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Inaugural session of "Energy Dialogues"

The inaugural session of "Energy Dialogues", a scientific initiative focusing on the analysis of important regulatory issues affecting the Energy Market co-organized by the Hellenic Energy Regulation Institute and Energypress, took place on October 31,2014 at Aegli, Zappeio.

Key personalities from the Greek Energy scene participated as speakers in the inaugural session, which focused on the regulatory aspects of the restructuring the Greek electricity market. Speakers included Environment, Energy & Climate Change Deputy Minister Asimakis Papageorgiou, the President and CEO of PPC S.A. (Public PowerCorporation) Arthuros Zervos, Miltos Aslanoglou, Vice President of RAE (Regulatory Authority for Energy), Ioannis Giarentis, President of the Hellenic Independent Power Transmission Operator, Anastassios Garis, President of the Operator of Electricity Market, Giorgos Stamtsis, General Manager of the Hellenic Association of Independent Power Producers (HAIPP - locally referred as ESAI), Pantelis Kapros, Professor at the National Technical University (NTUA), Antonis Kontoleon, Board Member of EVIKEN(Industrial Energy Consumers Association), Ioannis Tsipouridis, Board President of ELETAEN (Greek Wind Energy Association) and Konstantinos Athanassiadis, President of the recently established Hellenic Association of Electricity Traders and Suppliers.

"Energy Dialogues" were curated and coordinated by Dr. A. Metaxas, President of the Hellenic Energy Regulation Institute and Managing Partner of M&A Law Firm.

Speakers at the "Energy Dialogues" series offered detailed and substantiated answers to pre-determined questions. The answers will be published for the creation of an archive of thought-provoking material. In order to provide access of information to sector professionals, researchers, as well as to the ever-increasing number of young scientists interested in the discipline of energy regulation, the archive will also be made available through a special section to be launched in the Energypress news portal.

Hellenic State Aid Institute co-organized the Conference on "State Aid Modernisation – Challenges for the Greek Public Administration"

The Hellenic State Aid Institute and its Chairman, Dr Antonis Metaxas, organised in cooperation with the State Aid Central Unit of the Ministry of Economy and Finance and the Centre of International and European Economic Law (CIEEL) - State Aid Unit the Conference titled *'State Aid Modernisation – Challenges for the Greek Public Administration'*. The event took place at the Greek Ministry of Foreign Affairs on the 13th of November.

The conference, in which leading academics and practitioners in the field of EU State Aid Law and Policy participated as speakers, comprised of two sessions: The first session focused on the modernization of the EU regulatory framework on State Aid Law. In the second session experts discussed the highly important issues of the application of the state aid rules by national courts. Last, a Round Table discussion focused on topical issues regarding State Aid policy in Greece.

For more information see ***here***.

STATE AID

EU–wide stress test by the European Banking Authority and assessment by the ECB

Since the onset of the financial crisis, major improvements in the EU regulatory framework, the level and quality of banks' capital and supervision have considerably strengthened the resilience of European banks. The results of the EU-wide stress test and the comprehensive assessment, which represent the most intense scrutiny that banks have ever undergone in Europe, confirm overall this positive trend. It is also an important step towards an operational Single Supervisory Mechanism, which is a key component of the Banking Union.

In this process, the Commission makes sure that such follow-up actions are in line with EU law ensuring that any capital shortfalls are met from private sources. If, however, state support is needed, the Commission will apply EU State Aid rules, in particular the Commission's Banking Communication of August 2013, which ensure a level playing field in the single market and that any public support is limited to the minimum necessary.

Background:

In order to identify and address any remaining vulnerabilities in the EU banking sector, the European Banking Authority has coordinated an EU-wide stress test covering 123 of the most significant banking groups in the whole EU. The European Commission adapted its temporary state aid rules for assessing public support to financial institutions during the crisis in a Communication ("Communication from the Commission on the application of State aid rules to support measures in favour of banks in the context of the financial crisis" – the so-called 2013 'Banking Communication'). The main changes, applicable since 1 August 2013, include requiring banks to work out a sound plan for their restructuring or orderly winding down before they can receive recapitalization or asset protection measures. They also include strengthened burden-sharing: in case of capital shortfalls, bank shareholders and junior creditors are now required to contribute as a first resort, before banks can ask for public funding.

