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European Union: Energy

Salomé Cisnal de Ugarte and Lorenzo Di Masi
Crowell & Moring LLP

The energy sector has continued to be under intense competition scrutiny this year, particularly in the context of state aid and merger control, but also with regard to behavioural investigations. This article discusses the main European Union (EU) competition law developments in the energy sector during the past year,¹ with particular regard to the current EU Energy Union policy.

The European Energy Union

The European Union aims at ensuring that Europe has secure, affordable and climate-friendly energy. To that end, the Commission under President Jean-Claude Juncker adopted the Energy Union Strategy as one of the top priorities. This strategy was adopted in February 2015 and pursues the following five closely related objectives:

- ensuring the security of energy supply;
- energy efficiency;
- emissions reduction through an increasing use of renewable resources;
- research and innovation in low-carbon technologies; and
- the creation of an integrated Union-wide energy market.²

In the attainment of these objectives, EU competition law and policy is called to play a key role.³ In this spirit, Commissioner for Competition, Margrethe Vestager confirmed that actions in the field of energy are more effective if the 'efforts to promote competition are combined with other policies aimed at building a true European market'.⁴

Behavioural Investigations

In the course of the past year, antitrust enforcement of articles 101 and 102 TFEU in the field of energy was, to a large extent, carried out by national competition authorities throughout Europe.⁵ The European Commission concentrated in turn on those transactions with an EU-wide impact, such as the *BEH Electricity* case below, which targeted territorial restrictions to the free flow of electricity and natural resources and limitations to the access to infrastructures. This approach is in line with the Commission's strategy stated above and the need for a strong internal market for energy, as emphasised in the February 2015 Commission Energy Union Communication, 'strict enforcement of the Treaty's competition rules [is needed] to prevent companies from distorting the internal energy market. Antitrust enforcement will ensure that energy can flow freely by addressing territorial restrictions in supply contracts as well as upstream/downstream and network foreclosure issues (including interconnectors)'.⁶

BEH Electricity

The only decision adopted in the period of analysis concerned an antitrust investigation against Bulgarian Energy Holding (BEH), the state-owned vertically integrated energy company in Bulgaria.⁷

The Commission opened an investigation against BEH in late 2012, accusing the company of abusing of its dominant position on the Bulgarian wholesale electricity market.⁸ In the statement of

objections, sent to the company in August 2014,⁹ the Commission reached the preliminary conclusion that BEH had hindered competition on the non-regulated wholesale market in Bulgaria by imposing contractual restrictions where the electricity supplied by the company could be resold. More specifically, the greatest majority of electricity supply contracts concluded between BEH and traders provided that electricity supplied by BEH could only be resold within the country or only be exported. The contracts provided BEH with the possibility to monitor effectively the restrictions and punish the traders who tried to circumvent them.

In June 2015, BEH proposed a set of commitments under article 9 of Regulation 1/2003 to address the Commission concerns. These commitments were market tested¹⁰ and made legally binding in December 2015. In these commitments BEH offered 'certain volumes of electricity on an independently-operated day-ahead market on a newly-created power exchange in Bulgaria',¹¹ which would trade electricity on an anonymous basis. BEH agreed to establish the power exchange with the aid of a third party and to transfer its ownership to the Bulgarian Ministry of finance in order to ensure the entity's independence. In addition BEH offered 'minimum stipulated volumes of electricity on the Bulgarian power exchange, for a period of five years. These volumes will be put for sale in the day-ahead market, with a maximum price based on the marginal costs of BEH's production subsidiaries. The volumes offered will vary on an hour-by-hour basis, in line with the pattern of consumption of electricity in Bulgaria'.¹²

Ongoing investigations

The Commission opened a further investigation, this time under article 102 TFEU, against BEH. In March 2015, the Commission sent a statement of objections to BEH Gas alleging that it had abused of its dominant position by preventing competitors from having access to key gas infrastructure in Bulgaria.¹³ This investigation is still ongoing.

