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Subject: State aid SA. 36894 (2013/N) – Reset of Greek Motorway concession projects - Ionia Odos S.A. – Greece

Sir,

1. PROCEDURE

- (1) Following informal contacts, by SANI notification of 21 June 2013, the Greek authorities notified to the Commission a series of measures amending the concession agreement for the construction of the Ionia motorway project.
- (2) Additional information was requested by e-mail of 4 July 2013 and letters of 5 August 2013 and 8 November 2013. The Greek authorities provided additional information by letters of 5 September 2013 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 Ionia motorway project concerns the construction of a new motorway of 196 km from Antirio to Ioannina in Western Greece and the upgrade of an existing motorway of 172 km from Athens to Maliakos in Central Greece. The project is divided in two distinct periods: a) the design-and-construction period ("T1"), which includes the design and construction of the necessary infrastructure for the operation of the full length of the motorway, the management of the traffic during

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the construction, and the operation and maintenance of the existing motorway section; and b) the operation period ("T2"), which includes the operation and maintenance of the infrastructure.

- (5) Ionia motorway is part of the priority projects of the TEN-T network, which connects Greece to the rest of the EU¹. As such, and given the condition of the existing network currently serving the traffic in the region, the Greek authorities have argued that the project will significantly improve traffic speed, capacity and safety and will provide an improved interconnection with other modes of transport, especially ports. In particular, the motorway will connect the following: a) the region of Western Greece, which includes Patra and Ioumenitsa (Patra is a regional capital, together with Ioumenitsa they are important sea ports with connections mainly to Italy), to b) Athens and Piraeus, the country's capital and major sea port, respectively. The motorway will also connect the region of Western Greece to the rest of the motorway network of the country and improve the connectivity of Greece with the rest of the EU.
- (6) Finally, the Greek authorities estimate that the construction and operation of Ionia 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 provided a cost/benefit analysis for the notified project, and an analysis based on the Financial Net Present Value ("FNPV") method². Over a reference period of 30 years, the project has a negative FNPV of minus EUR 747 million with a discount rate of 6%. The funding gap ratio³ is of 60%. This analysis indicates that the project is not financially sustainable without public support.

2.2. THE BENEFICIARY

- (8) The construction and operation of the above were conceded in 2006, through an open tender, to a purpose-made SPV, the *Nea Odos Concession S.A.* ("Concessionaire"). The Concessionaire currently has the following shareholders (Greek and international construction firms): Cintra SA (33.34%), GEK-Terna SA (33.33%), ACS SA (23%), Dragados SA (9%) and Iridium Concesiones de Infraestructuras SA (1.33%)⁴.

¹ Decision No 661 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 calculated as the difference between the discounted investment costs and the discounted net revenues to be obtained for the project during the given reference period (which for the project at stake is of 30 years).

³ The funding gap ratio is defined as the ratio between the financial net present value of the project (calculated as the difference between the discounted investment costs and the discounted net revenues to be obtained for the project during the given reference period, which for this project is of 30 years) and the discounted total costs of the project (which for this project is of EUR 200.6 million).

⁴ In the context of a contractual right of the shareholders, upon injection of the remaining equity GEK-Terna SA will take over the equity obligations of Cintra SA and ACS SA. This will result in the following shareholding: GEK-Terna SA 57.2%, Cintra SA 21.4%, ACS SA 14.8%, Dragados SA 5.8% and Iridium Concesiones de Infraestructuras SA 0.9%. It is noted that the total commitments for the remaining equity contributions remain unchanged.

2.3. CONTEXT OF THE MEASURES

2.3.1. The original concession agreement

- (9) The original concession agreement was signed on 19 December 2006, between Greece and the Concessionaire. It was ratified by Law 3555/2007⁵. According to the original concession agreement, the construction during T1 of the Ionia motorway was envisaged to be financed both by private and public sources. The public sources were: a) a State Financial Contribution ("SFC") of EUR 144 million; and b) motorway revenues of EUR 883 million collected from the parts of the motorway already in operation (such as the section Schimatari-Halkida)⁶. The private sources were: a) long term loans of EUR 110 million; b) short-term loans of EUR 552 million; and c) equity by the Concessionaire of EUR 192 million, including shareholders' loans. The loans were provided by a group of 13 foreign and Greek banks⁷. The loans would be drawn progressively during T1 and would be repaid during T2 period.
- (10) In addition, according to the concession agreement, during T2 the Greek State would receive part of the revenues from the motorway's operation and part of the Concessionaire's profits.

