OTE is calling: who’s going to pick up this call? Is it for the State?
Reflections on the recent Commission’s State aid decision

Lambros PAPADIAS (1)

I. Introduction

On 10 May 2007, the Commission approved under Article 87.3 of the Treaty the Greek government’s envisaged participation to the Hellenic Telecommunications Organization (OTE) early voluntary retirement scheme. The case raised a number of important legal issues mainly in relation to the definition of the notion of “aid” of Article 87.1 of the Treaty, as well as in relation to the scope of the compatibility assessment carried out under Article 87.3 with regard to undertakings that used to enjoy a monopoly in the past and are now operating in liberalised but still regulated markets. This article discusses in some more detail these issues and focuses on some of the findings contained in the decision that could shed some more light into the Commission’s current thinking and policy orientation in this area.

II. Background to the notification: the labour structure of OTE — a relic of the past

Since the full liberalisation of the electronic communications market in 1997, incumbent telecoms operators in the EU have undergone a gradually and often drastic transformation from public monopolies to fully-fledged or semi-privatised competitive undertakings. Full liberalisation in Greece took place at a later stage, in January 2001, a delay justified at the time by the need to enable OTE, the fixed line incumbent operator, to complete the necessary modernisation and digitalisation of its network and to prepare for the imminent opening of the fixed line market by rebalancing tariffs and carrying out the necessary structural adjustments towards a fully commercial market-driven operator (2).

OTE remains today the dominant network and fixed-voice operator in Greece. Competition is slowly but gradually bearing fruits as the company’s market share has dropped from 100% before 2001 to almost 60% in 2007. The competitive process is managed by the day-to-day application of a comprehensive ex ante regulatory framework that essentially guarantees third party access to OTE’s network for the provision of voice, data and other internet related services.

Yet, despite a series of “external adjustments” dictated by the liberalisation of the fixed-line market (i.e., tariff rebalancing, introduction of account separation, publication of a Reference Interconnection Offer), OTE ushered into this new market reality without undergoing any fundamental change in its core “internal” structure. Although a public limited company (plc) since 1994, OTE’s labour law structure had remained that of a public sector utility, its employees continuing to enjoy a de facto permanent employment status (3). Most labour-related aspects such as hiring, promotions, salaries and pensions remained governed by past rigid collective agreements that were given force of law. The overall employment regulations had thus put OTE in a disadvantage compared to its (new) private competitors and kept its labour costs at a much higher level. Its increasingly large workforce (around 15 000 employees) was the result of an unrestrained (and thus irreversible) policy of hiring during the monopoly years when the company was often treated by it sole shareholder, the State, as an extension of the wider public sector and as a complementary tool for the implementation of the State’s own social agenda.

In 2004, asked by OTE to analyse the company’s structure and performance, McKinsey, a consultancy group, concluded that OTE had an excess of almost 5000 employees and that most operations were characterised by significant inefficiencies. It was therefore imperative that the company reduces its personnel by at least one third and that an end was put to the permanent status of its employees in order to allow the company to reduce its high fixed labour costs and allow it to behave like any other commercial entity.

(1) Directorate-General for Competition, unit C-4. The content of this article does not necessarily reflect the official position of the European Commission. Responsibility for the information and views expressed lies entirely with the author.


(3) Although strictly speaking not public servants, OTE had concluded during the monopoly years when the company was fully State-owned, collective agreements with the unions hereby an employee, save in exceptional circumstances, could not be dismissed. Appropriate legislation had given force of law to these agreements. As a result, OTE employees enjoyed a quasi civil servant status.
The choice of a voluntary retirement scheme

OTE was faced with two options to choose from. It could either implement a wide range mandatory redundancy on the basis of new legislation that would abolish retroactively the permanent status of its employees, or try to negotiate with the unions an early voluntary retirement scheme (VRS) to the same effect. The first option was discarded from the outset given the existence of legal (constitutional) doubts as to whether a law could be passed giving effect to OTE’s decision to denounce unilaterally the existing collective labour agreements that granted a quasi permanent employment status to its employees. It was accordingly the second option that was actively pursued. In practice that meant that in order to ensure that at least one third of the employees could retire now instead in the next seven years (the expected retirement evolution of the targeted 5000 employees), OTE would have to offer a rather generous package to ensure a successful take up of its offer. That meant offering the kind of incentives that would neutralise the loss of full employment and thus convince the employees that early retirement would not reduce their social and other work related future (and guaranteed) benefits. As a quid pro quo, however, OTE demanded that the unions consent to putting an end to the permanent status for any future hires. Agreement was finally reached in 2005, and in July of the same year, Parliament enacted Law 3371 (the Law) giving effect to all the above agreements and providing for a partial State contribution to the costs of the VRS.

