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Subject: **State aid SA.36893 (2013/N) – Greece –**
Reset of Greek Motorway concession projects – Central Motorway (E65)

Sir,

1. PROCEDURE

(1) Following informal contacts, the Greek authorities notified to the European Commission ('Commission') by SANI notification of 21 June 2013 a series of measures amending the concession agreement for the "Design, Construction, Financing, Operation, Maintenance and Exploitation of the Project Central Greece Motorway" ('Central Motorway').

(2) Additional information was requested by e-mail of 4 July 2013 and letters of 5 August 2013, 4 October 2013 and 8 November 2013. The Greek authorities provided additional submissions by letters of 3 September and 25 November 2013 and clarifications by e-mails between 25 November and 2 December 2013.

(3) By their letter of 3 September 2013, the Greek authorities informed the Commission that in the interest of adopting the present decision as soon as possible, they accept that the decision is adopted in English.

2. DESCRIPTION

2.1. The project

(4) The Central Motorway project is a 30-years concession by the State and concerns:

a. the design, construction, operation, maintenance and exploitation of a new motorway of 174 km linking the existing Athens-Thessaloniki motorway

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(near the town of Lamia) with Egnatia Odos in the north (InterChange Panagia), through the towns of Karpenisi, Karditsa, Trikala and Grevena;

b. the operation, maintenance and exploitation of a section of the Athens-Thessaloniki motorway between Skarfia and Raches (57 km), to be constructed by the Greek State.

(5) The Central Motorway is included in the Trans-European Transport Network (TEN-T) as part of the European Corridor E-65.[1] As such, and given the condition of the existing network serving the afore-mentioned regions, the works on the Central Motorway are expected to improve traffic speed, capacity, safety, as well as interconnection with other modes of transport and other EU Member States both for passengers and cargo. In particular, the Central Motorway will connect parts of the Thessaly region with the two main motorway axes in Greece and subsequently with Athens (the capital and major hub for sea, air and railway transport), Thessaloniki (regional capital and sea, air and railway transport hub) and Igoumenitsa (sea port with connections mainly to Italy).

(6) Finally, according to the Greek authorities, the construction and operation of the Central Motorway will have significant positive effects on the Greek economy, as it is expected to improve competitiveness, create direct (through the construction) and indirect (through improved mobility) employment and boost growth. This is supported by a study prepared by the Greek Foundation for Economic and Industrial Research.

(7) The Greek authorities have provided a cost/benefit analysis for the project based on the Financial Net Present Value ('FNPV') method.[2] Over a reference period of 30 years, the project has a negative FNPV of – EUR 942 million. This indicates that the expected revenues do not cover the total investment costs of the project. In principle a project with negative FNPV needs public support in order to be concluded, since no private investor would contribute the full cost of the project, as this would yield no return.

2.2. The beneficiary

(8) The project is carried out by a Special Purpose Vehicle company ('SPV'), "Central Greece Concession Company" ('Central ProjectCo' or 'Concessionaire') with the following shareholders:

a.	Cintra S.A./ Ferrovial S.A	33.34%
b.	GEK-Terna S.A.	33.33%
c.	Dragados S.A.	32.00%
d.	Iridium Concesiones de Infrastructuras S.A.	01.33%

[1] Decision 661/2010/EU of the European Parliament and of the Council of 7 July 2010 on Union guidelines for the development of the trans-European transport network, OJ L 204, 5.8.2010, p.1.

[2] The Financial Net Present Value is a formula used to determine the present value of an investment by the discounted sum of all cash flows incoming to or outgoing from a project.

2.3. Context of the measures

2.3.1. The original concession agreement

(9) On 31 May 2007, following an open tender, the Greek State and Central ProjectCo signed the concession agreement for the Central Motorway, which was ratified by law 3597/2007.[3] The Concession commenced on 31 March 2008 (referred to as 'CCD') and was initially foreseen to have duration of 30 years, thus ending on 31 March 2038.on

(10) The Concession Agreement with Central ProjectCo has the characteristics of a Public-Private Partnership ('PPP')[4] in the form of Build-Operate-Transfer back ('BOT').

(11) The concession agreement is divided into two distinct periods: design and construction period ('T1') and operation period after construction ('T2'). The existing motorway section is to be operated already during T1.

(12) The construction of the Central Motorway during T1 was envisaged to be financed partly by private sources and partly by public sources. This was based on the premise that, in view of the negative FNPV, the Central Motorway could not be constructed unless financed, in part, with public funds.

(13) The public sources were envisaged to be:

a. A grant of EUR 518 million by the State ('State Financial Contribution') which included money from the State budget and from Community Funds;

b. The motorway revenues from the sections of the motorway constructed by the State (i.e. the section Skarfia-Raches).

