



EUROPEAN COMMISSION  
Competition DG

***CASE AT.38700 – Greek lignite and  
electricity markets***

(Only the Greek text is authentic)

**ANTITRUST PROCEDURE**

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Article 106 (3) of the Treaty on the Functioning of the  
European Union

Date: 17/04/2018

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Strasbourg, 17.4.2018  
C(2018) 2104 final

**COMMISSION DECISION**

**of 17.4.2018**

**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**

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(Text with EEA relevance)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 106(3) thereof,

Having regard to 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. ("PPC") for extraction of lignite<sup>1</sup>,

Having regard to the Commission Decision of 4 August 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 PPC for extraction of lignite<sup>2</sup>,

Having regard to the appeals by PPC of the two Decisions and to the subsequent judgments of the European Courts, in particular the judgments of the General Court of 15 December 2016 in cases T-169/08 RENV and T-421/09 RENV<sup>3</sup>, confirming in full and finally both Commission Decisions,

Having regard to the fact that both Commission Decisions are now final and binding and have to be implemented,

Whereas:

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<sup>1</sup> Summary of Commission Decision of 5 March 2008 relating to a proceeding under Article 86(3) of the EC Treaty on the maintaining in force by the Hellenic Republic of rights in favour of Public Power Corporation SA for extraction of lignite (Case COMP/B-1/38.700) (notified under document C(2008) 824), OJ [2008] C93/3.

<sup>2</sup> Summary of Commission Decision of 4 August 2009 relating to a proceeding under Article 86(3) of the EC Treaty 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 (Case COMP/38.700) (notified under document C(2009) 6244), OJ [2009] C243/5.

<sup>3</sup> Judgment of the General Court of 15 December 2016, *DEI v Commission*, T-169/08 RENV, ECLI:EU:T:2016:733; and judgment of the General Court of 15 December 2016, *DEI v Commission*, T-421/09 RENV, ECLI:EU:T:2016:748.

## 1. SUBJECT MATTER

### 1.1. Infringement found in Commission Decision of 5 March 2008

- (1) By Decision of 5 March 2008, relating to a proceeding under Article 106(3) of the Treaty on the Functioning of the European Union<sup>4</sup> on the maintaining in force by the Hellenic Republic of rights in favour of PPC for the extraction of lignite (Case COMP/38.700), the Commission found that the Hellenic Republic infringed Article 106(1) in conjunction with Article 102 TFEU by giving PPC privileged rights to exploitation of lignite in Greece. This Decision is hereinafter referred to as "the 2008 Decision".
- (2) In the 2008 Decision, the Commission found that the Hellenic Republic had infringed Article 106(1) in conjunction with Article 102 TFEU, to the extent that it granted and maintained privileged rights to PPC for the exploitation of lignite in Greece, thereby creating inequality of opportunity between economic operators as regards access to primary fuels (i.e. lignite) for the production of electricity and enabling PPC to maintain or reinforce its dominant position on the Greek wholesale electricity market by excluding or hindering market entry by newcomers.
- (3) The Commission, in Article 2 of the 2008 Decision, called upon the Hellenic Republic to adopt and implement, within eight months from the notification of the 2008 Decision, measures correcting the anti-competitive effects of the infringement as identified in Article 1. In addition, Article 2 obliged the Hellenic Republic to abstain from adopting any measure that may aggravate the situation.
- (4) As specified in the 2008 Decision, the scope and purpose of the measures is to ensure that the competitors of PPC have access to sufficient amounts of lignite and to generation of electricity based on lignite, allowing them to exercise a competitive constraint on PPC during off-peak periods and to build balanced generation portfolios<sup>5</sup>. The 2008 Decision found that PPC's competitors needed a mix of generation sources and that lignite-fired capacity would provide the flexibility they lacked in order to compete on the wholesale electricity market<sup>6</sup>. The 2008 Decision indicated that a divestment of around 40% of lignite reserves or lignite-fired generation capacity (representing at least one third of baseload production) was the minimum target to allow PPC's competitors to exercise competitive pressure on the incumbent<sup>7</sup>.
- (5) The Commission also indicated *non exhaustively and on an indicative basis* some examples of concrete measures that could be adopted by the Hellenic Republic, cumulatively or separately, to remove the effects of the infringement<sup>8</sup>. The 2008

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<sup>4</sup> With effect from 1 December 2009, Articles 81, 82 and 86 of the EC Treaty have become Articles 101, 102, and 106 respectively, of the Treaty on the Functioning of the European Union ("TFEU"). The three sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101, 102 and 106 of the TFEU should be understood as references to Articles 81, 82 and 86, respectively, of the EC Treaty where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this Decision.

<sup>5</sup> The scope of the remedies to be adopted by the Hellenic Republic is explained in recitals 245 et seq. and in particular 246 and 247 (including footnote 255) of the 2008 Decision.

<sup>6</sup> See recital 215 of the 2008 Decision.

<sup>7</sup> See footnote 255 of the 2008 Decision.

<sup>8</sup> See recital 248 of the 2008 Decision.

Decision further specified that if the Hellenic Republic revised its policy of allowing further exploitation rights on lignite deposits in Greece, with a view to taking into account EU environmental policies regarding CO<sub>2</sub> emissions, the measures would have to be aligned with that revised policy<sup>9</sup>.

- (6) Finally, pursuant to recital 252 of the 2008 Decision, the Commission retained the right to adopt a further decision thereby establishing specific measures to correct the anti-competitive effects of the infringement established by the Decision pursuant to Article 106 TFEU.