2.3.2. The 2007 decision

- (11) The concession was the subject to a decision by the Commission on 23 October 2007 finding that no State aid was involved⁸.

2.3.3. Construction suspension and renegotiation

- (12) Due mainly to the decline in traffic revenue for the Concessionaire, the construction of the motorway was interrupted in June 2011, when approximately 31% of the T1 construction work was completed, including the upgrading part. The Greek authorities have submitted that the main cause for this interruption was the decline in the motorway's revenues, forecasted to be equal to 64%, due to the worsening economic conditions in Greece, notably the 25% decline of GDP since 2008 and unemployment which in February 2013 reached 27%. 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.
- (13) 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 project (i.e. the minimum levels of debt servicing required by the lenders to continue lending to the project) were breached. This led the lenders of the project to cease providing

⁵ Government's Gazette FEK A 81 of 16 April 2007.

⁶ Revenues stemming from tolls, Motorist Service Stations and deposit interest.

⁷ BNP Paribas (10.46%), BBVA (8.5%), Banco Santander (5.8%), Instituto De Credito Oficial (7.84%), Banco Infrastrutture Innovazione (4.58%), Caja Ahorros Y Monte De Piedad (4.58%), ATE Bank (8.5%), Piraeus Bank (8.5%), EFG Eurobank (8.5%), NBG (7.19%), Millenium Bank (8.5%), Emporiki Bank (7.84%) and Bank of Attica (6.54%).

⁸ N 508/2007, OJ C 298, 11.12.2007, p. 4.

funding to Concessionaire as they no longer believed in its viability (the "draw stop").

- (14) According to the Greek authorities, the project has also faced significant judicial and administrative delays, attributed to environmental permits, archaeological excavations and expropriation delays. The draw stop combined with these judicial and administrative delays resulted in an overall delay of the construction period of 2 years.
- (15) As a result of the construction delays, including the suspension period, the duration of the construction of the Ionia motorway was delayed by 2 years. In this context, since the works were suspended for reasons imputable to one of the contractors, the time for finishing the works is extended by the same period and thus the completion deadline of the construction is moving from December 2013 to December 2015, although this does not have an impact on the overall duration of the concession agreement.
- (16) The Greek authorities have also explained that a termination of the concession agreement would have an adverse impact on the Greek budget, delay economic recovery and compromise the allocation of structural funds (past and future) to the project, and was therefore not a viable option.
- (17) The concession's terms were therefore the subject of renegotiations between the Greek State, the Concessionaire and the lending banks, in order to ensure that the project has a sustainable financial basis and that the construction works can be finalised, on the basis of revised traffic estimates. On the basis of these renegotiations, a final agreement between the State and the Concessionaire was signed on 28 November 2013. The result of these negotiations is referred to hereafter as the "Reset". The Greek authorities have undertaken to only implement the agreement after the Commission has adopted its decision regarding the state aid.
- (18) The Greek authorities have explained that, three other motorways, which were tendered at approximately the same period as the Ionia motorway and had similar funding mechanisms, are facing similar problems. These are the Aegean motorway, the Olympia motorway and the Central motorway. Measures related to these three motorways are the subject of separate Commission decisions⁹.

3. THE NOTIFIED MEASURES

3.1. New conditions of financing by financial institutions

- (19) As explained in paragraph (13) above, the breach of the project's coverage ratios due to lower than expected Motorway revenues, in addition to the severe lack of liquidity and steep increase in the funding costs of financial institutions, led to a draw stop. It is noted that the lending financial institutions were not under an obligation to keep providing funding, if the latter's repayment was uncertain, therefore the terms of the loans had to be renegotiated in order to take account of the motorway's Concessionaire reduced capacity to ensure repayment of the loans.

