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Newsletter

Latest Legal Updates

M&A Law Firm's recent practice highlights:

- *M&A Law Firm advises major energy producer with regard to the acquisition* ***of wind power stations in a multi million deal*** *through participation in the increase of share capital of the SPV*
- *M&A Law Firm advises major electricity suppliers with regard to participation in* ***NOME auctions following the amendment*** *of the Forward Electricity Products Auction Code*
- *M&A Law Firm represents major group of energy companies for the* ***due diligence review and conclusion of sale and purchase agreement of shares*** *in a 9 mil Euros transaction*
- *M&A Law Firm conducts the* ***due diligence review*** *and negotiates the SPA for the acquisition of a 5 MW pv park connected in the grid*

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Exclusive traders to be barred from NOME auctions

NOME auctions were introduced the previous year so as to offer independent suppliers access to PPC's low-cost lignite and hydropower sources. Decisions on the distribution of electricity amounts to be offered in the four NOME auctions taking place this year, as well as conditions that need to be met by participating suppliers, are indeed crucial for the opening up of the Greek energy market.

RAE decisions will be implemented at the year's first auction to be staged on February 7. According to the terms of said decisions, suppliers who took part in previous NOME auctions will need to prove that that they have supplied electricity to consumers – even just one – for an uninterrupted period of at least one month. Otherwise, suppliers will not be eligible to take part in the next session. This term effectively excludes traders from the NOME auctions.

Newcomers to the NOME auctions will need to present convincing business plans to qualify for participation. If the business plan is not approved, interested parties will not be permitted to take part in the upcoming NOME auctions.

The Market Operator (LAGIE) has been tasked with examining all suppliers for correlations between electricity amounts purchased at NOME auctions, respective retail market shares, as well as electricity export amounts. The operator's findings will be relayed to RAE.

A total of 1,711 MWH/h will be offered at the four NOME auctions planned for 2018. This amount includes a 594-MWh/h penalty quantity resulting from the main power utility PPC's failure to reduce its retail electricity market share to 75.24 percent by the end of 2017. The utility ended last year well over this level, registering an 85.34 percent market share.

The first, second and third NOME auctions this year – scheduled for February 7, April 18 and June 18 – will each offer participants 400 MW/h, while a 511-MW/h electricity amount will be offered at the final session, scheduled for October 17. However, these amounts could be revised following a review of the NOME auctions in June. The 1,711 MWH/h currently planned to be offered in 2018 represents 19 percent of electricity consumption in the previous year. This quota will rise to 22 percent in 2019.

According to the bailout terms between Greece and its creditors, PPC will need to reduce its retail electricity market share to 62.24 percent by the end of 2018 and 49.24 percent by the end of 2019.

Public Service Compensation revisions creating new deficit

Recent legislative revisions to Public Service Compensation (YKO) categories and charges will reduce revenues needed to fully balance this account, used to cover high-cost electricity generation on non-interconnected islands and also subsidize power supply to low-income households. Under the new system, higher YKO surcharge rates applying to higher consumption level categories are not imposed on entire electricity amounts consumed, as was the case under the previous formula, but to consumption amounts exceeding category upper limits. This change is expected to deprive the YKO account of tens of millions of euros, annually.

The Cyclades are planned to be interconnected to the mainland electricity grid this year, a development that promises to lessen the demands of the YKO account and subdue any developing deficit. Even so, the YKO account deficit will not be fully covered and transformed into a surplus figure until other Greek island interconnections are completed, especially that of Crete, the country's largest and most populous island.

The YKO account benefits to be offered by the Cyclades interconnection are estimated to be worth 100 million euros, annually, according to a 2014 estimate.

TAIPED pushing ahead with DEPA sale

TAIPED, the State privatisation fund, is keen on pushing ahead with the privatisation of gas utility DEPA, but the sale's timely launch, expected in March, according to the latest bailout terms, will not only depend on the fund's intentions.

In essence, this privatization's punctual progress is dependent on Shell and DEPA, currently engaged in advanced talks for the Dutch firm's sale of its 49 percent stake in retail gas supplier EPA Attiki. DEPA holds a 51 percent stake in this venture and wants to increase its hold.

The privatization of DEPA cannot proceed unless Shell and DEPA agree on the acquisition of EPA Attiki. Also, DG Comp will need to authorize any transfer of EPA Attiki shares to a third party.

Rothschild, acting as DEPA's consultant, and Lazard, representing Shell, are expected to appoint a common evaluator for an official price estimate. The evaluation process is expected to take at least one month to complete. Then, the two sides will still need to agree on a price before competition

authorities in Athens and Brussels decide whether DEPA's continued presence in the retail gas market raises any obstacles.

Given all these requirements, the launch date of DEPA privatisation, scheduled for March, should prove to be an extremely difficult target date.

The Greek government is eagerly anticipating a final deal between Shell and DEPA as a reinforced retail and distribution role for DEPA through EPA Attiki would undoubtedly heighten the interest of investors once the gas utility's privatisation is launched.