## **1.2. Remedies made binding by Commission Decision of 4 August 2009**

- (7) Following receipt of the 2008 Decision, the Hellenic Republic communicated a number of measures it intended to adopt with a view to ensure access by competitors of PPC to lignite and ultimately to lignite-fired generation in the Greek electricity market.
- (8) Those measures were made binding by Commission Decision of 4 August 2009, establishing the specific measures to correct the anti-competitive effects of the infringement identified in the 2008 Decision on the granting or maintaining in force by the Hellenic Republic of rights in favour of PPC for extraction of lignite. This Decision is hereinafter referred to as "the 2009 Decision".
- (9) The scope of those measures was set out in detail in the 2009 Decision, which made binding on the Hellenic Republic a commitment to grant exploitation rights on the lignite deposits of Drama, Ellassona, Vegora and Vevi through tender procedures to entities other than PPC. That way, competitors of PPC were to obtain exploitation rights to around 40% of the total exploitable lignite reserves in Greece and would be able to build lignite-fired electricity generation in order to compete with PPC on an equal footing.
- (10) The exploitation rights for the Drama, Ellasona and Vegora deposits were to be granted within twelve months from the notification of the 2009 Decision. As to the Vevi deposit, a tender procedure, which was launched prior to the 2008 Decision, was already on-going. The 2009 Decision stipulated that if that tender procedure was annulled, PPC should be excluded from the new tender procedure.

## **2. THE EU COURTS JUDGMENTS AND THE NEW REMEDIES PROPOSAL**

### **2.1. The judgments of the EU Courts**

- (11) By judgments of 15 December 2016, the General Court upheld the Commission Decisions of 2008 and 2009<sup>10</sup>.
- (12) In its December 2016 judgments, the General Court confirmed the existence of inequality of opportunity that the quasi-exclusive rights for the exploitation of lignite granted to PPC created against its competitors<sup>11</sup>. The General Court ascertained that

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<sup>9</sup> See recital 249 of the 2008 Decision.

<sup>10</sup> Case T-169/08 RENV *DEI v Commission* and Case T-421/09 RENV *DEI v Commission* not yet reported.

<sup>11</sup> Case T-169/08 RENV *DEI v Commission*, paragraphs 118-131, 143 and 150; and Case T-421/09 RENV *DEI/Commission*, paragraphs 85-86 and 150.

PPC remains the only undertaking that can exploit significant volumes of lignite<sup>12</sup> and that, at the same time, its competitors are left without any lignite supply options and, as a result, they are unable to compete with PPC on equal footing in the Greek wholesale electricity market. In order to eliminate such disparity between PPC and its competitors created by the Hellenic Republic, the General Court confirmed that PPC's competitors should be given access to sufficient quantities of lignite and capacity of power generation from lignite<sup>13</sup>.

- (13) The General Court also confirmed that granting PPC's competitors access to at least 40% of the total exploitable lignite reserves was necessary and adequate to reach this goal<sup>14</sup>. At the same time, the General Court confirmed the proportionate character of the 40% target, as PPC would continue to have access to approximately 60% of the exploitable lignite reserves in Greece and to be by far the largest electricity operator in Greece<sup>15</sup>. Finally, the General Court clarified that the 2008 Decision did not require the Hellenic Republic to adopt any specific measure and ultimately left to the Hellenic Republic to choose the measures to be adopted<sup>16</sup>.
- (14) The General Court's 2016 judgments have not been appealed and are now final and binding. The Hellenic Republic has therefore to implement structural measures to address the competition concerns arising from the 2008 Decision.

## **2.2. The proposal of new measures**

- (15) The measures formally accepted by the Commission in the 2009 Decision have not been implemented by the Hellenic Republic until now, nor have been any alternative measures.
- (16) Therefore, the competition issues originally identified in the 2008 Decision have not been solved and will not disappear without proper pro-competitive remedies, as explained in more detail below. In fact, lignite-fired generation still plays an essential role on the wholesale electricity market and is crucial for the security of supply in Greece. Based on the current market circumstances, all interested parties recognize that the current level of lignite-fired generation will still be heavily needed to balance the Greek wholesale market and will therefore continue constituting an essential competitive asset.
- (17) Since the 2008 and 2009 Decisions are now final and binding, the Hellenic Republic has therefore to implement pro-competitive measures to address the competition issues raised in the 2008 Decision.
- (18) In light of the significant changes in its environmental policy since 2008-2009, the Hellenic Republic considers no longer appropriate to resolve the market distortions created by the infringement ascertained in 2008 with the measures identified in the

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<sup>12</sup> Entities other than PPC only have exploration and exploitation rights on a limited number of small and medium-sized public lignite deposits or privately own a limited number of lignite deposits. These entities are not active on the Greek wholesale electricity market and generally have lignite supply contracts with PPC.

<sup>13</sup> Case T-421/09 RENV *DEI v Commission*, paragraph 150.

<sup>14</sup> *Id.*, paragraphs 157 and 161-162; see also Case T-169/08 RENV *DEI v Commission*, paragraphs 242-245.

<sup>15</sup> *Id.*

<sup>16</sup> Case T-169/08 RENV *DEI v Commission*, paragraphs 230 and 242. See also the 2008 Decision, recitals 248-250.

2009 Decision, which would lead to an increase in the use of lignite and likely construction of new plants, besides those currently operating and/or already licensed.