In April 2015, the Commission sent a statement of objections to Russian gas giant Gazprom alleging the violation of article 102 TFEU in the central and eastern European gas market.¹⁴ The Commission accuses Gazprom of abusing its dominant position by imposing territorial restrictions in its supply agreements with gas wholesalers. These territorial restrictions include export ban clauses, destination clauses and other measures preventing the cross-border flow of gas. Moreover, according to the Commission preliminary findings, Gazprom has pursued an unfair pricing policy in five eastern EU member states 'by charging prices to wholesalers that are significantly higher compared to Gazprom's costs or to benchmark prices'.¹⁵

The most recent investigation was launched on 7 June 2016 and concerns energy companies in Romania. The Commission confirmed dawn raids at the premises of several companies active in the supply and the transport of natural gas in Romania. The Commission suspects that these companies engaged in 'anti-competitive behaviours aimed at hindering natural gas exports from Romania to other Member States'.¹⁶

Merger control

In the course of last year, the Commission cleared a significant number of concentrations in the energy field. Most of these cases involved largely unproblematic transactions that were approved under the simplified merger procedure,¹⁷ with only a small number of transactions assessed under the normal merger procedure.¹⁸

Two cases, however, concerned more complex transactions, which required in-depth investigations by the Commission: General Electric's (GE) acquisition of Alstom's thermal power, renewable power and grid business,¹⁹ and Halliburton's failed acquisition of oil-field operations rival Baker Hughes.²⁰

In *GE/Alstom* the Commission was concerned with the fact that the acquisition would have brought together two of the three largest competitors in a market where only four undertakings were active.²¹ This would in turn have led to less innovation and higher prices. The concentration was cleared in Phase II after the agreement of the parties to divest Alstom's heavy duty turbines business, including certain company's R&D engineers, test facilities and servicing agreements, to Italian company Ansaldo.

The *Halliburton/Baker Hughes* merger was withdrawn in May 2016, more than nine months after the initial notification in late July 2015. According to the Commission, the merger raised competition concerns with respect to tenders and innovation on the markets as it would have created a duopoly on many oil-field operation markets. This would have in turn led to less choice and potentially higher prices for customers with respect to several integrated services for which Halliburton and Baker Hughes were fierce competitors.²²

The *GE/Alstom* and *Halliburton/Baker Hughes* cases present certain commonalities with respect to the issues raised by the Commission and the methodology used in the competitive assessment. First, the two cases witness a growing tendency on the part of the Commission to deeply scrutinise the impact of notified transactions on innovation. The central role played by innovation in the assessments of *GE/Alstom* and *Halliburton/Baker Hughes* has been recalled by both Commissioner Vestager²³ and by the recently appointed DG Comp's Director General for Mergers Carles Estava Mosso.²⁴ In *GE/Alstom*, there was the significant risk that as a result of the merger, the development of Alstom's latest and most innovative gas turbine model would have been discontinued.²⁵ In *Halliburton/Baker Hughes* similar risks existed, as the two players were close competitors on many different lines of developing products.

Second, the assessment of the Commission in these two cases takes into account of the broader EU energy policy framework. In announcing the clearance of *GE/Alstom*, Commissioner Vestager recognised the importance of the Alstom technology for the attainment of EU energy objectives – most notably for the creation of a well-balanced EU energy mix and the security of supply – when she declared that 'advanced heavy duty gas turbine technology is crucial to face the challenges of climate change and modernising our energy supply. It is the most efficient, cleanest and flexible fossil fuel power generation technology and an important complement to more unpredictable generation from renewables [...]'.²⁶ Similarly, in *Halliburton/Baker Hughes*, Commissioner Vestager recalled the need to employ competition tools to ensure competitive energy prices and security of supply.²⁷

Finally, these two cases demonstrate the increasing cooperation in the context of merger reviews between DG Comp and antitrust authorities around the world, including most notably the US Department of Justice.²⁸ In a recent speech, Commissioner Vestager emphasised the important role of international cooperation in the scrutiny of *Halliburton/Baker Hughes*. According to the

Commissioner, '[w]e talked to several authorities about that merger, including our counterparts in Australia, Brazil, India and China. We had especially good discussions with the US Department of Justice, which helped us to get a deeper understanding of the deal and to test our picture of how the markets worked. And in the end, when the parties abandoned the transaction, we and our US colleagues had come to very similar conclusions – us in our statement of objections, and the Department of Justice in its complaint before the courts'.²⁹

