The CJEU further clarifies the competition law assessment of selective distribution restrictions

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Editorial: The CJEU further clarifies the competition law assessment of selective distribution restrictions

In its preliminary judgement in Case C-230/16, the CJEU clarified that a supplier of luxury goods has the right to prohibit its authorised distributors from selling those goods on a third-party internet platform such as Amazon.

The Court reminded first its long established case-law according to which a selective distribution system for luxury goods, designed primarily to preserve the luxury image of those goods, does not breach the prohibition of agreements, decisions and concerted practices laid down in EU law, provided that the following conditions are cumulatively met: (i) resellers are chosen on the basis of objective criteria of a qualitative nature, laid down uniformly for all potential resellers and not applied in a discriminatory fashion; and (ii) the criteria laid down must not go beyond what is necessary to achieve the aforementioned goal of preservation of the quality image.

Applying these criteria the CJEU has already established that in the context of a selective distribution system, a general prohibition made to the reseller to sell the products under contract via the internet as a result of a contractual clause requiring sales of cosmetics and personal care products to be made in a physical space where a qualified pharmacist must be present, amounts to a restriction of competition by object which is not after examination of its legal and economic context objectively justified and cannot further be block exempted.

However, with its judgement at hand the CJEU clarifies that a clause in a selective distribution contract by virtue of which internet sales via a third party platform, such as Amazon, is restricted can be regarded as objectively justified. In fact, according to the Court that prohibition does not appear to go beyond what is necessary to preserve the luxury image of the contractual goods. In particular, given the absence of any contractual relationship between the supplier and the third-party platforms enabling that supplier to require those platforms

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to comply with the quality criteria which it has imposed on its authorised distributors, an authorisation for those distributors to use such platforms subject to their compliance with pre-defined quality conditions cannot be regarded as being as effective as the prohibition at issue. To read the full Press Release of the Court, click here.

**Antitrust**

The CJEU ruled that the concertation on price and quantities between agricultural producers and associations of theirs may constitute an agreement, decision or concerted practice for the purposes of competition law.

In 2012, the French Competition Authority imposed sanctions on practices considered to be anticompetitive in the endive production and marketing sector. Those practices, implemented by producer organisations (POs), associations of producer organisations (APOs) and various bodies and companies, consisted, in essence, of concertation on the price of endives and the quantities placed on the market as well as the exchange of strategic information. The Court of Justice of the European Union (CJEU) noted that under the TFEU, the common agricultural policy (CAP) has precedence over the objectives of competition, with the result that the EU legislature may exclude from the scope of competition law certain practices which would have to be regarded as anticompetitive. The CJEU also observed that the common organisations of the markets in agricultural products are not a competition-free zone. The CJEU concluded that the practices adopted within an entity not recognised by a Member State in pursuance of one of the objectives assigned to POs and APOs cannot escape the prohibition of agreements, decisions and concerted practices. The Court noted that practices established between several POs or APOs and, all the more so, practices involving not only such POs or APOs but also entities not recognised by a Member State in the context of the implementation of the CAP cannot escape the prohibition of agreements, decisions and concerted practices. To read the full press release of the CJEU (No 120/17), click here. To read the full judgement of the CJEU click here.

**GC annulled in part the Commission’s decision against the Icap Group in the cartels relating to Yen interest rate derivatives**

In 2013, the Commission imposed fines totalling €669,719,000 on the banks UBS, RBS, Deutsche Bank, Citigroup, JPMorgan and on the broker RP Martin for participating in one or more cartels in the Yen interest rate derivatives sector. The Commission uncovered seven
distinct bilateral infringements lasting between 1 and 10 months in the period 2007 to 2010. The cartel concerned discussions between traders of the participating banks on certain JPY LIBOR submissions. The aforementioned companies had admitted their involvement in the cartels, which allowed the Commission to settle the case with them. The Icap Group, which, according to the Commission, facilitated six of the seven cartels discovered, chose not to settle the case. The General Court (GC) observed that, in the context of the bilateral cartel between UBS and RBS in 2008, the Commission did not succeed in proving that Icap was aware of RBS’s role in that cartel. In the light of the available evidence, nor could the Commission reasonably conclude that Icap should have suspected that UBS’s requests in 2008 were part of the implementation of collusion with another bank (RBS). The GC therefore annulled the part of the Commission’s decision finding that Icap participated in the bilateral cartel between UBS and RBS in 2008. The Court emphasised that, in cases of ‘hybrid’ settlement procedures which do not concern all the participants in an infringement, the Commission must respect the presumption of innocence of the undertaking which has decided not to enter into a settlement. To read the full press release of the GC (No 118/17), click here. To read the full judgement of the CJEU click here.

The European Commission decided that International Skating Union’s restrictive penalties on athletes breach EU competition rules

The European Commission has decided that International Skating Union (ISU) rules imposing severe penalties on athletes participating in speed skating competitions that are not authorised by the ISU are in breach of EU antitrust law. The ISU must now change these rules. By imposing such restrictions, the ISU eligibility rules restrict competition and enable the ISU to pursue its own commercial interests to the detriment of athletes and organisers of competing events. In particular, the Commission considered that the ISU eligibility rules restrict the commercial freedom of athletes who are prevented from participating in independent skating events. The Commission decision requires the ISU to stop its illegal conduct within 90 days and to refrain from any measure that has the same or an equivalent object or effect. In order to comply, the ISU can abolish or modify its eligibility rules so that they are based only on legitimate objectives (explicitly excluding the ISU’s own economic interests) and that they are inherent and proportionate to achieve those objectives. 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 publishes non-confidential version of decision to fine Google €2.42 billion for abusing dominance

The European Commission has published the non-confidential version of the decision adopted on 27 June 2017 to fine Google €2.42 billion for breaching EU antitrust rules. The decision found that Google abused its market dominance as a search engine by giving an illegal advantage to another Google product, its comparison shopping service. To read the relevant press release of the European Commission click here.

