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ENERGY

Complaint to be lodged with the EU Commission against the retroactive taxation on RES stations adopted by the Greek Government

A team consisting of specialized scientists and university professors, coordinated by Dr. A. Metaxas, Lecturer of European Law at the University of Athens and Managing Partner of "Metaxas and Associates" Law Firm, has been assigned, by several foreign and greek RES investors, to lodge a complaint with the European Commission on the retroactive taxation on RES stations which has recently been imposed by the Greek Ministry of Environment, Energy and Climate Change. The complaint will mainly focus on the infringements of European Energy and State Aid Law contained in the relevant provisions, by adopting an interdisciplinary approach that will help underline a series of legal arguments related to the functioning as well as the distortions of the greek energy market. Furthermore, the internationally renowned Professor, Dr. Ph. Nicolaides, Jan Tinbergen Chair of European Economics and Director of Studies in the "College of Europe" will also play a very significant part in this scientific group. The complaint with the EU Commission will be a first crucial step towards the legal challenge of the retroactive taxation, which will be followed by a series of further legal actions, at both individual and collective level, before the Greek and european courts and tribunals on behalf of RES producers since the negative impacts of this latest legislation on the Greek RES market are severe.

"Economist" Conference: The Cyprus - EU Presidency Summit

The Economist Conference "The Cyprus - EU Presidency Summit", organized under the auspices of the Cyprus Presidency of the Council of the European Union and co-organized with the European Parliament office in Cyprus and the European Commission Representation in Cyprus, was held on the 8th of October 2012. The Summit's primary objective was to show how the Cypriot presidency could contribute to the fulfillment of Europe's visions and scopes. Conference

sessions mainly focused on sustainable development, stabilisation of the economy, economic governance, employment issues, poverty and social exclusion and tackling of climate change and exploration of the energy landscape. *Dr. A. Metaxas was invited as guest speaker and made a Presentation on "Re-designing the Framework of European Electricity Market: Necessary Conceptual Modifications of the Greek Electricity Market"*. Also, within the framework of the Conference, other invited speakers, such as Anni Podimata, Vice-president of the European Parliament, William Kennard, US Ambassador to the European Union, Ambassador Vladimir Chizhov, Permanent Representative of the Russian Federation to the European Union, Demetris Christofias, President of the Republic of Cyprus, Erato Kozakou-Marcoullis, Minister of Foreign Affairs of Cyprus, Evripidis Stylianidis, Minister of Interior of Greece, Christos Gortsos, Secretary General of the Hellenic Bank Association formulated their positions on the aforementioned agenda.

Commission opens proceedings against Bulgarian Energy Holding

The European Commission has opened formal proceedings to investigate whether Bulgarian Energy Holding may be abusing its dominant market position in the wholesale electricity market in Bulgaria. The Commission has concerns that Bulgarian Energy Holding might be hindering competition on wholesale electricity markets in Bulgaria and neighbouring Member States through territorial restrictions. Such behaviour would breach EU antitrust rules. An opening of proceedings does not prejudge the outcome of the investigation; it only means that the Commission will treat the case as a matter of priority.

The Commission is investigating certain provisions in electricity supply agreements entered into by subsidiaries of Bulgarian Energy Holding. These provisions may restrict their trading partners' freedom to deliver electricity purchased from Bulgarian Energy Holding by prescribing where the electricity has to be delivered. According to these provisions, electricity supplied by BEH may for example be resold only within Bulgaria and not exported.

These contractual provisions may constitute territorial restrictions and have the effect of distorting the allocation of electricity within the Single Market and partitioning electricity markets along national lines. Such a practice would both hinder competition and undermine the integration of EU electricity markets.

Background

Article 102 TFEU prohibits the abuse of a dominant market position which may affect trade between Member States. The implementation of this provision is defined in the Antitrust Regulation (Council Regulation No 1/2003), which can be applied by the Commission and by the national competition authorities of EU Member States.

Article 11(6) of the Antitrust Regulation provides that the initiation of proceedings by the Commission relieves the competition authorities of the Member States of their competence to also apply EU competition rules to the practices concerned. Article 16(1) of the same Regulation provides that national courts must avoid giving decisions which would conflict with a decision contemplated by the Commission in proceedings it has initiated.