(14) The private sources were envisaged to be:

a. EUR 155 million by the Concessionaire in the form of equity, including shareholders' loans;

b. EUR 1,190 million from commercial loans by a group of Greek and international financial institutions. The commercial loans would be drawn progressively during T1 and would be repaid during T2 period.

(15) As regards the financing of T2, this would be financed partly by the Concessionaire with the revenues generated by the operation of the Central Motorway[5] and partly through a State subsidy (grant) to be paid throughout the concession term.[6] These revenues would also allow the Concessionaire to repay the commercial loans.

(16) If the revenue from the Central Motorway exceeded certain thresholds during T2, as a result of traffic above-expectation, the subsidy by the State would be reduced or, even reversed and the Concessionaire would grant payments to the State.

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[3] National Gazette FEK 168/A/25.7.2007.

[4] A Public-Private Partnership is a government service or private business venture which is funded and operated through a partnership of government and one or more private entities. A PPP involves a contract between a public sector authority and a private party, in which the private party provides a public service or project and assumes substantial financial, technical and operational risk in the project.

[5] Motorway revenue is considered the revenue collected from the toll stations and motorist service stations.

[6] The subsidy was already provided in the original Concession Agreement (see Art. 25) and was envisaged to cover the difference between the anticipated revenue from traffic and the actual cost of the operation and financing of the motorway, including a return to the investors. The subsidy was contractually envisaged to reach a maximum of EUR 1,647 m.

2.3.2. *2008 State aid decision*

(17) The State support in favour of the Central Motorway was the subject of a Commission decision which did not to raise objections, since it was deemed not to involve state aid for either the Concessionaire or the end users of the motorway.[7]

2.3.3. *Construction suspension and renegotiation*

(18) Since 2011, the Central Motorway faced a significant decline in revenue through the reduction in traffic (at least 60% lower than envisaged), mainly due to the worsening economic conditions in Greece, demonstrated by a significant reduction of GDP since 2008 and high unemployment. In addition, public unrest led to demonstrations and the occupation of toll booths, with the subsequent inability of the Concessionaire to collect tolls on certain occasions.

(19) According to the Greek authorities, as a result of the loss of revenue brought about by the crisis, the contractually specified loan cover ratios of the projects (i.e. the minimum levels ofdebt servicing required by the lenders) were breached. At the same time, the financial institutions involved faced lack of liquidity and a steep increase in their funding costs.

(20) This led the lenders to cease providing funding to the project ('draw stop') as they no longer believed in its viability. The draw stop resulted in a suspension of the construction of the Central Motorway since June 2011, when approximately 16% of the T1 construction works had been completed.

(21) The Central Motorway also faced significant judicial and administrative delays. This was due to delays in a large number of expropriations by the State and court proceedings on environmental approval of the section Kalambaka-Egnatia Odos.

(22) As a result of the construction delays, including the suspension period, the duration of the construction of the Central motorway was delayed by 27 months. In this context, since the works were suspended for reasons imputable to one of the contracting parties, the time for finishing the works of T1 is extended by the same period and thus the completion deadline of the construction is moving from September 2013 to December 2015, although this does not have an impact on the overall duration of the concession agreement.

(23) The Greek authorities have explained that a collapse of the concession and re-tendering would not be an economically sound option.

(24) Thus, the Greek authorities have decided to re-negotiate with the Concessionaire and provide additional public support measures, in view of restoring the viability of the Central Motorway and allow its construction and operation. The result of these negotiations is hereinafter referred to as "Reset".

(25) Three other motorway concessions in Greece, which were tendered at approximately the same period as the Central Motorway and had similar funding mechanisms, are facing similar problems. These are Aegean Motorway, Ionia Odos and Olympia Odos. State support measures for these motorways are the subject of separate Commission decisions.[8] Ionia Odos and the Central Motorway have the same shareholders and are thus treated in conjunction by the Greek State.

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[7] Decision E(2008)310 final, adopted on 30.01.2008, case N 565/2007, published in OJ C 70, 15.03.2008, p. 4

[8] Cases SA.36877, SA.36894, SA.36878.

3. THE NOTIFICATION

3.1. New conditions of financing by financial institutions

(26) Following the draw stop, the lending financial institutions were not under an obligation to provide funding, because the repayment was uncertain. The lending conditions were therefore renegotiated between the Concessionaire and the financial institutions, leading to the following changes:

a. reduced and regrouped committed amounts of long term loans to a total of EUR 435 million (as opposed to various loan facilities of EUR 1,190 million originally), reflecting the reduced loan capacity of the Central Motorway;

b. established the maturity of the new loans to December 2032 and adjusted the repayment of the already undertaken loans, in order to reflect the repayment possibilities of the Central Motorway;

c. increased margins by 145-385 basis points;

d. partial breakage of old hedging contracts (interest rate swap). The amount of the breakage cost will be rolled-over into a new loan ('swap crystallisation facility').

