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The "Athens Conference on European Energy Law and Policy", organized by the Hellenic Energy Regulation Institute and Florence School of Regulation

The participation of prominent European academics marked the International Scientific Conference '*The Athens Conference on European Energy Law and Policy'* on 29 September 2017. Key Energy Law and Energy Regulation issues were discussed in the presence of high-ranking European Commission executives, through high-level scientific speeches and contributions from distinguished speakers academics and practitioners active in the domestic and European energy market.

The Conference was a joint initiative of the Hellenic Institute for Energy Regulation and the Florence School of Regulation, which, apart from its extensive research project, is a key think tank, providing advisory support to the European Commission in the formulation of European policies across the whole range of energy policy.

Some of the top speakers that participated were:

- Tom Maes, Vice-Chairman of the Advisory Group on Energy at the Council of European Regulators of Energy (CEER), and the Agency for the Cooperation of Energy Regulators (ACER);
- Christof Schoser, Deputy Director of the Commission's Directorate General for State Aid, Energy and the Environment, DG COMP;
- Professor Leigh Hancher, Research Director of the Florence School of Regulation,
- Augustin Van Hasteren, Executive Director of the European Commission, responsible for the design of the European Electricity Market;
- Alberto Pototschnig, Director-General of the Agency for the Cooperation of Energy Regulators (ACER);
- Professor J. Mohr, Judge at the German Court competent for Energy Disputes,
- Yiannis Basias, Chairman and Managing Director of Hellenic Hydrocarbon Managing Company SA (EDEY);
- Anne Houtman, Advisor to the European Commission on Energy

  Professor Dr. Antonis Metaxas, President of the Hellenic Energy Regulatory Institute, gave a speech on the Dispute Resolution Arbitrations provided under the provisions of the Energy Charter Treaty (ECT) in the context of cross-border energy investments.

At the heart of the Court's scientific interest were four major issues for the EU energy market:

- Geopolitical influences and prospects of regional cooperation in the field of hydrocarbon exploitation in the Eastern Mediterranean region.
- The cross-border installation and operation of natural gas pipelines according to the EU law provisions.

- The EU hydrocarbon market, and the ongoing restructuring plan for the EU gas market.
- The design of a functioning electricity market at the EU level: the challenges for the implementation of the EU Competition Law provisions, and the basic principles of energy regulation.

Sponsorship of the EU – EURASIA – CHINA BUSINESS SUMMIT by the Economist

Metaxas & Associates Law Firm sponsored the EU – EURASIA – CHINA BUSINESS SUMMIT organized by the Economist, which took place at the Divani Apollon Palace & Thalasso, Kavouri, Athens, on 9th – 10th October 2017.

Invited speakers were institution leaders and personalities from around the world, including Prokopis Pavlopoulos, President of the Hellenic Republic, George Stathakis, Minister of environment and energy, Greece, Konstantin Goncharov, Head of Russian-Greek Council for Co-operation and Investments, member of the board of management, Russian Union of Industrialists and Entrepreneurs, General Director, Novotrans, Natasha Khanjenkova, Managing Director for central Asia and Russia, EBRD, Jean-Guy Carrier, Executive Chairman, Silk Road Chamber of International Commerce (SRCIC), China, Jemal Inaishvili, honorary Chairman of the Silk Road Chamber of International Commerce (SRCIC) and Pavel Oderov, Head of department, Gazprom, Russia.

Prof. Dr. Ant. Metaxas was invited to participate as a Speaker in the Panel "Illuminating the Path to Cooperation in the Energy Sector" together with Emmanuel Panagiotakis, Chairman & CEO of Greek Public Power Corporation, and Shirong Lyu, Deputy Director-general of the International Cooperation Department of the State Grid Corporation of China.

Business leaders and top personalities from politics and academia once again brainstormed, openly discussed and put forward new proposals on all the issues that this year's Business Summit covered.

