



# Newsletter

## Latest Legal Updates

### **In this issue:**

- \* *M&A Law Firm has been ranked as "Leading Law Firm" by renowned legal Directories LEGAL 500 EMEA and CHAMBERS & PARTNERS GUIDE 2016*
- \* *M&A Law Firm is an Official Contributor of the leading Conference "20th Roundtable with the Government of Greece" organized by the Economist (22-23 June 2016, Athens)*

### **State Aid**

- \* *Commission approves agreement between Greece and TAP allowing new gas pipeline to enter Europe*
- \* *Commission publishes interim report on electricity capacity mechanisms*
- \* *Commission authorizes support for renewable energy in Italy*
- \* *General Court confirms that the German law on renewable energy of 2012 involved State aid*

### **Energy**

- \* *IEA publishes report on European electricity market design*
- \* *Commission proposes new rules on gas and a heating and cooling strategy*

### **Antitrust**

- \* *Commission sends Statement of Objections to Google on Android operating system and applications*
- \* *Commission's e-commerce sector inquiry finds geo-blocking is widespread throughout EU*

**Issue 2**  
**May 2016**

**M&A Law Firm has been ranked as "Leading Law Firm" by renowned legal Directories LEGAL 500 EMEA and CHAMBERS & PARTNERS GUIDE 2016**



Metaxas & Associates Law Firm is glad to announce that it has been again recommended as Leading Law Firm by the Legal 500 Europe, Middle East & Africa 2016 and Chambers & Partners Guides 2016.

According to the relevant editorial of Legal 500 EMEA, the 'client-focused' and 'well-organised' team at Metaxas & Associates Law Firm has 'excellent attention to detail' and 'specialist knowledge' in its fields of expertise. Department Head, Prof. Dr. Antonis Metaxas is renowned for his 'deep academic knowledge' and his 'remarkable experience' in the State Aid and Energy sectors. Moreover, Partner Stathis Kakounis is recommended as a distinguished lawyer in his field.

Chambers & Partners cited that Metaxas & Associates Law Firm enjoys a reputation for representing major energy producers operating in Greece before National and European Courts, advising on a broad spectrum of regulatory, transactional and dispute matters. The clients have stated that our Law Firm is 'a strong boutique law firm' which offers 'very good and more personal service' and that they are 'very satisfied with services and expertise'. Prof. Dr. Metaxas has been described as a pioneer in the subjects of his specialization, combining academic excellence with professional experience. He was also noted for regularly advising major companies active in the energy sector on disputes and complex regulatory and State aid issues.

M&A Law Firm is glad to receive this important acknowledgement of its professionalism and expertise by its numerous clients.

For further information, please click [here](#) for Chambers & Partners Guide 2016 and [here](#) for Legal 500 EMEA 2016.

**M&A Law Firm is Official Contributor of the leading Conference “20th Roundtable with the Government of Greece” organized by the Economist (22-23 June 2016, Athens)**



Metaxas & Associates Law Firm is official Contributor of the 20th Roundtable with the Government of Greece which will be held by the Economist in Athens on 22-23 May 2016 under the theme “Europe: Shaken and Stirred? Greece: A Skillful Acrobat?”

Among the invited speakers are distinguished personalities from around the world, including Greece's Prime Minister Alexis Tsipras; Enrico Letta, Former Prime Minister of Italy; Panos Skourletis, Greece's Minister for Environment and Energy; Louka Katseli, President of the Hellenic Bank Association; and Klaus Regling, Managing Director of the European Stability Mechanism (ESM). Top personalities from politics and academia will exchange views and put forward proposals on the timely and important issues covered by the Roundtable's agenda, from the migrant crisis to the recovery of the Greek economy.

Prof. Dr. A. Metaxas, Managing Partner of M&A Law Firm, will participate in the panel discussion on the Greek Energy market. M&A Law Firm's participation in the Government Roundtable of the Economist is typical for its categorization as one of the leading, prominent law firms in Greece, especially in the core fields of its specialization, i.e. energy, privatizations and legal and regulatory aspects in all network-bound sectors of the economy.

For further information, please click [here](#).

