

COMMISSION DECISION

of 4.8.2009

Establishing the specific measures to correct the anti-competitive effects of the infringement identified in the Commission Decision of 5 March 2008 on the granting or maintaining in force by the Hellenic Republic of rights in favour of Public Power Corporation S.A. for extraction of lignite

(Text with EEA relevance)

(Only the Greek text is authentic)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 86 (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 lignite¹,

Whereas:

1. Legal Framework

1. In Article 1 of the 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 (Case COMP/38.700, hereafter "the March 2008 Decision"), the Commission found that the Hellenic Republic had infringed Article 86(1) in conjunction with Article 82 of the EC Treaty, to the extent that it granted and maintained privileged

¹ OJ C92, 15.4.2008, p.3,

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 new-comers.

2. The Commission, in Article 2 of the March 2008 Decision, also called upon the Hellenic Republic to adopt and implement within eight months from the notification of the 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.
3. The scope and purpose of the measures 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 March 2008 Decision. Accordingly, the measures must ensure that the competitors of PPC have access to sufficient amounts of lignite and to generation of electricity on the basis of lignite allowing them to exercise competitive constraints on PPC during off-peak periods and to have sufficient baseload production to build balanced generation portfolios. Reference is also made to recital 248 of the Decision where the Commission indicated examples for measures which could be adopted by the Hellenic Republic (without the adoption of any such measures being imposed on it by the Decision), including for instance the organisation of tender procedure for the allocation of new exploitation rights with the exclusion of PPC.
4. Furthermore, recital 250 of the March 2008 Decision sets out that "*[i]t is incumbent upon the Hellenic Republic to adopt effective transitory measures if the measures that it adopts with a view to effectively removing the effects of the infringement only do so several years into the future.*"
5. Finally, pursuant to recital 252 of the March 2008 Decision, the Commission retains the right to adopt a further decision pursuant to Article 86 of the EC Treaty thereby establishing specific measures to correct the anti-competitive effects of the infringement established by the Decision.

2. Procedure – Submissions by the Hellenic Republic

6. Following receipt of the March 2008 Decision of the Commission, the Hellenic Republic through a series of letters of 20 May, 13 June, 8 August, 13 October and of 12 December 2008 has communicated and detailed a number of measures it intends to adopt with a view to ensuring access by competitors of PPC in the Greek electricity market to lignite and to lignite-fired generation.
7. Specifically, the Hellenic Republic has stated that it intends to:
 - a. grant exploitation rights on the deposits of Drama², Ellassona³, Vegora⁴ and Vevi⁵ through tender procedures to entities other than PPC unless no other reliable offer is made;
 - b. prohibit the right holders of the deposits of Drama, Ellassona and Vegora to sell the extracted lignite to PPC unless no other reliable offer to purchase them is made, and for so long as PPC owns exploitation rights on more than 60% of all lignite reserves licensed for exploitation in Greece⁶;
 - c. to carry out a new allocation procedure, if the ongoing procedure to award the rights for the exploitation of the Vevi deposit is cancelled. In that procedure a potential bid by PPC will not be considered unless no other reliable offer is made and the right holder will be prohibited to sell the extracted lignite to PPC unless no

² Letter of the Minister of Development of the Hellenic Republic to the Commission of 13 October 2008, point(c), first paragraph.

³ Letter of the Minister of Development of the Hellenic Republic to the Commission of 13 October 2008, point(c), first paragraph.

⁴ Letter of the Minister of Development of the Hellenic Republic to the Commission of 13 October 2008, point(d).

⁵ In the case of Vevi, a tender procedure was launched already in 2006 as explained in recital 34 of the Decision. The Hellenic Republic communicated in the following letters that PPC has not submitted the highest bid and ultimately withdrew from the tender process: see Letter of the Minister of Development of the Hellenic Republic of 20 May 2008 to the Commission, point 2, Letter of the Secretary General of the Ministry of Development of the Hellenic Republic of 13 June 2008 to DG Competition, point 1, and Letter of the Secretary General of the Ministry of Development of the Hellenic Republic of 8 August 2008.

