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CJ preliminary ruling on Ernst & Young P/S v. Konkurrenserådet, C-633/16: when premature implementation of merger-connected agreements amounts to «jumping the gun»?

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HIGHLIGHTS

- The European Commission imposed binding obligations on Gazprom to enable free flow of gas at competitive prices in Central and Eastern European gas markets
- The European Commission cleared acquisition of TireHub by Goodyear and Bridgestone
- The European Commission concluded that Germany needs to recover illegal aid from certain large electricity users exempted from network charges in Germany in 2012-2013
- The European Commission concluded that the offer of the French State to participate in the France Telecom (today Orange), in 2002, did not consist state aid
- The concentration by means of acquisition of the control of the company “RADIOTILEOPTIKI ANONYMI ETAIREIA” and of the brands of the company “PIGASOS” by the company “DIMERA MEDIA INVESTMENTS LTD” was prematurely completed and lately notified to the HCC
- The concentration by means of acquisition of the full control of the company “HELLENIC SEAWAYS” by the company “ATTICA GROUP S.A.” was approved by the HCC with the imposition of special terms and conditions (structural measures)
- The concentration by means of acquisition of the full control of the company “PROMITHEFTIKI TROFIMON ANONYMOS ETAIREIA” by the company “DIAMANTIS MASOUTIS A.E. SUPER MARKET” was notified to the HCC

- Antitrust
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Editorial:

CJ preliminary ruling on Ernst & Young P/S v. Konkurrencerådet, C-633/16: when premature implementation of merger-connected agreements amounts to «jumping the gun»?

On the basis of a preliminary referral from a Danish Court, the CJ had the opportunity to give useful clarifications as per the question in which circumstances it can be held that a concentration is prematurely implemented in breach of the prohibition of the standstill obligation contained in article 7 of the Regulation 139/2004 as in force (the EU Merger Regulation – EUMR).

In the case at hand, KPMG DK and EY Companies decided to enter in a merger agreement, both auditing firms active in auditing and accountancy services in Denmark. At the time of conclusion of the merger agreement, the KPMG DK companies were members of an international network of independent auditing firms, known as KPMG International. Since the KPMG DK companies were not structurally included in the KPMG International network, a cooperation agreement was concluded on 15 February 2010 between the KPMG DK companies and KPMG

International («the cooperation agreement»). In accordance with the merger agreement, immediately after its signature, the KPMG DK companies were to announce that, with a view to the merger with the EY companies, they were withdrawing from KPMG International from 30 September 2014 at the latest. The merger was notified to the Danish Competition Council and approved on 28 May 2018. After the approval, the KPMG DK companies and KPMG International agreed to end the cooperation agreement from 30 June 2014. By a second decision the Danish Competition Council held that KPMG DK companies, by giving notice to terminate the cooperation agreement on 18 November 2013 in accordance with the merger agreement, that is to say, before the Competition Council approved the merger, had disregarded the prohibition of implementing a concentration prior to that approval under the Danish Law on competition. This decision was contested before the Danish Maritime and Commercial Court which decided to suspend the proceedings and refer questions to the CJ essentially as to whether such notice of termination of the cooperation agreement could be qualified as a violation of the non-jumping the gun rule.

The Court ruled that not any merger-connected transaction could give rise to a jumping the gun, but only the implementation of these transactions which contribute to lasting change of control over one of the undertakings concerned by the concentration. Thus, it ruled that Article 7(1) of the EUMR must be interpreted as meaning that a concentration is implemented only by a transaction which, in whole or in part, in fact or in law, contributes to the change in control of the target undertaking. The cooperation agreement in question – subject to the verification by the referring national court – although linked to the concentration, did not seem to contribute in whatsoever manner to the lasting change of control of the target company.

What is also worth noting from a procedural point of view is that the CJ overruled the objection of the Commission that the Court had no jurisdiction to respond to the referred questions because these questions were related only to national competition provisions, as it was established that the concentration in question had no community dimension and was reviewable only by Danish authorities

¹ CJ, 14.3.2013, Case C 32/11, *Allianz Hungária Biztosító and Others*, EU:C:2013:160, paragraphs 20-21 and

exclusively on the basis of national law. The Court extending the scope of its previous jurisprudence¹ ruled that it was competent to respond on the basis of the fact that the national provisions of no-jumping the gun were substantially identical to article 7 of the EUMR and that the referring national court, in its assessment of the particular circumstances of the case pending before it and, in particular, in view of the *travaux préparatoires* to the applicable national law, held that Danish law should be interpreted in the light of the case-law of the Court.

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

Antitrust

The European Commission confirmed unannounced inspections in the metal packaging sector

The European Commission can confirm that on 24 April 2018 its officials carried out unannounced inspections in several Member States at the premises of companies active in the metal packaging sector. The Commission has concerns that the companies involved may

the case-law cited and CJ, 11.12.2007, Case, C-280/06, *ETI and Others*, EU:C:2007:775, paragraphs 23 and 24.

have violated EU antitrust rules that prohibit cartels and restrictive business practices. The Commission officials were accompanied by their counterparts from the relevant national competition authorities. Unannounced inspections are a preliminary step into suspected anticompetitive practices. The fact that the Commission carries out such inspections does not mean that the companies are guilty of anti-competitive behavior nor does it prejudge the outcome of the investigation itself. There is no legal deadline to complete inquiries into anticompetitive conduct. Their duration depends on a number of factors, including the complexity of each case, the extent to which the undertakings concerned co-operate with the Commission and the exercise of the rights of defense. To read the full press release of the European Commission click [here](#).