- (19) The scope of the Hellenic Republic's Commitments proposal is therefore to finally address such competition issues, as confirmed by the EU Courts, by new measures amending the measures originally proposed and accepted with the 2009 Decision.
- (20) The possibility for the Hellenic Republic to propose alternative measures is specifically envisaged by the 2008 Decision. The Hellenic Republic can therefore request a revision of the actual remedies to solve the competition issues<sup>17</sup>, if it modifies its policy with regard to further exploitation rights on lignite deposits, with a view to take better account of EU environmental targets.

### **2.3. The Initial Remedies offered by the Hellenic Republic on 1 December 2017**

- (21) On 1 December 2017, the Hellenic Republic officially proposed to the Commission a new set of remedies (hereinafter referred to as the "Initial Remedies") for the purpose of subjecting them to a market test and gather the views of potentially interested third parties. The Hellenic Republic's proposal of new measures is aimed at replacing the measures stipulated in the 2009 Decision and has been discussed in a number of previous meetings between the Commission, the Hellenic Republic and PPC.
- (22) Consistently with the 2008 Decision, the Initial Remedies proposed by the Hellenic Republic aim at opening up the Greek wholesale market to competition by divesting part (around 40%) of PPC's lignite-fired generation capacity as to allow existing competitors or potential new entrants to compete with PPC on a level playing field<sup>18</sup>.
- (23) Under the Initial Remedies proposed to the Commission, the Hellenic Republic commits to procure PPC to divest two divestment businesses (together hereinafter referred to as the "Divestment Businesses"): the "Megalopoli Divestment Business" and the "Meliti Divestment Business". In order to enlarge the number of potentially interested third parties, the Initial Remedies foresee that the two Divestment Businesses can be sold separately to different purchasers.

#### *2.3.1. The Megalopoli Divestment Business*

- (24) The Megalopoli Divestment Business comprises the lignite-fired electricity generation unit of Megalopoli 3, with a capacity of 255 MW<sup>19</sup>, and the lignite-fired electricity generation unit of Megalopoli 4, with a capacity of 256 MW. The electricity production licenses of Megalopoli 3 and Megalopoli 4 will expire respectively in 2025 and 2036.
- (25) The Megalopoli 3 and Megalopoli 4 units have amongst the lowest minimum average variable costs of production in PPC's lignite-fired fleet and are thus amongst the most competitive units on the Greek wholesale electricity market.

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<sup>17</sup> See recital 249 of the 2008 Decision.

<sup>18</sup> For the sake of completeness, it should be noted that, following the 2016 judgments by the General Court, the same structural measures relating to the divestment of lignite-fired capacity were also formally included among the commitments stipulated in the Supplemental Memorandum of Understanding signed on 5 July 2017 between the Hellenic Republic and the Commission, on behalf of the European Stability Mechanism.

<sup>19</sup> This figure, as well as the figures on capacity presented afterwards, refers to net capacity.



- (26) The Megalopoli Divestment Business also comprises all assets, licenses and contracts associated to the Megalopoli 3 and Megalopoli 4 units and the personnel currently employed within the units.
- (27) In addition, it includes the relevant mining exploration and exploitation rights on the lignite mine of Megalopoli (whose estimated lignite reserves amount to ≈[80-130] million metric tons), together with the associated mining infrastructure, the personnel currently employed in the mine and the main associated assets and contracts.
- (28) In conclusion, in terms of divested lignite-fired capacity, the Megalopoli Divestment Business represents up to 511 MW and, on average over the period 2018-2035, 12.8% of PPC's total forecasted lignite-fired capacity.

### 2.3.2. *The Meliti Divestment Business*

- (29) The Meliti Divestment Business comprises the lignite-fired electricity generation unit of Meliti 1, with a capacity equal to 289 MW and whose electricity production license will expire in 2048, as well as the option (and related licenses) to build a supplemental lignite-fired unit called Meliti 2, whose license has been issued in 2009 and is valid for 30 years and whose capacity is expected to be equal to 420 MW.
- (30) The Meliti 1 lignite-fired unit was commissioned in 2003 and is the most modern of PPC's lignite-fired units. It has the lowest minimum average variable cost of production in PPC's lignite-fired fleet and is thus amongst the most competitive units on the Greek wholesale electricity market.
- (31) The Meliti Divestment Business comprises all assets, licenses and contracts associated as well as the personnel currently employed in Meliti 1. It includes the relevant mining exploration and exploitation rights on the mines of Lofi-Meliti, Klidi and Vevi (for total estimated lignite reserves amounting to [130-160] million metric tons), together with the associated personnel and mining infrastructure.
- (32) In addition, with a view to ensure that the purchaser of the Meliti Divestment Business will have sufficient lignite supply in order to operate the unit(s), in the Initial Remedies the Hellenic Republic also commits to carry out an appropriate procedure for the granting of the mining exploration and exploitation rights for the part of the Vevi deposits that currently remains at the Hellenic Republic's disposal and which represent estimated lignite reserves equal to [70-120] million metric tons.
- (33) Finally, the Meliti Divestment Business also includes PPC's lignite supply contracts with third party mines.
- (34) In conclusion, in terms of divested lignite-fired capacity, the Meliti Divestment Business represents up to 709 MW and, on average, up to 22.8% of PPC's total forecasted lignite fired capacity over the period 2018-2035.

### 2.3.3. *Total divested capacity resulting from the Initial Remedies and provisions related to the execution of the divestiture*

- (35) Overall, in terms of divested lignite-fired capacity, the Divestment Businesses included in the Initial Remedies represent up to 1220 MW and, on average, up to 35.6% of PPC's total forecasted lignite fired capacity over the period 2018-2035<sup>20</sup>.

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<sup>20</sup> See section 4 for a detailed analysis of the Divestment Businesses.