⁶ Letter of the Minister of Development of the Hellenic Republic to the Commission of 13 October 2008, point(c), second paragraph.

other reliable purchase offer is made and so long as PPC owns exploitation rights on more than 60% of all lignite reserves licensed for exploitation in Greece⁷.

- d. repeal Article 3 paragraph 3 of Law 134/1975, or any other similar provision should there be any, which allow a special treatment of PPC for the allocation of exploitation rights on lignite reserves.⁸
8. Following the submission of a set of measures by letters dated 13 October 2008 and 12 December 2008, the Commission informed the Hellenic Republic, with a letter of 25 February 2009, of its intention to make the proposed measures binding on the Hellenic Republic by adopting a Decision on the basis of Article 86(3) of the EC Treaty. The Hellenic Republic responded by letter dated 18 March 2009, reiterating its view that the submission of proposals was without prejudice to its view that the March 2008 Decision erroneously established an infringement of competition rules, asking for a flexible solution as regards the time limits for the implementation of the proposed measures and finally informing the Commission about the repeal of Article 3 (3) of Law 134/1975.

3. Procedure - Observations submitted by PPC

9. The Commission also informed PPC about its intention to make the suggested remedies binding on the Hellenic Republic and giving it the opportunity to comment.
10. In its reply of 26 March 2009, PPC expressed its disagreement with the legal and factual findings in the March 2008 Decision. PPC argues 1- that the Commission made an error in determining the relevant markets in this case, 2- that the Commission erroneously applied the theory of extension of dominant position, 3- that the acquired rights of PPC do not lead to a situation of inequality of opportunity to the detriment of new competitors and 4- that the Commission failed to take into account the facts that the electricity market can only be opened gradually and that certain developments on the Greek electricity market took place. PPC considers that corrective measures are neither necessary nor

⁷ Letter of the Secretary General of the Ministry of Development of the Hellenic Republic to DG Competition of 12 December 2008.

⁸ This intention was presented in point 1 of the Letter of the Minister of Development of the Hellenic Republic of 20 May 2008 to the Commission. In his letter of 19 March 2009 the Minister of Development of the Hellenic Republic informed the Commission that article 3.3 of Law 134/1975 has been repealed by law 3734/2009.

justified and would constitute an unjustified and unfair discrimination due to its prior status as a State monopoly.

11. PPC also called upon the Commission to abstain from adopting a new decision under article 86(3) of the EC Treaty, to take into account the developments in lignite trade and the actual circumstances of the Greek electricity market at its current liberalisation stage and to withdraw the March 2008 Decision.
12. PPC has drawn the Commission's attention in particular to a few market developments: in its letter PPC listed a number of projects (of several gas-fired power plants and a lignite-fired power plant) by competitors of PPC in the wholesale electricity market. PPC found that the most significant development in that regard was the license granted by the Greek Ministry of Development to Heron S.A (hereafter "Heron") for lignite fired electricity generation, allegedly, on the basis of plans by that undertaking to build and operate a power plant which would be fuelled by imported lignite. Specifically, PPC has stated that this undertaking has provided to the Greek Energy Regulator ("RAE") proofs that it has secured long term supplies of lignite from lignite producers outside Greece. In this respect PPC has stated that recent developments, and in particular this license, demonstrate that the Commission erred in its findings in the March 2008 Decision. Therefore corrective measures were neither justified nor necessary.
13. It appears from these elements and from the four arguments made by PPC that PPC requests a reconsideration of the Commission decision as regards 1- the determination of the relevant market for lignite and 2- the assessment of the impact of the measures which are the subject of the March 2008 Decision. The Commission considers that the comments put forward by PPC do not constitute – within the meaning of the relevant case law⁹ - substantial new facts which could justify a reconsideration of the March 2008 Decision.
14. In the March 2008 Decision, the Commission had concluded that the market for lignite supply was national (i.e. limited to Greece). It came to that conclusion based on the inexistence of imports and exports of lignite at the time the decision was taken as well as