3.2. The new shareholding structure

(27) In the context of the Reset, the shareholders of Central ProjecCo decided that only GEK-Terna would contribute to the new equity injections. Thus, when the full agreed equity injection takes place under the Reset, the shareholding structure of Central ProjecCo will become:

a.	Cintra S.A./ Ferrovial S.A	29.0%
b.	GEK-Terna S.A.	42.0%
c.	Dragados S.A.	27.8%
d.	Iridium Concesiones de Infrastructuras S.A.	01.2%

(28) The shareholding structure of Ionia Odos will also be affected.[9]

3.3. State support measures

(29) Following the notification, on 28 November 2013, the Greek State signed an agreement with the Concessionaire regarding the Reset of the Central Motorway. This agreement (in the form of amendments to the original Concession) will enter into force after ratification by the Greek Parliament. The Greek authorities have undertaken the commitment to only implement that agreement after the Commission has adopted its decision regarding the state aid.

(30) The following measures have been notified to the Commission under Article 108 (3) of the Treaty on the Functioning of the European Union ('TFEU'):

[9] See Commission decision in case SA.36894.

3.4. Measures in T1

3.4.1. Measure 1: Settlement of contractual obligations and deferment of parts of the construction

3.4.1.1. Payment of claims

(31) During the construction period, the State has the contractual obligation to provide a vacant site for the Central Motorway. However, delays in obtaining vacant possession of the construction site of the Central Motorway have occurred due to judicial and administrative reasons. They have resulted in (i) disruption of the Central Motorway's construction schedule and (ii) adverse financial impact on the operation of the Central Motorway for the Concessionaire, resulting in a reduction of the Concessionaires' anticipated revenues and increase in construction costs.

(32) The Concessionaire submitted to the Greek State a list of financial claims of EUR 198.3 million. On the basis the original concession agreement[10] all claims were reviewed by appointed independent engineers, auditors and the competent services of the Greek administration. In conclusion, the Greek State has accepted only part of the claimed amounts as admissible, following a review of on the basis of contractual grounds. It has thus agreed to pay a total of EUR 111.5 million to the Concessionaire, in order to settle the claims.

3.4.1.2. Deferment of parts of the construction

(33) Because of the anticipated reduced revenue from the Central Motorway and the reduced amounts of commercial loans, the financing sources of the Central Motorway would not be sufficient for the conclusion of the entire project. In addition, the construction of the section Kalambaka-Egnatia (see Annex I) faced judicial obstacles.[11]

(34) In order to limit the necessary additional public financing (see section 3.4.2. below) and tackle the judicial obstacle, the Greek State has agreed with the Concessionaire that the construction of two sections (i.e. Lamia-Xiniada and Trikala-Egnatia – see Annex I) shall be deferred for maximum 3 years after the conclusion of T1 ('Option Period').

(35) According to the notification, the Greek State shall retain the right to instruct the Concessionaire at any time during the above Option Period to commence the development and construction of the deferred sections, subject to increased revenue from the Central Motorway, availability of funds and consent of the lenders.

(36) The Greek authorities have undertaken the commitment to notify any additional State resources to the Commission, if they become necessary for the construction or operation of the deferred parts.

(37) Irrespective of the above trigger events, the Greek State shall have the right to cancel the construction of any of the afore-mentioned sections at any time during the Option Period. In any event, their construction will be deemed to have been cancelled by the State at the end of the Option Period. The cancelation of the construction will not lead to any compensation by the State to the Concessionaire.

[10] Art. 26.1, 26.2, 26.4, 26.5 and 26.6 of the Concession Agreement.

[11] Injunction of the Administrative Supreme Court following appeals against this part of the Project on environmental grounds.

3.4.2. Measure 2: Additional State Financial Contribution

(38) As explained, the Central Motorway has experienced and is anticipated to experience also in the future a significant reduction in traffic. . The lending financial institutions are therefore willing to commit significantly lower amounts for commercial loans and with higher margins.

(39) In addition, the shareholders will contribute EUR 78 million less equity than originally planned. This reduction reflects the deferment of construction of the two sections but also the fact that the Central Motorway is not generating enough revenue to allow remuneration for the originally envisaged equity. The remuneration of the Concessionaire was originally depending on a State subsidy (see recital (15) above), which is now replaced by a sharing of revenues of Ionia Odos Motorway (see recital (47) below).