State aid

In the course of past year, there has been a large number of state aid decisions involving energy-related measures.³⁰ These decisions demonstrate the Commission's commitment towards the key objectives of the Energy Union. These objectives are pursued by the Commission by means of a strict enforcement of its Guidelines on State aid for environmental protection and energy 2014–2020 (EEAG).³¹

General trends

The Commission is supporting the move towards a green economy based on section 3.3 of the EEAG 'Aid to Energy from Renewable Resources' by which it declared several national measures to be compatible with the internal market.³² At the same time, the Commission and the member states are closely cooperating to ensure that uncompetitive coal mines receive the necessary aid to terminate their activities by 31 December 2018, as required by Council Decision 2010/787/EU.³³

With regard to energy infrastructure, the Commission has declared two investments proposed by Finland into liquefied natural gas terminals to be compatible with article 107 TFEU.³⁴ This is the first time that the Commission has assessed investments under the provisions of section 3.8 'Aid to energy infrastructure' of the EEAG. As such, the two decisions represent an important benchmark for other EU member states to design their investments in energy infrastructures in a way that is compliant with EU state aid rules.

Finally, the Commission continues to monitor capacity mechanisms to ensure that security of supply is not used to create distortion on the internal energy market. In particular, in November 2015, the Commission opened two in-depth investigations under article 108(2) TFEU against capacity mechanisms in France.³⁵ In case SA.40454, the Commission reached the preliminary conclusion that a country-wide capacity mechanism designed by France did not meet the criteria of section 3.9 EEAG. According to the Commission, there are serious doubts on the legality of the French capacity mechanism from the point of view of both selectivity and necessity (the security of supply could be reached with less distortive measures).³⁶ Moreover, France had violated article 108(3) TFEU insofar as it had implemented the mechanism in absence of a prior notification to the Commission.³⁷

Commission inquiry into capacity mechanisms

In parallel to these cases, the Commission has made substantial progress in the sector inquiry – the first ever in the area of state aid – into the capacity mechanisms of 11 EU member states launched in late April 2015. The preliminary findings and tentative conclusions of the inquiry were published in an interim report (the 'report') on 13 April 2016.³⁸

The report lists the main competition problems linked with capacity mechanisms. In particular, according to the Commission, 'a patchwork of mechanisms across the EU risks affecting cross-border trade and distorting investment signals in favour of countries with more 'generous' capacity mechanisms. Nationally determined generation adequacy targets risk resulting in the over-procurement

of capacities unless imports are fully taken into account. Capacity mechanisms may strengthen market power if they, for instance, do not allow new or alternative providers to enter the market. Capacity mechanisms are also likely to lead to over-compensation of the capacity providers – often to the benefit of incumbents – if they are badly designed and non-competitive. All of these issues can undermine the functioning of the internal energy market and increase energy costs for consumers.³⁹

In addition, in this report the Commission maps the main types of capacity mechanisms employed by the 11 member states and recognises that ‘a clear majority of public authorities expect reliability problems in the future even though today such problems occur only very rarely.’⁴⁰ Against this background, in line with section 3.9 of the EEAG, member states are asked to take into account the following principles and criteria when designing their capacity mechanisms:

- Member states must carry out a detailed assessment of the adequacy situation in order to justify the need for capacity mechanisms.⁴¹
- Participation in the capacity mechanism must be open to different types of capacity providers, new capacities and capacity providers located in other member states in order to avoid selectivity issues.⁴² In this respect, the report notes, however, that ‘the preliminary findings indicate that the most existing capacity mechanisms are open only to a limited number of capacity providers.’⁴³
- The allocation process in capacity mechanisms should be based on competitive bidding processes rather than on administrative allocation processes. Indeed, in the Commission’s view, ‘administrative allocation processes are unlikely to reveal the true capacity value and therefore unlikely to be cost effective [...] and to send the proper investment signals.’⁴⁴
- In order to be reliable, capacity mechanisms must provide for clear obligations for their beneficiaries as well as penalties for non-compliance.⁴⁵