The Commission has informed Bulgarian Energy Holding EAD and the Bulgarian competition authority that it has opened proceedings in this case.

There is no legal deadline to complete inquiries into anti-competitive conduct. The duration of an antitrust investigation depends on a number of factors, including the complexity of the case, the extent to which the undertaking concerned cooperates with the Commission and the exercise of the rights of defense.

More information on this investigation will be available in the Commission's public case register under the case number 39767 BEH electricity.

EU anti-subsidy investigation on solar panel imports from China

The European Commission has launched an anti-subsidy ("countervailing duty") investigation into imports of solar panels and their key components (i.e. solar cells and solar wafers) originating in China.

EU ProSun, an industry association, claimed in its complaint lodged on 26 September 2012 that solar panels and their key components imported from China benefit from unfair government subsidies. In terms of value of imports affected, this is the most significant anti-subsidy complaint the European Commission has received so far: in 2011, China exported solar panels and their key components worth around €21 billion to the EU. The investigation will take 13 months in total. According to trade defence rules it is possible to impose provisional anti-subsidy duties within 9 months, provided there is sufficient prima facie evidence of subsidisation.

An anti-dumping investigation concerning the same product was initiated on 6 September 2012 and is on-going.

The European Commission is legally obliged to open an anti-subsidy investigation if it receives a valid complaint from a Union industry which provides evidence that a product exported from one or more countries is being subsidized and causing injury to the Union industry.

Such an anti-subsidy complaint was lodged on 26 September by EU ProSun, an ad hoc association representing more than 20 European companies producing solar panels and their key components. Their collective output represents more than 25% of Union production and the producers opposing the complaint do not represent more Union production than companies supporting the complaint. Both elements are legal requirements under the EU's anti-subsidy Regulation for an investigation to be initiated.

The complainant has brought sufficient elements demonstrating the existence of:

- possible subsidisation by the Government of China
- injury suffered by the Union industry and
- a possible causal link between the subsidized imports and the injury suffered by the Union industry.

Hence, The European Commission has found that there is sufficient prima facie evidence to warrant the opening of an investigation.

The product covered by the investigation is solar panels and their key components, i.e. solar cells and solar wafers. In order to produce a solar panel, solar wafers are converted into cells and then cells are assembled together into modules, i.e. panels. Some producers have integrated production covering all three segments, whilst others produce only wafers, cells and/or modules.

The European Commission will send out questionnaires to various interested parties (e.g. Government of China, exporting producers, Union producers, importers and associations), asking for information relating inter alia to the alleged subsidies, exports, production, sales and imports of solar panels and their key components. Once the interested parties have responded to the questionnaires, the data will be verified by the European Commission, often by means of on-spot verification of company or government data.

On the basis of the information collected, the European Commission will establish if there is subsidisation and whether the injury allegedly suffered has been caused by the subsidised imports. This examination will also include looking at possible other factors that could also have contributed to the injury suffered. The European Commission will then, within 9 months of the initiation of the investigation (in this case, the deadline is 5 August 2013), issue its provisional findings.

STATE AID

Information request: Availability of short term export insurance for exports to Greece

As a consequence of the difficult situation in Greece, a lack of insurance or reinsurance capacity to cover exports to Greece was observed in 2011. This led the Commission to amend the Communication of the Commission to the Member States pursuant to Article 93(1) of the EC Treaty applying Articles 92 and 93 of the Treaty to short-term export-credit insurance (Communication on short-term export-credit insurance) by temporarily removing Greece from the list of marketable risks countries. This modification is due to expire on 31 December

2012. To determine whether current market situation justifies the expiry of Greece's removal from the list of marketable risk countries in 2013, or whether a prolongation is needed, the Commission invites Member States, credit insurers and other interested parties to submit information on:

- Private credit insurance capacity
- Activity of insurers acting on behalf or with State guarantee or the State itself in provision of short-term credit insurance for exports to Greece in 2012
- Sovereign sector ratings
- Corporate sector performance in Greece

Commission proposes to reform state aid procedures and exempt certain categories of aid from prior notification

In the context of its State Aid Modernisation (SAM) initiative, the European Commission has adopted proposals to amend two Council Regulations governing EU state aid control. The reform of the Procedural Regulation of 1999 is aimed at focusing state aid enforcement on the most significant distortions of competition in the internal market and to speed up decision making. The proposed amendments to the Enabling Regulation of 1998 would allow the Commission to adopt more block exemptions for aid with limited impact on the internal market, for example in the field of culture or innovation. The Commission proposals will now be discussed in Council and in the European Parliament.

