ZEPOS & YANNOPOULOS | 130 YEARS AHEAD OF OUR TIME

SEPTEMBER 2023

Competition law and policy in a constantly evolving energy sector | a Greek perspective

Contents

1. Introduction

Energy markets is one of the hottest topics of the recent years, and thus, the manner in which the competition rules are applied within the EU and locally in Greece becomes increasingly important and complex at the same time. This publication aims at providing an overview of the most noteworthy recent antitrust, merger control and State aid developments that are related to the Greek energy sector and are in line with the most topical features and challenges of the EU's energy markets. In this context, this publication also presents a forward-looking view of competition law and policy in the constantly evolving (Greek) energy market, attempting thereby to offer an outlook on what to expect in the next few years in terms of challenges, trends, and priorities for competition authorities – notably the Hellenic Competition Commission ("**HCC**") and the European Commission ("**Commission**").

The energy sector is constantly and rapidly evolving as a result of both external parameters (such as the energy crisis) and the EU green transition/sustainability goals, leading to the need for innovation and the deployment of new environmentally friendly technologies. This has revived the discussion about the role of competition law in the context of broader policy concerns, such as addressing the challenges relating to the resilience of the energy markets and supporting the energy industry's efforts to deliver sustainability objectives, while simultaneously sanctioning competition distortions by market players. While competition law is not the appropriate tool to pursue sustainability objective as such, it may significantly contribute to the various challenges raised in this regard. In this vein, the HCC and the Commission have shown vigilance in terms of enforcement and flexibility in terms of policy reforms so as to both swiftly identify any conduct that is in breach of the competition rules and effectively support companies adopting initiatives that are in line with the EU's clean energy transition.

This publication starts with displaying in **Section 2** the most topical developments and challenges shaping the Greek energy markets and transforming the prevailing competition conditions therein, discussing, in this context: the current energy crisis and the impact of the policy responses on competition (**Section 2.1**); the EU's transition plan to Net-Zero (**Section 2.2**); and the respective development and deployment of new environmentally friendly technologies (**Section 2.3**). Having unveiled the main changes and challenges pertaining to the energy sector, the discussion in **Section 3** turns to the role of competition law and policy in this regard, which appears to evolve in line with the transformation of the energy markets. In this context, the review outlines the most notable developments in antitrust (**Sections 3.1-3.2**), merger control (**Section 3.4**), and State aid (**Section 3.5**), also setting out the expectations in terms of competition enforcement and competition policy for the future.

2. Topical themes in the energy sector

2.1 Current energy crisis and impact of policy responses on competition

The turmoil caused by both the Covid-19 pandemic's impact on global supply chains and Russia's invasion in Ukraine led to a mix of rising prices for energy in Europe. On the one hand, the pandemic caused an increase in demand and supply shortages driving natural gas and electricity prices up. In turn, this has given rise to long-term and short-term challenges in the energy market which have significant implications for competition policy. In a nutshell, energy prices dropped considerably in 2020 due to lockdown policies and the fall in economic activity and transport, whereas around the second half of 2021, following the resumption of economic activity and transport, energy prices rose even higher than pre-pandemic price levels. On the other hand, Russia's full-scale invasion in Ukraine and the export shortages and bans that followed also had a profound impact on the already existing crisis in energy prices, given that Europe's reliance on Russia for natural gas has considerably increased during the past decade.

The high energy prices we are experiencing, as an aftermath of the pandemic and the Russian invasion, have significantly impacted inflation, economic growth and, ultimately, the shaping of policies to address such challenges. For instance, the rising level of inflation has led governments to design and implement various policy measures in order to alleviate the economic burden borne by consumers, such as, *inter alia*, providing subsidies to eligible undertakings and direct support payments to low-income or all households (household support), introducing price caps for natural gas and electricity, reducing indirect taxes, as well as introducing windfall taxes (taxes on extraordinary profits).[1]

As regards the measures' effectiveness, according to the International Monetary Fund ("IMF"), price suppressing methods, such as subsidies, price controls and tax reductions, are not efficient measures for protecting vulnerable consumers because they obstruct energy-conserving behaviors and energy-efficient investments. On the contrary, measures such as support to vulnerable households are considered more effective given that they do not cause distortion of the marginal price of energy. Furthermore, measures such as subsidies, and tax reductions may have an effectiveness potential when implemented on viable enterprises; however, where the rise in energy prices is persistent, such measures may constitute an impediment to the reallocation of demand and production towards less energy-intensive activities.[2]

From a competition law perspective, despite the undoubtedly legitimate objective of introducing abundant and diverse State aid measures to address the persistent liquidity shortage issue (see Section 3.5 below) along with the energy crisis in the market, the uneven implementation of such measures has been criticised for its distortive effect on competition in that it leads to advantages to a number of eligible undertakings with potentially better access to capital compared to their competitors. According to the IMF, high level of trading cost can squeeze market participants out of commodity markets leading to a significant drop of liquidity and allowing even small trades to lead to large price movements, which can give rise to a market vulnerable to manipulation. In relation to windfall taxes, where pre-announced, companies may in response change their behavior to effectively limit the potential upside of profits, which, in turn, can reduce the competitive forces in the market due to its dampening effect on new entry, as opposed to exceptional taxes, which are less likely to impede market entry.[3]

Given that it is an unprecedented crisis, which has emerged as a result of successive events, the policy measures

> "Both Covid-19 pandemic's impact on global supply chains and Russia's invasion in Ukraine have given rise to long-term and short-term challenges in the energy market which have significant implications for shaping accordingly competition policy.

1 OECD (2022), Competition in Energy Markets, OECD Competition Policy Roundtable Background Note, available here.
2 IMF (2022), Surging Energy Prices in Europe in the Aftermath of the War: How to Support the Vulnerable and Speed up the Transition Away from the Fossil Fuels, available here.
3 ibid.

adopted to deal with it are effectively applied on challenging and uncharted waters. Therefore, it remains to be seen how effective such policy measures will be in dealing with the crisis in energy prices, and doing so in a manner that is consistent with the competition rules.

2.2 Energy transition plans: the race to Net-Zero

The Paris Agreement, in 2015, signaled the kick-off towards a path of coordinated international cooperation on reducing carbon emissions, maintaining the global temperature increase to well below 2°C, ideally up to 1.5°C, as well as adapting to the impacts of climate change. Accordingly, the EU presented in 2018 its vision for a modern, competitive, prosperous and climate-neutral EU economy by 2050, demonstrating how Europe can pave the way to climate neutrality by investing into realistic technological solutions, empowering citizens, and aligning action in industrial policy, finance, and research, whilst ensuring social fairness for a just transition. Furthermore, the Commission adopted in 2019, the 'Clean energy for all Europeans' package providing for both legal acts and non-legislative initiatives. As the EU is responsible for 10% of global greenhouse gas emissions ("GHG"), its 2050 long-term strategy is inevitably at the heart of the European Green Deal. Since the production and use of energy account for more than 75% of EU's GHG emissions, all 27 EU-Member States committed in 2019 to turn the EU into the first climate neutral continent by 2050, and they pledged to reduce emissions by at least 55% by 2030, compared to 1990 levels ('Fit for 55' Deal). The Green Deal pact focuses on three main pillars for the clean energy transition:

i. ensuring a secure and affordable EU energy supply;

ii. developing a fully integrated, interconnected, and digitalised EU energy market; and

iii. prioritising energy efficiency, improving the energy performance of buildings and developing a power sector based mainly on renewable sources.

As part of the European Green Deal, the Commission proposed in 2020 the first European Climate Law to enshrine the 2050 climate-neutrality target into law and secure that the transition to climate neutrality, which entered into force in 2021, is irreversible. In March 2023, the European Parliament and the Council reached a provisional agreement on reforming and strengthening the EU Energy Efficiency Directive, thereby giving the Green Deal energy

efficiency principle legal strength. More recently, on 31 July 2023, the Commission adopted as a delegated regulation the European Sustainability Reporting Standards ("ESRS"), for use by all large companies and all listed SMEs subject to the Corporate Sustainability Reporting Directive ("CSRD") which requires these companies to disclose information on what they see as the risks and opportunities arising from social and environmental issues, and on the impact of their activities on people and the environment, in order to facilitate the transition to a sustainable EU economy. The standards cover the full range of environmental, social, and governance issues, including climate change, biodiversity and human rights, whilst providing information for investors to understand the sustainability impact of the companies in which they invest, and reflecting the discussions with the International Sustainability Standards Board ("ISSB") and the Global Reporting Initiative ("GRI") in order to ensure a very high degree of interoperability between EU and global standards and to prevent unnecessary double reporting by companies. Moreover, on 17 August 2023, the Commission adopted the rules governing the implementation of the Carbon Border Adjustment Mechanism ("CBAM") during its transitional phase starting on 1 October 2023 and running until the end of 2025, which contain detailed information on the transitional reporting obligations for EU importers of CBAM goods (i.e. carbon intensive goods), as well as the transitional methodology for calculating embedded emissions released during the production process of CBAM goods. CBAM is the EU's landmark tool to fight carbon leakage, which occurs when companies based in the EU move carbon-intensive production abroad to take advantage of lower standards, or when EU products are replaced by more carbon-intensive imports, making it thus one of the central pillars of the EU's ambitious Fit for 55 Agenda.

