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<p>In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...].</p>	<p style="text-align: center;">PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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Subject: State aid SA.34572 (2013/C) (ex 2013/NN) – Greece

Possible state aid to Larco General Mining & Metallurgical Company S.A.

Sir,

The Commission wishes to inform Greece that, having examined the information supplied by your authorities on the measures referred to above, it has decided to initiate the formal investigation procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union.

1. PROCEDURE

- (1) In the context of its economic adjustment programme, Greece has undertaken an extensive privatisation programme.¹ Larco General Mining & Metallurgical Company S.A. ("Larco") has been earmarked as a State-owned company for privatisation.
- (2) In March 2012 the Hellenic Republic Asset Development Fund ("HRADF")² informed the Commission services about the proposed privatisation of Larco. In order to clarify whether any state aid issues could arise in that privatisation

¹ See the *Second Economic Adjustment Programme for Greece – First Review December 2012*, http://ec.europa.eu/economy_finance/publications/occasional_paper/2012/pdf/ocp123_en.pdf.

² The Hellenic Republic Asset Development Fund (HRADF) is a *société anonyme* established on 1st July 2011 in order to manage the privatisation process.

project, the Commission opened a case *ex officio* and initiated a preliminary assessment in April 2012.

- (3) Subsequently, the Commission services provided their comments and explained their doubts as to whether the privatisation structure, as proposed, would avoid involving state aid. Despite extensive discussions, it appears that the privatisation of Larco has not advanced since April 2012.
- (4) In the context of these discussions, it emerged that Larco benefited from past State measures in favour of the company. The Commission requested further information by e-mails dated 18 April 2012, 24 April 2012, 5 July 2012, 22 August 2012, 7 December 2012, and by letters of 4 May 2012 and 14 January 2013, to which the Greek authorities replied on 20 April 2012, 26 April 2012, 3 October 2012, 13 November 2012, 15 November 2012, 7 December 2012, 24 December 2012 and 18 January 2013. Meetings between the Commission services and representatives of the Greek authorities took place on 30 April 2012 and 11 September 2012 in Athens and 25 January 2013 in Brussels.

2. THE BENEFICIARY

- (5) Larco is specialised in the extraction and processing of laterite ore, extraction of lignite and production of ferronickel and by-products. It is exporting most of its production to EU/European countries, mainly targeting the aluminium and steel industries and is one of the top 5 sellers worldwide. It has approximately 960 employees (31 December 2011) and therefore qualifies as a large enterprise.³ In 2012 55.2% of Larco's shares were owned by the Greek State, 33.4% by the National Bank of Greece ("NBG", a private financial institution) and 11.4% by Public Power Corporation SA ("PPC", the incumbent electricity producer in Greece, of which the State is the majority shareholder).
- (6) Larco holds significant mining rights in various locations in Greece and a smelting facility in Larymna (central Greece), through concessions or lease agreements. Larco processes raw material from its mines. The Larymna smelter and a nearby mining site in Agios Ioannis (approx. [...] of raw material) are covered by the same concession ("Agios Ioannis/Larymna concession").⁴
- (7) Larco was established in 1989 as a new corporate entity following the liquidation of Hellenic Mining and Metallurgical SA of Larymna ("Old Larco"). Old Larco is still under liquidation after 23 years, but its assets were contributed to Larco along with the corresponding liabilities in 1989. Old

³ Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, OJ L 124, 20.05.2003, p.36.

* Information covered by the obligation of professional secrecy, according to the Commission Communication on professional secrecy in State aid decisions (OJ C 297 of 9.12.2003, p. 6)

⁴ The Agios Ioannis/Larymna concession was initially granted to Larco by a 1976 contract for a period of 35 years, expiring in end June 2012 (Ratified by law 371/1976 (Official gazette 167/A/1.7.1976). According to Article 1(13), the smelting facility was part of the concession and would be returned to the State upon expiry of the concession without any obligation, along with the mining right.

Larco and its shareholders, i.e. the Greek State, NBG and PPC are therefore creditors of Larco.

- (8) As presented in paragraphs (17) to (22) below, Larco currently has negative equity and would qualify as a firm in difficulty at least since 2008. Furthermore, Larco appears to operate without covering its costs.

