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BY VASSILIS KARAGIANNIS, DR. JURA, PARTNER,
LITO DOKOPOULOU, LL.M, ASSOCIATE



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Editorial

Electricity prices for energy intensive industries: a longstanding controversy and a recent judgment of the General Court (Joined Cases T-639/14 RENV, T-352/15 and T-740/17, DEI v. Commission)

PPC has a quasi-monopoly in supplying electricity to industries connected to high voltage. Since a long time ago these industries complaint that PPC is exploiting this relation of economic dependance by charging particularly unaffordable prices not adapted to their specific characteristics. Conversely, PPC claims that these prices are often below cost, which implies inter alia the granting of illegal state aid to these industries.

This opposition led PPC and Alouminion SA (the largest energy intensive consumer) to submit their difference to an independent arbitral court hosted by RAE on the basis of article 37 of the Law 4001/2011. PPC contested the arbitral award by submitting subsequently a complaint before the European Commission alleging that the arbitral award granted an undue advantage to Alouminion and thus constituted an unlawful state aid measure in favor of said undertaking. The Commission after several administrative inconveniences rejected the complaint. PPC appealed the decision of the Commission before the General Court (GC). The GC in an interesting judgment found that the Commission erred in rejecting the complaint. Indeed, according to the GC, the Commission misapply the law in limiting its examination only to the question whether a prudent entrepreneur (Market Operator Test – MEO) would submit the difference to an arbitration process with the characteristics of the arbitration in question, but should also examine whether the arbitral award, from a substantial point of view, granted or not an undue advantage to Alouminion. In the case at hand the GC estimated that such a conclusion presupposed the performance of a complex economic assessment which the Commission failed to do. It has to be noted that the judgment of the GC has been appealed by Alouminion and the appeal is pending before the Court (C-701/21). To read the full judgment of the GC click [here](#).



Antitrust

C-882/19 - Sumal L v. Mercedes Benz Trucks España SL

The ECJ's judgment in Sumal brings about important clarifications not only on the concept of undertaking under Article 101 TFEU, but also on the ratio governing the extension of liability between entities that form part of the same economic unit in the field of private enforcement. With its judgment, the ECJ clarifies that subsidiaries can be held liable for the infringements committed by their parent companies, even when they are not addressees of an infringement decision in the context of follow-on actions for damages, as long as they form part of the same economic unit in light of their economic, organisational and legal links, and the specific link between their economic activities and the subject matter of the anti-competitive behaviour.

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

Judgments in Cases:

Nec v Commission ([T-341/18](#));

Nichicon Corporation v Commission ([T-342/18](#));

Tokin v Commission ([T-343/18](#));

Rubycon and Rubycon Holdings v Commission ([T-344/18](#)); and

Nippon Chemi-Con Corporation v Commission ([T-363/18](#)).

The General Court's Extended Composition Chamber delivered five judgments dismissing the actions for annulment brought by various manufacturers of electrolytic capacitors against the Commission's Decision of 21 March 2018 in Case [AT.40136](#) – Capacitors. By that decision, the Commission fined eight Japanese companies for the exchange of commercially sensitive information in what amounted to a cartel for the supply of aluminium and tantalum electrolytic capacitors between 1998 and 2012. The Commission found that despite the fact that the meetings and contacts took place mainly in Japan, the cartel conduct was implemented on a global scale, including the European Economic Area, thereby in breach of Article 101 TFEU. The fines for each company range from 782,000 to nearly 98 million euros.

Commission conducted unannounced inspections in the wood pulp sector

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

Commission fines car manufacturers €875 million for restricting competition in emission cleaning for new diesel passenger cars

The European Commission has found that Daimler, BMW and Volkswagen group (Volkswagen, Audi and Porsche) breached EU antitrust rules by colluding on technical development in the area of nitrogen oxide cleaning. The Commission has imposed a fine of € 875 189 000. Daimler was not fined, as it revealed the existence of the cartel to the Commission. All parties acknowledged their involvement in the cartel and agreed to settle the case.

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

Dawn Raids of the Hellenic Competition Commission in the construction of natural gas networks and supply of relevant equipment

On the 14th of July 2021, officials of the Hellenic Competition Commission (HCC) conducted consecutive unannounced inspections, acting ex officio, at the premises of undertakings participating in public tenders for the construction of natural gas networks and relevant equipment and materials, regarding potential anti-competitive practices in the context of a bid-rigging investigation.

