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HIGHLIGHTS

- C-607/18 P - NKT Verwaltung and NKT v Commission. Power cable cartel.
- Commission opens investigation into Apple practices regarding Apple Pay and into Apple's App Store rules
- Dawn Raids in the Greek Press Distribution Market by HCC
- Dawn raids in the food and beverage sector by HCC
- HCC's in-depth investigation in healthcare materials during the coronavirus health crisis
- Commission waives the commitments made by Takeda to obtain clearance of its acquisition of Shire
- HCC clears the concentration between SAIGA S.à.r.l. acquiring negative sole control over Skroutz Internet Services S.A
- C-262/18 P and C-271/18 P - Slovakia v Dôvera zdravotná poisťovňa. State Aid
- T 399/16 - CK Telecoms UK Investments Ltd v Commission. Mergers
- C-591/16 P - H. Lundbeck A/S and Lundbeck Ltd v Commission. Opinion, patent settlements

Editorial

The coronavirus outbreak, air transport and competition rules.

Air transport is one of the most exposed sectors to the negative impact of the coronavirus outbreak. Member States have been obliged to adopt serious restrictive measures in order to contain the spread of the pandemic. Air transport is particularly affected due to the fact that movement of persons across the borders is effected in large part by airplanes. Member States had to derogate temporarily from Treaties' rules on free movement of persons because of the pandemic. The various containment measures adopted by Member States caused to aviation a serious negative shock of demand. Compared to the same time last year, there are over 80% fewer flights across the European network, Europe's largest airports are operating less than 75% of flights and the number of bookings continues to decrease.

The Commission had issued special soft law interpretative guidelines (click [here](#)) for air transport applicable during the pandemic. One major issue is how to maintain and finance properly Public Service Obligations (PSO's) during the pandemic without causing undue distortions of competition. Furthermore, adequate public support must be authorized for airline companies, in order to survive during the pandemic and bounce back afterwards. In line with this interpretative approach, characteristically the Commission has approved the public measures taken by Germany and Finland for the recapitalization of Lufthansa and Finnair respectively (click [here](#) and [here](#)). Furthermore, the Commission has approved on the basis of EU State Aid rules an urgent liquidity support to TAP of Portugal (click [here](#)). However, operational aids to airports may, if the principles of non-discrimination and proportionality are not observed lead to undue advantages in favor of airline companies (see for instance the judgements of the General Court concerning the Sardinian airports, click [here](#) and [here](#)).

Airline companies may try to face the negative consequences of the pandemic by private means, notably by concentrations (mergers or acquisitions) in order to pool financial strength. One characteristic example is the acquisition of Transat by Air Canada. The Commission will not waive from its privileges to scrutinize whether such mergers and acquisitions would have as a consequence to restrict unduly competition in the relevant markets (to see the press release of the Commission, click [here](#)).

Conclusively, the application of competition rules is properly adapted so as to allow public and private support to airports and airline companies. However, it must be carefully assessed in each case whether unjustified restrictions take place. In fact, in order to bounce back successfully, undertakings must not be able to obtain during the pandemic undue advantages.



Antitrust

C-607/18 P - NKT Verwaltung and NKT v Commission

The case referred to on an appeal by NKT Verwaltungs GmbH (formerly nkt cables GmbH) and NKT A/S (formerly NKT Holding A/S) against a General Court judgment that upheld the European Commission's power cables cartel decision, by which the applicants, active in the production and supply of underground and submarine power cables, were fined €3.887.000 for their participation in the cartel during the period from 3 July 2002 to 17 February 2006. The ECJ partially annulled the contested decision and reduced the fine imposed on the applicants. To read the full Judgement of the Court, click [here](#).

Commission opens investigation into Apple practices regarding Apple Pay and into Apple's App Store rules

The European Commission has opened a formal antitrust investigation to assess whether Apple's conduct in connection with Apple Pay violates EU competition rules. The investigation concerns Apple's terms, conditions and other measures for integrating Apple Pay in merchant apps and websites on iPhones and iPads, Apple's limitation of access to the Near Field Communication (NFC) functionality ("tap and go") on iPhones for payments in stores, and alleged refusals of access to Apple Pay. In the same vein, the European Commission has opened formal antitrust investigations to assess whether Apple's rules for app developers on the distribution of apps via the App Store violate EU competition rules.

To read the full press releases, click [here](#) and [here](#) respectively.

Commission consults stakeholders on a possible new competition tool

The European Commission has published an inception impact assessment as well as an open public consultation inviting comments on exploring the need for a possible new competition tool that would allow addressing structural competition problems in a timely and effective manner.

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

The European Commission launches a process to address the issue of collective bargaining for the self-employed

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

HCC completing a Code of Procedures

HCC, in the context of enhancing transparency and its procedural effectiveness, is in the process of completing a Code of Procedures, with a view, inter alia, to simplifying procedures and providing more information to interested stakeholders ("users of its services") and citizens in general.

