• Greece: The Hellenic Competition Commission accepts Commitments from dominant Greek incumbent Gas Company

In a landmark decision of 12 November 2012, the Hellenic Competition Commission (HCC) accepted commitments offered by DEPA, the Greek incumbent gas supplier, with a view to speeding up the liberalisation of the Greek gas supply market. DEPA is dominant in the market of natural gas supply and the secondary market of natural gas transmission.

The commitments evolve around four main axes: a) the unbundling of gas supply from gas transportation services, b) providing for a higher degree of customer mobility and increase of liquidity in the market of natural gas, c) the introduction of fair, transparent and non-discriminatory contractual terms and d) the gradual opening of reserved capacity in the natural gas transmission network.

The details of the commitments are as follows:

A. The unbundling of supply from transport is addressed through DEPA's obligation to untie contractually the two products/services by offering to its clients – starting from 30 November 2012 – a gas supply contract, not including transportation services. The price of supply of natural gas will be the same in both types of contracts.

B. A higher degree of customers’ mobility is achieved, firstly, through the renegotiation of annual contractual gas quantities (ACQs). In particular, DEPA had to inform all its clients by 30 November 2012 that they may re-assess (without any limit as to quantities declared) their ACQ for 2013. Moreover, each year the customers may augment or decrease their ACQs for the next year by a percentage varying from 5 to 20% of the previous year ACQ (depending on their annual gas consumption from DEPA), while at the same time still enjoying the flexibility of 80 to 110% of ACQ provided for already, by the “take or pay” provisions of the contracts in force. Furthermore, regarding new contracts or in case of renewal of existing contracts DEPA: a) will inform its clients that they may opt for a one-year duration contract and b) will not enter into contracts of a duration longer than two years with customers that purchase more than 75% of their actual gas supply needs from DEPA.

In addition, an auction system shall increase liquidity in the market of natural gas supply. DEPA committed to auction each year 10% of its yearly gas supply to customers. The quantities to be offered per auction will be split to 1000 parts, thus allowing even “small” customers to cover their needs through the said channel. The first auction has taken place on 11 December 2012.

C. With a view to enhancing contractual transparency and to ensuring the use of FRAND terms, DEPA committed a) to adopt model contracts to be approved by the Regulatory Authority for Energy (RAE) and published on DEPA’s website for: i) the sale and storage of Liquified Natural Gas (LNG) and ii) the transfer of transmission capacity at the network exit points and b) to model a pricing system for peak gas based on the consumption profiles of each customer and the cost actually incurred by DEPA.

D. Finally, the HCC accepted commitments leading to the opening of sufficient capacity at the entry points of the transmission network for third importers and customers, in order to enable capacity acquisition at the primary market of gas transmission and thus the possibility to find alternative sources of supply. Firstly, DEPA is obliged to offer without due delay and free of charge (to the extent that it has not paid any charge) any unused transportation capacity allocated to it at the gas network entry points. Moreover, until DEPA’s reserved transport capacity is reduced to 55% per network entry point, DEPA commits to transfer free of charge to its clients, following a declaration on their part that it will not purchase gas from DEPA for a certain period of time, up to 20% of its total capacity per network entry point.

Secondly, DEPA will reduce significantly its capacity rights to 55% of the total capacity per entry point: a) at the entry point Kipoi, 3 months after the installation of a capacity compressor (expected to take place within the next three months) and b) at the entry point of Sidirokastro, until 30 June 2017. Finally, DEPA will not reserve on a yearly basis more than 40% of the total capacity at the LNG entry point.

The above commitments were offered by DEPA following a Statement of Objections issued by the HCC in July 2012 against both DEPA and DESFA, the dominant Greek operator of the gas transmission system. According to the Statement of Objections, DEPA abused its dominant position by foreclosing its clients and
competitors from accessing the gas network and imposing de facto exclusivity contracts, thus preventing clients from purchasing gas from other suppliers. DESFA is also accused of abusing its dominant position in the primary market of natural gas transmission by way of denying access to the gas transmission network (an essential facility) to DEPA’s clients. Given that DESFA did not offer commitments to address the HCC’s competition concerns regarding the above practices, proceedings continue under the standard procedure and a decision is expected within the next few months.