



NEWSLETTER - *Latest legal updates*

Issue 16

2009

In this issue:

STATE AID

- Financial penalties against Greece in Olympic Airways state aid case
- Commission authorizes Greek temporary scheme to grant aid of up to €500 000 to boost real economy
- Public financing for the Greek Port of Piraeus partly approved by the Commission
- Commission adopts new Communication on the application of state aid rules to public service broadcasting

COMPETITION LAW

- Commission publishes proposals for future competition law regime for motor vehicle sector
- Commission accepts commitments from Greece to ensure fair access to Greek lignite deposits

ENERGY

- Commission acts against 25 Member States for failure to implement electricity and gas legislation

STATE AID

Financial penalties against Greece in Olympic Airways state aid case

On 7 July 2009, the European Court of Justice (ECJ) imposed another fine on the Greek government under Article 228 of the EC Treaty for failing to comply with Court's judgment in Case C-415/03 Commission v. Greece [2005] ECR I-3875 that found that Greece had failed to recover unlawful state aid paid to Olympic Airways. The ECJ ordered Greece to pay a periodic penalty payment of EUR 16 000 per day until Greece complies with that judgment and also imposed a lump sum of EUR 2 million. The Court stated that the Greek authorities had avoided recovering the money for over four years, a failure that "concerns the common market, the establishment of which is an essential task of the European Community". Greece argued that all the aid amounts were recovered but the formerly state-owned airline had been allowed to keep some of the state aid in exchange for damages the Greek state was ordered to pay in 2006 as compensation for costs the airline incurred when the government forced it to move its services from Elliniko airport to Athens's international airport. The Greek government tried several times to restructure the airline in an attempt to keep the airline solvent before selling in to Marfin Investment Group this March. The Court held that a Member State is free to choose the means by which unlawful state aid must be recovered, provided that the measures chosen do not adversely affect the scope and effectiveness of Community Law (Case C-209/00 Commission v. Germany [2002] ECR I-11659, paragraph 34) and that a set-off operation can constitute an appropriate means. The Member State must provide all necessary information to allow the Commission to verify that the means chosen constitute an appropriate implementation of that decision. Greece has proved payment of an amount of state aid, but, on the other hand, Greece had not provided evidence that show that the rest of the aid concerning the "spatosimo" tax and the aid relating to airport rentals had been set off.

Commission authorizes Greek temporary scheme to grant aid of up to €500 000 to boost real economy

The European Commission has authorised, under EC Treaty rules on state aid, a Greek scheme to help businesses encountering financial difficulties to deal with the current economic crisis. The scheme allows aid to be granted up to €500 000 per firm until the end of 2010 to businesses facing funding problems because of the current credit squeeze. The scheme meets the conditions of the Commission's "Temporary Framework for state aid measures" (the Framework is available on the Commission's Europa website at: http://ec.europa.eu/competition/state_aid/legislation/horizontal.html), which gives Member States additional scope to facilitate access to financing in the present economic and financial crisis. It is limited in time and scope and applies only to companies that have not been in difficulties before 1st July 2008. It is compatible with Article 87(3)(b) of the EC Treaty, which permits aid to remedy a serious disturbance in the economy of a Member State.

The aid will be available inter alia in the form of grants. Under the scheme, limited amounts of compatible aid can be granted as from its approval by the Commission until 31 December 2010. The scheme is the third Greek measure authorised under the Temporary Framework aiming at remedying a serious disturbance in the economy. The other two are a temporary scheme allowing subsidised guarantees and a temporary scheme allowing aid to firms in the form of reduced interest rates.

