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STATE AID

Commission extends support package for Greek credit institutions

On 18 September 2009 the European Commission announced that it has decided to extend its approval to a Greek support package for credit institutions until the end of 2009. The support measures consist of a recapitalisation scheme, a guarantee scheme and support through the issuance of Greek State special purpose securities to credit institutions. The original scheme was approved, under Article 87(3)(b) of the EC Treaty, on 19 November 2008, as an adequate means to remedy a serious disturbance in the Greek economy. The Commission has also approved amendments made to it in accordance with the Recapitalisation Communication, which was adopted after approval of the original Greek scheme. The extended package is limited in time and scope and it is compatible with Article 87 (3)(b) of the EC Treaty.

Commission statement on aid for Opel Europe

On 23 September 2009, the European Commission issued a statement on the grant of state aid for the restructuring plan for new Opel Europe. The statement underlines that the restructuring plan must guarantee the company's viability in the future. Any financial support by German authorities must fully comply with the EU's state aid and internal market rules and the Commission, from its part, will carefully examine whether the authorities have attached any additional non-commercial conditions to their aid for New Opel in relation to the location of investments and/or the geographic distribution of restructuring efforts. The Commission will also examine indications that negotiations are taking place with other European governments concerning financial support linked to the number of workers retained by New Opel in each Member State. 'State aid granted under the Temporary Framework cannot be subject - de jure or de facto - to additional conditions concerning the location of investments and/or the geographic distribution of restructuring efforts', as stated by Commissioner Neelie Kross. The entire European car industry suffers from considerable over-capacity and

a failed restructuring would result in great damage for the company and its workers, negative spillovers for the whole sector and a waste of taxpayers' money.

COMPETITION LAW

Commission consults on commitments offered by Microsoft to resolve tying complaint

Commission expressed specific concerns that Microsoft may have infringed Article 82 of the EC Treaty by abusing its dominant position in the market for client PC operating systems through the tying of Internet Explorer to Windows. Microsoft made improvement proposals that seem to give European consumers real choice over how they access and use the internet. The aim of these commitments is to allow original equipment manufacturers and end users an unbiased choice between Microsoft's web browser and competing web browsers. In particular, the company agreed to present users with a first screen explaining what web browsers are and giving more information about the web browser they may wish to install. The proposed commitment would now be subject to a clause, thus allowing the Commission to review it in the future in order to ensure that consumers would continue to have a genuine choice among browsers. On 9 October 2009 the Commission formally invited comments from consumers, software companies, computer manufacturers and other interested parties on this proposal, as it intends to adopt a decision under Article 9(1) of Regulation 1/2003 to end its Article 82 investigation (without an infringement decision) and to make the commitments binding on Microsoft for a five year period (subject to a possible review of effectiveness after two years).

Commission refers Greece to ECJ over restrictions on courier services

On 8 October 2009, the European Commission announced that it has referred Greece to the European Court of Justice over its national legislation that

imposes additional burdens and obligations on operators providing courier, parcel and mail services. Under the Greek rules, courier services are not authorised to transport consignments in excess of 20 kilograms and, therefore, must engage the services of independent transporters. This limits the range of services couriers may provide and at the same time drives up costs for consumers. Moreover, duly authorised courier services that operate through a franchise system across the national territory are experiencing additional operational problems, as they must lease trucks on behalf of their franchisees unless the latter holds a separate general licence, which can only be issued by EETT, the national Communications and Postal Regulator. EETT takes the view that franchisees do not require a separate general licence.

In the Commission's view, this legislation is incompatible with EU rules on postal services. The continued application of the contested national rules means that the full attainment of the objective of the postal directive (97/67/EC) is being jeopardised, thus depriving customers of new and competitively priced services.

Commission confirms dawn raids in the pharmaceutical sector

On 6 October 2009, the European Commission announced that its officials have been conducting unannounced inspections at the premises of certain companies active in the pharmaceutical sector (MEMO/09/435). The Commission states that it is investigating suspicions that the companies concerned may have engaged in illegal restrictive practices in breach of EU Competition Regulations. These inspections (conducted under Article 20 of Regulation 1/2003) are a preliminary stage in the Commission's investigation, which could take a number of years to complete depending on the complexity of the case and the co-operation of the companies involved.

