EUROPEAN COMMISSION
DG Competition

Case M.10139 - DESFA / COPELOUZOU / DEPA / GASLOG / BTG / GASTRADE

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 26/11/2021

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EUROPEAN COMMISSION

Brussels, 26.11.2021
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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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Subject: **Case M.10139 – DESFA / COPELOUZOU / DEPA / GASLOG / BTG / GASTRADE**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 20 October 2021, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Hellenic Gas Transmission System Operator S.A. ("DESFA", Greece), Ms. Asimina-Eleni Copelouzou ("Ms Copelouzou", Greece), DEPA Commercial S.A. ("DEPA Commercial", Greece), GasLog Cyprus Investments Limited ("GasLog", Cyprus) and Bulgartransgaz EAD ("BTG", Bulgaria) acquire within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control of GASTRADE Limited Construction and Technical Company of Natural Gas S.A. ("GASTRADE", Greece) ("the Transaction").[3] DESFA, Ms Copelouzou, DEPA Commercial, GasLog and BTG are designated hereinafter as the "notifying parties" and together with GASTRADE as the "parties".

1. THE PARTIES

1.1. DESFA

(2) DESFA owns, operates, maintains, manages, exploits and develops the Greek high-pressure gas transmission network, the National Natural Gas Transmission System (the "NNGTS"), and as such is the Greek gas Transmission System Operator ("TSO"). It also owns and operates the Liquefied Natural Gas (LNG) terminal located on Revithoussa island, Greece (the "Revithoussa LNG Terminal" or "Revithoussa"). DESFA's overall system (i.e. including the NNGTS and Revithoussa LNG Terminal) is referred to as the Greek National Natural Gas System ("NNGS").

(3) DESFA is ultimately controlled by the Italian investment bank Cassa Depositi e Prestiti S.p.A. ("CDP")[4]. CDP controls DESFA through Snam S.p.A. ("Snam"), which in turn controls DESFA via "SENFLUGA ENERGY INFRASTRUCTURE HOLDINGS SOCIETE ANONYME" ("Senfluga"). Senfluga holds 66% of the shares in, and voting rights of, DESFA. The Hellenic Republic holds the remaining 34% participation in, and voting rights of, DESFA. Decisions in relation to DESFA's commercial strategy are adopted by simple majority and quorum. Senfluga, holding

[1] OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union (the 'TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

[2] OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

[3] Publication in the Official Journal of the European Union No C 435, 28.10.2021, p. 8.

[4] See Commission decision of July 12, 2013, in Case M.6887 SNAM/ GISCI/ TIGF. Snam is the holding company of the Snam Group, which controls the main gas TSO in Italy, and has several participations in companies active in gas transmission and storage throughout the EU.

a majority of shares and voting rights, can therefore adopt such decisions. The Hellenic Republic does not have any veto rights beyond those normally accorded to protect the financial interests of a minority shareholder.[5] Senfluga's sole control over DESFA was confirmed by the Commission in Case M.8953 - SNAM/DESFA.[6] In view of this, CDP via Senfluga exercises decisive influence, and thus has sole control, over DESFA.

1.2. Ms Copelouzou

(4) Ms Copelouzou is the founding shareholder of GASTRADE. She is an individual and, with the exception of GASTRADE, has no other activities in the gas sector.[7]

1.3. GasLog

(5) GasLog is an owner, operator and manager of LNG vessels. GasLog owns and manages 33 LNG vessels, which are chartered to customers. GasLog also provides ship management services to its own fleet. GasLog has technical and commercial background, resources, and know-how to operate and maintain GASTRADE's proposed Floating Storage and Regasification Unit ("FSRU").

(6) GasLog is a wholly-owned (indirect) subsidiary of GasLog Ltd., incorporated in Bermuda and listed on the New York Stock Exchange. GasLog Ltd. is effectively controlled by Mr. Peter G. Livanos.

1.4. DEPA Commercial

(7) DEPA Commercial is Greece's major gas supplier. It is active in the supply, wholesale and retail trading of natural gas. It is also active in the retail supply of electricity (through EPA Attikis).

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[5] Form CO, paragraphs 140-143.

[6] See Case M.8953 - SNAM/DESFA, paragraphs 6-7. Following the Commission's decision in that case, the shareholding structure of Senfluga changed, albeit with no impact on its controlling structure. Specifically, Damco Energy SA ("Damco"), which is controlled by [description of Damco's shareholding structure], made a financial investment in Senfluga in return for 10% of the non-voting shares (preferential shares) in Senfluga. The acquisition by Damco of a 10% share in Senfluga has been structured so to ensure that Damco remains only a financial shareholder with no voting and very limited information rights (passive shareholder) (Form CO, paragraph 138). Therefore, the quality of control in DESFA did not change following the entry of Damco into Senfluga's shareholding structure. The Parties have confirmed that, other than Damco, no other entity or person related to the Copelouzos Group holds a passive minority participation in Senfluga nor in DESFA (Form CO, paragraph 155). In the Commission's preliminary market investigation, a market player raised a concern in relation to whether the Transaction could result in the Copelouzos Group, which is active in the Greek energy sector, benefitting through gaining access to commercially sensitive information due to Damco's shares in Senfluga. However, the Notifying Parties submit that the only right granted to Damco is the right to receive the minimum information provided under the law as a 'minority shareholder'; it cannot be precluded under the applicable corporate law (L.4548/2018) but has been substantially curtailed so as to exclude the provision to Damco of any commercially sensitive information. The Greek Energy Regulator's ("RAE") Decision no 1100/2019 of 28 November 2019 approving the acquisition of a 10% shareholding of Damco over Senfluga confirmed that Damco would not be exercising any rights and no control over Senfluga or DESFA, and that the transaction would not result in a violation of the unbundling rules or DESFA's certification. Damco was considered by RAE as to be falling under the scope of a financial investor (Form CO, paragraphs 146-147).

[7] Ms Copelouzou holds minority stakes, but no control, in [description of Ms Copelouzou's minority shareholdings]. All these companies are unrelated to the gas sector (Form CO, paragraph 133).

(8) DEPA Commercial is currently owned by the Hellenic Republic Asset Development Fund ("HRADF")[8] (65%) and by Hellenic Petroleum SA ("HELPE")[9] (35%).

1.5. BTG

(9) BTG is a Bulgarian state-owned licenced independent operator of natural gas transmission and storage in Bulgaria.[10] Its capital is fully owned by Bulgarian Energy Holding ("BEH"), which is 100% owned by the Bulgarian State.

(10) The Parties submit that, despite BEH owning BTG, the regulatory framework in Bulgaria, as well as BTG's Articles of Association, guarantee that BEH does not exercise decisive influence over BTG.[11]

(11) The Commission notes, however, that certain aspects in the governance of BTG might lead to the conclusion that BEH is in a position to exercise decisive influence in relation to the strategic business behaviour of BTG. In particular, BEH owns shares in BTG to 100% of the shares in BTG. In addition, BTG has a two-tier system of management, which consists of a Supervisory Board and a Management Board. The Management Board manages and represents BTG, while the Supervisory Board supervises and controls the activities of the Management Board.[12] The members of both the Supervisory Board and the Management Board are nominated through regulated competitions. However, BEH has a veto right with respect to the appointment of the nominated members of the Supervisory Board. The Supervisory

[8] The HRADF was established by the provisions of Greek Law 3986/2011 on 1 July 2011. It is not a public entity and is governed by private law. It is an undertaking entrusted with the development of the Greek State's assets and serves the public interest at large. The assets transferred to it by the State do not form part of its share capital and the HRADF is not deemed to exercise control over DEPA Commercial for competition law purposes but rather acts as a public authority (Form CO, paragraph 127.1). (See Decision of the Hellenic Competition Commission 672/2018, para. 40).