⁹ Judgement of 6 May 2009 in Case T-12/08 P, *M v Agence europeene des medicament (EMEA)*, (not yet reported) paragraphs 47 *et seq.* with further references to the judgement of 7 February 2001 in Case T-186/98, *Compania Internacional de Pesca y Derivados, SA (Inpesca) v Commission*, ECR [2001], II-557, paragraphs 44 *et seq.*

on the consideration that the potential for lignite imports was very limited, in particular due to the characteristics of lignite, the location of lignite mines in neighbouring countries as well as the existence of vertically integrated operators in these countries.¹⁰ In the March 2008 Decision the Commission also found that the almost exclusive access to lignite enjoyed by PPC conferred it an advantage on the Greek wholesale market which created an inequality of opportunity between PPC and its competitors, due to the characteristics of lignite as a fuel for generation (in particular the low and stable cost of lignite-fired generation)¹¹.

15. PPC does not submit any information which would specifically address the elements mentioned in the Commission Decision. In fact, the evidence submitted by PPC is limited to references to projects of competitors as regards new gas-fired plants and to the authorisation granted to Heron and a newspaper article. Furthermore, the information at the Commission's disposal is not such that a reconsideration of the findings and conclusions in the March 2008 Decision would be necessary.
16. In particular, the information as regards the lignite supply for the Heron plant does not cast any doubt on the correctness of the Commission's findings since it does not show that competitors have access to lignite from neighbouring countries under conditions which would allow them to effectively exercise competitive pressure on PPC (see also below paragraph 22). Therefore, there is no reason to reconsider the market definition adopted in the March 2008 Decision. In addition, PPC simply recalls that competitors have projects of new power plants, but does not address the competitiveness of lignite-fired generation vis-à-vis other sources of generation; PPC's comments are therefore not capable of affecting the detailed assessment that was made in the March 2008 Decision. As a consequence there is no reason to reconsider the conclusions and the need for corrective measures as outlined in the March 2008 Decision.
17. To the extent PPC's observations are to be understood as aiming at a limitation of the scope of the remedies, this aspect will be dealt with below.

¹⁰ See in particular recital 169 with reference to recitals 12 to 17 of the March 2008 Decision.

¹¹ See in particular recitals 84-94, 185-190 and 206-225 of the March 2008 Decision.

4. Assessment of the scope and effectiveness of the specific measures necessary to correct the anti-competitive effects of the infringement identified in the March 2008 Decision

18. In accordance with obligations imposed on the Hellenic Republic in accordance with Article 2 and the considerations of the March 2008 Decision (cf. in particular recitals 245 et seq.), the Commission considers that the measures to be adopted by the Hellenic Republic need to ensure that competitors of PPC have access to sufficient amounts of lignite in Greece, and subsequently to generation of electricity on the basis of lignite, in order to allow them to compete with PPC in the electricity wholesale market on an equal footing.

19. As stated in the March 2008 Decision¹², competitors of PPC need lignite-fired generation and thus sufficient access to lignite in particular for the following two reasons: "*First, they need to have some baseload capacity in their generation portfolio and there is little other baseload capacity available. Second, they need to be able to exercise competitive pressure on PPC during off-peak periods. Given that the relationship between lignite reserves and lignite-fired generation capacity is broadly the same for all sites, 40% of lignite reserves represent less than 40% but at a minimum one third of baseload production in Greece. This is considered as the necessary minimum with a view to ensuring the exercise of competitive constraints on PPC by other players during off-peak periods and in order to allow competitors to have a sufficient baseload production to build balanced generation portfolios*".

20. In the March 2008 Decision, the Commission considered that a proportion of around 40% of the total exploitable Greek lignite reserves constitutes the minimum proportion to be made available to competitors of PPC in order to effectively ensure that these competitors are able to exert competitive constraints on PPC in the electricity wholesale market.¹³ The "total exploitable Greek lignite reserves" comprise both presently available

¹² Cf. March 2008 Decision, in particular recital 247, including footnote 255.

