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ENERGY

Conference "Wind Energy in Greece – market and developments"

Law Firm "Metaxas & Associates" co-organised with the Embassy of the Federal Republic of Germany and the German-Hellenic Chamber of Commerce and Industry the conference "Wind Energy in Greece – market and developments" having as focus the problems and challenges in the field of wind energy in Greece.

In the conference that was held on the 20th of April 2010 at the King George II Palace Hotel in Athens, Dr. Antonis Metaxas, Managing Partner of "Metaxas & Associates", presented the new legislative developments in the field of Renewable Energy Sources (RES) and particularly the new basic rules contained in the proposed draft law on "Accelerating the development of Renewable Energy Sources to tackle climate change" as well as the proposed modifications regarding the new structure of the licensing procedure for RES projects.

More specifically, Dr. Metaxas commented that the proposed draft law sets as high political priority the climate protection through the promotion of energy from RES and identifies specific binding national targets by 2020. The proposed changes to the licensing status of RES projects aim to restructure and simplify the process and, most important, to reduce the total time needed to obtain authorization from 3-5 years at present to less than 8-10 months in total. Several essential provisions of the draft law were analyzed, such as the attribution of an important part of a special fee on energy production from RES to benefit the local community through their electricity bills, several other important proposed amendments of the specific normative framework for RES as well as the modifications of the pricing mechanisms for the energy produced.

Representatives from PPC Renewables SA, the Center for Renewable Energy Sources (CRES), the Regulatory Authority for Energy (RAE) and from the

Hellenic Wind Energy Association (ELETAEN) also participated as keynote speakers, analyzing latest developments in the Wind Energy market in Greece, the obstacles and the challenges for the future.
The conference was opened by the Ambassador of the Federal Republic of Germany in Greece, Dr. Wolfgang Schultheiss, the President of the German-Hellenic Chamber of Commerce and Industry Mr. Michalis Mailis and the Secretary General for Energy and Climate Change of the Ministry for Environment Mr. Kostas Mathioudakis.

COMPETITION LAW

Commission adopts new vertical agreements block exemption and vertical restraints guidelines

On 20 April 2010 the European Commission adopted Regulation 330/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union (TFEU) to categories of vertical agreements and concerted practices.
The new vertical agreements block exemption was published on 23 April 2010 in the Official Journal. The current vertical agreements block exemption, Regulation 2790/1999, expires on 31 May 2010. The new Regulation shall be in force from 1 June 2010 to 31 May 2022. There is a transitional period from 1 June 2010 to 31 May 2011 for agreements already in force, which do not satisfy the conditions for exemption in Regulation 330/2010 but which did satisfy the conditions for exemption in Regulation 2790/1999.
The Regulation and accompanying Guidelines take into account the development of the Internet as a force for online sales and for cross-border commerce, something that the Commission wants to promote as it increases consumer choice and price competition. Authorised distributors are free to sell on the Internet without limitation on quantities, customers' location and restrictions on prices.

In order to benefit from the block exemption, manufacturers cannot have a market share in excess of 30% and their distribution or supply agreements must not contain any hardcore restrictions of competition.

The new rules introduce the same 30% market share threshold for distributors and retailers in order to take into account the fact that some buyers may also have market power with potentially negative effects on competition. This change is beneficial for small and medium-sized enterprises which could otherwise be excluded from the distribution market.

For further information on the new block exemption see Regulation 330/2010 (OJ 2010 L102/1).

STATE AID

Commission takes Greece to Court for failure to recover illegal aid from Hellenic Shipyards

On 14 April 2010 the European Commission announced its decision to refer Greece to the European Court of Justice for not complying with a Commission decision of 8 July 2008, finding that State aid was unlawfully granted to Hellenic Shipyards (HSY) and should, therefore, have been recovered.