[9] HELPE is an energy group based in Greece, with activities spanning across the energy value chain and presence in seven countries. Its shares are primarily listed on the Athens Stock Exchange with a secondary listing on the London Stock Exchange. HELPE's shareholding in DEPA Commercial is not accompanied by rights that provide control over DEPA (Form CO, paragraph 127.2.) (See Decision 38 of the Bulgarian Commission on Protection of Competition (14 January 2021), section 2.2).

[10] BTG's acquisition of control over GASTRADE was unconditionally cleared by the Bulgarian competition authority on 14 January 2021, Decision 38 of the Bulgarian Commission on Protection of Competition, 14 January 2021 (Form CO, Annex 17).

[11] According to the parties, BEH, which holds a 50% stake in the IGB Interconnector Project (Form CO, footnote 104), is a holding company whose participation in its subsidiaries is limited to exercising its shareholder rights, i.e. supervising their activity without interfering directly in the management and day-to-day operation. In addition, the parties submit that BTG is independent in terms of decision making from BEH (and other companies integrated in the holding structure of BEH) and that internal assurances are in place which re-enforce the status of independence of BTG (e.g. its Articles of Association and the Compliance Program provide that BEH shall not determine BTG's activity, and BTG shall not accept orders from BEH and its representatives when performing activities relevant to the operation of the transmission network, the overall management of the network and investments). See Form CO, paragraphs 164-165. See also Decision 38 of the Bulgarian Commission on Protection of Competition (14 January 2021) clearing BTG's acquisition of a stake in GASTRADE which states in its Section 2.1 that *"According to the documents submitted by the notifiers, there are no prerequisites for direct or indirect determination of [BTG]'s competitive behavior with regard to its current activities and the management of the network or in relation to the activities necessary for the preparation of the 10-year network development plan by the sole owner of its capital. Therefore, there is no exercise of control within the meaning of Art. 22 of the LPC by BEH in its capacity of a sole owner of [BTG]."* (See Form CO, footnote 102). See also response to RFI10, para. 25.

[12] See response to RFI10, paragraph 6.

Board, in turn, appoints and releases from office the members of the Management Board. Furthermore, the Supervisory Board approves the short and long-term financial plans of BTG, which are proposed by the Management Board.[13]

(12) For the purposes of this Decision, the question of whether BEH exercises control over BTG can be left open, as the Transaction does not lead to serious doubts as to its compatibility with the internal market regardless of whether BEH exercises control over BTG. Hence, the competitive assessment of the Transaction will be conducted on the basis that BEH controls BTG.

1.6. GASTRADE

(13) GASTRADE is currently jointly controlled by Ms Copelouzou (40%), DEPA Commercial (20%), GasLog (20%) and BTG (20%) (hereafter: the "Existing Shareholders") (see recital (17) below concerning GASTRADE's control structure prior to the Transaction).

(14) GASTRADE is the owner, licence holder and developer of the Alexandroupolis LNG Terminal ("Alexandroupolis"), a proposed facility to be located offshore of Alexandroupolis in Northern Greece. It will consist of an offshore FSRU for the reception, storage and regasification of LNG, and permanent offshore installations.

Figure 1: Image of the proposed FSRU

(15) It also comprises a subsea and onshore gas transmission pipeline, which will transmit the gas from the FSRU to Greece's NNGTS.

[13] See response to RFI10, paragraphs 8 et seq.; paragraphs 17 et seq.

Figure 2: Pipeline and connection to NNGTS

2. THE TRANSACTION

(16) Ms Copelouzou signed a Share Purchase Agreement on 30 October 2020 with DESFA for the acquisition by DESFA of half of Ms Copelouzou's shares in GASTRADE, i.e. DESFA will acquire 20% of GASTRADE's shares. Thus, post-Transaction each of the Notifying Parties will have 20% of the shares and joint control over GASTRADE within the meaning of Article 3(1)(b) of the Merger Regulation.

2.1. GASTRADE will be jointly controlled by DESFA and the Existing Shareholders

(17) *Pre-Transaction*, the Existing Shareholders already have joint control over GASTRADE on the basis of veto rights over the business plan and the revocation of the appointment of the managing director of GASTRADE; these factors are the same as outlined below in (18) for the situation post-Transaction.

(18) *Post-Transaction*, DESFA will acquire joint-control over GASTRADE together with the Existing Shareholders on the basis of veto rights over the business plan and the revocation of the appointment of the managing director of GASTRADE. These give each notifying party the power to reject proposed strategic decisions over GASTRADE and hence produce a deadlock.

(19) The […] constitutes a "critical matter" under the Shareholders Agreement (SHA), which requires a unanimous resolution of the shareholders that are duly represented[14] at the general meeting.[15] The […][16] is also a "critical matter", as is the […][17]

14 Clauses 5.5 and 5.6. SHA provide that for "*a Critical Matter or a Shareholders Reserved Matter*" *the quorum* […]. *Therefore, a "critical matter" can be adopted* […].

15 Clauses 7.5 and 5.6 SHA.

Therefore, each of the Notifying Parties will have the power to reject proposed strategic decisions regarding […]and will thus be able to produce a deadlock situation. Similarly, pursuant to the SHA, none of the shareholders can on its own block or pass a resolution in relation to "Board Reserved Matters", which include […], or "Matters Reserved for Shareholder Approval", which includes […].[18]

(20) Each shareholder will have the right […][19].[20] Decisions over the revocation of the appointment of the Managing Director[21] will require […].[22] Therefore, each of the Notifying Parties […] will thus be able to produce a deadlock.

(21) A deadlock would arise if […].[23] In case of a deadlock, […].[24]. It follows that all shareholders must reach a common understanding in determining the commercial policy of GASTRADE and that they will have joint control over GASTRADE.

(22) Given that the Existing Shareholders already exert joint control prior to the Transaction, the only merger-specific change in the structure of control pertains to DESFA's entry into GASTRADE's shareholding, which will be the focus of the present decision.

2.2. GASTRADE is a full-function joint venture

(23) GASTRADE will be performing on a lasting basis all the functions of an autonomous undertaking operating in the market for gas import infrastructure.

(24) *First*, GASTRADE will have an independent management dedicated to its day-to-day operations, namely, a Board of Directors and a Managing Director, and (assuming a positive FID from its shareholders) will hire further personnel and commence construction.[25]

(25) *Second*, GASTRADE will have its own presence on the market and it is anticipated that it will achieve the majority of its turnover with third parties. In addition, any agreement between GASTRADE and a shareholder will be at arms' length and on the basis of prevailing market terms at the time.

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16 The FID to be taken by GASTRADE's General Meeting constitutes GASTRADE's shareholders' final decision to proceed with the investment for the Alexandroupolis LNG Terminal as well as the construction and operation thereof (Form CO, footnote 105).