The thrust of the VRS: the recognition of notional years of employment

In short, the Law offered to OTE employees close to retirement age the possibility to receive full pension immediately. For that purpose, the Law recognised as much fictitious employment time as necessary (“notional years”). Thus, immediate retirement was offered to those employees eligible to take mandatory retirement between 2005 and 2012, by having up to 8 years of notional employment recognised by the Law. The recognition of notional years of employment was the basis for calculating the basic and the auxiliary pensions, as well as the lump sum payments to which each retiring person is entitled to under the existing legal framework. The idea was that the employees would receive the exact same benefits as if they had exhausted the maximum period of entitled employment. Most employees to whom the right to early retirement was offered were over 50 years old and had completed more than 27 years of service.

The Greek State’s financial (“parental”) contribution

Given OTE’s labour structure the costs of the VRS were higher than any other “ordinary” early retirement scheme offered by a private company under the generally applicable labour laws and regulations. The material difference between OTE’s VRS and an ordinary VRS was that apart of the incentives given to induce employees to take up the early retirement offer, OTE had also to make up for the loss of future revenues or social advantages associated with the enjoyment of a permanent employment status. These “extra costs” were the main reason that led the Greek State to assume part of the overall costs of the VRS.

Expressed in net present values, the costs of the VRS were estimated to be €863 million. Article 74 of the Law provided that the costs of the VRS would be borne by OTE and the Greek government, the latter transferring 4% of its shares in OTE to the Pension Fund to which OTE employees are insured (TAP-OTE). It is important to bear in mind that like any other pension fund in Greece (4), TAP-OTE is an independent legal body, governed by public law and part of the country’s wider state pension system. It is not thus a company pension fund owned, managed or even supervised by OTE. Yet, the question that was raised was whether the State’s direct contribution to the Pension Fund of OTE could still benefit indirectly OTE by reducing the latter’s overall pension liabilities arising from the VRS.

Based on the share price of OTE at the date of the publication of the Law (14 July 2005), the value of the 4% shares to be transferred from the State to the Pension Fund was around €315 million. However, up to the date of the adoption of the Commission’s decision, the share price of OTE had considerably gained in value, from around €16 in 2005 to almost €21 by February 2007. The value of the State’s contribution had thus passed from €315 million in 2005 to almost €411 million in early 2007. The uncertainty and variable character of the State’s planned contribution was a point that needed to be addressed before any final finding by the Commission (see below).

(4) In terms of financing, the Greek pension system is in principle a «pay-as-you-go» system while in terms of structure it is of the defined-benefit type. As to its legal status, it is mandatory and run by the wider public sector, including autonomous, public law governed bodies like TAP-OTE. Under the Greek Constitution, the State is the ultimate guarantor for the payment of pensions. Every year, for most of the funds, the State finances any gap between income from employee and employer contributions and the cost of pensions.
III. The notification by the Greek government: no aid involved — the “Combus” line of defence

In its notification the Greek government argued that no aid was involved for two reasons. First, the State had acted in line with the private investor principle, and second because its financial contribution to the costs of the VRS did not confer an economic advantage on OTE within the meaning of Article 87.1 of the Treaty. The State’s transfer of its 4% shares in OTE to TAP-OTE aimed instead of Article 87.1 of the Treaty. The State’s transfer of its 4% shares in OTE to TAP-OTE aimed instead to relieve OTE from a “structural disadvantage” due to the de facto permanency and the high fixed salary costs of its personnel, costs that no other private company in Greece had to bear.

In this regard, the Greek government relied heavily on the Combus judgment by the CFI, according to which freeing a public-sector company from structural disadvantages compared to the private sector competitors, such as those due to the “privileged and costly status of officials”, does not constitute State aid (5). Were the Commission to reach a different view, the Greek government asked that the aid be declared compatible under Article 87(3)(c) of the Treaty on the basis of the principles derived from the EDF decision (6) and by analogy to those applicable to the stranded costs in the energy field.

The calculation of the alleged “extra costs” of OTE’s VRS was one of the interesting aspects of the notification. In this respect, the Greek government came up with a two-pronged calculation aimed at identifying separately (a) the financial burden imposed on OTE by the permanency status of its employees, and (b) the burden imposed by their inflated fixed salaries. This calculation was further refined and substantiated following the opening of the formal investigation (see below).