The Commission is currently carrying out a public consultation on the preliminary results of the inquiry, which will be concluded in July 2016. On the basis of the inputs received through the public

consultation, the Commission intends to publish a final report on the results of the sector inquiry later in 2016. In the meantime, the Commission will continue ‘to assess capacity mechanisms under EU State aid rules, and in particular the 2014 Guidelines on State aid for environmental protection and energy.’⁴⁶

State aid case law

Among the various EU judgments concerning state aid and energy delivered this year,⁴⁷ the *Germany v Commission* case deserves special consideration.⁴⁸ This case concerned an appeal brought by Germany against the Commission decision relating to the German Law on Renewable Energy 2012 (EEG). In extreme synthesis, the EEG laid down a scheme to support undertakings producing electricity from renewable energy sources and mine gas. 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, electricity-intensive undertakings (EIUs) were eligible for a cap on the surcharge in order to maintain their international competitiveness.⁴⁹ In its decision of 25 November 2015, the Commission held, inter alia, that the reductions in the EEG surcharge for EIUs had to be considered as state aid and ordered their partial recovery.

By its judgment of 10 May 2015, the General Court of the EU (GC) dismissed the appeal filed by Germany in its entirety. With respect to the EEG surcharge, the GC held that such a scheme exempted EIUs from a charge which they would normally bear and that, therefore, the existence of an advantage granted to EIUs, had been correctly established.⁵⁰ The Commission was therefore correct in taking the view that the EEG 2012 system as a whole involved state resources. The funds at issue had to be classified as state funds given that final consumers were required to pay a price supplement that could be assimilated to a levy for implementation of a policy set by the state. The GC also held that funds financed through compulsory contributions imposed by the legislation of a member state, administered and apportioned in accordance with that legislation, may be regarded as state resources within the meaning of article 107(1) TFEU, even if – as it was the case in Germany – they are administered by entities separate from the public authorities.⁵¹

Annex Overview of state aid decisions in the energy sector (May 2015 – June 2016)			
Case (decision date)	Member state	Legal basis	Summary
SA.37177 – <i>Amendments to the green certificates support system for promoting electricity from renewable sources</i> (4 May 2015)	Romania	Guidelines on State aid for environmental protection and energy 2014-2020 (EEAG) and 2008 Guidelines on State Aid for Environmental Protection (EAG)	Compatibility of the measure with the internal market (article 107(3)(c) TFEU). The proposed measure meets the criteria of section 3.2 EEAG (General compatibility provisions) and section 3.3.2.4. (Aid granted by way of certificates).
SA.34992 – <i>Individual aid to Vaskiluodon Voima Oy for a forest chips gasification plant</i> (24 June 2015)	Finland	EEAG	Compatibility of the measure with the internal market (article 107(3)(c) TFEU). The proposed measure meets the criteria of section 3.3.2. EEAG (Operating aid granted from renewable resources). The investment in the gasification plant allows Finland to replace imported coal with renewable energy sources.
SA.35486 – <i>Aid for electricity generation in industrial combined heat and power plants</i> (14 July 2015)	Denmark	EEAG	Compatibility of the measure with the internal market (article 107(3)(c) TFEU). The proposed measure meets the criteria of section 3.4 EEAG (Energy efficiency measures, including cogeneration).
SA.41939 – <i>Aid To UK Coal</i> (24 July 2015)	United Kingdom	Council Decision 2010/787/EU	Closure aid of uncompetitive coal mines – Compatibility with the provisions of Council Decision 2010/787/EU.