⁹ SA. 36877 Aegean motorway, SA.36878 Olympia Odos motorway and SA.36893 Central motorway (E65).

- (20) As a result, the following changes in lending conditions were agreed between the Concessionaire and the financial institutions:
- a. reduction of committed amounts of loans by EUR 230 million (from EUR 662 million to EUR 456 million);
 - b. reduction of duration of loans by 2-13 years;
 - c. increase of margins by 200-500 basis points.

3.2. The State support measures

- (21) Greece notified to the Commission under Article 108 (3) TFEU the following support measures stemming from the Reset:
- a. in T1, settlement of contractual obligations (measure 1);
 - b. also in T1, additional State grants to cover financing gap in construction (measure 2); and
 - c. in T2, recycling of T2 payments to the State (measure 3).

3.2.1. Measure 1: Settlement of contractual obligations

Compensation for claims

- (22) During the construction period, the State had the contractual obligation to undertake the necessary administrative actions and clearances for ensuring the availability of the construction sites (including expropriations, archaeological investigations, environmental permits and the relocation of public utility network). The original concession agreement allocated risks associated with delays in obtaining vacant possession entirely to the Greek State.
- (23) The judicial and administrative delays, linked mainly to environmental permits, archaeological excavations and expropriation procedures (see paragraph 14 above), have thus resulted in claims of EUR 613.4 million by the Concessionaire against the State. Those claims were related to loss of revenue (due to e.g. late payment of SFC or inability to increase toll rates), as well as additional costs and expenses caused by the above delays (such as costs for disruption of executed works, cost of works suspension etc). Those claims have been reviewed separately by independent engineers, auditors and the Greek administration, on the basis of supportive detailed documentation. As a result, the Greek administration has accepted to pay a final compensation of EUR 201.5 million, on the basis of identifiable and non-contested contractual grounds.

3.2.2. Measure 2: Additional State Financial Contribution

- (24) The Ionia motorway project has a financing gap of EUR 279 million in T1, due mainly to an unexpected decrease in revenues, a decrease in the loans, combined with an increase in construction costs. The above breakdown of the financing gap of the Ionia motorway in T1 is depicted in the Table 1 below:

| Table 1: Financing gap of T1 (in EUR million, figures rounded) | | | |
|---|---------------------------|--------------|-------------------|
| Sources | Initial concession | Reset | Difference |
| | | | |

| | | | |
|---|---------------------------|---------------------|-------------------|
| Revenue | 883 | 569 | (315) |
| Loans | 662 | 456 | (206) |
| SFC | 144 | 360 ¹⁰ | 216 |
| Compensation to concessionaire | 0 | 95 ¹¹ | 95 |
| Concessionaire's equity | 192 | 192 | 0 |
| Other (net working capital) | 6 | 0 | (6) |
| Total sources | 1 888 | 1 672 | (216) |
| Uses | Initial concession | Reset | Difference |
| Construction costs | 1 115 | 1 295 ¹² | 180 |
| Expenses (working capital, operating and maintenance) | 196 | 253 | 57 |
| Loans repayment | 350 | 215 | (135) |
| Financing cost (incl. interest, cost and fees) | 101 | 104 | 3 |
| Other (working capital, tax) | 126 | 84 | (43) |
| Total uses | 1 888 | 1 950 | (62) |
| Financing gap | | | 279 |

- (25) The Greek authorities have explained that the above financing gap will be covered with an additional State Financial Contribution (SFC), which will come from EU Structural Funds and national funds.
- (26) A claw-back mechanism is introduced, whereby, if the total amount of the funds available to cover the cost of T1 exceeds the amount of the T1 cost, then the additional SFC will be reduced by the respective amount. The reduction will be effective at the last payment of the additional SFC.

¹⁰ The SFC actually remains the same at Reset: in the Initial Concession, it was agreed to disburse EUR 216 million of the SFC at the beginning of T2, to repay part of the loans (i.e. the total SFC was EUR 360 million). Under the Reset agreement, the entirety of the SFC (i.e. EUR 360 million) is disbursed during T1.