To address climate change and deliver its 2050 long-term strategy goals cost-effectively, the EU has launched since 2005 the EU Emissions Trading System ("ETS"), which is the world's first international emissions trading system and biggest carbon market. The system is based on the "cap and trade" principle, i.e. a cap is set on the total amount of certain GHG that can be emitted by the operators covered by it. Within the cap, operators purchase and receive emission allowances, which they can trade with one another, although there is a limit on the total number of allowances available to protect their value. The price signal incentivises emission reductions and boosts investment in innovative, low-carbon technologies, whilst trading adds flexibility that ensures emissions are decreased where it costs least to do so. Following each year, an operator is obliged to have enough allowances to fully cover its emissions, otherwise heavy fines are imposed. Participation in the EU ETS is mandatory for companies operating in sectors or/and pursuing activities that produce gases, such as:

i. CO2 from electricity and heat generation, energy-intensive industry sectors (e.g. oil refineries, steel works, production of iron, aluminium, metals, etc.), and aviation within EEA;

ii. N2O from production of nitric, adipic and glyoxylic acids and glyoxal; and

iii. PFCs from the production of aluminium.

The system operates in trading phases and is currently in its fourth phase (2021-2030). With regard to Greece's very promising climate performance, total GHG emissions in Greece are expected to decrease to 60.6 MtCO2e in 2030, as the country has achieved during the past years to largely limit its ETS emissions due to a decline in the operation of diesel-fired plants as well as the lignite-based electricity generation, in combination with an expected increased use of renewable energy sources.[4] In this respect the Commission approved, under the EU State aid rules,[5] a €1.36 billion Greek scheme to compensate energy-intensive companies for higher electricity prices resulting from indirect emission costs under the EU ETS incurred between 2021 and 2030 (see Section 3.5 below).[6] More recently, the Commission published that it is investing

"With regard to Greece's very promising climate performance, total GHG emissions in Greece are expected to decrease more by 2030, as the country has achieved during the past years to largely limit its ETS emissions.

4 See European Parliamentary Research Service (EPRS) Briefing Report on Climate Action in Greece: Latest state of play. See also OECD's Pricing Greenhouse Gas Emissions: Carbon Pricing in Greece.
5 See European Commission's Guidelines on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post-2021, OJ C 317, [2020].
6 See European Commission's Press Release dated 07.02.2023.

over €3.6 billion of emissions trading revenues in 41 large-scale innovative clean tech projects, as it focuses on its REPowerEU Plan and the gradual elimination of Europe's imports of Russian fossil fuels. These projects, which will enter into operation before 2030 and have the potential to avoid 221 million tonnes of CO2 emissions in their first 10 years of operation, cover a wide range of industries, such as cement, steel, advanced biofuels, sustainable aviation fuels, wind and solar energy, and renewable hydrogen and its derivatives, and they are located in 15 EU Member States including Greece. In particular, Greece will participate in the "general" decarbonisationtopic, which consists of 3 projects from refineries and 5 projects in the cement and lime sector.

To hasten the transition to Net-Zero, the Commission proposed additionally its low-emission mobility strategy, which provides for:

i. the increase in efficiency of the transport system by utilising more digital technologies, smart pricing and further stimulating the shift to lower emission transport modes;

ii. speeding up the deployment of low-emission alternative energy for transport (e.g. advanced biofuels, renewable electricity and renewable synthetic fuels, eliminating obstacles to the electrification of transport); and

iii. moving towards zero-emission vehicles.

In October 2022, the European Parliament and Council reached an agreement pursuant to which all new cars and vans registered in Europe will be zero-emission by 2035, marking thereby the first step towards the adoption of the Commission's "Fit for 55" legislative proposals and honoring EU's international climate commitments. With regard to Greece's e-mobility market, it shall be noted that until now three significant developments have taken place, i.e. (a) Greek Law 4710/2020 "On the promotion of e-mobility" which introduces a regulatory framework for the e-mobility market, and (b) the Ministerial Decisions ("MDs") No. ΥΠΕΝ/ΕΣΠΑΕΝ/77472/520/2020 and ΥΠΕΝ/ΑΤΗ/70517/238/2022 on the "Go electric" initiatives which provide subsidies for the acquisition or lease of electric vehicles. The main goal of the Law is, inter alia, to increase the use of low emission vehicles, to develop Greece's charging infrastructure and to formulate the regulatory framework of the e-mobility market, by establishing financial and tax incentives as well as provisions on the organisation and operation of the market, the relations between market players and their obligations, whereas the MDs give important incentives to consumers and professionals for the acquisition

of electric vehicles or plug-in hybrid vehicles, as well as for the purchase and installation of relevant charging infrastructure.

In any event, to successfully achieve the economic transformation required and the broader sustainable development goals, as well as to align with EU's 2050 long-term strategy, Member States were required to establish and endorse their own stable long-term strategies ("LTSs"), which should be consistent with their integrated national energy and climate plans ("NECPs") for 2021-2030.

According to Greece's NECP:[7]

i. its 2030 target for GHG emissions not covered by the EU ETS (non-ETS), is -14% compared to 2005;

ii. in terms of renewable energy, the national contribution to the EU target for 2030 is set at a share of 31%, while specific initiatives are promoted such as e-mobility;

iii. as regards energy security, it has set a target to connect 29 autonomous islands with the synchronised system of mainland Greece by 2030, and to reach the interconnectivity level of 15% by then; whilst

iv. increased regional cooperation already takes place in some Energy Union dimensions.

On a similar note, as of 1 February 2023, the Greek LTS,[8] consists of alternative solutions and pathways to approach climate neutrality by 2050, without defining a specific goal. Overall, the strategy is developed thoroughly, and projections have been completed up to 2050, although not for all sectors. The Greek LTS displays four scenarios (EE2, NC2, EE1.5, NC1.5) including measures for the electrification of energy uses in all sectors and the improvement of energy efficiency. The LTS presents also emission projections by sectors (i.e. power, industry, transport, buildings/agriculture) and aims for GHG emission reductions of a range of 85-95%, whereas the share of renewables (i.e. heating and cooling, electricity generation, and transport) in gross final energy consumption in 2050 is foreseen to be from 81.9% to 113.8%. Concerning energy efficiency, especially for buildings, industry and transport, power energy consumption seems to increase after 2035 due to the development of hydrogen production and synthetic hydrocarbons, while under the scenarios where the development of new climate neutral energy carriers is uncertain, the main focus is on lowering energy consumption, i.e. primary energy consumption falls in 2050. Nonetheless, the LTS does not include elements concerning policies and measures for adaptation to climate change or any socio-economic impact assessment, whilst there is currently no law that includes the LTS, nor legally binding targets specified therein. Conclusively, it shall be noted that Greece's direction is towards the electrification of energy uses and the enhancement of energy efficiency, while combating GHG emissions and promoting renewable sources of energy, in order to reduce and gradually decouple economic development from energy and carbon intensity, decrease energy costs for all consumers, and create a circular economy. It is worth underlining in this regard that Greece is currently among the EU countries with the largest share of renewable energy sources in the energy mix.