M&A Law Firm's participation in this leading Conference of the Economist contributed scientifically and academically to the core fields of its specialization in particular energy, infrastructure, privatizations and legal and regulatory aspects in all network bound sectors of the economy.

European Union: Policy News

Strengthening Solidarity between Central and South-Eastern European Countries

Maroš Šefčovič, Commission Vice-President responsible for Energy Union, Miguel Arias Cañete, Commissioner for Climate Action and Energy, met with Ministers from 9 EU Member States (Austria, Bulgaria, Greece, Croatia, Hungary, Italy, Romania, Slovenia, Slovakia) and 8 Energy Community Contracting Parties (FYROM, Serbia, Ukraine, Albania, Bosnia and Herzegovina, Montenegro, Kosovo, Moldova) in Bucharest on the 28th of September 2017. The meeting was concluded with the Parties agreeing to reinforce their regional cooperation. The fourth CESRC High Level Group Ministerial meeting constitutes a landmark moment for the entire central and south-eastern European region.

According to *Šefčovič* statements, given the rapid accomplishments of CESEC cooperation in the field of gas, its scope is expanded to electricity, renewables and energy efficiency, thus covering, through the application of solidarity, all the dimensions of the Energy Union. The political commitments together with the smart channeling of the EU funds, the much-needed infrastructure in the region will be soon realised, according to *Cañete*.

A Memorandum of Understanding, complementary to the existing CESEC initiative, marked the commitments undertaken in the meeting. It provides for the regional cooperation in the electricity markets, as well as in the fields of energy efficiency and the development of renewables. To that end, priority infrastructure projects and specific actions were agreed upon.

In addition, the Connecting Europe Facility Grant Agreement for the LNG Terminal in Croatia was initiated. Looking ahead, Ministers reconfirmed their commitment to rapidly complete the remaining CESEC priority gas projects, and adopted an updated action plan on gas market and regulatory aspects setting out progress made since September 2016.

Finally, the meeting also saw the launch of two new working groups of the gas transmission system operators: one on the implementation of reverse flow on the Trans-Balkan pipeline system, and the other on the so-called "Vertical Corridor" between Bulgaria, Greece, Romania and Hungary; both to be facilitated by the European Commission.

Background to the CESEC Initiative

In 2014 the Commission's 'stress tests' revealed a region extremely vulnerable to a cut in gas supply by its largest, and often sole, supplier. Moreover, consumers have historically paid significantly more for their gas in this region compared to Central Western Europe. To solve these problems, the Commission launched the CESEC Initiative in 2015, with the aim of guaranteeing that all countries in Central and South- Eastern Europe (Austria, Bulgaria, Croatia, Greece, Hungary, Italy, Romania, Slovakia and Slovenia) have access to a more varied mix of energy sources, and are properly interconnected to the rest of Europe. CESEC has proven instrumental in the process of integrating the region's gas markets and has thus become a central channel for further consolidation across the energy sector.

The CESEC ongoing priority gas projects are: the Trans-Adriatic Pipeline (gas pipeline from Greece to Italy via Albania and the Adriatic sea); the Interconnector between Greece and Bulgaria; the Interconnector between Bulgaria and Serbia; the reinforcement of the Bulgarian transmission system; the reinforcement of the Romanian transmission system (part of the "BRUA" corridor); the LNG terminal in Croatia; and the LNG evacuation system towards Hungary. Other possible projects include: a connection of off-shore Romanian gas to the Romanian grid and enhancement of the national system; a new Greek LNG terminal; and the interconnection between Croatia and Serbia.

In September 2016, in Budapest, CESEC's scope of cooperation was expanded further to include electricity, energy efficiency and renewable energies, recognising it makes no sense to address gas in isolation and that the key to security of supply in the region is a comprehensive energy strategy. Examples of electricity priority projects include: the enhancement of the transmission capacity between Bulgaria, Romania and Greece; the enhancement of the transmission capacity along the East-West corridor from Italy to Romania via the Balkans; electricity connections between Hungary and Serbia; and infrastructures supporting the integration of the Ukraine and Moldova power systems into the European electricity market. With regards to renewables in CESEC countries, an assessment of the renewable energy potential in the region by 2030 and 2050 will be carried out and best practices and financing tools for the development of renewable energies will be promoted. On energy efficiency, the focus will be on financing and the use of financial instruments to mobilise private financing as well as on ways to support the development of projects.