The European Commission confirmed unannounced inspections in the styrene monomer purchasing sector

The European Commission can confirm that on 5 June 2018 its officials carried out unannounced inspections in several Member States at the premises of companies active in styrene monomer purchasing.

The Commission has concerns that the inspected companies may have violated EU antitrust rules that prohibit cartels and restrictive business practices. The Commission officials were accompanied by their counterparts from the relevant national competition authorities. Unannounced inspections are a preliminary step in investigations into suspected anticompetitive practices. The fact that the Commission carries out such inspections does not mean that the companies are guilty of anti-competitive behavior nor does it prejudge the outcome of the investigation itself. To read the full press release of the European Commission click [here](#).

GERMANY: Bundeskartellamt imposed fines totaling 13.2 million euros on potato and onion packaging companies

The Bundeskartellamt has imposed fines totaling 13.2 million euros on two potato and onion packaging companies for fixing prices in their supplies to the Metro group. The companies concerned are Hans-Willi Böhmer Verpackung und Vertrieb GmbH & Co. KG ("Böhmer"), Mönchengladbach, and Kartoffel-Kuhn GmbH ("Kuhn"), Frankenthal. The proceeding was initiated in May 2013 with a sector-wide dawn

raid following a leniency application. At least since early 2005 and until the proceedings were initiated on 7 May 2013, the persons responsible at the companies had been in regular telephone contact with one another, especially in the run-up to the weekly offer for packed potatoes and onions (standard purchase) to the Metro group (Cash & Carry and Real distribution channels, "Metro"). In their telephone calls the company representatives informed one another of their purchase prices for potatoes and onions (so-called "raw product prices") and agreed to use the same raw product price both for potatoes and onions as the basis for their internal calculations of offer prices to Metro. In addition they agreed to apply the same or approximately the same amounts for other cost items in their internal offer price calculations. Unlike the raw product prices, the other costs generally remained constant. To read the full press release of the Bundeskartellamt click [here](#).

Mergers

GC's decision on concentration compatible with the internal market subject to certain commitments

In its Judgment of 16 May 2018, C-144/17, the GC authorized the concentration between Lufthansa and Swiss International Air Lines Ltd.

The applicant claimed that the Court should annul, in whole or in part, Commission Decision C(2016) 4964 final of 25 July 2016 in Case No M.3770 — Lufthansa/Swiss — and the Commission decision on Lufthansa's request for a partial waiver of the commitments concerning the Zurich Stockholm and Zurich-Warsaw routes order as well.

Lufthansa relied on three pleas in law, in order to support its argument for the annulment of the Commission's decision. First, it alleged that the Commission's decision had an important assessment error which led to the breach of the principles of proportionality and protection of legitimate expectations by refusing to review and/or waive certain commitments imposed by Commission Decision of 4 July 2005 in Case No COMP/M.3770 — Lufthansa/ Swiss. The second plea in law was based on the necessity to annul the Decision of the European Commission due to the fact that the Commission failed to comply with the

principle of good administration regarding its omission to assess carefully and impartially all the elements of the case. Third, Lufthansa held that the Commission has misused its powers in circumventing the administrative procedure under Regulation 1/2003.

The GC concluded that the Commission made a manifest error of assessment inasmuch as it failed to take into consideration all the relevant information and that the matters relied on in the contested decision were not capable of justifying the rejection of the waiver request. On the other hand, the GC rejected the second and third pleas on the grounds of Commission's incentive to examine the waiver request impartially and of just suggesting and not ordering the rejection of the request due to the codeshare agreement between the companies, respectively. To read the full decision of the GC, click [here](#)

The European Commission cleared acquisition of TireHub by Goodyear and Bridgestone

TireHub will combine the US tire wholesale distribution businesses of Bridgestone and Goodyear to offer wholesale, distribution and delivery services to customers for a wide range of products and an expanded network of locations across the US. The Commission concluded that the proposed acquisition would raise no competition concerns because TireHub will only be active in the

US. To read the relevant press release of the European Commission click [here](#).

The European Commission cleared acquisition of General Electric Industrial Solutions by ABB

Both ABB and GEIS are active in the design, manufacture and sale of low voltage and medium voltage products for industrial, commercial and residential applications, as well as of secured power protection systems and transformers. However, their respective geographic areas of activity are complementary, with ABB being stronger in Europe and GEIS in the US. On overlapping markets in the European Economic Area (EEA), the Commission found that the transaction raises no significant concerns because: i) the combination of ABB's and GEIS' portfolios does not significantly increase concentration in a number of product categories; ii) the merged entity will continue facing effective competition from a number of large-scale rivals and specialized or local suppliers; iii) products in these markets are generally homogeneous and therefore interchangeable between competing brands. On markets where the merging companies are active at different levels of the supply chain, the Commission found that they

would not have the ability to foreclose competitors, notably because alternative suppliers will continue to operate in the market. To read the full press release of the European Commission click [here](#)

The European Commission cleared ArcelorMittal's acquisition of Ilva, subject to conditions

The European Commission has approved under the EU Merger Regulation the acquisition of Ilva by ArcelorMittal. The decision is conditional on the divestiture of an extensive remedy package to preserve effective competition on European steel markets to the benefit of consumers and businesses. The steel plants would be sold to one or more buyers that will continue to operate and develop them, so they can compete effectively with ArcelorMittal. In other words, the sale of a plant to a buyer, which would plan to subsequently close it down, would not be an acceptable solution. To read the full press release of the European Commission click [here](#).