¹¹ The Greek authorities have explained that the amount of EUR 95 million does not reflect the full amount of claims payments, described in section paragraph 23 above. That is because part of the claims payments by the State is given directly to the Construction Joint Venture passing through the Concessionaire.

¹² Of the total increase of EUR 180 million, EUR 100 million stem from a potential change in technical scope, due to an interim decision of 19 June 2009 by the State Council, by which works in the section Riza-Klokova were suspended for environmental reasons. In the event that the Court's final ruling (still pending) annuls the section's environmental terms, an alternative non-tolled route will be constructed. It is noted that on the basis of the Initial concession agreement, the State bears the environmental risk of the project.

3.2.3. Measure 3: Recycling of T2 payments to the State

- (27) According to the original concession agreement, the revenues and profits from the toll proceeds in T2 were shared between the Greek State and the concessionaire. Under the Reset, Greece proposes a recycling mechanism of the share of payments to the State deriving from the operation of the Ionia motorway, in case that the motorway's revenues are not enough to cover the Concessionaire's costs and a certain profit. According to the recycling mechanism, the payments to the State will be placed at the disposal of the Concessionaire, in order to finance, according to priority, certain eligible costs and the base IRR¹³ of the Concessionaire, for the Ionia motorway and also for the Central motorway, another motorway facing similar problems (see paragraph 18 above). The reasons for this common recycling mechanism of the two motorways are: a) Central motorway is expected to have low revenue from traffic; and b) the concessionaires of Central and Ionia have the same shareholders.
- (28) In the context of this common recycling mechanism, the revenues of Ionia Odos originally attributed to the State will serve: a) first the Eligible costs of both motorways and b) second Base IRR of Ionia Odos and the Central motorway. In case that the revenues of the Ionia motorway are enough to cover the above, the State will have the right to withdraw any remaining amounts for its own use. This mechanism will stay in place for the whole duration of the concession.
- (29) In particular, the structure of the costs and IRR covered by the recycling mechanism is as follows:
- a. Certain eligible costs of Ionia and the Central Motorway (e.g. operating and maintenance costs, debt servicing, tax etc);
 - b. Base IRR of Ionia of 7.76%;
 - c. Base IRR of Central of 8.45%;
- (30) The Greek authorities forecast that an amount of EUR 2 177 million of revenues that originally should have benefitted the State will finance the recycling mechanism of the Ionia motorway combined with Central motorway. This amount is based on projections of traffic and is therefore indicative.
- (31) In the event that, one year before the expiry of the contractual duration, the anticipated IRR of the whole concession period is below the Base IRR, of 7.76%, then the overall concession period will be extended by 3 years, if requested by the Concessionaire.

3.3. Cumulation

- (32) The Greek authorities commit 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.

¹³ The IRR of an investment is the discount rate at which the net present value of costs of the investment equals the net present value of the benefits (positive cash flows) of the same investment.

4. ASSESSMENT

4.1. Existence of state aid

- (33) 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.
- (34) Greece only notified to the Commission the new State support measures deriving from the Reset, considering these measures as being distinct from the measures assessed under the Commission's 2007 decision.
- (35) In order to establish whether the notified measures under the Reset can be separated from the ones previously approved by the Commission (cf. 2007 decision), the Commission refers to relevant jurisprudence, in order to determine whether the assessment of the existence of aid should be limited only to the new measures under notification or whether it should include the entirety of the State contributions stemming from both the original concession agreement, and the Reset.
- (36) According to the Court's jurisprudence¹⁴, the following elements need to be considered, in order to determine whether a given measure could be reasonably separated from previous ones: a) the chronology of each measure; b) its purpose; and c) the financial and risk situation of the beneficiary.
- (37) In the case at hand, the Commission notes that the Reset takes place almost five years after the original concession agreement, therefore there is a significant time-difference between the original concession agreement and the measures included in the Reset. The Commission also notes that the notified measures serve the same purpose as the previous ones, i.e. the financing of the construction and operation of the motorway. Finally, the Greek authorities have explained that the measures under notification are being implemented because the beneficiary's situation deteriorated significantly, due to the significant recession of the Greek economy and the inherent financial problems with the project. This situation could not be foreseen at the time of the signing of the original concession agreement.
- (38) 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 2007 decision, i.e. the financing of the construction and operation of the motorway, the notified measures can reasonably be separated from the measures assessed under the 2007 Commission decision.
- (39) 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 as well as potential distortion of competition and effect on trade between Member States, are met for each of the notified measures.

