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## **Market consultation in case COMP/B-1/38.700 – Greek lignite and electricity markets**

### **1. INTRODUCTION**

- (1) The Hellenic Republic has requested a review of the European Commission Decision of 4 August 2009 and proposed to adopt new measures to address the competition concerns expressed by the Commission in its Decision of 5 March 2008. The Hellenic Republic has decided not to allocate exploitation rights on further deposits except Vevi and proposes that the competitors of the state-owned electricity incumbent Public Power Corporation (hereinafter: "PPC") have access to amounts of lignite-fired electricity generation from existing power plants of PPC as well as new projects to be built.
- (2) Before the Commission decides on the request of the Hellenic Republic, it seeks the views of any interested party about the effectiveness of the measures offered by the Hellenic Republic. This note provides a concise summary of the case and the main content of the measures. Interested parties may submit their observations within the time limit fixed by the Commission.

### **2. SUMMARY OF THE CASE**

- (3) By Decision of 5 March 2008 (hereinafter: "the 2008 Decision") the Commission found that the Hellenic Republic had infringed competition rules (Articles 102 and 106 of the Treaty on the Functioning of the European Union) by maintaining rights giving the state-owned electricity incumbent PPC privileged access to lignite, which is the cheapest source for electricity generation in Greece. That privileged access created inequality of opportunity between economic operators and enabled PPC to maintain or reinforce its dominant position on the Greek wholesale electricity market by excluding or hindering market entry by new-comers.
- (4) The 2008 Decision required the adoption of measures to ensure that competitors of PPC have access to 40% of lignite and lignite-fired generation in Greece. In order to address those competition concerns the Hellenic Republic offered measures to tender exploitation rights on four deposits (Drama, Ellassona, Vegora and Vevi) to competitors of PPC. That way, competitors would get access to around 40% of the total exploitable Greek lignite reserves. Those measures were made binding upon the Hellenic Republic by a Commission Decision of 4 August 2009 (hereinafter: "the 2009 Decision").
- (5) The Hellenic Republic has requested a review of the 2009 Decision. The Greek Government has informed the Commission that it has adopted a new energy policy: it envisages continuing to allow the exploitation of existing lignite mines but to grant no new exploitation rights on lignite deposits except on Vevi. The Greek Government

plans also to order the decommissioning of a number of existing lignite fired power plants at an earlier date than envisaged previously.

- (6) In order to address the competition concerns identified in the 2008 Decision, the Hellenic Republic proposes to give to competitors of PPC access to 40% of lignite-fired generation through drawing rights in existing lignite-fired power plants of PPC as well as participation in future lignite-fired plant projects.
- (7) A letter of the Hellenic Republic explaining its energy policy (including the decommissioning of power plants) and presenting the measures it proposes to adopt is annexed to this notice.

### **3. THE MAIN CONTENT OF THE PROPOSED MEASURES**

- (8) The key elements of the proposed measures are as follows:
  - (a) PPC will sell structural drawing rights related to the lignite fired plants that are planned to remain online after 2020. The drawing rights will amount to 457 MW and will be related to the lignite-fired power plants Agios Dimitrios 5, Meliti, Megalopoli 3 and Megalopoli 4. The drawing rights will be linked to the overall portfolio of those plants. Term-sheets presenting the main elements of those drawing rights are included in the letter of the Hellenic Republic. In addition competitors will have the right to participate with a share of 40% in new-build lignite fired plants. The proposal of the Hellenic Republic is to implement the measures through swaps in the first instance, fallback options are also described in the proposal of the Hellenic Republic in case swaps do not materialise.
  - (b) PPC will sell transitory drawing rights relating to the lignite-fired plants that are planned to be decommissioned by 2020. Those drawing rights will amount to 1043 MW with an extra amount as far as required to reach the 40% threshold. The drawing rights will be related to the following lignite-fired power plants: Agios Dimitrios 1, Agios Dimitrios 2, Agios Dimitrios 3, Agios Dimitrios 4, Amyntiao 1, Amyntiao 2, Kardias 1, Kardias 2, Kardias 3 and Kardias 4. In case the decommissioning of those plants would be delayed, the buyers of the drawing rights will have the opportunity to prolong the drawing right. The drawing rights will be linked to the overall portfolio of those plants. Term-sheets presenting the main elements of those drawing rights are included in the letter of the Hellenic Republic. The preferred option of the Hellenic Republic is to implement the measures through swaps but transitory drawing rights could also be sold as one way drawing rights if necessary.
- (9) These new proposed measures and documents relevant to this case are published in full in English on the website of the Directorate-General for Competition at: [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_38700](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_38700)

#### 4. INVITATION TO MAKE COMMENTS

- (10) If the request for the review of the 2009 Decision is justified and the measures proposed by the Hellenic Republic are adequate to meet the concerns identified by the 2008 Decision, the Commission could adopt a new Decision, on the basis of Article 106 TFEU, making the measures proposed by the Hellenic Republic binding upon it.
- (11) Interested third parties are hereby invited to submit their observations on the proposed measures. Interested parties are invited to assess if the proposed measures are adequate to remedy the competitive advantage enjoyed by PPC based on its access *to lignite-fired generation* on the Greek wholesale electricity market. Interested third parties are in particular invited to provide their assessment as regards the total capacity offered, the plants concerned, and the terms of the drawing rights proposed. They are also invited to provide their assessment of the provisions of the term sheets, inter alia as regards "the reserve price" envisaged by PPC.
- (12) These observations must reach the Commission **no later than 11 February 2011**. Interested third parties are also asked to submit a non-confidential version of their comments, in which commercial secrets and other confidential passages are deleted and are replaced as required by a non-confidential summary or by the words 'commercial secrets' or 'confidential'. Legitimated requests will be respected.
- (13) Observations can be sent to the Commission under reference number COMP/B-1/38.700 - Greek lignite and electricity markets either by e-mail (COMP-GREFFE-ANTITRUST@ec.europa.eu), by fax ((32-2) 295 01 28) or by post, to the following address:

European Commission

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