- (36) According to the Initial Remedies, to carry out the divestiture, PPC will have to design and run, based on a fair valuation, an international open tender procedure, under the supervision of a monitoring trustee and through means of an official publication of a call for tender by May 2018. To ensure a fair valuation of the Divestment Businesses, PPC will appoint an independent valuator subject to prior approval by the Commission. The appointed valuator will have to assess the value of each of the Divestment Businesses separately in the last phase of the tender process with a view to determine a fair value range of both Divestment Businesses. For the valuation of each of the Divestment Businesses, the valuator will also have to consider similar transactions which have happened in the last years and that PPC will carry a proportionate part of the decommissioning costs.
- (37) Under the Initial Remedies and in order to ensure a proper divestiture of the Divestment Businesses, by May 2018 the Hellenic Republic commits to procure that PPC will effectively implement all the necessary corporate measures and/or resolutions and that PPC will carry out the actual carve-out and/or spin-off of the Divestment Businesses. In addition, by May 2018, the Hellenic Republic also commits to take all the necessary steps for the effective preparation of the divestment, including the adoption of all the necessary legislative, regulatory and corporate measures and/or resolutions as well as the official launch of the tender. This includes the adoption by the Hellenic Republic of special legislation envisaging that PPC takes all necessary corporate measures and/or resolutions to carve-out the Divestment Businesses into two wholly-owned subsidiaries.

#### **2.4. The Market Test and the revised Remedies submitted by the Hellenic Republic on 19 January 2018**

##### *2.4.1. Market Test*

- (38) Following up from the Hellenic Republic's proposal for a new remedy package and the official submission of the Initial Remedies described above, on 14 December 2017 the Commission launched an extensive consultation with market participants and potentially interested third parties through a detailed questionnaire on the viability and attractiveness of the Divestment Businesses and the market conditions in Greece (the "Market Test"). The Commission's questionnaire contained questions aimed at assessing whether the divestiture of existing lignite-fired generation capacity as foreseen in the Initial Remedies was apt at increasing, under current market circumstances, the competitive pressure brought by PPC's actual or potential competitors in the Greek wholesale market.
- (39) The Commission sent the questionnaire to more than 80 potentially interested third parties, including companies operating outside Europe (e.g. Asia and North-America). The large majority of the names of the Market Test's addressees was suggested by PPC in order to gather the wider possible variety of views and cover a large spectrum of interests and expertises, also from companies operating in different continents and at different levels of the supply chain (e.g. financial investors, portfolio/holding companies and commodities merchants active in the energy sector).

The Commission received 30 replies, covering all Greek addresses (100%) and the majority of European (non-Greek) companies<sup>21</sup>.

- (40) Overall, the large majority of the responses were favourable to the proposal put forward by the Hellenic Republic. The Market Test showed that the Divestment Businesses contain viable and competitive plants that would allow, in principle, actual or potential competitors of PPC to operate in the Greek wholesale electricity market. Some parties generally acknowledged that the proposed Divestment Businesses have low variable cost and are thus apt at operating competitively under different market conditions - thus also potentially providing base-load capacity during off peak hours, which, as further explained below, is a crucial competitive issue.
- (41) The assets included in the Divestment Businesses also proved to be generally attractive to the market, thus also showing their overall viability. A total of 15 companies expressed interest in possibly acquiring one or both of the Divestment Businesses proposed for divestiture.
- (42) Overall, the proposed measures were deemed appropriate to solve the competition concerns identified in the 2008 Decision, at the same time taking into account the change in market circumstances and in the Greek environmental policy.
- (43) Finally, a number of respondents also submitted comments aimed at improving the viability of the lignite-fired power plants and, overall, the effectiveness of the Remedies. In particular, the three main points raised by the Market Test were the following:
- (1) due to some technical limitation on the electricity transmission grid in the Megalopoli/Peloponnese area, the Remedies could further clarify how potential congestions issues would be managed;
  - (2) the Market Test also indicated that some clarifications would be needed with regard to the lignite sources available to supply the Meliti Divestment Business and with regard to the tendering procedure for the granting of the mining exploration and exploitation rights on the part of the Vevi deposit that currently remains at the Hellenic Republic's disposal;
  - (3) finally, some parties commented that, due to the presence of shared facilities and personnel among the lignite-fired unit of Megalopoli 4 and the gas-fired unit of Megalopoli 5 (retained by PPC), the Remedies text could further clarify to which extent these facilities and personnel will be separated and under which conditions they will be shared between PPC and the purchaser of the Megalopoli Divestment Business.
- (44) A number of respondents also stressed that, in order to further improve the attractiveness of the Divestment Businesses by creating a more balanced portfolio of generation, hydroelectric generation should also be included in the divestment package.

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<sup>21</sup> The response ratio from non-EU parties was considerably lower due to the lack of knowledge and/or interest of the addressees with respect to the Greek wholesale electricity market or specifically lignite-fired generation. Most of the non-responding parties are not present in Europe and in any case do not operate in electricity production or simply have no specific expertise in the operation of lignite-fired plants.

(45) Some parties also emphasized the importance of having complete and transparent information on the validity of the current licenses and permits of the Divestment Businesses as well as on the staffing of the Divestment Businesses.

(46) Subsequently, the Commission informed the Hellenic Republic and PPC of the observations received from interested parties.

#### 2.4.2. *The Remedies of 19 January 2018*

(47) Following the Market Test and based on the analysis of current competitive constraints in the Greek wholesale electricity market, the Commission finalised its assessment of the potential pro-competitive effects arising from the proposed measures and thereafter informed the Hellenic Republic and PPC of the improvements needed in order to make the Divestment Businesses a viable package of assets capable of addressing the competition concerns raised in the 2008 Decision.