IV. The opening of the formal investigation: an ex monopolist in the spotlight?

In the opening of the procedure the Commission first questioned whether the contribution of the State could be compatible with the private investor principle mainly because no other shareholder was making any contribution to the costs of the VRS.

As to the question whether aid was involved, the Commission preferred to leave open the issue whether Combus was “good law” and/or relevant to the case. Instead, the Commission raised doubts on a number of issues which were essentially related to the fact that up to full liberalisation of the telecoms market, OTE had been a privileged, “protected” monopolist. In particular, it was not clear whether OTE may have benefited in the past (or may have continued to do so) from other kind of special advantages that could neutralise the alleged “extra costs” of the VRS. The Commission distinguished between two main categories of advantages, those that could derive from the overall labour law framework that was applicable to OTE including the likelihood that OTE might have in the past benefited from other State measures that may have reduced its own labour costs (i.e., State measures of the same nature as the notified measure, that is labour law related), and advantages that resulted from OTE’s prior monopoly position (the competition law-related advantages).

As to the alleged costs of the VRS, the Commission considered that there was not enough evidence to back up the claim put forward by the Greek government according to which in an ordinary VRS, an employer would pay twice the redundancy compensation required by law in case of a dismissal (an argument that had an impact on the calculation of the “extra costs” of the VRS). Furthermore, there was no mechanism in place to ensure that the Greek government’s planned transfer of its 4% shares in OTE to TAP-OTE would not exceed the alleged “extra costs” of OTE given that the share price of OTE was fluctuating on a daily basis in the Athens Stock Exchange.

Following the opening of the procedure, the Commission received detailed replies by the Greek government on the aforementioned issues and also comments on behalf of four operators present on the Greek telecoms market. These comments focused mainly on the conditions of competition prevailing on the Greek fixed line market where OTE was said to be abusing its dominant position. Moreover, it was alleged that the regulatory authority had failed to take appropriate measures

(5) In that case, the Court stated that a (state) measure which was “introduced to replace the privileged and costly status of the officials employed by Combus with the status of employees on a contract basis comparable to that of employees of other bus transport undertakings competing with Combus” did not constitute aid for “the intention [of the Danish government] was thus to free Combus from a structural disadvantage it had in relation to its private-sector competitors”, Case T-157/01, Danske Busvognmænd v Commission, 16 March 2004, ECR II-0917, paragraph 57.

to curtail OTE’s abusive behaviour. Finally, the said operators argued that in the past, the Greek State had made a number of capital contributions in order to cover the deficits of TAP-OTE that benefited the company and which would have also to be taken into consideration.

V. The Commission’s decision — Combus: is the door left open or closed?

With regard to the question of aid, the Commission had no difficulty in discarding the private investor argument raised by the Greek government. In line with the existing case-law, the Commission recalled that a distinction must be drawn between the obligations which the State must assume as owner of the share capital of a company and its obligations as a public authority (7). OTE being a public limited company (“plc”), the Greek State as the majority owner of the share capital of the company would only have been liable for the debts of the company up to the liquidation value of its assets. Social security and other labour law related liabilities are normally for the company concerned, not for its shareholders, to assume. Therefore, the obligations arising from the cost of the early retirement redundancies and the payments of any other associated employment benefits could not be taken into consideration for the purpose of applying the private investor test (8). Furthermore, OTE was not a company in a difficult financial situation nor unable to meet on its own the financial liabilities of the VRS.

The actual question was whether OTE needed to be compensated by the State for the burden of the permanency and if yes, whether such a State measure could be said to confer an economic advantage on the latter.

Some preliminary remarks on the concept of aid

The case-law of the Court of Justice (ECJ) had for years been based on a wide interpretation of the notion of “aid” of Article 87.1. In principle, every positive or even negative measure by a Member State that would facilitate or improve the financial or commercial situation of an undertaking would be considered to confer on it an economic advantage. Whether the measure in question aimed to make up for or “compensate” the recipient undertaking for some kind of “disadvantages” or undue “burdens” that may have been imposed on, this was an issue to be dealt with under the compatibility assessment of Article 87.3(c) (9).

However, not all measures that involve the transfer of state resources confer an advantage to a recipient undertaking. The recent case law, as reflected by the Altmark (10) judgment regarding compensation given to undertakings for the performance of a public service or of an activity of general economic interest, has introduced some important nuances to the interpretation of the concept of aid of Article 87.1. In the same vein, the Combus judgment by the Court of First Instance (CFI) seemingly expands further the kind of situations of State measures which although prima facie appear to benefit a given undertaking, could fall out of the notion of aid (the compensation approach) (11).