¹⁴ Joined Cases C-399/10 P and C-401/10 P Bouygues SA, Bouygues Télécom SA v Commission. Also judgment of the Court of First Instance of 15 September 1998 in case T-11/95 – BP Chemicals Limited v Commission of the European Communities (BP Chemicals), [1998] ECR II-3235.

4.1.1. Existence of aid at the level of the Concessionaire

4.1.1.1. Notion of undertaking

- (40) The Concessionaire is a private law company, which is responsible for constructing and subsequently operating and exploiting the infrastructure in question. According to established Court jurisprudence¹⁵, 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 judgment¹⁶, the construction of an infrastructure which shall be commercially exploited constitutes an economic activity. Since this is the case for the Ionia motorway, the funding of the construction and subsequent operation of such infrastructure falls within the scope of EU state aid rules.
- (41) Since the Ionia motorway will be commercially exploited by the concessionaire, the latter is therefore considered to be an undertaking for the purposes of state aid assessment.

4.1.1.2. Measures in T1

4.1.1.2.1. Measure 1: Settlement of contractual obligations

Compensation for claims

- (42) The Commission notes that the payments for claims referred to in paragraphs (22)-(23) above have been reviewed separately by independent engineers, auditors and the Greek administration, on the basis of supportive detailed documentation. The final compensation accepted by the State is based on identifiable and non-contested contractual obligations of the State. Indeed, under the original concession agreement the State is responsible for compensating the Concessionaire for delays and any financial impact on the Concessionaire's operations under certain specified circumstances.
- (43) In light of the above, the Commission concludes that, measure 1, although partly involving State resources in the form of payment for compensation of claims and being imputable to the State, reflects contractual obligations of the State vis-à-vis the Concessionaire and as such does not confer an advantage to the latter. The Commission, thus, concludes that measure 1 does not involve State aid to the Concessionaire.

4.1.1.2.2. Measure 2: Additional State Financial Contribution ("additional SFC")

- (44) The Commission notes that the EU resources (Structural Funds) that shall be made available for co-financing this project are placed at the disposal of the Greek authorities, and therefore amount to State resources. The Greek authorities

¹⁵ See e.g. Case C-41/90 *Hofner and Elser* [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.

¹⁶ Joined cases T-455/08 *Flughafen 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.

themselves also provide funding for this project through the Public Investment Budget.

- (45) Furthermore, it is noted that 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 project was directly chosen by the Greek State. Therefore its financing, whether by Structural funds resources or directly by resources coming from the Greek budget is imputable to the State.
- (46) As regards the advantage conferred by measure 2, the Commission must assess whether such measure would have been undertaken at the same terms by a private investor (market economy investor test).
- (47) The Commission recalls that the question that is being assessed here is whether a private investor would be willing to provide an additional financial contribution in order to bridge the financing gap of the project, as notified by the State. In this respect, the Commission notes that, following the Reset negotiations, the lenders of the project took the decision to reduce the amount of loans committed to the project, in the light of lower debt capacity of the motorway, while the financial contribution of the Concessionaire to the project remains unchanged. The Commission considers this to constitute evidence that the market was not willing to provide the additional funding required by the project, in the light of the more severe conditions brought about by the crisis. The Commission therefore concludes that the measure of the additional SFC does not reflect the behaviour of a market economy investor.
- (48) In the light of the above and of the fact that the Greek authorities do not claim that the private investor test is met, it must be concluded that in this case the State did not act as a private investor, and the measure confers an economic advantage to the Concessionaire, equal to the amount of EUR 279 million.