(40) These conditions have created a financing gap for the construction of the project (i.e. T1 period), which was not anticipated when the original concession agreement was signed. The difference in the various funding sources and costs is demonstrated at the table below:

Table 1: Financing gap of Central Motorway
T1 funding sources and uses (in EUR millions – rounded up figures)

Sources	*Reset*	*CCD*	*Delta*
Total Central Motorway revenues[12]	47	43	4
Long Term loan (commercial loans)	435	1,190	-755
SFC Bridge Facility	*222*	*311*	*-89*
Swap crystallisation facility[13]	*213*	*-*	*213*
Other long term loans	*-*	*880*	*-880*
SFC Bridge Facility (rolled-over as new loan above)	-	311	- 311
VAT Facility Drawdowns	99	265	- 166
State Financial Contribution	518	492	26
Remaining SFC beginning T2	*-*	*26*	*- 26*
Implied total original SFC	*518*	*518*	*-*
Compensation to Concessionaire[14]	28	-	28
Equity (incl. shareholder loans)	77	155	- 78
Total sources	**1,205**	**2,457**	**1,251**

[12] Motorway revenues increase from CCD to Reset due to the extension of the construction period (T1) by 27 months. On a like-to-like comparison, i.e;, without this extension, the revenues would be 26% lower at Reset than at CCD.

[13] See recital (26)d above. The Greek authorities calculated the cost of readjustment (and subsequent swap crystallisation facility) at EUR 213 million in November 2013. The final amount can only be calculated on the date of entry into force of the Reset, because the valuation depends on market interest rates on the date, on which it becomes effective.

[14] The Greek authorities have explained that this amount does not reflect the full amount of claims payments, described in section 3.4.1.1. above. That is because part of the claims payments by the State is given directly to the Construction Joint Venture passing through the Concessionaire.

Uses			
Project costs (incl. overheads, operating and maintenance)	36	104	-68
Capital expenditure for construction	719	1,358	- 639
Loan repayment	64	486	422
Of which amortisation of the swap crystallisation facility[15]	*35*	-	*35*
VAT Facility repayment	66	266	- 201
Financing costs (incl. fees)	481	233	249
Debt Service Reserve Account and Major Maintenance Reserve Account	13	8	5
Other (Working Capital and corporate tax)	40	1	39
Total uses	**1,420**	**2,457**	**-1,037**

Financing gap			**214**

Source: Submission of the Greek authorities 21/06/2013

(41) According to the notification, the Greek authorities will provide grants, in order to cover the financing gap. The Greek authorities have notified the amount of EUR 214 million as aid amount for the Additional State Financial Contribution, with the reservation that this amount may change marginally only as regards certain costs and payments.[16]

(42) The Additional State Financial Contribution will come from the State budget and the European Regional Development Fund ('ERDF').

(43) A claw-back mechanism is included, whereby, if the total amount of the funds available to cover the costs of R1 exceeds the amount of the T1 costs, then the additional SFC will be reduced by the respective amount. The reduction will be effective at the last payment of the additional SFC.

3.5. Measure in T2

3.5.1. Measure 3: Recycling of T2 State revenue of Ionia Odos

(44) As explained above, the Central Motorway was originally envisaged to support its operation partly through a State subsidy, provided by the original concession agreement.

(45) The shareholders of the Central Motorway are the same as the shareholders of Ionia Odos Motorway (see recital (25) above). Under the relevant original concession

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[15] The Greek authorities have calculated the amount at EUR 35 million. Since the final amount of the swap crystallisation facility can only be calculated on the date of entry into force of the Reset (see footnote 11 above), the amount of its amortisation is also subject to change. In addition, this amortisation may further change, in order to respect certain loan cover ratios for T2. This is because the financing of the Central Motorway during T2 is provided by revenues from Ionia Odos (see section 3.5.1.).

[16] As explained in footnote 13 and 15, the exact amount of the financing gap depends on (i) the final amount of the swap breakage costs, which will only be known on the day of entry into force of the Reset and (ii) the amortisation of the swap crystallisation facility, which may change marginally.

agreement, the Concessionaire of Ionia Odos had agreed to pay a certain share of the revenue and the profits of that motorway to the State after the conclusion of its construction in 2016.

(46) Ionia Odos also suffers from reduced (actual and forecasted) revenue from its operation, which has decreased significantly its capacity to repay the commercial loans and to provide a return for the Concessionaire.

(47) In order to remedy the shortfall resulting from the reduced revenue of both motorways and given the fact that the Central Motorway would anyway not have enough revenue, the Greek State has decided to forgo its share of the revenue and profits of Ionia Odos, to the extent required and provided they are available, in favour of both Ionia Odos and the Central Motorway. These amounts will thus be used by the concessionaires to support certain agreed costs associated with the operation phase of the two motorways and to enable the concessionaires to receive an agreed Internal Rate of Return ('IRR').