ENERGY

Commission publishes summary of Article 86 decision in relation to Greek mining rights

On 10 October 2009, the European Commission published in the Official Journal a summary of its decision under Article 86(3) of the EC Treaty to accept commitments offered by Greece to correct the anti-competitive effects of an infringement of Article 86, in conjunction of Article of the EC Treaty (*OJ 2009 C243/5*). The Commission had found that Greece had infringed Article 86 of the EC Treaty, in conjunction with Article 82, by maintaining the quasi-exclusive rights for access to lignite granted to state-owned electricity company Public Power Corporation (PPC). This resulted in inequality of opportunity between economic operators as regards access to lignite for the production of electricity and enabled PPC to maintain or reinforce its dominant position on the Greek wholesale electricity market by excluding or hindering market entry by new-comers. To comply with the Commission's decision, Greece agreed to ensure fair access to Greek lignite deposits by holding public tenders to grant exploitation rights to four lignite deposits. Competitors of PPC in the Greek electricity market will be able to obtain access to about 40% of exploitable lignite resources in Greece.

Commission contests limitation on voting rights in Greek PPC

On 8 October 2009, the European Commission announced that it has issued a reasoned opinion to Greece in which it contests a Presidential Decree stipulating a 5% voting cap in Public Power Company. The infringement procedure was initiated by a letter of formal notice in April 2008 and after analysing the Greek government's reply, the Commission considers that the restrictions represent unjustified obstacles to EC Treaty rules on free movement of capital. The Commission's request takes now the form of a 'reasoned opinion', the second stage of infringement procedures under Article 226 of the EC Treaty, by which, if there is no satisfactory reply within two months, the Commission may decide to refer the case to the European Court

of Justice. In Article 1 of Presidential Decree 333/2000, which lays down the Article of Association (“AoA”) of the PPC, it is stated that Article 8 of PPC's AoA limits the voting rights of non-state shareholders to 5%. Even though a majority of 51% has to remain in public ownership, the voting rights cap appears to be a restriction on the free movement of capital within the meaning of Article 56 of the EC Treaty. Direct investors are hindered from effectively participating in the management and control of PPC and portfolio investors, who invest for reasons other than active participation in management or control, are deprived of the full protection of minority shareholders provided by general company law.

While Greece must show that this measure is appropriate and necessary to attain a legitimate objective, so far, Greece has neither explained sufficiently why the voting cap should be justified on grounds of public interest and security, nor why either of those would be put at risk without the voting cap that applies to all company decisions.

Consultation published on Swedish interconnectors commitments

The Swedish electricity transmission operator Svenska Kraftnaet (SvK) has pledged to open up transmission capacity in order to settle the Commission's antitrust charges. By the notice published in the Official Journal on 6 October 2009, the European Commission invites comments on commitments offered by SvK to divide the Swedish transmission system into two or more bidding zones and stop limiting trading capacity on interconnectors. This proposal was made to address the Commission's concerns that SvK was abusing its dominant position in the Swedish electricity transmission market by reducing interconnection capacity for trade between Sweden and neighbouring countries. The Commission will make its final decision after receiving comments from the interested parties.

EREG publishes status review of distribution system operator unbundling

On 18 September 2009, the European Regulators' Group for Electricity and Gas (EREG) published a status review on the level of compliance with the EREG's guidelines for good practice on functional and informational unbundling for distribution system operators (DSOs), published in July 2008. The guidelines advise DSOs on how to realise the required functional unbundling of vertically-integrated energy operators under Directives 2003/54 and 2003/55, concerning common rules for the internal market for electricity and natural gas. These Directives required the legal unbundling of DSOs with more than 100,000 customers by 1 July 2007. The review reveals a varied situation of unbundling across the 22 NRAs that responded to the questionnaire, with progress similar in both sectors. Generally, integrated companies are still free to set up their own unbundling regimes, and consumers tend to expect "integrated behaviour". The biggest problem seems to be the separation of information, with distribution and supply companies usually employing the same people. Although most Member States have compliance programmes in place, the actual role of the compliance officer is not often made clear. The third energy liberalisation package, adopted in June 2009, contains radical changes to transmission unbundling, but has left very much unchanged the distribution unbundling provisions.

MERGERS

Commission clears joint venture of Piraeus Bank and BNP Paribas

The European Commission has granted clearance under the EU Merger Regulation to the acquisition of joint control of Piraeus Wealth Management AEPEY of Greece (Greek JV) and Piraeus Wealth Management SA of Switzerland (Swiss JV) by way of purchase of shares in a newly created company. The new company constitutes a joint venture between Piraeus Bank SA of Greece, which operates in retail banking, asset management, corporate and investment banking and BNP Paribas SA (BNPP) of France. Greek JV

will combine the wealth management activities in Greece, carried out respectively by the Piraeus Bank Wealth Management division and by the BNPP Wealth Management Greek branch, while international wealth management services will be offered by Swiss JV, particularly to Greek investors. The transaction was examined under the simplified merger review procedure.

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