

(see, *inter alia*, the Court's judgments in *Raso*, *GB-Inno-BM*, *Connect Austria*, *Dusseldorp*, *CBEM* and *MOTOE*). The extension of DEI's dominant position from the primary to the secondary market and its retention on that market, and the undoubted competitive advantage that DEI enjoyed in electricity production because of the low cost of lignite, enabled DEI to feed electricity into the interconnected network in Greece at lower prices, in greater quantities and for a longer period, factors which amount to abusive behaviour (although the Court's case-law does not require proof of behaviour of such kind, having regard to the specific facts of the present case).

- The contested decision adopted by the Commission also found that DEI's competitors needed a diversified spectrum of sources, including access to sufficient quantities of lignite, in order for them to enter the electricity market, viably remain there and effectively participate in competition there. That fact should have been known both to the Hellenic Republic, which failed to grant operating licences for exploitable lignite deposits to DEI's potential competitors, and to DEI when it exercised its quasi-monopolistic rights, using its dominant position on the primary lignite market as leverage to extend its dominant position to the secondary market for the wholesale supply of electricity and to maintain it there, with the result that it *de facto* obstructed or prevented access of the potential new competitors to the secondary market in question.

**Appeal brought on 30 November 2012 by the European Commission against the judgment delivered by the General Court (Sixth Chamber) on 20 September 2012 in Case T-421/09 DEI v European Commission**

(Case C-554/12 P)

(2013/C 32/15)

*Language of the case: Greek*

#### Parties

*Appellant:* European Commission (represented by: T. Khristoforou and A. Antoniadis, Agents, and A. Ikonomou, *dikigoros*)

*Other parties to the proceedings:* Dimosia Epikhirisi Ilektrismou AE (DEI), Hellenic Republic

#### Form of order sought

- set aside the General Court's judgment of 20 September 2012 in Case T-421/09 in its entirety;
- give final judgment in the matter if it is considered that the state of the proceedings so permits;
- order DEI to pay its own costs, and the Commission's costs at first instance and on appeal.

#### Pleas in law and main arguments

1. By its judgment in Case T-421/09, the General Court annulled the decision of 4 August 2009 by which the Commission found that the corrective measures proposed by the Hellenic Republic were necessary and proportionate for removing the consequences of the infringement and ensuring compliance with the previous decision of 5 March 2008 ('the decision of 4 August 2009' or 'the contested decision'). The General Court held that the contested decision had to be annulled, basing its assessment solely on the fact that the Commission's previous decision of 5 March 2008, upon which the contested decision was exclusively founded, had in the meantime been annulled by its judgment in Case T-169/08, also delivered on 20 September 2012.
2. Since the Commission considers that the General Court's judgment in Case T-169/08 is based on many errors of law, on defective and insufficient reasoning and on misinterpretation of the evidence and of the basis of the Commission's decision of 5 March 2008, it has already also brought an appeal against that judgment of the General Court. Therefore, if that appeal against the judgment in Case T-169/08 is upheld, the sole basis upon which the judgment under appeal in the present case (T-421/09) was founded will also automatically disappear.

**Reference for a preliminary ruling from the Tribunale di Tivoli (Italy) lodged on 3 December 2012 — Claudio Loreti and Others v Comune di Zagarolo**

(Case C-555/12)

(2013/C 32/16)

*Language of the case: Italian*

#### Referring court

Tribunale di Tivoli

#### Parties to the main proceedings

*Applicants:* Claudio Loreti and Others

*Defendant:* Comune di Zagarolo

#### Questions referred

It is considered necessary to refer to the European Court of Justice of the European Union questions of interpretation for a preliminary ruling on:

1. the compatibility of Article 7 of the Code of Administrative Procedure in force in the Italian Republic, which, pursuant to Article 103 of the Italian Constitution, provides that