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NEWSLETTER - Latest Legal Updates

Issue 46 - January - March 2015

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M&A LAW FIRM’S PARTICIPATION IN PROMINENT CONFERENCES

HELLENIC ENERGY REGULATION INSTITUTE

Annual European Forum on Contract Risk Management for Utilities and Power Generation Industry (9-10 March 2015, Berlin)

The Hellenic Energy Regulation Institute, represented by its Chairman, Dr. Antonis Metaxas, Managing Partner of M&A Law Firm, has been invited to participate to the “Annual European Forum on Contract Risk Management for Utilities and Power Generation Industry” that will take place on 9th and 10th of March 2015 in Berlin, Germany. Dr. Metaxas, Lecturer at the University of Athens and Vis. Professor of Energy Law, IHU is among the invited distinguished speakers (other speakers include leading academics as well as Directors of Legal Departments of major electricity companies as SIEMENS, ENEL, RWE, ALPIQ etc.); his lecture will focus on the state aid qualification of compensation schemes for the provision of PSO's in the electricity sector and the civil law implications of EU Law violations on Contract Risk Management.

This forum constitutes an excellent networking platform for Senior Experts from Legal and Contract divisions of major Power Generation, Utilities, Contractor and Sub-contractor Companies to share and gain invaluable knowledge on the best practices in contract risk management. Invited leading scientists in the field of energy regulation will examine efficient policies on how to facilitate smooth running of contracts by turning risk into opportunities and overcoming on-going contract hurdles. Key Industry players will brainstorm together to review top contracting strategies aiming to maximize the value of contracts and to ensure effective outcome of the projects.

In case you would be interested to receive further information about this event that will gather leading scientists and practitioners in the field of energy regulation from all over Europe, please click ***here***. For the agenda click *here*.

Berlin Energy Transition Dialogue –
Towards a Global Energiewende
(26-27 March 2015, Berlin)

"The Global Energy Elite meets in Berlin to shape Concepts for an intelligent Transition towards Renewable Energy"

The German Federal Government and the German Renewable Energy Federation (BEE) together with its sectoral associations organize the exclusive conference "Berlin Energy Transition Dialogue 2015 – towards a global Energiewende" on 26 and 27 March 2015 at the Federal Foreign Office in Berlin, Germany.

The German Federal Government is initiating an international dialogue to tackle international energy challenges. Together with the top world energy policy experts, representatives of politics, industry, leading academics from around the world and civil society, solutions are developed towards an international energy transition. Looking ahead to the Climate Change Conference COP21 in Paris as well, the aim of this top level Conference is to discuss possibilities of reconciling climate protection, security of the energy supply and economic growth. For the Agenda, please click http://www.energiewende2015.com/agenda/.

Dr. A. Metaxas, Chairman of the Hellenic Energy Regulation Institute and Managing Partner of M & A Law Firm has been invited to participate to this important Conference by the Conference organizers, the German Federal Foreign Office, the German Federal Ministry for Economic Affairs and Energy and the German Renewable Energy Federation.

STATE AID

State aid to European Banks: Returning to Viability

The Commission's assessment of bank restructuring plans under the State aid crisis rules aims to restore long-term viability by restoring sustainable profitability and reducing risk, minimise the use of taxpayers' money, through appropriate burden-sharing measures, and limit distortions of competition through proportionate remedies.

Since the beginning of the European financial crisis, EU countries have provided EUR 671 billion in capital and repayable loans and EUR 1 288 billion in guarantees to financial institutions in distress, subject to EU State aid rules. Between 2007 and 2014, DG Competition has taken more than 450 State aid decisions, determining the restructuring or orderly resolution of 112 European banking institutions. The effectiveness of these restructuring measures has been evaluated and the conclusion is that the results are striking.

More specifically, around 25% of the entire European banking sector has been restructured under EU State aid rules. The Commission reviewed State aid granted to some of Europe's biggest financial institutions. Out of the top 20 European banks, the Commission approved aid to 12 banks, of which six were subsequently restructured, five received aid through approved aid schemes, and one was orderly liquidated.

Furthermore, this aid has paid off. Supported and restructured banks are showing significant improvement in operational and risk indicators, and in funding and solvency positions. However, the recovery is a time-consuming process. It is only towards the end of the restructuring period that the performance of restructured banks converges towards the values of banks that did not receive aid.

Results from the recent asset quality review and stress test conducted by the ECB on the main European Banks confirm these findings. Most Banks under State Aid control successfully passed the test confirming their solvency. Only a few years after commencing a Commission-monitored restructuring scheme, recipients of aid start converging towards their peers. This suggests that in general, Banks that received aid during the financial crisis have bounced back after implementing a considerable part of their restructuring plans, and can today be considered to be as healthy as ordinary Bank.