Annex Overview of state aid decisions in the energy sector (May 2015 – June 2016)			
Case (decision date)	Member state	Legal basis	Summary
SA.38406 – <i>Renewables support scheme in Croatia 2014–2015</i> (1 September 2015)	Croatia	EEAG	Compatibility of the measure with the internal market (article 107(3)(c) TFEU). The proposed measure meets the criteria of section 3.3 EEAG.*
SA.39515 – <i>Individual aid to LNG Infrastructure (Pori)</i> (22 September 2015)	Finland	EEAG	Compatibility of the measure with the internal market (article 107(3)(c) TFEU). The proposed aid meets the criteria of section 3.8 EEAG (Aid to energy infrastructure).
SA.24571 – <i>Aid granted to MOL</i> (26 October 2015)	Hungary	Article 107(1) TFEU	The case concerns the provisions of the Hungarian Mining Act. In 2009, the Commission had concluded that the provisions of the Act conferred a selective advantage to MOL. The Commission decision was later annulled by the GC in Case T-499/10. The findings of the GC were confirmed by the European Court of Justice in C-15/14. The Commission decision of October 2015 recalls the main findings of the litigation before EU courts and concludes on the non-existence of the aid on the basis of a lack of selectivity of the measure.
SA.40454 – <i>French country-wide capacity mechanism</i> (13 November 2015)	France	EEAG	Initiation of an in-depth investigation under article 108(2) TFEU. According to the Commission, the capacity mechanism designed by France is not in line with the principles set in section 3.9 EEAG (Aid for Generation Adequacy).
SA.40454 – <i>Tender for additional capacity in Brittany</i> (13 November 2015)	France	EEAG	Initiation of an in-depth investigation under article 108(2) TFEU. According to the Commission, the capacity mechanism designed by France is not in line with the principles set in section 3.9 EEAG (Aid for Generation Adequacy). In particular, the Commission has concerns that the tender is opened only to one type of technology (gas-fired power plant) and risks creating a subsidy dependent market in Brittany. ⁵²
SA.42800 – <i>Prolongation of aid for exceptional costs for mine closure in Romania</i> (13 November 2015)	Romania	Council Decision 2010/787/EU	Closure aid of uncompetitive coal mines – Compatibility with the provisions of Council Decision 2010/787/EU.
SA.38454 – <i>Possible aid to the Paks nuclear power station</i> (23 November 2015)	Hungary	Article 107(1)	Initiation of an in-depth investigation under article 108(2) TFEU. The Hungarian authorities had notified plans to invest in the construction of two new nuclear reactors in Paks. The Commission has reached the preliminary conclusion that the investment might not be on market terms (ie, a private investor would have not financed the project on similar terms). ⁵³
SA.38762 – <i>Lynemouth Biomass Conversion</i> (1 December 2015)	United Kingdom	EEAG	Compatibility of the measure with the internal market (article 107(3)(c) TFEU). The proposed measure meets the criteria of section 3.3.2.1 EEAG (Operating aid for electricity from renewable energy sources).*
SA.38760 – <i>Drax 3rd Unit Biomass Conversion</i> (5 January 2016)	United Kingdom	EEAG	Initiation of an in-depth investigation under article 108(2) TFEU. The Commission has concerns that the proposed measure does not meet the criteria of section 3.3.2.1 EEAG (Operating aid for electricity from renewable energy sources). ⁵⁴
SA.40713 – <i>Support for installations producing electricity from mine gas</i> (10 December 2015)	France	EEAG	Compatibility of the measure with the internal market (article 107(3)(c) TFEU). The proposed measure meets the criteria of sections 3.2. and 3.5 (Aid for resource efficiency and in particular aid to waste management) EEAG.
SA.42218 – <i>Operating aid for forest chips fired power plants</i>	Finland	EEAG	Compatibility of the measure with the internal market (article 107(3)(c) TFEU). The proposed measure meets the criteria of section 3.3.2. EEAG (Operating aid granted from renewable resources).*
SA.42889 – <i>Individual aid to LNG Infrastructure (Hamina)</i> (18 March 2016)	Finland	EEAG	Compatibility of the measure with the internal market (article 107(3)(c) TFEU). The proposed measure meets the criteria of section 3.8 EEAG (Aid to energy infrastructure).
SA.38968 – <i>Transitory electricity flexibility remuneration mechanism (FRM)</i> (31 March 2016)	Greece	EEAG	Compatibility of the measure with the internal market (article 107(3)(c) TFEU). The proposed capacity mechanism meets the criteria of section 3.9 EEAG (Aid for generation adequacy).
SA.40912 – <i>Reform of the Renewable Energy Law, cumulation</i> (19 April 2016)	Germany	EEAG	Compatibility of the measure with the internal market (article 107(3)(c) TFEU). The proposed measure meets the criteria of section 3.3 EEAG (Aid to energy from renewable sources).
SA.41694 – <i>Support to renewable electricity in Portugal</i> (27 April 2016)	Portugal	EEAG	Compatibility of the measure with the internal market (article 107(3)(c) TFEU). The proposed measure meets the criteria of section 3.3 EEAG (Aid to energy from renewable sources).*
SA.43756 – <i>Support to electricity for renewable sources in Italy</i> (29 April 2016)	Italy	EEAG	Compatibility of the measure with the internal market (article 107(3)(c) TFEU). The proposed measure meets the criteria of section 3.3 EEAG (Aid to energy from renewable sources). ⁵⁵