Greece: The HCC to decide on violation of art. 1 of Law 3959/2011 after ex Officio investigation in the field of provision of electrical installations/services

The Hellenic Competition Commission will convene on the 24th of January 2018 to decide on the violation of art. 1 3959/2011 by transport companies in the area of Kavala. According to the statement of objections the undertakings involved participated in a horizontal agreement to the fixing of tariffs charged for the transportation of fertilizers of the company “ELFEA.B.E.E.”, and other violations of art. 1 of Law 3959/2011. To read the full press release of the HCC, please visit the website of the HCC.

Greece: The HCC to decide on violation of art. 1 of Law 3959/2011 after ex Officio investigation in the field of provision of electrical installations/services

The Hellenic Competition Commission will convene on the 2th of February 2018 to decide on the violation of art. 1 3959/2011 by electrical installations/services suppliers. According to the statement of objections the undertakings under the “Panhellenic Federation of Associations of Electrical Contractors” have coordinated their charging policies and set minimum tariffs for a series of electrical services in violation of art. 1 of Law 3959/2011. To read the full press release of the HCC, please visit the website of the HCC.

Greece: The HCC decided to take interim measures regarding its ex Officio investigation concerning the market of potatoes and dairy products on the island of Naxos

The Hellenic Competition Commission decided to take interim measures regarding its ex Officio investigation against the Union of Agricultural Cooperatives of Naxos. The Union undertook the responsibility to recall its decision posing restrictions on the free distribution of potatoes by its members, as well as publish this decision and notify all of its members. In case of no compliance, the HCC could impose a fine of 2,000 euros per day of non-compliance. To read
the full press release of the HCC, please visit the website of the HCC.

Greece: The HCC to decide on alleged infringements of Articles 1 and 2 of Law 3959/2011 by “MINERVA S.A. Edible Oils Enterprises” regarding its supply agreements of butter and margarine products both on the wholesale and retail level in Greece

The Hellenic Competition Commission will convene on the 25th of February 2018 to decide on the violation of art. 1 and 2 of Law 703/77 by “MINERVA S.A. in connection with commercial practices employed by MINERVA to butter and margarine products in Greece. In particular, according to the statement of objections, the investigation focused, on the contract clauses between MINERVA and its wholesalers imposing resale price main tenance and restriction of passive sales to other exclusive territories, in breach of Article 1 of Law 3959/2011. To read the full press release of the HCC, please visit the website of the HCC.

Germany: Bundeskartellamt’s preliminary assessment in Facebook proceeding: Facebook’s collection and use of data from third-party sources is abusive

The Bundeskartellamt has informed the company Facebook in writing of its preliminary legal assessment in the abuse of dominance proceeding which the authority is conducting against Facebook. Based on the current stage of the proceedings, the authority assumes that Facebook is dominant on the German market for social networks. The authority holds the view that Facebook is abusing this dominant position by making the use of its social network conditional on its being allowed to limitlessly amass every kind of data generated by using third-party websites and merge it with the user’s Facebook account. These third-party sites include firstly services owned by Facebook such as WhatsApp or Instagram, and secondly websites and apps of other operators with embedded Facebook APIs. According to the authority’s preliminary assessment, when operating this business model Facebook, as a dominant company, must consider that its users cannot switch to other social networks. To read the full press release of the Bundeskartellamt, please click here.

Mergers

The European Commission opened in-depth investigation into proposed acquisition of Ilva by ArcelorMittal

The European Commission has opened an in-depth investigation to assess the proposed acquisition of Ilva by ArcelorMittal under the EU Merger Regulation. The Commission has concerns that the merger may reduce competition for a number of flat carbon steel
products. ArcelorMittal is the leading producer of flat carbon steel, both worldwide and in Europe, with a wide production network within the European Economic Area (EEA). Ilva is a significant producer of flat carbon steel with major production assets in Italy. With the transaction, ArcelorMittal would notably increase its market leadership through the acquisition of Ilva’s steel plant in Taranto, Italy, which is Europe’s largest single-site integrated plant. The Commission’s initial market investigation raised several issues relating in particular to the combination of ArcelorMittal’s and Ilva’s offering of a number of flat carbon steel products, namely hot rolled, cold rolled and galvanised flat carbon steel products. At this stage, the Commission is concerned that, following the transaction, customers would face higher prices, particularly in Southern Europe. To read the full press release of the European Commission click here.

**The European Commission cleared the merger of aerospace equipment suppliers Safran and Zodiac**

The European Commission has approved unconditionally under the EU Merger Regulation the proposed acquisition of Zodiac Aerospace by Safran, both global suppliers of aerospace equipment. Safran of France is active in the aerospace and defence industries worldwide. Zodiac Aerospace also of France is active in the aerospace industry in the development and manufacture of aircraft equipment such as electrical and wiring systems, on-board systems such as seats and galley inserts, as well as solutions for space applications. The Commission found no serious competition concerns because the increase in market shares resulting from the transaction is very limited, and the merged entity will continue to face strong competition from other established suppliers. The Commission concluded that the transaction would raise no competition concerns in the relevant markets. To read the full press release of the European Commission click here.

**The European Commission opened in-depth investigation into proposed acquisition of Cristal by Tronox**

The European Commission has opened an in-depth investigation to assess the proposed takeover of Cristal by Tronox under the EU Merger Regulation. The Commission was concerned that the deal may reduce competition in titanium dioxide pigment, a critical input for many consumer products. Tronox, registered in Australia and headquartered in the US, is active in mining and in the production of minerals and chemicals. Cristal is active in mining and in the production of titanium dioxide and other titanium chemicals. The Commission’s initial market investigation raised several
issues relating in particular to a reduction in the number of suppliers of titanium dioxide pigment produced via the chloride-based process. The market is already concentrated and Tronox and Cristal are close competitors. The Commission is concerned that the transaction could lead to less choice for customers and potentially to higher prices for the products concerned. To read the full press release of the European Commission click here.

The European Commission cleared the acquisition of sole control over OOIL by COSCO

The European Commission has approved, under the EU Merger Regulation, the acquisition of sole control over Orient Overseas (International) Limited ("OOIL") of Bermuda by COSCO SHIPPING Holdings Co., Ltd. of China. OOIL is a company with activities in container liner shipping, logistics services and provision of container terminal services. The Commission found that the combined market share of COSCO and OOIL and their consortia partners would be very significant on the Northern Europe-North America trade route. However, the Commission concluded that the proposed transaction would not give rise to competition concerns given, among other things, (a) the presence of significant competitors post-merger, (b) the fact that the companies do not appear to be close competitors and (c) COSCO’s marginal position on the Northern-Europe-North America trade route. To read the relevant release of the European Commission click here.

