

# KLC

LAW FIRM

# COMPETITION & REGULATION REPORT

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- Mergers
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- T-799/17 Scania v European Commission
- Ex officio investigation of the Hellenic Competition Commission in the market of the installation and maintenance of elevators (Settlement Procedure)
- Ex officio investigation of the Hellenic Competition Commission in markets concerning the provision of catering services to migrants/refugees (Settlement Procedure)
- Decision on the ex-officio investigation in the ferry connection market of the port of Igoumenitsa with the island of Corfu (Settlement Procedure)
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- Commission approves 2022-2027 regional aid map for Greece
- Commission refers UK to EU Court of Justice over a UK Judgment allowing enforcement of an arbitral award granting illegal State aid

# Editorial

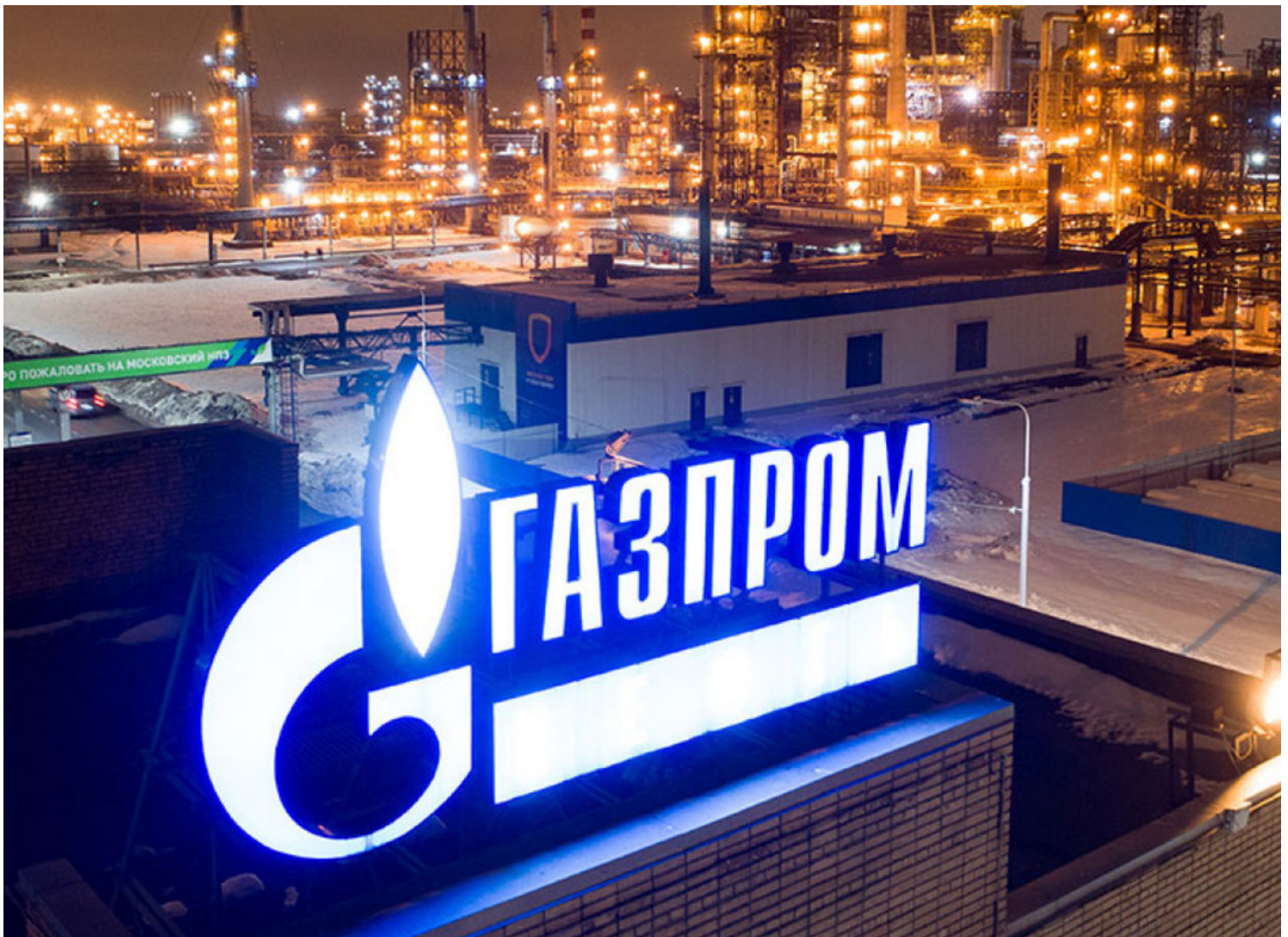
## **Gazprom's commercial policy scrutinized by the General Court: Two important judgements in the middle of the energy crisis.**