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

Complaints against «OPAP SA» regarding infringements of articles 1 and of Law No 3959/2011 and articles 101 & 102 TFEU

The Plenary of the HCC will convene on December 7th, 2021, to examine, based on the relevant Statement of Objections (SO) by the Rapporteur, the submitted complaints by the Association of Professional Betting Agents (SEPPP) and sixty-five (65) former OPAP agents against «OPAP SA». The case under scrutiny concerns the relevant product markets of offline betting services, payment services associated with the payment of utility bills and the execution of wire transfers and retail sale of pay-as-you-go prepaid cards.

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

Market Investigation in the Press Distribution Sector – HCC Second Interim Report

Following the first interim Report of the Hellenic Competition Commission (HCC) (here in Greek) and the views submitted to the public consultation (here in Greek) the HCC publishes its second interim Report and launches a second public consultation inviting interested parties to submit comments. The second interim Report (here in Greek) concludes that there is a lack of effective competition in the press distribution sector and proposes remedies to restore competition in the sector.

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

Dawn Raids of the Hellenic Competition Commission in the sectors of supply and retail trade of supermarket products, in particular in the markets for cereals, milk, coffee, jam, beverages and cheese

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

Dawn Raids of the Hellenic Competition Commission in the sectors of import/manufacturing, wholesale and retail trade of school bags, kids' lunch bags and pencil cases

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

Dawn Raids of the Hellenic Competition Commission in the sectors of refining, wholesale and retail trade of petrol (gasoline) and diesel

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

Dawn Raids of the Hellenic Competition Commission in the IT systems market

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

Merger

Commission adopts interim measures to prevent harm to competition following Illumina's early acquisition of GRAI

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

Commission opens in-depth investigation into proposed acquisition of Arm by NVIDIA The Commission is concerned that the merged entity would have the ability and incentive to restrict access by NVIDIA's rivals to Arm's technology and that the proposed transaction could lead to higher prices, less choice and reduced innovation in the semiconductor industry.

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

Commission approves acquisition of IHS Markit by S&P Global, subject to conditions

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

Commission opens in-depth investigation into proposed acquisition of Kustomer by Facebook

The Commission is concerned that the proposed transaction would reduce competition in the market for the supply of Customer Relationship Management (CRM) software. The Commission is also concerned that the proposed transaction would further strengthen Facebook's market position in the online display advertising market by increasing the already significant amount of data available to Facebook for personalization of the ads it displays.

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

Commission clears acquisition of Willis Towers Watson by Aon, subject to conditions

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

Clearance of EFT SERVICES HOLDING B.V. (Euronet Worldwide Inc)/Piraeus Bank (merchant acquiring activities)

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

Public version of the decision concerning the clearance by the HCC of the concentration ALPHA/STAR/ GREEN PIXEL

The Hellenic Competition Commission will from now on publish extensive summaries of the published HCC decisions, with a view to better informing the public as well as enhancing transparency and public debate. In this context, the HCC publishes an extensive summary of HCC Decision 728/2021, in view of the publication of the non-confidential version of the decision on the HCC's website.

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

Clearance of the proposed acquisition by VENETIKO HOLDINGS of sole control over DODONI S.A.

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

State Aid

Judgments in cases:

C-50/19 P Sigma Alimentos Exterior v Commission ([here](#)),

C-51/19 P World Duty Free Group v Commission and C-64/19 P Spain v Commission ([here](#)),

C-52/19 P Banco Santander v Commission ([here](#)),

C-53/19 P Banco Santander and Santusa v Commission and C-65/19 P Spain v Commission ([here](#)),

C-54/19 P Axa Mediterranean v Commission ([here](#)),

C-55/19 P Prosegur Compañía de Seguridad v Commission ([here](#))

The Court of Justice dismissed the appeals brought against the judgments of the General Court upholding the qualification of the Spanish tax rules on the amortization of financial goodwill as State aid incompatible with the internal market. Under such measure, introduced in 2001 into the Spanish Corporate Tax Law, the financial goodwill resulting from the acquisition by a resident undertaking of a shareholding at least 5% in a foreign company may be deducted, in the form of an amortization, from the basis of assessment for the corporate tax for which the resident undertaking is liable, provided that the resident undertaking holds that shareholding without interruption for at least one year.