## State Aid

### **Commission approves agreement between Greece and TAP allowing new gas pipeline to enter Europe**

The European Commission has found the Host Government Agreement between the Greek authorities and the Trans Adriatic Pipeline to be in line with EU state aid rules. The project will improve the security and diversity of EU energy supplies without unduly distorting competition in the Single Market.

*According to Margrethe Vestager, Commissioner in charge of competition policy, the decision "opens the way for a multi-billion infrastructure project in Greece. The Trans Adriatic Pipeline will bring new gas to the EU and increase the security of energy supply for Southeast Europe. The investment incentives offered by the Greek Government are limited to what is necessary to make the project happen and in compliance with state aid rules."*

The Trans Adriatic Pipeline is the European leg of the Southern Gas Corridor, which aims to connect the EU market to new gas sources. With an initial capacity of 10 billion cubic metres of gas per year, the pipeline will transport gas from the Shah Deniz II field in Azerbaijan to the EU market as of 2020. The Trans Adriatic Pipeline will run from the Greek border via Albania to Italy, under the Adriatic Sea. The builder and operator of the pipeline is Trans Adriatic Pipeline AG (TAP), a joint venture of several energy companies. TAP will invest €5.6 billion over five years in the project, of which €2.3 billion in Greece.

The Host Government Agreement sets out how TAP will construct and operate the pipeline and defines the respective obligations of the parties. In particular, the agreement provides TAP with a specific tax regime for 25 years from the start of commercial operations. This may give the company an economic advantage over its competitors, who would not benefit from the specific tax regime, and therefore involves EU state aid rules.

The Commission assessed the measure under its 2014 Guidelines on state aid for energy and environmental protection. The Guidelines state that such aid can be found compatible under certain conditions when it furthers objectives of common interest. The Commission concluded that the project's benefits in terms of increased competition and security of energy supply clearly outweigh any potential distortions of competition triggered by the state aid.

## Commission publishes interim report on electricity capacity mechanisms

In April 2015, the Commission launched a state aid sector inquiry into national measures aimed at ensuring that adequate capacity to produce electricity is available at all times (so-called "capacity mechanisms"). The purpose of the inquiry is to gather information on capacity mechanisms to examine, in particular, whether they ensure sufficient electricity supply without distorting competition or trade in the EU Single Market. The inquiry complements the Commission's Energy Union Strategy to create a connected, integrated and secure energy market in Europe.

Over the past year the Commission has collected a large amount of information from over 120 market participants and public bodies on past, existing and planned capacity mechanisms in 11 Member States - Belgium, Croatia, Denmark, France, Germany, Ireland, Italy, Poland, Portugal, Spain and Sweden. The Commission found 28 capacity mechanisms which can be categorized in six different types. The most common type is a strategic reserve, by which the State pays specific power plants to become operational in case of need. Recent initiatives by Member States suggest there is a general trend towards more open and inclusive mechanisms, which are in principle open to participation from all categories of capacity providers. This is a positive development: to create a true Energy Union and ensure costs for consumers and companies are kept to a minimum, capacity mechanisms should be open to all types of providers, domestic or foreign, regardless of technology.

However, the Commission's interim report also points to a lack of proper and consistent analysis by many Member States of the actual need for capacity mechanisms. It also appears that some of the capacity mechanisms that are currently in place could be better targeted and more cost-effective. These findings do not prejudge the Commission's assessment of the compatibility with EU state aid rules of any individual capacity mechanism, which requires a case-by-case analysis.

The Commission has invited Member States, stakeholders in the electricity sector and others to submit comments on the interim report and the annexed staff working document by 6 July 2016. In the light of comments received, the Commission will publish a final report on the results of the sector inquiry later this year. In the meantime, the Commission continues to assess capacity mechanisms under EU State aid rules, and in particular the 2014 Guidelines on state aid for environmental protection and energy. The sector inquiry also contributes to the Commission's Energy Union objectives. In particular, the results of the inquiry will feed into legislative proposals on a revised electricity market design due to be presented later this year.

For the full text of the interim report, please click [here](#).

## Commission authorizes support for renewable energy in Italy

The European Commission has concluded that an Italian scheme aimed at supporting electricity generation from renewable energy sources is in line with EU state aid rules. The scheme will further EU energy and climate goals without unduly distorting competition in the Single Market.