4.1.1.3. Measures in T2

4.1.1.3.1. Measure 3: Recycling of T2 State revenue

- (49) According to the concession agreement, the revenues and profits from T2 were shared between the Greek State and the Concessionaire. Under the Reset, the State is forgoing that potential revenue in favour of the Concessionaire. Therefore, the measure involves State resources in the form of forgone State revenue. The decision to forgo that revenue is imputable to the State.
- (50) It is noted that in the event the concession term is extended by three years after 2038 (see paragraph 31 above), this would also involve waiving of State resources in the form of loss of the right of operating and exploiting the motorway, which the State would otherwise enjoy after 2038.
- (51) As regards the advantage criterion, the Commission must assess whether such measure would have been undertaken at the same terms by a private investor (market economy investor test). The State following the implementation of measure 3, agrees to forgo its contractually anticipated revenue, in order to allow the Reset of Ionia motorway. By doing so, the State is financing expenses and a certain level of profit that should be borne by, or at the risk of, the Concessionaire in its normal course of business. Therefore, it must be concluded that measure 3 does not reflect the behaviour of a market economy investor. Therefore, measure 3 provides the Concessionaire with an advantage that it would not have received under normal market conditions.

4.1.1.4. Selectivity of measures 2 and 3

- (52) As the public financing is granted specifically to the Concessionaire, measures 2 and 3 are selective.

4.1.1.5. Distortion of competition and affectation of trade between Member States of measures 2 and 3

- (53) For measures 2 and 3, that stem from State resources, are imputable to the State and confer a selective advantage to the Concessionaire, the Commission has to consider whether the measures taken by the Greek authorities in favour of the Concessionaire are likely to distort competition and affect trade between Member States, by providing this undertaking with an advantage over its competitors not receiving the same public support.
- (54) According to 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, there is at least a potential effect on trade between Member States and on competition.¹⁷
- (55) 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.
- (56) The Concessionaire is entrusted with the construction and management of a motorway infrastructure projects. Such projects are constructed and managed in all Member States, and usually the concessionaires of such activities come from more than one Member States, as confirmed by the fact that the shareholders of *Nea Odos Concession S.A.* in the present case are both Greek and international firms. In any case, the market in concessions for the construction and operation of highways or motorways has an international character.
- (57) The Commission therefore considers that measures 2 and 3 are capable of effecting trade between Member States and distorting competition.

4.1.1.6. Conclusion on the existence of state aid

- (58) On account of the arguments above, the Commission considers that measures 2 and 3 constitute state aid within the meaning of Article 107(1) TFEU.

4.2. Compatibility of the state aid

- (59) Insofar as measures 2 and 3 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.
- (60) The Greek authorities have invoked two alternative compatibility bases: a) Article 107(3)(b) TFEU; and b) Article 107(3)(c) TFEU.
- (61) The Commission observes that, according to established practice, the appropriate legal basis for assessing compatibility of state aid to infrastructure is Article

¹⁷ See e.g. Case 730/79 *Philip Morris v. Commission* [1980] ECR 2671, paragraph 11, and Case C-372/97 *Italy v. Commission* [2004] ECR I-3679, paragraph 44.

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".

- (62) It should therefore be examined if 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 intra-EU trade to an extent contrary to the common interest.
- (63) 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

- (64) The measures under assessment aim to allow the Reset of the construction and operation of the Ionia motorway, which is part of the TEN-T network, a project of European interest. Indeed, according to *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*¹⁸, Member States were encouraged to carry out the projects of the TEN-T network, in order to ensure the cohesion, interconnection and interoperability of the trans-European transport network.
- (65) The Greek authorities have provided evidence that the construction and operation of the Ionia motorway will be beneficial for the connectivity of the region of Western Greece, the rest of the motorway network in the country and also the connectivity of Greece with the rest of the EU. In addition, the Commission notes that 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.
- (66) Finally, according to the arguments and the study provided by the Greek authorities (see paragraph 6 above), the construction and operation of the Ionia motorway, together with the other three motorways which are subject to a reset of their concessions (i.e. the Aegean motorway, the Olympia motorway and the Central motorway, see paragraph 18 above), 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 many regions. Finally, the construction and operation of all four motorways has the potential to improve the competitiveness of the Greek economy.
- (67) 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.

