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Latest legal updates

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ENVIRONMENTAL LAW

Greek landfill Site subject to complaint to the European Commission

On the 19th of June 2007 the Prefecture of Western Attica submitted a complaint to the European Commission concerning the situation at the new landfill site in the municipality of Fyli, Western Attica. The legal estimation performed by the law firms *Pappas & Associates* (Brussels) and *Metaxas & Associates* (Athens), legal advisors of the Prefecture of Western Attica, shows that although the relevant European legislation has been correctly implemented in Greece, the operation of the EU-funded landfill site in Fyli contradicts several principles and legal provisions of EU Environmental law.

In July 2007 in its rapid response to the Complaint the European Commission (Directorate-General Environment) emphasized that EU policy on waste management strongly promotes waste recycling and recovery, whereas landfilling constitutes an acceptable waste disposal method, only as long as it complies with all the technical requirements laid down in Directive 99/31/EC. However, illegal dumps and uncontrolled waste sites are expressly prohibited by Directive 2006/12/EC. After a first preliminary assessment of the Complaint the European Commission decided to open a new complaint against the Hellenic Republic regarding the operation of the landfill site in the municipality of Fyli. Following this, the Commission will conduct an investigation of whether the operation of the landfill site complies with the requirements laid down in the relevant Directives, as well as ask for clarifications from the Greek government.

BANKRUPTCY LAW

A new Bankruptcy Code

The Greek Parliament has recently adopted the new Bankruptcy Code, bringing important changes into the Bankruptcy law. The new Code consists of two basic pillars: The first introduces a “single system” for liquidation and reorganization replacing the old binary system that separated the process of liquidation under Article 525 of the Commercial Code from that of reorganization/rescue under Article 44 of Law 1892/1990. Certainly, the restorative reorganization of a company is not an end in itself in the process, but constitutes a means for the potentially better satisfaction of creditors’ claims, while at the same time it provides an opportunity to rescue the debtor. The second pillar of the new legislation changes the procedural and substantive rules of bankruptcy law giving greater autonomy to the parties involved in the process, without of course affecting the supervisory role of the judiciary.

The application of the new provisions continues to limit the ability of tradesmen to trade in bankruptcy and has not been extended to include bankruptcy of private individuals, consumers, freelance professions or farmers for which the general procedural provisions will continue to apply. For the first time, however, the bankruptcy law of Greece will be applicable to bankruptcy of associations and unions of non-commercial nature, which pursue an economic aim.

For further information, you may visit:

<http://www.ministryofjustice.gr/modules.php?op=modload&name=News&file=article&sid=897>

COMPANY LAW - CORPORATE GOVERNANCE

New EU Directive on the rights of shareholders in listed companies

The recently adopted Directive 2007/36/EC on the exercise of certain rights of listed companies' shareholders constitutes an important development in the field of European corporate law, by facilitating shareholder voting and harmonising the rules concerning the convocation and operation of general meetings of listed companies in the European Union. More specifically, inter alia the new directive

- introduces a minimum notice period of 21 days for General Meetings, which may be reduced to 14 days where shareholders can vote by electronic means and the general meeting agrees to the shortened notice period;
- allows internet publication of the agenda and the documents submitted to the General Meeting at least 21 days before the convocation
- abolishes the obstacles to electronic participation to the General Meeting and electronic voting;
- establishes the right of shareholders to ask questions and an obligation of the company to answer them;
- abolishes existing constraints on proxy voting;
- imposes obligatory disclosure of the voting results on the issuer's internet site.

The new rules enable shareholders to participate in General Meetings of listed companies from anywhere within the European Union, a development of great value taking into consideration the degree of European securities markets integration. Finally, the new rules make it possible for shareholders to keep themselves updated on the issues to be dealt with in the General Meeting.