3. DESCRIPTION OF THE MEASURES

3.1. Measure 1: non-collection of debt to the Ministry of Finance

- (9) Since 2004, a certain debt of Larco towards the Greek State appears not to have been collected by the Greek authorities. That debt stemmed from a Settlement Agreement of April 1998, which was reached between Larco and its major creditors, namely Old Larco, PPC and the Greek State. Under that agreement, the liability of Larco to its creditors was supposed to be serviced with an interest rate of 6% p.a. However, according to Larco's financial statements in the period 2004-2012 the debt to the Greek State remained stable or increased slightly- In 2004 it was EUR 10.3 million and today EUR 13 million, whereas the respective debts to PPC and Old Larco have at the same time been eliminated or decreased, as follows: on
- (a) In 2004 the debt to PPC was EUR 39 million, whereas in 2011 it was eliminated.
- (b) In 2007 the debt to Old Larco was EUR 48.3 million, whereas in 2011 it was EUR 43.8 million.
- (10) The above indicates that the debts of Larco towards PPC and Old Larco were serviced, while the debt to the State was not collected since 2004.

3.2. Measure 2: the 2008 State guarantee

- (11) According to the Greek authorities, on 22 December 2008, the State provided a guarantee for a loan of EUR 30 million from ATE Bank. At this stage, the terms of the guarantee or the loan are not known. Larco was a firm in difficulty at that time (see section 5.1 below).

3.3. Measure 3: the 2009 capital increase

- (12) In 2009, in light of its negative equity, Larco's Board of Directors proposed and the three shareholders approved a share capital increase of EUR 134 million. However, only the Greek State exercised its rights in full, whereas NBG exercised its rights in part and PPC did not participate at all in the share capital increase. No new shareholders contributed to the share capital. As a result, the capital increase reached EUR 65.5 million, with the State contributing EUR 45 million (69% of total capital injection) and NBG EUR 20.5 million (31%).

3.4. Measure 4: the 2010 State guarantee

- (13) On 26 May 2010, the Greek State provided a guarantee covering a letter of guarantee provided by NBG for a debt of EUR 10.8 million of Larco. The

guarantee premium paid to the State was 1% and the guarantee covered 100% of the risk associated to the covered letter of guarantee. Furthermore, the State guarantee's duration was indefinite. Finally, the fee charged by NBG to Larco was equal to 0.5% per trimester, i.e. 2% on an annual basis. Larco was a firm in difficulty at that time (see section 5.1 below).

3.5. Measure 5: non-collection of a tax fine in 2010

- (14) In 2010, the Greek tax authorities audited Larco's financial statements and rejected the accounting treatment of certain losses resulting from hedging contracts (for the price of nickel). As a result, a fine of EUR 190 million was imposed. Larco subsequently challenged the fine in the Greek courts. According to Greek law,⁵ the entity liable for the tax fine should pre-pay 25% of the fine, in order to challenge the fine in court (in this case EUR 47 million). However, in the case of Larco, a Greek administrative court decided to alleviate the company from the obligation to pre-pay 25% of the fine, replacing it with the obligation to deposit letters of guarantee of EUR 1.5 million.

3.6. Measure 6: the 2011 State guarantees

- (15) According to the Greek authorities, on 30 December 2011, the Greek State provided a guarantee for two loans of EUR 30 and 20 million from ATE Bank. One of the loans (of EUR 20 million) was overdue at the time of the granting of the guarantee. The guarantee premium paid to the State was 1% and the guarantees covered 100% of the loans' amounts. The interest rates of the underlying loans were equal to the lending bank's "Basic lending interest" (8.5% at the time) plus a premium of 0.6% (for the loan of EUR 20 million) and 1.6% (for the loan of EUR 30 million). Larco was a firm in difficulty at that time (see section 5.1 below).

4. COMMENTS FROM THE GREEK AUTHORITIES

- (16) The Greek authorities have not presented any comments regarding the qualification of the measures in question as state aid and any possible compatibility with the Treaty on the Functioning of the European Union ("TFEU").

5. ASSESSMENT

- (17) This decision addresses as a preliminary point the issue of whether Larco is a firm in difficulty in the sense of the Rescue and Restructuring Guidelines ("R&R Guidelines")⁶ (see below section 5.1). Subsequently, the Commission will examine whether the measures under scrutiny constitute state aid to Larco in the meaning of Article 107(1) TFEU (see below section 5.2), and finally whether such aid might be compatible with the internal market (see below section 5.4).

