



## **NEWSLETTER** - *Latest legal updates*

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## STATE AID

### *Commission approves two Greek temporary aid schemes*

The European Commission has decided to authorize, under Article 87(3)(b) of the EC Treaty, two Greek schemes to boost real economy. This approval aims at helping companies to deal with the current economic crisis. The first measure that allows national authorities to grant aid in the form of reduced interest rates on loans concluded by Dec. 31, 2010, "meets the conditions of the commission's Temporary Framework for state aid measures" which gives Member States additional scope to facilitate access to financing in the present economic and financial crisis.

Competition Commissioner Neelie Kroes commented that "the Greek measure aims at improving the liquidity of companies affected by the current economic downturn, without causing undue distortions of competition. A significant reduction in the cost of loans can be an effective way of encouraging business investment and economic recovery". The other Greek scheme allows authorities to grant aid in the form of subsidized guarantees for investment and working capital loans concluded by Dec. 31, 2010 to boost the real economy.

Both schemes are limited in time and only apply to companies that were not in difficulties before July 1, 2008, when the global financial crisis broke out.

*For further information see:*

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/867>

### *Commission consults on guidelines for the application of the state aid rules to public funding of broadband networks*

On 19 May 2009, the European Commission published for public consultation draft guidelines on the application of EU state aid rules in relation to rapid deployment of broadband networks. The financing aims to encourage and support very high speed, so-called "next generation access networks", which are capable of delivering broadband access services with enhanced characteristics as compared to traditional broadband networks. This area is

considered to be of great importance to the recovery of the European economy and competitiveness and the draft guidelines are going to improve legal certainty and transparency in this important field. The Commission's policy on public funding of broadband networks contributes to providing adequate broadband services for all EU citizens, ensuring at the same time that public intervention will not crowd out private investment and harm competition. Therefore the draft guidelines include a number of conditions that would have to be fulfilled for the purposes of the compatibility assessment carried out under Article 87.3(c) of the Treaty.

*For further information see:*

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/813>

### *Commission adopts state aid Simplification Package*

The European Commission has adopted the state aid Simplification Package, comprising the final versions of a Best Practices Code and a Simplified Procedure Notice. Competition Commissioner Kroes commented: "The state aid Simplification Package will benefit business by facilitating faster state aid decisions notably through earlier and better cooperation between Member States and the Commission. In adopting the Best Practices Code and Simplified Procedure Notice, the Commission has delivered on its promise to modernise and simplify state aid procedures, as set out in the State Aid Action Plan." These measures are intended to improve the effectiveness, transparency and predictability of state aid procedures. The Commission will offer pre-notification contacts on a more regular basis and a mutually agreed planning will frame the conduct of particularly novel, complex or urgent cases. Best Practices Code encourages Member States to react promptly and keep the procedures moving by proposing a rigorous enforcement of existing procedural means in order to answer more swiftly and completely case-related requests made by the Commission. The Best Practices Code also aims at improving the procedure for dealing with complaints, including indicative deadlines and better information of complainants. The Simplified Procedure Notice provides an accelerated procedure and gives an illustrative list of aid

measures, including certain aids for SMEs, environmental aid, innovation aid and rescue and restructuring aid, which are in principle suitable for simplified treatment. The Commission wants to ensure that clearly compatible aid gets approved within one month when Member States provide a complete notification.

*For further information see:*

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/659>

### *Commissioner Kroes hosts entrepreneurs roundtable on state aid*

On 7 May 2009, Competition Commissioner Neelie Kroes hosted a roundtable seeking feedback from the business world on the problems companies are experiencing in obtaining financing and state aid. She is concerned that, although entrepreneurs and small businesses are at the heart of European economic recovery, they find it difficult to obtain the necessary support to create jobs and grow their businesses. The Commissioner noted that “national governments must do more to make state aid opportunities known and accessible to all businesses (...). Focusing aid on large companies is not sufficient as they are not where the most jobs are created (...). 90% of state aid to SMEs does not even need to be notified to the Commission, yet I heard today that often these business owners are discouraged from applying or must wait one to two years for approval. National authorities can't afford these attitudes if we want to recover quickly.” The main problems revealed include cash flow difficulties and administrative complexity and inflexibility when dealing with banks and government. There are also problems with credit insurance and gaps in financing opportunities, with banks showing reluctance to fund businesses in start-up phases and governments losing interest in small and medium-sized enterprises (SMEs) once initial support has been provided. A similar roundtable will reconvene in the second half of 2009.