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

Publication of study on the competitiveness of the digital economy in Greece

The Hellenic Competition Commission made a request for an independent study on the competitiveness of the Greek mobile data market, in the context of its two recent Sector Inquiries (into E-commerce and Fintech, respectively).

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

Dawn Raids in the Greek Press Distribution Market by HCC

On May 8th 2020, officials of the Hellenic Competition Commission (HCC) carried out pre-planned unannounced on-site inspections in the premises of companies operating in the press distribution market, in the context of ex officio investigations, following the HCC Decision no. 659/2018.

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

Dawn raids in the food and beverage sector by HCC

The HCC has carried out on the 23rd of June, with the assistance of Prefecture Units, dawn raids at the premises of 38 undertakings active throughout Greece in the food and beverage markets in the context of an ex officio investigation into the sector and following a complaint.

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

HCC initiatives in relation to the covid-19 health crisis

In the current situation that the country is being tested by the coronavirus pandemic (Covid-19), has already established since 20.3.2020 a special strike team Covid-19_Competition, which has taken a variety of actions for the implementation of the competition rules in key sectors of the economy at the present time, such as in the field of sanitary ware and medical equipment as well as in the wider food sector and for the information of companies and the public.

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

HCC's in-depth investigation in healthcare materials during the coronavirus health crisis

The investigation was deemed necessary following numerous consumer complaints and press coverage regarding, on the one hand, significant price increases of the products in question at a number of retail outlets, and shortcomings of these products, on the other, which are likely to stem from business practices in the distribution chain that may fall under the provisions of Law 3959/2011.

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

Review of compliance of the company ARGOS SA Press Distribution Agency with the operative part of the HCC Decision no. 687/2019, pursuant to Article 25(5) of Law 3959/2011

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

HCC Implementing Regulations authorising agreements and decisions on market stabilisation measures to further support the agricultural and food sectors most affected by the coronavirus crisis

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

HCC e-commerce sector inquiry: public consultation and teleconference

In the context of the first phase (Phase A') of its sector inquiry into e-commerce has successfully completed its teleconference/public consultation with various stakeholders. The teleconference followed the written submissions by the companies and institutions concerned, and served as an interactive forum for exchanging views on the competitive conditions prevailing in the e-commerce sector.

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



Merger

Commission clears Aurubis' acquisition of Metallo

The European Commission has approved, under the EU Merger Regulation, Aurubis' acquisition of Metallo, a large copper scrap refiner, since the merger would not adversely affect competition in the European Economic Area or any substantial part of it.

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

Commission waives the commitments made by Takeda to obtain clearance of its acquisition of Shire

The Commission approved the acquisition of Shire by Takeda on 20 November 2018, subject to the divestment of a biologic drug under development by Shire to treat inflammatory bowel diseases ("IBD"), namely SHP 647.

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

Commission approves acquisition of Bayer's animal health division by Elanco, subject to conditions

The decision is conditional on the divestment of otitis products and several types of parasitocides in the European Economic Area (EEA), the UK and globally.

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

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Commission opens in-depth investigation into proposed acquisition of Refinitiv by London Stock Exchange Group

The Commission is concerned that the proposed acquisition may reduce competition in trading and clearing of various financial instruments and in financial data products.

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

Commission opens in-depth investigation into the proposed merger of PSA (Peugeot S.A.) and FCA (Fiat Chrysler Automobiles N.V.)

The Commission is concerned that the proposed transaction may reduce competition with respect to light commercial vehicles (vans) below 3.5 tonnes in the European Economic Area (EEA) and, more specifically, in 14 EU Member States and the UK.

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

HCC clears the concentration concerning the acquisition of sole control by the company ADAMA AGRICULTURE B.V. over the company ALFA AGRICULTURAL SUPPLIES S.A.

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

HCC clears the concentration between SAIGA S.à.r.l. acquiring negative sole control over Skroutz Internet Services S.A

Pursuant to its unanimous Decision No. 714/2020, the HCC found that the proposed concentration, which concerns the market for price comparison shopping services, the market for online marketplaces (merchant platforms), the market for online advertising and the market for online restaurant platforms, while falling within the scope of Art. 6(1) of Greek Law 3959/2011, does not raise any serious doubts as to its compatibility with the competition rules in the relevant markets involved.

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

State aid

C-415/19 - Blumar and others v. Agenzia delle Entrate

In the present case, the requests for a preliminary ruling concerned the interpretation of Article 108(3) TFEU, the principle of proportionality and Commission Decision C(2008) 380 of 25 January 2008, 'State aid N 39/2007 — Italy — Tax credit for new investment in less-favoured areas' ('the Decision of 25 January 2008'). The requests have been made in three sets of proceedings brought by Blumar SpA, Roberto Abate SpA and Commerciale Gicap SpA, respectively, against the Agenzia delle Entrate (Tax Authority, Italy) concerning the latter's refusal to grant a tax credit to those companies under a State aid scheme authorised by the Commission's Decision of 25 January 2008.