¹⁸See footnote 1 above.

4.2.2. Necessity and proportionality of the measures

4.2.2.1. Measure 2: Additional SFC

- (68) The Commission notes that the financing gap established for the construction of the motorway is the result of reduced revenues and increased construction expenditure. This financing gap could not be covered by the Concessionaire (which did not increase equity), the financial institutions (which reduced the loan amounts) or any other private investor.
- (69) In addition, the Commission notes the argument of the Greek authorities that re-tendering the concession or letting the concession collapse would likely have adverse effects on the Greek economy and were therefore not viable options.
- (70) Finally, the Commission notes that measure 2 is limited to the gap of costs which cannot be covered by any other source. Indeed, the Greek authorities have provided evidence that measure 2 only provides what is strictly necessary to cover the above financing gap of EUR 279 million, while at the same time maximizing the exposure of the other parties, by requesting that the Concessionaire keeps the originally agreed equity (EUR 192 million, see Table 1 above) and that the financial institutions provide the maximum debt that the motorway can sustain.

4.2.2.2. Measure 3: Recycling of T2 State revenue

- (71) In the same vein as for measure 2, the Concessionaire's own revenue is inadequate to cover its operating cost, service the debt and obtain a reasonable return in the absence of State support. Therefore, the recycling of T2 state revenue is necessary in order to ensure the sustainability of the project throughout the concession period.
- (72) Likewise, the potential Concession term extension is only permitted where the Concessionaire's projected IRR has fallen below the agreed basis IRR.
- (73) In addition, the Commission notes that measure 3 will allow the Concessionaire to have a return which has been revised downwards (the originally expected IRR was 7.93%, compared to the current 7.76%) and is below the rate of return of similar projects, according to the information available to the Commission¹⁹. It is also noted that the measure includes a cap of costs to be covered, which sets a cap to the public funding (see paragraph 26 above). Finally, the project is subject to a principle of "self-sufficiency", which means that the State will not commit any further amounts to T2 other than the revenues to which it was contractually entitled under the original concession agreement.
- (74) Finally, measures 2 and 3 have an incentive effect, insofar as they enable the Concessionaire 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 finalised the construction of the motorway.
- (75) In the light of the above, the Commission concludes that the aid to the Concessionaire is necessary and proportionate.

¹⁹ 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.

4.2.3. Distortion of competition and affectation of intra-EU trade

- (76) With this project, Greece acquires an infrastructure which allows it to improve its road connections. However, 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 capacity²⁰. Thus its effect on trade between Member State and on competition will be limited.
- (77) Given that the positive effects of the construction of the motorway outweighs its potential distortion of competition and trade, the Commission concludes that the aid for this project does not affect competition and trade between Member States to an extent that would be contrary to the common interest.

4.2.4. Conclusion

- (78) On the basis of the foregoing findings, the Commission concludes that the aid in question is necessary to address a well-defined objective of common interest, the advantage conferred by the aid to the Concessionaire is proportionate, and the aid does not affect intra-EU trade to an extent that would be contrary to the common interest. On these grounds, the Commission concludes that the aid is compatible with the Treaty under Article 107(3)(c).

5. CONCLUSION

The Commission has accordingly decided that measure 1 in the context of the Reset of the Ionia 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 Ionia motorway constitute state aid within the meaning of Article 107(1) of the TFEU. That aid is however compatible with the Treaty under Article 107(3)(c) of the TFEU. 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.

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:

European Commission
Directorate-General for Competition

²⁰ Indicatively, it will represent 379 km over a total EU capacity of around 5 814 000 km.

State aid Greffe
B-1049 Brussels
Fax No: +32 (0)2 2961242

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-president

Annex I: The Ionia motorway project



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

Concession Motorways in Greece