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

C-915/19, C-916/19, C-917/19 - Eco Fox, Alpha Trading & Novaol (joined cases)

The ECJ rendered its judgment in response to three preliminary ruling requests by the Italian Council of State (Consiglio di Stato) concerning the modification of an aid scheme authorised by the European Commission which provides for a privileged tax treatment for biodiesel.

The question referred by the Council of State in the three cases concerned whether under Articles 107 and 108 TFEU and Regulations 659/1999 and 794/2004, such modification must be regarded as new aid subject to the prior notification requirement. The ECJ held that such amendment of criteria with retroactive effects for an approved State aid measure do not qualify as a new aid, subject to notification requirement.

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

C-665/19 P, NeXovation v European Commission, and C-647/19 P, Ja zum Nürburgring v European Commission

On 2 September 2021, the Court of Justice rendered judgments in two cases lodged by two potential buyers of the legendary Nürburgring car racing circuit in Germany. NeXovation appealed against the judgment of the General Court in case T-353/15, NeXovation v European Commission. Ja zum Nürburgring appealed against the judgment in case T-373/15, Ja zum Nürburgring v European Commission. In both judgments, the General Court dismissed the applications for partial annulment of Commission decision 2016/151 on State aid granted by Germany to Nürburgring. However, the Court has partially quashed the judgments of the General Court and consequently annulled partially the Commission's decision.

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

C-337/19 P - Commission v Belgium and Magnetrol International

The contested decision referred to tax exemptions granted by Belgium to multinational companies by way of rulings: the Commission correctly found that there was an aid scheme. The Court of Justice set aside the judgment delivered on 14 February 2019 by the General Court and referred the case back to the latter for it to rule on other aspects of the case.

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

T-648/19 - Nike European Operations Netherlands and Converse Netherlands v Commission

The General Court of the EU dismissed Nike's action against the Commission's decision to initiate a formal investigation into possible State Aid it might have received. The EU case was part of a crackdown on multinationals' sweetheart tax deals with EU countries that Brussels says gives them an unfair advantage, among them Apple's Irish tax arrangements, and Fiat Chrysler and Amazon's Luxembourg deals.

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

Commission invites comments on draft proposal to further facilitate implementation of aid measures promoting the green and digital transition

The European Commission is [inviting Member States and all other interested parties](#) to comment on certain proposed amendments to the [General Block Exemption Regulation](#) (GBER). Member States and other interested parties can respond to the consultation until 8 December 2021.

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

Commission gives green light to new synthetic securitization product under the European Guarantee Fund to further support SMEs affected by the coronavirus outbreak in 22 Member States

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

€314.6 million capital injection from PostNord to Post Danmark does not constitute State aid; Denmark and Sweden need to recover €66 million of incompatible aid from PostNord

The European Commission has found that an internal capital injection of DKK 2.34 billion (approximately €314.6 million) from PostNord to Post Danmark does not constitute State aid within the meaning of EU rules. At the same time, the Commission has found that two capital injections from Denmark and Sweden to PostNord, for a total of SEK 667 million (approximately €66 million) constitute incompatible State aid. Consequently, Denmark and Sweden have to recover respectively SEK 267 million (approximately €26.4 million) and SEK 400 million (approximately €39.6 million) from PostNord.

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

Commission approves €500 million Greek aid scheme to support uncovered fixed costs of companies affected by coronavirus outbreak

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

Energy

T-193/19 - Achema and Achema Gas Trade v Commission

The case referred to an action for annulment before the General Court of the European Commission's decision of 31 October 2018 which found that compensation granted by Lithuania to LITGAS for supplying a mandatory quantity of liquefied natural gas to the LGN terminal in Klaipėda was compatible with the State aid rules (SA.44678). On 8 September 2021, the General Court issued its judgment in which it partially upheld the appeal. In particular, the General Court ruled that, when the Commission reviewed the Applicants' complaint, it had 'objective and consistent evidence of serious difficulties' and thus should have launched an in-depth investigation. In addition, the General Court found that review of the compensation of certain costs was 'incomplete, insufficient and inconsistent'.

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

C-850/19 P, FVE Holýšov and 28 others v European Commission

As the process of transition to green economy accelerates, Member States have been reducing the subsidies they promised to grant to the early investors in the production of electricity from renewable sources of energy [RES]. Some of these investors have taken legal action before national courts or resorted to arbitration tribunals in the context of investor-protection treaties to seek compensation. On 16 September 2021, the Court of Justice upheld a judgment of the General Court that rejected claims that the principle of protection of legitimate expectations had been violated.