The European Commission approved acquisition of Rockwell Collins by UTC, subject to conditions

The European Commission has approved, under the EU Merger Regulation, the acquisition of Rockwell Collins by United Technologies Corporation (UTC)

in the aerospace sector. The decision is conditional on divestment of businesses in actuators, pilot controls, ice protection and oxygen systems. The Commission concluded that other overlaps and vertical links between UTC and Rockwell Collins' activities did not lead to any competition concerns, mainly because of the existence of a sufficient number of alternative suppliers. The Commission also investigated whether the merged entity would have the ability and incentive to use components in its portfolio to shut out competitors, through practices such as bundling or tying. The Commission concluded that the merged entity would have neither the market power nor the incentives to engage in such strategies and harm competition. To read the full press release of the European Commission click [here](#).

The European Commission cleared acquisition of joint control over two new joint ventures by BHAP and Gestamp China

The manufacturing joint venture will manufacture flat steel automotive components including lightweight body parts, chassis and other components in China. The sales joint venture will sell those automotive components and provide after-sales, technical and consultation services to the automotive

industry, also in China. The Commission concluded that the proposed acquisition would raise no competition concerns because the joint ventures will only be active in China. To read the relevant press release of the European Commission click [here](#).

The European Commission opened in-depth investigation into proposed acquisition of Solvay's nylon business by BASF

The European Commission has opened an in-depth investigation to assess the proposed acquisition of Solvay's global nylon business by BASF, under the EU Merger Regulation. The Commission is concerned that the merger may reduce competition in the supply of key inputs in the nylon production chain. The proposed transaction would create an important player in the nylon compounds market with a market size almost double that of the closest competitor. The merged entity would also control substantial parts of the merchant markets and of the production capacities at all levels of the nylon production chain. Moreover, no other player would be similarly fully integrated in the production chain. Competitors will thus depend on the merged entity to continue to supply them with one or more essential inputs. In addition, there is no indication that competition could be preserved by new entrants, since access to essential inputs (such as ADN) is limited and critical to

be able to compete effectively. To read the full press release of the European Commission click [here](#).

The European Commission cleared Zodiac and Fluidra pool equipment joint venture, subject to conditions

The European Commission has approved under the EU Merger Regulation the proposed creation of a joint venture between the swimming pool equipment businesses of Zodiac and Fluidra. For robotic pool cleaners, the Commission found that after the transaction, the merged entity would have faced competition from only a few other suppliers. The Commission also found that it is particularly difficult to enter the robotic pool cleaners market due to the need for research and development investment, and the need to rely on a set of features protected by international property rights. The Commission, therefore, had preliminary concerns that the transaction may have resulted in higher prices and reduced choice for European consumers. To address the Commission's competition concerns, the two companies offered to divest Fluidra's Israeli based subsidiary Aquatron Robotic Technology Ltd., which manufactures and supplies robotic pool cleaners worldwide. It accounts for almost all of Fluidra's sales of these products in Europe. Following an extensive market test, the Commission found that the

commitments address the identified competition concerns and concluded that the proposed transaction, as modified by the commitments, would raise no competition concerns. To read the full press release of the European Commission click [here](#).

Greece: The concentration by means of acquisition of the full control of the company “PROMITHEFTIKI TROFIMON ANONYMOS ETAIREIA” by the company “DIAMANTIS MASOUTIS S.A. SUPER MARKET” was notified to the HCC.

To read the full press release visit the website of the [HCC](#).

Greece: The concentration by means of acquisition of the control of the assets of company “DIMOSIOGRAFIKOS ORGANISMOS LAMPRAKI (DOL) S.A.” by the company “ALTER EGO EPIXEIRISI MESON MAZIKIS ENIMEROSIS S.A.” was approved by the HCC.

To read the full press release visit the website of the [HCC](#).

Greece: The company “EVERGOLF TOYRISTIKES EPENDYSEIS ANONYMOS ETAIREIA” is going to acquire the majority ownership of the company “GOLF RESIDENCIES ANONYMI ETAIREIA KSENOXOXEIAKON KAI TOYRISTIKON EPIHEIRISEON” under the condition that special terms are fulfilled.

To read the full press release visit the website of the [HCC](#).

Greece: The concentration, pursuant to the article 6 para. 1-3 of Law 3959/2011, by means of acquisition of the full control of the company “PAKO A.E.” by the company “UNIPAK AE” was approved by the HCC.

To read the full press release visit the website of the [HCC](#).

UK: Ausurus Group/Metal & Waste Recycling merger inquiry

The Competition and Markets Authority (CMA) has been investigating the completed acquisition by Ausurus Group Ltd through its subsidiary European Metal Recycling Limited of Metal & Waste Recycling Limited. To read the full press release of the CMA click [here](#).

UK: Tarmac Trading Limited / Breedon Group plc merger inquiry

The Competition and Markets Authority (CMA) has accepted undertakings in lieu of reference for the anticipated acquisition by Tarmac Trading Limited of certain assets of Breedon Group PLC. To read the full press release of the CMA click [here](#).

