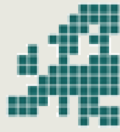

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M&A Law Firm's latest client's alert ("CJEU decision on PPC's lignite exploitation rights and future investments") is published in MacroPolis

M&A Law Firm published in the leading independent analysis service provider "MacroPolis" its latest clients' alert on the decision of the General Court regarding the extension of PPC's exploitation rights to third parties and the future investments expected through this privatization.

For further information, please click **here**.

Prof. A. Metaxas' article on "The legal assessment of the remuneration capacity mechanisms according to EU law" is published in the scientific journal "European Networks Law & Regulation Quarterly"

Prof. Dr. A. Metaxas' article on the legal assessment of the remuneration capacity mechanisms of Greece as applied according to EU law standards, rules and regulations is published in the scientific journal "European Networks Law & Regulation Quarterly" (ENLR).

For further information, please click **here**.

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Energy

Commission develops a new energy system model

The Commission is developing a new energy system model which is capable of analyzing the EU's energy systems in a high level of detail.

The model – METIS – can simulate the operation of both energy systems and energy markets for electricity, gas and heat on an hourly basis for a whole year. It can also factor in uncertainties like variations in the weather – particularly useful for planning the integration of more renewable energy.

Recently, METIS has been used to feed in to the Commission's Clean Energy for All Europeans package of policy proposals by providing fact-based information on renewable energy, energy market design and energy security issues.

The model complements the Commission's other modeling tools like PRIMES and POTEnCIA so that a wide range of analytical tools are used to inform Commission policy proposals.

A Memorandum of Understanding to intensify energy cooperation between the EU and the EBRD

A new Memorandum of Understanding to enhance energy cooperation between the EU and the EBRD has been signed in London by the EU Commissioner Arias Cañete and EBRD President Sir Suma Chakrabarti.

The new agreement will broaden the existing cooperation to a significant number of areas, including scaling-up energy efficiency financing, increasing investment in renewable energy, developing smart grids, and enhancing our resilience to climate change. The Memorandum will also contribute to enhance Europe's energy security by further promoting the interconnectivity of our energy systems, and by promoting nuclear safety and decommissioning. It will extend cooperation to related areas like regulatory and financing criteria issues. Until now, cooperation focused mainly on energy security, energy efficiency and nuclear decommissioning.

EU Commissioner for Energy and Climate Action, Miguel Arias Cañete, said: "*The new MoU comes at the best possible moment: enhancing the bilateral cooperation between the EBRD and the Commission will help us make the most of each other's expertise and support our actions to promote investment in key areas like energy efficiency, renewables and infrastructure.*"

EBRD President Sir Suma Chakrabarti said: *"I am delighted to sign this MOU, which will establish even closer relations between the EBRD and the EU on a range of energy issues. The EBRD and the EU already collaborate closely, but this MoU will help us take our co-operation further, including scaling-up energy efficiency financing, increased investment in renewable energy and the development of smart grids."*

The new Memorandum of Understanding replaces a previous document signed in 2007. It will be implemented through an enhanced coordination of policies and activities and through the optimization of financing synergies.

The EU is one of the largest donors to EBRD green projects and has contributed more than €290 million in support of the Bank's green ventures since 2006. The EBRD's green investments have reached a value of €20 billion in over 1,000 projects during this period. This has helped to reduce greenhouse gas emissions by an estimated 80 million tonnes each year, which is equivalent to the annual GHG emissions of Romania.

Commission proposes new rules to minimize the risk of black-outs

The European Commission has published a new set of proposals on 'risk preparedness' designed to ensure that in the event of 'emergency situations' Europeans are better protected against electricity black-outs.

The plans, published on 30 November 2016 as part of a raft of measures aiming to put Energy Union in place, will ensure that EU countries have measures to prevent, prepare for and manage electricity crisis situations.

They will also require EU countries to cooperate to ensure that electricity goes where it is most needed in crisis situations.

Normally, well-functioning energy markets and systems are the best guarantee of security of electricity supply. However, the risk of an electricity crisis as the result of extreme weather, malicious attacks or a fuel shortage cannot be excluded.

Moreover, the consequences of crisis situations often spill over national borders and large blackouts can have severe economic and social implications that are rarely confined to one country. For example, in 2006, a cruise ship in Germany tripped an electricity line – an event which affected 45 million people and impacted the entire continental power system.