Spurred on by its own NECP and LTS, as well as the EU's long-term strategy goals, major opportunities for infrastructure projects and its geostrategic position, Greece is currently aiming at reinventing itself as a safe regional hub of energy supply and playing a pivotal role in charting Europe's energy map by, *inter alia*, utilising its potential for wind-generated and solar-generated power, investing in new liquefied natural gas ("LNG") facilities, and installing new high-voltage undersea power cables. The endeavour of transforming Greece into an energy hub has been endorsed keenly by the EU. In 2021, the European Investment Bank ("EIB") and the European Investment Fund supported Greece with a record €4.85 billion grant to finance projects ranging from the digitisation of the public sector to urban renewal and the transition to clean energy.[9] In 2022, the Commission approved a €657 million grant for the construction of a 2,000-megawatt undersea electricity cable that will link the power grids of Israel, Cyprus and Greece, highlighting the EU's broader efforts to exploit the hydrocarbon resources of the Eastern Mediterranean and to end the energy isolation of the islands of Cyprus and Crete (EuroAsia Interconnector Project).[10]

As regards more novel initiatives in the electricity sector, an agreement with North Macedonia regarding the Cebren hydroelectric plant seems to be getting closer to signing; a construction project for the creation of

7 See Greece's NECP.
8 See Greece's LTS.
9 See EIB's Press Release dated 08.02.2022.
10 See European Commission's Press Release dated 14.10.2022.

a co-generation unit in Romania is in progress; whereas the GREGY Project, i.e. the electrical interconnection between Greece and Egypt received a vote of confidence from the Greek, Egyptian and Bulgarian governments. In recent years, investment projects of heavy importance have been initiated placing Greece at the epicenter with regard to the transmission system for natural gas in Southeast Europe and broader Eastern Mediterranean area (see Section 3.4 below), such as:

i. the Trans Adriatic Pipeline (TAP), part of the Southern Gas Corridor, connecting with the Trans Anatolian Pipeline at the Greek-Turkish border, crossing Northern Greece, Albania and the Adriatic Sea before coming ashore in Southern Italy to connect to the Italian natural gas network;

ii. the IGb Gas pipeline connecting the Greek to the Bulgarian natural gas pipeline network;

iii. the new LNG terminal in northern Greece, where the greenlight has been given for a planned €360 million project to develop an LNG terminal and pipeline near the northern port of Alexandroupolis (Alexandroupolis FSRU);

iv. the EastMed Gas Pipeline - a planned offshore/onshore natural gas pipeline, directly connecting East Mediterranean energy resources to mainland Greece via Cyprus and Crete;

v. the Aegean LNG Import Terminal - a new Greek offshore LNG Floating Storage and Regasification Unit (FSRU) in Kavala; and

vi. the IGI Poseidon Gas Pipeline, i.e. the interconnector between Greece and Italy which enables access to natural gas sources not currently available to Member States.

In the promising field of energy storage (see Sections 3.4 and 3.5 below), the 'Hydro Pumped-storage system in Amfilochia' currently constitutes the largest grid energy storage investment in Greece, while the Commission has approved on 5 September 2022 an ambitious State aid scheme in the context of which Greece will support investments in storage facilities for a total capacity of up to 900 MW (SA.64736).

Meanwhile, Greece has seen billions of euros invested in new renewable energy projects over the past several years, particularly in new wind and solar facilities, and in supporting infrastructure, such as the extension of the national power grid to Crete and the Aegean Islands. In line with the aforementioned, the Hellenic Parliament approved the first law on Offshore Wind Energy (Law 4964/2022) for the development of offshore windfarms, which has already drawn foreign investor interest.

It is evident, therefore, that Greece is

on track to becoming not only a net exporter of green energy to Central Europe, but also the intermediary country that can connect Europe to inaccessible – until now – sources of energy.

2.3 Developing and deploying new environmentally friendly technologies

As earth is warming rapidly with massive risks to ecosystems and humans, moving away from fossil fuels towards alternative sources of energy is crucial. Renewable Energy Sources ("RES"), i.e. energy derived from natural sources which are replenished at a higher rate than they are consumed such as water,[11] solar[12] and wind,[13] is an integral part of the transition to Net-Zero emissions by 2050. The use of renewables has risen rapidly at a global level. In 2022, Greece produced approximately 47% of electricity from renewables.[14] This increase in renewable sources is due to the broader environmental objectives to address climate change at a global level, which have also brought adjustments to the national regulatory framework. In particular, Law 4414/2016 on renewable energy sources came into effect to further enhance renewable energy investments and Law 4643/2019 complemented the existing framework governing renewable energy stations. In this vein, regarding the rollout of offshore wind power, Law 4964/2022, enacted on 30 July 2022, includes, *inter alia*, provisions on the development of offshore wind farms. However, the national regulatory framework concerning the development of offshore wind farm projects is still incomplete, despite the enactment of Law 4964/2022, as the secondary legislation in the form of presidential decrees and ministerial decisions detailing its provisions is still expected to be issued.

There are currently several renewable energy stations in different parts of Greece, which has invested primarily in wind power, exceeding 4.5 GW of installed onshore wind capacity. In addition, the country has also invested in hydro power; PPC, alone, currently employs 16 large hydroelectric power plants and 18 small ones are also in operation, 4 under construction and various new projects have already been granted a generation licence.[15] It is also worth noting that Greece will host the largest hybrid project in Europe, the

11 Hydropower, as one of the oldest, largest and also affordable sources of electricity, basically uses the natural flow of moving water and the elevation difference of water flowing from one side to the other to generate electricity.
12 Solar power that converts sunlight into electrical energy through photovoltaic (PV), panels or mirrors that concentrate solar radiation is one of the most popular sources of renewable energy, as defined in the OECD (2022), Competition in Energy Markets, OECD Competition Policy Roundtable Background Note, p. 28, available here. See also the Commission's 2022 Communication on EU Solar Energy Strategy here.
13 Wind power, i.e. when wind is used to produce electricity by converting the kinetic energy of air in motion into electricity, is highly important in the renewable energy mix.
14 See relevant reference here.
15 See, inter alia, PPC's 2020 Sustainability report here.

Hydro Pumped Storage in Crete, which will combine energy produced by wind farms, a hydroelectric power plant and a pump complex. Development of solar power through installations of photovoltaic systems has also increased, mainly due to feed-in tariffs that were designed to accelerate investment in renewable energy sources by offering long-term contracts and cost-based purchase prices to renewable energy producers. There is also a considerable number of photovoltaic power plants constructed from 2009 onwards and a few upcoming ones. These investments in technology and infrastructure have led to the country's shift from fossil fuels to renewable energy, which not only reduces emissions, but also contributes to its sustainable growth, sustainable employment opportunities and real energy security.

Conforming to the governmental strategy seeking to diversify energy sources and reduce the CO2 intensity of the economy, the most important change in the Greek energy landscape has been an increasing dependency on imported natural gas, which has coincided with the lignite phase-out effort. In 2021, all natural gas supply in Greece was imported from overseas. This has led to increased infrastructure investments in Greece, in an effort to, on one hand, ascertain that natural gas can be effectively transmitted in all areas in Greece for domestic and commercial use and, on the other hand, establish connections with neighbouring countries so as to develop and enhance natural gas export activities (see Sections 2.2 and 3.4 for a more detailed presentation of the ongoing infrastructure projects). Meanwhile, large energy companies are turning their focus to hydrogen, planning their next large investments in the relevant sector, investing in what is considered to be the energy solution of the future (see Section 3.5 below on aids facilitating investments in renewable hydrogen).

With the rapid RES development projects, the investments targeting in the diversification of natural gas supply and with the eyes to future sources of energy, such as hydrogen, the activity in the Greek energy sector has the potential of making Greece an energy hub of the region for the adoption of cleaner energy and a strategic gateway for the entry of energy resources into Southeastern Europe.

3. Competition law trends in the Greek energy markets

3.1 Soaring energy prices under competition law scrutiny

Since early 2021, a combination of market, geographic, and political factors have coalesced leading to an unprecedented surge in energy prices around the globe, including Europe. On one hand, long-term trends such as underinvestment in natural gas and clean energy supply, as well as short-term developments like reductions in natural gas spot delivery by Russia and a strong recovery in demand following the COVID-19 turmoil, and, on the other hand, the war aggression in Ukraine triggering Russia to cut off energy supply to several countries and others effectuating embargoes on Russia energy imports, have put further strain on already tight energy markets and increased uncertainty over the near term development of supply. Governments and regulatory authorities have been responding to these record energy prices, considering the impact of prices on supply security, inflation and competition. In Greece, HCC has been actively intervening along with the Greek Regulatory Authority for Energy ("RAE")[16] in order to ensure that the effects of price volatility do not create any anti-competitive conditions therein or cause consumer welfare reduction.[17]

With respect to the particularities of the Greek energy market, a heavy regulatory framework surrounds the activities pursued therein. The Ministry of Environment and Energy sets the country's energy policy and issues secondary legislation, whereas RAE (recently renamed to RAEWW) is the competent authority responsible for the security of energy supply and, *inter alia*, the granting, modification and revocation of producer certificates and licences required for energy activities, including the production, transmission, distribution, supply and trading of electricity and natural gas; the approval of tariffs for non-competitive activities; and the monitoring and supervision of the operation of domestic energy market, the conduct of studies, the publication of reports and any resolutions or proposals regarding the enactment of measures, especially with regard to the application of competition rules.[18] Pursuant to the Memorandum of Understanding signed between the HCC and RAE in 2020,[19] there is enhanced cooperation between the two Authorities aiming at increasing regulatory efficiency by improving the interaction between *ex ante* regulatory policy and *ex post* competition law enforcement in the energy market. In particular, the HCC is in charge of the *ex post* enforcement of competition law in the electricity sector, and, along with RAEWW, is closely monitoring the price increases occurring worldwide, as these increases may have an impact on Greek consumers. Meanwhile, RAE has the legal responsibility, pursuant to Law 3784/2009 and Law 3851/2010, of sharing data with the HCC that may indicate harmonised practices or other distortions of competition. In this context, it has been reported that in 2022 RAE had put forth to the HCC data to evaluate whether there is an abuse of dominant position or concerted practices in the electricity sector with respect to pricing at all voltage levels, with a focus on vertically integrated companies.