⁵ Greek Income Taxation Code law 2238/1994 (Official gazette FEK A/151/16.9.94), Article 74(9).

⁶ Communication from the Commission – Community guidelines on state aid for rescuing and restructuring firms in difficulty, OJ C 2044, 1.10.2004, p.2.

5.1. Difficulties of Larco

- (18) The Commission observes that, as set out in table 1 below, the company's financial performance has deteriorated significantly in the period 2008-1st half of 2012 ("H1 2012").

Table 1: Larco's key financial data 2007-6/2012 (EUR million)						
	2007	2008	2009	2010	2011	H1 2012*
Turnover	549.3	284	98.8	239	311	154.6
EBT	23	- 116	- 105	6.4	6.5	-12.2
Registered capital	163.8	163.8	109	109	109	109
Own equity	104	- 0.4	- 35	- 31	- 26	-39
Total Debt	141.2	230.1	233.9	261.8	262.7	326.0
Debt/Equity (ratio)	1.3	-575.0	-6.6	-8.3	-10.1	-8.4

- (19) Point 10(a) of the R&R Guidelines stipulates that a company is in difficulty in the case of a limited liability company when *"more than half of registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months"*. This provision reflects the assumption that a company experiencing a massive loss in its registered capital will be unable to stem losses that will almost certainly condemn it to go out of business in the short or medium term (as stipulated in point 9 of the R&R Guidelines).
- (20) The Commission also notes that in accordance with point 11 of the R&R Guidelines, a firm may be considered to be in difficulty *"where the usual signs of a firm being in difficulty are present, such as increasing losses, diminishing turnover, growing stock inventories, excess capacity, declining cash flow, mounting debt, rising interest charges and falling or nil net asset value"*. In this respect, according to the General Court, *"the existence of negative own capital which [...] may be considered to be an important indicator that an undertaking is in a difficult financial situation"*.⁷
- (21) According to the financial statements of Larco for the years 2007-H1 2012, the registered capital of the company was not lost by more than half. However, over the same period the company's own equity turned negative. In previous cases the Commission has considered that where a company has negative equity, this implies in fact that the entire registered capital of that company has been lost and there is an *a priori* assumption that the criteria of point 10(a) of the R&R Guidelines are met.⁸

* Data submitted by HRADF.

⁷ Joined Cases T-102/07 *Freistaat Sachsen v Commission* and T-120/07 *MB Immobilien and MB System v Commission*, [2010] ECR II-585, para.106.

⁸ Commission Decision in case C 38/2007 *Arbel Fauvet Rail*, OJ L 238, 5.9.2008, p. 27, Commission Decision in case C 27/2010 *United Textiles*, OJ L 279, 12.10.2012, p. 30.

- (22) In the case of Larco the Commission considers that Larco's registered capital only appears not to have been lost by more than half, because the company did not adopt appropriate measures, as normally foreseen by Greek legislation.⁹ Such appropriate measures would aim at turning the company's own equity from negative to positive and, at the same time, at increasing it to an adequate level. Such appropriate measures could be either the capitalisation of losses or a capital increase or both. At this stage, the Commission has no information as to why Larco did not undertake any such measures.
- (23) In this respect, the Commission considers that a capitalisation of losses would have resulted in the loss of the entire registered capital of the company, since the accumulated losses were higher than the registered capital. For this reason the Commission considers that the criteria of point 10(a) of the R&R Guidelines are met in this case since 2008.
- (24) In addition, as regards the criteria of point 11, the Commission notes that Larco incurred a significant decrease of turnover from 2007 until 2009 and significant losses in 2008 and 2009, with a total amount of EUR 221 million (EUR 116 million and EUR 105 million respectively). In 2010 and 2011 the company had increased turnover and earnings, but those increases were not sufficient to allow Larco's financial recovery. During the same period its equity remained negative and its debt continued to grow. Furthermore, Larco's operations turned again loss-making in H1 2012.
- (25) In light of the above, the Commission is of the view that Larco can be considered as a firm in difficulty within the meaning of the R&R Guidelines at the time when the identified measures were provided.