Today, each EU country has a different approach to crisis situations and does not necessarily take account of the impact of its approach on other countries. This can be costly and undermine market function. Additionally, there is very little information sharing across borders. In today's world in which electricity flows across borders, this is no longer sufficient.

The Commission's new plans set out common ways to assess security of supply risks, as well as rules on how to prevent and prepare for crisis situations. The plans also establish common rules for managing crisis situations to ensure markets function for as long as possible and to make sure electricity goes where it is most needed.

State Aid

Sector Inquiry report gives guidance on capacity mechanisms

The European Commission has published the final report of its capacity mechanism sector inquiry. It concludes that Member States need to better assess the need for such mechanisms and gives guidance on how to make their design deliver on security of supply while minimizing competition distortions.

The report concludes that Member States have often failed to adequately assess the need for a capacity mechanism before introducing one. Furthermore, many Member States have yet to implement market reforms that are indispensable to deliver on security of supply issues. Where a capacity mechanism is necessary the report gives practical guidance to Member States on which types of capacity mechanisms may be most suitable to solve the problem identified.

The capacity mechanism sector inquiry has provided input to and complements the Clean Energy for All Europeans Package presented by the Commission today to create modern, better working, more integrated electricity markets in the European Union.

Commissioner Margrethe Vestager said: "*Capacity mechanisms need to match a problem in the market and be open to all technologies and to operators from other EU countries. They must not be backdoor subsidies for a specific technology, such as fossil fuels, or come at too high a price for electricity consumers. The sector inquiry report will help the Commission and Member States introduce better targeted capacity mechanisms, and only if there is a genuine need for them.*

But even if capacity mechanisms are well designed, they can't replace essential electricity market reforms. That's why the sector inquiry complements the Commission's important Clean Energy for All Europeans package of proposals to make European electricity markets more integrated and work better."

The main conclusions of the report are:

Capacity mechanisms must be accompanied by appropriate market reforms

Although there is generally overcapacity in the European electricity markets and power shortages are extremely rare, many Member States have concerns that in the future they may not have enough generation capacity to meet electricity demand. Some Member States have therefore decided to introduce capacity mechanisms that remunerate electricity generators and other capacity providers for being available in case needed. The Commission found a total of 35 previous, existing or planned capacity mechanisms in the 11 Member States covered by the sector inquiry (namely Belgium, Croatia, Denmark, France, Germany, Ireland, Italy, Poland, Portugal, Spain and Sweden).

The inquiry has found that in many Member States market and regulatory failures prevent the price signals necessary to maintain appropriate levels of security of supply. Many of these concerns could be removed by implementing market reforms proposed in the Clean Energy for All Europeans Package. This includes the removal of low electricity price caps, enabling the participation of demand response in the market and matching bidding zones to network congestion. However, most Member States have yet to implement appropriate market reforms to reduce or even eliminate the need for a national capacity mechanism.

Therefore, when Member States plan to introduce capacity mechanisms, the Commission will require them to first implement necessary market reforms.

The need for a capacity mechanism must be demonstrated

The inquiry has found that many of the capacity mechanisms introduced in Europe were not designed to solve a clearly identified security of supply problem. Member States' assessments of the security of supply situation are insufficiently thorough and not always based on an economically justifiable target for security of supply. The Commission therefore requires that the need for capacity mechanisms be underpinned by a robust generation adequacy assessment. Today's Clean Energy for All Europeans Package proposes a European resource adequacy assessment, which will provide an increasingly reliable basis for determining the need for capacity mechanisms.

Capacity mechanisms must be fit for purpose and open to all capacity providers

The inquiry has found that the design of most capacity mechanisms could be significantly improved.

First, the mechanism chosen must match the problem identified. On the one hand, for long-term adequacy problems a market-wide mechanism is likely to be the most appropriate. On the other hand, temporary adequacy concerns are better addressed through more transitional measures such as a strategic reserve. Strategic reserves keep certain capacity outside the electricity market for operation only in emergencies. Where the generation adequacy issue is constrained to a limited area, improved grid connections and the definition of more appropriate geographical boundaries of bidding zones are likely to be better suited to solving underlying adequacy concerns.

So-called "interruptibility schemes" pay electricity consumers to reduce their energy demand at times when electricity is scarce. The inquiry concluded that such schemes may be appropriate to encourage flexible demand in the longer term, but at the same time, they must not become a subsidy for energy-intensive users.