Commission approves Greek financing of ELTA for transitory period (2013-2015) for universal postal service and opens in-depth investigation for 2016-2020

The European Commission has found direct subsidies granted by Greece to the state-owned postal incumbent Hellenic Post (ELTA) for the delivery of the universal service during a two-year or three-year transitory period (from 2013 until 2014 or 2015) to be in line with EU state aid rules. The Commission has concluded in particular that the grants only compensate ELTA for the extra costs of carrying out public service obligations. However, the Commission has concerns that the compensation fund mechanism to be established for the following five-year period may unduly favour ELTA over competitors and has therefore opened an in-depth investigation. The opening of an in-depth investigation gives Member States and interested parties an opportunity to submit comments and does not prejudge the result.

ELTA is entrusted until 2028 with the universal postal service which consists in offering a baseline level of postal services to all residents in Greece with uniform tariffs. To compensate ELTA for the net cost incurred in fulfilling its obligations as universal postal service provider, the Greek authorities have established a five-year compensation fund mechanism, requiring other providers of postal services active on the Greek market to contribute to the financing of the universal service. The possibility to establish such a mechanism is provided for by the 3rd Postal Directive (see IP/08/163). Given the novelty of such a mechanism and the recent liberalisation of the postal services market in Greece, the Greek authorities have decided to implement a two-year or three-year transitory State-funded compensation regime.

The Commission found that the transitory regime complies with EU rules on Services of General Economic Interest (SGEI). ELTA will only receive compensation for the extra costs of delivering the universal service, in line with the Commission's 2012 Decision on Services of General Economic Interest (SGEI) (see IP/05/937).

The Commission then assessed the 5-year compensation fund mechanism under the provisions of the 2012 SGEI Framework (see IP/05/937), which applies to public service compensations of higher amounts than those covered by the provisions of the Decision. Indeed the compensation amounts granted through the fund could exceed the relevant threshold of 15 million euros per year.

Following this preliminary assessment, the Commission considers that although most of the conditions of the Framework are fulfilled, the level of contributions requested from ELTA's competitors raises serious competition issues since they might prevent competitors from entering or remaining active in the services where the universal service obligations apply. While ELTA's fixed contribution to the fund would reach 0.5% of its turnover generated by the universal service provision, the contribution of competitors could reach up to 10% of their turnover in the same services, depending on their ratio of urban distribution. The Commission has opened an in-depth investigation to examine whether these concerns are confirmed and to ensure that the compensation fund mechanism to be put in place by the Greek authorities will not excessively distort competition in the postal market in Greece.

Commission approves German aid scheme for renewable energy and orders partial recovery

Following an in-depth investigation the European Commission has concluded that aid granted for the production of energy from renewable energy sources under the German Renewable Energy Act of 2012 (Erneuerbare-Energien-Gesetz – "EEG") was in line with EU state aid rules. The Commission has also approved the majority of reductions granted to energy-intensive companies on a surcharge to finance the support for renewables. This surcharge was imposed on electricity suppliers and passed on to end consumers (EEG-surcharge). However,according to the Commission, a limited portion of the reductions exceeded what is permitted under EU state aid rules. The beneficiaries now have to pay this excess back to remedy the distortion of competition. The recovery only concerns 2013 and 2014.

Competition Commissioner Margrethe Vestager commented: "I want to strike a balance between several needs: to promote renewable energy and ensure its stable financing. At the same time we need to make sure that contribution by SMEs and consumers is fair, and that we protect the competitiveness of European industry. Today's decision achieves this."