It is in the light of this evolving background that the Commission examined the issue of aid in the OTE decision.

At the outset, it should be recalled that according to a well-established line of case-law, even a partial reduction of social charges devolving upon an undertaking constitutes aid within the meaning of Article 87(1) of the Treaty if that measure is intended partially to exempt that undertakings from the financial charges arising from the normal application of the general social security system, without there being any justification for this exemption on the basis of the nature or general scheme of this system (12). More particularly, the ECJ has ruled that any measure that relieves an

(8) Case C-305/89, op.cit., paragraph 22.
undertaking from the charges which are normally included in the budget of the undertaking constitutes State aid (\(^{13}\)).

However, this line of case-law presupposes that the said reductions and other similar measures are decided within the context of an ordinary social security framework, and concern charges which are “normally included in the budget” of an undertaking. OTE's social security and labour framework however was not that of an ordinary undertaking, and the charges assumed by OTE were not those normally assumed by any other telecom operator in Greece. The question was therefore whether this line of established case-law could still be relevant with regard to a measure which aimed precisely at bringing OTE within the “ordinary” social security framework that applies to all other undertakings in the country. Could the notion of aid coexist alongside measures that purport to relieve an undertaking from obligations that allegedly go “over and above” those imposed on its competitors?

In Combus the CFI stated that a (state) measure which was “introduced to replace the privileged and costly status of the officials employed by Combus with the status of employees on a contract basis comparable to that of employees of other bus transport undertakings competing with Combus” did not constitute aid for “the intention [of the Danish government] was thus to free Combus from a structural disadvantage it had in relation to its private-sector competitors”.

The question whether “Combus” could, as a matter of principle, apply soon became one of the important aspects of the OTE investigation. For, if one were to accept that compensation given for so-called “structural disadvantages” does not give rise to the granting of an economic advantage within the meaning of the existing jurisprudence, then there is no aid involved and subsequently not a notification obligation for the Member State concerned. On the contrary, if aid is involved, then measures such as the one notified by the Greek government will still need to be assessed under the compatibility framework provided for by Article 87.3 of the Treaty.

The OTE decision does not at the end answer this question on the ground that the measure is in any event compatible with the common market under Article 87.3 (c). Thus, the decision leaves open the issue of whether and under which circumstances (if any) Combus may apply (\(^{14}\)).

That being said, the decision does not entirely eschew the issue; instead it underlines those aspects of the notification that could have been relied upon, for or against the application of Combus. Thus, one the one hand, the decision notes that OTE bears a number of similarities with the Combus case. In Combus the Danish State did not compensate the company concerned, but the officials employed by it. Likewise, the Greek authorities did not compensate OTE, but the employees' Pension Fund (TAP-OTE) for the loss of revenue due to the early retirement. Like in Combus, the permanent status of OTE's employees constituted a “privileged and costly status” vis-à-vis the status of private sector's employees. As in Combus, the intention of the Greek government was to free OTE “from a structural disadvantage it had in relation to its private-sector competitors”. Finally, as was also the case in Combus, the Greek State's financial intervention did not aim to make up for or alleviate OTE from its past pensions obligations resulting from the period of time when the company was a monopolist. There was no pension deficit to be covered nor had OTE failed to pay its own employee contributions towards TAP-OTE.

On the other hand, a number of differences between the legal and factual context of OTE and that of Combus case were also brought to the fore by the analysis made by the Commission. In particular, when OTE became a plc company in 1994, and especially after full liberalisation of the telecoms market in 2001, there was no measures adopted to ensure that the company's labour structure would be aligned to that of any other plc. Thus, it was not clear why 13 years after the transformation of the company into a plc, OTE was still subject to a sui generis labour regime and no measures were taken to remedy the structural disadvantages of the company in due time. Accordingly, one could argue that the high labour costs of the company had at the end become charges “which are normally included in the budget of the company” within the meaning of the case-law, and thus the


\(^{14}\) This is not the first time the Commission leaves open the question whether a notified measure that is in any event compatible under Article 87.3 (c) constitutes aid. See for instance, Commission decision in cases NN49/99 — Spain, Régimen transitorio del mercado de la electricidad, N 6/A/2001 — Ireland, Public service obligations imposed on the electricity Supply Board, N 826/01 — Ireland, Alternative energy Requirements, N 34/99 — Austria, Compensation for «Stranded Costs», N 448/2005 — Spain, Aid for the production of theatre, music and dance and N 449/2005 — Spain, Aid for the production of short films.
notified measure relieved OTE from the "financial charges arising from the normal application of the general social security system" (15).