In particular, the scheme will support Italy in reaching its EU renewable energy targets by helping to deploy around 1300 megawatts (MW) of additional renewable generation capacity.

The Commission assessed the scheme under its 2014 Guidelines on State Aid for Environmental Protection and Energy. Under these rules Member States can grant state aid for renewable energy, subject to certain conditions, aimed at ensuring that Europe meets its ambitious energy and climate targets at the least possible cost for taxpayers and without undue distortions of competition in the Single Market.

The scheme will last until the end of 2016. All renewable energy technologies can benefit from the scheme, except solar power. According to Italy, solar power is already competitive on the Italian market without the need for direct support to the electricity produced, as confirmed by the significant generation capacity deployed in recent years without such support.

The type of support renewable energy projects can receive under the scheme depends on their size:

- large projects with more than 5 MW of installed power will compete in tenders specific for each technology;
- medium size projects with installed power between 0.5 MW and 5 MW enter a list specific for each technology, and will be prioritised subject to set criteria in order to receive support;
- projects smaller than 0.5 MW will have direct access to aid upon request.

The Commission found that the scheme promotes the integration of renewable energy producers into the market, in line with the Guidelines. Only small installations can benefit from feed-in tariffs, whilst larger installations will receive support through a premium, i.e. a top-up on the market price, which exposes these renewable energy sources to market signals. The scheme will also support the refurbishing of existing generators of any size, for example to increase their efficiency or extend their operational lifetime.

The Commission was therefore able to conclude that the scheme will increase the proportion of electricity generated from renewable sources and reduce pollution, in line with EU Energy Union goals, without unduly distorting competition.

## **General Court confirms that the German law on renewable energy of 2012 involved State aid**

In the relevant dispute, Germany contested the Commission's finding that the German law on renewable energy of 2012 (the EEG 2012) involved State aid, even though the Commission, ultimately, largely approved the aid.

The EEG 2012 laid down a scheme to support undertakings producing electricity from renewable energy sources and mine gas ('EEG electricity'). That law thus guaranteed those producers a price higher than the market price. In order to finance that support measure, it imposed an 'EEG surcharge' on the suppliers to the final customers, which in practice was passed on to the final customers. However, certain undertakings, such as electricity-intensive undertakings in the manufacturing sector ('EIUs'), were eligible for a cap on that (passed on) surcharge in order to maintain their international competitiveness. The EEG surcharge was payable to the interregional operators of high and very-high-voltage transmission systems (TSOs), which were obliged to sell the EEG electricity.

In its decision of 25 November 2014, the Commission found that, although the support laid down by the EEG 2012 for undertakings producing electricity from renewable energy sources constituted State aid, that aid was, however, compatible with EU law. It also classified the reduction in the EEG surcharge for electricity-intensive undertakings as State aid. Since it took the view that those reductions were for the most part compatible with EU law, it ordered recovery in respect of a limited part of the reductions only.

In its judgment of 10 May 2016, the General Court rejected all the arguments by which Germany sought annulment of the Commission's finding that the EEG 2012 involved State aid. It accordingly dismissed the action in its entirety.

According to the Court, the Commission was correct in taking the view that the reduction in the EEG surcharge for electricity-intensive undertakings conferred upon them an advantage within the meaning of EU law on State aid. That reduction released them from a charge which they would normally have had to bear. The grounds underlying an aid measure do not suffice to exclude the measure at the outset from classification as aid.

Furthermore, the Commission was correct in taking the view that the EEG 2012 involved State resources. The mechanisms under the EEG 2012 result, principally, from implementation of a public policy, laid down by the State through the EEG 2012, to support producers of EEG electricity. First, the funds generated by the EEG surcharge and administered collectively by the TSOs remain under

the dominant influence of the public authorities; second, the amounts in question, generated by the EEG surcharge, are funds which involve a State resource and can be assimilated to a levy; and, third and last, it may be concluded from the powers and tasks given to the TSOs that they do not act freely and on their own behalf, but as administrators (assimilated to an entity executing a State concession) of aid granted through State funds.