Following complaints from consumers, the Commission opened an in-depth investigation in December 2013 to examine whether the support for renewable energy and the surcharge reductions granted to energy-intensive companies in 2013 and 2014 gave those companies an undue economic advantage over their competitors, in breach of EU state aid rules. Germany had not notified the EEG-Act 2012 to the Commission for prior state aid scrutiny because it considered that it did not involve state aid.

The decision reached the following main conclusions:

The EEG 2012 involves state aid. Germany has introduced a specific state resource, the EEG-surcharge, to support electricity production from renewable sources. It has set the rules under which private operators collect and administer the surcharge. By granting reductions to energy-intensive companies, the State has also decided who should pay that surcharge and, in particular, which consumers should pay less than others. Finally, public authorities are involved in the monitoring of the system and in the approval of the surcharge reductions.

The Commission confirmed that the support to renewable energy production under the EEG 2012 was in line with the Commission's 2008 environmental aid guidelines, notably because it was limited to compensating the extra costs of renewable energy production that exceeded the market price for electricity. The support consisted in particular of feed-in tariffs and premia for renewable electricity producers.

The surcharge reductions for energy-intensive companies under the EEG 2012 were for the major part compatible with the new Environmental and Energy Aid Guidelines, which are applicable since 1 July 2014. The guidelines provide a framework to grant energy-intensive companies reductions from the funding of support for renewable energy. Under the guidelines, Member States can apply such reductions to EU energy intensive sectors particularly exposed to international competition.

The 2014 guidelines also apply to non-notified reductions granted before the 1 July 2014. In order to ensure a smooth transition for the companies concerned, Member States are required to submit an adjustment plan to progressively bring non-notified reductions in line with the criteria of the 2014 guidelines. The Commission has assessed and approved the adjustment plan proposed by Germany for the reductions on the EEG-surcharge applied in 2013 and 2014 on the basis of the 2014 guidelines. However, the actual reductions granted to some energy-intensive users exceeded the levels set under the adjustment plan. This additional reduction gave the beneficiary companies an undue advantage over their competitors in breach of EU state aid rules and now has to be paid back.

Finally, Germany has committed to invest €50 million in interconnectors and European energy projects, in order to remedy any risk that the measure discriminated against imported electricity, which is also subject to the surcharge. Articles 30 and 110 of the Treaty on the Functioning of the European Union (TFEU) prevent Member States from imposing charges or taxes that discriminate against imports. On the basis of Germany's commitment, the Commission concluded that this would remedy any discrimination which importers may have suffered in the past from the EEG 2012.

ENERGY

EU General Court rules in the Greek "Aloumինion" Case (T-542/11)

By its judgment of 8 October 2014 in Case T-542/11, Aloumինion v Commission, the General Court of the European Union annulled the Commission's decision 2012/339/EU of 13 July 2011 which had declared that the aid granted by the Greek authorities to Aloumինion S.A., in the form of reduced electricity tariffs accorded by the Greek State Supplier, the Public Power Corporation (PPC), is unlawful State aid. According to the Court's ruling, the preferential electricity tariffs offered to Aloumինion S.A. by PPC, covering the period from January 2007 to March 2008, do not constitute state aid.

The full text of the judgment can be assessed ***here***.

Commission wins appeals on preferential electricity tariffs in Italy

The General Court confirmed in October a Commission decision of November 2009, ordering Italy to recover incompatible state aid from Alcoa. The company had enjoyed preferential electricity tariffs without objective justification. The GC dismissed the appeal and entirely confirmed the Commission's findings (T-177/2010).

The GC found, in particular, that Alcoa had enjoyed preferential tariffs which were financed by the Italian State by means of the imposition of tax on all electricity consumers in Italy. The background of the decision is interesting since Alcoa had been enjoying similar preferential tariffs during the period 1995 – 2005 by ENEL, the monopoly energy supplier, a measure which had been already examined and approved by the Commission. However, the new preferential tariffs, which were the contested measures in the case before the General Court, refer to a new legislative measure of the Italian State with effect from 2006. The Court found that the older measure which had been approved by the Commission presented important differences with the new one, since the new tariffs were not defined by a supplier but the State. Therefore, Alcoa enjoyed a selective advantage, which was financed by a special fund through the imposition of a tax.