(48) Any amounts by Ionia Odos originally attributed to the State will support the following sequence of payments (by priority) at the end of each year:

a. Eligible Project Costs of both Ionia Odos and the Central Motorway (operating and maintenance costs, loan servicing, corporate tax etc);
b. A Base IRR of 7.76% for the concessionaire of Ionia Odos;
c. A Base IRR of 8.45% for Central ProjectCo;
d. Any accrued and not paid Base IRR from previous years for both concessionaires;
e. Additional equity payments, due to inflation surplus;
f. Additional loan servicing expenses of Central ProjectCo, related to the swap crystallisation facility;
g. Accelerated repayment of bank loans according to a defined method ("cash sweep").

(49) The Greek authorities have specified that operating-related expenses will be subject to annual caps established at Reset and applicable for the entire concession term, to ensure that the costs are not inflated artificially.

(50) The Greek authorities have estimated the potential total amount of the forgone State revenue from this measure in favour of the Central Motorway at EUR 1,199 million.

(51) According to the notification, if one year before the end of the concession term (i.e. 2037) Central ProjectCo has not achieved the Base IRR of 8.45% over the whole concession period, the concession period may be extended for three years after 2038, i.e. the originally foreseen termination of the concession term. In that case and provided that the concession term of Ionia Odos is extended accordingly, the Recycling mechanism will continue to apply.

(52) If the Ionia Odos concession term is not extended concomitantly to the Central Motorway concession, the State will provide direct financial support in the place of the monies that could have been received from the Ionia Odos though the Recycling mechanism described above.

(53) The 8.45% IRR represents the IRR, which the Concessionaire expects to receive over the whole concession period, based on the latest traffic forecasts.

(54) The notification includes a benchmark analysis of market practices related to infrastructure concessions in Greece and in other countries for projects realised

between 1996-2010, which shows that concessionaires of similar projects usually expect an IRR between 11-13% in nominal terms.

3.6. Cumulation

(55) The Greek authorities have undertaken the commitment that the aid received for this project will not be cumulated with aid received from other local, national or EU sources for the same eligible costs.

4. ASSESSMENT

4.1. Existence of state aid

(56) 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.

(57) The Greek authorities have notified only new State support measures for the Central Motorway considering the measures under the Reset as being distinct from the measures assessed under the 2008 decision and based on the original concession agreement.

(58) In order to establish whether the notified measures under the Reset can be severed from the ones previously approved by the Commission (cf. 2008 decision), the Commission refers to relevant jurisprudence.[17] In the quoted jurisprudence the Court sets out a non-exhaustive list of elements that should be taken into account when determining whether a given measure can be reasonably severed from the previous ones. These elements are: (i) the chronology of the measures; (ii) their purpose and (iii) the assessment of the financial and risk situation of the undertaking concerned.

(59) In the present case, the measures covered by the 2008 decision were granted in 2007, while the current measures are implemented 5 years after the approval of the last measures. Therefore, a substantial period of time has already elapsed between the envisaged measures and the ones assessed in 2008 decision, therefore the measures cannot be considered as closely related in time.

(60) In addition, the Commission notes that the measures under notification are being implemented, because the beneficiary's situation deteriorated significantly, due to the significant recession of the Greek economy. This situation was not known nor anticipated at the time of the signing of the original concession agreement and at the time the Commission took its 2008 decision.

(61) Finally, the measures serve the same purpose as the original measures assessed by the 2008 decision, i.e. the construction and operation of the motorway.

(62) In light of the above, the Commission shares the Greek authorities' conclusion that, although the notified measures serve the same general purpose as the measures assessed in 2008 decision, the notified measures can reasonably be severed from the measures assessed under its 2008 decision.

[17] Joined Cases C-399 10 P and C-401 10 *P Bouygues SA, Bouygues Télécom SA v Commission*, and *BP Chemicals vs. Commission* judgment in case T-11/95 [1998], para. 171.

(63) 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 effect on trade between Member States) are met for each of the notified measures.

4.1.1. Existence of state aid at the level of Central ProjectCo

4.1.1.1. Notion of undertaking

(64) Central ProjectCo is a private law company, which is responsible for constructing, operating and exploiting the infrastructure. According to established Court jurisprudence,[18] whenever an entity is engaged in an economic activity, regardless of its legal status and the way in which it is financed, it can be considered as an undertaking for the purposes of EU competition law. According to the Leipzig-Halle judgment,[19] the construction of an infrastructure which shall be commercially exploited constitutes an economic activity. Since this is the case for the Central Motorway, the funding of the construction and subsequent operation of such infrastructure falls within the scope of EU state aid rules.

(65) Since the Central Motorway will be commercially exploited by Central ProjectCo, the latter is therefore considered to be an undertaking for the purposes of the state aid assessment.