The decision also notes that one could not exclude that the large number of employees might have enabled OTE during the post liberalisation period to be present in all the segments of the electronic communications market and thus to maintain its dominant position.

As stated in paragraph 102 of the decision, the above considerations "examined in conjunction with relevant jurisprudence, including the Com- bus judgement could suggest that the measure concerned could be regarded as aid; however, the matter does not need to be pursued since, for the reasons explained in more detail below, it is in any event compatible with the common market under Article 87(3)(c) of the Treaty" (16).

VI. The compatibility assessment:
how to deal with ex monopolists

In assessing the notified measure under Article 87.3 (c) the Commission came to the conclusion that the aid was compatible with the Treaty. In particular, the envisaged financial contribution of the Greek government to the costs of the VRS was found to be in line with the common interest to the extent that the aim of the VRS was to reduce by around one third the excessive number of OTE’s employees while at the same time putting an end to the permanency status for future hires, thus paving the way for the company’s planned privatisation and the subsequent relinquish of the Greek State’s control over OTE.

The aid was also found to be an appropriate instrument. Without the recognition of the extra notional years to those employees who would have been subject to mandatory retirement between 2005 and 2012, very few employees would have chosen to retire at an earlier stage and thus forfeit the financial advantages accruing from longer employment and a higher pension that would have been forer had they stayed until the age of mandatory retirement. Clearly, an employee who enjoys a quasi civil servant status has no incentive to go into early retirement without full, forward-looking compensation.

The decision also notes in this respect the analogy with the Commission’s Communication on stranded costs in the energy sector as well with the EDF decision. The special permanency regime of OTE’s employees had its origins in the previous monopoly era, a period during which OTE although it still incurred higher labour costs compared to other companies, it was however shielded from any intra-industry competition. It was only after the liberalisation of the Greek telecommunication market that the permanency status of its employees became a real burden for the company affecting its competitiveness and overall fixed cost structure.

Two further aspects of the compatibility assessment merit some particular mention, the proportionality character of the aid and the treatment of OTE’s alleged other advantages.

The proportional character of the aid

As stated above, the Greek State’s financial participation aimed only to compensate OTE for the extra costs of the VRS due to the permanency which were reflected in (i) the recognition of up to 8 years of notional employment and (ii) the high salary costs of OTE’s personnel that originated from agreements concluded prior to full liberalisation. The proportional character of the aid was thus dependant on having adequately quantified these extra costs and ensured that the State’s financial participation would not end up over-compensating OTE.

On the basis of a series of calculations and expert advice submitted by the Greek government, the Commission accepted that the extra burden on OTE should be set at €390.4 million. The only difficulty was that during the period following the opening of the formal investigation, the value of the State's envisaged transfer of 4% of its own shares of OTE to TAP-OTE had already exceeded €390.4 million because of the upward move of the OTE share price in the Stock exchange. In this respect, the Greek government committed itself to repeal the relevant legislation should the value of its 4% stake in OTE exceed the amount of €390.4 million the day of its transfer to the Pension Fund and to take any measure deemed necessary to ensure that the Pension Fund will not receive any amount in excess of €390.4 million.

The alleged other advantages: Not all types of alleged advantages are relevant

Although the decision opening the formal investigation had left open the possibility that the Commission could also look at any other kind of advantages that OTE as a former monopolist may have benefited from (or may continued to do so) which could be set against the extra costs of the VRS, in its final decision the Commission considered that "the compatibility assessment under

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(15) Moreover, OTE’s stock valuation was always based on the premise that the permanency and high labour costs of its staff are fixed costs for OTE and for the State to assume, See OTE decision, para. 101.
(16) See paragraph 102 of the decision.
Article 87(3) (c) of measures that aim to compensate an ex monopolist for the extra costs that derive from a period when the company concerned operated under a monopoly regime should be limited to examining whether the latter has benefited or continue to do so from other advantages of similar nature only, in the case at hand, other labour law related advantages enjoyed by OTE and which may neutralise the costs in question”\(^{(17)}\).