State aid

CJ decision on the characterization as selective

state aid of the restructuring clause

On 28 June 2018 the CJ decided on the characterization as selective State aid of the restructuring clause in Paragraph 8c (1a) of the German Law on corporation tax, on a dispute brought before the Court by Lowell Financial Services GmbH against the European Commission. Specifically, the first ground of appeal concerned the infringement of Article 107(1) TFEU with regard to the system of reference, the restructuring clause which was of general application in so far as it did not confer any selective advantage and the assessment of equal treatment. The second ground of appeal referred to the infringement of the principle of the protection of legitimate expectations. The CJ concluded the annulment of some points of the GC's decision. To read the full decision of the CJ, click [here](#).

CJ decision on appeal brought on 14 April 2016 by the Federal Republic of Germany against the judgment of the General Court of 4 February 2016 in Case T-620/11 GFKL Financial Services AG v European Commission

On 28 June 2018 the CJ decided on the grounds brought before the Court by the German State regarding the *a priori* selective nature of the restructuring clause

and its justification by the nature and inner logic of the tax system. The appeal was rejected by the CJ. To read the full decision of the CJ, click [here](#).

CJ decision on appeal brought by the Federal Republic of Germany against the judgment of the General Court delivered in Case T-287/11 Heitkamp BauHolding GmbH v European Commission

On 28 June 2018 the CJ rejected the appeal by the German State concerning the *prima facie* selectivity of the restructuring clause. To read the full decision of the CJ, click [here](#).

CJ decision on the appeal of Dirk Andres, acting as liquidator in the insolvency of Heitkamp BauHolding GmbH against the judgment of the General Court of the European Union, Heitkamp BauHolding v Commission (T-287/11)

On 28 June 2018 the CJ dismissed the cross-appeal, annulled the points 2 and 3 of the operative part of the judgment of the GC of the European Union of 4 February 2016 and annulled Commission Decision 2011/527/EU of 26 January 2011 on State aid. The two basic grounds of the appeal that was filed were the alleging infringement of the obligation to state reasons to which the GC

was subject, and the alleging infringement of Article 107 TFEU. To read the full decision of the CJ, click [here](#).

CJ decision on the appeal brought by Mr Dirk Andres, liquidator in the insolvency of Heitkamp BauHolding GmbH, formerly Heitkamp BauHolding GmbH against the judgment of the GC in Case T-287/11 Heitkamp BauHolding GmbH v European Commission

On 28 June 2018 the CJ dismissed the cross-appeal, annulled points 2 and 3 of the operative part of the judgment of the GC of the European Union of 4 February 2016 and annulled Commission Decision 2011/527/EU of 26 January 2011 on State aid. In support of its appeal, HBH relies on two grounds, the first alleging infringement of the obligation to state reasons to which the GC is subject, and the second alleging infringement of Article 107 TFEU. To read the full decision of the CJ, click [here](#).

GC's decision on aid measures (corporate tax exemption for public undertakings) implemented by the Netherlands

The single plea in law, on which Groningen Seaports NV was based in order to challenge the Commission's decision² was the

infringement of the general principles of EU law. Specifically, it concerned the principle of equality, the requirement that decisions should be prepared with due care and the prohibition of arbitrary conduct, and the breach of the obligation to state reasons. The public seaports in the Netherlands compete with European seaports and not with Dutch private undertakings. Those European seaports receive aid as well. The contested decision unilaterally abolishes the tax exemption in force for the Dutch public seaports, while the relative exemptions for the other European seaports (the Belgian and French) were maintained and no action had been taken so as to abolish that State aid as well. Consequently, there was not similar behavior of the Commission towards the rest of the European seaports and the Commission's decision brought the Dutch seaports in a disproportionate position in comparison to their direct competitors- the rest of the European seaports. The GC rejected the appeal. To read the full decision of the GC, click [here](#).

² Commission Decision of 21 January 2016 on aid measure SA.25338 (2014/C) (ex E 3/2008 and ex CP 115/2004)

The European Commission approved prolongation of Greek bank guarantee scheme

The European Commission has authorized the prolongation of the Greek guarantee scheme for credit institutions until 30 November 2018 under EU State aid rules. The liquidity situation of the Greek banks is gradually improving, but challenges still remain. In this context, the Commission has found that the prolongation of the guarantee scheme is in line with EU State aid rules, i.e. the 2013 Banking Communication, in particular because the prolonged measure is targeted, proportionate and limited in time and scope. The Commission is authorizing guarantee schemes on banks' liabilities for successive periods of six months in order to be able to monitor developments and adjust conditions accordingly. The scheme is available for banks with no capital shortfall. To read the relevant press release of the European Commission, click [here](#).

The European Commission approved aid for financing the orderly market exit of Cyprus Cooperative Bank Ltd, involving sale of some parts to Hellenic Bank

On 17 June 2018, the Cypriot authorities notified to the Commission for assessment

under EU State aid rules their plans to support the orderly liquidation of CCB, including the sale and full integration of some of CCB's assets and deposits into another Cypriot bank, Hellenic Bank. In particular, Cyprus plans to provide around €3.5 billion to CCB (of which €2.5 billion were provided already in April 2018) and to counter-guarantee the guarantees provided by CCB to Hellenic Bank in the context of the sale, including a large asset protection scheme. The Commission concluded that the Cypriot support measures constitute aid that is compatible with EU State aid rules. In particular, the public support will finance the orderly market exit of the bank, through the sale and full integration of some activities into another credit institution and the wind down of the rest of the bank. CCB's residual entity will be entirely focused on working out its remaining assets. Thus, it will not carry out any new business, which will limit potential distortions of competition arising from the aid. To read the full press release of the European Commission, click [here](#).