The European Commission cleared the creation of the joint venture Carl Zeiss Smart Optics by Carl Zeiss and Deutsche Telekom

The European Commission has approved, under the EU Merger Regulation, the creation of the joint venture Carl Zeiss Smart Optics, Inc. of the US by Carl Zeiss AG and Deutsche Telekom AG, both of Germany. The aim of Carl Zeiss Smart Optics is to develop and commercialise a system for smart glasses. Carl Zeiss AG is a technology group in the field of optics and optoelectronics. The Commission concluded that the proposed acquisition would raise no competition concerns because Carl Zeiss Smart Optics has negligible actual and foreseen activities within the EEA. To read the relevant release of the European Commission click here.

Greece: On 13.12.2017 the concentration by means of acquisition of partial control of the under special administration company “News Organization Lambrakis (DOL)” by “ALTER EGO MEDIA” was notified to the HCC

To read the full press release visit the website of the HCC.
Greece: On 27.11.2017 the concentration by means of an agreement for the mutual sale of ships from their fleet between the company “MINOAN LINES” and the company “Attica GROUP” was notified to the HCC.

To read the full press release visit the website of the HCC.

Greece: On 05.12.2017 the concentration by means of the intention to acquisition of the full control of the company “IASO GENERAL” by the company “HELENIC HEALTHCARE” was notified to the HCC

To read the full press release visit the website of the HCC.

Greece: the HCC cleared the proposed acquisition by «DIMERA MEDIA INVESTMENTS LTD» of sole control over «RADIO TILIOOPTIKI SA» [“EPSILON TV”]

By its unanimous Decision No. 652/2017, the Hellenic Competition Commission in plenum approved, under Greek merger control rules, the proposed acquisition by «DIMERA MEDIA INVESTMENTS LTD» of sole control over «RADIOTILEOPTIKI SA», a company active in the Media market in Greece, which operates the nationwide TV channel “EPSILON TV”. To read the full press release of the HCC, please visit the website of the HCC.

Greece: the HCC cleared the proposed acquisition by Thrace Plastics Co S.A. and Elastron Agrotiki AEVE – Steel Products of joint control over Thermokipia Thrakis S.A.

By its unanimous Decision No. 649/2017, the Hellenic Competition Commission in plenum approved, under Greek merger control rules, the proposed acquisition by Thrace Plastics Co S.A. and Elastron Agrotiki AEVE – Steel Products of joint control over Thermokipia Thrakis S.A, following the merger by absorption of Elastron Agrotiki AEVE by Thermokipia Thrakis S.A. To read the full press release of the HCC, please visit the website of the HCC.

State aid

The CJEU decision on state aid law violation concerning the recovery of state aid regarding Larco S.A.

On 09.11.2017, the CJEU upheld the action of the European Commission, regarding the failure of the Greek Government to recover the state aid granted to Larco S.A. between 2008 and 2011. With its decision of 2014/539 the European Commission established a two month period for the recovery, after which the Commission received no information from the Greek Government regarding the recovery, despite the Commission’s formal notices. The Court decided that the Greek Government failed to fulfill its
obligations by not taking the necessary measures for the recovery of state aid according to the Commission’s decision of 2014/539 within the established period and not informing the European Commission about it. The Court dismissed the defendant’s argumentation that the legal and practical adversaries of the transition plan of Larco S.A. obstructed the immediate execution of the recovery decision. To read the full judgement of the CJEU (C-481/2016) click here.

The General Court dismissed Greek case on the annulment of the Commission’s decision to impose a fine on Piraeus Container Terminal S.A.

According to the Commission’s decision the Greek Government granted to the Piraeus Container Terminal S.A. an unlawful state aid in the form of tax exemptions and favorable provisions on the concession agreement. The General Court of the EU (GC) found no violation of the plaintiff’s rights of defense. The GC regarded the decision of the European Commission sufficiently reasoned and rejected the state’s argumentation of justified derogation from the notion of state aid. As a result, the GC dismissed the case. To read the full judgement of the GC click here.

The European Commission concluded in-depth investigation on support to Italy’s largest steelmaker ILVA S.p.A. in A.S. and orders recovery on two measures that involved illegal State aid.

The European Commission has concluded that two loans granted by Italy in 2015 to support ILVA involved illegal State aid. Italy must now recover this undue benefit of about €84 million from ILVA. The Commission’s investigation has confirmed that two measures gave ILVA an undue advantage, in breach of EU State aid rules, the pricing conditions of a State guarantee on a €400 million loan and a €300 million public loan. The responsibility to repay illegal aid remains with ILVA and would not affect any future buyer of ILVA assets, provided there is economic discontinuity between ILVA and the entity under new ownership. To read the full release of the European Commission click here.

The European Commission approved introduction of tradable phosphate rights for dairy cattle in the Netherlands.

The European Commission has approved under EU State aid rules a trading system for phosphate rights for dairy cattle in the Netherlands. The measure aims to improve water quality in the Netherlands by limiting phosphate production from dairy cattle manure and promote a shift to land-based farming. Given the high density of dairy cattle in the Netherlands, the phosphate contained in dairy cattle manure
represents a significant environmental concern, as this can pollute ground and surface water. To limit phosphate production from dairy cattle manure in the Netherlands and to encourage land-based farming in the dairy cattle sector, and so improve water quality, the Dutch authorities are setting up a trading system for phosphate rights for dairy cattle. The Commission considered that the measure constitutes State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union. As the measure has a clear environmental objective, the Commission has assessed it under the EU Guidelines on State aid for environmental protection and energy 2014-2020. To read the full release of the European Commission click here.