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

C-148/19 P - BTB Holding Investments and Duferco Participations Holding v Commission

The ECJ dismissed the appeal by BTB Holding Investments SA (BTB) and Duferco Participations Holding SA against a General Court's judgment that upheld a 2016 European Commission decision on state aid granted to steel companies in the Duferco group.

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

C-262/18 P and C-271/18 P - Slovakia v Dôvera zdravotná poisťovňa

The Court of Justice upheld the decision of the Commission according to which health insurance bodies operating under Slovak State supervision do not fall within the rules of EU law on State aid.

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

C-456/18 P - Hungary v Commission

The case refers to the new tax introduced by Hungary in 2014 in two sections: the progressive tax on the annual turnover of companies deriving at least 50% of their turnover from the production of, or trade in, tobacco products and the progressive food chain inspection fee on the turnover of shops selling daily consumer goods. The Court of Justice upheld the appeal brought by Hungary (supported by Poland) against the judgment of the General Court of 25 April 2018 in Hungary v Commission (T-554/15 and T-555/15). To read the full Judgement, click [here](#).

C-594/18 P - Austria v Commission

The case referred to an appeal concerning the European Commission Decision of 8 October 2014 to approve the UK State aid scheme planned to support a new capacity for the generation of nuclear energy at the Hinkley Point nuclear power station in Somerset. In a nutshell, the Advocate General was of the opinion that this case can be described as the legal side of a dispute between Member States that are in favour of nuclear power and those that are not. At the heart of the matter lies the fundamental question of whether the construction of a nuclear power plant can be the subject of a State aid approval by the European Commission for the purposes of Article 107(3)(c) TFEU.

To read the full Opinion of the Advocate General, click [here](#).

C-556/19 - Eco TLC v Minister of the Ecological and Inclusive Transition

In this request for preliminary ruling, the Advocate General, faced, in essence, the question whether the extended producer responsibility system set up in France for the management of waste from textile products, household linen and shoes (hereinafter "TLC products") establish a system of State aid under Article 107 (1) TFEU.

To read the full Opinion of the Advocate General, click [here](#).

Commission invites comments on updated proposal on simplified rules for State aid combined with EU support

The European Commission is inviting Member States and other stakeholders to comment on its updated proposal to exempt from prior Commission scrutiny under EU State aid rules aid granted through national funds for projects supported under certain EU centrally managed programs.

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

State aid

Commission approves State financing granted by Spain for Correos's universal postal service obligation

State-owned Correos is the biggest postal operator in Spain. The European Commission has found the compensation granted by Spain to Correos to fulfil its public service mission (so-called "universal service obligation" or USO) during the 2011-2020 period to be compatible aid under EU State aid rules.

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

Commission approves €33 million Cypriot scheme deferring payment of VAT to support companies affected by coronavirus outbreak

The European Commission has approved a €33 million Cypriot aid scheme deferring VAT payments to ease the liquidity constraints of companies affected by the coronavirus outbreak. The scheme was approved under the State aid Temporary Framework.

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

Commission expands Temporary Framework to further support micro, small and start-up companies and incentivise private investments

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

Commission opens in-depth investigation into the financing of Czech Post's universal service obligation

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



Energy

Commission approves compensation for early closure of coal fired power plant in the Netherlands

The European Commission has concluded that the compensation of €52.5 million granted to coal fired power plant Hemweg by the Netherlands will contribute to reducing CO2 without unduly distorting competition within EU.

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

Electronic Communications & Post

T-399/16 - CK Telecoms UK Investments Ltd v Commission

In this landmark ruling for EU merger control, the General Court annulled in its entirety the EU Commission's decision which blocked the proposed acquisition by CK Hutchison Holdings Ltd (Hutchison) of Telefónica Europe plc (O2). The proposed transaction would have brought together two of the UK's four mobile network operators (MNOs), Three and O2. The Court found that the Commission failed to illustrate that the effects of the merger on the UK's network-sharing agreements and on the mobile network infrastructure in the UK would constitute a significant impediment to effective competition.

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

Pharmaceuticals

C-591/16 P - H. Lundbeck A/S and Lundbeck Ltd v Commission

In this case and in line with the CJEU's ruling, in Case C-307/18 Generics (UK) and Others (see [here](#) and C&RR 2020, Issue 1), Advocate General Kokott recommended that the CJEU uphold the General Court's finding that the patent settlement agreements between Lundbeck and several generic manufacturers restricted competition "by object", analyzing particularly the role of the counterfactual scenario on the "by object" classification.

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

Transport

Commission approves Italian tax measures for maritime transport

The European Commission has approved under EU State aid rules the prolongation until end 2023 of various Italian support measures for maritime transport under Italy's "International Registry" scheme. The scheme encourages shipping companies to register their ships in Europe and so ensure higher social, environmental and safety standards.

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

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