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

C-57/19 P - Commission v Tempus energy and Tempus Energy Technology

On 2 September 2021, the Court of Justice quashed the Judgment of the General Court of 15 November 2018 in the case Tempus Energy v Commission ([T-793/14](#)). In its ruling, the Court of Justice provided extensive guidance on which elements may (not) give rise to "doubts" as to the compatibility of a State aid measure with the internal market, thus compelling the Commission to open a formal investigation pursuant to Articles 108(3) TFEU and 4(4) of Regulation No 659/1999. In so doing, the Court of Justice circumscribed the Commission's investigative duties as a "good and diligent administration" during the preliminary examination phase of State aid proceedings.

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

Commission approves Greek measures to increase access to electricity for PPC's competitors

Greece submitted these measures to remove the distortion created by PPC's exclusive access to lignite-fired generation, which the Commission and Union courts had found to create an inequality of opportunity in Greek electricity markets. The proposed remedies will lapse when existing lignite plants stop operating commercially (which is currently expected by 2023) or, at the latest, by 31 December 2024.

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

Commission approves €5.7 billion French scheme to support production of electricity from small solar installations on buildings

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

Commission approves €30.5 billion French scheme to support production of electricity from renewable energy sources

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

Commission approves €173 million aid scheme for charging and refueling stations for zero and low emission vehicles in Poland

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

Unannounced inspections of the HCC in the construction of natural gas networks and supply of relevant equipment

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

Clearance of GEK TERNA/ HERON I and HERON II

HCC found that the proposed concentration, which concerns the market for electricity generation and supply at wholesale level, including imports, the market for the construction of electricity generation power plants, the market for electricity supply at retail level, the market for gas supply at wholesale level, and the market for gas supply at retail level, 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 concerned.

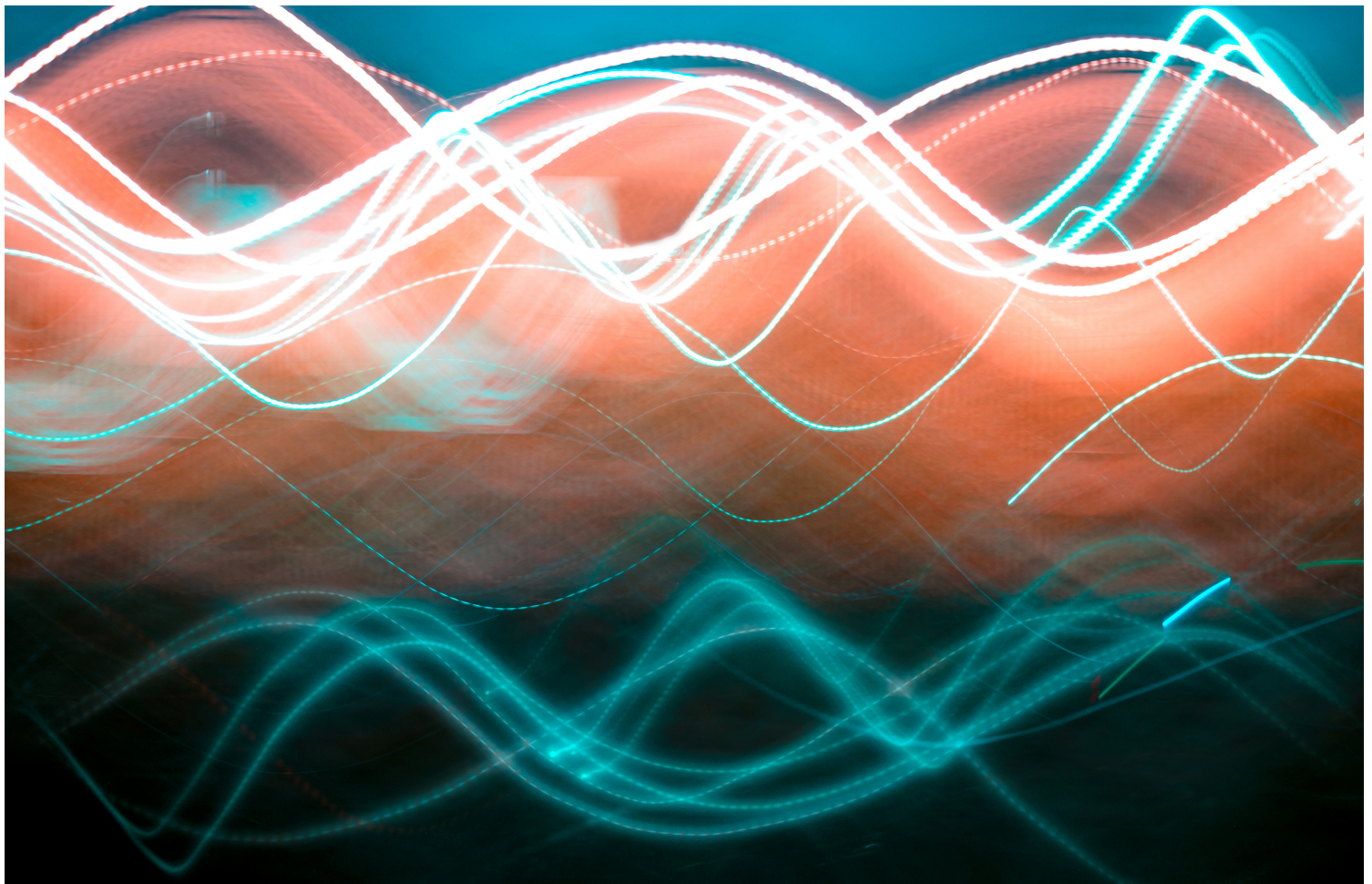
To read the full press release of HCC, click [here](#).

