the determination of a National Market for Wholesale Central Access to a fixed position for products of mass consumption, and the determination of businesses with an important presence in said market and the obligations thereof**

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

**France: the Autorité de la concurrence fined the Altice group 80 million euros for the premature completion of two mergers notified in 2014**

The Autorité de la concurrence issued a decision to fine jointly Altice Luxembourg and SFR Group 80 million euros, in application of Section II of Article L. 430-8 of the French Commercial Code (Code de commerce), for having prematurely completed two mergers, notified in 2014, in the electronic communications sector. This decision is the first to be issued in Europe or anywhere else in the world in terms of the scale of practices sanctioned and the amount of fines handed out. It is also the first decision of this kind in France. While companies have already been sanctioned for failing to notify a merger or to fulfil their commitments, this case is the first in which the Autorité has had to adjudicate on the completion of a merger before the clearance decision has been issued, and specifically sanction this type of behavior. To read the full press release of the Autorité de la concurrence click [here](#).

### Pharmaceuticals

**The European Commission approved the acquisition of Sanofi's animal health business Merial by Boehringer Ingelheim, subject to conditions**

The European Commission approved under the EU Merger Regulation the acquisition of the animal health business of Sanofi (Merial) of France by Boehringer Ingelheim of Germany. The decision is conditional on the divestment of a number of animal health vaccines and pharmaceuticals. To read the full press release of the

European Commission (IP-16-3641) click [here](#).

**The European Commission published seventh report on patent settlements in the pharma sector**

The European Commission published its seventh monitoring report on pharmaceutical patent settlements. The report covers the 125 patent settlements concluded between originator and generic companies in the pharmaceutical sector in 2015. This number is higher than in 2014 (76) and is closer to the higher numbers seen in 2012 (183) and 2013 (146), and remains significantly higher than the average of 24 in the period between 2000 and 2008. The annual monitoring exercises since 2008 have shown that the Commission's enforcement activities in this area do not discourage companies from settling their patent disputes. The number of settlements that might attract competition law scrutiny has progressively decreased since the pharmaceutical sector inquiry in 2008 and has stabilized at a low level. To read the relevant press release of the European Commission click [here](#).

**The CMA fined pharma companies Pfizer and Flynn Pharma nearly £90 million for charging excessive prices to the NHS for an anti-epilepsy drug**

The CMA imposed a record £84.2 million fine on the pharmaceutical manufacturer Pfizer, and a £5.2 million fine on the distributor Flynn Pharma after finding that each broke competition law by charging excessive and unfair prices in the UK for phenytoin sodium capsules, an anti-epilepsy drug. The CMA also ordered the companies to reduce their prices.

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

**Transport**

**CJEU: Judgment issued in Case C 524/14 P (European Commission vs. Hansestadt Lübeck)**

In Case C 524/14 P (European Commission vs. Hansestadt Lübeck), the Court of Justice of the European Union (CJEU) ruled on the Commission's appeal against an earlier General Court ruling that had annulled a Commission decision of 2012. The 2012 decision had extended the scope of a state aid investigation into public measures in favour of Lübeck airport and airlines flying from it. Lübeck airport brought an action for annulment against the 2012 extension decision. The General Court of the European Union (GC) annulled the decision with regard to one measure: Lübeck airport's 2006 schedule of airport charges. The 2012 decision had found that the schedule selectively favoured airlines flying from Lübeck airport over competing airlines flying from other nearby airports, such as Hamburg. The GC held that the schedule was not selective because it was open to all airlines willing to fly from Lübeck airport. The CJEU confirmed the General Court's findings. To read the full judgment of the CJEU in Case C 524/14 P click [here](#).

**CJEU: Judgment issued in Joined Cases C 164/15 P and C 165/15 P (European Commission vs. Ryanair/Aer Lingus)**

In Joined Cases C 164/15 P and C 165/15 P (European Commission vs. Ryanair/Aer Lingus), the CJEU ruled on the Commission's appeal against an earlier General Court ruling that had

annulled a Commission decision of July 2012 regarding the Irish air travel tax. In Ireland, airline operators were liable to pay Air Travel Tax in respect of every departure of a passenger. Until March 2011, two tax rates applied: €2 for passengers flying up to 300 km from Dublin, and €10 for all other passengers. In its decision the Commission concluded that the lower tax rate conferred an undue advantage on its beneficiaries, in breach of EU State aid rules. The Commission found that the aid to be recovered amounts to the difference between the lower and the standard air travel rate and ordered Ireland to recover the difference of €8 per passenger from beneficiary airlines. The judgment at hand confirmed these findings by the Commission. The CJEU held, in particular, that where illegal State aid takes the form of a tax relief, the advantage received by the beneficiary amounts to the difference between the standard tax rate and the lower rate. This illegal advantage needs to be paid back in full. This is because the lower tax rate constitutes an economic advantage, which distorts competition on the air transport market. To read the full press release of the CJEU (No. 142/2016) click [here](#).