17 Clause 7.3 SHA.

18 Form CO, paragraph 198.

19 Clauses 6.3 and 6.7 SHA.

20 Clause 6.18 SHA. In addition, pursuant to Clause 6.6 SHA, the Chairman [information regarding GASTRADE's internal organisation, based on GASTRADE's Shareholders Agreement].

21 The Managing Director will [information regarding GASTRADE's internal organisation, based on GASTRADE's Shareholders Agreement] (see Schedule 4 SHA).

22 Clause 6.24 and Schedule 4 SHA, Part 2, point 3.

23 Clause 9.1 SHA.

24 Clause 11.2 SHA (there are separate provisions for [information regarding GASTRADE's internal organisation, based on GASTRADE's Shareholders Agreement]; see Clause 10 SHA).

25 GASTRADE will not employ its own staff until the FID (the shareholders are contributing resources for the development of the project at this stage). After the FID (anticipated later in 2021), GASTRADE will hire and employ its own staff, which will be paid from GASTRADE's budget as an operating expense (OPEX), in accordance with the company's business plan. Form CO, paragraphs 201 - 204.

(26) *Third*, GASTRADE has secured financial resources via public subsidies and private funds so that it conducts its business activity independently from its parents.

(27) *Fourth*, GASTRADE has obtained the majority of regulatory licenses required for the operation of the Alexandroupolis LNG Terminal and GASTRADE's Articles of Association anticipate that it will have a 50-year duration and will therefore operate on a lasting basis.

(28) Therefore, GASTRADE will be a full-function joint venture.

3. UNION DIMENSION

(29) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (in 2020, SNAM/CDP: EUR […] million; Ms Copelouzou: EUR […] million; DEPA Commercial: EUR 550 million; GasLog: EUR 715 million; BTG[26]: EUR 189 million)[27]. Three of them have a Union-wide turnover in excess of EUR 250 million (in 2020, SNAM/CDP: EUR […] million; Ms Copelouzou: EUR […] million; DEPA Commercial: EUR […] million; GasLog: EUR […] million; BTG: EUR […]million), but not all Parties achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

4. RELEVANT MARKETS

4.1. Introduction

(30) Natural gas originates in oilfields or natural gas fields. After being processed and purified at a treatment plant, natural gas can be supplied either in gaseous form through pipelines or in liquid form, as LNG. When supplied as LNG, natural gas is converted into liquid form in a liquefaction plant, transported in specially-designed LNG tankers and then delivered for regasification at a receiving terminal at the point of destination or used directly as LNG for certain specific applications. Once regasified, LNG is transported in the pipeline network where it is mixed with "piped" natural gas. It is then distributed and supplied to end customers.

(31) In the previous decisional practice of the Commission,[28] the gas markets have been segmented into (i) the production and exploration for natural gas, (ii) gas wholesale supply, (iii) gas transmission (via high pressure systems), (iv) gas distribution (via

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[26] As noted in paragraph (12), the competitive assessment of the Transaction will be conducted on the basis that BEH controls BTG. Although in this section the turnover of BTG alone is taken into consideration, the assessment on the Transaction's Union dimension would not change if BEH's turnover would be considered instead, as the latter would in any case include the turnover of BTG.

[27] Turnover calculated in accordance with Article 5 of the Merger Regulation.

[28] Cases M.9641 SNAM/FSI/OLT; M.3440 ENI/EDP/GDP; M.3294 EXXONMOBIL/BEB; M.3293 Shell/BEB; M.4180 Gaz de France/Suez; M.3868 DONG/Elsam/Energi E.

low pressure systems), (v) gas storage, (vi) gas trading, (vii) gas supply to end customers[29] and (viii) the market for infrastructure for gas imports.

(32) DESFA, BEH and GASTRADE are active in the market for infrastructure for gas imports into Greece. DESFA operates the Revithoussa LNG Terminal and, as the TSO, the interconnection points where import pipelines interconnect with the NNGTS. GASTRADE is the developer and future operator of the Alexandroupolis LNG Terminal. BEH, through BTG, operates the Bulgarian natural gas transmission system, which connects to the Greek NNGTS at the Greek-Bulgarian border.[30]

4.2. Product market definition

4.2.1. Infrastructure for gas imports, including a possible sub-segment for regasification services

(33) In previous decisions, the Commission considered the question whether the market for infrastructure for gas imports could be sub-segmented into the following markets: (i) regasification services for the import of liquid natural gas; (ii) interconnection points with international gas pipelines; and (iii) underground gas storage.[31] The Commission has generally ultimately left open the exact market definition, though it did conclude in one decision that underground gas storage represented a separate market.[32]

(34) The Notifying Parties submit that there is a single product market for regasification terminals and pipelines, as these two are interchangeable facilities that are used to carry out the import of gas and that, from the end customer's perspective, the form of the gas immediately before it is added to the network is immaterial.[33] In any event, the Notifying Parties submit that the exact market definition can be left open as, in their view, the Transaction does not raise competition concerns regardless of the market definition adopted.

(35) The results of the market investigation conducted in the present case indicated that most entities that import gas in Greece do so by using both pipelines and regasification terminals.[34] The majority of those respondents who provided a definite answer consider that regasification terminals and pipelines are interchangeable facilities in order to carry out the import of gas. However, a number of respondents consider the two types of infrastructures to be more complementary than

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29 This market can be further subdivided according to different types of users (big and industrial, small and medium enterprises, households, etc.).

30 BEH also holds a 50% stake in ICGB AD, which will operate the "Interconnector Greece-Bulgaria" pipeline, which is expected to be operational by mid-2022 and will interconnect the Bulgarian transmission system with the NNGTS. However, IGB's entry point to the NNGTS will only be able to cater for gas flows from Greece to Bulgaria and not the other way around. In order for IGB to be offered entry capacity to the NNGTS, a regulatory procedure pursuant to Reg. 2017/459 shall be implemented first, and if positive, IGB will have to proceed with the required investments. Consequently, IGB is not considered an import infrastructure into Greece. See Form CO, paragraph 353 et seq.: Form CO, fn. 326.

31 Cases M.5649 RREEF FUND/ ENDESA/ UFG/ SAGGAS, paragraphs 11-15; M.8771 Total/Engie, paragraphs 23-27.

32 Case M.1383 Exxon / Mobil, recital 69.

33 Form CO, paragraph 268.

34 See replies to question 4 of Questionnaire 1 to customers.

substitutable solutions.[35] Respondents pointed specifically to the different costs and timelines involved in the planning of gas imports, as well as the complementary needs served by the different import infrastructure. In this respect, one customer submitted that "*[p]ipeline gas provides a steadier supply stream - LNG terminals usually cater for flexibility, system reserves, seasonal spikes etc., but may also be partly used as a long-term supply solution*".[36]

(36) The Commission considers that, for the purposes of this decision, it may be left open whether pipelines and regasification terminals belong to the same relevant product market or belong to separate relevant product markets, as the Transaction does not lead to serious doubts as to its compatibility with the internal market, regardless of the market definition adopted.

