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ENERGY

Commission invites comments on measures proposed by Greece regarding the Greek electricity market

Commission's decision of March 5th, 2008 found that Greece had infringed EU competition rules by maintaining rights giving the state-owned electricity incumbent Public Power Corporation (PPC) privileged access to lignite, the cheapest source of electricity generation in Greece.

Greece, in order to comply with this decision, had proposed to grant access to 40% of lignite-fired generation to competitors of PPC in the Greek electricity market by tendering four new lignite mines to these competitors. These measures were made legally binding by the Commission's Decision of August 4th, 2009. However, the Greek Government requested a review of the 2009 Decision due to its new energy policy. Greece has informed the Commission that it would continue using existing lignite without opening up new lignite mines. As an alternative measure to address the competition concerns the Greek Government proposes to give PPC's competitors access to 40% of lignite-fired generation through drawing rights in existing lignite-fired power plants of PPC. Furthermore, they will be offered participation in future power plant projects using currently available lignite.

Should the request for review of the 2009 Decision be found justified and the measures proposed by the Greek Government adequate to meet the concerns identified by the 2008 Decision, the Commission could adopt a new Decision, on the basis of Article 106 TFEU, rendering these measures binding for the Hellenic Republic.

The European Commission invites comments from interested parties on measures proposed by the Greek Government regarding its electricity market by February 11th, 2011. These measures are published in full in English and Greek on the website of the Directorate-General for Competition.

ERGEG 2010 Status Review of the Liberalization and Implementation of the Energy Regulatory Framework

On the 13th of December 2010, ERGEG published its Status Review of the Liberalization and Implementation of the Energy Regulatory Framework. ERGEG's report draws conclusions primarily from the National Reports of the national energy regulators and from several additional, also external, sources in order to build an assessment of the development of the European energy market.

The Status Review refers to the situation in 2009 and tracks the development of national electricity and gas markets and the progress towards a single EU energy market.

A main finding of the ERGEG Status Review is the need for quick implementation of the 3rd Package of energy laws. It also seems that progress towards competitive retail markets is slow, although the national reports showed some positive developments. Consumers are still cut off from the benefits of increased efficiency on wholesale markets and unbundling of network companies is still insufficient. Market concentration on a national basis in wholesale gas and electricity markets remains a problem. Improved market integration might, however, alleviate the negative effects of national market concentration.

STATE AID

Commission Communication on the revised Temporary Framework for state aid

A Commission Communication on the revised temporary framework for state aid measures to support access to finance in the current financial and economic crisis was published in the Official Journal of January 11th, 2011 (OJ 2011 C6/5). The original Temporary Framework was valid until December

31st 2010 but due to the continuing financial crisis the Commission decided the prolongation of certain measures targeted at facilitating companies' access to finance. However, the Commission has introduced stricter conditions in order to achieve gradual return to normal state aid rules. Particularly, there have been introduced stricter conditions for larger companies to obtain subsidized loans and state guarantees comparing to SMEs. Under the revised Temporary Framework, state support is no longer available to firms in difficulty and the measure allowing member states to provide grants of up to 500,000 Euros has also been removed. The new Communication applies from January 1st 2011 until December 31st 2011.

Commission accepts commitments from Greece regarding incompatible aid granted to Hellenic Shipyards

On the 1st of December 2010 the European Commission declared that it has formally accepted Greece's commitments to comply with the Commission's decision of 2008 which demanded that the latter stops providing various guarantees and recovers illegal subsidies granted in favor of the civilian activities of Hellenic Shipyards (HSY). That decision found that subsidies granted by the Greek State to HSY were incompatible with the Internal Market because Greece did not respect the conditions attached to the restructuring and closure aid approved by the Commission in its prior decisions of 1997 and 2002. Moreover, various loans and guarantees provided by the Greek State and the then State-owned bank ETVA to Hellenic Shipyards were also found to constitute additional incompatible aid as they were provided either below the market price or at a time when the financial situation of HSY had become so difficult that it could not raise financing on the market.

As a result, the Greek State was requested to recover €539 million including interest from HSY's civil activities and along with HSY were ordered to renounce various guarantees.

As the Hellenic Shipyards nowadays produce primarily military ships, the Greek Government is concerned that the recovery might endanger those activities. Instead of the recovery Greece proposed to cease providing various guarantees granted to HSY and that HSY repay part of the aid through the sale of its non-naval assets. The Greek Government also proposed to compensate the absence of full recovery by banning HSY's civilian activities for 15 years. This will address the repeated distortions of competition in the past in a sector still affected by overcapacity while having no direct consequence on jobs.