Subsidies granted by Greece to Hellenic Shipyards S.A. were found by the Commission to be incompatible with the common market, as they distort competition. Various loans and guarantees provided by the Greek State and the then State-owned bank ETVA to HSY constituted incompatible aid as they were provided either below market price or at a time when the financial situation of Hellenic Shipyards had become too difficult to find bank financing, giving HSY an unfair advantage over its competitors. In fact, Hellenic Shipyards is involved in both civil and military activities, but in this decision, the Commission only examined aid which had exclusively benefited

its civil activities because the subsidies that Hellenic Shipyards received for its military activities are exempted from EU State aid rules under Article 346 of the Treaty on the Functioning of the EU.

Since July 2008 discussions have been made between the Commission, the Greek authorities and HSY in order to find possible effective ways of implementing the decision, as the company is facing financial difficulties. These discussions have not resulted to anything so far and therefore the Commission decided to refer Greece to the Court of Justice of the European Union, under Article 108(2) of the Treaty on the Functioning of the EU.

MERGERS

Commission refers Motor Oil (Hellas) Corinth Refineries / Shell Overseas Holdings case to the competent authorities of the Hellenic Republic

On 23 April 2010, the European Commission published its decision under Article 9(3)(b) of the EU Merger Regulation to refer the review of the acquisition by Motor Oil of Shell's Greek fuel and bitumen business to the Greek competition authority. The notified concentration also includes plans to establish a joint venture with Shell Overseas Holdings Limited for the supply of aviation fuel at Greek airports. The Hellenic Competition Commission (HCC) claimed that the proposed transactions would give the merged entity high market shares in various retail markets for fuels in Greece and in various non retail markets for fuels and bitumen. That may affect competition in Greece. Commission and HCC agreed that the concentration would only affect the Greek markets for fuels and bitumen, which are distinct markets, and that the HCC would be best placed to conduct the competitive assessment of the transaction. The Commission decided to refer the case in its entirety to Greece.

The European Commission found that the criteria for referral under Article 9 of the Merger Regulation are fulfilled in this case, as the notified transaction

threatens to significantly affect competition in certain markets for fuels and bitumen in Greece. Taking further into consideration the experience of the Hellenic Competition Commission in dealing with cases concerning the markets for petroleum products, the European Commission concluded that the Greek Authority is better placed to carry out an investigation of the envisaged operation, on the basis of national merger control rules.

COMMUNICATIONS

Commission raises serious doubts about Lithuania's proposed definition of access network markets

On 11 March 2010, the European Commission announced its serious doubts regarding Lithuanian telecoms authority (RRT)'s definition of the markets for access services used by alternative operators to connect final consumers to telecoms services like telephone and internet. Particularly, RRT made a distinction between unbundled copper loops and unbundled optical fibre-to-the-home loops, as two separate markets for access to copper and fibre networks close to the final customer. The Commission does not consider that this distinction is justified, according to the principles of competition law.
The definition of access markets was based on the differences between unbundled access provided through copper local loops and optical fibre-to-the-home (FTTH) local lines. In addition, RRT has proposed to exclude unbundled access through fibre-to-the-building (FTTB) lines from both markets.
The Commission is concerned that the market definition proposed by RRT is not in line with the principles of competition law. The data provided by RRT does not justify its definition of separate copper and fibre markets. According to the Commission, copper and fibre networks should both be included in the same relevant market, because of their similar technical characteristics. Moreover, the prices consumers pay for internet access appear to be

equivalent, irrespective of the kind of services provided through fibre or copper loops.

Furthermore, the Commission is not convinced that FTTB-based access should be excluded from the market definition. It is technically possible to unbundle copper lines to connect each consumer's home to the basement of the building. RRT has not provided any convincing data to exclude such access. The RRT's approach could lead to incorrect regulation of the incumbent's access network, leading to limited competition by alternative operators and restricted investment in Next Generation Access networks by both incumbent and alternative operators.

Commission will call for and assess further clarifications and market data from both RRT and market players. Until then, RRT cannot adopt its proposed measure.

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