This is an important statement in relation to the assessment of State aid measures that concern undertakings which used to enjoy in the past the kind of rights that Article 86 of the Treaty declares incompatible. In the life of an ex monopolist one cannot exclude that somewhere there may be still lurking a state measure from the past, other than those that have already been abolished on the ground of Article 86, that could be said to still procure an advantage to the said undertaking. However, it would arguably be beyond the scope of Article 87.3 to link the compatibility assessment of such a measure on first issuing a kind of complete bill of clean health other than focusing on the specific pathogenesis of the patient under examination.

In the case of OTE, the Commission found that the company has not benefited from any other labour advantages that could be set against the extra (labour) costs of the VRS. The investigation also showed that in the past the company was actually “asked” by the State to make more payments towards TAP-OTE over and above its own employer contributions in order to address periodic deficits of the Pension Fund that in principle are for the State to take care of.

The competition advantages: drawing a demarcation line vis-à-vis ex ante regulation

The interplay between State aid and ex ante regulation in a fully liberalised market was one of the other interesting aspects of this case. Competitors of OTE argued during the investigation that a decision to declare the aid compatible should include conditions imposed on the company in order to address a number of competition problems such as the allegedly abusive conduct of OTE in the wholesale fixed-line markets and more generally the alleged shortcomings of the Greek regulatory regime, especially the alleged failure of the National Regulatory Authority (NRA) to take the necessary and timely enforcement measures to tame OTE’s anticompetitive behaviour.

In an important consideration, the Commission took the view that the question whether one would also have to take into account other advantages that derive from the previous monopoly position of the undertaking concerned depends, in essence, on whether the relevant market has been fully liberalised in the sense that an appropriate legal or regulatory framework exists to ensure that the ex monopolists no longer enjoy any exclusive or special rights or other advantages, and that actual or likely distortions of competition can be dealt with effectively under the available ex ante regulatory remedies and/or under the ex post enforcement of the relevant competition law provisions.

In this respect, the Commission noted that under the current regulatory framework \(^{(19)}\), the NRA has already designated OTE as having significant market power within all fixed markets that are included in the Commission Recommendation on Relevant Markets \(^{(20)}\). To date, OTE remains subject to a set of comprehensive ex ante regulatory remedies both at wholesale and retail level. More particularly, OTE is obliged to provide third parties: (a) wholesale access to its fixed network, (b) carrier selection and carrier pre-selection, (c) transit services and a whole set of network services under the principles of fairness, reasonableness and timeliness. As an operator with significant market power in the fixed line market, OTE has also an obligation of non-discrimination, transparency, accounting separation and auditing and is subject to an obligation of price control and cost accounting based on long run average incremental costs on the basis of current costs of assets \(^{(20)}\). Overall, the various cost accounting and accounting separation obligations imposed on OTE aim to ensure that OTE as a former monopolist should derive no advantage that could undermine or distort competition in the market.

\(^{(17)}\) See paragraph 136 of the decision


Moreover, the Commission also stressed that since the opening of the formal investigation the regulatory authority had taken a number of ex post measures against OTE finding violations either of the existing regulatory or competition law provisions (21).

VII. Conclusions

The OTE case is an illustrative example of the Commission’s approach in relation to aid measures which aim to assist the on-going transformation of former monopolists towards truly competitive undertakings that operate within fully competitive markets.

Although the liberalisation of the electronic communications market is now a reality in the EU, certain ex monopolists, like OTE, have yet to complete their transformation course. Most often, the remaining adjustments relate to pension or labour law aspects. The Combus case-law and its uncertain still scope of application further shows that the concept of aid can still raise a number of difficult and intriguing questions even after almost 35 years of solid jurisprudence as to the notion of “economic advantage”.

In the case at hand, it is hoped that the decision will contribute to a level playing field between OTE and all other private operators and will contribute towards more healthy competition in the relevant market.

(21) Thus, on 29 November 2006, the NRA fined OTE a total of EUR 3 million, that is EUR 1 000,000 for breach of the existing regulatory framework (carrier pre-selection) and EUR 2,000,000 for an abuse of a dominant position because of its refusal to provide network access, leverage of market power, and abuse of a relation of economic dependency. Finally, on 2 March 2007, in the context of an injunction relief procedure, the NRA issued two «Temporary Orders», following a request filed by a number of alternative providers which OTE threatened with interconnection interruption, invoking the existence of alleged high outstanding debts of such providers to it. The said order temporarily prohibits OTE from proceeding to Interconnection interruption until the NRA has decided on whether OTE’s claims are founded in the context of a dispute settlement procedure in accordance with the exiting Regulatory framework. See Press release issued by EETT on 2 March 2007.