¹³ Cf. March 2008 Decision, in particular recital 247.

exploitable lignite reserves¹⁴ and exploitable lignite reserves which can be made available in the foreseeable future¹⁵ and thus an amount of approximately 1255 Mt¹⁶.

21. While PPC has challenged the March 2008 Decision before the Court, including the need for corrective measures, neither PPC nor the Hellenic Republic have specifically questioned the Commission's assessment in the March 2008 Decision that a 40% proportion of the total exploitable lignite reserves (or an amount of 1255 Mt) needs to be made available to competitors of PPC in order to allow them to exert competitive constraints on PPC in the electricity wholesale market.
22. To the extent PPC questions the general need for remedies as established by the March 2008 Decision reference is made to the explanations above in section 3 of the present Decision. To the extent that the observations submitted by PPC (in particular the reference to the recent authorisation of a lignite-power plant) should be understood as aiming at a limitation of the scope of the corrective measures, the Commission would like to point out the following: in principle and given the fact that the geographic market for lignite supply is national in scope, the corrective measures should also be related to Greek lignite reserves. This does not exclude that, when determining the scope of the remedies, other lignite supplies may be taken into account. In order to be able to substitute exploitation rights for lignite deposits located in Greece by lignite imports any such imports would need to be of sufficient quality and quantity, at competitive prices and providing adequate security of supply (in particular in terms of the contract duration) allowing electricity operators to compete with PPC on the electricity wholesale market on an equal footing.. Information about any such supplies would have to be specific enough to allow the Commission to – where necessary – reduce the share of total exploitable lignite reserves in Greece either in percentage terms or as regards the concrete mines for which tender procedures are to be organised (with – in principle – the exclusion of PPC).

¹⁴ These are the deposits of Achlada Vevi and Vegora (cf. March 2008 Decision, in particular recital 247).

¹⁵ These are essentially the deposits of Drama and Elassona (cf. March 2008 Decision, in particular recital 247).

¹⁶ See Table 5 of the March 2008 Decision

23. Neither the information submitted by PPC nor the information available to the Commission demonstrates that such supplies from abroad do exist and that the scope of the remedies as indicated in the March 2008 Decision should be limited.
24. The only information provided by PPC relates to a license which has been granted to Heron for a lignite-fired power plant, the first of its kind to a company other than PPC. This licence has indeed been granted through a Decision of the Minister of Development of 7 January 2009¹⁷ based on an opinion of the Greek Energy Regulator (RAE)¹⁸. The Commission notes however that this license does not confirm in itself that imports of lignite are offered under conditions which would make them a substitute for exploitation rights for lignite deposits located in Greece.
25. The Opinion of the regulator RAE issued in the process leading to the licensing of the power plant states that the intent of Heron is first of all to procure lignite from the Achlada and Vevi deposit. As regards the latter deposit it thus appears that Heron expects to exploit the Vevi deposit: according to the claims of Heron presented in RAE's opinion, Terna (part of the same group as Heron¹⁹) is the highest bidder in the tender process for exploitation rights on the Vevi deposit²⁰. In the RAE opinion it is further stated that lignite quantities necessary for the annual needs of the plant (about 3 million tons) could also be imported from Kosovo as defined by United Nations Security Council Resolution 1244 of 10 June 1999 (hereafter "Kosovo").²¹ However, , while considering lignite imports as a possible alternative to supplies from the Vevi deposit, the regulator RAE

¹⁷ Referenced as A.Π.Δ5/ΗΛΤ/Φ28/31026/183Π

¹⁸ RAE Opinion 313/2008

¹⁹ Terna participated in the tender process for the allocation of exploitation rights on the Vevi deposit. As explained in footnote 88 of the March 2008 Decision, Terna and Heron are part of the same group, called GEK.

