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NEWSLETTER - Latest legal updates

Issue 25 *March 2011*

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ENERGY

ERGEG publishes final draft framework guidelines on capacity allocation and congestion management for electricity

On 11th of February 2011 and after extensive consultation with the relevant stakeholders, the European Regulators Group for Electricity and Gas (ERGEG) formally submitted their framework guidelines on electricity capacity allocation and congestion management (CACM FG) to the European Commission.

CACM FG addresses a central issue in completing the internal market in electricity: how bottlenecks in networks are managed. The integration of national markets regarding efficient and effective use of interconnection capacity is essential to the achievement of an internal electricity market in Europe.

The framework guidelines address the integration, coordination and harmonization of the congestion management regimes, insofar as this is necessary to enable electricity trade within the EU.

The guidelines deal with three timeframes of capacity allocation: forward market, day-ahead market and intraday market. Additionally, the guidelines address capacity calculation, crucial to the issue of capacity allocation and congestion management.

The final framework guidelines are indented to act as input to the work of the Agency for the Cooperation of the Energy Regulators.

STATE AID/ ELECTRONIC COMMUNICATIONS

Commission orders recovery of Greek mining aid

After an in-depth investigation, the European Commission found that the sale of Greek Cassandra mines back in 2003 from the Greek State to Ellinikos Xrysos for € 11 million was carried out below its market value and on the 23rd of February 2011 it has ordered the recovery of the state aid.

The mines are located in Northern Greece, in the Chalkidiki Region. Some of its main products, apart from gold, are zinc, copper, lead and silver. On the other hand, Ellinikos Xrysos was established for the exact purpose of acquiring the mines and it now belongs to European Goldfields, a Canadian mining company.

Neither an open tender nor a valuation of the mines' assets by an independent valuator ever took place. Moreover, the sale contract provided for the waiver of the transaction taxes. The Commission received a complaint in July 2007.

The Commission's decision is mainly based on a report conducted shortly after the transaction on behalf of Ellinikos Xrysos, according to which the value of the mines was € 25 million. The corresponding taxes for this transaction should have amounted to € 1.34 million.

Consequently, the Commission concluded that Ellinikos Xrysos has benefited from illegal state aid, which the Greek State needs to recover, including interest.

State aid: Recovery of illegal State aid gets faster as Commission tightens procedures

In 2010 Member States have recovered € 530 million in subsidies found to be illegal under EU State Aid rules, bringing a total of recovered aid since 2000 amounting to € 10 billion (86% of a total of € 12.7 billion of illegal subsidies during the last decade), whereas another € 1.8 billion still remains to be recovered. The pace of recovery is increasing, as 57% of the illegal aid has either been recovered or taken to European court in less than two years, compared to 48.3% in 2009 and 26.9% in 2007.

However, there is still a big number of old cases that are dragging on for far too long. In total, 10 cases were successfully closed in 5 Member States in 2010, whereas 54 were still pending at the beginning of 2011 in 12 Member States. In 2010 the Commission has asked the Court of Justice to impose penalties on Italy and Spain for failing to comply with recovery decisions, despite having been previously condemned for non implementation of such decisions. It also sent a formal notice to France for not recovering aid awarded in the form of tax exemptions from corporate tax.

The European Commission has accelerated its procedures and tightened its rules for failure to comply with EU law or decisions, including State aid control. In the future, recovery will be monitored even closer and infringement procedures will be initiated as soon as it becomes obvious that the given government is not planning on recovering the money.

Commission approves record amount of state aid for the deployment of broadband networks in 2010

During 2010, Commission adopted a record number of decisions regarding state aid in developing broadband networks in Spain, Finland, Germany etc, according to which the Commission authorized the use of over 1.8 billion of public funds for broadband developments, an amount of approved state aid twice as much as in 2009.

The state aid approved in this field was in line with the 2009 Guidelines the Commission set regarding the necessity of public support to ensure universal coverage and to avoid the existence of a technological divide between urban and rural areas.

Moreover, the Commission has included very ambitious targets regarding broadband among its Europe 2020 strategy. These targets cannot be reached, unless public funds complement private investments in the expansion of traditional and the development of next generation broadband networks in areas where private operators are not planning any investments in the near future.

Access to broadband services is expected to enormously improve the socio-economic level of life of citizens of remote areas, by providing them with services such as e-health and e-government.

The Commission has to ensure that public support in broadband networks doesn't crowd out private investors and allows private operators to have effective and non- discriminatory access to the broadband infrastructures, in order to approve it. Thus, it has to conclude that the support is being given in areas where no other infrastructure was available before and that operators are being given access under non discriminative terms and conditions, thereby offering households and businesses in remote rural areas level of service comparable to urban areas.
The Commission will continue encouraging the use of public funds in line with its 2009 Guidelines, to help as many Europeans as possible to directly benefit from the advantages of the knowledge-based society.

Commission Hosts Broadband Investment Talks

The Commission examines how best to ensure the very high levels of private sector investment necessary for the deployment of next generation broadband networks to sustain internet growth and so meet Europe's Digital Agenda targets. At a high-level meeting of CEOs and senior board-level company representatives in Brussels on March 3, European Commission Vice-President for the Digital Agenda Neelie Kroes asked industry to come forward with concrete proposals on how to address the broadband investment challenge. The meeting asked an interdisciplinary group led by Ben Verwaayen of Alcatel-Lucent, René Obermann of Deutsche Telekom and Jean-Bernard Lévy of Vivendi, to engage with all stakeholders to develop a holistic approach, with a view to confirming such proposals at a CEO Summit in Brussels on 13th July.

