

# Table of Contents

<b>Foreword</b> . . . . .	V
<i>Margrethe Vestager</i>	
<b>Introduction: The Law of the – State Aid – Jungle</b> . . . . .	VII
<i>Caroline Buts and José Luis Buendía</i>	
<b>Chapter 1</b>	
<b><i>BP Chemicals: An Important Clarification on the Applicability of the MEOP That Still Waits for Its Full Recognition</i></b> . . . . .	1
Case T-11/95 BP Chemicals Limited v European Commission (‘BP Chemicals’) [1998] <i>Małgorzata Agnieszka Cyndecka</i>	
<b>Chapter 2</b>	
<b>Every Family Is the Same, Every Family Is Different: State Aid and Free Movement</b> . . . . .	23
Case C-169/08 Presidente del Consiglio dei Ministri v Regione Autonoma della Sardegna (‘Luxury Tax’) [2009] <i>Andrea Biondi</i>	
<b>Chapter 3</b>	
<b><i>PreussenElektra: Dead or Alive?</i></b> . . . . .	33
Case C-379/98 PreussenElektra AG v Schleswig AG [2001] <i>Kai Struckmann</i>	
<b>Chapter 4</b>	
<b>When Is State Aid Granted by Public (or Even Private) Undertakings Imputable to the State?</b> . . . . .	51
Case C-482/99 French Republic v Commission of the European Communities (‘Stardust Marine’) [2002] <i>Juan Jorge Piernas López</i>	
<b>Chapter 5</b>	
<b><i>Altmark: Developments in the Case Law 2018–2021</i></b> . . . . .	69
Case C-280/00 Altmark Trans and Regierungspräsidium Magdeburg [2003] <i>Phedon Nicolaidis</i>	

## Chapter 6

- The Principles for Recovery: SMI and the Importance of a Meticulous Assessment of State Interventions by the Granting Authorities and the Commission** . . . . . 91  
 Case C-277/00 Germany v Commission ('SMI') [2004]  
*Maria Segura, Marianne Clayton and Gaétan Roelants du Vivier*

## Chapter 7

- Pearle and the Lifecycle Approach** . . . . . 107  
 Case C-345/02 Pearle and Others [2004]  
*Leigh Hancher and Anna Nowak-Salles*

## Chapter 8

- Belgium and Forum 187 Once Again Revisited** . . . . . 121  
 Joined Cases C-182/03 and C-217/03 Belgium and Forum 187  
 v Commission [2006]  
*Wout De Cock and Tony Joris*

## Chapter 9

- Tales from an Outermost Region: How Does the Azores Judgment Look from a Distance?** . . . . . 139  
 Case C-88/03 Portugal v Commission ('Azores') [2006]  
*Fiona Wisblade*

## Chapter 10

- Laboratoires Boiron: A Retrospective** . . . . . 149  
 Case C-526/04 Laboratoires Boiron SA v ACOSS [2006]  
*Isabel Taylor*

## Chapter 11

- BUPA: The Illusion of Flexibility That Strengthened Altmark** . . . . . 159  
 Case T-289/03 BUPA and Others v Commission [2008]  
*Alfonso Lamadrid de Pablo*

## Chapter 12

- The Ryanair Charleroi Judgment: What Is Its Legacy?** . . . . . 167  
 Case T-196/04 Ryanair v Commission ('Ryanair Charleroi') [2008]  
*Nicole Robins and Ling Yang*

**Chapter 13**

**The *British Aggregates* Saga: Looking Back at an Earlier Stage of the Selectivity Discussion** . . . . . 183  
 Case C-487/06 P *British Aggregates Association v European Commission* [2008]  
*Clemens Ziegler*

**Chapter 14**

**The Powers and Obligations of National Courts with Regard to Unlawful State Aid control: Lessons Learned from *CELF I* and *CELF II*** . . . . . 193  
 Case C-199/06 *CELF v SIDE* ('*CELF I*') [2007] and Case C-1/09 *CELF v SIDE* ('*CELF II*') [2010]  
*Jacques Derenne*

**Chapter 15**

**The Status of Complainants in State Aid Cases: A Look Back into the *Athinaïki Techniki* Saga** . . . . . 209  
 Case C-521/06 P *Athinaïki Techniki AE v Commission* ('*Athinaïki Techniki I*') [2008] and Case C-362/09 P *Athinaïki Techniki AE v Commission* ('*Athinaïki Techniki II*') [2010]  
*Fernando Pastor-Merchant*

**Chapter 16**

**Finding Selectivity or the Art of Comparison** . . . . . 223  
 Joined Cases C-78 to 80/08 *Paint Graphos and Others* [2011]  
*José Luis Buendía Sierra*

