



NEWSLETTER - Latest legal updates

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## COMPETITION LAW

### *Hellenic Competition Commission imposes largest fines ever on seven dairy producers*

On 3 December 2007, the Hellenic Competition Commission (HCC) issued a decision regarding the horizontal aspects of a major cartel case, which involved 17 dairy producers and retailers on four counts of price-fixing and concerted practices. The HCC has fined seven dairy producers a total of EUR 48.3 million, which is the highest fine ever imposed in Greece by HCC.

### *Commissioner Kroes on perspectives for competition policy in Europe*

In her speech on the assessment of and perspectives for competition policy in Europe on November 19th, Competition Commissioner Neelie Kroes spoke about the enforcement of competition law by the Commission over the past fifty years. Commissioner Kroes also considered the Commission's proposal for a settlement procedure for cartel cases where companies admit to their involvement in a cartel and their liability for it, provided that they also agree to a faster and simplified procedure. This cooperation is different from cooperation under the Leniency Notice. There, the Commission rewards the voluntary production of evidence during the investigative stage, where that evidence triggers or advances the Commission's investigation. Under the Settlement proposals, on the other hand, the Commission will reward admissions of liability by companies that are made after the investigative stage, and that lead to procedural savings on the part of the Commission.

Commissioner Kroes believes that a new system of direct settlement will have numerous benefits to companies, the Commission and European consumers alike.

*For further information see Neelie Kroes speech (SPEECH/07/722, 19/11/2007) which may be found at:*

<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/07/722&format=HTML&aged=0&language=EN&guiLanguage=en>

### *Microsoft agrees to comply with Commission Decision*

One month earlier than the expiration date of bringing an appeal before the European Court of Justice, Microsoft announced its intention to comply with its obligations under the 2004 Commission Decision imposing a € 497 million-fine, which was upheld to a great extent by the European Court of First Instance on 17th September (Microsoft Corp. v Commission of the European Communities, Case T-201/04). After intensive discussions between the Commission and Microsoft, the latter has agreed to lower its royalty rates for the patents claimed to be applicable to the interoperability information that was the central initiative for the imposed fine. Microsoft will also make interoperability information available to “open source” software developers by practicing licensing terms that allow every recipient of the resulting software to copy, modify and redistribute it in accordance with the open source business model, and give legal security to programmers who help to develop open source software, as well as provide complete and accurate technical documentation. Although the above mentioned issues seem to have been resolved for the future practice by Microsoft, the Commission is expected to adopt a decision on the pending non-compliance case regarding past unreasonable pricing for the interoperability information, on which the Commission sent a Statement of Objections on 1 March 2007.

*For further information see Neelie Kroes speech (SPEECH/07/647, 22/10/2007) that may be found at:*

<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/07/647&format=HTML&aged=0&language=EN&guiLanguage=en>

### *In-depth investigation into the Google-DoubleClick-merger*

On November 13<sup>th</sup> the European Commission announced its intention to open an in-depth investigation under the EU Merger Regulation into the proposed acquisition whereby the company Google (US) would acquire sole control of the online advertising technology company DoubleClick (US). The initial market investigation carried out by the Commission indicates that the proposed merger would raise competition concerns in the markets for intermediation and ad serving in online advertising.

Besides the well known service as an operator of a free Internet search engine, Google also provides online advertising space on its websites, as well as intermediation services to publishers and advertisers for the sale of online advertising space on partner websites through its network "AdSense". DoubleClick's key service is to supply advertisers, advertising agencies and website publishers' technology solutions for the delivery, management and reporting of display ads, and hence engaged in different aspects of Internet advertising than Google and their activities do not overlap. Nevertheless, of special concern for the Commission is the question whether without this transaction, DoubleClick would have grown into an effective competitor of Google in the market for online ad intermediation, as well as if it is likely to result in anti-competitive restrictions harming competitors operating in these markets.

*For further information on the decision see PRESS RELEASE IP/07/1688 (13/11/2007) at:*

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/1688&format=HTML&aged=0&language=EN&guiLanguage=en>

### *Compatibility of national law prohibiting the advertisement of dental services with Article 81 EC*

On 22 November 2007, Advocate General Yves Bot handed down his opinion in case C-446/05 Procureur du Roi v. Ioannis Doulamis, on a preliminary reference from the Brussels Court of First Instance (Tribunal de première instance de Bruxelles) requesting a ruling on the question whether Article 81 EC, in conjunction with Articles 3(1)(g) and 10 EC, precludes a national law from prohibiting a provider of dental services from engaging in advertising. In his opinion AG Yves Bot concluded that the Community provisions on Competition do not apply to the situation put forward in the case at hand. Instead, the Advocate General suggests that the legislative measure should be tried against article 43 EC on the freedom of establishment and article 49 EC on the freedom to provide services.

*The Advocate General's opinion may be found in German and French edition at: [www.curia.eu](http://www.curia.eu), Case C-446/05 (22/11/2007).*

### *Maladministration by the Commission in the handling of an application for access to documents*

On November 23th the European Ombudsman Nikiforos Diamandouros published a decision whereby the Commission was found to have failed to respect the time-limits provided for in Article 7 and 8 of Regulation 1049/2001, when dealing with a request for access to documents relating to a Commission investigation into a cartel case. The Ombudsman concluded that this constituted an instance of maladministration.