Emphasis has been put on the establishment of joint working groups to ensure open and fair competition and prevent market abuse and manipulation, while promoting consumer protection. The HCC and RAE have reached an agreement for the development of guidelines, studies and research papers on issues of common interest within their competences, and have specifically undertaken to, *inter alia*, promote policies and strat-

> The enhanced cooperation between RAE and HCC aims at increasing regulatory efficiency by improving the interaction between ex ante regulatory policy and ex post competition law enforcement in the energy market.

16 Recently renamed as "Regulatory Authority for Waste, Energy, and Water" ("RAEWW") to assume expanded executive powers also giving the authority water and waste management duties. Its expanded role is expected to facilitate Greece's eligibility for EU Recovery and Resilience Facility (RRF) funds.
17 For a holistic view of HCC's actions in the energy sector see HCC's Newsletter No 6 (March 2023), pp. 43-45.
18 See RAE's competences in detail at https://www.rae.gr/shetika-me-ti-rae-notes/.
19 See HCC's Press Release dated 28.09.2020, Press Release - MEMORANDUM OF UNDERSTANDING BETWEEN HCC AND RAE (epant.gr).

egies to inform economic operators/participants in the energy market on matters relating to their responsibilities. Additionally, the HCC has also set up a working group consisting of the HCC's staff and experts from foreign and domestic institutions, such as the University of Cambridge, the University of East Anglia and the Athens University of Economics and Business, to closely monitor the electricity market.

At the same time, the HCC has also been acting in a rather targeted manner, placing at the spotlight the electricity and oil markets. The HCC has already launched two ex officio investigations, one into the market for the retail supply of electricity to low voltage customers (households and SMEs),[20] and one into the market for the wholesale supply of electricity, in 2021 and 2022 respectively. As part of its investigation into the market for the retail supply of electricity to low voltage customers, the HCC carried out a survey recording the criteria for choosing and changing electricity supplier of domestic consumers and SMEs, in order to investigate the conditions on the demand side in this market, as well as the possible occurrence of unfair pricing and other commercial practices of the providers operating therein, and, particularly, whether there were marketing and pricing practices that favoured the creation of confusion among consumers ("confusopoly"), creating thus an incentive for companies to raise prices.[21] Accordingly, the HCC has carried out unannounced inspections ("dawn raids") at the premises of undertakings active in the wholesale supply of electricity to low voltage customers,[22] at the premises of undertakings active at each of the refining, wholesale and retail stages in the gasoline and oil markets,[23] as well as at the premises of undertakings active in the supply of equipment used in electricity distribution networks to ascertain whether practices infringe Art. 1, 1A and 2 of Law 3959/2011 and/or Art. 101 and 102 TFEU. Among other HCC's initiatives, it conducted its first mapping study on the conditions of competition in the petroleum industry, by using the new tool added in its toolbox by Law 4886/2022 (Art. 14(2)(S)), which allows the study of the competitive conditions in any market or sector of the economy - where required - for the effective exercise of its powers.[24] Finally, in November 2022, the HCC decided to initiate the procedure of regulatory intervention in the petro-

20 See HCC's Press Release dated 20.12.2021.
21 See HCC's Press Release dated 05.07.2022.
22 See HCC's Press Release dated 05.05.2022.
23 See HCC's Press Release dated 28.09.2021.
24 See HCC's Press Release dated 30.06.2022.

leum industry, as stipulated in Art. 11 of Law 3959/2011, in order to explore the industry and, in particular, to assess the prevailing market conditions in terms of effective competition in the three production and distribution stages (refining, wholesale, retail) of petroleum products (unleaded petrol, diesel and heating oil) in the Greek market.[25]

It follows from the above that the HCC has taken a dynamic stance towards the soaring energy prices, concentrating mainly on the market for the supply of electricity and the petroleum industry.

3.2 Balancing the granting of exclusive rights with ensuring fairer market access

The Greek lignite saga, which reached a final conclusion in 2021 after many episodes, indicates that the competitive landscape in the energy sector is within the competition authorities' radar, which have used their enforcement power to ensure fair competition and easy market access, whilst "tolerating" existing exclusivity rights. An evident example of this would be the case involving Public Power Corporation S.A. ("PPC"), member of the PPC Group and partially owned by the Greek state, being its majority shareholder until 2021. PPC is by far the largest wholesale and retail electricity supplier in Greece and controls almost all of Greece's lignite and hydroelectric power plants located in mainland and Greek islands, as well as some of the natural gas and renewable power generation installations. Given the exclusive exploitation rights granted to PPC for electricity production based on lignite through Legislative Decree 4029/1959 and Greek Law 134/1975, the Commission has since 2004 initiated a series of investigations, decisions and monitoring based on competition concerns stemming from PPC's exclusive access to lignite-fired electricity generation (Case AT.38700 on Greek lignite and electricity markets).

In particular, following the Commission's preliminary finding in 2004 that the granting of such exclusive rights to PPC are in breach of Article 106(1) TFEU in conjunction with Article 102 TFEU, based on the premise that these long-term rights allow PPC to maintain its dominant position in the Greek electricity market and potentially abuse it to the detriment of its rivals, as well as (following) the issuance of a relevant Letter of Formal Notice giving Greece two months to either sufficiently justify the granting of such rights or otherwise abolish them, in 2008 the Commission reached its final decision on the case (Commission Decision of 5.3.2008 "on the granting or maintaining in force by the Hellenic

25 See HCC's Press Release dated 03.12.2022.

Republic of rights in favour of Public Power Corporation S.A. for extraction of lignite"). According to this decision, PPC held a dominant position on both the market for the supply of lignite and the downstream market for the wholesale supply of electricity in Greece, and Greece breached Article 106(1) TFEU read in conjunction with Article 102 TFEU, by granting and maintaining quasi-monopolistic access to lignite to PPC and thus strengthening PPC's dominance on said markets, despite liberalisation of the wholesale electricity market. In compliance with this decision and to address the anticompetitive effects of the infringement, the Commission called on Greece to propose and implement measures to promptly enhance competition in the wholesale electricity market, by ensuring sufficient access to lignite by PPC's competitors and thus alleviating the Commission's concerns over inequality of opportunity between economic operators regarding access to lignite for the production of electricity.

Following the Commission's 2008 and 2009 decisions (Commission Decision of 4.8.2009 "establishing the specific measures to correct the anti-competitive effects of the infringement identified in the Commission Decision of 5 March 2008 on the granting or maintaining in force by the Hellenic Republic of rights in favour of Public Power Corporation S.A. for extraction of lignite"), which found an infringement of the competition law rules and accepted Greece's commitments to ensure fair access to Greek lignite, PPC appealed against both decisions before the General Court of the European Union (cases DEI v Commission T-169/08 RENV and DEI v Commission T-421/09 RENV). In its appeals, PPC argued that the corrective measures were "neither necessary nor justified" and would constitute a "discrimination due to its prior status as a state monopoly". The implementation of the proposed remedies was thus postponed until the General Court's final judgments on the matter in 2016, which ultimately made both Commission's decisions binding.

After the aforementioned development on the case and the market consultation that tested the proposed measures in the Greek electricity market in 2011,[26] the Commission, in 2018 and 2021[27] respectively, approved the amended commitments proposed by Greece to ensure fair access to lignite-fired electricity generation as well as increase access to electricity for PPC's rivals. In essence, in order to enhance competition in the electricity market and ensure that fair access is granted to PPC's competitors, PPC was obliged to implement a number of measures, including to sell specific minimum volumes of electricity to the wholesale market on a quarterly basis through electricity baseload futures contracts and maintain a net seller position regarding its transactions on the Hellenic Energy Exchange and the European Energy Exchange. All these measures are designed to be in force until the decommissioning of all lignite-fired production plants in Greece takes place (tentatively by 2023 or, at the latest, by 31 December 2024), in line with the European environmental objectives and the gradual transition to Net-Zero.

In addition to the above investigation, the Commission, in March 2021, expressed its concerns that competition in the wholesale electricity market was hindered by PPC enforcing predatory bidding strategies to the detriment of its rivals. Amidst Greece's plan to gradually phase out power generation from lignite and in line with the Commission's goal towards greener energy, the investigation also sought to ensure that investment in less pollutant energy sources was not hindered by PPC's allegedly abusive practices in the energy market (Case AT.40278 on the Greek wholesale electricity market).