**The European Commission investigated practices of Czech railway incumbent České dráhy in passenger transport**

The European Commission opened an investigation to assess whether the Czech railway incumbent České dráhy, a.s. (ČD) charged prices below costs with the aim of shutting out competition in rail passenger transport services, in breach of EU antitrust rules. The Commission had concerns that ČD may have charged prices that are so low that it could not cover the costs of the

service. Such practices can hinder competitors from remaining in the market to the detriment of passengers. To read the full press release of the European Commission (IP-16-3656) click [here](#).

**The European Commission approved the creation of a joint venture for motorway service areas in Portugal**

The European Commission cleared under the EU Merger Regulation the creation of a new joint venture (Brisáreas) by Brisa - Auto-Estradas de Portugal S.A. and Áreas Portugal - Restauração e Distribuição S.A., all of Portugal. Brisáreas will be responsible for the management, operation and commercial development of service areas in certain motorways operated by Brisa in Portugal. Brisa constructs, maintains and operates motorway concessions in Portugal and offers ancillary services to road mobility. Áreas, controlled by Elixir S.A. of France, operates food service concessions at airports and motorways service areas in Portugal and other European Economic Area countries. To read the relevant press release of the European Commission click [here](#).

**The European Commission approved public funding to promote move of freight transport from road to rail and sea in Italy**

The European Commission found two Italian public support schemes to encourage a shift of freight transport from road to rail and to sea, to be in line with EU state aid rules. The measures will further EU environmental and transport objectives whilst maintaining competition in the Single Market. Both measures support a mode of transport that is less polluting

than road, which will have a positive impact on the environment. To read the full press release of the European Commission (IP-16-4461) click [here](#).

**Greece: HCC decision clearing the proposed acquisition by COSCO (HONG KONG) GROUP LIMITED of sole control over PIRAEUS PORT AUTHORITY S.A. subject to conditions, published in the Government Gazette**

To read the full text of the decision No. 627/2016 of the Hellenic Competition Commission (HCC) as published in the Government Gazette (Issue B' 3649/11.11.2016) click [here](#).

**France: The Autorité de la concurrence cleared the acquisition of Aéroports de Lyon by Vinci Airports, subject to commitments**

On 6 September 2016, Vinci Airports, a subsidiary of the Vinci group, notified the Autorité de la concurrence of its acquisition of sole control of Aéroports de Lyon, the company that operates Lyon-Saint-Exupéry and Lyon-Bron airports. On 2 November 2016 the Autorité de la concurrence cleared the acquisition, subject to commitments. To read the full press release of the Autorité de la Concurrence click [here](#).

### **News of the Markets**

**HRADF to proceed with AIA extension deal**

According to press information State privatization fund HRADF (Hellenic Republic Asset Development Fund), is set to secure the extension of the concession contract for Athens International Airport. The 20-year extension of the AIA contract, over

which comments are being exchanged, will set the airport's administrators back 1.75 billion euros, bolstering the revenues of the sell-off program. The down payment will amount to 580 million euros and the remainder will be broken down into annual payments as a return for airport profits. The annual payment will be calculated as a rate on the pretax earnings.

**The privatization of Kassiopi in Corfu completed**

The procedures for the privatization of Kassiopi in Corfu were completed on 29/12.2016, after the signing of the transaction by the management teams of the HRADF and NCH Capital. It was January 2013 when TAIPED announced the selection of NCH Capital at the tender for the concession of the Kassiopi plot, saying it was "the first direct 100 percent international investment in public land in the last 15 years." To read the full press release of the HRADF click [here](#).

**Brussels objects to rules for slot machines in Greece**

According to press information, the European Commission sent a letter to the government asking it not to implement a new regulation on the operation of video lottery terminals (VLTs), which OPAP has undertaken. Dated December 21, the letter asked the government to forward its draft measures for the operation of the gaming market to Brussels and to freeze the application of the new VLT operation regulations, as the Internal Market Directorate-General argues the rules approved in October by the Greek Gaming Commission (EEEP) do not protect punters or society sufficiently.



**Aktor landed Faliro Bay project**

According to press information, construction company Aktor won the tender for the first phase of regeneration works at Faliro Bay in southern Athens. The discount the company offered exceeded 50 percent, reducing the cost for the state to 80.3 million euros. Aktor won the tender offering a discount to the budgeted cost amounting to 53.54 percent.

**Affiliate of Rosneft to acquire Jet Oil**

According to press information, Rosneft has its eye on Greece's Jet Oil, as the latter's lawyers have cited acquisition interest by Vienna-based Cetracore Energy, in which the Russian oil giant holds a stake, in asking for the postponement of a court hearing connected with Jet Oil seeking protection from its creditors.

**Entire 67 pct stake in Thessaloniki Port up for grabs**

According to press information, the stake of 67 percent in Thessaloniki Port Authority will be immediately conceded in its entirety to the winning bidder of the tender, according to the draft contract forwarded to short-listed candidates. The original plan had been for the concession of 51 percent at first and the remaining 16 percent at a later date. The contract also provides for investments of 180 million euros within seven years.