Public financing for the Greek Port of Piraeus partly approved by the Commission

The European Commission announced on 13 July 2009, that it has partly approved under the state aid rules public financing for the construction of a pedestrian bridge and jetties in the passenger section of the Port of Piraeus. It has, however, expressed its doubts regarding the public financing of the construction of a jetty and the acquisition of different types of equipment in

the container terminal section of the same port. The pedestrian bridge is intended to provide better access to and from the passenger section of the port and the Athens-Piraeus railway station. The jetties are intended to provide extra berthing slots for ships. The Commission considers that the public financing for the bridge's construction does not involve state aid, since it is a general infrastructure, open to all users, which cannot be exploited commercially by the Piraeus Port Authority. On the other hand, financing the jetties' construction in the port's passenger section, was decided by the Commission to be a measure that constitutes State aid, since it concerns public investment in a port facility that can be commercially exploited but that it is compatible with the common market. Indeed, the investment in this port facility is in line with the objectives of the European transport policy, as it is aimed at linking the Greek islands which are considered to be peripheral regions with the mainland and at ensuring connection with the railway system of the Piraeus-Athens urban area. Greece also intends to finance a jetty in the container terminal of the Port of Piraeus, as well as the acquisition of equipment with a total cost of EUR 52.8 million. Part of this infrastructure and equipment is put at the disposal of Piraeus Port Authority. The remainder is to be exploited under a concession agreement by a private undertaking chosen on the basis of a Europe-wide open tender. The Commission finds that this financing does constitute state aid in favour of Piraeus Port Authority since it alleviates the port authority from investment costs in commercially exploitable infrastructure which it would normally have to bear. The Commission has therefore decided to open a procedure of in-depth assessment in this regard.

Commission adopts new Communication on the application of state aid rules to public service broadcasting

On 2 July 2009, the European Commission adopted a new Communication on state aid for the funding of public service broadcasters. The new Communication, which replaces the Commission's 2001 Broadcasting Communication (see IP/01/1429) provides a clear framework for the

development of public broadcasting services and enhances legal certainty for investment by public and private media alike. This new Communication focuses on the Commission's task of preserving fair competition and explains the applicability of Articles 87(1) and, in particular, Article 86(2) of the EC Treaty to the public funding of public service broadcasting activities. Competition Commissioner Neelie Kroes said: "Public broadcasters will be able to take advantage of the development of digital technology and Internet-based services to offer high quality services on all platforms, without unduly distorting competition at the expense of other media operators." The new Communication reflects changes in the broadcasting market by considering the use of new media and new business models by public service broadcasters. It also requires control of overcompensation and supervision of the public service mission at national level. In addition, it gives public service broadcasters greater financial flexibility by allowing them to build up funding reserves to help them to deliver their public service mission and withstand cost fluctuations. The Communication is designed to ensure high quality public broadcasting services on a variety of platforms, ranging from the internet to screens in public places. European citizens and stakeholders will be able to give their views in public consultations before any new services are put on the market by public service broadcasters. They will also benefit from a more accountable and transparent use of public funding in this sector.

COMPETITION LAW

Commission publishes proposals for future competition law regime for motor vehicle sector

On 22 July 2009, the European Commission published for consultation a Communication setting out its views on the future legal framework for motor vehicle distribution and after sale services agreements after the expiry of the current Block Exemption Regulation (Regulation 1400/2002) in May 2010. It is

proposing that the general rules for vertical agreements should apply to agreements for the sale of new motor vehicles. This would be accompanied by sector specific guidelines on certain issues and there would be a transitional period of three years until May 2013. In relation to the aftermarkets for servicing and repairs, the Commission considers that, from 31 May 2010, the general rules for vertical agreements should apply, in conjunction with sector specific guidelines and/or an additional, more focused sectoral block exemption regulation. The objectives underlying Regulation 1400/2002 remain valid. However, the Commission has not found indications of significant competition shortcomings in the EU primary market (sales of new vehicles) but rather structural overcapacity and falling real prices. The future competition law framework in this sector should therefore not impose regulatory constraints which might increase distribution costs and are not justified by the objective of protecting competition on the market. In the light of these market conditions, the Commission proposes to align the rules applying to the primary market to the general competition rules on vertical agreements. It underlines, however, the need to introduce safeguards in the form of guidelines against any possible closing off of new entrants, price discipline imposed by manufacturers, or market segmentation through territorial protection or impediments to cross-border sales, in order to ensure at least as much competition in these areas compared to the situation under the current Regulation. It is particularly important to protect competition in the aftermarket as it is less competitive due to its brand-specific nature. Aftermarket issues will arise, such as independent operators' access to technical information, access to spare parts and access to the network of authorised repairers and also new issues, such as the misuse of warranties aimed at excluding independent repairers.