At the same time, the HCC has showed particular interest in the market conditions in the supply of retail electricity to (low voltage) customers, where, as previously mentioned, it initiated an ex officio investigation in December 2021 and conducted a survey to examine the existing situation from a demand side and potential unfair pricing and commercial practices in said market.[28] Notably, the HCC seemed to be interested in practices that create ambiguity in the offering of the energy providers' services ("confusopoly") leading to inability for customers to choose the best supplying offer and to lessening of competition in the market, especially when there is no (easy) consumer switching. The results of this survey pointed to the fact that there is no strong price competition in said market and, although supplier switching might be practically easy, it is not finally worth it from an economic perspective.

The HCC has also been active in the natural gas sector, where, following the Commission's objective to ensure fair access of market players to energy sources and infrastructure, it imposed commitments on DEPA COMMERCIAL S.A. ("DEPA") following third-

26 See Market consultation in case COMP/B-1/38.700 – Greek lignite and electricity markets here.
27 See the final commitments to the Commission in 2018 here and in 2021 here.
28 See the HCC's relevant Press Release here.

party complaints in 2010. At the time, DEPA proposed a remedy package which the HCC accepted to alleviate anticompetitive concerns in the market for supply of natural gas and access to natural gas infrastructure, raised by DEPA's significant market power creating entry barriers for its competitors and less flexibility for its customers. The latter's practices in the relevant markets of natural gas supply and access to infrastructure were thought to potentially be a serious abuse of dominant position within the remit of Article 102 TFEU, according to the HCC, which, in 2012, required the immediate implementation of the specific commitments to liberate the natural gas market, motivate new market entrants and offer better and more competitive pricing to consumers (HCC Decision no. 551/VII/2012, later amended with HCC Decisions no. 589/2014, 596/2014, 618/2015, 631/2016 and 651/2017).

After a series of amendments to the initial commitments, the HCC decided, in 2021, to finally lift all commitments undertaken by DEPA due to significant change of circumstances in the national market of natural gas that no longer justified them (HCC Decisions no. 723/2020 and 737/2021).

The implementation of DEPA's commitments significantly contributed to the liberation and change of the competitive landscape of the natural gas market, i.e., *inter alia*, the increase of the number of market participants and the introduction of alternative sources of supply.

All these developments over the past years illustrate that the energy sector is rapidly evolving and loses its monopolistic character; however, it still requires constant monitoring and occasionally action is needed to rebalance the dynamics in the competitive landscape, bearing also in mind that the introduction of renewables in the energy mix will bring further turbulence from a regulatory perspective. Consequently, businesses should be diligent towards competition law compliance and self-assess their commercial conduct, while Member States should be particularly careful when granting exclusive rights to undertakings, as such interference in the market is likely to create serious imbalances with an, ultimately, damaging effect to competition.

3.3 Sustainability agreements and competition law

The relationship between competition law and sustainability has become increasingly important and a subject of extensive discussions over the last few years, both at national and EU level.[29] The focus of the debate in this regard concerns the idea that competition law should not act as a barrier to initiatives and cooperations that would deliver sustainability objectives. Indeed, a transition to a low-carbon economy may entail high investment costs and potentially "first mover disadvantages", thereby requiring cooperation on sustainability initiatives. Yet, companies may feel uncomfortable to proceed with such sustainability agreements for fear of being exposed to competition law investigations. More broadly, the concern is how the tensions between the objectives of promoting Net-Zero (as described in Section 2 above) and competition may be resolved and what role may competition policy play in this context.

Indeed, competition law may in certain instances obstruct companies in the energy and other industries in their efforts to innovate and adopt more energy-efficient technologies, and thus is susceptible to delay the Net-Zero transition. The existing uncertainty as to what is (not) a breach of the competition rules can hinder the ability of companies active in the energy markets to work towards sustainability goals. Particularly, companies may be looking to lessen the environmental impact of their activity by pooling resources and expertise with other market players, by e.g. developing common standards for electric vehicle charging. In this context, competition law and competition authorities can play a role in facilitating the transition to a green economy and supporting companies in this transition, in particular, by providing more clarity and reducing legal uncertainty about the application of the competition rules in these circumstances. For instance, competition authorities can provide letters of comfort or derogations from competition law to allow certain types of cooperation between competitors, where clear environmental/climate benefits exist, and consumers will ultimately receive a fair share of these benefits.

As part of realising its potential to facilitate in that transition, the HCC has taken various relevant initiatives, often adopting innovative initiatives and being at the forefront of discussions regarding the challenges of the application of the competition rules in the (now accelerated) transition to a sustainable economy.[30] In particular, the HCC has expressed its interest in the relationship between sustainable development and competition law, and the potential relevance of sustainability and environmental considerations for the assessment of business practices, especially for collaborations between market competitors. The HCC has indeed been very active in this regard and has taken steps to stimulate a public discussion on the interplay of the two and in particular the issues of whether competition law is capable of impeding innovative synergies between companies promoting sustainability, the possibility of integrating environmental and other social sustainability concepts into the application of competition law, as well as the potential adjustments of the competition law rules against sustainability objectives. In this regard, the HCC has published a Staff Discussion Paper analysing the areas of convergence and conflict between sustainable developments and competition law, organised relevant conferences,[31] and published a respective Technical Report on Sustainability and Competition in view of the initiative undertaken by the Commission in the framework of the Green Deal.[32]

Of particular relevance is the launch by the HCC, on 22 June 2022, of the so-called Sandbox for Sustainable Development and Competition, which aims to strengthen competition in par with a sustainable development and will initially operate within targeted industries, such as energy and recycling/waste management.[33] The adoption of the Sandbox follows the various recent initiatives at national and European level pertaining to the integration into competition law of the objective of sustainable development.[34] This

29 See e.g. OECD, "Competition Policy and Environmental Sustainability – Note by BIAC/ICC" (01.12.2020), available here; OECD, "Environmental Considerations in Competition Enforcement" (19.11.2022), available here; Commission, "Competition Policy supporting the Green Deal – Call for contribution" (2020), available here.

30 See e.g. OECD, "Environmental Considerations in Competition Enforcement – Note by Greece", available here.

31 HCC, "Staff Discussion Paper on Sustainability Issues and Competition Law", available here.

32 Report jointly commissioned by the Netherlands Authority for Consumers and Markets (ACM) and the HCC, available here.

33 The new platform for the Sustainability Sandbox is online at sandbox.epant.gr/en.

34 Other initiatives at national level have also been noted. For instance, the Dutch NCA, which has been pushing towards that discussion and has published relevant guidelines, has developed an innovative approach in relation to the exemption of "environmental damage agreements" and Austria amended its national law to provide that, if the necessary conditions are met, agreements which "make an essential contribution to an economically sustainable and climate neutral economy" can be excluded from the prohibition of anti-competitive agreements. In 2022, the UK Competition & Markets Authority published advice on how competition and consumer laws can help meet the UK's environmental goals and outlined plans for a Sustainability Taskforce, while Germany has also published studies and working papers on sustainability and antitrust.

truly innovative initiative is in essence a new regulatory sandbox that allows businesses to digitally submit sustainability agreements to the authority to assess whether their environmental benefits outweigh any competition concerns. Particularly, companies can submit business proposals through the sandbox, which will be fully evaluated *ex ante* by the HCC, and following this, the HCC may in certain cases issue a "no-enforcement action letter" to interested parties. On the basis of this letter, parties will be able to implement their proposal under the supervision of the HCC within a specific time frame. In essence, it creates a supervised space for experimentation to promote innovative business initiatives, and especially agreements in which market players team up to work on sustainable business projects. In a similar vein, with a relatively recent amendment to the Greek Competition Act (effected by virtue of Law 4886/2022), a new Article 37A has been inserted empowering the President of the HCC to issue "no-enforcement action letter" when issues of urgent public interest arise, particularly when a business practice is found to contribute significantly to sustainable development. The overall aim seems to increase legal certainty regarding the application of competition law for undertakings willing to invest in green transformation, to create new green products, to set green standards for the production of products, services, energy, etc., by facilitating their development.

At EU level, the Commission has recognised that guidance and clarity is needed in applying the competition law rules to sustainability initiatives and has initially published a policy brief on Competition Policy in Support of Europe's Green Ambition, which explores how the EU competition rules can complement environmental and climate policies more effectively.[35] More importantly, the adoption of the revised Horizontal Guidelines is itself an effort to provide guidance and legal certainty so as to enable collaboration on sustainability without infringing competition law provisions. There is now a new chapter in the revised Horizontal Guidelines on how to self-assess sustainability agreements, thereby clarifying that the antitrust rules do not stand in the way of agreements between competitors that pursue a sustainability objective, and as such setting out a rather broad view of the benefits that are relevant to the competitive analysis, including:

i. the individual use value (e.g. improved product quality or variety);

35 Commission, "Competition Policy Brief 1/2021 - Policy in Support of Europe's Green Ambition" (10.09.2021), available here.

ii. the individual non-use value (where the consumers' use experience with the product is not directly improved, but consumers value the impact of their sustainable consumption on others); and

iii. the collective benefits (where objective benefits accrue to a larger group of which the consumer is part).