Both parties came to the agreement that the "non-naval" assets of HSY will be sold and the sale's proceeds will serve to partially repay the incompatible aid. Also, HSY will renounce the use of the parts of land conceded to it by the Greece, that are not needed for military activities and it will not carry out any civil activities for the next 15 years. Greece and HSY will renounce the various guarantees that the Commission had found incompatible in its 2008 decision and Greece will report every year on HSY's respect of the ban on civil activities for as long as this ban lasts.

The Commission invites Greece to implement the agreed commitments swiftly. When all commitments (except the reporting obligation on the ban of civil activities for 15 years) will have been fully implemented, the Commission will consider the possibility to withdraw the Court action it filed in April for failure to implement the 2008 decision.

COMPETITION LAW

OECD publishes papers on competition and corporate governance and credit rating agencies

The Organisation for Economic Co-operation and Development (OECD) published two papers containing an overview of the two hearings of the OECD Competition Committee on the issues of competition and corporate governance, and competition and credit rating agencies.

The first paper concerns the hearing on competition and corporate governance which was held in February 2010, including issues about conflicting interests of shareholders and directors, interlocking directorships, etc. The role of business groups in the corporate environment, competition and corporate governance in relation to state owned enterprises and the impact of the financial crisis on corporate governance were also discussed.

The second paper is a summary of the hearing on competition and credit rating agencies which was held in June 2010. The Committee considered the role of credit rating agencies and their functions of measuring credit risk, providing comparisons and common standards. The paper describes the oligopolistic nature of the market and sets out the view that decreasing regulatory reliance on credit ratings may be advisable. Contributors suggested that moving away from an "issuer pays" business model (where credit ratings agencies are paid by the issuers whose securities they rate) to an "investor pays" model (where institutional investors and brokers are charged for ratings) could reduce conflicts of interest and increase the independence of ratings agencies.

Commission approves acquisition by Urbaser and PPC of a joint venture in Greece

On December 20th. 2010, the European Commission granted clearance under the EU Merger Regulation to the acquisition by Urbaser S.A. and Public Power Corporation S.A. (PPC) of joint control of a joint venture in Greece. This joint venture will be active in the field of waste recovery and treatment. Urbaser, which is controlled by the Spanish ACS Group, is active in the provision of waste management services. PPC is an energy company active in mining as well as generation, transmission, distribution and supply of electricity in Greece. The operation was examined under the simplified merger review procedure.

PUBLIC PROCUREMENT

Public consultation on reforms to public procurement law

The European Commission plans to launch a public consultation on January 26th, 2011 towards the modernization of EU public procurement law and policy.

The Commission will publish a Green Paper which will open a general debate on European Public Procurement law with a view to simplify and update the existing legislation. The main objective is to make the award of public contracts more easy and flexible and to enable public contracts to be better used in support of other policies.

So far it seems that public procurement is insufficiently targeted at societal objectives such as promoting innovation and fighting climate change, while member states seem to make little progress in implementing electronic technologies for public procurement, which could reduce costs for businesses that want to participate in tender procedures.

In October 2010 the Commission had announced in the Single Market Act that it will make proposals to modernise EU public procurement rules until 2012. The results of this consultation will be very useful in view of the forthcoming legislative changes.

Commission refers Greece back to Court for supply contracts of medical equipment to hospitals

The European Commission has referred Greece back to the EU's Court of Justice because of its failure to apply EU public procurement rules as regards contracts for supplies of medical equipment to hospitals.

On March 19th, 2009 the Court ruled that Greece had breached EU rules on common safety standards for products as well as on public procurement by rejecting offers from suppliers of medical equipment bearing the CE marking. CE marking, which is a mandatory conformity mark on many products that

are placed on the EU Single Market, is particularly important for medical equipment, as the common standards ensure safety and health protection for patients and users and guarantee the free movement of such equipment across the EU. Only under serious circumstances, such as concerns on public health, can a Member State prevent CE-certified medical equipment to be put in service or placed in their market. Greek hospitals did not comply with EU rules, when rejecting offers from suppliers of medical equipment that bear the CE certification marking, such as medical gloves and threads used for operations. The Commission found that Greek hospitals practically do not acquire the devices they need at a competitive price and, as the Greek health security fund reimburses the acquired medical equipment, these practices may lead to a waste of taxpayers' money.

Greece has not yet complied with the Court's judgment, therefore the Commission has decided to refer the case back to the Court and ask the Court to impose on Greece financial penalties of 7173,06 euro per day from the date of the original Court ruling until Greece finally complies with EU rules or until the second Court ruling, whichever comes first, as well as 43724,8 euro per day from the date of the second Court ruling until Greece finally complies with EU rules.

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