



METAXAS & ASSOCIATES
ATTORNEYS AT LAW

NEWSLETTER - *Latest legal updates*

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STATE AID / ELECTRONIC COMMUNICATIONS

CIEEL Conference

The Centre of International and European Economic Law (CIEEL) and the State Aide Unit (StAU) co-organized in Athens, on 16th of June, a conference on “Special State Aid Issues”, focusing on the legal problems of state financing to several sectors of the economy. Several members of the Hellenic State Aid Institute participated as keynote speakers in the conference. Dr. Mihalis Kekelekis, Secretary of the Institute, presented an analysis on “State aid to finance infrastructure” and Associate Professor Nikos Farantouris, Member of the Institute’s Advisory Board held a speech on “State Aid to Firms in Difficulty”.

Dr. Antonis Metaxas, President of the Hellenic State Aid Institute, presented an analysis of the legal issues arising in cases of State financing of Broadband Infrastructures. More specifically, Dr. Metaxas underlined the importance of developing Broadband Next Generation Access (NGA) Networks in Greece, focusing especially on various FTTx models. The multiple difficulties that investors encounter during the procedure of network development, as well as citizens’ demands for better and more efficient network access, require government intervention to facilitate the deployment of broadband infrastructures. The European Commission has already adopted Guidelines on the application of EU state aid rules to public funding of broadband networks. Dr. Metaxas analyzed the criteria of assessing the compatibility of such state aid according to the Commission’s guidelines and commented on whether State aid schemes constitute appropriate means for developing next generation networks.

COMPETITION LAW: MOTOR VEHICLE SECTOR

Commission adopts revised competition rules for motor vehicle distribution and repair

Taking into account the intensity of competition on the markets for the distribution of motor vehicles and spare parts, as well as for the provision of repair and maintenance services, the European Commission adopted on 27th of May 2010 Regulation 461/2010 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 in the motor vehicle sector. These new competition rules apply on agreements between vehicle manufacturers and their authorized dealers, repairers and spare parts distributors.

The Commission hopes to increase competition in the market for repair and maintenance by improving access to technical information needed for the repairs and by making it easier to use alternative spare parts. According to the Commission the new rules will reduce manufacturers' abuse of warranties when they request that cars are serviced only in authorized garages. They will also bring down the cost of repairs and maintenance and the cost of distribution by eliminating overly restrictive rules.

The new Regulation introduces a 30% market share threshold above which agreements between car manufacturers and authorized repairers will no longer be block exempted, aligning the rules with the general framework laid down in the Vertical restraints block exemption Regulation 330/2010 that was adopted on the 20th of April. The Commission believes that the new rules will strengthen repairers' access to alternative spare parts, which can represent a big share of the repair bills. Independent repairers must, however, have clear access to all the necessary technical information.

Furthermore, the Commission wants to treat the distribution of cars like any other market. The existing rules are very complicated and restrictive and have

had the indirect effect of driving up distribution costs, which make up on average 30% of the price of a new car. The current distribution model will continue to be exempted in most cases, but certain sector-specific clauses which have proven ineffective or counter-productive will not be carried forward. The new regime will give carmakers more flexibility to organize diverse networks and will ensure the distribution of smaller brands.

The new rules will be valid until 31st May 2023 and will come into force on 1st June 2010 for the repair and maintenance markets and on 1st June 2013 with regard to the vehicle sales markets.

PUBLIC PROCUREMENT

CJ ruling for Greece on right of consortium members to bring actions against public procurement procedures

On 6th May 2010, the Court of Justice of the European Union (CJ) handed down its judgment on two joined preliminary references from a Greek court. The first reference concerns the award of a mixed contract and its compatibility with the EU public contracts legislation. In this case, the CJ ruled that a mixed contract of which the main object is the acquisition by one undertaking of 49% of the shares in a public undertaking and the ancillary object, indivisibly linked with that main object, is the supply of services. The performance of works does not fall within the scope of EU directives on public contracts.

The second reference examines the right of consortium members to bring actions against public procurement procedures. The CJ concluded that EU law, in particular the right to effective judicial protection, precludes a national rule that deprives the members of a temporary consortium tendering in a public procurement procedure of the possibility of seeking, individually, compensation for loss suffered individually as a result of a decision adopted by an authority other than the contracting authority involved in the

procurement procedure and which is such as to influence the conduct of that procedure.

ENERGY

EREGG publishes advice for EU ten-year electricity network development plan

The European Regulators Group for Electricity and Gas (EREGG) published on 23 June 2010 its advice on the EU-wide ten-year electricity network development plan, which aims to eliminate physical congestion where it is considered to hinder the development of the cross-border electricity trade and market integration. The European Network of Transmission System Operators for Electricity (ENTSO-E) is required to publish the network development plan every two years under the third energy reform package. The EREGG consulted on its draft advice in December 2009.

The EREGG's document sets out the roles and responsibilities of ENTSO-E, the Transmission System Operators (TSOs), the Agency for the Cooperation of Energy Regulators (the Agency), the national regulatory authorities (NRAs) and stakeholders. It also sets out the main tasks in the planning process, stakeholders' involvement and the contents of the Community-wide ten-year network development, as well as the evaluation criteria for the Agency's opinion on network development plans.

Analyzing the specific regulatory criteria applied in the opinion-forming process, the document highlights that the network development plans must ensure safeguard security of supply, non-discrimination, effective competition, efficient functioning of the internal electricity market, and sufficient level of cross-border interconnection open to third party access.

SERVICES

Commission calls on Greece to end fixed minimum fees for lawyers

The European Commission has sent a formal request to Greece asking for an amendment of its legislation on the minimum prices that lawyers should charge for their services. These national rules restrict lawyers from other Member States to operate in Greece and limit the range of legal services on offer to Greek citizens.

The fundamental EU law principles of freedom of establishment and of provision of services require Greece, and any other Member State, not to have any provision in its laws that could hinder a service provider, in this case a lawyer, from operating in its territory.

However, there are fixed minimum fees on all lawyers providing their services in Greece, with no exception. This legislation seems to be a restriction of the basic EU law principles mentioned above, according to the Commission, and does not appear to be justified by consumer protection or quality assurance. This price system cannot assure the quality of services and therefore Greek citizens cannot receive legal services for better prices while their choice of service providers is limited.

Within two months Greece must reply to Commission's questions regarding these infringements, otherwise the matter will be referred to the Court of Justice of the EU.

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