The European Commission opened in-depth investigation into the Netherlands’ tax treatment of Inter IKEA

The European Commission has opened an in-depth investigation into the Netherlands’ tax treatment of Inter IKEA, one of the two groups operating the IKEA business. The Commission has concerns that two Dutch tax rulings may have allowed Inter IKEA to pay less tax and given them an unfair advantage over other companies, in breach of EU State aid rules. The Commission will now investigate Inter IKEA Systems’ tax treatment under both tax rulings. Firstly, the Commission will assess whether the annual licence fee paid by Inter IKEA Systems to I.I. Holding, endorsed in the 2006 tax ruling, reflects economic reality. In particular, it will assess if the level of the annual licence fee reflects Inter IKEA Systems’ contribution to the franchise business. Secondly, the Commission will also assess whether the price Inter IKEA Systems agreed for the acquisition of the intellectual property rights and consequently the interest paid for the intercompany loan, endorsed in the 2011 tax ruling, reflect economic reality. In particular, the Commission will assess if the acquisition price adequately reflects the contribution made by Inter IKEA Systems to the value of the franchise business, and the level of interest deducted from Inter IKEA Systems’ tax base in the Netherlands. To read the full release of the European Commission click here.

The European Commission approved prolongation of Greek bank guarantee scheme

The European Commission has authorised the prolongation of the Greek guarantee scheme for credit institutions until 31 May 2018 under EU State aid rules. The liquidity situation of the Greek banks is gradually improving. Therefore, the scheme is used significantly less. In this context, the Commission has found the prolongation of the guarantee scheme to be in line with the 2013 Banking Communication, which
sets out the rules on State aid to banks during the crisis. This is because the prolonged measure is targeted, proportionate and limited in time and scope. To read the relevant release of the European Commission click here.

The European Commission confirmed most Greek measures for Hellenic Defence Systems do not involve aid and ordered recovery of some public support for civil activities

Hellenic Defence Systems S.A. (or Ellinika Amynitika Systimata A.E. - HDS) is a Greek company, which is almost fully-owned by the Greek State. HDS manufactured both defence-related products (e.g. infantry weapons, ammunition, weapon systems, aircraft fuel tanks) as well as civil-use products (e.g. small pistols, explosives for construction works, fireworks). During the period 2004-2011, Greece granted a number of support measures to HDS. These measures included a direct grant by the State of €10 million, a capital increase of €158 million and several State guarantees for loans of up to €942 million. The EU Treaty fully recognises the right of Member States to take measures they consider necessary to protect their essential security interests in connection with the production of military products (Article 346 of the Treaty on the Functioning of the European Union). Such measures are excluded from assessment under EU State aid rules. At the same time, public support for civil activities of defence companies have to comply with EU State aid rules. The Commission’s in-depth investigation of the Greek measures in favour of HDS has concluded that the vast majority of Greek measures for HDS fall outside scope of EU State aid control because they served Greek security interests. Some Greek measures (worth up to €55 million) for HDS’ civil activities amounted to illegal State aid in breach of EU rules. To read the full press release of the European Commission click here.

The European Commission and China start new dialogue on State aid control and discuss competition policy

In the context of the cooperation on competition matters, on 2 June 2017 the EU and China signed a Memorandum of Understanding to start a dialogue on State aid control, creating a mechanism for consultation, cooperation and transparency in this field. The agreement complements the existing cooperation framework between the EU and China in the field of competition policy and enforcement. In particular, cooperation on State aid control is important to prevent public policies from distorting or restricting competition, or from harming an internal market. Both sides acknowledged the mutual benefit of exchanging experiences on how to optimise and steer the use of State resources to promote efficient and sustainable
economic development. In this context, the EU welcomed China’s adoption of a Fair Competition Review System designed to ensure State measures do not adversely affect market entry and exit and the free movement of goods. As part of this new dialogue, the Commission also met at technical level the 28 ministries in charge of implementing the Fair Competition Review System in China. This cooperation between the EU and China will continue and both sides agreed to take stock of the dialogue at the next EU-China Summit in 2018. To read the full press release of the European Commission click here.

The European Commission approved Greece’s plan to exchange its Eurobank preference shares with Tier 2 bonds

The European Commission has endorsed, under EU State aid rules, a plan notified by Greece to exchange the State’s existing preference shares in Eurobank for Tier 2 bonds. The Greek authorities considered that this exchange does not involve State aid but notified the measure to the Commission for legal certainty. In May 2009, Eurobank received a capital injection of €950 million in the form of preference shares under the recapitalisation measure of the Greek Banks Support scheme. The Commission found that, compared to these preference shares, the terms of the new Tier 2 Bonds imply an improvement for the Greek State.

In particular, while the preference shares have a high nominal coupon, its payment is subject to conditions and in practice the coupon has not been paid since 2011 and is not expected to be paid in the future. The Commission concluded that a private investor would accept the exchange at the envisioned terms and therefore the exchange does not result in additional State aid to Eurobank. To read the relevant press release of the European Commission, click here.

Energy

CJEU decision on natural gas suppliers’ obligations concerning security of gas supply

The companies Eni, Eni Gas & Power France and UPRIGAZ applied to the French Council of State for annulment of a French decree which infringed the EU regulation on security of gas supply. Those companies maintained that the decree improperly extends the definition of ‘protected customers’ laid down in the regulation. The definition of ‘protected customers’ is important, as it imposes a whole series of obligations on gas suppliers to safeguard, in the event of crisis, security of gas supply to the most vulnerable customers. The companies in question argued that, in order to ensure continuity of gas supply to customers, the decree requires them to hold sufficient stocks of natural gas in
France, up to 80% of their storage rights. The CJEU observed that the imposition of such an additional obligation is subject to compliance with a number of conditions laid down in the regulation. In particular, such an obligation must be based on a risk assessment, must not unduly distort competition or hamper the functioning of the internal market in natural gas etc. The Court declared that legislation which requires natural gas suppliers to hold sufficient gas stocks necessarily and exclusively on national territory is incompatible with the regulation, as the latter prohibits the competent authorities from taking account solely of infrastructure located on national territory. To read the full press release of the CJEU (No 143/17), click here. To read the full judgement of the CJEU click here.