4.2.2. Gas transmission

(37) The transmission of natural gas consists of physical gas transportation services via high-pressure pipelines to gas wholesale suppliers that aim to resell their gas either to other gas wholesalers, to distributors, or to large industrial customers that are directly connected to the gas transmission network.

(38) In its decisional practice, the Commission has consistently considered gas networks as natural monopolies.[37] The Notifying Parties do not challenge this conclusion.

(39) The results of the market investigation confirm that the conclusions reached by the Commission in its previous practice are still valid for Greece today.[38] The Commission therefore considers that gas networks for the transmission of gas are natural monopolies and each of them constitute a distinct product market.

4.2.3. Gas storage

(40) In previous decisions, the Commission has defined a separate relevant product market for the storage of natural gas.[39]

(41) The Notifying Parties consider that a gas storage market has not yet developed in Greece. The current situation where there is no large-scale gas storage in Greece would change if the prospective underground natural gas storage ("UGS") project in South Kavala, Greece comes to fruition.[40] The Notifying Parties consider that the temporary storage at a LNG terminal does not compete with gas storage infrastructure as they have very different characteristics in terms of capacity and

35 See replies to question 8.1, Questionnaire 1 to customers; question 4.1, Questionnaire 2 to competitors.

36 See replies to question 8.1 of Questionnaire 1 to customers.

37 Cases M.9641 SNAM/FSI/OLT, paragraph 29; M.6984 EPH/ STREDOSLOVENSKA ENERGETIKA, paragraph 25; M.3696 E.ON/MOL, recital 97.

38 See replies to question 14 of Questionnaire 1 to customers; question 11 of Questionnaire 2 to competitors.

39 Cases M.5467 RWE / Essent; M.3410 Total / Gaz de France. The Commission also considered a further distinction between pore and cavern storage facilities, as well as between storage facilities suited for the storage of high calorific value (H-gas) and storage facilities suited for the storage of low calorific value (L-gas), but it ultimately left these questions open.

40 Form CO, paragraphs 242-249. An international public tender process is currently underway by the Hellenic Republic Asset Development Fund for the concession of the use, development and operation of the South Kavala UGS. The final stage of this tender will most likely take place early in 2022 and the Parties cannot safely estimate its date of entry into operation.

duration of storage, and fulfil different purposes, and that the Alexandroupolis LNG Terminal cannot be considered a storage facility.[41]

(42) The results of the market investigation confirm that a gas storage market has not yet developed in Greece. A number of respondents confirmed that there is currently no storage facility for natural gas in Greece.[42] A clear majority of customers also confirmed that short-term storage provided by LNG terminals cannot be considered as equivalent to underground gas storage services.[43]

(43) In view of the above, the Commission considers that gas storage belongs to a separate market. As the Parties are not active in such a market and there is currently no gas storage market in Greece, in this Decision gas storage will not be dealt with further.

4.3. Geographic market definition

4.3.1. Infrastructure for gas imports

(44) In past decisions, the Commission considered that the market for infrastructure for gas imports, including LNG regasification terminals, was national in scope but ultimately left open whether the geographic scope was national or wider.[44]

(45) The Notifying Parties submit that, given Greece's land and sea borders, the positioning of gas import infrastructure in the wider region, and the technical specifications of the Greek gas infrastructure, in this case the market should not be delineated on a national basis, but should instead comprise at least Greece, the Balkans and countries of South and Eastern Europe, as well as Turkey.[45] In any event, the Notifying Parties submit that the exact market definition can be left open as the Transaction does not raise concerns regardless of the market definition.

(46) The Parties submit that the consumption centre for natural gas in Greece is in the southern part of Greece, mainly around the Athens (Attica) area. Furthermore, there are physical limitations to the flow of gas within Greece due to the diameter of the pipelines between Komotini and Karperi (in the North-East of Greece) and to the South of the Nea Messimvria compressor station (see Figure 4 below), as well as the capacity of the existing compressor station at Nea Messimvria. These limitations do not apply to the same extent to both directions, i.e. greater amounts of gas can flow from the South to North than the other way around.[46]

(47) The results of the market investigation with regard to the geographic scope of the market for infrastructure for gas imports point to it being national in scope. The majority of competitors submitted that the market is national in scope.[47] A slight majority of those customers who provided a definitive answer confirmed that they

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41 Form CO, paragraphs 250-262.

42 See replies to question 15 of Questionnaire 1 to customers; question 12 of Questionnaire 2 to competitors.

43 See replies to question 16 of Questionnaire 1 to customers.

44 Cases M.9641 SNAM/FSI/OLT, paragraph 36; M.5649 RREEF FUND/ ENDESA/ UFG/ SAGGAS, paras. 16-18; M.8771 Total/Engie, paragraphs 35-37.

45 Form CO, paragraphs 281-282.

46 Form CO, paragraph 540 et seq.

47 See replies to question 14 of Questionnaire 2 to competitors.

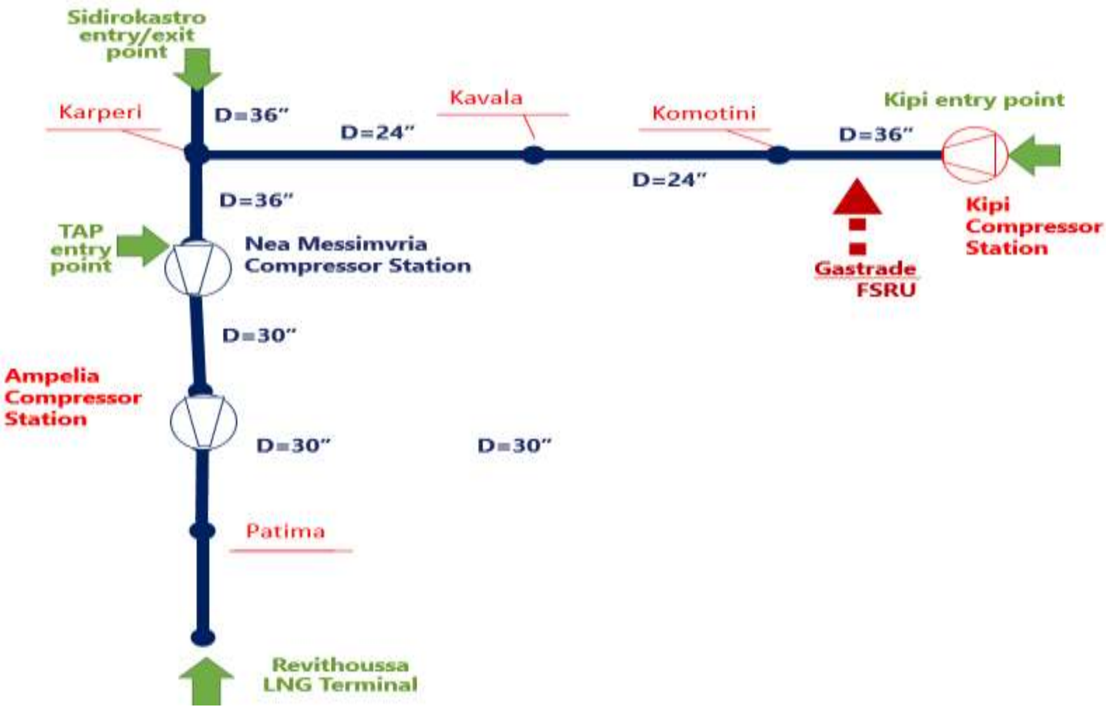
would select gas import infrastructure in all of Greece for their sales of gas in Greece.[48]

(48) However, a number of respondents pointed to a bottleneck in the NNGTS, allowing for limited gas flow between the North-eastern part of Greece (where the Alexandroupolis Terminal is located) and the rest of Greece. In this respect, one respondent noted that "[*d]ue to the bottleneck in Komotini, gas originating from the Alexandroupolis terminal is expected to mainly be fed to the IGB* [Interconnector Greece-Bulgaria]*"*. The location of the terminal is illustrated in Figure 3, and in Figure 4 the "bottleneck" is illustrated by identifying the parts of the transmission system whose diameter is narrower than 36 inches.