5.2. Existence of state aid

- (26) By virtue of Article 107(1) TFEU, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.
- (27) In order to conclude on whether state aid is present, it must therefore be assessed whether the cumulative criteria listed in Article 107(1) TFEU (i.e. transfer of State resources, selective advantage, potential distortion of competition and affectation of intra-EU trade) are met for each of the measures identified.
- (28) Greece has not argued on whether the measures described in Section 3 above involve state aid within the meaning of Article 107(1) TFEU.

⁹ According to Article 47 of Greek Law 2190/1920, in case that a company's own equity falls below 50% of its share capital, the company's shareholders must decide (within 6 months from the expiry of the relevant fiscal year) either to dissolve the company or to adopt other measures.

5.2.1. *State resources and selective advantage of measure 1 (non-collection of debt to the Ministry of Finance)*

- (29) It appears that during the period 2004-2012 the Ministry of Finance has not collected properly a claim against Larco. Thus, the latter has effectively been granted a delay for the payment of a financial obligation to the Ministry of Finance, at the time of financial difficulty. This measure clearly involves State resources, in the form of State revenue to be collected.
- (30) According to case law,¹⁰ in order to establish whether a selective advantage is conferred by non-enforcement of debts and whether the advantage could be classified as state aid for the purposes of Article 107(1) TFEU, it must still be established that Larco could not have obtained such an advantage under normal market conditions. In this regard, the essential question to be asked is whether the behaviour of the State as creditor in the given circumstances could be compared to the behaviour of a diligent private creditor.
- (31) The debt appears in Larco's annual financial statements under the account title "*Obligations from the Debt Settlement Contract of 27/4/1998*", which is separated in three sub-accounts for each of the three creditors (Old Larco, PPC and Ministry of Finance). Only the amount of debt in Larco's sub-account for the Ministry of Finance towards the Ministry of Finance has remained stable or increased slightly at least since 2004, at the level of EUR 13 million, whereas the debts to PPC and Old Larco, which were parts of the same overall arrangement of public debt, have at the same time been decreased or eliminated (see paragraph 9 above). Thus, the debts to PPC and Old Larco were reduced whereas the debt towards the Greek State was not collected by the latter.
- (32) The Greek authorities have not clarified whether, during the period 2004-2012, the company's public debts were rescheduled, by applying appropriate penalties, and whether Larco has respected the terms of such rescheduling agreement. The Greek authorities have also not clarified the State's actions during the same period in order to collect its claims against Larco, i.e. whether the State submitted any requests to Court for orders of payment, seizure of assets etc.
- (33) For the above-stated reasons, the Commission has doubts whether the Greek State behaved as a diligent private creditor since 2004. The measure benefitted a single company and it is therefore selective.
- (34) Thus, the Commission has reached the preliminary conclusion that the non-collection of the debt to the Ministry of Finance conferred a selective advantage within the meaning of Article 107(1) TFEU on the company.

5.2.2. *State resources and selective advantage of measures 2, 4 and 6 (2008, 2010 and 2011 State guarantees)*

¹⁰ See e.g. Judgement of 29 April 1999 in C-342/96 Spain v. Commission, Rec.1999, p.I-2459; Judgement of 11 July 2002 in T-152/99 HAMSA v. Commission, Rec.2002, p.II-3049; Judgement of 29 June 1999 in C-256/97 DM Transport, Rec.1999, p.I-3913.

- (35) State guarantees put at risk State resources, as their call is paid through the State budget. Moreover, any guarantee that is not properly remunerated implies a loss of financial resources for the State. Thus, the criterion of State resources is fulfilled.
- (36) As regards the advantage to Larco, the Commission draws attention to the *Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees* ("Guarantee Notice"),¹¹ sections 2.2 and 3.2. According to the Guarantee Notice, when the borrower does not pay a risk-carrying price for the guarantee, it obtains an advantage. In some cases, the borrower, as a firm in financial difficulty, would not find a financial institution prepared to lend on any terms, without a State guarantee. In addition, the Guarantee Notice stipulates that the fulfilment of certain conditions could be sufficient for the Commission to rule out the presence of state aid, such as that the borrower is not in financial difficulty and that the guarantee does not cover more than 80% of the outstanding loan or other financial obligation.
- (37) In the case at hand, the Commission has no indication of the corresponding guarantee premium benchmark that could be found in the financial market for similar guarantees. However, an annual guarantee premium of 1% does not *prima facie* appear to reflect the risk of default for the guaranteed loans, given the significant financial difficulties of Larco, and in particular its high debt to equity ratio and its negative equity.
- (38) Furthermore, the Commission notes that the guarantees exceeded 80% coverage of the guaranteed amounts and were granted to a firm in difficulty. Thus, the Commission doubts whether a market economy guarantor would provide Larco with a guarantee for that price. The presence of state aid can therefore not be ruled out.
- (39) Furthermore, in the absence of the State guarantee, the Commission doubts as to whether any financial institution would be prepared to lend to Larco on any terms.
- (40) Finally, the guarantees in question were *ad hoc* measures for Larco and thus selective.
- (41) Thus, the Commission considers at this stage that the guarantees provided by the State in 2008, 2010 and 2011 conferred a selective advantage to Larco.

