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- **Florence School of Regulation: Interdisciplinary Research Project on the Capacity Mechanisms in the EU Energy Market – Dr. A. Metaxas, MP of M&A Law Firm has drafted the Chapter focusing on the Greek Energy Market**

The Florence School of Regulation (FSR) (http://fsr.eui.eu/Home.aspx), one of the world leading academic institutions in the field of energy regulation, working closely with the European Commission and providing a European forum where academics and practitioners shape EU energy policies, has conducted an interdisciplinary scientific study combining legal, economic and policy perspectives regarding Capacity Mechanisms in the European electricity markets.

The above study aimed at analyzing current capacity mechanisms in the European national electricity markets by conducting a cross-country comparison as well as providing economic and legal evaluations of these mechanisms in the context of European market integration. In the absence of consensus regarding the necessity of these mechanisms in light of concerns over security of supply on the one hand and possible market distortions caused on the other, the objective of the study was to provide the European Commission and national regulatory authorities with an in-depth empirical and comparative account of the relevant discourse from a broader European and international perspective.

The chapter concerning Greece has been drafted by Dr. Antonis Metaxas, Lecturer at the University of Athens and Visiting Professor of Energy Law at various Universities.

The official Book Launch Seminar hosted by OXFORD University Press and FSR will take place on 29 September 2015 in Brussels.

For further information see the relevant link:

http://fsr.eui.eu/Events/ENERGY/Workshop/2015/150929BookLaunchSeminarCapacityMechanismsintheEUEnergyMarket.aspx

STATE AID

Commission finds that electricity contracts between state-owned Romanian electricity generator Hidroelectrica and certain customers did not involve state aid

Following an in-depth investigation, the European Commission has concluded that electricity supply contracts concluded between the state-owned Romanian electricity generator Hidroelectrica and certain electricity traders and industrial customers did not involve state aid within the meaning of the relevant EU rules.

The Commission found that the contracts were either concluded on market terms or, where tariffs were below market level, that the Romanian state could not be held responsible for the tariffs granted. In particular, the analysis revealed that Hidroelectrica charged prices that were fully in line with the benchmark market price to nine customers (ArcelorMittal, Alro, Alpiq RomEnergie, Alpiq RomIndustries, EFT, Electrica, Electromagnetica, Energy Holding, Euro-Pec). The prices charged to Luxten-Lighting, Electrocarbon and Elsid were lower than the benchmark market price. However, the investigation did not establish that the decision to grant favourable conditions to these relatively minor private players can be attributed to the Romanian authorities. The Commission therefore concluded that none of the sale contracts under examination involved state aid.

Commission orders France to recover €1.37 billion in incompatible aid from EDF

The European Commission has decided that Électricité de France (EDF), the main electricity provider in France, has been granted tax breaks incompatible with EU rules on state aid. In 1997 France did not levy all the corporation tax payable by EDF when certain accounting provisions were reclassified as capital. This tax exemption conferred upon EDF an undue economic advantage compared with other market operators and so distorted competition. In order to remedy this

distortion, EDF must now repay that aid. The Commission reopened its investigation in 2013 following annulment of an earlier decision by the EU Court of Justice.

Margrethe Vestager, the Commissioner responsible for competition policy, commented that whether private or public, large or small, any undertaking operating in the Single Market must pay its fair share of corporation tax. The Commission’s investigation confirmed that EDF received an individual, unjustified tax exemption which gave it an advantage to the detriment of its competitors, in breach of EU state aid rules.

As EDF was awarded the high-voltage transmission network in France as a concession, between 1987 and 1996 it made accounting provisions with a view to renewing the network. In 1997, when EDF’s balance sheet was restructured, the French authorities reclassified some of these provisions as a capital injection without levying corporation tax.

The Commission reopened the investigation in 2013 to verify, in accordance with the criteria laid down by the European Courts, whether France's tax revenue loss was economically justified from the point of view of a private investor in relation to EDF in similar circumstances. The Commission has now concluded that it was not, in particular because at the time the profitability that could reasonably be expected of such an investment was too low. It follows that the tax exemption granted to EDF cannot be considered an investment made on economic grounds.

