EN

Case No COMP/M.5249 - EDISON / HELLENIC PETROLEUM / JV

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 27/08/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1) (b) DECISION

To the notifying parties

Dear Sir/Madam,

Subject: Case No. COMP/M.5249 - EDISON/ HELLENIC PETROLEUM/ JV Notification of 22.07.2008 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 22.07.2008, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertakings Edison S.p.A. ("Edison"), an Italian energy company, and Hellenic Petroleum S.A. ("HelPe"), a Greek state-owned energy company, acquire within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of a newly created joint venture by way of purchase of shares.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not significantly impede effective competition in the common market or in a substantial part of it.

I. THE PARTIES

3. Edison is active primarily in Italy in the generation and supply of electricity and in the production, transportation, distribution and supply of natural gas.

[1] OJ L 24, 29.1.2004, p. 1.

4. HelPe is mainly active on the market for the production, refining and trading of crude oil, fuel supplies, oil and gas exploration and production, chemicals and petrochemicals in Greece and, in addition, has operations in the electricity sector.

II. THE OPERATION

5. The operation involves the creation of a Joint Venture ("JV") which will be active in the sector of electricity generation in Greece. Edison will contribute to the joint venture its 65% interest in Thisvi, a company currently developing a 410 MW combined-cycle gas turbine power plant project, while the approval process for a further project for the construction of a coal-fired 600 MW power plant has also commenced. HelPe will contribute its T-Power subsidiary, which owns a 389.5 MW combined-cycle power plant fuelled with natural gas in Thessaloniki.

III. CONCENTRATION

6. The parties submit that the proposed transaction between Edison and HelPe involves the creation of a full-function joint venture within the meaning of Article 3(4) ECMR, performing on a lasting basis all the functions of an autonomous entity. The joint venture is established for an indefinite period of time with a view to operating on the Greek electricity market. Termination of the joint venture may occur only upon written agreement between the parties. The parents agreed to confer to the venture sufficient resources to operate independently on the market, such as a management dedicated to its day-to-day business, and tangible assets. In particular, the parties agreed to respectively contribute two combined cycle gas turbine power plants (i.e., the T-Power and Thisvi plants). No sales or purchases are envisaged between the parent companies and the joint venture. As the parties submit, the JV will not procure gas and other inputs from parties which are controlled by the parents and will sell electricity directly to the electricity pool in Greece.

7. HelPe and Edison will have joint control, with equal shares, in both HoldCo (the Holding company which is in essence an investment vehicle) and Genco (the operating business controlling the power plants). No decisions can be taken by any of the decision making bodies of either HoldCo or Genco without the approval of both Edison and HelPe. With regard to Genco, it should be noted that HoldCo shall hold 75% of Genco's shares and the remaining shares shall be owned by minority shareholders. In accordance with clause 6 of the Genco Shareholder's Agreement, the board of directors of Genco shall be composed of 8 members, of whom 6 shall be appointed by HoldCo (including the Chairman of the board) and the remaining two shall be appointed by the minority shareholders of Genco.

8. It follows from the above that the JV is considered to be full functional and the operation constitutes a concentration within the meaning of Article 3.1(b) of the ECMR.

IV. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate worldwide turnover that exceeds €5,000 million (HelPe € 8.538 billion; Edison € 95.052 billion in 2007). In addition, the undertakings concerned do not achieve more than two-thirds of their aggregate EU-wide turnover in one and the same EU Member State and the aggregate

Community-wide turnover of at least two undertakings concerned is more than EUR 250 mil. Thus, the Transaction has a Community dimension since it meets the thresholds set out in Article 1(2) of Council Regulation (EC) No 139/2004.

V. RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

A. Relevant product markets

The market for the generation and wholesale supply of electricity in Greece

10. In its past practice, the Commission has notably considered the following product markets as relevant markets in the electricity sector: (i) Generation and wholesale supply of electricity; (ii) Electricity transmission (i.e. the operation and management of the high-voltage grid); (iii) Distribution of electricity (i.e. the operation and management of the lower-voltage grids); and (iv) Retail supply of electricity to end-customers, indicating that there could be a distinction between large industrial and commercial customers on the one hand and smaller industrial and commercial customers and domestic customers on the other hand[2].

11. The joint venture between Edison and HelPe will be active on the market for the generation and wholesale supply of electricity. In a previous decision by the Commission, concerning a concentration between EdF, AEM and Edison, the market for the wholesale supply of electricity was described as *"encompassing the production of electricity at power stations and imports through interconnectors, whether sold bilaterally or on the [electricity pool], for the purpose of resale to retailers and to a lesser extent directly to industrial end-users".*[3] In the case of Greece, in practice all electricity (whether produced in Greece or imported) goes through the mandatory day-ahead electricity pool. It could thus be argued that the wholesale market is reduced to the pool in Greece.

12. Nevertheless, as will be explained below, even if one were to consider the narrowest or the largest possible market definition which is mentioned above in recital 11, there are no competition issues either at horizontal level or due to the vertical relationships and the final definition can be left open.

B. Relevant geographic market

The market for the generation and wholesale supply of electricity in Greece

13. From a geographical perspective, the Commission has consistently considered wholesale electricity markets to be national or smaller in scope. In the case of Greece, as the parties note, there may be potential smaller markets because there are non-interconnected islands in Greece.[4] In other words a distinction may be made between the

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2 Cases No. COMP/M.4672 – E.ON/Endesa Europa/Viesgo; COMP/M.3440 – ENI/EDP/GDP; COMP/M.4180 – Gas de France/Suez; COMP/M.3696 – E.ON/MOL.