Discussion at the CEO Roundtable focused on the following themes:

-assessing the current state of play on next generation networks deployment and devising the most effective additional means to foster and accelerate such deployment
-assessing the sustainability of the current internet ecosystems and any alternative business models.

The Digital Agenda for Europe (see IP/10/581, MEMO/10/199 and MEMO/10/200) aims to ensure very fast internet access that will enable citizens to shop, create, learn, socialise and interact online and is also essential for the economy to grow. The Agenda sets specific targets of:
-basic broadband coverage for all EU citizens and businesses by 2013,
-internet coverage of 30 Mbps or above for all Europeans by 2020 with half European households subscribing to connections of 100 Mbps or higher.

MERGERS

Commission blocks merger between Olympic Air and Aegean Airlines

On the 26th of January 2011 the Commission decided to block the merger between Olympic Air, which is part of Olympic group of companies, and Aegean Airlines, a publicly listed company. Commission Vice President in charge of competition policy, Mr. Almunia, stated that this merger would have led to a quasi monopoly and therefore to higher prices and lower quality of services for travelers.
The merger was notified to the Commission on June 24th 2010 for regulatory clearance under the European Union’s Merger Regulation. Aegean provides scheduled and charter air passenger and cargo in Greece and short international routes. Olympic Air is active since 2009, following the privatization of the former Olympic Airways. Both Aegean and Olympic operate on routes covered by Public Service Obligations (PSOs). Aegean has PSOs on four routes, whereas Olympic Air has PSOs on thirteen routes.
The Commission analyzed the combined effects of the proposed merger on the individual routes on which they both operate. Many views and complaints were submitted to the Commission by several market participants from Greece and abroad. The proposed merger would have led to quasi monopoly between Athens and Thessaloniki and between Athens and eight island airports, where there are no PSOs.

The investigation revealed that ferries covering these routes are not considered to be a sufficiently close substitute, since travel times are much longer and frequency is much lower. Besides, the investigation revealed no intention of any new player entering the market after such a merger. Olympic Air and Aegean currently compete very closely and will continue to do so in the future, despite the fact that they offered to release slots in several Greek airports and other remedies, such as access to their frequent flyers' programs. The Commission decided that such remedies were insufficient to protect customers from the effects of the transaction, since the problem is not the availability of the slots. Consequently, the merger would be harmful for Greek citizens, as competition would be eliminated, thus leaving the Commission no other alternative than prohibiting the merger.

PUBLIC PROCUREMENT

Commission sends Greece reasoned opinions alleging breach of public procurement rules

The Commission requests Greece to ensure full compliance with EU rules on public procurement as regards school bus services and supply of underground electricity cables.

As far as school bus services are concerned, the award of several school bus contracts took place by means of negotiated procedure, without prior publication of such a notice or launching of transparent tendering procedures. Hence, other interested companies in Europe were prevented from bidding for the contracts, the value of which ranged from € 2 million to € 5 million.

Under EU procurement rules a negotiated procedure is only allowed in exceptional circumstances (assessed by the case law of the CEU), therefore the use of such a procedure in the present case was not in line with those rules.

Regarding the underground electricity cables, in 2008 the Greek Public Power Corporation launched an open public tender for their supply. The contract was estimated at € 55 million. According to the call for tender, the contract was to be awarded to the bidder offering the lowest price. During the course of the open tender and after the legal binding submission of the offers, one bidder offered to discount his initial offer from € 39.4 million to € 37.4 million, and as a result, he was awarded the contract under the new price.

However, modifying a legally submitted offer is against the rules of an open procedure, since other candidates were precluded from participating in the tender on an equal and non discriminatory basis. Contracting authorities need to comply with the terms defined at the outset of a tendering procedure, all applicants must be aware of the applicable rules in advance and assured that these rules apply equally to every bidder.

ENVIRONMENT

Commission urges Greece to comply with Court ruling over lack of urban waste water treatment

The European Commission is urging Greece to comply with a CEU ruling to ensure proper urban waste water treatment in nine towns and cities. The lack of such a system, which should have been in place since 2000, poses threats to the health of people living there. Therefore, the Commission sends a letter of formal notice under ongoing infringement proceedings and if Greece fails to comply, the Commission could refer the case back to the European Court of Justice and ask for financial penalties.

The Court of the EU ruled in October 2007 that Greece was in breach of the Urban Wastewater Treatment Directive. Since the judgment many of the towns and cities across the country have conformed to the legislation, but there are still nine in breach of the rules.

The Commission considers this time delay to be unacceptable because of the risks to health of the citizens living in these areas. The lack of treatment threatens also the marine environment of these areas. Proper waste water treatment is considered to be an important factor in ensuring a thriving tourist industry, a key sector in Greece.

Given the situation, the Commission is giving Greece two months to comply with the ruling and if it fails, the case may be referred back to the European Court of Justice.

For further information you can contact:

METAXAS & ASSOCIATES
ATTORNEYS AT LAW

Offices

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

Berlin
Fritz-Reuter-Str. 5
10827 Berlin, Germany

www.metaxaslaw.gr