Clearance of the proposed change in the quality of control from sole to joint, by Motor Oil Renewable Energy and Gek Terna Group of companies, of Thermoilektriki Komotinis

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

Clearance of the proposed change in the quality of control from sole to joint, by the Public Power Corporation Renewables S.A. and Geoenergy Aegean Single Member S.A., of company Geothermal Target TWO II Single Member S.A.

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



Electronic Communications & Post

T-425/18 - Altice Europe v Commission

The General Court upheld the Commission's 2018 decision imposing an EUR 124 million fine on Altice Europe NV (Altice) for violating the "standstill" and notification obligations under the EU Merger Control Regulation. This decision represents a significant expansion of EU enforcement against "gun jumping."

In particular, the GC affirmed that the Commission could impose two separate fines: (i) a fine for implementing a concentration prior to its clearance by the Commission, and (ii) a fine for implementing a concentration prior to its notification. In coming to those findings, the GC also clarified the appropriateness of certain pre-closing covenants and information exchanges.

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

Commission approves acquisition of Telekom Romania by Orange, subject to conditions

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

Commission publishes results of evaluation of EU State aid rules for deployment of broadband networks

The European Commission has published a Commission [Staff Working Document](#) summarising the results of an evaluation of the State aid rules for the deployment of broadband networks: (i) the [Broadband Guidelines](#) and (ii) the corresponding provisions of the [General Block Exemption Regulation](#) (GBER). The evaluation concludes that, overall, the existing rules work well and are fit for purpose.

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

Transport

Judgments in Cases T-240/18 and T-296/18 Polskie Linie Lotnicze 'LOT' v Commission

The General Court dismissed the actions of Polskie Linie Lotnicze 'LOT' against the Commission decisions authorizing the mergers concerning the acquisition by easyJet and Lufthansa, respectively, of certain assets of the Air Berlin group.

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

C-453/19 P - Deutsche Lufthansa v Commission

In this case, an appeal was filed against the General Court's judgment of 12 April 2019 *Deutsche Lufthansa v Commission* (T-492/15), by which the General Court declared inadmissible the action for annulment of Commission Decision 2016/789 in State aid case SA.21121 (aid implemented by Germany for the financing of Frankfurt Hahn airport and the financial relations between the airport and Ryanair). The Court of Justice has clarified the rules on the admissibility of actions for annulment brought by competitors against Commission State aid decisions adopted following the formal investigation procedure provided for in Article 108(2) TFEU.

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

Commission finds new air carrier ITA is not Alitalia's economic successor and Italy's capital injections into ITA are market conform

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

Commission approves award of slots at Paris-Orly airport to Vueling in context of Air France's recapitalisation

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

Commission concludes Italian loans worth €900 million to Alitalia are illegal aid

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

Commission approves €39.7 million of Italian aid measure to compensate Alitalia for further damages suffered due to coronavirus outbreak

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



KLC Law Firm

10 Kapsali Str. 10674 Athens, Greece

T. +30 210 7264500

F. +30 210 7264510 www.klclawfirm.com