Figure 3: Location of the Alexandroupolis LNG Terminal

48 See replies to question 17 of Questionnaire 1 to customers.

Figure 4: Current entry points and pipeline diameter in the NNGTS[49]



(49) The Commission notes that the bottleneck indeed leads to a situation where the volumes per day of gas that can be injected in the north of Greece are higher if the gas does not have to pass through the bottleneck to the south of Greece. While taking account of this "bottleneck", the Commission notes that the cost of using the transmission system in Greece does not depend on the distance between the particular entry and exit point but DESFA charges for entry and exit to the system, meaning that transmission costs are largely homogenous throughout the NNGTS, regardless of where the gas enters and exits the system.[50] Furthermore, as illustrated in Table 2 below, not all gas import infrastructures located in Northern Greece are affected by the bottleneck as much as the Alexandroupolis Terminal. In fact, all other gas import infrastructures that are subject to the bottlenecks in gas flow from North to South of Greece[51] have more capacity for gas to be injected into the NNGTS going to Southern Greece. This indicates that capacity constraints for injecting gas into the NNGTS going to Southern Greece does also depend on the specific gas import infrastructure, and is not only location-specific. The Commission further notes that a gas import infrastructure that is connected to the NNGTS would also be capable of serving the import of natural gas into neighbouring countries, where such countries are sufficiently interconnected with the NNGTS. In light of the above, including the responses to the market investigation and the view of the Notifying Parties, the Commission considers that the geographic market for gas

[49] Form CO, Figure 15. Installation of new compressors at Kipi and Ampelia, and compressor upgrade at Nea Messimvria, are expected to be operational by the end of 2023.

[50] Form CO, paragraph 338

[51] I.e. the interconnection point with the Bulgarian transmission system in Sidirokastro, the interconnection point with the Turkish transmission system in Kipi, the interconnection point with TAP in N. Mesimvria.

import infrastructure and the possible sub-segment for regasification terminals is national, or even wider (comprising Greece and other countries in South East Europe). For the purposes of this Decision, the question can be left open, as the Transaction does not lead to serious doubts as to its compatibility with the internal market regardless of the market definition adopted in this respect.

4.3.2. Gas transmission

(50) In its past decisional practice, the Commission has generally considered the market for gas transmission to be national, although noting that the region covered by the physical infrastructure grid constitutes the narrowest possible delineation of the geographic market.[52]

(51) The Notifying Parties note that in Greece the Trans Adriatic Pipeline ("TAP") (running across Greece from the Turkish border to Albania and into Italy) is now operational and is thus a second balancing zone or entry-exit system where the amount of gas put into the system balances with the amount taken out (in addition to the balancing zone associated with DESFA's transmission network). Given that it is an international pipeline its balancing zone is wider than Greece. However, given that TAP cannot currently be used for physical gas transportation services between two points in Greece, on a conservative basis the Parties provided their analysis of the market for the transmission of natural gas as the NNGTS balancing zone encompassing the territory of Greece.[53]

(52) A majority of the respondents confirmed in the market investigation that the Commission's decisional practice of considering the market for gas transmission systems as being national, covering the physical infrastructure grid, is still valid for Greece today[54]. In this respect, one customer noted that "DESFA is the only TSO operating on national scale."[55] The Commission therefore considers the market for gas transmission to be national in scope, in line with its decisional practice.

Market definition summary

(53) For the purposes of this Decision, the competitive assessment will be based on the following relevant markets:

(a) Overall market for infrastructure of gas imports in Greece or wider and its possible sub-segment of regasification terminals in Greece or wider; and

(b) Gas transmission in Greece.

52 Cases M.9641 SNAM/FSI/OLT, paragraph 40; M.6984 EPH/ STREDOSLOVENSKA ENERGETIKA, paragraph 25; M.3696 E.ON/MOL, recital 126.

53 Form CO, paragraphs 304-305.

54 See replies to question 28 of Questionnaire 1 to customers; question 25 of Questionnaire 2 to competitors.

55 See replies to question 28.1 of Questionnaire 1 to customers.

5. COMPETITIVE ASSESSMENT

5.1. Affected markets

(54) Both DESFA and GASTRADE are active in Greece in the market for infrastructure for gas imports, and the possible sub-segment of regasification terminals. BEH, through BTG, is also active in the operation of gas import infrastructure into Greece (via pipelines) as it operates the Bulgarian natural gas transmission system, which connects to the NNGTS at the Greek-Bulgarian border. Tables 1 and 2 below show the extent of their activities and overlap.

(55) Moreover, DESFA is active in Greece in the gas transmission market. Customers of regasification terminals (i.e. some LNG gas importers) need transmission services to deliver the commodity to their customers once their LNG loads are processed and converted back to a gaseous state. Therefore, the gas transmission market is downstream of the market for infrastructure for gas imports and its possible sub-segments.

(56) The Transaction would lead to the following horizontally-affected markets: (i) overall market for infrastructure for gas imports in Greece; and (ii) regasification terminals in Greece. The Transaction would lead to the following vertically-affected markets: (i) gas transmission in Greece (downstream) and market for infrastructure for gas imports in Greece (upstream). The Commission will assess whether the Transaction could lead to competition concerns with respect to these relationships in sections 5.2 – 5.4 below

5.2. Horizontal non-coordinated effects in the market for infrastructure for gas imports

5.2.1. Analytical framework

(57) Under Article 2(2) and 2(3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position.

(58) In this respect, a merger may entail horizontal and/or non-horizontal effects. Horizontal effects are those deriving from a concentration where the undertakings concerned are actual or potential competitors of each other in one or more of the relevant markets concerned. Non-horizontal effects are those deriving from a concentration where the undertakings concerned are active in different relevant markets.

(59) The Commission appraises horizontal effects in accordance with the guidance set out in the relevant notice, that is to say the Horizontal Merger Guidelines.[56] The Horizontal Merger Guidelines distinguish between two main ways in which mergers between actual or potential competitors on the same relevant market may

[56] Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines"), OJ C 31, 05.02.2004.

significantly impede effective competition, namely non-coordinated and coordinated effects.[57]

(60) The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant horizontal non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force. That list of factors applies equally, regardless of whether a merger would create or strengthen a dominant position, or would otherwise significantly impede effective competition due to non-coordinated effects. Furthermore, not all of these factors need to be present to make significant non-coordinated effects likely and it is not an exhaustive list.[58] Finally, the Horizontal Merger Guidelines describe a number of factors, which could counteract the harmful effects of the merger on competition, including the buyer power, entry and efficiencies.