On 2 February 2022 the General Court of the European Union issued two judgements in the cases T-616/18 and T-399/19, both related to the compliance of Gazprom with competition law, following and related to the 2011-2015 European Commission investigation of the gas markets in central and eastern Europe.

In case **T-616/18** *Polskie Górnictwo Naftowe i Gazownictwo v Commission* (Commitments by Gazprom), the General Court dismissed the action brought against **Decision C(2018) 3106** final of the European Commission which made binding on Gazprom commitments proposed by itself in order to address abuse of dominance concerns regarding the national markets of Bulgaria, Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland and Slovakia for the upstream wholesale supply of gas. The applicant, a Polish gas wholesaler, argued that the Commission, by accepting Gazprom's proposed – claimed to be – incomplete and insufficient commitments infringed Ar. 9 of Reg. 1/2003 and the principle of proportionality, along with Ar. 194 TFEU defining the energy policy of the European Union.

In particular, the applicant raised six pleas. The first plea alleged that the Commission accepted the final commitments notwithstanding them not referring to the Yamal Pipeline objections, which plea the court rejected, by reference to the fact that, according to the Commission, the Yamal pipeline concerns were dispelled as soon as the Polish energy regulator certified the operator of the polish section of the pipeline as an independent system operator by May 2015, establishing that, should Gazprom had made any attempt to increase its control over the management of investments, it was the operator who exercised executive power over the investment. Furthermore, the court pointed out that the Commission did not find that no infringement of European competition law had been committed, thus leaving intact the powers of both national courts and regulatory authorities to step in and put Gazprom's behavior under scrutiny, rejecting the plea that the principle of sincere cooperation had been infringed. The second plea referred to the pricing policy commitments being inadequate, as the Commission, rather than imposing a direct change of the pricing methodology of the contracts concerned, accepted a new methodology to be adopted, based on the pricing guidelines collectively emerging from the commitments, with the possibility of referral of any disputes arising thereof to an EU established arbitration tribunal, obliged to enforce EU competition law. The court found that the Commission did not commit any manifest error in accepting such a commitment. Regarding the third plea, that the territorial restrictions objections were inadequately satisfied, the Commission pointed out the commitment undertook by Gazprom to proceed to changes of gas delivery points. The Court upheld Commission's positions. The court also rejected the fourth plea, that of disregard on behalf of the Commission to Ar. 194 TFEU, as not demonstrated by the applicant, as well as the fifth plea, alleging breach of procedure by the Commission during the consultation with the Advisory Committee on Restrictive Practices and Dominant Positions. Finally, the sixth plea claiming breach of its procedural rights by the act of the Commission to open separate proceedings for their complaint of 9 March 2017, was rejected as the effective exercise of the applicant's rights was not found to have been impeded.

