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**NEWSLETTER** - *Latest legal updates*

*Issue 26*

*May 2011*

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## STATE AID

### **Commission issues decisions on state aid to Greek casinos**

The European Commission has announced two decisions concerning investigations under EU state aid rules on state aid granted to Greek casinos.

On the first case the Commission found that there has been a fiscal discrimination in favour of public casinos that distorts competition, as private casinos pay higher admission tax. The investigation began in 2009, when the Commission received a complaint alleging that the taxation of admissions in casinos in Greece is discriminatory, and its conclusion was that the fiscal discrimination entails unlawful incompatible aid. The Commission has ordered its recovery by Greece from the State-owned casinos since 1999. In the absence of complete information regarding the aid amounts, the Commission has provided Greece with guidance on the method of calculation of the recovery amount.

On the second case the Commission concluded that there was no state aid involved in the privatisation of the Mont Parnès casino. The Commission had received a complaint from a bidder, who was excluded from the tender process. The Commission found though that the sale took place in an open and unconditional bidding procedure and Greece is assumed to have obtained a market conform price.

### **Commission approves restructuring plan for Agricultural Bank of Greece**

On 23 May 2011 it was announced that the European Commission has approved aid granted by Greece for the restructuring of Agricultural Bank of Greece (ATE). The plan requires ATE to reduce its assets and operating costs, and to improve its risk management and credit approval process.

The Commission found that the restructuring plan submitted in April 2011 should allow ATE to return to long-term viability. It also contains sufficient measures to ensure that the bank's owners contribute adequately to the cost of

restructuring and to limit the distortion of competition brought about by the state support. Therefore the plan fulfils the criteria of the Commission's Restructuring Communication for banks. The plan was also assessed in the context of the international macro-financial assistance programme by the International Monetary Fund (IMF), the European Central Bank (ECB) and the EU, where Greece reaffirmed its commitment to fully implement the restructuring plan of ATE.

ATE's restructuring plan is mainly based on the following:

- the improvement of the capital structure through the increase of €1,259.5 million in its capital, representing a net increase of €584.5 million,
- the gradual reduction of the Group's total assets reaching at least 25% in 2013 (as compared to the bank's assets in 2009),
- (iii) a gradual reduction in its operating costs totaling 25% by 2013 (as compared to the bank's operating costs in 2009),
- (iv) a change in the risk management and credit approval process of the bank by strictly adhering to sound market practices.

The reduction in the bank's assets will be reached mainly through sales, the run-off of certain securities portfolios and a reduction of total loan balances. The overall 25% of deleveraging is an important step for the bank in order to reduce its reliance on external funding and was also welcomed under the international macro-economic assistance. Moreover, the measure will significantly contribute to limiting distortions of competition in the Greek retail banking market.

### **Commission approves budget increase of the Greek guarantee scheme**

The European Commission has approved, under EU state aid rules, a budget increase for the Greek guarantee scheme, with an additional tranche amounting to €30 billion. The scheme has been extended four times and this increase was already envisaged in a Memorandum on the Third Review of the Economic Adjustment Programme for Greece.

The guarantee scheme is part of the support measures for credit institutions in Greece which also includes a recapitalisation scheme and a bond loan scheme. The measures are limited in time and scope and are considered as an appropriate means of remedying the serious disturbance in the Greek economy created by the financial crisis, while encouraging a gradual phasing out of exceptional support measures.

### **Commission launches public consultation on the revision of the Broadband Guidelines**

European Commission decided on the 19th April 2011 to consult stakeholders on the forthcoming revision of EU rules on the public financing of broadband infrastructure. According to the Commission, the current guidelines, adopted in September 2009, provide a clear and comprehensive framework for the application of EU state aid rules in this strategic sector and together with other initiatives, such as the NGA Recommendation, the Spectrum Policy and the Broadband Communication, they play an important role in achieving the ambitious European goals for high speed broadband development. However, important market, technological and regulatory developments may require adaptations of the current guidelines. That is why the Commission has published a questionnaire, addressed to Member States and stakeholders at an early stage of the review process, concerning the technological and market development of very high speed broadband infrastructures, the best design of access conditions on subsidized next generation networks, enhancement of transparency of state aid broadband measures and the role of the national regulatory authorities in such projects.

In light of the replies, the Commission will then evaluate whether and to what extent changes are necessary. If appropriate, the Commission will come forward with new draft Guidelines in early 2012. Member States and stakeholders will again have the opportunity to express their views on this revised proposal.