The CESEC meeting was held in the context of Commission's Vice-President 2017 Energy Union Tour. The Vice-President has already visited the Netherlands, Spain, Slovakia, Sweden, Poland, Lithuania, Hungary, Portugal, Estonia and Belgium. He will be visiting Greece, meeting with government officials to discuss the National Energy and Climate Plans (NECPs), as well as with young energy professionals on 10-12 November. The 'Energy Union Future Leaders Academy' will be held on the same days, under the auspices of the Commission, organised by the Greek Energy Forum and the Energy and Environmental Policy Laboratory of the University of Piraeus.

European Union: Competition Law – Case-law

Abuse of dominant position: The Court of Justice of the European Union mandates effects-based assessment of loyalty rebates under Article 102 TFEU

On 6 September 2017, the ruling of the Court of Justice of the European Union in Intel v. Commission set aside the appealed judgment of the EU General Court, and ordered the case to be re-examined for failing to consider the effects of anticompetitive conduct on competition.

Background of the case was the fact that the Commission had fined Intel (13 May 2009 decision) with the amount of 1.06 billion Euros for abusing its dominant position. The breach of Article 102 TFEU constituted by the granting of "exclusivity" rebates to four computer makers, on the condition that they bought all of their x86 CPUs from Intel. The Commission considered that those rebates were capable 'by their very nature' of restricting competition. In June 2014, the General Court upheld the Commission's decision that the rebate system in that case was unlawful. The Court considered that rebates given in return for loyalty were automatically illegal and that it was not necessary to show, as the Commission did, that the rebates restricted competition.

Consequently**,** Intel appealed the General Court's ruling to the CJEU arguing that the General Court erred in law by concluding that the rebates in question were inherently capable of restricting competition, and it should have taken into account a number of factors, such as the market coverage of the practices, their duration, falling prices and a lack of foreclosure, as well as the conclusions that should properly have been drawn from the Commission's analysis of the 'as-efficient competitor' test.

In its judgment, the CJEU accepted that, when supporting evidence is produced, the Commission and the reviewing Courts must take seriously any arguments showing that the practice is not capable of having exclusionary effects on competition. The Commission shall analyse '*all the circumstances*' of the rebates, and is required to take into account the extent of the undertaking's dominant position, the share of the market covered by the challenged practice, the conditions and arrangements for granting the rebates, their duration, their amount and '*the possible existence of a strategy aiming to exclude competitors that are at least as efficient as the dominant undertaking from the market'.*

Therefore, the CJEU clarified that **a similar principle to Article 101(3) applies also in Article 102 TFEU**. The CJEU insists on the fact that Article 102 TFEU is not designed to prevent an undertaking from acquiring a dominant position in a market, nor does it seek to ensure that less efficient competitors should remain on the market, noting that '*it is in no way the purpose of Article 102 TFEU to prevent an undertaking from acquiring, on its own merits, the dominant position in a market*' and that '*not every exclusionary effect is necessarily detrimental to competition.*

Competition on the merits may, by definition, lead to the departure from the market or the marginalisation of competitors that are less efficient and so less attractive to consumers from the point of view of, among other things, price, choice, quality or innovation'.

In addition, the CJEU confirmed for the first time the jurisprudence of the General Court that the so-called '***qualified effects test***' is valid to establish jurisdiction. Finally, the Court of Justice clarified that 'probable effects' were sufficient to demonstrate the 'foreseeability criteria', and that the test should be applied to the company's strategy as a whole, and not to individual parts of such strategy.