Energy

The European Commission imposed binding obligations on Gazprom to enable free flow of gas at competitive prices in Central and Eastern European gas markets

Gazprom is the dominant gas supplier in a number of Central and Eastern European countries. In April 2015, the Commission sent a Statement of Objections to Gazprom. It set out the Commission's preliminary view that the company breached EU antitrust rules by pursuing an overall strategy to partition gas markets along national borders in eight Member States (Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland and Slovakia). This strategy may have enabled Gazprom to charge higher gas prices in five of these Member States (*Bulgaria, Estonia, Latvia, Lithuania and Poland*). Commission's decision puts an end to this behavior by Gazprom. Furthermore, it imposes on Gazprom a detailed set of rules that will significantly change the way Gazprom operates in Central and Eastern European gas markets: i) No more contractual barriers to the free flow of gas, ii) Obligation to facilitate gas flows to and from isolated markets, iii) Structured process to ensure competitive gas prices, and iv) No leveraging of dominance in gas supply. Combined, these obligations address the Commission's

competition concerns and achieve its objectives of enabling the free flow of gas in Central and Eastern Europe at competitive prices. To read the full press release of the European Commission click [here](#). To read the full Statement by Commissioner Vestager click [here](#).

The European Commission cleared the creation of a joint venture by SWO and BAG Netz

SWO, jointly controlled by Stadt Olching and Stadtwerke Schwäbisch Hall GmbH, provides electricity, gas, district heating and related services and operates the electricity distribution system in an industrial park in the city of Olching. BAG Netz develops, operates and maintains electricity and gas distribution networks. Currently, it holds the electricity distribution grid concession in the rest of the city of Olching. NG Olching will hold the electricity distribution grid concession transferred by BAG Netz and will participate in the 2019 tender for the concession of electricity distribution grid in the whole of the city of Olching. Olching Verwaltungs will manage NG Olching (both "the joint venture"). The Commission concluded that the proposed acquisition would raise no competition concerns given the joint venture's limited activities within the European Economic Area. To read the relevant press

release of the European Commission click [here](#).

The European Commission notified that Germany needs to recover illegal aid from certain large electricity users exempted from network charges in Germany in 2012-2013

The European Commission has concluded that the exemption for certain large electricity users in Germany from network charges in 2012-2013 was against EU State aid rules. This concerns electricity users that had an annual consumption above 10 gigawatt hours and a particularly stable electricity consumption. The Commission investigation found that there were no grounds to fully relieve those users from paying network charges, which are part of the usual electricity costs that any electricity user connected to the grid has to pay. Large electricity users, even if they have a stable electricity consumption, also generate network costs and make use of network services and it is for them to bear these costs. It is now for Germany to determine the amount of network charges generated by each beneficiary of the exemption in 2012 and 2013, in line with the methodology set out under the Commission decision, and recover the illegal aid. To read the relevant press release of the European Commission click [here](#).

The European Commission found Luxembourg had given illegal tax benefits to Engie's has to recover around €120 million

Following an in-depth investigation, the Commission concluded that two sets of tax rulings issued by Luxembourg have artificially lowered Engie's tax burden in Luxembourg for about a decade, without any valid justification. The Commission concluded that Luxembourg's tax treatment of these financing structures did not reflect economic reality. Tax rulings issued by Luxembourg endorsed an inconsistent treatment of the same transaction both as debt and as equity. On this basis, the Commission concluded that the tax rulings granted a selective economic advantage to Engie by allowing the group to pay less tax than other companies subject to the same national tax rules. In fact, the rulings enabled Engie to avoid paying any tax on 99% of the profits generated by Engie LNG Supply and Engie Treasury Management in Luxembourg. Luxembourg must now recover about €120 million in unpaid tax. To read the full press release of the European Commission click [here](#). To read the full Statement by Commissioner Vestager click [here](#).

The European Commission opened investigation into restrictions to the free flow of gas sold by Qatar Petroleum in Europe

The European Commission has opened a formal investigation to assess whether supply agreements between Qatar Petroleum companies exporting liquefied natural gas (LNG) and European importers have hindered the free flow of gas within the European Economic Area (EEA), in breach of EU antitrust rules. Certain clauses contained in these agreements appear to, directly or indirectly, restrict the EEA importers' freedom to sell the LNG in alternative destinations within the EEA. If proven, such practices may breach EU antitrust rules, specifically on anticompetitive agreements between companies (Article 101 of the Treaty on the Functioning of the European Union (TFEU)) and/or on the abuse of a dominant market position (Article 102 TFEU) and Article 53 and/or 54 of the Agreement on the EEA. To read the full press release of the European Commission click [here](#).