In case [T-399/19](#) *Polskie Górnictwo Naftowe i Gazownictwo v Commission* (Rejection of a complaint), the General Court upheld the action for annulment of [Decision C\(2019\) 3003 final](#) of the European Commission which rejected the same applicant's complaint submitted on 9 March 2017, by which the complainant alleged infrastructure related abusive practices by Gazprom. The court found that the Commission did not explicitly refer to its letter of intention to reject the complaint, to the State action defense as a ground for its Decision, and consequently failed to fulfil its obligation to inform the applicant under Ar. 7(1) of Reg. 773/2004. Had this error been omitted, the court underlined, the contested decision might have been essentially different as far as this ground is concerned. Additionally, the court found that the Commission committed a manifest error of assessment regarding the Polish energy regulator's certification decision, brought in support of its finding of a limited likelihood of establishing an infringement of Ar. 102 TFEU by Gazprom related to the claims concerning infrastructure-related conditions. In this regard, the court underlined that the Commission disregarded the fact that the transfer of the compression and metering stations of the polish located section of the Yamal Pipeline, previously operated jointly by the applicant and Gazprom, had not been transferred to the certified operator, thus rendering the certification decision vacant.





# Antitrust

## **T-286/09 RENV Intel Corporation v European Commission**

In this case, following judgement [C-413/14 P](#) of the Grand Chamber of the Court of Justice of the European Union, which set aside the judgment of the General Court (GC) of 12 June 2014, Intel v Commission ([T-286/09](#), EU:T:2014:547) and referred the case back to the GC, the GC annulled in part [Commission Decision C\(2009\) 3726 final](#) imposing a fine of € 1.06 billion on Intel. GC ruled that the Commission failed to properly assess the market share covered by the contested practice criterion, as well as to properly analyze the duration of the said practice; hence, Commission's analysis was incomplete, making impossible to establish to the requisite legal standard the conditional rebates at issue even having, or being likely to have, anticompetitive effects according to Ar. 102 TFEU. To read the full judgement, click [here](#).

## **T-799/17 Scania v European Commission**

The General Court dismissed Scania's action seeking annulment of [Commission Decision C\(2017\) 6467 final](#). The General Court verified that the "hybrid" procedure followed by the Commission did not infringe the principle of the presumption of innocence, the rights of defense or the principle of impartiality, To read the full judgement, click [here](#).

## **Commission opens investigation into licensing and distribution practices of [fashion house Pierre Cardin and its licensee Ahlers](#).**

## **Commission publishes [final report](#) and its accompanying [staff working document](#) on consumer Internet of Things sector inquiry**

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

## **Commission invites comments [on draft revised rules on horizontal cooperation agreements between companies](#).**

## **Ex officio investigation of the Hellenic Competition Commission in the markets of the installation and maintenance of elevators (Settlement Procedure)**

The Plenary of the HCC unanimously adopted Decision No 750/2021 according to the simplified Settlement Procedure and imposed a reduced fine amounting to € 5.703,69. To read the full press release of the HCC, click [here](#).

## **Ex officio investigation of the Hellenic Competition Commission in markets concerning the provision of catering services to migrants/ refugees (Settlement Procedure)**

The Plenary of the HCC unanimously adopted Decision No 767/2022 according to the simplified Settlement Procedure and imposed a total fine for all companies concerned amounting to € 304,427.89. To read the full press release of the HCC, click [here](#).

## **Decision on the ex-officio investigation in the ferry connection market of the port of Igoumenitsa with the island of Corfu (Settlement Procedure)**

The Plenary of the HCC imposed reduced fines amounting to €324,864. To read the full press release of the HCC, click [here](#).

## **HCC Decision No 722/2020 on the imposition of a fine to the Karditsa Pharmaceutical Association (FSK) in the market of pharmaceutical services in the Prefecture of Karditsa**

The Plenary of the HCC unanimously adopted Decision No 722/2020 and imposed on the FSK a fine amounting to € 2,096.83. To read the full press release of the HCC, click [here](#).

**HCC Decision on the complaint** lodged against the companies under the names “MONDIALPOL HELLAS SECURITY SERVICES S.A” and “ISS SECURITY S.A.”