4.1.1.2. Measures in T1

4.1.1.2.1. Measure 1 (Settlement of contractual obligations and deferment of parts of the construction)

Payment of claims

(66) The Commission notes that the payments in question are based on contractual obligations of the State in the context of the original concession agreement. Indeed, the Greek authorities have provided evidence that under the original Concession Agreement the State is responsible to compensate the Concessionaire for delays and any other financial impact on its operations, including lost revenue, imputable to the State.

(67) In addition, the Greek authorities have explained that those claims have been reviewed by independent engineers, auditors and the Greek administration where applicable, and the final amounts were accepted on the basis of the applicable contractual provisions.

Deferment of parts of the construction

(68) The deferment of works for two sections of the motorway will on the one hand result in reduced costs for Central ProjectCo. On the other hand, the Concessionaire will accordingly receive less revenue.

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[18] See e.g. Case C-41/90 *Hofner and Elsner* [1991] ECR I-1979, para. 21; C-160/91 *Poucet and Pistre v. AGF and Cancava* [1993] ECR I-637, para. 17; Case C-35/96 *Commission v. Italy* [1998] ECR I-3851.

[19] Joined cases T-455/08 *Flughhafen Leipzig-Halle GmbH and Mitteldeutsche Flughafen AG v. Commission* and T—443/08 *Feistaat Sachsen and Land Sachsen Anhalt v. Commission* [2011] ECR II-0000 see also Case T-128/89 *Aéroports de Paris v. Commission* [2000] ECR II-3929, confirmed by the ECJ, Case C-82/01P [2002] ECR I-9297, and Case T-196/04 *Ryanair v. Commission* [2008] ECR II-3643, paragraph 88.

(69) It should be noted that the State has not reduced its initial SFC proportionally to the parts not being built because this would likely result in an increase of the financing gap of the project which would in any event need to be covered by the State. Any potential advantage deriving from this measure is therefore assessed in the context of Measures 2 and 3 below.

(70) In view of the above, the Commission considers that measure 1, although partly involving State resources and being imputable to the State, does not involve state aid to the Concessionaire, because it does not confer an advantage to the latter.

4.1.1.2.2. Measure 2 (Additional State Financial Contribution)

(71) Measure 2 involves State resources and is imputable to the State. Indeed EUR 214 million will be provided as a grant directly from the State budget and ERDF resources. The latter shall be made available for co-financing this project, are placed at the disposal of the Greek authorities and in particular the relevant Managing Authority. Therefore, they amount to State resources. The Greek authorities enjoy a high degree of control in the selection at national level of the projects of this nature to be financed. The notified funding for this project was directly chosen by, and is therefore imputable to the Greek State.

(72) In order to establish whether the additional State funding granted to Central ProjectCo provide it with an economic advantage, the Commission must assess whether such measure would have been undertaken at the same terms by a private investor (market economy investor test).

(73) In the case at hand, it must be concluded that no market investor would have accepted to provide the additional State funding. Therefore, measure 2 provides Central ProjectCo with an advantage that it would not have received under normal market conditions. The measure is selective, because it is only granted to Central ProjectCo.

(74) In the light of the above and of the fact that the Greek authorities do not claim that the market investor test is met, it must be concluded that measure 2 confers a selective advantage to Central ProjectCo.

4.1.1.3. Measure in T2

4.1.1.3.1. Measure 3 (Recycling of T2 State revenue of Ionia Odos)

(75) According to the original concession agreement of Ionia Odos, the State would receive a part of that motorway's revenue and profits during T2. Under the Reset, the State is forgoing that potential revenue in favour of both Central ProjectCo and the concessionaire of Ionia Odos. Therefore, the measure involves State resources in the form of forgone State revenue. The decision to forgo that revenue is imputable to the State.

(76) It is noted that, in the event the concession term of the Central Motorway is extended by three years after 2038, this measure would also involve State resources in the form of a potential additional subsidy by the State, as well as loss of the right of operating and exploiting the motorway, which the State would otherwise enjoy after 2038.

(77) As regards the advantage, similar to measure 2 above, the Commission must assess whether such measure would have been undertaken under the same terms by a private investor (market economy investor test). The State, following the implementation of measure 3, will forgo part of its contractually anticipated revenue in Ionia Odos, in order to allow the Reset of Central Motorway. By doing so, the

State is financing expenses and a certain level of profit that should normally be borne by or at the risk of the Concessionaire in its normal course of business.

(78) Thus, under those circumstances, and given that Greece has also not claimed that this measure was in line with the behaviour of a market investor, the Commission concludes that measure 3 provides Central ProjectCo with an advantage that it would not have received under normal market conditions. The measure is only granted in favour of Central ProjectCo and is thus selective.

4.1.1.4. Distortion of competition and effect on trade between Member States for measures 2 and 3

(79) For measures imputable to the State, involving State resources and conferring a selective advantage to Central ProjectCo, the Commission has to consider whether they are likely to distort competition and affect trade between Member States, by providing the Concessionaire with an advantage over its competitors not receiving the same public support.