Greece: Announcement of results of the Public Consultation concerning the conducting of tender submission procedures for the operational aid on RES projects (article 7 para.5 Law 4414/2016)

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

Greece: The concentration by means of acquisition of the control of the assets of company "ETAIREIA PROMITHEIAS AERIOY THESSALONIKIS – THESSALIAS ANONYMOS ETAIREIA" ("AERIO THESSALONIKIS – THESSALIAS" and "ZENITH GAS & LIGHT") by the company "Eni S.p.A." was notified to the HCC.

To read the full press release of the HCC, visit the website of the [HCC](#).

Greece: Announcement of results of the Public Consultation on the proposals of HEMO S.A. – LAGIE concerning the Power Exchange Code For Electricity, the Code of Transactions for the Auction of Future Power Products and the RES Manager & Guarantees of Origin Code

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

Greece: Final lists of participants in stage B and final lists of excluded participants from stage B of categories I, II and III in the frame of No 1/2018, 2/2018 and 3/2018 invitations of Greek Regulatory Authority for Energy for the tender procedures on RES projects.

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

Greece: Public consultation of ENTSO-E on the common proposal of all the Transmission System Operators concerning the framework of

implementation for a European platform for the exchange of balancing energy

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

Electronic Communications & Post

The European Commission concluded that the offer of the French State to participate in the France Telecom (today Orange), in 2002, did not constitute state aid

The European Commission's decision follows the judgment of the Tribunal of the EU, dated 02.07.2015, which annuls the decision of the Commission, dated 02.08.2004 concerning the credit line of 9,000,000,000 euros offered to France Telecom. The Commission confirmed the Court's judgement that the credit line did not fall within the state aid prohibition. To read the relevant press release of the European Commission click [here](#).

The European Commission confirmed approval of acquisition of Dutch cable TV operator Ziggo by Liberty Global, subject to conditions

The European Commission has reapproved with conditions, under the EU Merger Regulation, the acquisition of Ziggo by Liberty Global. In 2014 the

Commission had concerns that the merger would have hindered competition by removing two close competitors and important competitive forces in the Dutch market for the wholesale of premium Pay TV film channels. The Commission confirmed its concerns that the merger, as initially notified, would have increased Liberty Global's negotiating power vis-à-vis TV channel broadcasters, hindering innovation in the delivery of audio visual content over the internet. The renewed approval is therefore again conditional upon the implementation of a commitments package. To read the relevant press release of the European Commission click [here](#).

The European Commission cleared Comcast's proposed acquisition of Sky under EU merger rules

The European Commission has approved unconditionally under the EU Merger Regulation the proposed acquisition of Sky by Comcast. The proposed transaction would combine Sky plc (Sky), the leading pay-TV operator in Austria, Germany, Ireland, Italy and the UK and Comcast Corporation (Comcast), owner of Universal Pictures, as well as an operator of TV channels such as CNBC, Syfy or E!. The Commission found that the proposed transaction would lead to only a limited increase in Sky's existing share of the markets for the acquisition of TV content,

as well as in the market for the wholesale supply of TV channels in the relevant Member States. To read the relevant press release of the European Commission click [here](#).

The European Commission opens in-depth investigation into proposed acquisition of Tele2 NL by T-Mobile NL in the Netherlands

The European Commission has opened an in-depth investigation to assess the proposed acquisition of Tele2 NL by T-Mobile NL under the EU Merger Regulation. The Commission is concerned that the merger could lead to higher prices, and reduce choice and innovation for customers in the Netherlands, as the merged entity would be the third largest player on the Dutch market after KPN and VodafoneZiggo. The main concerns are the following: i) T-Mobile NL and Tele2 NL currently compete against each other in the retail mobile telecommunications market in the Netherlands, ii) operators would coordinate their competitive behavior, and raise prices on the retail markets, and iii) prospective and existing mobile virtual network operators may face more difficulties in obtaining favorable wholesale access terms from mobile network operators. To read the relevant press release of the European Commission click [here](#).

The European Commission approved compensation granted by Denmark to Post Danmark for its universal service obligation

The European Commission has concluded that the compensation granted by Denmark to Post Danmark to fulfil its public service mission during the period 2017-2019 is in line with EU State aid rules. In February 2018, Denmark notified plans to compensate Post Danmark for carrying out its universal postal service obligation during the period 2017-2019. This includes the provision of basic postal services throughout Denmark at affordable prices and at certain minimum quality requirements. Post Danmark will, through its parent company, the PostNord Group (jointly-owned by Denmark and Sweden), receive a maximum of in total DKK 1.192 billion (SEK 1.683 billion or approx. €160 million) for the period 2017-2019. This compensation is foreseen in a bilateral agreement between Sweden and Denmark signed in October 2017. The Commission examined the measure under EU State aid rules on public service compensation and concluded that the compensation granted by Denmark to Post Danmark will not exceed the net cost of the public service mission, meaning there is no overcompensation. To read the full press release of the

European Commission, click [here](#).

Greece: The concentration by means of acquisition of the control of the company “RADIOTILEOPTIKI ANONYMI ETAIREIA” and of the brands of the company “PIGASOS” by the company “DIMERA MEDIA INVESTMENTS LTD” was prematurely completed and lately notified to the HCC.

To read the full press release of the HCC, visit the website of the [HCC](#).

Greece: On 14.5.2018 the measures plan of HTPC regarding the definition of the technical standards and the minimum characteristics of the wholesale of the Virtual Local Unbundling (VLU) was notified to the European Commission, the BEREC and the National Regulatory Authorities of other member-states of the EU

To read the full press release visit the website of the [HTPC](#).