The government and country's lenders appear to have reached a compromise deal on DEPA's reinforced role in EPA Attiki in exchange for DEPA's sale of its 51 percent stake in EPA Thessaloniki-Thessaly to Eni.

If this is true, DEPA will remain a powerful enterprise commanding three major fronts. Besides gaining a retail and distribution monopoly in the wider Athens market, the utility will also stand as a key gas importer and control gas distribution in all parts of Greece not covered by the EPA firms, through DEDA.

If DG Comp does not endorse DEPA's anticipated new role, then TAIPED as the privatization fund, will need to reexamine the utility's privatization or postpone it.

Commission welcomes new rules that benefit consumers by promoting more competition in processing of card payments

The European Commission has issued new requirements that ensure independence of payment card schemes and processing entities, to enhance competition in the card payment market. Retailers will be able to choose the most suitable processor for their card transactions, to the benefit of consumers.

In particular, when a consumer pays with a card in a shop or online, the transaction needs to be processed for the payment to be transferred to the shop's bank account. This service is carried out by processing companies, which manage the necessary communication and IT processes for the payment to be finalised. Payment card schemes often provide their own services for the processing

of payment transactions and therefore compete with many other independent companies that also provide the same processing services.

Under the 2015 Interchange Fee Regulation card schemes must ensure the independence of their own processing activities from the rest of their operations. This prevents card schemes from favouring their own processing entities over competing processing entities, and from bundling processing services with other services that the card schemes offer.

To ensure the independence of processing activities within card schemes, the new rules introduce detailed requirements concerning the separation of certain functions, which enter into effect on 7 February 2018. This includes limits on information exchange, as well as separate profit and loss accounts, separate corporate organisation (workspaces, management and staff) and separate decision-making.

As a result of this separation, retailers will be able to choose the best processor for their card transactions, while consumers benefit from reduced processing costs in their daily payments in shops, restaurants, on-line or via a growing range of card-based mobile payment applications.

Background information

The 2015 Interchange Fee Regulation addressed the problem of widely varying and excessive hidden inter-bank fees for card and card-based transactions which were an obstacle to the Single Market and a barrier to innovation in payments. It introduced caps on the fees of consumer debit and credit card payments, which are effective throughout EU and thus establish the same benefits for all consumers, regardless of where they live in the EU. It also ensures that consumers and retailers can choose which card payment options to use (e.g. debit card, credit card, loyalty cards of a store, premium cards), rather than this being imposed by card schemes and card issuing banks, and encourages the development of payments via mobile phones and other devices.

The Regulation also enables independent processors to compete effectively through separation of payment card schemes from their processing entities, applicable since June 2016. To establish the requirements ensuring this separation, the Regulation empowers the Commission to adopt Regulatory Technical Standards on the basis of a draft proposed by the European Banking Authority.

On 4 October 2017, the Commission adopted these Regulatory Technical Standards. Following completion of the scrutiny by the European Parliament and the Council, they have now become final and will enter into effect on 7 February 2018, which is the twentieth day following their publication in the Official Journal of the European Union.

Commission approves Greek auction scheme for renewable Electricity

The European Commission has found the Greek auction scheme for the production of electricity from renewable sources and high efficiency cogeneration to be in line with EU State aid rules. The scheme will further EU energy and climate goals whilst preserving competition.

Under the scheme Greece will organize regular, competitive auctions to grant support to renewable energy sources: In 2018, Greece will organize separate auctions for wind and solar installations in order to determine their market potential. As of 2019, joint auctions for both wind and solar installations will be held to increase competition and reduce the cost for consumers of renewable energy in Greece. - State support for other renewable energy technologies will be subject to auctions as soon as they become more mature in the Greek electricity market, i.e. when they reach a predefined level of market penetration. Moreover, Greece will evaluate the bidding processes in 2020, before designing bidding processes for the period 2021-2025.
The Commission has assessed the scheme under EU State aid rules, in particular the 2014 Guidelines on State Aid for Environmental Protection and Energy. The Guidelines require competitive auctions for renewables support since 2017, so as to ensure that the use of public funds is limited to the minimum and there is no overcompensation. On this basis, the Commission concluded that the Greek auctioning scheme will boost the share of electricity produced from renewable energy sources, in line with EU environmental objectives, while any distortion of competition caused by the state support is minimized.

Background information
Today's decision follows the Commission's decision of November 2016 which approved a support scheme for the production of electricity from renewable energy sources and high efficiency cogeneration in Greece (SA.44666). The Renewable Energy Directive established targets for all Member States' shares of energy renewable energy sources in gross final energy consumption by 2020. For Greece, that target is 18% of domestic energy supplies produced from renewable sources by 2020. More information on today's decision will be available, once potential confidentiality issues have been resolved, in the State aid register on the Commission's competition website under the case number SA.48143.

Commission finds Irish National Asset Management Agency did not breach EU rules

Following a complaint, the European Commission has assessed whether the Irish National Asset Management Agency (NAMA) has benefited from illegal State aid and whether it granted undue advantages to certain property developers. The Commission has concluded that NAMA did not breach EU State aid rules.