- **Commission opens in-depth Investigation into UK public measures in favour of Lynemouth power plant**

The European Commission has opened an in-depth investigation to assess whether UK plans to support the conversion of the Lynemouth coal power plant to operate entirely on biomass were in line with EU state aid rules. The Lynemouth plant is one of several projects selected under the Final Investment Decision Enabling for Renewables (FIDeR), ***a UK support measure for renewable energy projects***. In July 2014, the Commission already approved five FIDeR projects to develop offshore wind farms. In January 2015, the Commission also approved construction of the Teesside CHP biomass plant.

The Commission will investigate further to see if its concerns are justified and to make sure that the public funds used to support the project are limited to what is necessary and do not result in overcompensation. It will also assess whether the positive effects of the project in achieving EU energy and environmental objectives outweigh potential competition distortions in the market for biomass. The opening of an in-depth investigation gives the UK and interested third parties an opportunity to submit comments. It does not prejudge the outcome of the investigation.

In December 2014, the UK notified plans to subsidise the conversion of the coal-fired Lynemouth power plant to operate on biomass. The plant would have the capacity to generate 420 MW of renewable electricity running exclusively on wood pellets. The project would receive support in the form of a so-called "Contract for Difference" fixing a certain sales price ('strike price') for the electricity. This means that the generator of the Lynemouth power plant will earn money from selling its electricity into the market. When the average wholesale price of electricity is below the strike price, the generator will receive a top-up payment. According to UK estimates, the project would operate until 2027 and supply about 2.3 TWh of electricity per year. The plant would require approximately 1.5 million tonnes of wood pellets per year mainly sourced from the United States and Canada.

In its preliminary analysis, the Commission considered that the parties' financial calculations and estimates regarding key cost parameters may be too conservative. These parameters, including the load factor of the plant (i.e. the actual electricity produced in a year compared to the maximum possible), its efficiency and the cost of wood pellets, significantly affect the project's rate of return. At this stage, the Commission therefore has concerns that the actual rate of return could be higher than the parties estimate and could lead to overcompensation.

Moreover, the amount of wood pellets to be imported from overseas is considerable, as compared to the volume of the global wood pellets market. Subsidising such a large volume of wood pellets could significantly distort competition in the biomass market. The Commission is therefore also concerned that on balance the measure's negative effects on competition could outweigh its positive effect on achieving EU 2020 targets for renewable energy.

ENERGY

- **Commission launches plan for Energy Union**

The European Commission has adopted its strategy for a European Energy Union. Energy is a more than vital good: it is used to heat and to cool buildings and homes, transport goods, and power the economy. But with ageing infrastructure, insufficiently integrated markets, and uncoordinated policies, consumers, households and businesses do not reap the full benefits of increased choice and lower energy prices. Thus, it is more than necessary to complete the single energy market in Europe. By unveiling its strategy to achieve a resilient Energy Union with a forward-looking climate change policy, the European

Commission delivers on a top priority set out in President Juncker's political guidelines.

a) More specifically, a Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy was adopted. This sets out, in five interrelated policy dimensions, the goals of an energy union – and the detailed steps the Juncker Commission will take to achieve it, including new legislation to redesign and overhaul the electricity market, ensuring more transparency in gas contracts, substantially developing regional cooperation as an important step towards an integrated market, with a stronger regulated framework, new legislation to ensure the supply for electricity and gas, increased EU funding for energy efficiency and a new renewable energy package, focusing European R&I energy strategy, reporting annually on the 'State of the Energy Union', just to name a few.

b) An Interconnection Communication, setting out the measures needed to achieve the target of 10% electricity interconnection by 2020, which is the minimum necessary for the electricity to flow and be traded between Member States. It shows which Member States currently meet the target - and which projects are necessary to close the gap by 2020.

c) A Communication setting out a vision for a global climate agreement in Paris in December. The vision is for a transparent, dynamic and legally binding global agreement with fair and ambitious commitments from all parties. The Communication also translates the decisions taken at the European Summit in October 2014 into the EU's proposed emissions reduction target (the so-called Intended Nationally Determined Contribution, or INDC) for the new agreement.

EU set for greater control of bilateral energy deals with outsiders

The European Commission plans to impose mandatory pre-screening procedures for all bilateral energy agreements between EU Member States and other countries as a means of implementing more centralized control that would ensure compliance with EU regulations and avoid market irregularities.

The EU Commission considers the measure to be necessary following a series of bilateral agreements signed by EU Member States, including Greece, with Russia for the development of the latter's South Stream gas pipeline project, despite Russia's declared termination of the plan.

The European Commission's plan is expected to disappoint certain Member States that have already established closer ties with Russia and Russian energy companies, or would like to, such as Bulgaria, Romania, and Hungary, which were involved in the construction plans for Russia's derailed South Stream gas pipeline project.