In this connection, the Court pointed out that the EEG 2012 is substantially different from the mechanism established by the previous German law, which was the subject matter of the judgment of the Court of Justice in *PreussenElektra* – a judgment in which the Court ruled out the existence of State aid. The funds at issue in that case could not be considered to be a State resource since they were not at any time under public control and there was no mechanism (such as that at issue in the present case), established and regulated by the State, for offsetting the additional costs arising from the obligation to purchase and through which the State offered the private operator concerned the certain prospect that the additional costs would be covered in full.

## Energy

### IEA publishes report on European electricity market design

The International Energy Agency (IEA) has published a report on European electricity market design. The report, entitled ‘Key recommendations for European electricity market design’, contains best practices on ways a new market design can fit the changes taking place in the electricity sector.

It details the best ways to ‘re-power’ electricity markets – the process of replacing older market frameworks with ones that suit decarbonisation and ensure a secure electricity supply.

Speaking in Brussels at the report’s launch on 18 February, Miguel Arias Cañete, Commissioner for Climate Action and Energy, said: *“our challenge ahead is to make Europe number one in renewables. We must prepare for an energy system in which more than half of electricity consumption is powered by renewables.”*

For this, short term market frameworks need to be fit for purpose, market signals have to be precise and quick, providing the full benefits of cross-border integration and maximizing the use of energy from variable sources.



The report finds that electricity market designs have become increasingly complex with the introduction of competitive markets in most Organisation for Economic Cooperation and Development (OECD) countries.

For the full text of the report, please click [here](#).

### **Commission proposes new rules on gas and a heating and cooling strategy**

The European Commission has released new proposals for a raft of measures which will shore-up prevention of gas crises and ensure better coordination and support between EU countries in any gas supply disruption. The proposals will also tighten-up so-called intergovernmental agreements in the energy field between EU and non-EU countries and set out a strategy for boosting energy security through access to LNG and gas storage. Furthermore, by addressing the potential for improving energy efficiency and the use of renewable energy in the sector with an innovative, comprehensive policy, the Commission presents the way forward to move towards a smart, efficient and sustainable heating and cooling system. These proposals are part of the Commission's Energy Union strategy and will give a strong push to improving the EU's energy security and solidarity. They are also in line with the EU's commitments to fighting climate change taken at the Paris climate summit towards the end of last year.

On gas crisis prevention, the Commission plans to improve coordination between EU countries and create rules that would require an EU country to help out its neighbour if it is experiencing a very severe gas crisis. Under the so-called solidarity principle, an EU country in trouble would see gas supplies to its households and essential services ensured by neighbouring EU countries.

Gas currently covers one quarter of the EU's energy consumption and the EU is the biggest gas importer in the world. The expected decline of domestic EU gas production will also impact on gas imports. Besides, gas is also seen to play a determinant role in accompanying the EU's transition to a low carbon energy system since it is a back-up fuel for renewables when weather conditions hamper renewable energy production. The Commission has also published a proposal to tighten-up so-called intergovernmental energy agreements between an EU country and a non-EU country. The new rules will allow the Commission to take action before such agreements are signed if it assesses that such an agreement could affect the security of gas supplies in another EU country or hamper the functioning of the EU's energy market.

Finally, the Commission has outlined how better access to a rapidly developing global market in Liquefied Natural Gas (LNG) and better use of gas storage across the EU would allow EU countries

that are dependent on very few gas suppliers to diversify their supply and hence strengthen their energy security.

For heating and cooling, the Commission has launched its first ever strategy to tackle the massive use of energy, particularly fossil fuels, in the sector. Heating and cooling accounts for 50% of the EU's energy consumption and renewables account for just 18% of this. The strategy includes plans to boost the energy efficiency of buildings, improve linkages between electricity systems and district heating systems which will greatly increase the use of renewable energy, and encourage reuse of waste heat and cold generated by industry.

It also aims to ease access to information for consumers to allow them to better understand their energy use and make informed choices that could save energy, as well as inform them on possible energy efficient renovations and options for generating their own energy with renewables.

For more information on the Commission's proposal, please click [here](#).