5.2.2. *Market shares*

(61) Tables 1 - 2 below show market shares for <u>pipelines and regasification terminals for Greece</u>. As the question of whether the geographic scope of the market is national or wider than national was left open, the market shares and the assessment below are done based on the narrowest plausible (i.e. national) market.

(62) Revithoussa is currently the only LNG terminal providing regasification services in Greece. Alexandroupolis is due to become operational in the provision of regasification services in 2023. Motor Oil Hellas intends to develop a third LNG terminal in Greece, also due to be operational in 2023. Tables 3 – 4 below show the markets for these three terminals for the possible <u>sub-segment of regasification terminals</u>.

(63) Tables 1 - 4 below show market shares based on volumes, measured in million cubic meters per day ("mcm/d"), that can be injected into the NNGTS at the relevant entry point. Tables 1 and 3 show market shares based on the technical or physical capacity of the import infrastructure. Tables 2 and 4 show market shares based on the unconditional or firm capacity, i.e. the volume that can be guaranteed to be available for injection from each infrastructure into the transmission system. For any given gas import infrastructure, its firm capacity may be lower than the technical capacity of the infrastructure if not all of the gas that the infrastructure could send-out to the transmission system can be accepted by the transmission system. Tables 2 and 4 demonstrate the degree of closeness of competition or otherwise of GASTRADE to its competitors and the limited increment that results from the Transaction (which is particularly important given Alexandroupolis' focus on exporting gas).

(64) Table 1 shows the technical or physical capacity of the gas import infrastructures in Greece, i.e. for pipelines and regasification terminals. GASTRADE's regasification terminal is planned to be operational in 2023, and thus market shares are shown

[57] In the present decision, the Commission has not found evidence that the Transaction would raise serious doubts as regards its compatibility with the internal market with respect to coordinated effects in any of the horizontally affected markets. During the market investigation, the Commission received no concerns about possible anti-competitive coordinated effects arising from the Transaction.

[58] Horizontal Merger Guidelines, paragraph 26.

primarily for 2023 (but shares are also for the time before that). For 2023 Table 1 shows market shares based on both (i) the full technical or physical capacity (for Alexandroupolis that is [10-20] mcm/d) and (ii) excluding the capacity that is already reserved[59] and which therefore can be thought of as not competing with other sources (for Alexandroupolis the capacity excluding that which is already reserved is [5-10] mcm/d.[60]). For Alexandroupolis, this unbooked capacity is the gas that would be used in north-eastern Greece and exported to Bulgaria and beyond.

(65) Table 2 shows the unconditional/firm capacity for gas to be injected into the NNGTS for use in Greece, including "Southern Greece" (i.e. west of the bottleneck at Komotini). For Alexandroupolis, that is 0.7 mcm/d.

59 GASTRADE has already booked between [30-40]% and [40-50]% of the Alexandroupolis LNG Terminal' capacity for ten years, and [10-20] % for the following five years.

60 The booked capacity for 2023 for Alexandroupolis is [40-50]%, which equals [5-10] mcm/d; excluding that reserved capacity for Alexandroupolis gives a remaining capacity of [5-10] mcm/d (i.e. [10-20]mcm/d minus [5-10] mcm/d).

Table 1: Technical capacity of gas import infrastructures (pipelines and regasification terminals) in Greece [61]

Gas Import Infrastructure	Inter-connection Point (IP) / Country	Operator	Expected date of entry of operation	2018-2020		2021-2022		2023			
				Capacity (existing)		Capacity (existing)		Capacity (existing + planned)		Capacity excluding reserved capacity[62]	
				Capacity (mcm/d)	Share (%)	Capacity (mcm/d)	Share (%)	Capacity (mcm/d)	Share (%)	Capacity (mcm/d)	Share (%)
Bulgarian network (entry at Sidirokastro)	IP/ Bulgaria	**BTG**	Operational	10.8	**33%**	10.35	**32%**	[10-20]	**[10-20]%**	[10-20]	**[20-30]%**
Turkish network (entry at Kipi)[63]	IP/ Turkey	Botaş	Operational	4.3	13%	4.3	Up to 13%	[0-5]	Up to [5-10]%	[0-5]	[5-10]%
Revithoussa LNG Terminal	Greece	**DESFA**	Operational	17.15	**54%**	17.15	**53%**	[10-20]	**[30-40]%**	[10-20]	**[30-40]%**
TAP (Nea Mesimvria)	IP/ Greece	TAP	Operational (as of Dec 2020)			4.8	Up to 15%	[0-5]	Up to [5-10]%	[0-5]	[0-5]%
Alexandroupolis LNG Terminal	Greece	**GASTRADE**	2023					[10-20]	**[20-30]%**	[5-10]	**[10-20]%**
Ag. Theodori LNG Terminal[64]	Greece	Motor Oil Hellas	Q4 2023					[10-20]	[10-20]%	[10-20]	[20-30]%
Total				**32.25**	100%	**32.3**	100%	**[60-70]**	**100%**	**[50-60]**	**100%**
BTG+ Revithoussa + Alexandroupolis								*[40-50]*	***[60-70]%***	*[30-40]*	***[60-70%***

61 Form CO, Table 21. Tables 1 and 2 do not include infrastructure importing gas to the wider region (e.g. terminals in Turkey and Italy, or pipelines into Turkey, Bulgaria etc.,) which can be used to import gas into the NNGTS via this infrastructure.

62 Reserved capacity: (i) GASTRADE has already booked some capacity for up to [10-20] years (as explained in footnote 59); (ii) Most of TAP's existing capacity is already fully backed and booked by long-term gas transport agreements (it will conduct further market tests and must increase capacity if there is demand); (iii) The Parties are not aware of any reserved capacity in the Turkish network for entry into Greece, or at the Ag. Theodori LNG Terminal.

63 In Greece, until 2023, the allocation of capacity at Kipi and Nea Mesimvria (i.e. for import from the Turkish network and TAP, respectively) is offered in a competing way by DESFA as the TSO. Therefore, if capacity is utilised in one of these pipelines it is not available for the other.

64 The figure used is the maximum capacity and included in "DESFA Ten Year Development Plan 2021-2030" ([reference to firm capacity]).