Joaquín Almunia, Commission Vice President in charge of competition policy, said: "The reform package is designed to turn state aid policy into a simpler, stronger and smarter instrument to coordinate Member States' efforts to boost growth in times of extraordinary budgetary constraints. The proposals will streamline our decision-making and refocus enforcement on the aid that really matters."

The reform of state aid procedures focuses on improving the handling of complaints and ensuring that the Commission obtains complete and correct information from the market. The Commission proposes to clarify the requirements for lodging a complaint and to set up a transparent and faster procedure to handle state aid complaints. It also suggests formalising the channel of cooperation between the Commission and the national judges. To effectively investigate significant cases, the Commission needs to obtain relevant market information in good time. The Commission therefore proposes to set up more efficient tools to obtain all the necessary information directly from market participants if the information at its disposal is not sufficient. It also suggests to allow the Commission to conduct inquiries about aid granted to a certain sector or a specific type of aid in several Member States which raises competition concerns. The proposed extension of the Enabling Regulation would allow the Commission to exempt certain categories of aid from prior notification to the Commission. The Commission proposes to allow the adoption of such exemptions for aid to culture, aid for compensating damages caused by natural disasters, aid for innovation, aid for forestry, aid to compensate the damage caused by adverse weather conditions in fisheries, aid for amateur sports, as well as certain types of aid for transport and for broadband infrastructure. Block exemptions allow Member States to grant aid more quickly, without the Commission's prior intervention, as long as the conditions of the Block Exemption Regulation are fulfilled. They considerably simplify the granting of aid that has a limited potential to seriously distort competition in the internal market.

Background

In 1999, the Council adopted the state aid Procedural Regulation, setting out in detail the rules of procedure governing the enforcement of Articles 107 and 108 of the Treaty on the functioning of the European Union (TFEU). These rules have been applied until today without any significant modifications.

The 2009 state aid Best Practices Code has not created new legal provisions, but has detailed how state aid procedures should be carried out in practice, in particular as regards their duration, transparency and predictability.

In 1998, the Council adopted Regulation 994/98 (“Enabling Regulation”), allowing the Commission to adopt Regulations exempting certain categories of horizontal aid from the Commission's prior state aid scrutiny, provided they fulfill certain conditions (block exemption regulations – BER). On that basis the Commission has adopted BER for regional aid, aid for SME, aid for R&D, employment aid, environmental aid and training aid.

The reform proposals are key building blocks of the State aid modernisation initiative launched in May 2012 to achieve its three main and closely linked objectives. While the proposals to reform state aid procedures and exempt certain categories of aid from prior notification should primarily allow the Commission to reach faster decision-making and help the Commission focus its enforcement on cases with the highest impact at the EU level, it will also support sustainable growth and contribute to improving the quality of public spending by discouraging aid that does not bring real added-value and distorts competition.

As part of State Aid Modernisation the Commission is currently reviewing a number of other instruments in parallel, including, in particular the Regional Aid Guidelines, the Environmental Aid Guidelines, the Risk Capital Guidelines, the Community Framework for Research and Development and Innovation, the Broadband Guidelines and the Aviation Guidelines.

TELECOMS

M&A Law Firm has advised the Greek Government on the successful notification - Commission approves NGA broadband deployment in 72 cities in Greece

On 30.11.2012 Commission issued its no. SA 33641 (2011/N) State aid decision, in which it decided not to raise any objections to the implementation of the measure

“Metropolitan Area Networks (MAN)/ Fibre To The Home (FTTH)”, as the State aid contained therein is found to be compatible with Article 107 (3) c TFEU. This measure includes two subcategories: 1) the self provisioning subproject and 2) the wholesale subproject. In the first case, the Greek authorities decided to procure on private connectivity services for all the public administration sites of 72 municipalities. The selected concessionaires will make use of the already built fibre- based infrastructure for all public administration sites and will be required to roll out the missing parts, in order to roll out a new NGA network. For the second subproject, the infrastructure of the Metropolitan Area Networks in these 72 municipalities will be made available at wholesale level to private operators to remedy the insufficiency of existing and planned commercial infrastructures to provide adequate NGA services to end users.