The European Commission approved progressive application of renewable energy surcharge for certain self-suppliers of electricity in Germany

The European Commission has endorsed under EU State aid rules German plans to progressively apply renewable energy surcharges to certain self-suppliers of electricity. The surcharge reform will contribute to lower electricity bills for consumers, in a sustainable way for existing self-suppliers. The Commission has endorsed German plans on the exemptions and reductions of the EEG surcharge for all existing self-suppliers of electricity (i.e. having entered into operation before August 2014), new self-suppliers (i.e. having entered into operation as of August 2014) using renewable energy sources and new small self-supply installations. The Commission is in ongoing, constructive contact with the German authorities on the issue of reductions for new cogeneration installations used for the self-supply of electricity and heat, which are not covered by this decision. To read the full release of the European Commission click here.

The European Commission cleared the creation of a joint venture by innogy and EEX

The European Commission has approved, under the EU Merger Regulation, the creation of a joint venture by innogy AG, controlled by RWE AG, and European Energy Exchange AG, controlled by Deutsche Börse AG, all of Germany. The joint venture will develop and operate an online price comparison and intermediary platform for German retail energy suppliers in the business-to-business segment. innogy is a European energy company active in infrastructure, supply and renewable energy. The RWE group is active in generation, transport, trading and supply of electricity and gas as well as water and district heating. The Commission concluded that the proposed acquisition would raise no competition concerns given the joint venture's limited activities in
the EEA. To read the relevant release of the European Commission click here.

The European Commission cleared the acquisition of full control of IPMETL and IPFC by Engie

The European Commission has approved, under the EU Merger Regulation, the acquisition of full control of the two British companies IPM Energy Trading Limited (IPMETL) and International Power Fuel Company Limited (IPFC) by the French Engie S.A. Currently, Engie and Mitsui Co. Ltd control together the two companies. The Commission concluded that the envisaged concertation did not raise any antitrust issues, as the overlap of the activities of the companies is limited and already existent. To read the relevant release of the European Commission click here.

The European Commission cleared the acquisition of joint control over GNDB by CPPIB Europe, Allianz Infrastructure and Gas Natural

The European Commission has approved, under the EU Merger Regulation, the acquisition of joint control over Gas Natural Fenosa Generación Nuclear S.L. and Holding Negocios Regulados Gas Natural S.A. (together referred as “GNDB”) of Spain by CPPIB Europe, controlled by CPPIB of Canada, Allianz Infrastructure of Germany and Gas Natural of Spain. GNDB, which was previously solely controlled by Gas Natural, is active in gas distribution and transmission, retail supply of LPG and supply of gas connections in Spain. CPPIB Europe is a professional investment management organisation that invests in equities, private equities, real estate, infrastructure and fixed income instruments. Gas Natural is active in several regulated and deregulated gas and electricity markets in particular in Spain. The Commission concluded that the proposed acquisition would raise no competition concerns because the companies’ activities do not overlap. To read the relevant release of the European Commission click here.

The European Commission opened in-depth investigation into Spain’s support for coal power plants

The European Commission has opened an in-depth investigation to assess whether Spain’s environmental incentive for coal power plants is in line with EU State aid rules. The Commission has concerns the support has been used to meet EU environmental standards that were in any case mandatory. In 2007, the Spanish authorities introduced a scheme (‘environmental incentive’) to support the installation of new sulphur oxide filters in existing coal power plants. These filters were supposed to reduce sulphur oxide emissions from those plants below certain limits. In return, the coal power plants were entitled to receive public support linked to the size of the plant for a period of 10 year. Spain did not notify this
measure to the Commission for assessment under EU State aid rules. At this stage, the Commission has concerns that the emission limits imposed on beneficiaries of the scheme merely implement mandatory environmental EU standards which applied to coal power plants at the time. To read the full press release of the European Commission, click here.

The European Commission approved joint capacity mechanism for Ireland and Northern Ireland

The European Commission has approved under EU State aid rules the new capacity mechanism for the jointly operated Irish and Northern Irish electricity market. The mechanism will help ensure security of electricity supply whilst preserving competition in the Single Market. Under the capacity mechanism, power plants and other capacity providers in the 'all-island market' will obtain a payment for being available to generate electricity or, in the case of demand response operators, for being ready to reduce their electricity consumption to help balance demand with supply. It helps to ensure that there is sufficient capacity to meet electricity demand at all times in Ireland and Northern Ireland. The Commission assessed the measure under the 2014 Guidelines on State aid for environmental protection and energy. As required by the Guidelines, Ireland and Northern Ireland have demonstrated the measure’s necessity for ensuring the security of supply objective, based on a thorough market analysis. To read the full press release of the European Commission, click here.

The European Commission cleared the acquisition of Maersk Olie og Gas by Total

The European Commission has approved, under the EU Merger Regulation, the acquisition of the Danish company Maersk Olie og Gas A/S by the French Company Total S.A. Maersk Olie og Gas is present in the sectors of exploration, production and commerce of petrol and natural gas. Total is a producer and international supplier of energy, present in all sectors of the petrol and natural gas industry. The Commission concluded that the proposed acquisition would raise no competition concerns because it concerns a small percentage of the respective market. To read the relevant press release of the European Commission, click here.

Greece: The HCC accepted revised commitment proposed by DEPA, with regard to the supply of natural gas through electronic auctions

By its unanimous Decision No 651/2017, the Hellenic Competition Commission (HCC) accepted a proposal from DEPA to revise a commitment adopted with earlier HCC decisions(551/VII/2012 and 589/2014), and in particular to
abolish a specific term of the system for the supply of natural gas through electronic auctions (gas release programme) according to which the starting price of auctions (quarterly and annual) reflects any requests from its suppliers or DEPA itself to review the supply price of natural gas imported by DEPA through its long term supply contracts. This revision aims at reducing unexpected volatility regarding the auctions' starting price, while removing participants' uncertainty over its formulation. The revision is effective as of January 1, 2018. To read the full press release of the HCC, please visit the website of the HCC.

Greece: Announcement of results of the Public Consultation concerning the 10-year development program on the National System of Natural Gas (ESFA), 2017-2026

To read the full press release click here.

Greece: Announcement of results of the Public Consultation concerning the introduction of the Code for Natural Gas Supply for eligible customers, the introduction of Natural Gas Standard Distribution Network Connection/Usage/ Contract and the 1st Amendment of the Code for Natural Gas Distribution Network Management

To read the respective press releases click here, here, here, and here.