Table 2: Firm/unconditional capacity of gas import infrastructures (pipelines and regasification terminals) for import into Greece, volumes that can currently be injected to the NNGTS for delivery into the NNGTS (*i.e.* including for exit in Southern Greece) [65]

Gas Import Infrastructure	Interconnection Point (IP) / Country	Operator	Expected date of entry of operation	2018-2020		2021-2022		2023			
				Capacity (existing)		Capacity (existing)		Capacity (existing + planned)		Capacity excluding reserved capacity	
				Capacity (mcm/d)	Share (%)	Capacity (mcm/d)	Share (%)	Capacity (mcm/d)	Share (%)	Capacity (mcm/d)	Share (%)
Bulgarian network (entry at Sidirokastro)	IP / Bulgaria	**BTG**	Operational	10.8	**33%**	10.35	**32%**	[10-20]	**[20 - 30]%**	[10-20]	**[20-30]%**
Turkish network (entry at Kipi)	IP/ Turkey	Botaş	Operational	4.3	Up to 13%	4.3	Up to 13%	[0-5] [66]	[10-20]%	[0-5]	[10-20]%
Revithoussa LNG Terminal	Greece	**DESFA**	Operational	17.15	**54%**	17.15	**53%**	[10-20]	**[40-50]%**	[10-20]	**[50-60]%**
TAP (Nea Mesimvria)	IP/ Greece	TAP	Operational (as of Dec 2020)			4.8	Up to 15%	[0-5]	[10-20]%	[0-5]	[0-5]%
Alexandroupolis LNG Terminal	Greece	**GASTRADE**	2023					[0-5] [67]	**[0-5]%**	[0-5]	**[0-5]%**
Ag. Theodori LNG Terminal [68]	Greece	Motor Oil Hellas	Q4 2023					[0-5]	[0-5]%	[0-5]	[0-5]%
Total				**32.25**	100%	**32.3**	100%	**[40-50]**	100%	**[30-40]**	100%
BTG + Revithoussa + Alexandroupolis								*[30-40]*	***[70-80]%***	*[30-40]*	***[80-90]%***

(66) The market for infrastructure for gas imports into Greece is therefore horizontally affected. The combined market shares of the Parties (BTG, DESFA and GASTRADE) will range, from 2023, from [60-70]% to [80-90]%.

(67) As shown in Tables 3 – 4 below in relation to the possible sub-segment for regasification terminals in Greece, the combined market shares of the Revithoussa and Alexandroupolis Terminals would be even higher – ranging from [60-70]% - [90-100]%.

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65 Form CO, Table 22.

66 Following the completion of the planned NNGS upgrade projects the current Competing Capacity products in relation to the Kipi and Nea Messimvria Entry Points will expire. Competing capacity products or auctions ("Competing Capacity products") are methods used by a TSO to allocate conditional capacity between competing gas import infrastructure operators.

67 GASTRADE anticipates that this figure may increase if Competing Capacity products are introduced (see paragraph (87)). This would not change the total figure, as any increase would arise from a corresponding decrease in volume from other infrastructure(s) included in the product.

68 The figure used is the capacity that may be injected into the NNGTS on a Firm basis. The [10-20] mcm/d in Table 1 is the capacity of the metering station for the Ag. Theodori LNG Terminal (in effect, the terminal's maximum capacity).

Table 3: Technical capacity of regasification terminals in Greece

Gas Import Infrastructure	Operator	Expected date of entry of operation	2018-2020		2021-2022		2023			
			Capacity (existing)		Capacity (existing)		Capacity (existing + planned)		Capacity excluding reserved capacity	
			Capacity (mcm/d)	Share (%)	Capacity (mcm/d)	Share (%)	Capacity (mcm/d)	Share (%)	Capacity (mcm/d)	Share (%)
Revithoussa LNG Terminal	DESFA	Operational	17.15	100%	17.15	100%	[10-20]	**[40-50]%**	[10-20]	**[50-60]%**
Alexandroupolis LNG Terminal	GASTRADE	2023					[10-20]	**[30-40]%**	[5-10]	**[10-20]%**
Ag. Theodori LNG Terminal	Motor Oil Hellas	Q4 2023					[10-20]	[20-30]%	[10-20]	[30-40]%
Total			**17.15**	100%	**17.15**	100%	**[40-50]**	100%	**[30-40]**	100%
Combined market share of the Parties							**[30-40]**	[70-80]%	**[20-30]**	[60-70]%

Table 4: Firm/unconditional capacity of regasification terminals in Greece for volumes to be injected to the NNGTS for delivery into the NNGTS (*i.e.* including for exit in <u>Southern Greece</u>)

Gas Import Infrastructure	Operator	Expected date of entry of operation	2018-2020		2021-2022		2023			
			Capacity (existing)		Capacity (existing)		Capacity (existing + planned)		Capacity excluding reserved capacity	
			Capacity (mcm/d)	Share (%)	Capacity (mcm/d)	Share (%)	Capacity (mcm/d)	Share (%)	Capacity (mcm/d)	Share (%)
Revithoussa LNG Terminal	DESFA	Operational	17.15	100%	17.15	100%	[10-20]	**[90-100]%**	[10-20]	**[90-100]%**
Alexandroupolis LNG Terminal	GASTRADE	2023					[0-5]	**[0-5]%**	[0-5]	**[0-5]%**
Ag. Theodori LNG Terminal	Motor Oil Hellas	Q4 2023					[0-5]	[5-10]%	[0-5]	[5-10]%
Total			**17.15**	100%	**17.15**	100%	**[20-30]**	100%	**[30-40]**	100%
Combined market share of the Parties							**[10-20]**	[90-100]%	**[10-20]**	[90-100]%

5.2.3. *The Notifying Parties' view*

(68) The Notifying Parties submit that the Transaction will not lead to horizontal non-coordinated effects in the market for infrastructure for gas imports in Greece, or the possible segment for regasification services, due to: (i) the fact that the Parties will effectively be constrained by sectoral regulation, namely that DESFA and GASTRADE must allocate their available regasification capacity on the basis of transparent and non-discriminatory tenders in light of criteria set out by the Greek Regulatory Authority for Energy ("RAE"), and under tariffs approved by RAE; (ii) the availability to customers of alternative import infrastructure already operated by

different operators and the likelihood of new entry constraining the Parties; and (iii) the Parties not being close competitors, due to the different characteristics of DESFA's and GASTRADE's terminals.[69]

The highly regulated nature of the gas market

(69) The Notifying Parties submit that DESFA and GASTRADE's gas import infrastructures are subject to a stringent sectoral regulatory framework, which requires them to comply with the principles of objectiveness, neutrality, transparency, impartiality and non-discrimination, and which prevents them from exercising any form of market power.[70]

(70) DESFA and GASTRADE are bound by third-party access ("TPA") rules. Article 32 of EU Directive 2009/73/EC (the "Gas Directive")[71] provides for regulated TPA to gas transmission systems and LNG facilities "based on tariffs, applicable to all eligible customers, including supply undertakings, and applied objectively and without discrimination between system users". It also mandates that access to the transmission system may only be refused in very limited instances (e.g., lack of capacity). In the case of refusal, the TSO must provide "duly substantiated reasons". Access rules to the NNGTS and to the Revithoussa LNG Terminal include the NNGTS Network Code, which sets the rules for third party access.[72]

(71) GASTRADE received an Exemption Decision from RAE[73], following a review by the Commission[74], from TPA obligations for the capacity that has already been booked and only for the period of the bookings. GASTRADE has already booked between [30-40]% and [40-50]% of the Alexandroupolis LNG Terminal' capacity for ten years, and [10-20]% for the following five years. For the remaining capacity (i.e. the capacity not already booked), it must provide access under the TPA rules.

(72) The Notifying Parties submit that rejections of applications for TPA are very rare. Since 2010, DESFA has refused access to Revithoussa on only [...] occasions (and to the NNGTS on only […] occasions).[75]

(73) The Notifying Parties submit that there is no scope for GASTRADE's shareholders to influence the process of allocating the available (i.e. not already booked) capacity at Alexandroupolis as that will be done in accordance with the Terminal Access Code ("TAC"), which will be approved and subsequently monitored by RAE.