More specifically, in December 2015, the Commission received a complaint from five property developers. They alleged that NAMA distorts competition in the Irish property development market by granting loans at very favourable conditions to property developers, which are existing creditors of NAMA. Furthermore, the complainants alleged that NAMA itself benefitted from various illegal State aid measures in Ireland, including a State guarantee on its funding.

NAMA was created by the Irish government in 2009 in the context of the financial crisis to restore stability to the Irish banking system. For this purpose, NAMA acquired large portfolios of non-performing commercial loans secured by land and development property from five Irish credit institutions. In its decision of February 2010, the Commission approved NAMA's creation and support provided to the five credit institutions as in line with EU State aid rules.

NAMA's stated objective is to manage the assets acquired with a view to maximising their value and returning any surplus to Irish taxpayers. In practice, to achieve this objective NAMA has either sold property sites directly, or extended loans to its creditors (i.e. property developers), who would develop the site and then sell it on the market. NAMA has sold sites to independent developers, which will allow them to build 50,000 houses or apartments on those sites (without further involvement from NAMA). NAMA itself will only finance the development of up to 20,000 houses or apartments on other sites by the end of 2020.

As regards the financing NAMA has provided to certain property developers and any State aid NAMA itself received, the Commission's assessment concluded:

NAMA extends new loans to property developers where it is commercially viable to do so. This means that NAMA has acted as a private market operator would have done. More specifically, NAMA has demonstrated that it carries out a robust analysis in each case to decide whether it is more profitable to sell a site directly, or to extend a new loan to develop and then sell the property on the market. Once the houses or apartments funded by NAMA have been developed they are sold at market prices set by independent property experts. Therefore, the Commission concluded that property developers funded by NAMA are not receiving any undue advantage.

The State support to NAMA had already been approved under the Commission's 2010 decision. This concerns in particular the State guarantee on NAMA's funding, NAMA's special powers and

tax exemptions that were the subject of the complaint. The Commission concluded in this regard that NAMA has acted in full accordance with the 2010 decision and with all commitments made by the Irish authorities thereunder. Other measures that were the subject of the complaint, such as NAMA's alleged information advantage, do not amount to State aid.

Finally, the Commission found that extending financing to certain property development projects where it is commercially viable to do so is in line with NAMA's objective to obtain the best possible financial return for the State. Ireland is also expected to wind down NAMA within the timetable originally foreseen, i.e. in 2020/2021. On this basis, the Commission concluded that NAMA's actions are fully consistent with what was envisaged in the 2010 NAMA decision and with the Commission's case practice and guidance.
The Commission therefore concluded that NAMA did not breach EU State aid rules.

Background information

NAMA was created by means of the NAMA Act of 22 November 2009. It acquired large portfolios of commercial (real estate) loans secured by land and development property from Anglo Irish Bank, Allied Irish Bank, Bank of Ireland, Irish Nationwide Building Society and Educational Building Society. The purchase of these assets was financed up to 95% by State-guaranteed bonds.

The Commission approved the establishment of NAMA in its decision of 26 February 2010 and concluded that the aid that NAMA provided to the five credit institutions concerned was in line with EU State aid rules. The Commission relied on a number of commitments from the Irish authorities to ensure that NAMA's operations do not lead to distortions of competition through the use of certain powers, rights and exemptions granted in the NAMA Act.

In October 2017, NAMA fully repaid the last tranche of State-guaranteed bonds it has issued (worth in total €30.2 billion), thereby achieving full repayment of these bonds three years earlier than initially planned. In addition, NAMA currently expects to generate a surplus of €3 billion by the time it completes its work, subject to prevailing market conditions. This surplus will fully accrue to the State. NAMA is expected to be wound down in 2020/2021.

General Court confirms the legality of recovery decision against Larko

The Commission welcome the judgments of the General Court confirming its two Decisions of March 2014. In the first decision, the Commission concluded that Larko had been granted incompatible State aid and ordered the recovery of EUR 136 million. In its second decision, the Commission found that the sale of certain Larko assets would not lead to economic continuity and that a potential buyer would not be liable for the repayment of the incompatible aid granted to Larko.

The judgment regarding the first Decision confirms the Commission's assessment that the measures in favour of Larko would not have been granted by a private operator. It also finds that the Greek State did not perform a full diligent evaluation, as a private operator would have done, at the moment that it granted the respective measures. The judgment regarding the second Decision rejects the application of Larko, the beneficiary of the aid, as inadmissible. In particular, the General Court reasons that any prejudice to Larko from the privatisation plan results from Greece's decision to implement this plan and not from the Commission's decision on whether the plan would involve aid-related liabilities for a potential buyer.

For further information you may contact:

METAXAS & ASSOCIATES
ATTORNEYS AT LAW

154 Asklipiou Str.
114 71 Athens, Greece
Tel.: +30 210 33 90 748
Fax.: +30 210 33 90 749
E-mail: *info@metaxaslaw.com*

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