Electronic communications

The CJEU annulled the Commission’s decision ordering for the recovery of State aid granted by Spain to operators of the terrestrial television platform

The digitisation of broadcasting in the EU has been encouraged by the Commission since 2002 because it has significant advantages over analogue broadcasting. This digitisation can be carried out technically via terrestrial, satellite or cable platforms or through broadband Internet access. In June 2013 the Commission adopted a decision by which it declared the aid granted to the operators of the terrestrial television platform for the deployment, maintenance and operation of the digital terrestrial television network in parts of Spanish territory to be unlawful and incompatible with the internal market in the whole of Spain. By the judgments of 20.12.2017, the CJEU dismissed the appeals in Joined Cases C-66/16P Comunidad Autónoma del País Vasco and Itelazpiv Commission, C-67/16 P Comunidad Autónoma de Cataluña and CTTIvCommission, C-68/16 P Navarra de Servicios y Tecnologías v Commission and C-69/16 P Cellnex Telecomand Retevisión I v Commission and in Case C-81/16 P Spain v Commission. However, on the basis
of grounds of appeal put forward by the Autonomous Community of Galicia and the operator Retegal, the Court—in its judgment in Case C-70/16 P Comunidad Autónoma de Galicia and Retegal v Commission—annulled the Commission’s decision because it was not supported by an adequate statement of reasons. The CJEU noted that the examination of the condition relating to the selectivity of an aid measure must be supported by sufficient reasons to allow, in particular, full judicial review of the question whether the situation of the operators benefiting from the measure is comparable with that of the operators excluded from it.

To read the full press release of the CJEU (No. 142/17) click here. To read the full judgment of the CJEU in Joined Cases C-66/16 P to C-69/16 P, click here. To read the full judgment of the CJEU in Case C-70/16 P, click here. To read the full judgment of the CJEU in Case C-81/16 P, click here.

**ECJ annulled GC Judgment regarding Danish state aid in telecommunications**

On 9 November 2017, the CJEU issued its judgments on appeal in three cases, European Commission v TV2/Danmark, Viasat Broadcasting UK v TV2/Danmark and TV2/Danmark v European Commission. All three cases concerned state aid granted by the Danish state to TV2/Danmark (“TV2”), a Danish broadcasting company. The many measures in favour of TV2 included interest- and repayment-free loans, a state guarantee for operating loans, a corporate tax exemption and licence fee revenue. In addition, TV2 also benefitted from advertising revenue. The action for annulment brought by Viasat was dismissed both by the GC and the ECJ. The action for annulment brought by TV2 was upheld by the GC in so far as the Commission had held that the advertising revenue for 1995 and 1996 paid to TV2 constituted state aid. In particular, the GC found that the advertising revenue did not constitute state resources within the meaning of Article 107(1) TFEU. The rest of the Decision was upheld by the GC, TV2, Viasat and the Commission appealed. The ECJ dismissed the appeal brought by TV2 (Case 649/15 P), but (partly) upheld the appeals brought by Viasat (Case C-657/15 P) and the Commission (Case C-656/15 P). The main question submitted to the ECJ concerned the qualification of the advertising revenue as state resources within the meaning of Article 107(1) TFEU. The ECJ reiterated that the condition that there must be an advantage granted through state resources is satisfied not only where aid is granted directly by the state, but also where it is granted by public or private bodies established or designated by the state with a view to administering the aid. The CJEU concluded that the advertising revenue was under the control and at the disposal of the state and constituted state...
resources within the meaning of Article 107(1) TFEU. The ECJ thus set aside the judgment of the GC to the extent that it annulled the TV2 II Decision. To read the respective judgements of the CJEU click Case C-656/15 P, Case C-657/15 P and Case 649/15 P.

**Greece:** The Hellenic Telecommunications and Post (HTPC) Commission announced the results of its Public Consultation on the reference offer of OTE 2017 regarding the wholesale local access in accordance with HTPC’s Decision AP 792/07/22-12-2016 (Government's Gazette 4505/B/30-12-2016)

To read the full decision of the HTPC, click here.

**Greece:** The HTPC decided to modify the approved reference offer regarding the full and shared unbundled access to the local loop and sub-loop and the respective services, regarding the wholesale product of Virtual Partially Unbundled (VPU), to a FTTH (VPU/FTTH) architecture.

To read the full decision of the HTPC, click here.

**Pharmaceuticals**

**The European Commission cleared the acquisition of Teva’s International Women’s Health Business by CVC**

The European Commission has approved, under the EU Merger Regulation, the acquisition of the International Women’s Health Business of Teva of Israel by the CVC Group of Luxembourg. The International Women’s Health Business of Teva includes the production and supply of women’s health pharmaceutical products worldwide, with the exception of the US. The CVC Group is active in the management and provision of advice to investment funds and platforms. The Commission concluded that the proposed transaction would raise no competition concerns given the moderate overlaps between the activities of the International Women’s Health Business of Teva and those of Alvogen of the US and DOC Generici of Italy, two portfolio companies controlled by CVC, in the markets of pharmaceutical products. To read the relevant release of the European Commission click here.

**UK: CMA accused drug Company of abusing its position to overcharge the NHS**

The Competition and Markets Authority (CMA) has provisionally found that Concordia abused its dominant position to overcharge the NHS by millions for an essential
thyroid drug. The Competition and Markets Authority (CMA) has been investigating how much the pharmaceutical company was charging for liothyronine tablets. Liothyronine tablets are primarily used to treat hypothyroidism, a condition caused by a deficiency of thyroid hormone affecting at least 2 in every 100 people and which can lead to depression, tiredness and weight gain. Although liothyronine tablets are not the primary treatment for hypothyroidism, for many patients there is no suitable alternative and, until earlier this year, Concordia was the only supplier. To read the full press release of the CMA, click here.