To conclude, the General Court dismissed the action brought by Alcoa and confirmed the Commission's decision. The judgment of the Court can be found ***here***.

ANTITRUST

Mergers: Commission opens in-depth investigation into proposed acquisition of Greek gas transmission system operator DESFA by SOCAR

The European Commission has opened an in-depth investigation to assess whether the proposed acquisition of the Greek gas transmission system operator DESFA by the State Oil Company of Azerbaijan Republic (SOCAR), is in line with the EU Merger Regulation. SOCAR's activities include the production of natural gas and the upstream wholesale sale of gas in Greece in the context of the Southern Gas Corridor (see also IP/13/623). DESFA owns and operates Greek's sole high-pressure gas transmission and Greece's only LNG terminal and mainly transports gas through its network. The Commission has concerns that the transaction may reduce competition on the upstream wholesale supply market for natural gas in Greece because it could allow the merged entity to hinder SOCAR's competitors in accessing the Greek gas transmission network. The Commission aims to ensure that the sale of DESFA, part of the Greek government privatisation programme with a view to modernise and liberalise the energy markets, does not result in competitive harm and ultimately higher gas prices for consumers in Greece. The opening of an in-depth inquiry does not prejudge the outcome of the investigation. The Commission now has 90 working days, until 23 March 2015, to take a decision.

The Commission's initial market investigation indicated that the merged entity may have the ability and the incentive to hinder competing upstream gas suppliers from accessing the Greek transmission system, in order to reduce competition on the upstream wholesale gas market in Greece. The merged entity could restrict its competitors' access to the Greek gas transmission network by strategically limiting investments in future expansions of the import capacity including an expansion of the LNG Terminal and an interconnection between TAP and DESFA's network. In addition, the merged entity could restrict inflows of gas into Greece by managing the gas transmission network in a discriminatory way favoring SOCAR's supplies over its competitors. The preliminary investigation also suggested that SOCAR may have the incentive to shut out competitors from access to the network, because it would be profitable for SOCAR. Moreover, the Greek regulatory framework would be unlikely to deter the merged entity from doing so. This could reduce the number of current and potential suppliers and the amount of natural gas in Greece and lead to higher gas prices for clients.

The Commission will now investigate the proposed transaction in-depth in order to determine whether or not these initial concerns are confirmed.

The transaction was notified to the Commission on 1 October 2014.

Companies and products

SOCAR is wholly-owned by the Republic of Azerbaijan and is involved in exploring oil and gas fields, producing, processing, and transporting oil, gas, and gas condensate, marketing petroleum and petrochemical products in domestic and international markets, and supplying natural gas to industrial and residential customers in Azerbaijan.

DESFA was established in 2007 with the objective of operating, maintaining, managing, exploiting and developing the Hellenic gas transmission system. The activities of the company are overseen by a special law and subject to government supervision.

Merger control rules and procedures

The Commission has the duty to assess mergers and acquisitions involving companies with a turnover above certain thresholds (see Article 1 of the Merger Regulation) and to prevent concentrations that would significantly impede effective competition in the EEA or any substantial part of it. The vast majority of notified mergers does not pose competition problems and are cleared after a routine review. From the moment a transaction is notified, the Commission generally has a total of 25 working days to decide whether to grant approval (Phase I) or to start an in-depth investigation (Phase II).

In addition to the current transaction, there are two other on-going phase II merger investigations. The first is the planned acquisition of a controlling stake in De Vijver Media by Liberty Global, with a decision deadline on 5 March 2015 (see IP/14/1029). The second one relates to Zimmer's planned acquisition of Biomet, with a decision deadline on 11 March 2015 (see IP/14/1091).

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