5.2.3. *State resources and selective advantage of measure 3 (2009 capital increase)*

- (42) The 2009 capital increase of EUR 65.5 million was subscribed by the Greek State at 69% and by NBG at 31% (see paragraph 11 above)¹². Thus, the State contribution of EUR 45 million entailed State resources.

¹¹ OJ C 155, 20.6.2008, p. 10.

¹² The exact date of subscription of the shares by the Greek State and the other shareholders is not known to the Commission. This point will need to be clarified in the course of the formal investigation procedure.

- (43) As regards the advantage to Larco, the Commission notes that the 2009 capital increase was subscribed mainly by the Greek State, at 69%, and by NBG, a private financial institution, at 31%. A participation of 31% of a private investor could in principle be seen as sign that the investment in question was also supported by market economy investors.
- (44) However, the Commission notes that NBG refused to exercise its rights to the capital increase in full, even though it had originally agreed to that end (see paragraph 9 above). In this regard, based on NBG's shareholding before the capital increase, it appears that its original participation in the capital increase would be approximately EUR 49 million, however its final participation was reduced to EUR 20.5 million. As a result, NBG's shareholding in Larco was diluted from 36% before the capital increase to 33.4% after it.
- (45) In addition, the Commission notes that NBG's annual report of 2008 stated: "*The book value of Larco SA of an amount of EUR 42.611 was deleted entirely due to losses of an amount of EUR 38.529 and a reduction of value of an amount of EUR 4.352 because the Group does not foresee to recover the book value of the investment, given that the company encounters significant financial difficulties*"¹³. Based on this statement of NBG, the Commission has doubts whether NBG's participation in the 2009 capital increase, which took place a few months after the above statement, was based on expectations that a market economy investor would have for a positive return from such an investment, especially since in 2009 Larco had even worse financial results than in 2008 (see section 5.1 above).
- (46) The Commission also has doubts whether NBG's actions can be compared to those of a normal market economy investor, as NBG appears to have been exposed to Larco, not only as a shareholder, but also as a creditor or guarantor. Its decision to participate in the capital increase together with the State may therefore have been triggered by an attempt to mitigate its credit risk.
- (47) Also, the third shareholder of Larco, PPC, did not participate at all in the capital increase, even though it had originally agreed to that end. In this regard, based on PPC's shareholding before the capital increase, it appears that its original participation in the capital increase would be approximately EUR 38 million, however in the end it did not participate at all. As a result, PPC's shareholding was diluted from 29% before the capital increase to 11.4% after it. It is finally noted that no new shareholders contributed to the share capital.
- (48) As the General Court has clarified, "*la concomitance ne saurait à elle seule, même en présence d'investissements privés significatifs, être suffisante pour conclure à une absence d'aide au sens de l'article 87, paragraphe 1, CE sans prendre en considération les autres éléments pertinents de fait ou de droit*"¹⁴. Indeed, in the first place, it appears that Larco was a firm in difficulty at the time of the 2009 capital increase (see section 5.1 above), but the latter does not appear to have been followed by a restructuring plan, in order to restore the company's viability and ensure a return to the shareholders' investment. Also,

¹³ Note 24: Participations in linked companies

¹⁴ Case T-565/08 *Corsica Ferries v Commission*, judgment of 11 September 2012, not yet reported, at para 122.

the 2009 capital increase was the third State support measure in a time span of approximately 5 years, after the non-collection of a debt to the Ministry of Finance since at least 2004 (Measure 1) and the State guarantee of 2009 (Measure 2). Therefore, the 2009 capital increase took place in a context in which the public authorities had already demonstrated their willingness to financially support Larco and this might have influenced the conduct of the private investor.