Annex Overview of state aid decisions in the energy sector (May 2015 – June 2016)			
Case (decision date)	Member state	Legal basis	Summary
SA.32184 – <i>Alleged State aid to an electricity supplier and SA.32669 – Aid granted to CHP plants and an electricity supplier which affect the market for regulation power</i> (23 May 2016)	Denmark	Article 107 TFEU	The Commission decided that ‘that a contract between the Danish transmission system operator Energinet.dk and DONG Energy for the supply of electricity at short notice did not involve any State aid. The Commission concluded that the contract did not confer a selective advantage to DONG Energy’.* ⁵⁶
SA.34332 – <i>Aid to facilitate the closure of coal mines in Spain</i> (27 May 2016)	Spain	Council Decision 2010/787/EU	Closure aid of uncompetitive coal mines – Compatibility with the provisions of Council Decision 2010/787/EU.
SA.42536 – <i>Closure of German lignite plants</i> (27 May 2016)	Germany	Article 107 TFEU	Compatibility of the measure with the internal market (article 107(3)(c) TFEU).* ⁵⁷
* The public version of this decision is not yet available.			

Notes

- The present chapter takes into account developments between May 2015 and mid-June 2016. For the purpose of our analysis, we adopt a broad definition of ‘energy sector’ encompassing oil and gas, coal, nuclear and renewable energy sources, but also electricity and other energy infrastructures, as well as manufacturing of energy-related products such as turbines and power generators.
- For a detailed overview of the Energy Union strategy and of the legislative proposal adopted up to now by the Commission see http://ec.europa.eu/priorities/energy-union-and-climate_en.
- See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank. A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy (COM/2015/080 final), 25 February 2015 (also referred to as the ‘Energy Union Communication’).
- See Commissioner Vestager speech ‘Making energy markets work for consumers’, 10 June 2016 (available at https://ec.europa.eu/commission/2014-2019/vestager/announcements/making-energy-markets-work-consumers_en).
- For a summary of the legal developments at national level, see U Scholz and T Vohwinkel, ‘The Application of EU Competition Law in the Energy Sector’, in *Journal of Competition Law & Practice*, 2016, Vol. 7, No. 1.
- Energy Union Communication, above No. 4, p. 2.
- Case AT.39767 – *BEH Electricity*. The non-confidential version of the decision is not yet published.
- See European Commission Press Release of 1 December 2012 (available at http://europa.eu/rapid/press-release_IP-12-1307_en.htm).
- See European Commission Press Release of 12 August 2014 (available at http://europa.eu/rapid/press-release_IP-14-922_en.htm).
- Communication from the Commission published pursuant to Article 27(4) of Council Regulation (EC) No. 1/2003 in Case AT.39767 — *BEH Electricity* (OJ C 202, 19.6.2015, pp. 2–4). The full text of the commitments is available at http://ec.europa.eu/competition/antitrust/cases/dec_docs/39767/39767_1505_3.pdf.