²⁰ According to the RAE opinion, the business plan of Heron appears to have been made with the aim of creating a power plant at a distance of around 20km from the Vevi deposit (see section 1 and section 3 of the RAE opinion which states that the power plant is intended to be built in the Vegora region and that the Vevi mine is around 20km away from it). This is consistent with the analysis carried out by the Commission in its 5 March 2008 Decision regarding the proximity of lignite fired power plants to the mines providing the (lignite) fuel (see recitals 12-13 of the 5 March 2008 Decision) and regarding the Vevi deposit itself (recital 77 of the 5 March 2008 Decision).

²¹ See section 2 of the RAE opinion.

only takes into account the characteristics of local lignite when it assesses the possible environmental effects of the project²²: the realistic source of supply of the power plant is thus at this stage local lignite.

26. Information provided by Heron to the Commission confirms that it entered into a letter of intent with Kosovo Energy Corporation J.S.C. for the supply of lignite from Kosovo for an annual quantity of three million tons. First of all, the Commission takes note of the explanations provided by Heron that this letter of intent has not been formalised in a contract yet. Furthermore, the text of this letter of intent does not mention any specific duration. There is therefore no evidence showing that lignite supplies would be available for a duration providing the operator with adequate security of supply. Heron also indicates that the cost of lignite from Kosovo would be 30% higher than the cost of lignite from Greece (in particular due to transport costs²³), which would make the projected power plant less competitive. In effect Heron argues that the competitiveness of its plant will depend to a large extent on the finalisation of the tender procedure for the Vevi area, given that the success of the plant requires access to sufficient quantities of lignite at competitive prices for a period of 15-20 years. These circumstances demonstrate that Heron intends to and is to a certain extent dependent upon domestic lignite supply in the area (from the deposits of Achlada, Vegora and Vevi) and may not carry out its project if it could not secure these supplies. Based on the above considerations, the Commission considers that the conditions (as outlined above) for taking into account imported lignite for the determination of the scope of the necessary remedies are not met.
27. In the Commission's view, it has thus not been demonstrated that the competitors of PPC could get, through imports, lignite supplies in sufficient quantities and at prices so as to limit the scope of the remedies.

²² See section 9 of the RAE opinion: "*Solid waste, the ash and the SO₂ will be put into excavated areas of the local lignite mines area, following agreement. The application states that the ash quantity will be 0.367 t/Mwhe, on account of the good quality of the local lignite.*" (emphasis added). The Opinion only assesses environmental effects of the power plant project for local lignite and does not assess the impact for potential imports of lignite.

²³ The lignite would have to be imported from a mine located about 300km away from the power plant, which is unprecedented for lignite-fired power plants (see recital 12 of the March 2008 Decision) and which causes additional transport costs which are, in the case of lignite imports from Kosovo due to the necessity to construct/improve 5 – 10 km of railway tracks.

28. In light of the above, the Commission maintains its initial view as set out in the March 2008 Decision that the scope of the remedies to be adopted by the Hellenic Republic should be such so as to ensure that lignite reserves representing around 40% of exploitable reserves in Greece are made available to competitors of PPC.

Lignite quantities to be made available

29. According to information provided to the Commission by PPC and the Hellenic Republic in the course of the administrative procedure which led to the adoption of the March 2008 Decision and thereafter, PPC owned at the time of that decision exploitation rights for 2000 million tons (mt) of exploitable reserves. On the other hand, entities other than PPC can potentially access 1255mt of exploitable reserves: this corresponds to the public deposits of Drama (900mt), Elassona (169mt), Vevi (94mt), Achlada (70mt) and Amindeo-Vegora (15mt) and a small private mine (Servia, 7mt). Among these, only Achlada and Servia have already been allocated to entities other than PPC and Vevi is the subject of an ongoing allocation procedure²⁴. On this basis, the Commission considers that competitors of PPC can potentially access at minimum (1255 out of 3255 Mt) 38.5% of all potentially exploitable Greek lignite deposits.