Second, the price paid for capacity must be determined in a competitive process. The inquiry confirmed that prices set through an administrative procedure are not appropriate, since they risk over-compensating the beneficiaries or failing to deliver security of supply. Competitive price-setting processes, together with open eligibility criteria that allow for participation of all potential capacity providers, ensure the price paid for capacity is as low as possible. This is important in order to keep electricity prices low for consumers.

Third, capacity mechanisms should also be open to providers in other Member States. This will provide incentives for investment in interconnectors and generation capacity in other Member States, and reduce system costs.

Next steps

Since the inquiry has found that a number of existing capacity mechanisms have major shortcomings, the Commission will continue to work with the Member States to bring these schemes in line with State aid rules. In addition, any new plans of Member States to introduce capacity mechanisms will be assessed in light of the insight gained from the sector inquiry.

Commission approves revised French market-wide capacity mechanism

The European Commission has approved French plans for a capacity mechanism under EU state aid rules. During the investigation France agreed to amend the measure. The Commission concluded that the revised measure improves the security of electricity supply whilst maintaining competition.

Commissioner Margrethe Vestager, in charge of competition policy said: "*The French capacity mechanism will be open to all capacity providers, including those located across the border, and allow new players to enter the market. This ensures that the measure is cost-effective and competitive. Today's approval ensures that electricity prices are kept in check for consumers. We have worked constructively with the French authorities to bring the planned French mechanism into line with EU state aid rules.*"

France plans to implement a national market-wide capacity mechanism where capacity obligations are traded between electricity capacity providers (e.g. power plants or demand side operators) and electricity suppliers. Under the mechanism capacity providers offer capacity when demand is highest, for example during extreme winter conditions. In return for their available electricity capacity they receive certificates. Suppliers need to purchase certificates from capacity providers in order to cover the peak demand of their customers. These certificates can either be traded bilaterally between providers and suppliers or through regularly organised public auctions.

The Commission opened an in-depth investigation into the measure in November 2015, because of concerns that the planned capacity mechanism might favour certain companies over their competitors

and hinder the entry of new players. In order to alleviate these concerns, France has agreed to modify the mechanism in the following way:

- New capacities can obtain certificates with a seven-year duration instead of the standard 1-year duration, if they are shown to be more competitive than existing capacities. The longer contract duration will give sufficient investment certainty for new projects and facilitate the entry of new market players. To give new projects enough time to be developed, new capacities will be contracted through an organised public auction in four years' time.
- The French capacity mechanism will also be open to capacity providers, both generators and demand response operators, located in neighbouring Member States, subject to the expected capacity of the interconnector at peak times (around 7 gigawatts in total). It is the first mechanism to explicitly include and remunerate foreign capacities, thereby also contributing to building an Energy Union in Europe.
- Moreover, France will introduce a series of measures to prevent possible market manipulation. In particular, capacity declarations of providers will be compared to historical benchmarks, to prevent providers from under-certifying their capacities to artificially drive up capacity prices. Also, large capacity providers will have to offer specified minimum amounts of certificates during the organised auctions, to increase liquidity on the capacity market.

Based on these changes, the Commission finds that the remedies proposed by the French authorities adequately address the points of concerns raised by the Commission in its opening decision. At the same time, the investigation has confirmed the positive features of the French capacity mechanism already proposed in its original design. This includes notably its openness to all potential types of capacity providers, in particular demand response operators, and its market-based character based on auctions and trading.

The Commission has therefore concluded that the French capacity mechanism complies with EU state aid rules, in particular with the Commission's Energy and Environmental State Aid Guidelines.

Antitrust

Commission fines Crédit Agricole, HSBC and JPMorgan Chase € 485 million for euro interest rate derivatives cartel

The European Commission has fined Crédit Agricole, HSBC and JPMorgan Chase, a total of € 485 million for participating in a cartel in euro interest rate derivatives.

The banks colluded on euro interest rate derivative pricing elements, and exchanged sensitive information, in breach of EU antitrust rules.

Crédit Agricole, HSBC and JPMorgan Chase chose not to settle this cartel case with the Commission, unlike Barclays, Deutsche Bank, RBS and Société Générale, with whom the Commission reached a settlement concerning the same cartel in December 2013. Since then, the investigation has continued under the Commission's standard cartel procedure. Today's decision marks the end of a cartel investigation that was the first of several in the financial services sector.