- See European Commission Press Release of 10 December 2015 (available at http://europa.eu/rapid/press-release_IP-15-6289_en.htm).
- Ibid.
- Case AT.39849 – *BEH Gas*.
- Case AT.39816 – *Upstream gas supplies in Central and Eastern Europe*.
- See European Commission Press Release of 22 April 2015 (available at http://europa.eu/rapid/press-release_MEMO-15-4829_en.htm).
- Case AT.40335 – *The Wall* and Case AT.40400 – *Wall-E*. See European Commission Press Release of 7 June 2016 (available at http://europa.eu/rapid/press-release_STATEMENT-16-2133_en.htm).
- See, inter alia, M.7823 – *Acciona/Nordex*; M.7828 – *Ineos/DEA UK E&P Holdings*; M.7889 – *Engie/REC/ITEN*.
- See M.7602 – *Deutsche Telekom Group/MET Holding/JV*; M.7631 – *Royal Dutch Shell/BG Group*; M.7779 – *Trafigural/Myrstar*; M.7799 – *Schlumberger/Cameron*; M.7816 – *EGPI/F2/JV*; M.7870 – *Fondo Strategico Italiano/ENI/Saipem*.
- M.7278 – *General Electric/ALSTOM (Thermal Power – Renewable Power & Grid Business)*. The decision is not published yet.
- M.7477 – *Halliburton/Baker Hughes*.
- GE is the world’s largest manufacturer and Alstom was the number three or four players globally.
- See European Commission Press Release of 12 January 2016 (available at http://europa.eu/rapid/press-release_IP-16-48_en.htm).
- See Statement of Commissioner Vestager of 2 May 2016 on announcement by Halliburton and Baker Hughes to withdraw from proposed merger (available at http://europa.eu/rapid/press-release_STATEMENT-16-1642_en.htm).
- See speech by Mr Carles Esteva Mosso at Brussels School of Competition Morning Briefing ‘Recent Developments in Merger Control’ on 13 November 2015 as reported by MLex article by D. Nelson ‘Comment: Innovation draws deeper scrutiny in M&A reviews’ (available at www.mlex.com upon subscription). The full video of Mr Estava Mosso’ intervention is available at www.youtube.com/watch?v=aXPz70jdMPA.
- See European Commission Press Release of 8 September 2015 (available at http://europa.eu/rapid/press-release_IP-15-5606_en.htm).
- Ibid.
- See Statement of Commissioner Vestager of 2 May 2016, above No. 23. ‘The exploration and production of oil and gas are key sectors in ensuring competitive energy prices for consumers and companies across the EU. They are also particularly important for the efficient use of available gas resources within the EU, a key element of our Energy Union strategy in terms of ensuring security of supply’.
- See European Commission Press Release of 8 September 2015, above n. 25.
- See Commissioner Vestager speech ‘Working together to support fair competition worldwide’, 3 June 2016 (available at https://ec.europa.eu/commission/2014-2019/vestager/announcements/working-together-support-fair-competition-worldwide_en).
- Please see the Annex, for a list and a short summary of these decisions.
- Guidelines on State aid for environmental protection and energy 2014–2020 (OJ C 200, 28.6.2014, pp. 1–55).
- See, inter alia, SA.34992 – *Individual aid to Vaskiluodon Voima Oy for a forest chips gasification plant*; SA.38406 – *Renewables support scheme in Croatia 2014–2015*; SA.38760 – *Drax 3rd Unit Biomass Conversion*;