It is therefore state aid that has strengthened EDF's position to the detriment of its competitors, without furthering any objective of common interest. The aid is therefore incompatible with the single market and EDF must repay it to the French state. The amount in question is some €1.37 billion, of which €889 million is a tax exemption granted in 1997 and €488 million is interest.

Commission approves over €750 million aid for gas pipelines in Poland

The European Commission has found that Poland's plans to grant aid of PLN 3 131.5 million (€758 million) for nine gas infrastructure projects in Poland are compatible with EU state aid rules. The projects will facilitate the attainment of a true Energy Union by contributing to the diversification and the overall level of security of gas supply via the connection of European gas supply sources from the Baltic, Adriatic and the Black Sea to the rest of Europe via Poland (as part of the "North South Gas interconnection priority corridor"), the elimination of bottlenecks and the provision of additional capacity to the existing gas networks. Accordingly, the Commission found that the public funding of these projects will further objectives of common interest, in compliance with EU state aid rules and in particular with its 2014 Environmental Protection and Energy State Aid Guidelines.

The total investment costs to realise the nine gas infrastructure projects are estimated at PLN 4 909.4 million (€1 191.6 million). The public aid of PLN 3 131.5 million (€758 million) will cover 64% of the total investment costs. These funds will come from the European Regional Development Fund under the Infrastructure and Environment Operational Program 2014–2020. The remainder of the investment costs will be funded by the Transmission System Operator Gazociągów Przesyłowych GAZ-System S.A. (GAZ-System). Resources from the European Regional Development Fund are considered as state resources (i.e. state aid) since Member States have discretion to decide on their specific use.

The Commission concluded that the support measures were in line with EU state aid rules. In particular, the Commission's assessment showed that the projects could not have been carried out without public funding. An in-depth financial analysis demonstrated that GAZ-System's expected income from the use of the new gas infrastructure would be insufficient to cover investment costs for the nine gas infrastructure projects over a period of 25 years. If the total investment costs were to be financed only by GAZ-System's own financial resources, it

would have led to an increase of the average transmission tariff by 22.34%, which would not have been sustainable.

ENERGY

- **Commission refers Greece to Court and gives Germany a final warning regarding the transposition of the Energy Efficiency Directive**

The European Commission is referring Greece to the EU Court of Justice for failing to transpose the Energy Efficiency Directive (Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012). Under this Directive EU Member States must meet certain energy savings targets from 1 January 2014 to 31 December 2020. They must do this by using energy efficiency obligations schemes or other targeted policy measures to drive energy efficiency improvements in households, buildings, industry and transport. Under the Energy Efficiency Obligations Schemes, companies have to take measures to ensure energy savings at final customer level, for example by giving advice on installing better insulation or offering grants for replacing old energy-wasting windows. Member States were required to transpose the obligations of the Directive by 5 June 2014.

In February 2015, the Commission sent a reasoned opinion to Greece requesting the country to notify the Commission of all transposition measures for the Energy Efficiency Directive. To date, no legislation transposing the Directive into national law has been adopted and/or notified to the Commission.

Referring Greece to the Court, the Commission proposes a daily penalty of 29.145,60 €. The level of this penalty takes into account the duration and the seriousness of the infringement. In case the transposition remains incomplete and the Court confirms the Commission's view, the daily penalty would have to be paid from the date of the judgment or a later date set by the Court until the

transposition is complete. The final amount of the daily penalty will be decided by the Court, but cannot exceed the Commission's proposal.

- **Commission proposes "new deal" for energy consumers, redesign of electricity market and revision of energy label for more clarity**

The package is an important step towards implementing the Energy Union strategy with a forward-looking climate change policy, launched as one of the political priorities of the Juncker Commission in February 2015. Today's proposals give prominence to the "energy efficiency first" principle and put households and business consumers at the heart of the European energy market.

"Energy efficiency first" is a central principle of the Energy Union strategy because it is such an effective way to cut emissions, bring savings to consumers, and reduce the EU's fossil fuel import dependency. Since its introduction twenty years ago, the success of energy labeling has encouraged the development of ever more energy efficient products. This has resulted in the current label becoming too complex. The Commission proposes returning to the original A to G energy label scale, simpler and well understood by consumers.