30. The Hellenic Republic states that [0-1000mt] of reserves currently in the hands of PPC (deposits of East Field, Komnina and Proastio) are of "doubtful economic exploitability" given they are costly to exploit.²⁵ In practice, according to the Hellenic Republic these deposits require larger amounts of excavations to obtain the same output of lignite as the existing mines of PPC and the Proastio deposit faces additional costs (e.g. expropriation costs).

31. The Commission is not in a position to ascertain the economic exploitability of these reserves as this depends on the subjective assessment by PPC based on future circumstances and costs. The Hellenic Republic seems to argue that, if this assessment

²⁴ See Decision of 5 March 2008, in particular recitals 24 to 43, Letters of the Secretary General of the Ministry of Development of the Hellenic Republic to DG Competition of 13 June and 8 August 2008 respectively.

²⁵ Letter of the Secretary General of the Ministry of Development of the Hellenic Republic to DG Competition of 8 August 2008.

were to materialise in the future, competitors of PPC could theoretically be able to access 1255 out of [2000-3000 Mt] of currently exploitable deposits, giving a potential access to competitors at reserves amounting to [40 % - 50 %] of total reserves. This conclusion is however based on a flawed assumption, given that nobody can predict today whether the rest of the reserves (1255 Mt) would in fact be fully available for "economic exploitation". It is a fact of lignite exploitation that the "economic exploitability" of deposits may diminish as exploitation progresses through a deposit not only due to external factors but also to the lignite itself. Ultimately the assertions regarding doubtful economic exploitability can apply equally to deposits to be granted to competitors in the future and to deposits currently in the hands of PPC.

32. There is therefore no reason to believe that competitors will be put in a more advantageous position vis-à-vis PPC by effectively being able to exploit more than 40% of what could be regarded as economically exploitable reserves. Given the uncertainties surrounding any determination of the scope of what could be regarded as being of "economically doubtful exploitation", the Commission does not consider it appropriate to revise the proportion of exploitable reserves to be made available to competitors (or the corresponding reserves exploited by PPC) as required by the March 2008 Decision by establishing as a point of reference only amounts of proven economic exploitability, as the Hellenic Republic seems to argue.

Exclusion of PPC

33. The Commission further considers that with a view to ensuring that a proportion of around 40% is made available to competitors of PPC, it is necessary and proportional to exclude PPC from future allocations of exploitation rights by the Hellenic Republic for the deposits mentioned at recital 7(a) above.
34. Excluding PPC from future allocations is considered necessary and proportional given that a further deposit allocation to PPC will aggravate the situation as regards the exploitation of lignite for electricity production in Greece²⁶. This is considered to be the

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As regards the need to exclude PPC from future allocations, see recital 205 of the March 2008 Decision.

least detrimental measure to PPC, given that in this way it would not be necessary to reallocate rights currently exploited by PPC²⁷.

35. The Hellenic Republic has stated that it takes the appropriate steps to ensure that in these processes of allocating new exploitation rights, PPC does not obtain and/or benefit from lignite supplies from these exploitation rights²⁸.
36. Procedures for the allocation of new exploitation rights to competitors of PPC should therefore ensure that PPC does not obtain these exploitation rights unless no other reliable offer is available. It shall be incumbent on the Hellenic Republic to demonstrate to the Commission that no other reliable offer has been made. If this is accepted by the Commission, the Hellenic Republic may proceed with a consideration of an offer by PPC.

Anti-circumvention measures

37. Given that the objective of the corrective measures to be adopted is to enable competitors to exert competitive constraints on PPC in the electricity wholesale market, it is considered necessary to ensure that the lignite which will be extracted from Drama, Elassona and Vegora, , by the future right holders is available to competitors of PPC for lignite-fired generation. The Hellenic Republic intends thus to make sure that this lignite cannot be supplied to PPC unless no other reliable offer to purchase the extracted lignite is made. This condition shall apply so long as PPC owns exploitation rights on more than 60% of all lignite reserves licensed for exploitation in Greece.
38. It shall be incumbent on the Hellenic Republic to find that no reliable offers have been made for purchasing the lignite originating from these reserves or to conclude that PPC has ceased to own exploitation rights on more than 60% of all lignite reserves licensed for exploitation in Greece.