(80) According to an established case law, when the financial support granted by a Member State strengthens the position of an undertaking compared to other undertakings competing in trade between Member States, then there is at least a potential effect on trade between Member States and on competition.[20]

(81) Central ProjectCo is an undertaking, which is active in the sector of construction and management of motorway infrastructures. The Commission considers that the support by the State to Central ProjectCo may reinforce the position of this operator compared to other operators active in the same sector and involved in trade between Member States.

(82) As regards the distortion of competition, the measures in question enable the Concessionaire to continue operating so that it does not have to face the consequences normally deriving from shortage of financing or increased costs. Therefore the Concessionaire competitive position is strengthened vis-à-vis that of other operators. As a result the measure is capable of distorting competition, notably in the market for the construction and operation of highways.

(83) Thus, measures 2 and 3 have the potential to distort competition and affect trade between Member States.

4.1.1.5. Conclusion on existence of state aid for measures 2 and 3at the level of Central ProjectCo

(84) Consequently, measures 2 and 3 fulfil all the conditions and therefore entail state aid to Central ProjectCo within the meaning of Article 107(1).

4.2. Compatibility of the state aid

(85) Insofar as the measures 2 and 3 above 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.

(86) The Greek authorities have invoked two alternative compatibility bases: Article 107(3)(b) TFEU or Article 107(3)(c) TFEU.

[20] See e.g. Case 730/79 *Philip Morris v. Commission* [1980] ECR 2671, para. 11, and Case C-372/97 *Italy v. Commission* [2004] ECR I-3679, para. 44.

(87) The Commission observes that, according to established practice, the appropriate legal basis for assessing compatibility of state aid to infrastructure of a general nature is Article 107(3)(c) TFEU, which stipulates that *"aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest"* may be found compatible with the internal market".

(88) It should therefore be examined if the measures 2 and 3 meet a clearly-defined objective of common interest, are necessary and proportionate to this objective, and do not affect competition and trade between Member States to an extent contrary to the common interest.

(89) The Commission observes that the measures are part of an overall package of actions necessary for the Reset and will thus assess compatibility for all measures together.

4.2.1. Objective of common interest

(90) The Greek authorities have argued that the measures under assessment aim to allow the Reset of the construction and l operation of the Central Motorway, part of the TEN-T network, which is declared to be of European interest.[21] In particular, the Central Motorway will contribute to the following objectives:

a. Providing sustainable mobility of persons and goods between important areas without internal frontiers under the best possible social and safety conditions. In particular, the Central Motorway will link important Greek towns such as Trikala and Karditsa with a motorway of increased capacity and safety in comparison to the existing infrastructure. These towns are important centres for agricultural and other economic activity in Greece. The Central Motorway will allow them better further access to ports and airports, such as Thessaloniki, Athens/Piraeus and Igoumenitsa. They thus allow mobility of persons and goods not only within Greece but also toward other Member States or third countries.

b. Allowing the optimal use of existing capacities, since parts of the Central Motorway were constructed in the past.

(91) The European Union, through the Decision 661/2010,[22] has encouraged Member States to carry out these projects, in order to ensure the cohesion, interconnection and interoperability of the trans-European transport network.

(92) As regards other EU objectives, the economic, social and territorial cohesion are EU objectives recognised by Articles 174-178 TFEU and the motorway concerns regions which are assisted regions under Article 107(3)(a) TFEU.

(93) Finally, according to the arguments and the study provided by the Greek authorities, the construction and operation of the Central Motorway, together with the other three motorways which are subject to a Reset (i.e. The Aegean Motorway, Olympia Odos and Ionia Odos) will contribute to the creation of approximately 3,600 direct jobs and up to 18,000 indirect jobs. It may also increase the Greek Gross Domestic Product ('GDP') by an overall 2.07% from 2013 to 2020, by enhancing the economic output of many sectors, as it will materially improve transport capacity and speed in

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[21] See *Decision 661/2010/EU of the European Parliament and of the Council of 7 July 2010 on Union guidelines for the development of the trans-European transport network,* OJ L 204, 5.8.2010, p.1, Article 24.

[22] *Ibid.*

many regions. Finally, the construction and operation of all four motorways has the potential to improve the competitiveness of the Greek economy.

(94) The above elements demonstrate that the project contributes to objectives of common EU interest and in particular the EU transport policy and the economic convergence and cohesion.

4.2.2. Necessity and proportionality of the measures

(95) The Greek authorities have provided arguments which demonstrate that the measures 2 and 3 are necessary and proportionate to the objective of common interest described above. In particular:

4.2.2.1. Necessity and proportionality of measure 2 (Additional State Financial Contribution)

(96) The additional State funding in the form of grants has become necessary because of the financing gap for the construction, which resulted from the reduction of (actual and forecasted) motorway revenue and the reduction of available commercial loans.