- SA.41694 – *Support to renewable electricity in Portugal*; SA.43756 – *Support to electricity for renewable sources in Italy*.
- 33 See, inter alia, SA.41939 – *Aid To UK Coal*; SA.42800 – *Prolongation of aid for exceptional costs for mine closure in Romania*. Council Decision 2010/787/EU of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines (OJ L.336, 10 December 2010, pp. 24–29).
- 34 See SA.39515 – *Individual aid to LNG Infrastructure (Pori)* and SA.42889 – *Individual aid to LNG Infrastructure (Hamina)*.
- 35 SA.40454 – *French country-wide capacity mechanism* and SA.40454 – *Tender for additional capacity in Brittany*.
- 36 See Commission Decision in SA.40454, paragraphs 135 and 150.
- 37 Ibid. paragraphs 144–145.
- 38 REPORT FROM THE COMMISSION Interim Report of the Sector Inquiry on Capacity Mechanisms. More information on the inquiry and the full interim report are available at http://ec.europa.eu/competition/sectors/energy/state_aid_to_secure_electricity_supply_en.html.
- 39 Interim Report, p. 10.
- 40 Ibid. p. 11.
- 41 Ibid. p. 11; paragraph 223 EEAG.
- 42 Ibid. pp. 12–14; paragraph 235 EEAG.
- 43 Ibid. p. 13.
- 44 Ibid. p. 15; paragraph 229 EEAG.
- 45 Ibid. p. 16.
- 46 The next steps are described at http://ec.europa.eu/competition/sectors/energy/state_aid_to_secure_electricity_supply_en.html.
- 47 Judgment of 1 October 2015 in *Electrabel SA and Dunamenti Eromu Zrt v European Commission*, C-357/14 P, ECLI:EU:C:2015:642; Judgment of 4 June 2015 in *European Commission v MOL Magyar Olaj- és Gázipari Nyrt*, C-15/14 P, ECLI:EU:C:2015:362.
- 48 Judgment of 10 May 2016 in *Germany v Commission*, T-47/15, not yet published.
- 49 See General Court Press release on *Germany v Commission*, available at http://webcache.googleusercontent.com/search?q=cache:YahcfkDqaocJ:curia.europa.eu/jcms/jcms/P_207848/fr/+&cd=1&hl=it&ct=clnk&gl=be.
- 50 *Germany v Commission*, paragraphs 55–56.
- 51 *Germany v Commission*, paragraph 125.
- 52 http://europa.eu/rapid/press-release_IP-15-6077_en.htm.
- 53 http://europa.eu/rapid/press-release_IP-15-6140_en.htm.
- 54 http://europa.eu/rapid/press-release_IP-16-2_en.htm.
- 55 http://europa.eu/rapid/press-release_IP-16-1605_en.htm.
- 56 http://europa.eu/rapid/press-release_IP-16-1885_en.htm.
- 57 http://europa.eu/rapid/press-release_IP-16-1911_en.htm.



Salomé Císnal de Ugarte
Crowell & Moring LLP

Dr Salomé Císnal de Ugarte is a partner based in the Brussels office of Crowell & Moring, admitted to practise in Spain and Belgium. Salomé advises on all aspects of EU competition law, including merger control, investigations (cartels, state aid, dominance and other behavioural issues) and litigation before the EU courts.

Prior to joining Crowell & Moring, Salomé worked for Freshfields Bruckhaus Deringer and Mayer Brown, and as director for European and regulatory affairs at Whirlpool Europe.

In 2013, she received the International Law Office's (ILO) 'EU Competition Lawyer of the Year' Client Choice Award, which recognises those lawyers and law firms around the world that stand apart for the excellent client care they provide and the quality of their service. Clients described her as providing 'brilliant and spot-on advice on the legal issues, as well as on the required strategy to get the best results', as well as her 'extensive experience with both competition law and consumer protection law [which] sets her apart from most practitioners.'

Salomé is the president and a member of the board of the Harvard Club of Belgium and currently also serves as a vice-chair and member of the board of directors of the American Chamber of Commerce to the EU. She is associate professor on EU competition law at ESADE and IE Law Schools and is also a fellow of the Centre for European Studies/IE in Madrid. She frequently writes and speaks on issues of competition and trade.

Salomé graduated summa cum laude in law and economics from the University of Deusto (Premio Extraordinario de Licenciatura) and holds a master of laws from Harvard Law School, where she was an associate fellow of the Real Colegio Complutense at Harvard. She obtained a PhD in law from the European University Institute in Florence and has been a Fulbright Scholar.



Lorenzo Di Masi
Crowell & Moring LLP

Lorenzo Di Masi is an associate in the EU competition and international trade practice groups at the Brussels office of Crowell & Moring LLP. Lorenzo's competition practice covers the broad spectrum of EU competition law, including merger control, behavioural issues, private antitrust enforcement and state aid.

Prior to joining Crowell & Moring, Lorenzo worked in the Brussels office of another leading international firm and as a civil servant at the Directorate for Legislative Acts of the European Parliament.

He holds a law degree from the University of Milan and an LLM in European Law from University College London, where he also worked as research assistant at the Centre for Law, Economics and Society. He is author of several publications in the area of EU and trade law.



7 Rue Joseph Stevens
1000 Brussels
Belgium
Tel: +32 2 282 28 37
Fax: +32 2 230 63 99

Salomé Císnal De Ugarte
scisnaldeugarte@crowell.com

Lorenzo Di Masi
ldimasi@crowell.com

www.crowell.com

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