The Commission's proposed revision of the energy labeling directive ensures coherence and continuity and makes sure consumers are able to make more informed choices that will help them save energy and money.

Recognising that citizens must be at the core of the Energy Union, the Commission presents a Communication on delivering a new deal for energy consumers, based on a three-pillar strategy, firstly based on helping consumers save money and energy through better information, secondly on giving consumers a wider choice of action when choosing their participation in energy markets and last but not least on maintaining the highest level of consumer protection.

Consumers need to become just as well-informed and empowered as buyers and sellers on wholesale markets through clearer billing and advertising rules,

trustworthy price comparison tools and by leveraging their great bargaining power through collective schemes (such as collective switching and energy cooperatives).

Finally, consumers need to be free to generate and consume their own energy under fair conditions in order to save money, help the environment, and ensure security of supply.

The Energy Union strategy is designed to help deliver our 2030 climate and energy targets and make sure that the European Union becomes the world leader in renewable energy. Achieving these goals will require a fundamental transformation of Europe's electricity system including the redesign of the European electricity market.

Today's Communication launches a Public Consultation on what the new electricity market design should look like in order to meet consumers' expectations, deliver real benefits from new technology, facilitate investments, notably in renewables and low carbon generation; and recognise the interdependence of EU Member States when it comes to energy security.

This should reap maximum benefits from cross-border competition and allow decentralised electricity generation, including for self-consumption and support the emergence of innovative energy service companies.

Russia's gas pipeline strategy and Europe's alternatives

Europe depends heavily on Russian gas, but Gazprom's plan to stop using Ukrainian pipelines will require a new EU strategy. Strained relationships between EU and Russia due to the Ukrainian conflict forced Gazprom, Russia's state gas monopolist, to abandon the idea of controlling pipelines "from wellhead to burner tip". Gazprom's new grand vision in Europe is to build pipelines to the EU border and from there its clients are expected to take gas to their home markets. As part of this vision, it also commits not to use the Ukrainian pipelines

after 2019. So if Europeans need Russian gas they should build the missing links connecting to Gazprom's proposed pipelines – the so-called Turkish Stream and the recently announced expansion of the Nord Stream link – so goes the current thinking in Gazprom. However, neither Turkish nor western companies are rushing to give firm commitments to build the missing pipelines. In this case, what may happen to European gas markets, should Moscow commit not to use the Ukrainian pipelines after 2019?

First, Europe might be left without Russian gas going through Ukraine by the early 2020s. The implications of this scenario could be dramatic for Europe, after a period of rising energy demand and prices.

However, one could well be correct to point out that such a shock would not impact European prices in the same way as it did in Northeast Asia because we are entering the "buyers' market". Indeed, the demand in Asia is lower than anticipated and developments of liquefied natural gas (LNG) capacities globally are favouring consumers. But, the recent slump in oil prices means that some of the LNG production capacities may never materialise, while the low price environment would also encourage more gas demand. Thus, markets are self-correcting the imbalances eliminate the potential surplus.

Thus, a possible positive development that is perhaps most sought after by many across the Eurasian continent is some sort of reconciliation between Russia and Ukraine, possibly through containment of the conflict in the eastern part of Ukraine. In principle, Gazprom might continue using Ukrainian pipelines if "commercial" conditions, such as the transit fee, are attractive. But recent announcements suggest that Ukraine is asking too much and Gazprom is unhappy with the asked transit price. Furthermore, even if the commercial side of the transit question is resolved, the "transit–avoidance" policy is still deeply rooted in the minds of Russian leaders: the policy dates back to early 1990s and ever since then Russia's gas policy has been to bypass Ukraine's pipelines at any cost.

It remains to be seen whether structural changes in the markets and geopolitics force Gazprom's political masters to rationalise its European strategy, and in particular its strategy vis-à-vis Ukraine. Should this rationalisation occur, then the Russians could flood the European markets with cheap gas, fuelling the much sought re-industrialisation of European economies. But this would require more than just a rational business plan. Investments in political capital are needed to rebuild trust at the highest level between Russia and Europe, and most importantly, between Russia and Ukraine.