For the whole judgment:
curia.europa.eu/juris/document/document.jsf;jsessionid=9ea7d2dc30d64e7200afb839424895e4b13c121f1211.e34KaxiLc3qMb40Rch0SaxyMbxv0?text=&docid=194082&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=741112

The Latvian Collective Societies case judgment – on 'excessive pricing'

The ruling on the Latvian Collective Societies case came on the 14 of September, clarifying the CJEU's interpretation of Article 102 TFEU, specifically on the concept of 'unfair prices'.
Particularly, the case concerned the AKKA/LAA, a collective management organisation handling copyright for musical works, the only entity authorised in Latvia to issue licences for the public performance of musical works in respect of which it manages the copyright. It collects the fees from which Latvian copyright holders are remunerated, as well as, through contracts concluded with foreign collecting societies, those from which foreign copyright holders are remunerated. The National Competition Council imposed a fine on AKKA/LAA for abuse of dominant position as a result of the application of excessively high rates. Before the imposition of the fine, the National Competition Authority compared the rates applied in Latvia for the use of musical works with those applied in Lithuania and Estonia, as neighbouring Member States and markets. The Latvian Supreme Court referred seven preliminary questions to the CJEU, pursuant to Article 267 TFEU.

In the first question, the referring court asked whether trade between Member States is capable of being affected by the level of rates set by a copyright management organisation, with the result that Article 102 TFEU may be applicable. In that regard, it follows from well-established case-law of the Court that the interpretation and application of the condition relating to effects on trade between Member States contained in Articles 101 TFEU and 102 TFEU must be based on the purpose of that condition, which is to define, in the context of the law governing competition, the boundary between the areas respectively covered by EU law and the law of the Member States. Thus, EU law covers any agreement or any practice which is capable of constituting a threat to freedom of trade between Member States, in a manner which might harm the attainment on the objectives of a single market between the Member States, in particular by sealing off national markets or by affecting the structure of competition within the common market (judgment of 25 January 2007, Dalmine v Commission,

C-407/04 P, EU:C:2007:53, paragraph 89 and the case-law cited; C-177/16 paragraph 26). If an agreement, decision or practice is to be capable of affecting trade between Member States, it must be possible to foresee with a sufficient degree of probability, on the basis of a set of objective factors of law or of fact, that they may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States in such a way as to cause concern that they might hinder the attainment of a single market between Member States. Moreover, that effect must not be insignificant (judgment of 25 January 2007, Dalmine v Commission, C-407/74 P, EU:C:2007:53, paragraph 90; C-177/16 paragraph 27). Therefore, the Court ruled that trade between Member States may be affected by the level of rates set by a copyright management organisation.

As to the rest of the preliminary questions, the referring court asked in essence whether it is appropriate, for the purpose of examining the application of 'unfair prices' within the meaning of Article 102 TFEU, to compare the rates imposed by the national organisation with those applicable in other Member States. The Court ruled that the questions to be determined are whether the difference between the cost actually incurred and the price actually charged is excessive, and, if the answer to that question is in the affirmative, whether a price has been imposed which is either unfair in itself or unfair when compared with competing products (judgment of 14 February 1978, United Brands and United Brands Continentaal v Commission, 27/76, EU:C:1978:22, paragraph 252; C-177/16 paragraph 36). Regarding the criteria used to determine whether the rates in question constitute unfair pricing, in the meaning of Article 102 TFEU, the comparison of the rates with those imposed in other Member States must be made on a consistent basis (Judgments of 13 July 1989, Tournier, 395/87, EU:C:1989:319, paragraph 38, and of 13 July 1989, Lucazeau and Others, 110/88, 241/88 and 242/88, EU:C:1989:326, paragraph 25; C-177/16 paragraph 44). Such a comparison may prove relevant, on condition, as observed by the Advocate General in point 61 of his Opinion, that the reference Member States are selected in accordance with objective, appropriate and verifiable criteria. Therefore, there can be no minimum number of markets to compare and the choice of appropriate analogue markets depends on the circumstances specific to each case (C-177/16 paragraph 41).