Greece, as well, is not expected to fully embrace the measure, considering its interest in establishing new energy agreements with Russia.

The EU's wider energy policy for reduced dependence on Russian natural gas has been accepted by most Member States following gas supply complications caused in Europe by the ongoing conflict between Russia and Ukraine. Until now, the EU has depended on 30 percent of its natural gas supply from Russia.

According to European Commission sources, greater control of energy agreements will protect Member States from unnecessary pressures and distorted market conditions, the take-or-pay clauses applied to long-term natural gas deals being a prime example.

Gas Rate Cuts imminent, Power Rate reductions on hold

Gas consumers in Greece can expect to see a ten percent reduction on their bills as of March, as had been decided by the previous government, based on the lower crude oil prices in the international market. In Greece, gas price levels are linked to oil prices.

Besides the gas reductions, Government officials also appear keen to consider reducing electricity rates for consumers. However, any power rate cut for consumers will need to be preceded by an examination of whether PPC, the Public Power Corporation, can support such a measure as a result of cash-flow problems prompted by a rising level of overdue unpaid electricity bills owed by consumers.

Returning to the gas sector, the latest developments on a take-or-pay clause included in an agreement between the previous administration and Russian supplier Gazprom, which, based on its current standing, will obligate Greece to pay for unconsumed amounts, were discussed at the meeting between Minister of Reconstruction of Production, Environment and Energy, Mr. Panayiotis Lafazanis and DEPA's Chairman, Mr. George Spanoudis.

Based on December figures, DEPA's purchasing cost has fallen by 27 percent. But the lower exchange rate of the euro currency against the dollar is expected to limit the gas price reduction to about 20 percent by June.

ANTITRUST

- **Commission opens in-depth investigation into General Electric's proposed acquisition of Alstom's energy businesses**

The European Commission has opened an in-depth investigation to assess whether General Electric's (GE) proposed acquisition of the Thermal Power, Renewable Power & Grid businesses of Alstom is in line with the EU Merger Regulation. The Commission's preliminary investigation indicates potential competition concerns in the market for heavy-duty gas turbines which are mainly used in gas-fired power plants. The transaction would bring together the activities of GE, the world's largest manufacturer of heavy-duty gas turbines, with those of Alstom, eliminating one of the three main global competitors to GE in this market.

The opening of an in-depth inquiry does not prejudge the final result of the investigation. The Commission now has 90 working days, until 8 July 2015, to take a final decision.

Commissioner Margrethe Vestager, in charge of competition policy, said: "We are concerned that the proposed acquisition might not only lead to higher prices but also result in less choice for customers and less innovation in the sector. Technology is and will continue to be crucial to help Europe meet its environmental commitments. Therefore, it is essential to maintain competition in the heavy-duty gas turbines market."

The Commission has preliminary concerns in relation to the sale and servicing of heavy-duty gas turbines (HDGTs). The market for HDGTs is characterised by high technological and financial barriers to entry, leading to a concentrated market with only four globally active competitors: GE, Alstom, Siemens and Mitsubishi Hitachi Power Systems (MHPS). The fifth player, Ansaldo, appears to be a niche player with a more limited geographic reach. The margins in the market for HDGTs appear to be higher than those of neighbouring markets for power generation equipment such as steam turbines.

The HDGTs market worldwide is divided into two frequency regions, namely those operating at 50 Hz and those at 60 Hz. All the countries in the European Economic Area (EEA) operate at 50 Hz frequency.

Since MHPS seems to be less active in the EEA than in the rest of the world, the transaction would bring together the activities of two of the three main competitors in the EEA. The transaction would eliminate Alstom from the market, leaving European customers without an important competitor of GE and Siemens. Indeed, in the market for the sale of new 50 Hz frequency HDGTs, the merged entity would reach high market shares in the range of around 50 %, both in the EEA and at worldwide level excluding China.

Furthermore, the transaction might significantly reduce R&D and customer choice in the HDGT industry. After the merger there is a risk that GE would discontinue the production of certain Alstom HDGT models and that advanced HDGT technology developed by Alstom would not be brought to the market.

Finally, in the market for the servicing of General Electric's mature technology HDGT frames, the transaction eliminates competition by Alstom's subsidiary Power System Manufacturing. Overall, the Commission is at this stage concerned that the transaction may lead to an increase in prices, a reduction in customer choice and a reduction of R&D in the HDGT industry, leading to less innovation.

The Commission will now further investigate the proposed acquisition in-depth to determine whether its initial concerns are justified. At this stage, the Commission considers that the transaction is not likely to raise concerns in relation to power generation equipment for nuclear, coal-fired, wind and hydro power plants, as well as in relation to electricity transmission equipment.

Given the worldwide scope of the parties' activities, the Commission is cooperating closely with the Department of Justice in the US.

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