**Transport**

**CJEU dismissed British Airways appeal**

On 14 November 2017 the CJEU dismissed the appeal of British Airways against the Commission requesting to set aside in part the judgment of the GC (T-48/11) by which that Court annulled in part a Commission Decision relating to a proceeding under the Agreement between the European Community and the Swiss Confederation on Air Transport, in so far as it concerns British Airways. British Airways has appealed on the grounds that the GC erred in law by applying the concept of ultra petita to constrain its actions even when the GC had of its own motion found there to be fundamental public policy defects which vitiated the European Commission’s Decision entirely. The CJEU noted that an act, concerning a person, which is not challenged before the courts of the EU judicature cannot be annulled by those courts and thus becomes final as regards that person. Under the system governing judicial review proceedings before the EU courts, it is the parties that take the initiative in pursuing the case and delimiting its subject matter, inter alia by identifying in the form of order sought the act, or part of the act, which they intend to submit to judicial review. As a consequence, while, by raising of their own motion a plea involving matters of public policy which, a priori, has not been put forward by the parties, the EU courts do not go beyond the scope of the dispute that has been brought before them, the position would be different if, following their substantive examination of the contested measure, those courts, on the basis of a plea raised of their own motion, were to annul a measure to an extent that went beyond the annulment sought in the form of order they were duly requested to make, on the ground that such an annulment was necessary to remedy the unlawfulness established of their own motion in carrying out their substantive analysis. As a consequence, the GC did not err in law in finding that it could annul the decision at issue only within the limits defined by the form of order set out in the originating
application or, therefore, in annulling that decision only in part, in accordance with those limits. To read the full judgement of the CJEU (Case C-122/16 P), click here.

The European Commission approved the acquisition by Lufthansa of Air Berlin subsidiary LGW, subject to conditions

The European Commission has approved under the EU Merger Regulation Lufthansa's proposed acquisition of certain Air Berlin assets, through the entity Luftfahrtgesellschaft Walter GmbH ('LGW'). The decision is conditional on Lufthansa's compliance with commitments to avoid competition distortions. The Commission decision only concerns Lufthansa's proposed acquisition of LGW. This is because Lufthansa decided to drop the rest of the initially proposed transaction, i.e. its acquisition of NIKI Luftfahrt GmbH ('NIKI'), during the course of the Commission's merger review process. Following several years of financial difficulties, Air Berlin, Germany's second largest airline, filed for insolvency in August 2017. Air Berlin's insolvency administrator then launched a sale of Air Berlin assets with a deadline to submit bids by 15 September 2017. The Commission's investigation found that the increase in Lufthansa's slot portfolio at Düsseldorf airport, through the acquisition of LGW, was likely to adversely affect passengers in terms of fares and/or choice of services. The Commission therefore concluded that the acquisition of LGW by Lufthansa would raise competition concerns at Düsseldorf airport. No concerns were identified at the other airports where Lufthansa acquired slots because either these airports were not as highly congested, or the size of Lufthansa's slot portfolio after the acquisition did not create competition issues, or the increment brought about by the transaction was low. To read the full press release of the European Commission click here.

The European Commission approved proposed acquisition of parts of Air Berlin by EasyJet

The European Commission has approved unconditionally under the EU Merger Regulation the proposed acquisition of certain assets of Air Berlin by easyJet. The Commission concluded that the transaction would not adversely affect competition in the EU Single Market. Air Berlin, Germany's second largest airline, filed for insolvency on 15 August 2017. Air Berlin's insolvency administrator then launched a sales process for Air Berlin assets with a deadline to submit bids by 15 September 2017. Air Berlin's insolvency administrator received a number of bids for various Air Berlin assets. On 12 October 2017, Air Berlin announced that it signed an agreement with Lufthansa for a large part of Air Berlin's assets, i.e. the airline NIKI and the Luftfahrtgesellschaft Walter.
easyJet will continue to face strong competition from large carriers like Lufthansa and Ryanair on routes from and to Berlin. The Commission therefore concluded that the proposed acquisition would raise no competition concerns in any of the relevant markets. To read the full press release of the European Commission click here.

The European Commission fined five car safety equipment suppliers €34 million in cartel settlement

The European Commission has fined Tokai Rika, Takata, Autoliv, Toyoda Gosei and Marutaka a total of €34 million for breaching EU antitrust rules. The companies took part in one or more of four cartels for the supply of car seatbelts, airbags and steering wheels to Japanese car manufacturers in the EEA. All five suppliers acknowledged their involvement in the cartels and agreed to settle the case. Takata was not fined for three of the cartels as it revealed their existence to the Commission. Tokai Rika was not fined for one of the cartels as it revealed its existence to the Commission. The five car component suppliers addressed in this decision coordinated prices or markets, and exchanged sensitive information for the supply of seatbelts, airbags and steering wheels to Japanese car manufacturers Toyota, Suzuki and Honda in the European Economic Area (EEA). The coordination to form and run the cartel took place outside the EEA, notably in Japan, mainly through meetings at the suppliers’ business premises but also in restaurants and hotels, as well as through e-mail exchanges. Collusion between the car safety equipment suppliers generally intensified when specific requests for quotations were launched by the car manufacturers concerned. The cartel may have had a significant effect on European customers, since around one out of every eleven cars sold in Europe is produced by a Japanese company. To read the full press release of the European Commission, click here.

The European Commission approved Belgian tax measures for maritime transport

The European Commission has approved under EU State aid rules the prolongation until end 2022 of various Belgian support measures for maritime transport. The scheme encourages shipping companies to register their ships in Europe and so ensure higher social, environmental and safety standards. Belgium has also committed to a number of changes to its scheme to prevent any discrimination between shipping companies and registries of different European Economic Area (EEA) States and to avoid undue competition distortions. Under the Belgian scheme, a shipping company is taxed on the basis of ship tonnage (i.e. based on size of shipping fleet) rather than the actual profits of the company. The Commission assessed the
amended measures under EU State aid rules, in particular its Guidelines on State aid to maritime transport. It concluded that the Belgian scheme is in line with EU State aid rules, because it will provide incentives to maintain maritime jobs within the EU, whilst preserving competition within the EU Single Market. To read the full press release of the European Commission, click here.

The European Commission cleared acquisition of Copenhagen Airports by ATP and OTPP

The European Commission has approved, under the EU Merger Regulation, the acquisition of Copenhagen Airports A/S by Arbejdsmarkedets Tillaegspension (ATP), both of Denmark, and Ontario Teacher’s Pension Plan Board (OTPP) of Canada. Copenhagen Airports is the owner and operator of the Kastrup and Roskilde airports, which are located in Denmark, as well as the Clarion Copenhagen Airport Hotel. ATP is a Danish public pension provider which administers a number of welfare and social security schemes. OTPP administers pension benefits and invests pension plan assets on behalf of active and retired teachers in the Canadian province of Ontario. The Commission concluded that the proposed acquisition would raise no competition concerns given the transaction’s limited impact on the market structure. To read the relevant press release of the European Commission, click here.