The Commission, in assessing the compatibility of the scheme according to Article 107 (3) c TFEU and in the light of the Broadband Guidelines, found that the aid, being in line with the ambitious objectives of the Digital Agenda for Europe, is the appropriate instrument to reduce the digital divide and, at the same time, it is considered to be a complement and stimulation of commercial investment, since the wholesale access provided by the concessionaires may encourage private operators to invest in areas, where investment would have otherwise been unprofitable for private operators. Moreover, the measure was found to fulfill all the conditions set out in paragraphs 51, 57, 77, 78 and 79 of the Broadband Guidelines. Furthermore, the Greek authorities were successful in demonstrating that even in the areas that could be qualified as being grey NGA areas (with limited VDSL network present), State intervention is still justified, since the overall market conditions are not adequate to ensure the provision of NGA services, whereas reliance on FTTC technology alone will lead to a decline of the ladder of investment.

“Metaxas and Associates” Law Firm acted as the legal advisor of the Greek authorities throughout this notification procedure, providing them with legal guidance and support for this successful notification of the proposed measure to

the EU Commission as well in the course of the relevant negotiations with the Commission.

Commission clears UK umbrella support scheme for broadband investment 'BDUK'

The European Commission has found that a UK umbrella support scheme for investments in next generation access (NGA) broadband networks, 'BDUK', is in line with EU state aid rules. In particular, the scheme is aimed at supporting local projects in rural and remote areas, where such networks would unlikely be developed on commercial terms.

"BDUK, as a national competence centre, will assist local granting authorities in designing and implementing successful broadband support measures in line with EU competition rules. The umbrella scheme will be a big step towards the achievement of the EU Digital Agenda targets and a strong impetus for growth in the UK" said Commission Vice President in charge of competition policy Joaquín Almunia.

The UK notified plans to set up an umbrella scheme for implementing around 140 local broadband support projects without individual state aid notifications to the Commission. The Broadband Delivery UK (BDUK) scheme aims to provide as many UK homes and businesses as possible with access to superfast broadband infrastructure in the so-called "final third" areas. These areas are typically low-density, rural areas, where commercial operators are unlikely to invest in high quality broadband networks.

The total value of aid to be delivered by the scheme is estimated around GBP 1.5 billion (€1.8 billion). This will most likely enable the UK to achieve the objective of the EU Digital Agenda of coverage of 30 Mbps networks for all European citizens (see IP/10/581 and MEMO/10/199).

The design of the BDUK scheme contains several 'best practices' which will help to ensure more effective, better targeted and less distortive public interventions. For instance, a national competence centre will advise smaller local authorities.

Moreover, the UK telecommunications regulator will have a crucial role in designing wholesale access prices and conditions. All information related to projects under the scheme (including mapping, public consultation, tenders, aid beneficiaries) will be published on a central website. The UK has also committed to submit an evaluation of the scheme to the Commission before 31 March 2015 and to ensure that any forthcoming scheme will take this evaluation into account. The Commission encourages nationwide broadband support schemes to ensure consistency between small projects and to avoid delays in the implementation through reduced administrative burden for local authorities.

Background

The Digital Agenda is part of the Europe 2020 Strategy, which underlines the importance of broadband deployment to promote social inclusion and competitiveness in the EU. It seeks to ensure that, by 2020, all Europeans have access to internet speeds above 30 Mbps, while at least 50% of European households should subscribe to internet connections above 100 Mbps (see IP/10/581 and MEMO/10/199).

The non-confidential version of the decision will be made available under the case number SA.33671 the State Aid Register on the DG Competition website once any confidentiality issues have been resolved. New publications of state aid decisions on the internet and in the Official Journal are listed in the State Aid Weekly e-News.

For further information you can contact:

Offices



METAXAS & ASSOCIATES
ATTORNEYS AT LAW

Athens

154 Asklepiou Str.

114 71 Athens, Greece

Tel.: +30 210 33 90 748

Fax.: +30 210 33 90 749

e-mail: info@metaxaslaw.gr

www.metaxaslaw.gr

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