Art. 101 TFEU: Opinion of Advocate General Kokott in Gasorba Case (C-547/16 Gasorba SL and Others)

Under the request for a preliminary ruling of the Tribunal Supremo of Spain in Gasorba case, AG Kokkot's opinion on the case clarified the application of Article 101 TFEU to the facts of the case.

The question referred to the Court is whether there is a binding effect of decisions adopted by the Commission in its capacity as the EU competition authority on the courts of the Member States ruling on such as agreements. The focus of interest in the present case was, whether a national court is able to declare invalid, under Article 101(2) TFEU, an agreement between undertakings when previously the Commission has accepted commitments related to the self-same agreement, and

declared them binding in a commitment decision (Article 9(1) of Regulation No 1/2003). The AG Kokkot concluded that *'(...)a commitment decision adopted by the European Commission ... in relation to specific agreements between undertakings, does not preclude the national courts from examining the conformity of those self-same agreements with the competition rules and, if appropriate, declaring them to be invalid under Article 101(2) TFEU*'.

AG Kokott's Opinion in Gasorba case is a positive outcome for the claimants in cases claiming damages, and a negative outcome for public enforcement and the commitments tool. This is why the national courts are not prevented from examining in the next level the compatibility of the self-same agreements with the competition rules, and declaring them to be invalid and incompatible to the antitrust proceedings.

Background

Gasorba operates a service station in Spain which granted a right of usufruct to the oil and gas company, Repsol. In return, Repsol leased back to Gasoba's owners both the land and the service station for a term of 25 years. Under the lease agreement, Gasorba was required to procure the fuel offered for sale in its service station from Repsol. Moreover, Repsol periodically communicated to it the maximum retail selling prices for the fuel.

This contractual relationship between Repsol and Gasorba was the subject of the Decision 2006/446, a commitment decision concerning Repsol's relationship with Spanish service station operators initiated from European Commission as the EU competition authority. Following Decision 2006/446, Gasorba brought an action against Repsol for a declaration as to the invalidity under Article 101(2) TFEU of the contracts signed between the firms.

Commission approves four support schemes to deploy more than 7.5 gigawatts capacity in renewable energy in France.

Under the framework of EU State Aid rules, the European Commission has approved four schemes to support electricity production from onshore wind and solar on buildings and on the ground in France. These four newly approved measures aim to enhance and support small-scale onshore wind, solar, biogas and hydroelectric installations and to geothermal and sewage gas installations.

This approval will allow France to develop over 7 additional gigawatts in renewable energy achieving its 2020 target of producing 23% of its energy needs from renewable sources.

According to the EU data, the onshore wind scheme has a provisional budget of €188 million per year (or a total of €3.8 billion over 20 years) and the two solar schemes have a provisional budget of €232 million per year (or a total of €4.6 billion over 20 years). The last scheme will support both

onshore wind and solar installations, with a provisional budget of €6 million per year (or a total of €124 million over 20 years). The beneficiaries of the aid will be selected through tenders to be organised between 2017 and 2020.
The schemes approved consist of the following measures:

- An onshore *wind support* scheme which will grant support to 3 gigawatt of additional capacity over the next three years, taking the form of a premium on top of the market price (so-called "complément de rémunération") to operators of medium to large-scale onshore installations of more than 6 turbines, or with at least one turbine exceeding the limit of 3 megawatts.
- A *solar support* scheme for large-scale photovoltaic installations on buildings. Installations will receive a feed-in tariff (for installations between 100 and 500 kilowatts) or a feed-in premium (for installations comprised between 500 kilowatts and 8 megawatts) over twenty years.
- A *solar support* scheme for large-scale photovoltaic installations on the ground. The tender will grant support for up to 3 gigawatt of additional capacity, by means of a feed-in premium over twenty years.
- A support scheme for 200 megawatts of additional capacity, available to both onshore *wind and solar installations* not exceeding 18 megawatts.