(48) On 19 January 2018, the Hellenic Republic submitted revised measures (hereinafter referred to as the "Remedies" and attached in the Annex), taking account of the comments made by interested third parties and the issues raised by the Commission thereafter.

(49) The Remedies contain a number of modifications and clarifications aimed at improving the viability of the lignite-fired power plants and, overall, the effectiveness of the proposed measures. These modifications consist in particular in the following:

- (1) on the basis of information received by the Commission from the Greek TSO (ADMIE), the Remedies foresee that in order to avoid congestions issues in the Megalopoli area, PPC's gas-fired unit Megalopoli 5 will operate at limited capacity until the completion of the first high-voltage corridor in the Peloponnese, which is expected to occur in 2019. Before the completion of the first high-voltage corridor, the Remedies foresee that the dispatch of the units in the Megalopoli area will be carried out according to their respective positioning on the merit curve;
- (2) specific clauses ensuring the legitimate transfer of mining exploration and exploitation rights on the lignite reserves necessary to run and operate the Meliti Divestment Business have been included; and
- (3) more detailed provisions on the sharing of personnel and common infrastructure between Megalopoli 4 and Megalopoli 5 have also been included.

(50) With regard to the inclusion of hydroelectric generation in the divestment package, it is worth recalling that the scope of the current case is limited to lignite – more specifically it is aimed at reducing the asymmetry between PPC and its competitors by putting an end, ultimately, to the exclusive access to lignite-fired generation by PPC. Therefore, any consideration regarding access to hydroelectric capacity by competitors of PPC falls outside of the scope of this case.

(51) With regard to the request formulated by interested third parties aimed at obtaining supplemental information on the licenses and permits of the Divestment Businesses, the Commission considered that the text of the Remedies contained sufficient

safeguards aimed at ensuring that all necessary licenses, concessions, authorisations and permits for the pursuing of the activities of the Divestment Businesses will be transferred or, if necessary, re-issued<sup>22</sup>.

- (52) Finally, with regard to the request formulated by interested third parties aimed at obtaining supplemental information with regard to the staffing of the Divestment Businesses, the Remedies specify that, at most, the personnel currently employed for the needs of the Divestment Businesses will be transferred to the purchaser(s).

### **3. SCOPE OF THE REMEDIES**

#### **3.1. Change in the Greek/EU Environmental Policy**

- (53) As discussed, the 2008 Decision specifically allows for a revision of the corrective measures in order to take into account the changes in the Greek (and EU) CO<sub>2</sub> emission reduction policy<sup>23</sup>. The Hellenic Republic requested for the first time a revision of the 2009 remedies due its new environmental targets already in 2010. More specifically, on 21 October 2010, the Hellenic Republic officially communicated to the Commission that it could not comply with the measures indicated in the 2009 Decision given that the allocation of new lignite exploitation rights to PPC's competitors would run counter to its – at the time – new environmental policy, which had been adjusted in line with the EU objectives to reduce emissions. The Hellenic Republic explicitly indicated that it would not allocate any new lignite exploitation rights besides those relating to the Vevi deposit, for which a tender procedure was already underway.
- (54) At the same time, the Hellenic Republic also proposed new measures aimed at increasing competition in the Greek electricity wholesale market through the use of lignite. The scope of the new measures was to grant competitors of PPC access to PPC's existing lignite-fired generation capacity<sup>24</sup>. Nonetheless, as the 2008 and 2009 Decisions were in the meantime annulled by the General Court, no final decision on the new remedies could be taken.
- (55) However, the trend in decarbonisation in Greece has continued since then. As part of its environmental policy, the Hellenic Republic has also developed a plan for the decommissioning of existing lignite-fired electricity generation plants and for the restriction of the operating hours of some lignite-fired electricity generation plants, in order to comply with EU environmental requirements<sup>25</sup>.

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<sup>22</sup> With this regard, see in particular par. 11 of the Commitments in the Annex.

<sup>23</sup> See recital 249 of the 2008 Decision.

<sup>24</sup> The Hellenic Republic supplemented its first request by letters of 20 November 2010, 13 January 2011, 11 April 2011, 12 January 2012 and, finally, on 30 March 2012. The Commission ran extensive market consultations on the proposed new remedies and gathered sufficient evidence to adopt a new decision in 2012, replacing the 2009 Decision.

<sup>25</sup> The request for a review of the 2009 Decision made by the Hellenic Republic in 2012 referred to the change in environmental policy as a result of the adoption of Directive 2010/75/EU on industrial emissions (IED), which has replaced, as from 7/1/2013, Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (the IPPC Directive), as well as Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants (for existing plants, the new stricter provisions apply only as from 1/1/2016). Currently, Directive 2010/75/EU is the main EU instrument regulating pollutant emissions from

- (56) The rationale for the new remedies proposal is still grounded in the need to adjust the corrective measures to the current "green" targets and market reality. More specifically, given that access to new exploitation rights over sources of lignite is no longer possible under the Hellenic Republic's environmental policy and the measures it is pursuing to implement the EU 2020 objectives to reduce CO<sub>2</sub> emissions, the Hellenic Republic has proposed to give third parties the opportunity to access existing lignite-fired capacity.