For further information, you may visit:

http://ec.europa.eu/internal_market/company/shareholders/indexa_en.htm

COMPETITION LAW

Ryanair / Aer Lingus

The European Commission has recently prohibited the purchase of aviation company Aer Lingus by its only major competitor in the Irish market, Ryanair, although reciprocal measures to restrict repercussions on the market were proposed by the companies. The Commission concluded that due to the fact that the two undertakings had many common routes, Ryanair would acquire a dominant position or even a monopoly in 35 destinations by the merger, possibly causing a rise in ticket prices affecting more than 14 million passengers. This is the first time the Commission has been called to examine a merger between the two largest air companies of a single Member State, as well as two companies pursuing a “low-cost” policy. Furthermore it should be noted that Ryanair has a reputation for taking aggressive measures against new players in its market, a tactic the Commission feared would be all the more frequent had the acquisition been approved.

For the European Commission’s press release IP/07/893 (27/06/2007), see:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/893&format=HTML&aged=0&language=EN&guiLanguage=en>

Commission carried out Dawn Raids in the sector of hardware for windows & doors

On 3 and 4 July 2007 Commission officials undertook unannounced inspections at the premises of different producers of hardware for windows and doors in several Member States of the European Union (see Press Release MEMO/07/276,(04/07/2007).

These so called “dawn raid inspections” are carried out as a preliminary process in investigations for suspected cartels, enabling the investigating

officials to gather information without prior notification to the companies concerned. Dawn raids are often conducted by the Greek Competition Authority as an effective tool for the investigation of whether companies operating in the Greek market are implicated in anticompetitive practices or prohibited concerted practices with other competitors. Issues related to the rights of investigators/investigated companies in the event of dawn-raids have become of great importance for a large number of companies in Greece. For these reasons an informational guide focusing on the essential legal issues on the subject will soon be available by the law firm Metaxas & Associates.

For the European Commission's Press Release MEMO/07/276,(04/07/2007) see:

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/276&format=HTML&aged=0&language=EN&guiLanguage=en>

Commission's right to require disclosure of information

By a decision of 15 February 2007 the Commission compelled Chi Mei Optoelectronics Europe BV (Netherlands) and Chi Mei Optoelectronics UK Ltd (United Kingdom) to provide specific information and documents related to suspected anticompetitive practices under Article 18(3) of Council Regulation No 1/2003. On 7 July 2007 the appeal to the Court of First Instance against the decision was published in the Official Journal of the European Communities. The appellants claim that the contested decision is unlawful in that the Commission lacks the investigative and enforcement power to compel EU subsidiaries to produce documents and to provide information under the sole custody and control of legal entities seated outside the Commission's jurisdiction. The outcome of the case will have a significant impact on the conception of the European Commission's investigation powers.

The European Commission fines Spanish telecoms operator Telefónica

On 4 July 2007 the Commission published its decision imposing on Spanish Telefónica a €151,875,000 fine for abuse of dominant position in the Spanish broadband market between September 2001 and December 2006 (Press Release IP/07/1011 (04/07/2007)). Telefónica imposed unfair prices in the form of a margin squeeze between the wholesale prices it charged competitors and the retail prices it charged its own customers. Thereby Telefónica weakened its competitors, making their continued presence and growth difficult by forcing them to suffer losses in order to match Telefónica's retail prices. Earlier, the Commission had imposed fines on other actors in the European broadband market too, including Deutsche Telekom for adopting a margin squeeze Policy in the German narrowband and broadband markets (€12,6 million, May 2003), as well as the subsidiary of France Telecom for predatory pricing in the French retail market (€10,35 million, July 2003).

For the European Commission's Press Release IP/07/1011 (04/07/2007) see:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/1011&format=HTML&aged=0&language=EN&guiLanguage=en>

E.On/Gaz de France

The European Commission has recently decided to open an investigation for potential infringement of the European Competition rules by the German E.On and French Gaz de France, both major players in the European energy market (See Press Release IP/07/1011 (04/07/2007)). The investigation will focus on agreements between the undertakings, under which the two parties appear to have agreed to refrain from selling their products on each others' domestic markets, as well as to share Megal, the only Russian pipe-line providing the French market with gas and one of the most important pipelines for the German market too. The investigation could be seen as an action in line with the Commission's official policy to break up major companies in the Energy sector, in order to prevent such undertakings, which

are already in control of the production and distribution of energy at large, from also acquiring control over pipeline networks.