Each scheme provides for a bonus to local projects or local participation in projects.
The four schemes are accompanied by a detailed evaluation plan to assess their impact. The results of this evaluation will be submitted to the Commission in 2022, with an interim report to be submitted in 2018.

The Commission assessed all four schemes under EU state aid rules, which ensure that the use of public funds is limited and there is no overcompensation. It concluded that the measures will boost the share of electricity produced from renewable energy sources, in line with the environmental objectives of the EU, while the distortion of competition caused by the state support is minimized.

For more information: europa.eu/rapid/press-release_IP-17-3581_en.html

Greece: Latest Energy Law Updates

Decrease of two percentage points of PPC's market share for the benefit of private providers

Reduction and even sharp decline seems to have recorded PPC's market shares in September after the stagnation of the summer months, as shown by the loss of PPC of two whole units, in just one month.

September ended with PPC's share at 83.5% against 85.55% in August, 85.7% in July and 85.5% in June. The fact confirms that there is a tendency to further reduce PPC's share, with many consumers taking action in September on their decision to change provider before their summer. Of course, the offerings of private suppliers have certainly been their choice.

However, in a second reading, the sharp decline in PPC's share, if continued in October, may eventually prove to be beneficial for the company, in the sense that it reduces the pressure to take structural measures (see the sale of hydroelectric power) NOME auctions appear not to have the expected outcome.

We recall that the government-lender agreement for the second evaluation provided that if the deviation from the target of reducing PPC's share exceeds 2%, a type of "penalty" is triggered. In this respect, the interim reduction target of PPC's share in June is set at 81% (and 75.24% at the end of 2017). However, the share of the business in the retail electricity market remained stable at 85.5% in June, ie it deviated from the target of 2% to 4.5%, which corresponds to 243 MWh / h. This is also the "penalty", ie the extra quantity to be added to the PPC's energy for sale at the next NOME auction on 18 October.

As it is known last week, the Energy Regulatory Authority took the market signals into consideration as expressed in the short-term consultation and the will of the Commission and decided not to break the big NOME auction of 718 MWh / h that is still to be auctioned for 2017. The decision was taken despite the suggestion of the Electricity Market Operator, who proposed two different auctions to be made for 475 MWh / h on 18/10/2017 and one for 243 MWh / h on 15/11 / 2017.

Thus, on October 18, a total of 718 MWh / h will be auctioned, of which:

- 246 MWh / h is the balance of the originally determined quantities of the year.
- 229 MWh / h relate to the extra 4% of the quantity originally agreed for auction after the revised government agreement with the lenders.

• And 243 MWh / h arise from the agreement on the increase of the quantities to be auctioned due to the deviation of the achieved reduction of PPC share compared to the agreed targets.

Clean Energy For All European Islands Forum

The first ever Clean Energy for All European Islands forum took place on 22 September in Chania, Crete. It marked the launch of the Clean Energy for All European Islands Initiative, which aims to help the more than 2700 islands in the EU reduce high energy costs and challenges regarding energy security, make more use of renewables, and develop innovative energy systems.

The forum included discussion sessions on decarbonising islands in the EU and obtaining financing for this. It also featured two roundtables showcasing existing best practices and innovative projects in the areas of renewables, research and innovation, and energy efficiency. The forum marks a first opportunity for EU islands and existing EU initiatives to share, learn, and work collaboratively towards the creation of a long-term framework to promote funding and technical assistance to the clean energy transition on EU islands.

This forum is an important deliverable from the 'Clean Energy for All Europeans' package and the Political Declaration on Clean Energy for EU Islands signed in Valletta by the European Commission together with 14 Member States (Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Malta, Portugal, Spain, and Sweden) on 18 May 2017.
For more information on the conclusions of the forum: ec.europa.eu/energy/en/topics/energy-strategy-and-energy-union/clean-energy-eu-islands

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