## COMPETITION

### **Greece adopts a new Competition Law**

In April 2011, the Greek Parliament adopted the Competition Protection Act which aims at increasing the effectiveness of the Hellenic Competition Commission, while further promoting harmonization of the domestic competition law with EU competition law and practice.

The new law (3959/2011) was adopted on 15 April and entered into force on 20 April 2011. It introduces a number of significant amendments to Greek competition legislation by endorsing the latest jurisprudence of Greek courts (for example, introducing a five year statute of limitations), rationalising the filing obligations and by reducing some differences with the EU regime. The modifications include the abolition of notification requirements and formalities which entail a horizontal administrative burden for both companies and the HCC, the streamlining of merger-review deadlines, reflecting more closely the corresponding provisions of Regulation 139/2004 and the introduction of limitation periods for the imposition of fines.

As regards the HCC, the new Act introduces changes with a view to increasing the effectiveness of its enforcement actions, as it enhances its ability to set strategic goals and to prioritize important cases, in light of the estimated impact of the practices in question on the functioning of effective competition, and especially on consumers. The new Law extends the general deadlines for the investigation, deliberations and issuance of decisions from six months to twelve months, in order to establish a more reasonable timeframe for the resolution of cases.

Also, the new measures concern the improvement of the cooperation between the HCC and sectoral regulatory agencies, the enhancement of HCC's powers to issue opinions on legislative proposals/regulations, the HCC's ability to initiate external audits, as well as the HCC's discretion to issue notices and guidelines on the implementation of the law based on corresponding EU guidelines.

Finally, criminal penalties for cartels become stricter, with a view to increasing the overall deterrent effect of the competition rules, while the procedure for the suspension of fines upon appeal before administrative courts is further streamlined, so that a greater proportion of the fines imposed are to be paid pending the appeal process.

### **OECD paper on competitive neutrality and state-owned enterprises**

The OECD has published a paper on competitive neutrality and state-owned enterprises. The paper discusses the potential for the activities of state-owned enterprises to restrict or distort competition due to the competitive advantages that they may enjoy. The principle of competitive neutrality provides that no business entity should be advantaged, or disadvantaged, solely because of its ownership. In this paper the main sources of competitive advantages and the incentives for their use are examined, and there are considered ways of countering these advantages and incentives. The paper also assesses the approaches available to competition agencies to counter anti-competitive practices by state owned enterprises.

## **COMPANY LAW AND CORPORATE GOVERNANCE**

### **Updated OECD Guidelines for Multinational Enterprises**

On 25 May 2011, the Organisation for Economic Co-operation and Development (OECD) published an updated version of its Guidelines for Multinational Enterprises (Guidelines). The Guidelines, which were last reviewed in 2000, provide voluntary principles and standards for responsible business conduct and cover a range of issues including general policies, disclosure, employment and industrial relations, environment, bribery, consumer interests, science and technology, competition and taxation. The

updated Guidelines include a new section on human rights.

The implementation procedures set out in the updated Guidance are also broadly similar to those in the 2000 version. Responsible for promoting the updated Guidelines are the National Contact Points (NCP) which are also responsible for seeking to resolve specific issues arising between parties in connection with the Guidelines in accordance with the specific instance procedure. The commentary on the procedural guidance for NCPs in the updated Guidance provides additional detail on a number of matters relating to the specific instance procedure, including an indicative timeframe and an increased focus on making public the results on the procedure.

## ELECTRONIC COMMUNICATIONS

### **Revised EU electronic communications regulatory framework**

A series of press notices published on 23 May 2011, summarize the revised EU electronic communications regulatory framework, which must be implemented by member states by 25 May 2011. The legislative package to revise the EU telecoms regulatory framework was adopted in November 2009. It comprises Directive 2009/140 amending the Framework Directive (2002/21/EC), the Access Directive (2002/19/EC) and the Authorisation Directive (2002/20/EC) (OJ 2009 L337/37), Directive 2009/136 amending the Universal Services Directive (2002/22/EC), the E-Privacy Directive (2002/58/EC) and Regulation 2006/2004 on consumer protection co-operation (OJ 2009 L337/11) and Regulation 1211/2009 establishing a new Body of European Regulators (BEREC).

The benefits that the revised package will bring include higher levels of consumer protection and choice, improved online privacy and safety and more consistent regulation across the EU. In terms of how the new legislation will ensure more consistent and effective regulation of competition in EU telecoms markets, the Commission describes how it will have more oversight

on competition remedies, how national telecoms regulators will have greater independence and how there will be functional separation of network operations from service provision.

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