**Chapter 17**

**The *NOx* Case: Ten Years On and Still Trying to Fit in a System** . . . . . 237  
 Case C-279/08 P *Commission v Netherlands* ('*NOx*') [2011]  
*Philipp Werner and Martin Wortmann*

**Chapter 18**

***Gibraltar*: A Landmark Judgment Misinterpreted** . . . . . 261  
 Case C-107/09 P *European Commission and Kingdom of Spain v Government of Gibraltar and United Kingdom* ('*Gibraltar*') [2011]  
*Pierpaolo Rossi-Maccanico*

## Chapter 19

- The EDF Case: A Distant Mirror** . . . . . 275  
 Case C-124/10 P European Commission v Électricité de France  
 ('EDF') [2012]  
*Bernhard von Wendland*

## Chapter 20

- Commission Guidelines and Their Limits** . . . . . 295  
 Case T-304/08 Smurfit Kappa v Commission [2012]  
*Vincent Verouden*

## Chapter 21

- State Aid, Public Funding and Infrastructure** . . . . . 309  
 Case C-288/11 P Mitteldeutsche Flughafen AG, Flughafen Leipzig-  
 Halle GmbH, established in Leipzig v European Commission  
 ('Leipzig-Halle') [2012]  
*Erika Szyszczak*

## Chapter 22

- Ryanair v Commission: A Tale of Lost and Revived Opportunity** . . . . 331  
 Case C-287/12 P Ryanair v Commission [2013]  
*Elisabetta Righini and Natália Solárová*

## Chapter 23

- New Challenges for the Legal Standing in Actions for Annulment  
 after the Appeal Judgment in the Case Deutsche Lufthansa** . . . . . 355  
 Case C-453/19 P Deutsche Lufthansa v European Commission [2021]  
*Carlos Deniz Cesarano and Christian Koenig*

## Chapter 24

- The Bank Burgenland Case: Privatisations Require the Phantom  
 Market Operator to Forget its Corporate Social Responsibility** . . . . . 371  
 Joined Cases C-242/12 P, C-215/12 P and C-223/12 P  
 Land Burgenland and Others v Commission [2013]  
*Michael Schütte*

## Chapter 25

- Mediaset III: The Recovery Revolution Deactivated** . . . . . 383  
 Case C-69/13 Mediaset S.p.A. v Ministero dello Sviluppo Economico  
*Massimo Merola*

**Chapter 26**

***Ciudad de la Luz* Judgment: An In-Depth Review  
of the Market Economy Investor Principle** . . . . . 409  
 Joined Cases T-319/12 and T-321/12 Kingdom of Spain and others  
 v European Commission [2014]  
*Adina Claiici*

**Chapter 27**

***Eventech*: The Non-Selective Advantages of a Bus Lane Policy** . . . . . 419  
 Case C-518/13 Eventech v The Parking Adjudicator [2015]  
*Greetje van Heezik*

**Chapter 28**

**Interpretative Boundaries of EU and National Law  
in Case of *Res Judicata*** . . . . . 441  
 Case C-505/14 Klausner Holz Niedersachsen v  
 Land Nordrhein-Westfalen [2015]  
*Péter Staviczky*

**Chapter 29**

**The Use of Event Studies to Assess the Amount of Aid:  
Some Lessons Learned from the *France Télécom* Case** . . . . . 453  
 Case C-486/15 P European Commission v French Republic  
 and Orange [2016]  
*Alejandro Requejo Tovar*

**Chapter 30**

**Update on *World Duty Free Group*** . . . . . 459  
 Joined Cases C-51/19 P and C-64/19 P World Duty Free Group SA  
 and Spain v Commission [2021]  
*Conor Quigley QC*

**Chapter 31**

***FIH Holding*: The Market Economy Operator Principle  
as a Concept Based on Law and Economics, but Where  
the Law Prevails** . . . . . 469  
 Case C-579/16 P European Commission v FIH Holding and  
 FIH Erhvervsbank (‘FIH Holding’) [2018]  
*Małgorzata Agnieszka Cyndecka*

### Chapter 32

- State Aid, Turnover Taxes and Ability to Pay: To Cut the Gordian Knot?** ..... 493  
 Joined Cases T-836/16 and T-624/17 Poland v Commission [2019]  
 and Case C-562/19 P Commission v Poland [2021]  
*Julie Leroy and Francesco Cannas*

### Chapter 33

- Andres: The Unfinished Business of a Seemingly Selective Non-Advantage** ..... 507  
 Case C-203/16 P Dirk Andres v European Commission [2018]  
*Raymond Luja*