- (49) In this broader context, bearing in mind the difficulties of Larco at the time and the expectations that the investment would not yield a sufficient return in the short-to medium-term, the Commission preliminarily considers that the participation of NBG in the capital increase with EUR 20.5 million does not *per se* remove the Commission's doubts about a possible advantage for Larco.¹⁵
- (50) Given that the capital increase was provided by the State exclusively to Larco, the Commission considers that the advantage would be selective in nature.
- (51) On the basis of the elements above, the Commission has reached the preliminary conclusion that the State contribution to the 2009 capital increase conferred a selective advantage to Larco.

5.2.4. State resources and selective advantage of measure 5 (non-collection of a tax fine in 2010)

- (52) The collection of a tax fine is revenue attributed to the State. Thus, a non-collection of the pre-payment would be forgone State revenue and would thus involve State resources. In addition, the Commission notes that the measure is imputable to the Greek State, as it was adopted by a Greek court, which constitutes a body of the State¹⁶.
- (53) In order to establish the existence of an advantage in that measure, the Commission must compare the acts of the State as creditor with the acts of a prudent market economy creditor. The Commission observes that the pre-payment in question appears to be compulsory in situations like the one under examination, i.e. in order for the fine to be challenged in a Greek court. However, as a result of a Greek court judgment, the State accepted to forgo the collection of the pre-payment of EUR 47 million and replaced it with the letters of guarantee of EUR 1.5 million.
- (54) The Commission notes that the letters of guarantee are of a significantly lower amount, in comparison to the pre-payment due originally.
- (55) In light of the above, the Commission considers that a market economy creditor would not accept to forgo the collection of its claims without any specific justification. Furthermore, the Commission considers that a market economy creditor would not accept the replacement of a debt of that size with

¹⁵ See Cases T-358/94 *Compagnie nationale Air France v Commission* [1996] ECR II-2109, at paras 148-149 and T-296/97 *Alitalia – Linee aeree italiane SpA v Commission* [2000] ECR II-3871, at para 81.

¹⁶ See, in this respect, Commission decision in case *Alleged aid to Aluminium of Greece*, OJ L 166, 27.6.2012, p. 83.

a much lower letter of guarantee by a firm, which appears likely to default on its promise, due to its financial difficulties.

- (56) It appears that the non-collection of the above pre-payment of the tax fine is an *ad hoc* measure by the State benefitting a single company.
- (57) In this regard, Greece did not submit the court judgement in question or any arguments justifying that the State authorities accepted the replacement of the pre-payment of the tax fine based on general national legislation setting objective criteria for the adoption of such decisions.
- (58) Thus, the Commission considers at this stage that the non-collection of the pre-payment of 25% of the tax fine by the State and its replacement with the obligation to deposit letters of guarantees conferred a selective advantage within the meaning of Article 107(1) TFEU on the company.

5.2.5. Distortion of competition and effect on trade of measures 1 to 6

- (59) The Commission has to consider whether the measures taken by the Greek authorities in favour of Larco are likely to distort competition and affect trade between Member States, by providing this company with an advantage over competitors not receiving public support.
- (60) Larco is active in a sector whose products are traded among Member States and is itself exporting most of its production to other Member States. In addition, there is nickel mining, smelting and refining in 6 Member States apart from Greece, i.e. in Austria, Finland, France (New Caledonia), Spain, Sweden and United Kingdom¹⁷. As regards the trade of nickel, it is traded in almost all Member States¹⁸.
- (61) As regards the distortion of competition, the measures in question enable Larco to continue operating so that it does not have to face, as other competitors, the consequences normally deriving from its difficult financial results. This distorts competition as other companies active in nickel mining, smelting and refining need to operate without guarantees or equity from the state.
- (62) The Commission therefore considers that the measures in question have an effect on trade and distort competition.

5.2.6. Conclusion on the existence of state aid

- (63) On account of the arguments above, the Commission considers at this stage that measures 1 to 6 under scrutiny might involve state aid within the meaning of Article 107(1) TFEU.

5.3. Unlawful aid

- (64) If the measures identified were to constitute state aid, they would have been granted in breach of the notification and stand-still obligations established in

¹⁷ Sources: Source: British Geological Survey, European Mineral Statistics 2006-2010, <http://www.bgs.ac.uk/>; also Nickel Institute, <http://www.nickelinstitute.org>.