The revised Horizontal Guidelines also provide a "soft safe harbour" for sustainability standards, in that a sustainability standardisation agreement is unlikely to raise concerns where it secures transparency, open and non-discriminatory access, voluntary participation, freedom to adopt a higher standard and no exchange of commercially sensitive information; that said, the sustainability standard should not lead to a significant increase in price or reduction in choice.

Moreover, the Commission has signaled that it will be more open to respond to companies' requests for guidance on a case-by-case basis regarding envisaged collaborations with sustainability objectives. In fact, the public health emergency of COVID-19 has led competition law enforcers to take up a new role of providing informal guidance for businesses. In this context, the Commission was ready to exceptionally provide companies with a written "comfort letter" with respect to specific cooperation initiatives that need to be swiftly implemented to effectively address the COVID-19 crisis. In this context, the Commission has also shown willingness to consider collaboration in "other sectors" or "other forms of cooperation" (see e.g. Case AT.40178 *Car Emissions*). Undoubtedly, climate-change-related issues cannot be addressed effectively without a certain level of cooperation between market players. Therefore, informal guidance would be appreciated in the years to come. That said, as indicated in the revised Horizontal Guidelines, where market failures are addressed by appropriate regulation (e.g. mandatory EU pollution standards, pricing mechanisms, such as the Union's Emissions Trading System), additional measures by companies via cooperation agreements may be unnecessary; thus, cooperation agreements may become necessary if there are residual market failures that are not fully addressed by public policies and regulations.

As sustainability parameters are becoming competition parameters, the expectation is that further discussion will take place and the hope is that the next couple of years will bring more clarity on the extent to which the competition law rules impede collaborations which aim to achieve sustainability goals or contribute to achieving a green economy. That said, competition authorities are expected to adopt a tough stance against agreements which are disguised as sustainability collaborations ("greenwashing") or involve a negative environmental impact. Therefore, efficiencies related to sustainability objectives, as well as their impact to consumers and the risk of complaints by competitors, should be considered and be part of early transaction planning on behalf of players willing to enter into "green" collaboration agreements.

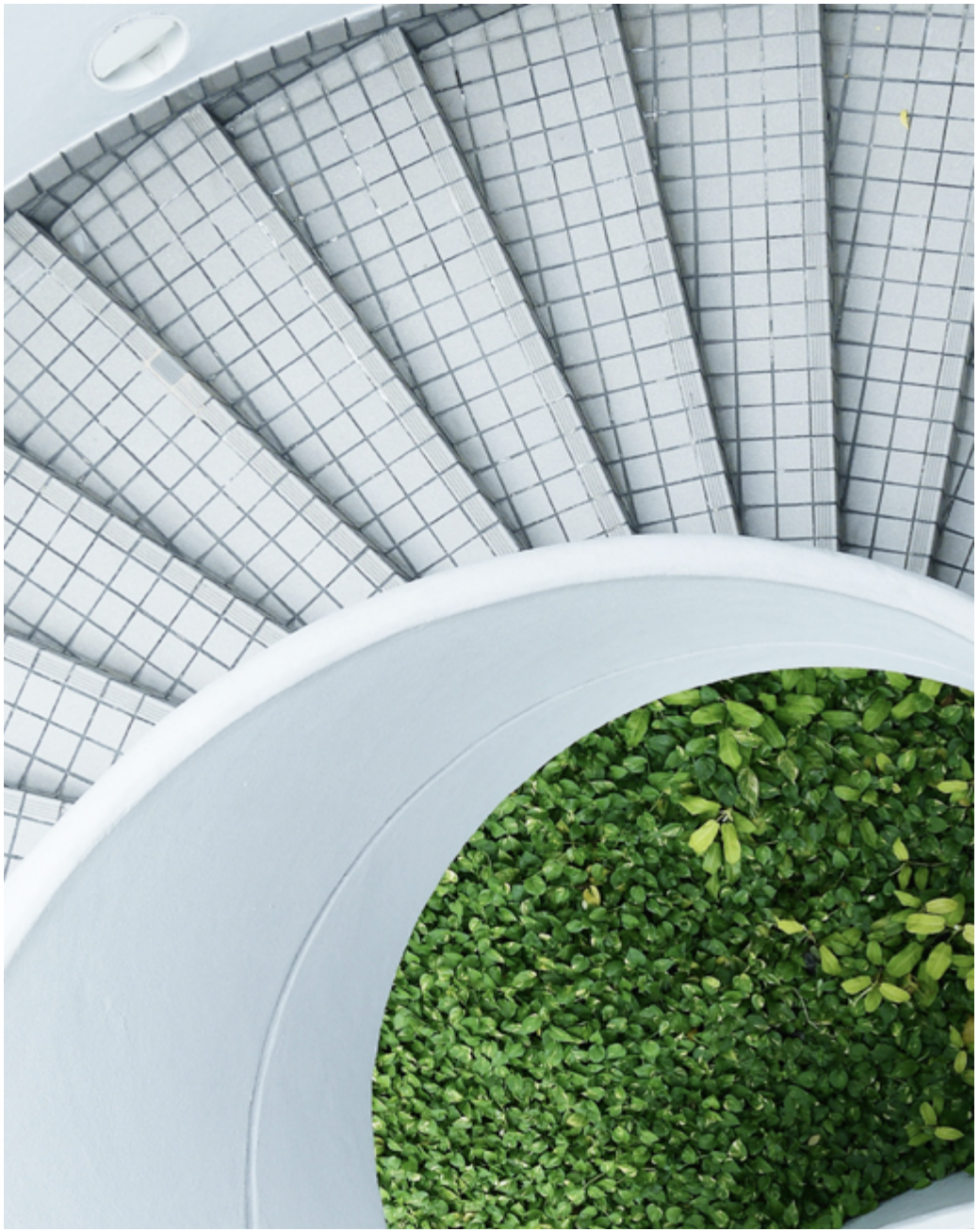
Companies should engage with the relevant authorities on these novel issues, as authorities may be keen to offer advice on a case-by-case basis so as to avoid legal uncertainty that may hold companies back. Companies pursuing sustainability objectives involving collaborations with competitors must therefore consider the competition law risks that may arise and engage with the HCC and/or the Commission. Overall, companies should focus on compliance and risk management, with the hope that more legal certainty will be provided in the next couple of years.

3.4 Increased investment/M&A activity in Greece in line with the market trends

In 2022, the global energy sector had a record year for M&A transactions with 1,241 deals — worth US$193.8 billion.[36] Energy transition along with the ever-increasing focus on security of supply have been and are expected to continue to function as a significant M&A driver. This global trend has also had a significant impact on the Greek M&A market. The EU energy policy (i.e. the European Green Deal, the REPowerEU Plan on European reliance on Russian fossil fuels, etc.),

> The EU energy policy along with the characteristics of the Greek energy market, have resulted in heightened investment activity in the overall energy sector in Greece

36 Based on data from Mergermarket as reported in White&Case's global M&A tracker – for more details see here.



along with the characteristics of the Greek energy market, have resulted in heightened investment activity in the overall energy sector in Greece.

The National Energy and Climate Plan (NECP, NOG 4893/B/2019), fully in tune with the ambitious objective of the EU to establish Europe as the first climate-neutral continent by 2050, stipulates the complete lignite phase-out nation-wide by 2028. This is one of the key measures for Greece to achieve carbon neutrality by 2050 and has rerouted the production of electricity to alternative sources, such as natural gas and renewable energy (solar and wind).

Several gas-fired combined-cycle power plants are currently in the pipeline, with major energy companies investing in the construction of such infrastructure. On several instances, large energy companies have joined forces, creating joint ventures for the development and acceleration of energy-infrastructure projects. For instance, the HCC in 2021 cleared the joint venture company created between Motor Oil and Gek Terna (HCC Decision no. 744/2021) for the development, construction, and operation of a new modern Combined Cycle Gas Turbine (CCGT) power plant fueled with natural gas in the industrial area of Komotini. In a similar vein, Protergia (Mytilineos Group) has invested in the Agios Nikolaos Combined Cycle Power Plant which is expected to imminently commence its commercial operation. Moreover, PPC with the support of minority investors DEPA Commercial and the Copelouzos Group, have invested in the construction of the new natural gas power plant in Alexandroupolis, which is expected to be operational by the end of 2025. Elpedison has also acquired the necessary licensing for the construction of a gas-fueled power plant in Thessaloniki.