Greece: On 22.5.2018 the HTPC approved the reference offer of the wholesale line rental of OTE 2017

To read the full press release visit the website of the [HTPC](#).

Pharmaceuticals

The European Commission refined intellectual property rules

The Commission is proposing today a targeted adjustment to intellectual property rules to help Europe's pharmaceutical companies tap into fast-growing global markets and foster jobs, growth and investments in the EU. To improve the current system further and remove a major competitive disadvantage of EU manufacturers, the Commission proposes a targeted amendment: the so-called 'export manufacturing waiver' to Supplementary Protection Certificates (SPCs). Supplementary Protection Certificates extend patent protection for medicinal products which must undergo lengthy testing and clinical trials prior to obtaining regulatory marketing approval. Thanks to the waiver, in the future EU-based companies will be entitled to manufacture a generic or biosimilar version of an SPC-protected medicine during the term of the certificate, if done exclusively for the purpose of exporting to a non-EU market where protection has expired or never existed. To read the relevant press release of the European Commission click [here](#).

The European Commission cleared acquisition of Farmexim and Help Net by Phoenix

The European Commission has approved, under the EU Merger Regulation, the acquisition of Farmexim SA and Help Net Farma SA, both of Romania, by Phoenix PIB Austria Beteiligungs GmbH of Austria. The Commission concluded that the proposed acquisition would raise no competition concerns given the companies' moderate combined market shares. To read the relevant press release of the European Commission click [here](#).

Transport

GC's decision on the infringement of article 8(1) (b) of Regulation No 207/2009

On 20 June 2018, the GC handed down the judgment on appeal brought by the Czech national railway operator against European Commission decision of 2016 that ordered České dráhy, under Article 20(4) of Regulation 1/2003, to submit to unannounced inspections concerning suspected participation in anti-competitive conduct. The five main claims brought before the Court were: the illegal acquisition of evidence used by the Commission, the acquisition of evidence came from an inspection not considering the present case, the contested decision and the associated inspection by the European Commission constituted a

disproportionate interference with the applicant's private sphere, the contested decision did not adequately delimit the subject and purpose of the inspection, there was an interference with the applicant's fundamental rights and freedoms guaranteed by Article 7 of the Charter of Fundamental Rights of the EU (or Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms) and Article 48 of the Charter of Fundamental Rights of the EU (or Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms). To read the full decision of the GC, click [here](#).

The GC decision on the request made by Lufthansa and Swiss concerning the waiver of their pricing commitments for the Zurich-Stockholm route

The planned acquisition of Swiss by Lufthansa included compliance with commitments on pricing (fare commitments) given by Lufthansa and Swiss in respect of the Zurich-Stockholm and Zurich-Warsaw routes. On 4 November 2013, Lufthansa and Swiss submitted a request to the Commission seeking a waiver of the fare commitments in question. Lufthansa has brought an action before the GC seeking annulment of the decision of the Commission rejecting the waiver request.

The GC annulled the Commission's decision in so far as it concerned the Zurich-Stockholm route and dismissed

the remainder of the action. The GC held that the Commission is obliged to undertake a careful examination of the request, to conduct, if necessary, an investigation, to make the appropriate enquiries and to base its conclusions on all the relevant information.

The Court concludes that the Commission made a manifest error of assessment and that the matters relied on in the contested decision are not capable of justifying the rejection of the waiver request relating to that route. To read the full decision of the GC, click [here](#).

The European Commission approved CZK 400 million public support for intermodal transport in the Czech Republic

The European Commission has approved a CZK 400 million (around €16 million) aid scheme to support the shift of freight traffic from road to rail and inland waterways in the Czech Republic. The scheme, which will run until 31 December 2023, will support the purchase of transport units dedicated to combined transport, such as intermodal road trailers and freight containers. The beneficiaries will be operators of intermodal transport. The government will support up to 30% of the eligible costs, with the scheme being partially funded by the EU Cohesion Fund. The

Commission concluded that the measure is necessary to improve the competitiveness of intermodal transport services in the Czech Republic and that it is proportionate in accordance with EU State aid rules. To read the relevant press release of the European Commission click [here](#).

The European Commission cleared HRK 105.6 million in restructuring aid for Croatian shipping company Jadroplov

Jadroplov, which is based in Split and suffered from reduced volumes and falling prices in worldwide trade of dry bulk cargo has started carrying out a comprehensive restructuring program aimed at reducing costs, focusing on core business and alleviating the financial pressure stemming from high-indebtedness. Croatia is supporting the process with a subsidy and two State guarantees on bank loans for a total State support amount of HRK 105.6 million (around €14.2 million). Jadroplov will make a significant own contribution to the cost of restructuring of HRK 144.9 million (around €19.5 million), in particular by securing financing from the private market and through asset sales. Moreover, the assets sale contributes to reducing the potential distortions of competition brought about by the restructuring aid. The Commission therefore

concluded that the restructuring plan was in line with EU State aid rules. To read the relevant press release of the European Commission click [here](#).