¹⁸ Source: British Geological Survey, European Mineral Statistics 2006-2010, <http://www.bgs.ac.uk/>.

Article 108(3) TFEU. Thus, the Commission considers at this stage that the measures granted to Larco qualify as unlawful state aid.

5.4. Compatibility of the aid

- (65) Inasmuch as the measures constitute state aid within the meaning of Article 107(1) TFEU, their compatibility must be assessed in the light of the exceptions laid down in paragraphs 2 and 3 of that Article.
- (66) According to the case-law of the Court of Justice, it is up to the Member State to invoke possible grounds of compatibility and to demonstrate that the conditions for such compatibility are met.¹⁹ The Greek authorities have not provided any possible grounds for compatibility.
- (67) The Commission has nonetheless assessed whether any of the possible compatibility grounds laid on the TFEU would *prima facie* be applicable to the measures under assessment. The Commission considers at this stage that the exceptions laid down in Article 107(2) TFEU are not applicable. The same conclusion would apply to the exceptions foreseen in Article 107(3), points (d) and (e), TFEU.
- (68) In view of the fact that Larco seemed to be in difficulty already in 2008 and continues to be in difficulty at present, it does not appear at this stage that the exception relating to the development of certain areas or of certain sectors laid down in Article 107(3)(a) TFEU could be applicable.
- (69) The Commission also has assessed whether any of the measures concerned could be compatible on the basis of Article 107(3)(b) TFEU under the crisis rules enshrined in the Temporary Framework.²⁰ However, the Commission notes that Larco was possibly a company in difficulty before 1 July 2008 and therefore would not be eligible for aid under the Temporary Framework. Moreover, the measures under assessment do not appear to fulfil the rest of the conditions of applicability of the Temporary Framework. The Commission does not have any information, which would substantiate that aid in favour of Larco could potentially "*remedy a serious disturbance in the economy*" of Greece, whereas the company's operations do not seem to fall under the definition of a project of common European interest.
- (70) In view of the nature of the measures at issue and of the fact that Larco could be considered a firm in difficulty at the time of the granting of the measures (see section 5.1 above), it appears that the compatibility of the measures can only be assessed under Article 107(3)(c) TFEU, and in particular in the light of the R&R Guidelines.
- (71) At this stage the Commission however doubts that the identified aid could be declared compatible with the R&R Guidelines, because it seems that several of the conditions and principles of the latter would not be met.

¹⁹ Case C-364/90, *Italy v Commission*, [1993] ECR I-2097, para.20.

²⁰ Temporary Framework for state aid measures to support access to finance in the current financial and economic crisis, OJ C 16 of 22.1.2009, p. 1, as modified by the Communication from the Commission amending the Temporary Community Framework for state aid measures to support access to finance in the current financial and economic crisis, OJ C 303, 15.12.2009, p. 6. The Temporary Framework expired in December 2011.

- (72) The Commission first notes that the conditions for rescue and restructuring aid laid down in sections 3.1 and 3.2 of the R&R Guidelines do not seem to be met. In particular, the Greek authorities have not provided any information as to whether any of the measures have been terminated and have not submitted a restructuring plan. In addition, the Commission notes that the State appears to have provided repeated measures in favour of Larco, while the latter was in difficulty. Thus the condition under section 3.3 of the R&R guidelines ("one time, last time") does not seem to be met either.
- (73) The Commission highlights the fact that the Greek authorities have not provided arguments as to their possible compatibility as restructuring aid.

5.5. Preliminary conclusion on compatibility

- (74) At this stage the Commission has doubts on the compatibility with the internal market of the different measures identified.

6. DECISION

In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union, requests Greece to submit its comments and to provide all such information as may help to assess the aid/measure, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.

The Commission wishes to remind Greece that Article 108(3) of the Treaty on the Functioning of the European Union has suspensory effect, and would draw your attention to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient.

The Commission warns Greece that it will inform interested parties by publishing this letter and a meaningful summary of it in the *Official Journal of the European Union*. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the *Official Journal of the European Union* and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.

If this letter contains confidential information which should not be published, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to publication of the full text of this letter. Your request specifying the relevant information should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State aid Greffe
B-1049 Brussels

Fax No: +32-2-296.1242

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-president