## Antitrust

### **Commission sends Statement of Objections to Google on Android operating system and applications**

The European Commission has informed Google of its preliminary view that the company has, in breach of EU antitrust rules, abused its dominant position by imposing restrictions on Android device manufacturers and mobile network operators. The Commission's preliminary view pertains to Google's practice of pre-installing Google Search or setting it as the default, or exclusive, search service on most Android devices sold in Europe. This practice appears to close off ways for rival search engines to access the market, via competing mobile browsers and operating systems. In addition, it also seems to harm consumers by stifling competition and restricting innovation in the wider mobile space

The Commission opened proceedings in April 2015 concerning Google's conduct as regards the Android operating system and applications. At this stage, the Commission considers that Google is dominant in the markets for general internet search services, licensable smart mobile operating systems and app stores for the Android mobile operating system. Google generally holds market shares of more than 90% in each of these markets in the European Economic Area (EEA).

In a Statement of Objections addressed to Google and its parent company, Alphabet, on 20 April 2016, the Commission alleges that Google has breached EU antitrust rules by:

- requiring manufacturers to pre-install Google Search and Google's Chrome browser and requiring them to set Google Search as default search service on their devices, as a condition to license certain Google proprietary apps;
- preventing manufacturers from selling smart mobile devices running on competing operating systems based on the Android open source code;
- giving financial incentives to manufacturers and mobile network operators on condition that they exclusively pre-install Google Search on their devices.

The Commission believes that these business practices may lead to a further consolidation of the dominant position of Google Search in general internet search services. It is also concerned that these practices affect the ability of competing mobile browsers to compete with Google Chrome, and that they hinder the development of operating systems based on the Android open source code and the opportunities they would offer for the development of new apps and services.

In the Commission's preliminary view, this conduct ultimately harms consumers because they are not given as wide a choice as possible and because it stifles innovation

For more information on the proceedings, please click [here](#).

### **Commission's e-commerce sector inquiry finds geo-blocking is widespread throughout EU**

The European Commission has published initial findings on the prevalence of geo-blocking which prevents consumers from purchasing consumer goods and accessing digital content online in the European Union. The information was gathered by the Commission as part of its ongoing antitrust sector inquiry into the e-commerce sector, launched in May 2015. In particular, the replies from more than 1400 retailers and digital content providers from all 28 EU Member States show that geo-blocking is common in the EU for both consumer goods and digital content. 38% of the responding retailers selling consumer goods and 68% of digital content providers replied that they geo-block consumers located in other EU Member States.

The e-commerce sector inquiry serves the purpose of gathering market information to allow the Commission to better understand if and to what extent any barriers erected by companies affect

European e-commerce markets. Geo-blocking is one of the issues covered by the sector inquiry. The facts and data on geo-blocking published by the Commission do not prejudge the finding of any anticompetitive concerns or the opening of any antitrust cases. The findings will feed the Commission's on-going analysis in the sector inquiry to identify possible competition problems and also complement actions launched within the framework of the Commission's Digital Single Market Strategy, to address barriers that hinder cross-border e-commerce.

In some cases, geo-blocking appears to be linked to agreements between suppliers and distributors. Such agreements may restrict competition in the Single Market in breach of EU antitrust rules. This however needs to be assessed on a case-by-case basis.

In contrast, if geo-blocking is based on unilateral business decisions by a company not to sell abroad, such behaviour by a non-dominant company falls clearly outside the scope of EU competition law.

There are a number of reasons for retailers and service providers not to sell cross-border and the freedom to choose one's trading partner remains the basic principle. Against that background, it is a key priority of the Commission to address unjustified barriers to cross-border e-commerce with legislative actions as part of its Digital Single Market Strategy and it will come forward with further legislative proposals in May. The common objective of competition enforcement and the Commission's legislative initiatives is to create an area where European citizens and businesses can seamlessly access and exercise online activities, irrespective of their place of residence.

A more detailed analysis of all findings from the on-going e-commerce sector inquiry will be presented in a Preliminary Report due to be published for public consultation in mid-2016. It will not only cover geo-blocking but also any other potential competition concerns affecting European e-commerce markets. The Final Report is scheduled for the first quarter of 2017.

**For further information you can contact:**



154 Asklipiou Str.

114 71 Athens, Greece

Tel.: +30 210 33 90 748

Fax.: +30 210 33 90 749

E-mail: [info@metaxaslaw.com](mailto:info@metaxaslaw.com)

**You can also follow us on:**



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 shall be construed as legal advice. The newsletter is necessarily generalized. Professional advice should therefore be sought before any action is undertaken based on this newsletter.