(97) The Greek authorities have provided evidence that the State only provides what is strictly necessary to cover this financing gap, while at the same time maximizing the exposure of the other parties, by requesting that the Concessionaire keeps as much equity as possible and that the financial institutions provide the maximum loans that the Central Motorway can sustain. A claw-back mechanism will also allow the possibility to reduce the additional State Financial Contribution, if additional revenues are realised during the T1 period.

(98) In light of the above, measure 2 can indeed be considered necessary and proportionate for the conclusion of the motorway, as it ensures the provision of an important part of the funding to Central ProjectCo.

(99) In addition, measure 2 has an incentive effect insofar as it enables Central ProjectCo to conclude the construction of the motorway whereas, in the absence of the additional public support, neither the Concessionaire nor any other market investor or financial institution would have financed the Reset.

4.2.2.2. Necessity and proportionality of measure 3 (Recycling of T2 State revenue of Ionia Odos)

(100) In the light of renewed traffic forecasts in the context of the crisis, Central ProjectCo would have even less revenue to pay the operating expenses and repay the loans undertaken for construction. Measure 3 is thus necessary, in order to ensure the revised sustainability of the project throughout the concession period.

(101) In addition, the Commission notes that measure 3 will replace an originally agreed State subsidy for the Central Motorway and will allow the Concessionaire to have a return which has been revised downwards and is in line or even lower in certain cases than the rate of return of similar infrastructure projects according to the information available to the Commission (see recital (54) above) and in the light of the prevailing economic and investment conditions in Greece. It is noted that the Central Motorway still bears a significant risk of traffic, whereas there is also a cap in the operating expenses covered by the State recycling mechanism.

(102) In light of the above, the Commission concludes that measure 3 is necessary and proportionate. It also has an incentive effect, since in the absence of this measure neither the Concessionaire nor the financial institutions would accept to construct the motorway and thus the Reset would not be realised.

4.2.3. Distortion of competition and effect on trade between Member States of measures 2 and 3

(103) With the above measures, Central ProjectCo is expected to conclude the construction of the Central Motorway and will be able to exploit it commercially.. In addition, as explained above, the project, combined with the Reset of the other motorways, is expected to have important benefits for the Greek economy in terms of growth and employment. Finally, as submitted by the Greek authorities, the new infrastructure resulting from the project will be located at the periphery of the EU and will represent only a small proportion of the overall EU capacity.

(104) Given that the positive effects of the construction of the motorway outweigh its potential distortion of competition and trade, the Commission concludes that the state aid for this project does not affect competition and trade between Member States to an extent that would be contrary to the common interest

4.3. Conclusion

(105) On the basis of the foregoing findings, the Commission concludes that the notified measure 1 does not constitute state aid, whereas measures 2 and 3 constitute state aid.

(106) The Commission also concludes that the state aid involved in measures 2 and 3 is necessary to address a well-defined objective of common interest, the advantage conferred by the aid to Central ProjectCo is proportionate and the aid does not affect competition and trade between Member States to an extent that would be contrary to the common interest. On these grounds, the Commission concludes that the state aid in measures 2 and 3 is compatible with the Treaty under Article 107(3)(c). The Commission underlines that Greece has respected the stand still obligation provided by Article 108 TFEU by not granting that aid before the adoption of the present decision.

5. CONCLUSION

The Commission has accordingly decided that measure 1 in the context of the Reset of the Central Motorway does not constitute state aid within the meaning of Article 107(1) of the TFEU

The Commission has also decided that the public financing involved in measures 2 and 3 in the context of the Reset of the Central Motorway constitute state aid within the meaning of Article 107(1) of the TFEU. The aid is however compatible with the Treaty under Article 107(3)(c) of the TFEU.

This Decision is without prejudice to any possible scrutiny under environmental or Structural Funds rules. Similarly, the Decision does not prejudice any possible further analysis by the Commission as far as compliance with public procurement rules is concerned.

If this letter contains confidential information which should not be disclosed to third parties, 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 the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site http://ec.europa.eu/competition/elojade/isef/index.cfm..

Your request should be sent by registered letter or fax to:

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Directorate-General for Competition
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B-1049 Brussels

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Yours faithfully,

For the Commission

Joaquín ALMUNIA

Vice-president

Annex I: Central Motorway Project

Skarfia-Raches: Existing section
Xiniada-Trikala: New section to be built under the Reset agreement
Lamia-Xiniada **and** **Trikala-I/C Panagia (Egnatia Odos):** Deferred sections

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Annex II: Overview of all the main motorways under concession in Greece.