3 See Case COMP/M. 3729 – *EdF/AEM/Edison*, cit., paras. 17-28.

4 See Case COMP/M. 3729 – *EdF/AEM/Edison*, cit., para. 39

interconnected system (i.e. mainland Greece and interconnected islands) and the non-interconnected system. The latter includes certain islands which account for approximately 8% of total Greek electricity demand and electricity for these is by law exclusively supplied by PPC. This separation was envisaged in past Commission practice[5].

14. For the purposes of the present case the exact definition of the geographic market can be left open since no competition concerns could arise in view of the limited horizontal overlaps and vertical issues on any of the possible relevant market.

VI. COMPETITIVE ASSESSMENT

15. The joint venture will be active in the market for generation and wholesale supply of electricity in Greece. From the parent companies, only HelPe is also active in this market.

16. Neither of the parent companies is currently active in the market for the supply of gas to gas-powered electricity plants. Both companies only have remote connections to this market which, however, do not allow concluding that they are currently active in this business.

17. HelPe owns 35% of shares in DEPA, the Greek gas incumbent. The rest of DEPA's shares (65%) are directly owned by the Greek State. DEPA is, however, not controlled by HelPe. As explained by the parties, HelPe appoints only 2 out of the 11 board members in DEPA and does not have a veto right as regards its operational business. The parties submit that there is also no *de facto* control by HelPe over DEPA. In this respect, the parties stated the following: (i) there are no guarantees or loans between HelPe and DEPA or any other similar financial links; (ii) HelPe does not provide extensive technical support to DEPA; (iii) there are no high ranking HelPe officers holding important positions in DEPA; and finally, (iv) there are no particularly supply links that indicate a special relation between the companies (DEPA supplies gas to T-Power on an arm's-length basis). Consequently, Helpe's 35% shareholding in DEPA does not give rise to control – neither de facto nor de jure – over DEPA. Moreover, in accordance with current practice, the fact that the Greek State currently controls both DEPA and HelPe does not change this result since both DEPA and HelPe represent distinct economic units[6] and can therefore not be considered as one group.

18. Also Edison is currently not active in the gas market. It is, however, worth noting, that Edison participates in the construction of the Poseidon pipeline[7] together with DEPA. Edison will be able to transport significant amounts of gas through the Greek territory when the project will be finished. An 80% of the capacity will be reserved for Edison,

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5 See recital 172 in the Commission Decision of 5 March 2008 against the Hellenic Republic (COMP Case 38700) where the Commission considered in its competition analysis that the interconnected system was a separate market.

6 See recital 22 to the ECMR.

7 The Poseidon pipeline is a gas interconnector between Greece to Italy which DEPA and one of the parents, Edison, are jointly developing and for which they were granted a third party access exemption under Article 22 of Directive 2003/55/EC.

whereas DEPA will have the right to the remaining 20% capacity (without the capacity that has to be made available to third party access). The pipeline is expected to become operational only at the end of 2012 and, it is noted by the parties, that Edison is not […]. […]. Edison can therefore not be regarded as being active in the gas market in Greece.

The market for generation and wholesale supply of electricity in Greece

19. The market for the generation and wholesale supply of electricity in Greece is currently dominated by the vertically-integrated, majority state-owned company, PPC. This undertaking has a market share of around 83% of the total installed capacity, whereas independent power producers currently play only a marginal role. The Greek government owns 51% of its shares, whilst the general public and institutional investors own 45.07% and a further 3.81% is held by PPC's employee insurance. Therefore there is no cross-ownership between the parties and PPC. Moreover, as stated by the parties, there are no significant supply agreements between the parties and PPC. Given the above PPC and HelPe, in spite of being controlled by the Greek government, represent distinct economic units[8] and can therefore not be considered as one group.

20. According to the parties, HelPe has an estimated market share of 2.6 % in installed capacity ([< 5]% in sales in 2007), while Edison currently does not operate any power generation facility in Greece but it has a power plant currently being developed and awaits the licensing authorisation for a second plant. In that sense, the parties submit that after the realization of all contemplated projects (by 2013/2014), the joint venture would account for less than 10% of the installed generation capacity in Greece.

21. Considering the JV's limited market share after the concentration and that PPC's dominance is expected to be maintained, no competition concerns could arise in the market for the generation and wholesale supply of electricity in Greece as a result of the creation of the joint venture. Thus, the operation does not significantly affect or impede effective competition in the market for generation and wholesale supply of electricity in Greece.

Cooperative effects of the Joint venture

22. As far as Art. 2(4) of the Merger Regulation is concerned, there will be no risk of coordination between the parent companies in the market for generation and wholesale supply of electricity in Greece as Edison is currently not active in this market. Moreover, the commercial significance of the investment in the JV in relation to the parents' activities can be considered of minor nature.

23. Consequently, it cannot be concluded that the JV could create a risk of coordination between HelPe and Edison in the market for generation and wholesale supply of electricity in Greece. It is equally unlikely that the JV could increase the risk of coordination between DEPA and Edison. Apart from the fact that Edison is currently not active in the Greek gas market, HelPE also does not control DEPA (nor does DEPA have any shares in HelPe) and DEPA therefore has no stake in the joint venture.

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[8] See recital 22 to the ECMR.

24. It follows from above, that it can therefore be excluded that the joint venture would create an incentive to co-ordinate the behaviour of its parent companies.

VII. CONCLUSION

25. For the above reasons, the concentration does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement and it does not significantly impede effective competition. Thus, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission,
(signed)
Siim KALLAS
Member of the Commission