Meanwhile, several and important investments and transactions have been taking place in the RES sector. In 2021, DEPA Commercial acquired joint control over of the company NORTH SOLAR S.A., which develops photovoltaic projects in Western Macedonia with a capacity of up to 500MW. The transaction was cleared by the HCC (HCC Decision no. 733/2021) as it did not raise serious doubts as to its compatibility with the merger control rules in the relevant markets. DEPA Commercial has also very recently agreed to install the very first compressed biomethane production unit in Greece, marking a transition to a new era in the field of production and use of biomethane in Greece. Moreover, Motor Oil has been heavily investing in RES, including but not limited to, acquisitions of RES companies. Motor Oil acquired through separate subsidiaries (a) sole control over several wind-parks in 2021 and (b) a 75% stake

in Ellaktor's RES.Both transactions were cleared unconditionally by the HCC (HCC Decisions no. 735/2021 and 799/2022 respectively).

The above indicatively presented M&As and investments in the electricity sector and the naturally subsequent evolution of electricity production activities in Greece, paint the picture of an ever-expanding and developing market, which is now found in the midst of changing its form. This bears the question of whether this heightened M&A and investment activity will affect the way the HCC has traditionally approached and defined the relevant markets within the overall electricity sector. In its decisions, the HCC has traditionally defined one single market for the production and wholesale supply of electricity, without making any further distinction based on the power used to produce electricity. This also applies to the market for the manufacture of electricity production facilities. Electricity production plants, regardless of the primary energy used for such production, are considered as direct competitors of photovoltaic power stations and wind-parks. This approach was certainly in line with the Greek electricity-production market in its late 1990s and early 2000s era. Is it merely a matter of time before the decisional practice catches up with the market reality? And how could this affect the market position of the large electricity players? This remains to be seen.

At the same time, a new trend is emerging as it seems that emphasis is put on the verticalisation in the retail electricity and natural gas supply market in Greece aiming at the consolidation of the energy markets in the country and the wider region. Most recently, Mytilineos Group acquired Volterra – the completion of the transaction being subject to HCC's approval, which follows the acquisition of Watt+Volt also by Mytilineos Group last year (HCC Decision no. 802/2022).

Of equal intensity is the M&A and investment activity in the natural gas sector, with major privatisations, acquisitions and investments taking place in the last couple of years in Greece. The need to ascertain security of supply and end Russian-gas dependency has led to several investments in natural gas infrastructure and more specifically to the construction of liquified natural gas (LNG) terminals. Even though the only currently operating LNG terminal in Greece belongs to DESFA, three additional terminals are also in the pipeline. Gastrade, a joint venture company between DESFA, DEPA, Asimina Eleni Copelouzou, GasLog and Bulgatransgaz, whose creation was cleared unconditionally by the Commission in 2021 (M.10139 - DESFA / COPELOUZOU / DEPA / GASLOG / BTG / GASTRADE), has been developing the Alexandroupolis FSRU and is expected to commence its operation by the end of 2023. Meanwhile, Motor Oil and Elpedison have been developing two more LNG Terminals, in Corinth and Thessaloniki respectively. Only recently investors and energy companies have become alive to the potential of Small Scale LNG (SSLNG) projects, with DEPA, DESFA and Coral Gas investing in offering SSLNG infrastructure and distribution solutions.

These efforts have been accompanied by major natural gas pipeline projects, namely (a) the Trans Adriatic Pipeline (TAP) which became operational in 2020 and spans from Azerbaijan at the Caspian Sea to Europe from Greece through Albania and the Adriatic Sea to Italy and (b) the Interconnector Greece-Bulgaria Pipeline (IGB) which connects Greece and Bulgaria while also connecting with the TAP, with more projects being developed (e.g. the IGI Poseidon and the EastMed pipelines). Also, the potential creation of an underground natural gas storage in Kavala is still being discussed and considered.

Overall, the Greek natural gas sector has demonstrated in the most recent years its potential to become a natural gas hub in South-Eastern Europe. The expansion of natural gas investments and activities will naturally lead to the emersion of new markets, e.g. separate markets for gas storage or SSLNG activities, and the prevalence of new market players, whilst the HCC will certainly need to catch up with the new market developments in its decisional practice. With the larger energy companies expanding continuously their natural gas activities and entering new markets, future transactions and joint ventures will certainly be met with higher interest from competition authorities in terms of potential horizontal and vertical overlaps. Lastly, in the effort of finding the main energy sources of the future, investors and management teams have certainly turned their attention to the ever-increasing prospects of green gases, including but not limited to biomethane, and hydrogen. With regard to biomethane, major gas companies, such as DEPA and DESFA, have expressed their interest in investing in its exploitation. Following the recent privatisation of DEPA Infrastructure and its acquisition by Italgas, cleared by the HCC by decision no. 770/2022, the issued by Italgas Strategic Plan for the next five years (2022-2028) envisages a total of 1.8 billion euros in investments with particular attention to renewable gases such as biomethane and hydrogen.[37]

Regarding hydrogen, the creation of

37 For more details, see here.

a joint venture company (HELLENIC HYDROGEN S.A.) between Motor Oil and PPC, which is being set up to produce, store and distribute green hydrogen in Greece, was cleared in late 2022 by the HCC (Decision 797/2022). The development and implementation of projects that accelerate the "green transformation" will be at the top of Hellenic Hydrogen's business and strategic planning agenda. Meanwhile, companies have been individually developing their own hydrogen projects with Motor Oil's BlueMed project revolving around the production of blue hydrogen with very low carbon footprint and TITAN Group's H2CEM[38] focusing on the production and use of green hydrogen for cement manufacturing being two of the most notable pipeline projects. Evidently, the Greek hydrogen market is still in an embryonic phase, albeit the projects above clearly demonstrate that large-scale investments and the rapid development of the relevant market should be anticipated.

An interesting jurisdictional issue is whether the Commission's recent change in its policy in relation to referral mechanisms, may reset expectations about the Commission's jurisdictional authority to review transactions in the energy sector that it considers may harm competition on the basis of forceable revenues, even in the absence of compulsory notifications. This expansion of the jurisdictional reach may be relevant in the future development of the energy market, as a response to potentially perceived concerns about overly concentrated markets regarding, in particular, deals that involve the acquisition of a nascent or future competitor by established players. Even though the Guidance that the Commission has issued on the new policy focuses on digital and pharma targets there are no sector limitations and any transaction (including in the energy sector) where the revenues of at least one of the parties do not reflect its actual or future competitive potential may be referred to the Commission, provided the transaction could be perceived as stifling future competition.

Finally, it should also be underlined that there is currently no foreign direct investment ("FDI") approval process in Greece. In particular, although there is an ongoing consultative process in Greece that is expected to result in the adoption of an FDI mechanism, there are no details available regarding the timing of the potential adoption of such a mechanism. As such, an investment in the Greek energy market is not

38 For more details see here.

at this stage subject to approval with regard to foreign investments. That said, the existing sector-specific regulation empowers Greece's energy regulator to kick-off the licensing process by issuing the producer's certificate, a procedure which contains some (but not all) elements of an FDI approval process.

3.5 Abundant State aid activity in relation to the Greek energy market

In view of both the EU energy goals and the consecutive crises (i.e. first the pandemic and then the energy crisis), the EU institutions adopted or updated several soft law texts in 2022 and early 2023, thereby allowing Member States to adopt measures capable of dealing with the several relevant challenges. Moreover, the granting of State aid to undertakings active in the energy sector has steadily grown. Looking forward, 2023 is a year that additional Greek aid measures/schemes are expected to be adopted and approved, given especially the more "flexible" assessment that the Commission appears to pursue, *inter alia*, as a result of the concern that foreign investment would leave the EU for more profitable locations abroad and might undermine the EU's Green Deal objectives.

In early 2022, the Commission provided guidance on the compatibility assessment of energy measures. In particular, on 27 January 2022, the Commission adopted its new Guidelines on State aid for climate, environmental protection and energy ("CEEAG") that replaced the guidelines that were in force since 2014 (EEAG). CEEAG covers many forms of support to promote the energy transition and provide the framework for public authorities to support the European Green Deal objectives efficiently and with minimum distortions of competition. In this regard, the CEEAG:

i. broadened the categories of investments and technologies that Member States can support to cover new areas (e.g. clean mobility infrastructure) and all technologies that can deliver the Green Deal (e.g. renewable hydrogen, electricity storage and demand response, decarbonising production processes);

ii. introduced a simplified assessment of cross-cutting measures under a single section of the Guidelines and eliminated the requirement for individual notifications of large green projects within aid schemes previously approved by the Commission;

iii. introduced safeguards, such as a public consultation requirement above certain thresholds; and

iv. ensured coherence with the relevant EU legislation and policies in the environmental and energy fields, among others by phasing out subsidies for fossil fuels.