*For further information see:*

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/224>

### *Statement by Commissioner Kroes on restructuring of banks and their return to viability*

A statement by Neelie Kroes, Competition Commissioner, to the Council of Economics and Finance Ministers was published by the European Commission on 9 June 2009, concerning the restructuring of banks and their return to viability. Commissioner Kroes noted that "we need to start thinking about a return to viability without state support, which means the timely phasing out of the rescue schemes. Without viable banks operating within well-functioning markets, we will not deliver financial stability, we will not restore market confidence and we will not re-start lending to the economy!" The Commission has already begun the process of considering the restructuring of banks that received state aid and that are not fundamentally sound in order to make sure that all the banks will have a viable future. The Commission will ensure that banks who behaved imprudently and caused the crisis by taking excessive risks are not rewarded through state aid. Banks which were saved from market exit by state intervention must not undermine the growth of their rivals. The Commission aims at finalising shortly some guidelines for restructuring banks and returning to viability. At this time, comments received from the Ministries of Finance through consultation of the Economic and Financial Committee are reviewed and the Commission hopes to finish this process quickly.

*For further information see:*

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/265>

### COMPETITION LAW

#### *ECJ ruling on Commission's amicus curiae powers*

On 11 June 2009 the ECJ handed down its first judgment defining the scope of the right of the Commission, as responsible for monitoring compliance with the EC competition rules to the Member States, to intervene in proceedings

pending before national courts where the coherent application of the antitrust rules so require. The ECJ ruled that Article 15(3) allows the Commission to submit written observations in national proceedings relating to the deductibility from taxable profits of the amount of a fine imposed by the Commission for breach of Articles 81 and 82 of the EC Treaty, even if the proceedings do not pertain to issues relating to the application of Articles 81 and 82. The ECJ held that the sole condition for the Commission to submit observations under Article 15(3) is that the coherent application of Articles 81 and 82 EC and the effectiveness of EC law so require.

### *Commission publishes report on operation of Merger Regulation*

On 18 June 2009 a report was published by the European Commission summarizing the results of its review of the functioning of the EC Merger Regulation (Regulation 139/2004). This review evaluates how the rules on jurisdictional thresholds regarding company turnovers which were left unchanged in 2004 are working and how the referral mechanisms (in Articles 4(4) and 4(5), 9 and 22 of the Merger Regulation) have worked in practice since their introduction in May 2004. These mechanisms allow a flexible reallocation of cases between the Commission and Member States' national competition authorities.

The Commission has found that, overall, the jurisdictional thresholds and the referral mechanisms have provided an appropriate legal framework for allocating cases between the Community level and member states. Turnover thresholds have in most cases been effective in distinguishing cases of EU relevance from those with a primarily national focus. Also, the improved system of case re-allocation between the Commission and the National Competition Authorities introduced in 2004 has allowed business to benefit from the Commission's "one-stop-shop" assessment and to have their cases reviewed by the more appropriate authority. However, the report has shown that there is potentially more scope for using the pre-notification referral procedures and that there are still a number of cases (falling below the Merger Regulation thresholds) which are reviewed by more than one national

authority. The Commission has also found that there are some concerns about the operation of the two-thirds rule that might merit further consideration.

*For further information see:*

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/963>

## **PUBLIC PROCUREMENT**

### ***ECJ rules that Greece has breached its obligations under the procurement rules***

On 4 June 2009, the European Court of Justice (ECJ) handed down a judgment finding that Greece had failed to fulfil its obligations under Article 41(4) of Directive 93/38 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors as amended by Commission Directive 2001/78/EC. The ECJ dismissed the European Commission's claim that Greece had breached Directive 93/38 by awarding a contract without publishing a prior call for competition. The ECJ found that the contracting entity had been entitled to rely on a derogation from the normal obligations on the basis of the absence of suitable tenders in response to a procedure with a prior call for competition. However, the ECJ found that Greece was in breach of its obligation to provide an unsuccessful tenderer with information promptly about the reasons for rejection of his application.

## **ELECTRONIC COMMUNICATIONS**

### ***ERG publishes reports on competition issues relating to spectrum management, next generation access and upstream broadband pricing***

On 3 June 2009, the European Regulators Group (ERG) published four reports, which were approved at a plenary session held at the end of May 2009. Two of the reports were prepared with the Radio Spectrum Policy

Group. The first report relates transitional issues and the second focuses on management of radio spectrum in order to avoid anticompetitive hoarding. In addition, the ERG has published a report on the economic analysis and regulatory principles of next generation access and a report on price consistency in upstream broadband markets.

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