The European Commission cleared the acquisition of joint control over London Luton Airport by AMP Capital and Aena Internacional

The European Commission has approved, under the EU Merger Regulation, the acquisition of joint control over London Luton Airport Operations Limited ("LLAO") of the UK by AMP Capital Investors (UK) Limited ("AMP Capital") of the UK and Aena Desarrollo Internacional, S.M.E., S.A. ("Aena Internacional") of Spain. The European Commission has approved, under the EU Merger Regulation, the acquisition of joint control over London Luton Airport Operations Limited ("LLAO") of the UK by AMP Capital Investors (UK) Limited ("AMP Capital") of the UK and Aena Desarrollo Internacional, S.M.E., S.A. ("Aena Internacional") of Spain. To read the relevant press release of the European Commission click [here](#).

The European Commission approved €165 million of investments by Croatia for the extension of the Istrian Y motorway

The Istrian Y motorway is a 145 km long motorway linking the Istrian

region with the rest of Croatia. The motorway is operated under a concession from 1995, which was awarded to the company Bina-Istra until 2027. In March 2018, Croatia notified to the Commission a prolongation of the concession agreement until 2032. Under certain conditions relating to the repayment of Bina-Istra's debt, the concession can be prolonged by up to 18 further months. The Commission found that, under the Croatian plan to extend the Istrian Y motorway concession agreement:

i) the concessionaire will not be overcompensated, following changes made by Croatia to the duration of the concession, ii) the prolongation of the concession is proportionate to the amount needed to finance the works required for building the new stretch of the carriageway. The Commission concluded that the measure will promote growth and unlock investment, while limiting the impact on motorway users, in line with EU State aid and public procurement rules. On this basis, the Commission approved the Croatian support granted through the prolongation of the Istrian Y motorway concession. To read the full press release of the European Commission click [here](#).

The European Commission approved €10.7 million aid for Erfurt-Weimar Airport in Germany

The European Commission has found that operating aid of €10.7 million to secure the functioning of the Erfurt-Weimar Airport in Germany, is in line with EU State aid rules. The small regional airport, is 100% publicly owned and located in the Land of Thuringia. The operating aid aims to keep the airport running until it is expected to cover its costs, as of 2024. This is on the basis of a new business model, making the airport independent from low cost airlines, and on a strategy to reduce costs. In its assessment, the Commission also took into consideration that part of the airport's operational costs are due to the fact that the airport is used by the fire brigade and the police. The Commission found that the measure is in line with EU State aid rules, in particular the Aviation Guidelines. To read the relevant press release of the European Commission click [here](#).

Greece: The concentration by means of acquisition of the full control of the company "HELLENIC SEAWAYS" by the company "ATTICA GROUP S.A." was approved by the HCC with the imposition of special terms and conditions (structural measures)

To read the full press release visit the website of the [HCC](#).

News of the Markets

According to HRADF the sale of DEPA is going to begin in November

According to press information, Greece will launch a tender in November to sell a majority stake in Gas Company DEPA's commercial operations. DEPA's privatization plan involves splitting DEPA into two entities, one covering its wholesale and retail gas supply business, and the other its distribution network and international activities. Greece holds a 65 percent stake in DEPA and aims to sell 50 percent plus one share in DEPA's commercial activities, according to a revised plan. Greece will start the sale of a 14 percent stake in DEPA's distribution networks once it divests the company's commercial activities.

The acquisition of Nireus and Selonda is signed

According to press information, the Andromeda aquaculture group, Amerra fund and Mubadala investment firm signed the agreement for the acquisition of Greek fish farming companies Nireus and Selonda. The implement of the deal is expected to take place by year-end.

The EBRD obtained a stake into the Hellenic Energy Exchange

According to press information, the European Bank for Reconstruction and Development signed an agreement to obtain a 20 percent stake in the Hellenic Energy Exchange. The bank invested 1 million euros to finance the establishment of the first energy exchange in the country. The aim of the energy exchange will be to organize and operate Greece's recently liberalized electricity, natural gas and environmental markets by enlarging the domestic market.

Two Czech companies are interested in PPC plant tender

According to press information, the list of candidate buyers who have expressed a non-binding interest in the lignite-powered units of Public Power Corporation in Florina and Megalopoli, includes bids from the consortium of Beijing Guohua Power Company Ltd with Damco Energy, from GEK Tern, from ElvalHalco, from Energeticky, a Prumyslovy Holding (EPH), from Indoverse (Czech) Coal Investments Ltd and from the Mytilineos group.

The surprise came from the two Czech firms, EPH and Indoverse, which are active in the energy

sector and have a significant coal-related portfolio. Indoverse passed to the second stage of this international competition.

Motor Oil obtained a 90 percent stake in NRG

According to press information, fuel industry Motor Oil has secured an entry into the electricity market via the acquisition of a 90 percent stake in NRG.

GEK Terna intends to bid for Sofia and Bucharest airport projects

According to press information, GEK Terna intends to bid for Sofia, Bucharest airport projects towards the upgrade and operate the airports of Sofia and Bucharest.

EETT approved the acquisition of CYTA by VODAFONE

According to press information, the National Commission for Telecommunications and Post (EETT) decided to approve the acquisition of Cyta telecom's Greek subsidiary by Vodafone. The acquisition was realized and Vodafone acquired the 100% of Cyta Hellas.

Elliniko plot's casino tender to be announced by end-August

According to press information, the tender for the casino permit

at Elliniko has to be announced by August 31. The deadline for the departure of all entities is November 2018, while some of them, such as the Civil Aviation Authority and the Aghios Cosmas sports center, are scheduled to be relocated by September.

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