### **3.2. The state of competition on the Greek wholesale electricity market and the enduring importance of lignite-fired generation**

- (57) As seen above, the 2008 Decision indicates that pro-competitive measures should ensure that the effects of the infringement are removed and that this can be achieved by giving competitors of PPC access to sufficient amount of lignite and to generation of electricity on the basis of lignite<sup>26</sup>. This would allow third parties to compete with PPC in the electricity wholesale market.
- (58) Almost ten years after the adoption of the 2008 Decision, the Greek electricity market appears to suffer from the same distortions identified in the original assessment made by the Commission. As highlighted by the Regulatory Authority for Energy (RAE) in its 2017 report to the European Commission, "*the electricity wholesale (and retail) market remains highly concentrated. PPC owns and operates all of the 7085 MW of Greek lignite and hydro power capacity*"<sup>27</sup>.
- (59) Overall, in the last few years, PPC's share of total electricity wholesale production remained very high when excluding renewable energy sources (RES), which do not exert competitive pressure on the wholesale market<sup>28</sup>. It amounted to more than 90% in 2014 and 2015 and to more than 75% in 2016 and 2017<sup>29</sup>.
- (60) While in 2016, especially due to the decrease in gas prices, the share of lignite-fired production over total wholesale production excluding RES amounted to ≈45%, in

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industrial installations. The IED was adopted on 24 November 2010. The IED is based on a Commission proposal recasting 7 previously existing directives (including in particular the IPPC Directive) following an extensive review of the policy. The IED entered into force on 6 January 2011 and had to be transposed by Member States by 7 January 2013. Under the IED, Member States have an obligation to ensure that large industrial facilities are operated in accordance with environmental permits issued by Competent Authorities. Such permits are required to be based on the application of Best Available Techniques (BAT) conclusions. BAT conclusions are the reference for setting permit conditions for installations covered by Chapter II of Directive 2010/75/EU. Competent authorities should set emission limit values which ensure that, under normal operating conditions, emissions do not exceed the emission levels associated with the best available techniques as laid down in the BAT conclusions. Chapter III (with Annex V) of the IED sets out special provisions for certain pollutant emissions from large combustion plants with a total rated thermal input equal to or greater than 50 MW, irrespective of the type of fuel used. These apply as minimum emission limit values to be respected in all cases. There are some temporary derogation mechanisms which allow for existing plants to continue operating without having to comply with the new stricter emission limit values (main derogations are running up to mid-2020, for plants covered by a so-called "transitional national plan" or up to end 2023 for plants covered by a "limited life time" derogation).

<sup>26</sup> This is clearly stated in recital 246 of the 2008 Decision and reiterated by the General Court, Case T-421/09 *RENV DEI v Commission*, par. 150.

<sup>27</sup> See RAE's national report 2017 to the European Commission (October 2017).

<sup>28</sup> RES units do not compete on the mandatory day-ahead pool as they benefit from priority dispatch.

<sup>29</sup> See RAE's national report 2017 to the European Commission (October 2017) and the monthly reports published by LAGIE.

2017 this share increased again to  $\approx 50\%$ <sup>30</sup>. It is not excluded that in the next few years the 2014 level, when PPC's lignite-fired generation accounted for  $\approx 70\%$  of total wholesale production excluding RES, will be reached again. These figures are largely in line with the findings of the Commission in 2008 (see recitals 86 and 188 of the 2008 Decision).

- (61) Still today, in order to bring more competition in the Greek market and to exercise more competitive pressure in particular during off-peak periods, third-party competitors need to have access to more base-load capacity, which in Greece is still significantly dependent on lignite<sup>31</sup>. In fact, lignite remains an important source of low-cost electricity generation in Greece<sup>32</sup> and having access to lignite-fired generation capacity would give to PPC's competitors a more competitive generation mix.
- (62) In other words, still today, as set out in the 2008 Decision, competitors of PPC need access to lignite-fired electricity generation capacity to increase their competitive pressure on the Greek wholesale market and to address the enduring distortions in favour of PPC<sup>33</sup>.

#### **4. EFFECTIVENESS OF THE REMEDIES**

- (63) As specified in the 2008 Decision, the purpose of the measures is to ensure that the competitors of PPC have access to sufficient amount of lignite and to generation of electricity based on lignite allowing them to exercise a competitive constraint on PPC during off-peak periods and to build balanced generation portfolios<sup>34</sup>.
- (64) The Remedies should address the issues arising from the 2008 Decision. In line with the change in the Hellenic Republic's environmental policy, they do it by divesting part of the existing lignite-fired generation capacity instead of opening up new lignite mines. This will allow PPC's competitors to have access to lignite-fired capacity in a relatively short timeframe.
- (65) Under the Remedies submitted on 19 January 2018, the Hellenic Republic will ensure that PPC divests the Megalopoli Divestment Business and the Meliti Divestment Business as described above.

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<sup>30</sup> Based on data published by the market operator LAGIE in its DAS monthly reports.

<sup>31</sup> Electricity generators need "base-load" capacity to economically generate the electrical power required to satisfy the minimum demand on an electrical grid over a given period of time. For power companies being able to produce (i.e. sell) base-load capacity means having a crucial competitive assets, as they are the ones that will be called to run most, if not all, of the time, on a given electricity market.

<sup>32</sup> RAE's national report 2017 to the European Commission (October 2017) shows that lignite-fired generation has by far the highest capacity factor amongst all electricity production sources in Greece. This is because, contrarily to other sources of electricity generation, due to its low variable cost of production, lignite often enters the merit curve at low prices and is thus frequently dispatched, also in off-peak hours.

<sup>33</sup> As seen above, since the 2008 Decision is about the competitive distortions created by PPC's quasi-exclusive access to lignite and lignite-fired generation (only), which are still actual today, the corrective measures cannot and should not take into account other sources of electricity capacity generation.