*For the full version of European Ombudsman's Decision Nr. 2196/2006(SAB)ID, please see:*

<http://www.ombudsman.europa.eu/decision/en/062196.htm>

### *Access to the Administrative Supreme Court in Competition Law Cases*

A formal requirement for the examination of an appeal before the Greek Administrative Supreme Court is a deposit by the appellant, which in matters concerning Competition Law is set to a higher amount than in other matters. On October 24th the Second Chamber of the Court announced its decision to refer to the plenary session the question of whether a case should be dismissed when the appellant has neglected to deposit the higher deposit, or if the Court is obliged to set out a time-limit for the appellant to supplement the deposit under the right to Judicial Protection according to article 20 of the Greek Constitution and article 6 of the European Convention on Human Rights.

*For further information, please see:*

<http://www.ste.gr/portal/page/portal/StE/ProsfatesApofaseis#a23>

### TELECOMMUNICATIONS

#### *The Commission adopts proposals for a reform of the EU Telecom rules*

On 13th November the European Commission adopted new proposals for a reform of the EU Telecom rules. Among the proposals is the establishment of a new European Telecom Market Authority, which will support the Commission and national telecoms regulators in ensuring that market rules and consumer regulation are applied consistently, independently and without protectionism in the Member States. The Commission aims at strengthening consumer rights through reinforcing competition between telecoms operators, promoting investment into new communication infrastructures and making communication networks more reliable and more secure and thereby enabling a single European Telecom Market by the proposed new regulatory measure. The Telecoms Reform Package is expected to come into force in 2009.

*For further information on the EU Telecom Reform see PRESS RELEASE IP/07/1677 (13/11/2007) at:*

<http://www.europa.eu/rapid/pressReleasesAction.do?reference=IP/07/1677&format=HTML&aged=0&language=EN&guiLanguage=en>

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### *EETT fines Greek Telecom Companies*

The Hellenic Telecommunications & Post Commission (EETT) has recently taken new measures to protect Greek consumers from abuse of their electronic connections to make unauthorised international calls. After numerous complaints from consumers the EETT carried out an investigation of the so called Pre-selected Telecom Providers and on the market of unbundled access to the local loop. Especially severe were the findings of unauthorised connections by Pre-selected Telecom Providers, insufficient information to consumers of the availability and the time frame for the connection and unreasonable delays in providing telecommunication services as well as delays in remuneration in regard of damages. The Telecommunications & Post Commission also made findings regarding unacceptable high fees for the disconnection of services. As a result of the investigation six Greek Telecom Service Providers have been imposed fines up to 350.000 Euro. Furthermore, the Commission has decided to block several international lines, such as calls to the Solomon Islands, Wallis, Futuna, Kiribati and Guinea Bissau, in order to come to terms with the unauthorised use of consumers' telephone connections.

*For further information please see:*

<http://www.eett.gr/opencms/sites/EETT/NewsReleases/PressReleases/DT15112007.html>

## STATE AID

### *Infringement procedures for failure to implement Financial Transparency Directive*

On November 9th the European Commission announced that it has initiated infringement procedures against several Member States for failure to implement Financial Transparency Directive. The Commission has requested information from five Member States (Belgium, Denmark, Italy, Luxembourg and the United Kingdom) regarding their failure to notify the Commission of national measures to implement Commission Directive 2005/81/EC amending the Directive on financial relations between public authorities and public undertakings (80/723/EEC). Subject for the Commission investigation are also the Slovak Republic and Latvia for notifying national measures not compliant with the aforementioned Directive.

Under Directive 2005/81/EC all undertakings entrusted with a special or exclusive right, or that operates a service of general economical interest for which it receives public service compensation (irrelevant if this is considered state aid or not), in the same time as it carries out other activities, are obliged to keep separate accounts. The amendment enhances the general transparency obligation on financial relations between public authorities and public undertakings imposed by Directive 80/723/EEC.

*For further information on the infringement procedure see PRESS RELEASE IP/07/1667 (09/11/2007) at:*

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/1667&format=HTML&aged=0&language=EN&guiLanguage=en>

### *Advocate General's opinion on treatment of abnormally low tenders*

On 27 November, Advocate General Colomer delivered an opinion on questions referred to the European Court of Justice for preliminary ruling



from an Italian court. The issue concerned was whether the rules in the public procurement directives relating to the treatment of abnormally low tenders constitute a fundamental principle of Community law which applies even if the contract in question is not covered by the directives. The Advocate General concluded that national legislation which does not require a contracting authority to verify the circumstances relating to an abnormally low offer is contrary to Community law, even where the public contract in question does not fall within the relevant directive.

*The Advocate General's opinion may be found in Spanish, French and Italian edition at [www.curia.eu](http://www.curia.eu), case C-147/06 (27/11/2007).*

### *State Aid Law Conference in Berlin*

A two-day specialized conference on "The Law and Economics of European State Aid Control" organized by the European State Aid Law Institute (EStALI) and the European School of Management and Technology took place in Berlin on the 8th and 9th October 2007.

Within the ambit of the conference was presented the new "refined economic approach" applied by the European Commission in appraising the compatibility of State Aid with the EC Treaty by the Commissioner for Competition Neelie Kroes and the Chief Economist DG Competition Damien Neven. Moreover a fruitful discussion took place over the critical issues of access to court and private enforcement through recovery with an exhaustive appraisal of all recent developments in the said fields by leading practitioners and academics.

Dr. A. Metaxas, national correspondent for EStAL in Greece, was invited to participate in the Conference.

*Neelie Kroes' speech may be found at:*

<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/07/601&format=HTML&aged=0&language=EN&guiLanguage=en>

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