In this way, for now, what remains for European energy security is the possibility that western energy companies may take risks in dealing with Ukraine's transit issues post-2019. Indeed, this may seem unpalatable for risk-averse western companies; however, recent policy and market developments in Ukraine – aimed at energy reforms following Europe's guidelines – give us some optimism that there might be some degree of "normalisation" of energy trade on the continent in years to come. To ensure this normalisation, however, Europe should, of course, keep engaging with Ukraine and Turkey, two most important transit countries for European gas markets, to make sure that their energy market liberalisation processes do not suffer due to internal political dynamics and short-term energy populism.

ANTITRUST

Mergers: Commission clears acquisition of BG Group by Royal Dutch Shell

The transaction was cleared as it will not grant Shell market power in oil and gas exploration, LNG liquefaction or LNG wholesale supply. Shell will also not be able to prevent competitors from using its gas infrastructure in the North Sea.

The European Commission has approved under the EU Merger Regulation the acquisition of BG Group by Royal Dutch Shell. The Commission concluded that

the takeover would not lead to Shell benefiting from market power in a number of markets, namely oil and gas exploration, the liquefaction of gas and the wholesale supply of liquefied natural gas (LNG). Moreover, the Commission found that Shell would be unable to shut out its competitors from access to its liquefaction facilities that supply LNG into the European Economic Area (EEA) or from gas transportation and processing infrastructure in the North Sea.

The Commission focused its investigation on the markets where the activities of Shell and BG Group overlap, namely in the exploration for oil and gas reserves, the supply of natural gas and the liquefaction and supply of LNG.

The Commission found that after the transaction the merged entity's market share would remain limited in the exploration for oil and gas reserves, the liquefaction of LNG and the wholesale supply of LNG. Moreover, a number of strong competitors would remain active in these markets after the merger. The Commission concluded that the takeover would not allow Shell to influence prices and that these markets would remain competitive after the transaction.

Moreover, the Commission found that Shell and BG Group would be unlikely to prevent competitors from accessing some of Shell's LNG liquefaction facilities used to supply LNG into the EEA or from its natural gas transportation and processing infrastructure in the North Sea. This is mainly because significant additional liquefaction capacity is being built and will come on-stream in the near future, while significant spare oil and gas transport and processing capacity exists in the North Sea region.

The Commission therefore concluded that the transaction would not raise competition concerns. The transaction was notified to the Commission on 29 July 2015.

Commission approves GE – Alstom deal

General Electric won European approval Tuesday for its €12.05 billion partial takeover of Alstom after agreeing to sell certain assets to an Italian rival. GE will sell "central parts of Alstom's heavy-duty gas turbines business" to Ansaldo Energia, which is 40 percent owned by China's Shanghai Electric, according to a statement by the European Commission. GE also ceded 34 service contracts out of about 100 for heavy-duty gas turbines.

"Even if Ansaldo is not the strongest player, this gives them a fighting chance," said Margrethe Vestager, the European commissioner for competition. The remedy package will enable Ansaldo "to get insight from the servicing contract and revenues from the contracts."

The deal will reshape the competitive landscape in Europe, consolidating GE's position as a global leader for power generation equipment by adding Alstom's superior steam turbine technology and its offshore wind power and hydro power businesses to GE's portfolio. That would set the stage for Ansaldo to enter Europe's €25 billion turbine market, which is fast-adapting to the decline in coal and nuclear and the rise in natural gas and renewable fuels. Ansaldo will need to establish itself on a market that will be a virtual duopoly between GE and Siemens.

The Commission demanded concessions because it was concerned the deal would give GE a dominant position in the market for gas turbines, allowing it to raise prices for the utilities and local authorities that build power stations. GE, for its part, insisted the European market was shrinking and investigators should consider the competitive pressure from global rivals. That argument may have held sway with the Commission.

GE was also forced to make various commitments to the French government, which threatened to block the deal. More specifically, GE promised to ring-fence some of Alstom's nuclear activities ensure certain business operations remained and create 1,000 new jobs in France. GE also agreed to transfer its train signalling

business to Alstom. The hope in France is that Alstom, with additional cash and bulk, will emerge as European champion in the transport sector, better equipped to face down international competition from Bombardier, Hyundai and Siemens.

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