The allocation Procedure for Vevi

²⁷ The Commission Decision of 5 March 2008, at recital 248, provided a non-exhaustive list of measures which could be adopted by the Hellenic Republic cumulatively or separately.

²⁸ See footnotes 1 and 2 above

39. The Vevi reserve is the subject of an allocation procedure which was launched before the March 2008 Decision. The Commission has been informed by the Hellenic Republic that in the meantime PPC has withdrawn its offer from that tender procedure²⁹. Having regard to these developments, it is in principle not necessary for the Greek Government to take any specific measures as regards the award of exploitation rights for Vevi.

40. If for any reason the Hellenic Republic were to carry out a new allocation procedure for the part of the Vevi reserve which is the subject of the ongoing allocation procedure, the Hellenic Republic has clarified that the conditions explained above relating to (i) the exclusion of PPC from participating in an allocation procedure and (ii) the prevention of PPC from purchasing the lignite to be extracted by a new right holder unless no other reliable purchase offer is made and so long as PPC owns exploitation rights on more than 60% of all reserves, shall also apply to the allocation procedure for the Vevi reserve³⁰.

Timeframe for implementing the remedies

41. The Commission considers that the remedies should be implemented and take effect as soon as possible upon notification of this decision.

42. The Hellenic Republic indicated that for the deposits of Drama and Ellassona the tendering procedure can last up to 6 months³¹. Taking into account the fact that it would be necessary to allow for a period of preparation of the relevant documents governing these tendering procedures, it is considered justified to give to the Hellenic Republic a further period of 6 months until the tender procedures for these mines are to be launched. Indeed, in October 2008 the Hellenic Republic indicated that it was starting the preparation for

²⁹ Letter of the Secretary General of the Ministry of Development of the Hellenic Republic to DG Competition of 8 August 2008

³⁰ Letter of the Secretary General of the Ministry of Development of the Hellenic Republic to DG Competition of 12 December 2008

³¹ Secretary General of the Ministry of Development of the Hellenic Republic of 13 June 2008 to DG Competition, points 3.2 and 3.3.

allocation processes for these two deposits and expected to launch the tendering procedure before the end of 2009³².

43. The Commission therefore considers that a reasonable time frame for the allocation of exploitation rights for Drama and Elassona is 6 months from the notification of this decision for launching the tender procedure and 12 months from the notification of this decision for the allocation of exploitation rights.
44. The Hellenic Republic has indicated³³ that it will also proceed with an allocation process for the Vegora deposit provided there is market interest and will proceed to identify such market interest. In the absence of any more concrete information for this process, it is considered adequate to apply the same timeframes for granting exploitation rights at Vegora as for Drama and Elassona.
45. In its reply of 18 March 2009, the Hellenic Republic asked the Commission to adopt a flexible timeframe concerning the completion of the process for allocating exploitation rights to deposits not currently under the control of PPC, particularly with regard to Drama and Elassona, given the particularities associated with each one of the deposits for which it intends to grant such rights. Given that in its letters of 2008 the Hellenic Republic had indicated that a normal process of allocation could be achieved within the timeframes indicated above, the request of the Hellenic Republic appears to relate to the possibility of delays due to unforeseen circumstances beyond the Hellenic Republic's control.
46. The Commission therefore considers that it is necessary and proportional to make the relevant measures binding within the above indicated timeframes but at the same time to give the opportunity to the Hellenic Republic to submit a duly substantiated request for an extension should unforeseen circumstances beyond the Hellenic Republic's control make this necessary

³² Letter of the Minister of Development of the Hellenic Republic to the Commission of 13 October 2008, point(c), first paragraph.

³³ Letter of the Minister of Development of the Hellenic Republic to the Commission of 13 October 2008, point(d).