<sup>34</sup> The scope of the remedies to be adopted by the Hellenic Republic is explained in recitals 245 et seq. and in particular 246 and 247 (including footnote 255) of the 2008 Decision.

- (66) As presented above, the Divestment Businesses represent up to 1220 MW of lignite-fired capacity<sup>35</sup> and, on average, up to 35.6% of PPC's total forecasted lignite-fired capacity over the period 2018-2035<sup>36</sup>.
- (67) The divested capacity available for third parties, while slightly below the 40% target established in the 2008 Decision, results in a balanced portfolio of lignite-fired generation capacity, which will be relatively stable over the entire period and it is expected to allow the purchaser(s) of the Divestment Businesses to exert competitive pressure over PPC. The positive feedback provided by the Market Test with this regard also shows that the Divestment Businesses are considered generally as viable assets to compete in the Greek market, already in the short term, consistently with the purpose of the Decision (and with the 10-years delay since the 2008 Decision).
- (68) The analysis of the Greek wholesale electricity market shows that, in line with what has been stressed by the respondents to the Market Test, the three lignite-fired units included in the Remedies have low variable costs per MWh produced, at least in line with the average variable costs of PPC's lignite-fired fleet. This feature makes these units amongst the most competitive ones on the Greek wholesale electricity market.
- (69) In addition, in order to ensure an effective and proportionate remedy, the efficiency<sup>37</sup> of the lignite-fired plants due to be sold under the Hellenic Republic's Remedies is very close to the efficiency of PPC's remaining lignite-fired generation portfolio. At the same time, the share of lignite reserves included in the Divestment Businesses is in line with the share of lignite-fired generation capacity meant to be divested to third parties. Finally, the Divestment Businesses present an average CO<sub>2</sub> emission factor over the 2018-2035 period, expressed in kg CO<sub>2</sub>/kWh, which is similar to the one of the lignite-fired units retained by PPC.
- (70) The Market Test has shown that the Divestment Businesses included in the Remedies raise the interest of a relatively large number of third parties. As the Remedies foresee that the two Divestment Businesses can be sold separately to different purchasers, this allows further enlarging the number of potentially interested third parties.
- (71) The methodology for the allocation of decommissioning costs foreseen in the Remedies and based on the respective years of operation of the Divestment Businesses, appears suitable to ensure a fair allocation of these costs between PPC and the purchaser(s).
- (72) The tender process foreseen in the Remedies appears adequate to ensure that the overall process is managed in an objective way and that a fair valuation of the Divestment Businesses is carried out. The Remedies foresee that PPC will appoint an independent valuator, subject to prior approval by the Commission, which shall have discretion to approve or reject the proposed valuator and which will assess the

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<sup>35</sup> This figure refers to the total net capacity of the Divestment Businesses.

<sup>36</sup> In case the purchaser of the Meliti Divestment Business decides not to build the already licensed unit of Meliti 2, the total capacity resulting from the divestiture of the Divestment Businesses decreases to 800 MW, which, on average, amounts to 27.3% of PPC's total forecasted lignite-fired capacity over the period 2018-2035. The divestiture of this capacity will, in any event, allow competitors of PPC to exert competitive pressure in off-peak hours.

<sup>37</sup> The efficiency of the plants is assessed with regard to their maximum ratio of useful energy output over input heat energy.



valuator according to the qualifications applicable for monitoring trustees. The Remedies also foresee that, in order to ensure a fair valuation of the Divestment Businesses, the independent valuator will also consider similar transactions occurred in the last years and that, as stated above, PPC will carry a proportionate part of the decommissioning costs.

- (73) Moreover, the design of the process ensures that the effective divestiture of the Divestment Businesses can take place within the timeframe foreseen in the Remedies as to allow the purchaser(s) to start operating the Divestment Businesses already in early 2019.
- (74) In light of the above, the Commission considers that the proportion and the intrinsic features of lignite-fired generation capacity that will come under the control of third parties according to the Remedies submitted by the Hellenic Republic will enable actual or potential competitors to exercise competitive pressure in the Greek wholesale electricity market, insofar as lignite-fired power generation is concerned. In particular, following the divestiture of the Divestment Businesses, competitors of PPC will increase their share of base-load electricity in Greece and will be able to exert more competitive pressure on the wholesale market irrespective of the level of gas prices. The electricity production licenses and the lignite reserves associated to the Divestment Businesses ensure that such increased competitive pressure can be exerted over a relatively long timeframe.
- (75) The Commission therefore considers that the new Remedies are appropriate and sufficient to address the competition concerns identified by the Commission in its 2008 Decision.

## **5. PROPORTIONALITY OF THE REMEDIES**

### **5.1. Proportionality *vis-à-vis* the Hellenic Republic**

- (76) Similarly to the commitments decisions adopted by the Commission pursuant to article 9 of Regulation (EC) No 1/2003<sup>38</sup>, also in this case the Commission ensures that the proposed commitments address its competition concerns and, second, that the undertakings concerned have not offered less onerous conditions that would also address those concerns adequately<sup>39</sup>.
- (77) In the case at stake, in its December 2016 judgements, the General Court clarified that the 2008 Decision did not require the Hellenic Republic to adopt any specific measure and ultimately left to the Hellenic Republic to choose the measures to be adopted<sup>40</sup>. The Hellenic Republic has to comply with the 2008 Decision and has chosen to revise the 2009 remedies due its new environmental targets. The Remedies have been offered by the Hellenic Republic as the most appropriate and proportionate measure, given its current policy and also in light of the quality and efficiency of the Divestment Businesses, to remove the anticompetitive conduct.