**HCC Sector Inquiry into E-Commerce** – Second public consultation - Teleconference on the Interim Report

HCC carries out unannounced inspections in the sectors of **cosmetics and personal care**.

HCC carries out unannounced inspections in the sectors of **eyewear**

HCC carries out unannounced inspections in the sector of **pasta products**.

## Merger

Commission clears **acquisition of Kustomer by Meta (formerly Facebook)**, subject to conditions

Commission approves **acquisition of Ferro by Prince**, subject to conditions

Commission **prohibits proposed acquisition** of Daewoo Shipbuilding & Marine Engineering by Hyundai Heavy Industries Holdings

Commission **clears the merger of Cargotec with Konecranes**, subject to conditions

Commission finds that **Hungary's veto over the acquisition of AEGON's Hungarian subsidiaries by VIG** breached Article 21 of the EU Merger Regulation

**Clearance by the HCC** of the proposed acquisition of sole control by DELTA SA Industrial and Commercial Food Company Sole Proprietors SA over Daniel S. Gatenio & Son SA Import and Export Company, food and beverages

The proposed acquisition of sole control by Delivery Hero SE of Alfa Dianomes SA, Inkat SA, Delivery.gr and E-table raises serious doubts as to its horizontal non-coordinated effects in the relevant markets according to HCC. The HCC initiated the Phase of full investigation of the proposed acquisition.

To read the full press release of the HCC, in Greek, click **here**.



# State Aid

## **C-347/20 SIA 'Zinātnes parks' v Finanšu ministrija**

In this request for a preliminary ruling, the Court interpreted Ar. 2(18)(a) of Commission Regulation 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 TFEU as meaning that, in order to determine whether a company is 'in difficulty' within the meaning of that provision, the expression 'subscribed share capital' must be understood as referring to all contributions which current or future members or shareholders of a company have made or have irrevocably undertaken to make; Ar. 3(3) of Reg. 1301/2013 of the European Parliament and of the Council of 17 December 2013 as meaning that, in order to determine whether a project applicant is to be regarded as not being 'in difficulty' within the meaning of Ar. 2(18) of Reg. 651/2014, the competent managing authority must take account only of evidence complying with the requirements laid down when the project selection procedure was drawn up, provided that those requirements comply with the principles of effectiveness and equivalence, as well as with the general principles of EU law, such as, in particular, the principles of equal treatment, transparency and proportionality; Ar. 125(3) of Reg. No 1303/2013 of the European Parliament and of the Council of 17 December 2013, together with the principles of non-discrimination and transparency to which that provision refers, must be interpreted as not precluding national legislation under which project applications may not be the subject of clarification after the deadline for submission of those applications. The Court however underlined that, pursuant to the principle of equivalence, that impossibility, for project applicants, to complete their file after the said deadline, must concern all procedures which may, where appropriate, be regarded as comparable with regard to their purpose, cause of action and essential characteristics to that laid down for receipt of support from the European Regional Development Fund.

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

## **C-51/20 European Commission v Hellenic Republic**

In this action for failure to fulfill obligations, the Court ruled that the Hellenic Republic, having failed to adopt all the measures necessary to comply with the judgment of 9 November 2017, Commission v Greece (C-481/16, not published, EU:C:2017:845), has failed to fulfil its obligations under Ar. 260(1) TFEU, and was therefore ordered to pay the European Commission a lump sum of € 5.500.000, as well as a periodic penalty payment in the amount of € 4.368.000 per six-month period from the date of delivery of the present judgment up to the date of full compliance with judgment C-481/16.

