

# COMPETITION & REGULATION REPORT

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- Mergers
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- Energy
- Electronic Communications
- Transport
- Pharmaceuticals

- C-57/21 RegioJet a.s. v České dráhy a.s.
- C-680/20 Unilever Italia Mkt. Operations Srl v Autorità Garante della Concorrenza e del Mercato
- C-883/19 P HSBC Holdings plc, HSBC Bank plc, HSBC Continental Europe v European Commission
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- T-522/20 Carpatair SA v European Commission
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- HCC : Clearance of the notified concentration concerning the acquisition by the company under the name "MOTOR OIL (HELLAS) CORINTH REFINERY S.A." of sole control over the company under the name "THALIS ENVIRONMENTAL SERVICES S.A."
- HCC : Clearance of the notified concentration concerning the acquisition by the company under the name "DOLIT INVESTMENTS SINGLE MEMBER S.A.", an indirect wholly owned subsidiary of "ECM Partners Inc.", of sole control over the companies under the names "PAVLIDIS MARBLE GRANITE S.A." and "ENERFARM 2 RENEWABLES S.A."
- HCC : Clearance of the notified concentration concerning the acquisition by the company under the name "PYRSOS HOLDING COMPANY S.A." of sole control over the company under the name "PROMETHEUS GAS S.A."
- HCC : Dawn raids in the pharmaceuticals sector

# Editorial

## **Court of Justice, in C-702/20 & C-17/21, Dobeles : a national court judgment can constitute State Aid?**

The notion of measure that can be constitutive of State Aid, because is attributable to the State must in a first place be extensively construed. Thus, not only administrative acts of the central government, but also acts of regional and local authorities can be considered as granting a State Aid. Furthermore, not only administrative acts, but also (administrative) contracts can be considered as State Aid measures in whatsoever form. Thus, it must be born in mind that state measures are not defined according to the subjective intention of their author, but rather by reference to their objective results / consequences in the markets.

However and despite this broad conception, the question whether a national court judgment can constitute a state aid measure is more controversial and harder to tackle. Self-evidently a court judgment is a state act, but on the other hand the judge does not create new rules of law, but rather applies and interprets existing ones in casu. Furthermore, accepting that a national judgment could constitute a state aid measure, would have as a consequence that the national court should, before rendering its judgement, stay proceedings and notify the contemplated content of the judgment to the European Commission in order to seek the approval of the later before the judgment being issued and enforceable. Nevertheless, the Court in its judgment **DEI v. Commission (C-590/14 P)** admitted that an interim measures judgment prolonging the applicability of a contract of supply of energy between the dominant public undertaking of Energy and an industrial user in a preferential tariff (allegedly amounting to a state aid in favor of the industrial customer) can constitute a state aid measure. The judgment of the Court has been extensively commented by practitioners and scholars. Now, the Court by its commented judgment in case C-702/20 & C-17/21, Dobeles, reviewed its previous position by stating clearly [point 76 of the judgment] that: "In any event, the establishment as such of State aid cannot result from a judicial decision. The establishment of State aid entails a decision as to the appropriate course of action which falls outside the scope of a court's powers and obligations". This is a clear turnaround in the case-law of the Court that will nourish doctrinal discussion, but will also have significant practical effects as it procures to the national judges an important immunity for their decisions. However, national courts still have the right or the obligation, when their decisions are final, to submit a request for a preliminary ruling before the Court of justice, when they have doubts as per the interpretation of EU State Aid rules applicable to the cases pending before them. They can also seek the assistance of the European Commission and stay proceedings, especially when the case to trial involves a decision previously adopted or pending before the Commission in State Aid matters.

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

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

# Antitrust

## **C-57/21 RegioJet a.s. v České dráhy a.s.**

The CJEU in its preliminary ruling of 12 January 2023 in RegioJet (C-57/21) held that a national court may order disclosure of evidence in proceedings for damages that have been stayed due to initiation of an investigation by the Commission regarding that same infringement, clarifying provisions regarding evidence disclosure under the EU Damages Directive 2014/10/EU.

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

## **C-680/20 Unilever Italia Mkt. Operations Srl v Autorità Garante della Concorrenza e del Mercato**

The Court held in Unilever that the conduct of the independent distributors of a dominant company can render it liable under Article 102 TFEU, under specific conditions and also, that when competition authorities suspect that an undertaking has infringed Article 102 TFEU by using exclusivity clauses, they must review all evidence brought by the undertaking before issuing a decision.

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

## **C- 883/19 P HSBC Holdings and Others v Commission**

The Court upheld the annulment of the fine imposed on HSBC in HSBC Holdings and Others but dismissed the claim that the conduct of companies of the HSBC Group did not consist of a single and continuous infringement by restricting or distorting competition in the EIRD sector.

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

## **T- 640/16 GEA Group AG v Commission**

The General Court dismissed in its entirety GEA Group's annulment action of a readopted Commission Decision in one part of the heat stabilizers cartel case.

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

## **European Commission : Questions and Answers: New Regulation to address foreign subsidies distorting the Single Market**

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

## **HCC: Dawn raids in the beer and alcoholic beverages sector**

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

**C-312/21 Tráficos Manuel Ferrer SL, D. Ignacio, v Daimler AG**

According to the CJEU judgment in Tráficos Manuel Ferrer, CaixaBank case law regarding the allocation of procedural costs in actions against unfair terms is inapplicable to competition claims for damages and provided some criteria for the estimation of harm caused by competition infringements.