Commission accepts commitments from Greece to ensure fair access to Greek lignite deposits

On 6 August 2009, the European Commission announced that it has accepted commitments offered by Greece to ensure fair access to Greek lignite

deposits. The commitments have been given to comply with a decision adopted on 5 March 2008 (see IP/08/386) which found that Greece had infringed competition rules (Articles 82 and 86 of the EC Treaty) by maintaining rights giving the state-owned electricity incumbent Public Power Corporation (PPC) privileged access to lignite. Greece has committed to grant exploitation rights to four lignite deposits through public tenders excluding PPC, to ensure that competitors of PPC in the Greek electricity market get access to lignite. The Commission's decision makes the proposals legally binding on Greece and requires the commitments to be implemented within one year. PPC currently enjoys privileged access for the extraction and exploitation of lignite deposits in Greece. Article 86(1) of the EC Treaty requires Member States to ensure that public undertakings and undertakings to which Member States grant special or exclusive rights comply with EC Treaty rules, including the competition rules. Currently competitors of PPC cannot compete effectively with PPC because access to sufficient quantities of lignite is denied to them. Greece proposes to grant exploitation rights on the lignite deposits of Drama, Elassona, Vevi and Vegora through tender procedures to entities other than PPC. Greece has also agreed to ensure that the companies winning the tenders will not sell the lignite extracted from these deposits to PPC. On the basis of Greece's proposals, competitors of PPC will potentially access about 40% of all exploitable Greek lignite deposits. The Commission is satisfied that the implementation of the proposed measures would remove the anticompetitive problems identified in the Commission's 5 March 2008 decision.

ENERGY

Commission acts against 25 Member States for failure to implement electricity and gas legislation

On 25 June 2009, the European Commission announced that it has launched new infringement proceedings against 25 Member States including Greece in

relation to their failures to implement Directive 2003/54 on the common rules for the internal market in electricity, Directive 2003/55 on the common rules for the internal market in gas, Regulation 1228/2003 on the conditions for access to the network for cross-border electricity exchanges and Regulation 1775/2005 on conditions for access to the natural gas transmission network. The action taken by the Commission today addresses violations of different provisions of the existing community legislation on electricity and gas, the so called Second Package of 2003. These violations concern the lack of information provided by electricity and gas transmission system operators, the inadequacy of network capacity allocation systems to optimise network use for electricity and gas transmission, the lack of coordination and cooperation across borders by electricity transmission system operators and national authorities, the inadequate efforts by gas transmission system operators to make maximum capacity available in order to optimise opportunities for market entrance and competition and the lack of effective enforcement action by the competent authorities in Member States in case of violations of the EU regulations. The EU legislation must be properly applied to enable the markets to operate and to ensure that they are integrated effectively. The creation of an integrated European energy market will be a key factor in improving the security of supply and in boosting competitiveness in the EU and will directly serve the interests of European consumers.

For further information you can contact:



Offices

Athens

80 Ippokratous Str.
106 80 Athens, Greece

Tel.: +30 210 33 90 748

Fax.: +30 210 33 90 749

e-mail: info@metaxaslaw.gr

Berlin

Fritz-Reuter-Str. 5
10827 Berlin, Germany

Tel.: +49 177 273 17 83

e-mail: lohmueller@metaxaslaw.gr

www.metaxaslaw.gr

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, or stored in any retrieval system of any nature without prior permission. Application for permission for other use of copyright material including permission to reproduce extracts in other published works shall be made to the publishers. Full acknowledgment of author, publisher and source must be given.

Nothing in this newsletter shall be construed as legal advice. The newsletter is necessarily generalised. Professional advice should therefore be sought before any action is undertaken based on this newsletter.