47. As regards the Vevi deposit, the Hellenic Republic indicated that it could without delay conclude the tender procedure. It is thus deemed appropriate to make the allocation of exploitation rights on that deposit binding within the same timeframe as for the other deposits, i.e. within six months of the date of notification of the decision. It may be that the current allocation process is annulled for reasons outside the reach of the Greek government. In such a case, the 6 and 12 month deadlines respectively, shall also become applicable to the Vevi deposit and they shall commence from the date of definitive cancellation and/or annulment of the procedure which was ongoing at the time of the Commission Decision of 5 March 2008

48. Finally, the Commission takes note that the legislative provision which allowed the Greek State to grant PPC exclusive exploitation rights (cf. recital 7 paragraph d)) has been abolished.

Transitory measures

49. The Commission considers that with the adoption of the measures as indicated above, the Hellenic Republic will have taken all measures in its power to ensure compliance with the March 2008 Decision. The other pre-conditions for allowing competitors to compete with PPC on the wholesale electricity market using lignite fired-generation (such as land acquisition, works, power plant construction) depend on third parties and not on the Hellenic Republic. Given that the licensing process for exploitation rights on deposits is set in a relatively short timeframe (one year)³⁴, the Commission does not consider it necessary at this stage to impose transitory measures.

5. Conclusion

50. The Commission therefore takes the view that the measures listed at recital 7 above are both necessary and proportional in removing the effects of the infringement.

³⁴ See recitals 41-43 above.

51. The Commission recalls the general obligation set out in its March 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 correct the anti-competitive effects of the state measures identified in the Commission Decision of 5 March 2008, the Hellenic Republic shall take all necessary measures in order to:

- (a) grant exploitation rights on the deposits of Drama, Ellassona, Vevi and Vegora through tender procedures to entities other than PPC unless no other reliable offer is made.
- (b) prohibit the holders of exploitation rights of the deposits of Drama, Ellassona and Vegora to sell the extracted lignite to PPC unless no other reliable offer to purchase them is made, and for so long as PPC owns exploitation rights on more than 60% of all lignite reserves licensed for exploitation in Greece;
- (c) carry out a new allocation procedure, if the ongoing procedure to award the rights for the exploitation of the Vevi deposit is cancelled. In that procedure a potential bid by PPC will not be considered unless no other reliable offer is made and the right holder will be prohibited to sell the extracted lignite to PPC unless no other reliable purchase offer is made and so long as PPC owns exploitation rights on more than 60% of all lignite reserves licensed for exploitation in Greece.

Should the Hellenic Republic consider that no reliable offer has been submitted and intends to award the exploitation rights to PPC it shall submit this proposal to the Commission for approval.

Article 2

1. The tender procedures aiming to give effect to the measures mentioned at Article 1 (a) shall be launched and implemented as soon as possible and at the latest within 6 months from the

notification of this decision and allocation rights shall be effectively granted to the successful bidders at the latest within 12 months of the notification of this decision.

2. The 6 and 12 month deadlines respectively, shall also become applicable to the Vevi deposit if there is to be a new allocation procedure for that deposit and they shall commence from the date of definitive cancellation and/or annulment of the procedure which was ongoing at the time of the Commission Decision of 5 March 2008.

3. The Hellenic Republic shall, every three months, report to the Commission on the steps it has taken with a view to implementing the measures outlined in Article 1. This reporting obligation shall remain in force until the measures outlined in Article 1 are fully implemented.

4. Should there be an inability on behalf of the Hellenic Republic to respect the deadlines mentioned at paragraphs one and two of this article, especially by reason of unforeseeable circumstances beyond the Hellenic Republic's control, the Hellenic Republic shall accordingly and without delay submit a motivated request to the Commission for an extension of the respective deadlines. Having due regard to the circumstances associated with any such request, the Commission may decide to grant a reasonable extension.

Article 3

This decision is addressed to the Hellenic Republic.

Done at Brussels,

For the Commission

Neelie Kroes

Member of the Commission