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<sup>38</sup> Council Regulation (EC) No 1/2003 of 16 December 2002, on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 4.1.2003.

<sup>39</sup> See judgement of the Court of Justice of 29 June 2010, *Commission v Alrosa*, C-441/07 P, ECLI:EU:C:2010:377, paragraph 41.

<sup>40</sup> Case T-169/08 RENV *DEI v Commission*, paragraphs 230 and 242. See also the 2008 Decision, recitals 248-250.

- (78) With regard to the general divestment target, the General Court confirmed that granting PPC competitors access to at least 40% of the total exploitable lignite reserves was necessary and proportionate to enable them to compete with PPC on equal footing in the Greek wholesale electricity market<sup>41</sup>. As the Court puts it, the proportionality of 40% target also stems from the fact that, quite intuitively, PPC would continue to have access to approximately 60% of the exploitable lignite reserves in Greece<sup>42</sup>.
- (79) To this extent, it should be noted that the Divestment Businesses represent up to 35.6% (if Meliti 2 is built, or less if the second unit is not built)<sup>43</sup> - therefore even less than the planned 40% - of PPC's total forecasted lignite-fired capacity over the period 2018-2035. The Commission has decided to accept a slightly lower divestment target due, as seen above, to the quality and viability of the plants, which would allow potentially interested parties to increase the level of competition on the Greek wholesale market already in the short-term by having access to existing lignite-fired generation capacity. By accepting a slightly lower divestment share, the Commission took into account that the Hellenic Republic provided for existing plants and mines as pro-competitive measures.
- (80) Finally, the legislative and regulatory measures that the Hellenic Republic has undertaken to adopt in relation to the divestment of the Divestment Business (including the Vevi mine) are strictly necessary to allow the actual sale of the plants and, in the meantime, the preservation of the economic viability, marketability and competitiveness of the Divestment Businesses.

## **5.2. Proportionality *vis-à-vis* PPC**

- (81) The Commission has ensured that the Divestment Businesses in terms of cost structure and efficiency are overall in line with the plants retained by PPC. Also *vis-à-vis* PPC it has to be recalled that the Commission accepts a lower divestment share than the 40% foreseen in the 2008 Decision.
- (82) Finally, the Remedies have been designed as to preserve also PPC's financial interests. As seen above, they stipulate that PPC will appoint an independent valuator in order to ensure that the Divestment Businesses are tendered out at a fair, market-based value. Furthermore, if the bids offered during the tender are below the valuation, PPC may request improved financial offers from bidders, in order to ensure the legitimate financial interests of PPC and its shareholders. In addition, after the opening of the bids and before taking the final decision, the Board of Directors of PPC may request the provision of a fairness opinion by an independent party to comply with their duties under Greek corporate law, taking into account the valuation, the offers made by the bidders and other data, which it considers relevant to establish a fair market value.

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<sup>41</sup> Case T-421/09 RENV *DEI v Commission*, paragraphs 157 and 161-162; see also Case T-169/08 RENV *DEI v Commission*, paragraphs 242-245.

<sup>42</sup> *Id.*

<sup>43</sup> See footnote 36 above.

## **6. LEGAL BASE FOR A REVISION OF THE 2009 DECISION**

- (83) As seen above, the 2008 Decision specifically allows for the Hellenic Republic to ask and obtain a different set of remedies than those envisaged in 2009 as long as those are apt at removing the effects of the infringement identified in the 2008 Decision<sup>44</sup>. It is important to note that the measures accepted with the 2009 Decision have never been implemented by the Hellenic Republic. Since both Commission decisions have been confirmed by the Court of Justice and the General Court, it is therefore of utmost importance that the competition law infringement described in the 2008 Decision are removed once and for all with appropriate and effective measures.
- (84) Pursuant to recital 252 of the 2008 Decision, in fact, the Commission retained the right to adopt a further decision pursuant to Article 106 TFEU thereby establishing specific measures to correct the anti-competitive effects of the infringement established by the Decision.
- (85) The grounds put forward by the Hellenic Republic in order to implement a new set of pro-competitive measures to offset the negative effects of infringement ascertained in 2008 clearly justify a revision of the 2009 Decision, in the light of the exception expressly provided for in the 2008 Decision.

## **7. CONCLUSION**

- (86) The revised remedy package proposed by the Hellenic Republic with the Remedies is necessary and proportionate to the objective sought of ensuring that third parties have access to a sufficient proportion of lignite-fired generation of electricity so that they can exert more competitive pressure in the Greek wholesale electricity market.
- (87) It is therefore considered that the Remedies proposed by the Hellenic Republic on 19 January 2018 and made binding by this Decision will correct the anticompetitive effects of the infringement identified in the 2008 Decision. The measures described above and set out in the Annex, which is an integral part to this Decision, constitute a necessary and proportionate remedy to address the consequences of that infringement.
- (88) The Commission recalls the general obligation set out in its 2008 Decision that the Hellenic Republic shall abstain from adopting any measure that may aggravate the situation.

HAS ADOPTED THIS DECISION:

### *Article 1*

In order to remedy the anticompetitive consequences of the State measures identified in the Commission Decision C(2008) of 5 March 2008, the Hellenic Republic shall comply with the commitments set out in the Annex to this Decision by adopting all the necessary measures within the deadlines provided therein.

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<sup>44</sup> See recital 249 of the 2008 Decision.

*Article 2*

This decision is addressed to the Hellenic Republic.

Done at Strasbourg,

*For the Commission*

*Margrethe VESTAGER*  
*Member of the Commission*