For the European Commission's Press Release IP/07/1011 (04/07/2007) see:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/1011&format=HTML&aged=0&language=EN&guiLanguage=en>

TELECOMMUNICATIONS

EU Regulation on roaming

On 30 June 2007 the EU Regulation 717/2007 (OJ L171/32, 29.06.2007) on roaming on public mobile telephone networks within the Community entered into force (MEMO/07/233, 07/06/2007). The Regulation introduces a so-called Eurotariff, which sets the price for international roaming when traveling within the EU unless the customer chooses to use a special package offered by a specific operator. The maximum price of the Eurotariff may not exceed €0,49 for outgoing calls, and €0,29 for incoming calls for next year, and will apply automatically for all consumers from 30 September 2007 onwards. Furthermore, the Regulation enhances the transparency of roaming costs by compelling European operators to inform travelers on the prices by SMS when accessing their network.

The drafting of the Regulation was initiated by the Commission after a proposal by the European Parliament, which had expressed its concerns about the high costs of cross-border telephony, in conjunction with the lack of industry-driven progress over many years.

ENERGY

The opening of the Internal Energy market

As from 1 July 2007, the internal energy market legislation of 2003 (Directive 2003/54 and Directive 2003/55) is fully in force within the EU Member States, meaning that former legal or administrative barriers for new companies wishing to enter the market and supply gas and electricity to the public should have been removed. The abolition of barriers is expected to lead to an integrated and more competitive internal market, as well as to encourage the development of new renewable energy sources to the benefit of lower prices for consumers and the protection of the environment. However, a few Member States are exempted from the above mentioned time-schedule and Greece, for example, has so far only opened up its electricity market without liberalizing the gas market. One of the features of the European legislation is that vulnerable citizens can be protected through specially established social schemes like social aids and reduced tariffs or arrays ensuring their continuous access to the electricity and gas services. Another complementary scheme places its emphasis on transparency in pricing.

However, the European energy market still faces problems that need to be resolved. In a speech on 28 June 2007, the Competition Commissioner Neelie Kroes emphasized that the European Commission regards the energy market a problematic area from a competition law perspective. Mainly three major structural reasons for this have been identified: national energy markets are too concentrated and lack liquidity, there is an absence of cross-border competition, and there is insufficient unbundling of network and supply activities. As a consequence new players face difficulties on the recently liberalized market to access energy supplies, networks and customers. These are some of the issues that need to be dealt with in the third liberalisation package for electricity and gas, which the Commission will present after the summer.

Further, on 5 July 2007 the European Commission put forward a proposal for an Energy Consumers' Charter. The Charter is expected to define more precisely and strengthen consumers' rights in the areas of electricity and gas supply, including contracts, information, prices, dispute settlement and protection against unfair commercial practices.

For further information see:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/1026&format=HTML&aged=0&language=EN&guiLanguage=en>

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/983&format=HTML&aged=0&language=EN&guiLanguage=en>

ANNOUNCEMENT OF NEW CO-OPERATION AGREEMENT

As of September 2007 *Metaxas & Associates* has established a link with the market of the People's Republic of China through its co-operation agreement with *China Solutions LLC*, who offer effective legal and operational advice for pursuing China-based commercial activities. *China Solutions (Shanghai)* is a distinguished consulting-law firm that provides legal and operational solutions which can be divided into four distinct categories: (i) advising on, and implementing, the establishment of companies in China, (ii) fulfilling operational requirements that arise post-establishment, such drafting and negotiating leases, employment contracts, trademark registrations and distribution agreements; (iii) delivering a spectrum of dispute resolution services, ranging from contract analysis to negotiations, as well as coordinating litigation or arbitration with local counsel; and (iv) one-off transactions, such as negotiating the sale of commodities or coordinating the transfer of ownership of vessels from the ship yard to the ship owner. *China Solutions'* clients include foreign diplomatic missions in Shanghai and Beijing, China-based manufacturers, retailers based in China's first tier cities, ship owners and service providers.

Through this important co-operation agreement, *Metaxas & Associates* can offer a wider variety of legal services to clients wishing to expand their activities to the Chinese market as well as to Chinese companies wishing to engage in business activities in Greece.

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