### Chapter 34

- Spanish Goodwill: A Textbook on Material Selectivity Awaiting a Second Edition** ..... 519  
 Joined Cases C-53/19 P and C-65/19 P Banco Santander and Santusa v Commission [2021]  
*Andreas Bartosch*

### Chapter 35

- Locus Standi in State Aid Litigation after *Montessori*** ..... 529  
 Joined Cases C-622/16 P to C-624/16 P Scuola Elementare Maria Montessori v Commission, Commission v Scuola Elementare Maria Montessori and Commission v Ferracci [2018]  
*Valérie Noël and Sébastien Thomas*

### Chapter 36

- Eesti Pagar: A Formalistic Approach to Incentive Effect and Recovery Procedures** ..... 555  
 Case C-349/17 Eesti Pagar [2019]  
*Caroline Buts and Péter Staviczy*

### Chapter 37

- State Aid in the Field of Energy: There and Back Again** ..... 577  
 Case C-405/16 P Germany v Commission [2019]  
*Theodoros G Iliopoulos and Eirini Galatsanou*

**Chapter 38**

- Is the Assessment on the Effect on Trade Changing?** . . . . . 593  
 Case T-728/17 Marininvest d.o.o. and Porting d.o.o. v  
 European Commission [2019]  
*Péter Staviczky*

**Chapter 39**

- BMW: Compatibility Assessment and the Two Faces of Discretion  
 in State Aid Law** . . . . . 617  
 Case C-654/17 P Bayerische Motoren Werke AG and  
 Freistaat Sachsen v European Commission [2019]  
*Pablo Ibáñez Colomo*

**Chapter 40**

- Nelson Antunes da Cunha: The Principle of Effective and  
 Immediate Recovery in the Light of a National Limitation Period  
 Shorter Than Ten Years.** . . . . . 631  
 Case C-627/18 Nelson Antunes da Cunha, Lda v Instituto de  
 Financiamento da Agricultura e Pescas IP (IFAP) [2020]  
*Péter Staviczky*

**Chapter 41**

- Dovera: The Interaction of EU State Aid Law and  
 Social Protection** . . . . . 641  
 Case T-216/15 Dôvera zdravotná poisťovňa v Commission [2018]  
 and Joined Cases C-262/18 P and C-271/18 P Commission v Dôvera  
 zdravotná poisťovňa [2020]  
*Joris Gruyters*

**Chapter 42**

- Compagnie des Pêches de Saint-Malo: Questions of Procedure  
 and Substance.** . . . . . 651  
 Case C-212/19 Ministre de l'Agriculture et de l'Alimentation  
 v Compagnie des Pêches de Saint-Malo [2020]  
*Mihalis Kekeleakis, María Muñoz de Juan and Jaap Tilstra*

**Chapter 43**

- Hinkley Point C: Trimming the SAM, While Extending the Reach  
 of Wider EU Law Infringements?** . . . . . 663  
 Case C-594/18 P Austria v Commission ('Hinkley Point C') [2020]  
*Leigh Hancker and Antonios Bouchagiar*

## Chapter 44

### *Fiat, Starbucks, Apple, Amazon and Engie:*

#### **Do Individual Tax Rulings Confer a Selective Advantage? . . . . . 689**

Joined Cases T-131/16 and T-263/16 Belgian Excess Profits [2019],  
 Joined Cases T-755/15 and T-759/15 Fiat [2019], Case T-760/15  
 Starbucks [2019], Joined Cases T-778/16 and T-892/16 Apple [2020],  
 Joined Cases T-816/17 and T-318/18 Amazon [2021], Joined Cases  
 T-516/18 and T-525/18 Engie [2021] and Case C-337/19 P Belgian  
 Excess Profits [2021]

*José Luis Buendía Sierra and Nieves Bayón Fernández*

## Chapter 45

### **The Ryanair COVID-19 State Aid Judgments**

#### **of the General Court . . . . . 715**

Cases T-238/20, T-259/20, T-643/20, T-465/20, T-665/20  
 Ryanair v Commission [2021]

*Juan Jorge Piernas López*

## Chapter 46

### **Milestone or Tombstone? Climate Change and**

#### **State Aid Procedures – Tempus Fugit? . . . . . 741**

Case T-793/14 Tempus Energy and Tempus Energy Technology  
 v Commission [2018]

*Leigh Hancher*

## Chapter 47

### **The Excess Profit Rulings: A Challenging Review**

#### **of the Notion of Scheme . . . . . 765**

Joined Cases T-131/16 and T-263/16 Belgium and Magnetrol  
 International v Commission [2019] and Case C-337/19 P  
 Commission v Belgium and Magnetrol International [2021]

*Marianne Clayton and Maria J Segura*

## **Index . . . . . 785**