**Astir Palace plans revealed**

According to press information, a Turkish-Arab fund plans to spend up to about 300 million euros to redevelop a luxury seaside resort on the southern coast of Athens, bringing significant

foreign investment into the cash-strapped country. Greece concluded in October the sale of a 90 percent stake in the Astir Palace hotel complex to the Jermyn Street Real Estate Fund as part of a key privatization scheme under Greece's international bailouts since 2010. The fund represents investors from Turkey, Abu Dhabi, Kuwait and other Arab emirates.

**New fund for private cash in state projects**

According to information of the press, the Economy and Development Ministry is paving the way for the creation of an Infrastructures Fund, which will be included in the European Commission's so-called Juncker Plan for financing projects of public interest with private participation.

**After Trainose, Italian Rail now eyeing Athens metro**

According to press information, after buying Greek railway service company Trainose this year, Ferrovie is looking at the possible privatization of the metro system in Athens. The Italian firm has also joined forces with Britain's First Group to bid for the rail service between London and Edinburgh.

**Romanian and Belgian gas grid operators show interest in DESFA**

According to press information, after the breakdown in talks between Athens and Azeri state company Socar concerning the acquisition of a 66 percent stake in DESFA by the latter, it became known that Greece's gas grid operator attracted the interest of its Romanian peer Transgaz, while the interest of Belgian operator Fluxys remains unchanged.



**European Commission: Greece amended unfair guarantee**

According to press information, Greece, Italy, Spain and Portugal have modified state guarantees on deferred tax assets created by banks following discussions with European Union regulators concerned that these may give the lenders an unfair advantage. The European Commission said the so-called deferred tax assets (DTAs) set up by the banks had started to deviate from their original goal, which meant authorities in the four countries repaid the banks for their DTAs even during their loss-making years.

**Japan shipping merger bodes well for Piraeus**

According to press information, the prospect of the merger of three Japanese shipping companies with regular container ship lines, creating the third biggest force in the sector, bodes well for the port of Piraeus. Kawasaki Kisen Kaisha (K Lines), Mitsui OSK Lines (MOL) and Nippon Yusen Kabushiki Kaisha (NYK) announced their intention to form a joint venture, a move that will create a new giant in the container shipping industry that will control a fleet of 134 vessels with a capacity of 1.054 TEUs, or twenty-foot equivalent units, and a value of \$6.1 billion.

**HRADF received OTE's 5 percent stake for utilization**

The state's 5 percent stake in OTE telecom was transferred from the Finance Ministry to state sell-off fund HRADF. The transfer of the 5 percent stake, which came out of the 10 percent of OTE that the Greek state controlled to date, was conducted outside the

bourse. OTE is majority-controlled by Deutsche Telekom, which owns 40 percent of the country's main telecom organization.

**Creditors want DEPA out of natural gas retail sector**

According to press information, Greece's creditors are pressing for the withdrawal of the Public Gas Corporation (DEPA) from the natural gas retail market, and quickly too. Pressure in this direction started after the country's creditors became aware of the corporation's strategy to enter the retail market by setting up a subsidiary, which fueled the reaction by DEPA's partners in the three local retail companies (EPA) in Athens, Thessaloniki and Thessaly, namely ENI and Shell.

**DEPA pays price of government nod to US gas**

According to press information, DEPA is apparently paying the price for a Greek decision to facilitate business plans that pave the way for American liquefied natural gas (LNG) to head through Greece to the Balkans and Central Europe - as in the case of the LNG terminal off Alexandroupoli - and for its own handling of the extension of the Turkish Stream pipeline. Gazprom's decision to supply natural gas to the Greek market via alternative suppliers is the outcome of the Russians' dislike of Greece's moves, breaking for the first time an informal agreement with the Greek government to exclusively supply DEPA.

**PPC took auction start price to Council of State**

PPC referred the government's decision to set a starting price for power auctions, a case that is creating unrest in the energy industry, to the Council of State. If PPC wins its case, it would lead to the overturning of the plans for strengthening competition in the electricity market agreed with the country's creditors.

**ETBA-Goldair consortium provisional winner of Thriaseio tender**

Railway property company GAIAOSE designated the consortium of ETBA BIPE, a Piraeus Bank subsidiary, with Goldair Cargo as the temporary contractor for the construction and operation of the 588,000-square meter freight center at Thriaseio, western Attica, the only one to submit a binding offer.

**Tender for 30 pct of Athens Airport by March 2017**

According to press information, the Greek government will have to proclaim a tender for the sale of 30 percent of Athens International Airport by March, according to the draft supplementary memorandum of understanding that the creditors submitted to Athens to close the second bailout review. The state will therefore reduce its holding in the share capital of AIA from 55 percent to 25 percent, while the private sector will own the remaining 75 percent.

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