The enhancement of the competitiveness of Europe's Net-Zero industry and the support of the fast transition to climate neutrality was complemented by the Green Deal Industrial Plan that was presented by the Commission on 2 February 2023. The Plan aims to provide a more supportive environment for the scaling up of the EU's manufacturing capacity for the Net-Zero technologies and products required to meet Europe's ambitious climate targets. The Plan builds on previous initiatives and relies on the strengths of the EU Single Market, complementing ongoing efforts under the European Green Deal and REPowerEU. It is based on four pillars: a predictable and simplified regulatory environment, speeding up access to finance, enhancing skills, and open trade for resilient supply chains.

A month later, on 9 March 2023, and in order to foster support measures in sectors which are key for the transition to a Net-Zero economy, the Commission adopted, in line with the Green Deal Industrial Plan, the Temporary Crisis and Transition State aid Framework ("TCTF"). The TCTF amended and prolonged in part the Temporary Crisis Framework, adopted on 23 March 2022, to enable Member States to support the economy in the context of Russia's war against Ukraine. In particular, the TCTF:

i. prolonged up to 31 December 2025 the possibility for Member States to support measures needed for the transition towards a Net Zero industry (schemes for accelerating the rollout of renewable energy and energy storage, for the decarbonisationof industrial production processes);

ii. amended the scope of such measures to make schemes to support renewable energy from all renewable energy sources (e.g., onshore and offshore wind), energy storage and decarbonisationof industrial production processes even easier to design and more effective; and

> "Looking forward, 2023 is a year that additional Greek aid measures are expected to be adopted and approved, given especially the Commission's strategy of attracting and retaining foreign investment within the EU.

iii. introduced new measures to further accelerate investments in key sectors for the transition towards a Net-Zero economy, enabling investment support for the manufacturing of strategic equipment (i.e. batteries, solar panels, wind turbines, heat-pumps, electrolysers and carbon capture usage and storage, as well as for production of key components and for production and recycling of related critical raw materials).

TCTF is considered to mark an important loosening of EU State aid rules in an attempt by the EU to react to the US Inflation Reduction Act and prevent the exodus of green projects across the Atlantic; therefore, more measures are expected to be adopted under the TCTF.

In parallel, the Commission, on the same day, endorsed a targeted amendment to the General Block Exemption Regulation ("GBER"). Together with the new TCTF, this amendment aimed at making it easier for the Member States to grant necessary support for key sectors in line with the Green Deal Industrial Plan. The updated GBER grants Member States more flexibility to design and implement support measures in sectors that are key for the transition to climate neutrality and to a net-zero industry. The revised rules are designed to increase and streamline the possibilities for aid in the area of environmental protection and energy, among others to support the rollout of renewable energy, decarbonisation-projects, green mobility and biodiversity, as well as to facilitate investments in renewable hydrogen and to increase energy efficiency. Finally and with a view to further supporting energy production from renewable sources, the new GBER increased the notification thresholds for operating aid for the promotion of electricity from renewable sources and operating aid for the promotion of energy from renewable sources and renewable hydrogen in small projects and renewable energy communities.

Greece participates also in two Important Projects of Common European Interest ('IPCEI'), approved on 15 July 2022 and 21 September 2022 (SA.64651 and SA.64654), that aim to support research and innovation and first industrial deployment in the hydrogen technology value chain. Said projects, called "IPCEI Hy2Tech" and "IPCEI Hy2Use", will receive up to €5.4 billion and up to €5.2 respectively in public funding, while they are expected to unlock additional €8.8 and €7 billion respectively in private investments. The first project focuses on: (i) the generation of hydrogen, (ii) fuel cells, (iii) storage, transportation and distribution of hydrogen, and (iv) end-users' applications, in particular in the mobility sector. The second project supports: (i) the construction of hydrogen-related infrastructure, notably large-scale electrolysers and transport infrastructure, for the production, storage and transport of renewable and low-carbon hydrogen; and (ii) the development of innovative and more sustainable technologies for the integration of hydrogen into the industrial processes of multiple sectors, especially those that are more challenging to decarbonise, such as steel, cement and glass.

Greece paved the way towards an energy storage support scheme in April 2022 with Article 225 of Law 4920/2022. Following the Commission's approval of this State aid scheme on 5 September 2022 (SA.64736), the Greek Government issued on 20 May 2023 a Ministerial Decision, which introduced an actionable plan for the implementation of energy storage solutions by providing for specific support schemes aiming to assist the integration of the electricity storage technology in the market. Said scheme targets standalone energy storage technologies with a minimum injection capacity of 1MW connected to Greece's high-voltage transmission system managed by the Independent Power Transmission Operator ("IPTO"). It offers two types of support, namely (a) an investment grant during the construction phase of each project and (b) a 10-year Contract for Difference, ensuring a minimum annual remuneration.[39]

Further, in accordance with the European Recovery and Resilience Facility ("RRF"), that aims to finance reforms and investments in Member States from the start of the pandemic in February 2020 until 31 December 2026, Greece submitted its National RRP plan to the Commission, called "Greece 2.0", that was approved on 13 July 2021. Greece 2.0 includes 106 investments and 68 reforms, structured around four pillars: Green Transition, Digital Transformation, Employment-Skills-Social Cohesion, Private Investments and Transformation of the Economy. In this context numerous investment projects have been and are expected to be supported. Accordingly, the Commission approved on 16 May 2022, under the State aid Temporary Framework, a €2 billion Greek scheme aimed at providing investment support towards a sustainable recovery until 31 December 2023 (SA.101963). Under this measure, the aid takes the form of loans with subsidised interest rates. The scheme was prolonged until 31 December 2023 (SA.105095), so that energy projects/investments may benefit from it in

39 For more details see Zepos & Yannopoulos Newsletter entitled "Greece puts forward an ambitious energy storage support scheme" of 8 June 2023, available here.

2023 as well. In this context, the European Investment Bank and Greece's Independent Power Transmission Operator signed in early 2023 a long-term loan agreement of €108 million using RRF funds to co-finance the construction of a vital power interconnector between mainland Greece and the Cyclades islands. The total cost of the project is €524M (€164.5M grant from the RRP Greece 2.0 and project sponsor's own contributions). The new electricity link consisting of five underground and submarine cables will have a total length of about 350km. The interconnector marks the fourth stage of the Cyclades project that aims to link Santorini, Folegandros, Milos and Serifos, the last islands in the Cycladic complex remaining off the mainland grid. The connection will allow the phase down of independent island systems that currently rely on more expensive, polluting oil-based generation capacity, delivering significant economic benefits, including cheaper and cleaner energy for citizens, while also supporting regional development and cohesion. The project works, including the construction of four GIS substations on the islands, will be rolled out by 2025.

Another Greek energy specific scheme was approved on 7 February 2023 concerning the partial compensation of energy-intensive companies for higher electricity prices resulting from indirect emission costs under the EU Emission Trading System (SA.103180). The measure is aimed at reducing the risk of "carbon leakage", where companies relocate their production to countries outside the EU with less ambitious climate policies, resulting in increased GHG emissions globally. The scheme, with a total estimated budget of €1.36 billion, will cover part of the higher electricity prices arising from the impact of carbon prices on electricity generation costs (so-called "indirect emission costs") incurred between 2021 and 2030.

It is apparent that the pursuit of the EU energy goals and the current energy crisis have led to a more flexible approach to the compatibility assessment of energy measures in the context of the EU State aid rules, with a view to strengthening European industries. At the same time, the spectrum of energy measures has been broadened and an increasing number of measures are approved by the Commission. At national level, the first steps have been taken, showing, in principle, Greece's ambition to make the most of the new or updated EU tools in 2023.

Our Antitrust & Competition team

Stamatis Drakakakis
Partner

s.drakakakis@zeya.com

Iraklis Tsakopoulos
Of Counsel

i.tsakopoulos@zeya.com

Ellie Gavriilidou
Associate

e.gavriilidou@zeya.com

Gina Goudoulia
Associate

g.goudoulia@zeya.com

Konstantinos Sidiropoulos
Associate

k.sidiropoulos@zeya.com

Yolanda Antoniou-Rapti
Senior Associate

y.antoniou@zeya.com

Lydia Gavriilidou
Associate

l.gavriilidou@zeya.com

Maria Lampadaki
Associate

m.lampadaki@zeya.com

ZEPOS & YANNOPOULOS

Established in 1893, Zepos & Yannopoulos is one of the leading and largest law firms in Greece providing comprehensive legal, tax and accounting services to companies conducting business in Greece.