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

**T-708/21 NO v European Commission**

The applicant (**NO**) sought a finding from the General Court that the European Commission unlawfully failed to define its position regarding an infringement of EU law on state aid, which was dismissed as inadmissible. The Court also found that there was no need to adjudicate on the alleged failure to act as well as the seeking of a declaration that the Commission failed to examine the alleged infringements of EU law on anticompetitive practices.

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

**Commission sends Statement of Objections to Apple clarifying concerns over App Store rules for music streaming providers.**

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



# Mergers

**Commission clears acquisition of the engineering materials business of Koninklijke DSM N.V. ('DEM') of the Netherlands and the high performance materials business of Lanxess AG ('HPM') of Germany, by Advent International Corporation ('Advent') of the US.**

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

**Commission clears acquisition of Ecobat Resources Stolberg GmbH ('ERS') of Germany, by Trafigura Group Pte Limited ('Trafigura') of Singapore.**

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

**Commission clears acquisition of Emerald JV Holdings L.P. ('Emerson') by Blackstone Inc., both of the US**

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

**Commission clears the acquisition of MBCC by Sika, subject to conditions.**

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

**Commission opens in-depth investigation into proposed acquisition of Asiana by Korean Air**

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

**HCC : Clearance of the notified concentration consisting of the acquisition by "AUTOHELLAS TOURIST AND TRADING S.A." and "SAMELET MOTORS LTD" of joint control over "FCA GREECE S.A."**

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

**HCC : Clearance of the notified concentration concerning the acquisition by the company under the name "MOTOR OIL (HELLAS) CORINTH REFINERY S.A." of sole control over the company under the name "THALIS ENVIRONMENTAL SERVICES S.A.".**

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

**HCC : Clearance of the notified concentration concerning the acquisition by the company under the name "DOLIT INVESTMENTS SINGLE MEMBER S.A.", an indirect wholly owned subsidiary of "ECM Partners Inc.", of sole control over the companies under the names "PAVLIDIS MARBLE GRANITE S.A." and "ENERFARM 2 RENEWABLES S.A.".**

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





# State Aid

## C- 284/21 P European Commission v Braesch and Others

The CJEU in **European Commission v Braesch and Others** set aside the General Court judgment in Braesch and Others v Commission (T- 161/18), ruling that the Commission was not responsible for the burden sharing arrangements proposed by Italy for the Commission to grant the precautionary recapitalization of Banca Monte dei Paschi di Siena.

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

## C-649/20 P, C-658/20 P, C-662/20 P

CJEU: JUDGMENT ISSUED IN JOINED CASES C- 649/20 P Spain v Commission, C- 658/20 P Lico Leasing and Pequeños y Medianos Astilleros Sociedad de Reconversión v Commission and C- 662/20 P Caixabank and Others v Commission

In Joined Cases C-649/20 P, C-658/20 P and C-662/20 P the CJEU partially set aside the General Court's judgment by which the General Court dismissed actions for annulment against a Commission decision on the tax regime applicable to finance lease agreements for the purchase of ships and also partially annulled the decision of the European Commission. The CJEU ruling was founded among else on the reason that the General Court considered the condition relating to selectivity incorrectly, by not considering economic interest groups as the beneficiaries of the advantages given to them through the tax regime.

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

## T-522/20 Carpatair SA v European Commission

The General Court in **Carpatair SA v European Commission** annulled the European Commission decision approving of state aid to Timișoara International Airport in favor of Wizz Air. The Court's judgment places the burden of proving lack of selective advantage in national measures not considered to be state aid on the European Commission.

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

## Commission consults Member States on proposal for a Temporary Crisis and Transition Framework

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



# Energy

**Commission approves €104 million Croatian scheme to support energy-intensive companies.**

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

**Commission approves €100 million Austrian measure to reduce electricity consumption in the context of Russia's war against Ukraine.**

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

**Commission approves €1.1 billion Danish scheme to support roll-out of carbon capture and storage technologies.**

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

**Commission approves €170 million Danish scheme to support renewable hydrogen production.**

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

**Commission approves €2.08 billion French measure to support offshore wind energy generation.**

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

**Commission approves €1.36 billion Greek scheme to compensate energy-intensive companies for indirect emission costs.**

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

**Commission approves €460 million Spanish measure to support ArcelorMittal decarbonise its steel production.**

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

**Commission approves €55 million German measure to support ArcelorMittal's green steel demonstration plant.**

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

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



# Electronic Communications

**Commission opens in-depth investigation into the proposed acquisition of Inmarsat by Viasat.**

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

# Transport

**C-42/21 P Lietuvos geležinkeliai AB v European Commission**

The CJEU upheld the General Court's judgement and following the Advocate General's opinion, found that by dismantling that railway track section, Lithuanian Railways (**Lietuvos geležinkeliai**) abused their dominant position in the market. The CJEU judgment also clarified the applicability of the Bronner criteria (the essential facilities doctrine).

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

**Commission approves EUR 119.3 million French restructuring aid for Air Austral and EUR 17.5 million compensation for damage suffered as a result of the coronavirus pandemic**

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

**Commission opens in-depth investigation into French support measures in favour of Fret SNCF.**

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

**Commission approves €1.1 billion German scheme to support rail transport operators using electric traction.**

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

# Pharmaceuticals

**HCC : Dawn raids in the pharmaceuticals sector**

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

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