Commissioner Margrethe Vestager, in charge of competition policy, said: *"A sound and competitive financial sector is essential for investment and growth. Banks have to respect EU competition rules just like any other company operating in the Single Market."*

The cartel

Interest rate derivatives are financial products such as forward rate agreements, interest rate swaps or interest rate options, which are used by companies to manage the risk of interest rate fluctuations or for speculation. They derive their value from the level of a benchmark interest rate, such as the Euro Interbank Offered Rate (EURIBOR) and/or the Euro Over-Night Index Average (EONIA) for euro interest rate derivatives. The EURIBOR benchmark interest rate is meant to reflect the cost of interbank lending in euros and is based on individual quotes submitted daily by a panel of banks to a calculation agent.

The Commission's investigation found that there was a cartel in place between September 2005 and May 2008, involving a total of seven banks (Barclays, Crédit Agricole, HSBC, JPMorgan Chase, Deutsche Bank, RBS and Société Générale) over varying time periods. It covered the whole European Economic Area (EEA).

The participating traders of the banks were in regular contact through corporate chat-rooms or instant messaging services. The traders' aim was to distort the normal course of pricing components for euro

interest rate derivatives. They did this by telling each other their desired or intended EURIBOR submissions and by exchanging sensitive information on their trading positions or on their trading or pricing strategies.

This means that the seven banks colluded instead of competing with each other on the euro derivatives market. This market is very important not only to banks but also to many companies in the Single Market, which use euro interest rate derivatives to hedge their financing risk.

Today's Commission decision fines Crédit Agricole, HSBC and JPMorgan Chase for their participation in this cartel. This follows a settlement reached with Barclays, Deutsche Bank, RBS and Société Générale in the same cartel in December 2013.

The anti-competitive practices concerning benchmark interest rates revealed through antitrust enforcement have also been addressed by a more stringent regulatory framework. In June 2016, the European Parliament and the EU's Council of Ministers adopted a new Regulation on benchmarks, following a proposal by the Commission. The Regulation makes it a violation of capital markets rules to manipulate benchmarks, such as EURIBOR, and reinforces the investigative and sanctioning powers of financial regulators.

Commission opens formal investigation into mobile telephone network sharing in Czech Republic

The European Commission has opened an investigation into a network sharing agreement between two Czech operators of mobile telephony, O2 CZ / CETIN and T-Mobile CZ. The Commission will examine whether the cooperation restricts competition and thereby harms innovation in breach of EU antitrust rules.

EU Commissioner in charge of competition policy Margrethe Vestager said: *"Network sharing agreements can bring about efficiencies, such as reduced deployment costs and may allow for network expansion to previously unserved areas. But, in some circumstances, network sharing may also reduce competition on the market. The network sharing agreement between the two major operators in the Czech Republic covers most of the country. We need to ensure that it will not reduce infrastructure competition and innovation."*

O2 CZ and T-Mobile CZ are both major telecoms operators in the Czech Republic. Together, they serve approximately three quarters of the Czech retail mobile telecommunications market. O2 CZ's mobile infrastructure and wholesale business has been transferred to CETIN, a new network infrastructure company belonging to the same corporate group.

The network sharing cooperation between O2 CZ/CETIN and T-Mobile CZ started in 2011 and has been increasing in scope. Currently it covers all mobile technologies (i.e. 2G, 3G and 4G) and the entire territory of the Czech Republic with the exception of Prague and Brno (thus covering the other cities and all rural areas, amounting to around 85% of the population).

The Commission will now investigate in particular whether the cooperation between O2 CZ/CETIN and T-Mobile CZ risks slowing down quality improvements in existing infrastructure, and delaying or hindering the deployment of new technologies, such as 4G/LTE and future technologies, and new services based on them, in particular in densely populated areas. If this were the case, the cooperation would be contrary to EU Treaty rules that prohibit anticompetitive business practices (Article 101 of the Treaty on the Functioning of the EU) to the extent that it concerns behaviours that restrict competition. The Commission will also investigate the impact of potential efficiencies that could be brought about by the network sharing.

The opening of proceedings means that the Commission will examine the case as a matter of priority. It does not prejudge the outcome of the investigation.

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