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

## **C-638/19 P European Commission v European Food and Others**

Upon review of this appeal against the judgment of the General Court (GC) of 18 June 2019, European Food and Others v Commission ([T-624/15](#), [T-694/15](#) and [T-704/15](#), EU:T:2019:423), the Court found that the GC erred in law both by ruling the Commission as incompetent *ratione temporis* to adopt Decision 2015/1470 of 30 March 2015 on State aid SA.38517 (2014/C) and by declaring judgment of 6 March 2018, Achmea, ([C-284/16](#), EU:C:2018:158) as inapplicable thereto. The Court set aside the contested decision, while declaring no need to adjudicate on the cross-appeal and referred the case back to the General Court for it to adjudicate on the pleas and arguments raised before it on the merits, and in particular whether the measure of the decision at hand substantially falls within the conditions of Ar. 107(1) TFEU.

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



**T-757/18 Koinopraxia Touristiki Loutrakiou AE OTA – Loutraki AE – Klab Otel Loutraki Kazino Touristikes kai Xenodocheiakes Epicheiriseis AE v European Commission**

The General Court dismissed entirely an application seeking annulment of Commission Decision (EU) 2018/1575 of 9 August 2018 on the measures to certain Greek casinos SA.28973 – C 16/2010 (ex NN 22/2010, ex CP 318/2009) implemented by Greece.

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

**Commission opens in-depth investigation into German support measures in favour of [DB Cargo](#).****Commission approves 2022-2027 regional aid map for Greece**

The European Commission has approved under EU State aid rules Greece's map for granting regional aid from 1 January 2022 to 31 December 2027 within the framework of the [revised Regional aid Guidelines](#) ('RAG').

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

**Commission approves 2022-2027 regional aid map for [Cyprus](#).****Commission refers UK to EU Court of Justice over a UK Judgment allowing enforcement of an arbitral award granting illegal State aid**

The Commission has decided to refer the **United Kingdom** to the Court of Justice of the European Union in relation to a judgment of its Supreme Court of 19 February 2020 allowing enforcement of an arbitral award ordering Romania to pay compensation to investors, despite a Commission decision having found that the compensation infringed EU State aid rules.

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



# Energy

Commission approves restructuring aid of up to around €2.7 billion for Romanian power company Complexul Energetic Oltenia S.A.

# Telecommunications

Commission approves €3.8 billion Italian scheme under Recovery and Resilience Facility to support deployment of Gigabit networks

The measure is part of a comprehensive strategy Italy put in place to address the needs of the digitalization of the country. It will also contribute to the EU's strategic objectives relating to the digital transition.

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

# Transport

**C-563/20 ORLEN KolTrans v Prezes Urzędu Transportu Kolejowego**

In this case the Court responded to a request for a preliminary ruling submitted by the Regional Court of Warsaw, Poland, by interpreting two provisions of Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification, as amended by Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007. The Court interpreted Ar. 30(2)(e) of the Directive as not governing the right of a railway undertaking using or intending to use the railway infrastructure, to participate in any procedure conducted by the regulatory body for the purpose of adopting a decision approving or rejecting a draft unit rate for the basic charge for minimum access to infrastructure submitted by an infrastructure manager. Article 30(6) of the Directive is interpreted as meaning that such a railway undertaking must be able to challenge before the court having jurisdiction the said decision of the regulatory body.

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

**T-791/19 Sped-Pro S.A. v European Commission**

The General Court annulled Commission Decision C(2019) 6099 final by which Sped-Pro S.A.'s complaint of abuse of a dominant position on the rail freight transport services market in Poland against the Polish state controlled PKP Cargo S.A. was rejected. The General Court found that the Commission failed to duly examine the evidence submitted by the applicant in order to conduct a thorough examination of the second step of the analysis provided by the judgement in case C-216/18 PPU. Thus, the Commission failed to ensure whether the Polish competition authority was in a position to adequately safeguard the complainant's rights, before rejecting its complaint for lack of EU interest by the annulled Decision, on the ground that the Polish competition authority is best placed to examine it.

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

Commission approves €20 million Spanish scheme under Recovery and Resilience Facility to support deployment of intelligent transportation systems

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