Germany: The Bundeskartellamt cleared merger between Airbus and Bombardier

The Bundeskartellamt has cleared the acquisition of C Series Aircraft Limited Partnership, Canada (“CSALP”), a subsidiary of Bombardier Inc. Montreal, Canada, by Airbus SE, Leiden, Netherlands. Airbus is active worldwide as a manufacturer of commercial single and twin aisle aircraft. Depending on the model, single aisle aircraft have a seating capacity of around 100 to 240 seats. Bombardier specialises in the manufacture of single aisle aircraft with a seating capacity of 100 to 150 seats. Airbus, Boeing, CSALP and Embraer are the four major manufacturers active on the worldwide market for commercial aircraft construction. Airbus is a powerful supplier on a possible market covering all single aisle aircraft. However, CSALP’s market shares in such a widely defined market are marginal, meaning that the merger would only result in a very low market share addition. There is also no close competitive relationship between Airbus and CSALP on such a market. To read the full press release of the Bundeskartellamt click here.
News of the Markets

The HRADF announced the signing of the sale of THPA agreement between HRADF and South Europe Gateway Thessaloniki Limited

The agreement for the sale of Thessaloniki Port Authority’s 67% was signed on December 21st, between HRADF and South Europe Gateway Thessaloniki (SEGT) Limited, the company set up by the Preferred Investor consortium comprising of the companies «Deutsche Invest Equity Partners GmbH», «Belterra Investments Ltd» and «Terminal Link SAS», for a total bidding offer of €231.926 million. To read the full press release of the Hellenic Republic Asset Development Fund (HRADF) click here.

The HTPC announced the signing of the concession of the spectrum use in the band of 1800 MHz to OTE S.A.

To read the full press release of the HTPC, click here.

The HRADF announced the opening of the tender procedure for the concession of the Egnatia Odos motorway

To read the full press release of the Hellenic Republic Asset Development Fund (HRADF) click here.

Morgan Stanley purchased big Korres stake

According to press information, majority ownership of the leading Greek natural cosmetics producer Korres is to pass into foreign hands, as the firm that it had signed a provisional agreement with Morgan Stanley and Chinese company Profex that will see the latter two obtaining share capital in the former of up to an indirect sum of 70 percent. Korres family stressed that they will hold on to a 30 percent stake in the firm as well as the management, adding that the development opens the way for Korres’s expansion to the Chinese market.

Unilever sale of Elais plant to KKR

According to press information, US investment firm KKR is taking over the historic factory and the output of Elais-Unilever on Pireos Street at Neo Faliro in Piraeus. It forms part of the wide-ranging deal providing for the acquisition by KKR of all Unilever’s spread business worldwide. The process of the 97-year-old factory’s transfer to KKR is expected to be completed during the third quarter of next year.

Cosco expressed interest in second Thriasio tender

According to press information, the contract for the concession to the ETVA BIPE - Goldair consortium of a freight center on a 0.59-square kilometer plot at Thriasio, western Attica, owned by state railway
property firm Gaiaose, will be approved in Parliament by next month. The Parliament must also ratify the announcement of a tender for the concession of another 1.4 sq.km. plot at Thriasio in which China’s Cosco is interested. The property already has two major logistics spaces in which Cosco and others have expressed an interest, while the entire complex represents part of the targets of a three-year economic cooperation plan between Greece and China.

Shenhua to enter power market after deal with PPC, Copelouzos

According to press information, Public Power Corporation and the Copelouzos Group have signed a series of cooperation deals signed in the last few months with China’s Shenhua group allowing the latter to enter the Greek electricity market. The Chinese state company the world’s biggest coal producer and one of the biggest producers of electrical energy from conventional sources in China, had been scanning the Greek market systematically for over a year, with its interest covering the entire range of electricity from renewable energy sources and energy management services to conventional units. Among the specific deals announced were the acquisition by Shenhua Renewables of 75 percent of shares in four windparks Copelouzos is developing.

HRADF commences OTE, AIA stake sales

According to press information, HRADF has started the process for the sale of its holdings in OTE telecom and Athens International Airport (AIA). It is now commissioning financial consultants to be tasked with coming up with a utilization model and assisting the process until transactions are complete. HRADF decisions are related to the ongoing third bailout review, as the implementation of the privatizations program forms an integral part of the program.

India and Greece signed air services agreement

According to press information, India and Greece signed an air services agreement and a memorandum of understanding (MoU) on cooperation in the field of new and renewable energy.

Romanian Banca Transilvania deal to buy Greek Eurobank’s Bancpost

According to press information, Banca Transilvania, Romania’s second-largest bank has reached an agreement with Greece’s Eurobank to buy its Romanian subsidiary Bancpost. The deal, which will be subject to regulatory approval, will also give Banca Transilvania stakes in ERB Retail Services and ERB Leasing, part of the Romanian group. The sale is part of a restructuring plan agreed
by Greece’s third largest lender with European Union authorities.

**Spar supermarket chain to return to Greece**

According to press information, Dutch supermarket chain Spar is returning to Greece following a deal with the local retail group Asteras, after leaving the country in 2015, where it had a presence via the Veropoulos firm since 1969. The agreement with Asteras foresees the creation of Spar Hellas between the Greek and Dutch companies, with the local retailer’s network of 200 stores being transformed into Spar stores. All of the stores in the existing network will be overhauled to meet the Dutch retailer’s standards, with work expected to begin by the end of the year and take two years to complete.

**Russia’s Rosneft signed oil supply deal with Greece’s Motor Oil**

Russia’s largest oil producer Rosneft and Greece’s Motor Oil Hellas Corinth Refineries have signed a deal on mutual supplies of crude oil and oil products for the next five years. The deal, signed with the participation of Petrocas Energy, a Rosneft subsidiary, implied the possibility of increasing annual oil and oil product supplies to up to 7.5 million tonnes.