69 Form CO, paragraph 532.

70 Form CO, paragraphs 603-604.

71 Transposed to Greek law by law 4001/2011, as amended.

72 Form CO, paragraph 382-384.

73 RAE decision 1580/2020 "Final Decision of the Greek Regulatory Authority for Energy on the Exemption Application of GASTRADE SA",

74 Commission Decision C(2020) 8377 of 25.11.2020 on the exemption of the Alexandroupolis Independent Natural Gas System LNG Terminal from the requirements regarding third party access and tariff regulation.

75 Form CO, paragraphs 386-392. The grounds for refusal of access were, for the NNGTS, mainly due to unavailable capacity, incomplete or late submission of the request, or inadequate provision of guarantees required, while for Revithoussa the grounds were mainly due to unavailable storage space, or in complete or late submission of the request.

GASTRADE shall offer on a regular basis the remaining available capacity through market-based arrangements such as auctions or open season procedures.[76]

(74) The Notifying Parties submit that the procedure for scheduling unloadings of LNG from a vessel and allocating capacity at Revithoussa, approved by RAE[77], is based on an auction, and that DESFA must allocate its available regasification capacity on the basis of transparent and non-discriminatory tenders.[78]

(75) TPA must be provided under pre-defined regulated tariffs. The tariffs for the Revithoussa LNG Terminal are calculated yearly based on coefficients approved by RAE, in accordance with the provisions of the Tariff Regulation for the NNGS, which sets the calculation methodology (also approved by RAE) and revised at the end of every four-year "regulatory period".[79] For the Alexandroupolis LNG Terminal the tariffs for the non-exempted capacity will also be pre-defined to a large extent.[80] The Notifying Parties submit that therefore GASTRADE's tariffs cannot be influenced by its shareholders for the entire lifetime of the Terminal.[81]

(76) While certain costs facing users would be similar whichever terminal is used, the tariffs for regasification at the two terminals are very different. This is because they are offering different operational models to their users. GASTRADE will provide long-term products, i.e. users of Alexandroupolis will be able to reserve long-term regasification capacity on a constant daily basis (which the users book on a long-term use-it-or-lose-it ("LT UIOLI") basis). GASTRADE's service will guarantee each user a base/stable send-out or flow rate for their gas into the NNGTS throughout the year through a process of borrowing and lending with other users (similar to a virtual pipeline). Revithoussa's offer is different. Each user of Revithoussa is given a maximum of 18 days as temporary storage time, during which the user has to regasify the entire volume of the LNG delivered by the vessel. Thus in order to inject regular volumes into the NNGTS, a user of Revithoussa would either need to have further unloading slots (i.e. additional deliveries by vessel) or acquire LNG from other users' reserves at Revithoussa in the secondary market.[82]

(77) While GASTRADE's business plan is based on a tariff of [10-20]€/1,000m^3, Revithoussa's tariff for 2021 is 4.73 €/1,000m^3. This difference reflects the fact that the two terminals do not have the same tariff methodology or cost structure, and that

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76 Form CO, paragraphs 446-449. The TAC is currently under public consultation with RAE and will be approved by RAE prior to its publication. RAE's Exemption Decision of December 2020 set out the conditions and guidelines under which such system will be formulated.

77 6th revision of the Network Code, RAE Decision 1433/2020 (Government Gazette Issue B' 4799/30.10.2020).

78 Form CO, paragraphs 402-407.

79 Form CO, paragraph 95. As set out in L. 4001/2011 and the applicable NNGS Network Code. See RAE Decision 1434/2020 Gov. Gazette B' 4801/30.10.2020 approved the 5th Amendment of the Tariff Regulation for the Basic Activities of the National Natural Gas System (NNGS).

80 Form CO, paragraphs 453-454. GASTRADE's tariffs will be subject to: (1) RAE's Exemption Decision setting out the main tariff principles of the tariff methodology; (2) GASTRADE's prospective Tariff Code setting out the exact calculation methodology for different products, which is subject to RAE's approval; (3) the EU Commission's State Aid Decision SA.55526 of 17 June 2021, prescribing in detail the mechanism to avoid overcompensation. RAE will monitor the implementation of this mechanism.

81 Form CO, paragraph 465.

82 Form CO, paragraph 563.

the cost of Revithoussa is socialised due to its role in Greece's security of supply.[83] Currently, 50% of Revithoussa's Required Revenue[84] cost is socialised to the transmission system tariffs and is thereby borne by all transmission system users. This percentage can be adjusted by RAE every regulatory period, based on a cost-benefit analysis.[85]

(78) The Notifying Parties submit that this means there will not be any competition between the terminals on price.[86] Revithoussa users will consider the Alexandroupolis terminal only in cases when demand exceeds capacity of the Revithoussa terminal, as well as for reasons of security of supply and diversification of sources of supply. Users will primarily choose which terminal to use based on factors other than the parameters of competition, as evidenced by the long-term bookings already secured by Gastrade despite its tariff being very different to that at Revithoussa.[87]

The existence of alternative routes (current and future) for gas imports into Greece via pipelines and via LNG regasification terminals by different operators

(79) The Notifying Parties submit that there are alternative routes for gas imports into Greece via pipelines and via LNG regasification terminals by different operators. Existing routes consist of the import pipelines and LNG terminals from (i) BTG's network at Sidirokastro, (ii) Botaş' network at Kipi, (iii) DESFA's Revithoussa LNG Terminal, and (iv) the TAP pipeline[88]. The market has seen recent entry by the TAP pipeline, and entry of other infrastructure is expected. There are existing LNG terminals in Turkey[89] which can be used to bring gas into Greece via the Turkish pipeline network or into Bulgaria via the Balkan Stream. In addition, RAE has granted Motor Oil Hellas a licence for an FSRU LNG terminal to be situated at Ag. Theodori, Corinth (relatively near Revithoussa).[90]

The different technical characteristics between the two terminals, which limit the competitive dynamics between them

(80) According to the Notifying Parties, a key factor in determining whether and in what way terminals compete with each other is capacity, i.e. the amount of gas that can be injected from each terminal (or pipeline) into the NNGTS on a firm capacity basis without restrictions on exit. For the reasons explained below, the Notifying Parties consider that the terminals are not in direct competition: Alexandroupolis will be

83 Form CO, paragraph 39.3.
84 See footnote 103.
85 Form CO, paragraph 95.
86 Form CO, paragraph 39.3.
87 Form CO, paragraph 628.
88 TAP shareholders are: Snam (20%), BP (20%), SOCAR (20%), Fluxys (19%), Enagás (16%) and Axpo (5%). None of these shareholders have sole or joint control over TAP.
89 Botaş' terminal at Marmara Ereğlisi (North West Turkey), Egegaz's FSRU and land-based terminal at Aliağa (in the Aegean region of Turkey), and Botaş' FSRU at Dörtyol (Southern Turkey). Botaş' is tendering for construction of a new terminal in the Gulf of Saros in northwest Turkey (relatively near Alexandroupolis) which should be operational by mid-2022. Users of these terminals can import into Greece given the connection between the Greek and Turkish networks at Kipi (Form CO, footnote 20).
90 Form CO, paragraphs 31-32.

used mainly to export gas to Bulgaria and possibly beyond, while Revithoussa will be used mainly to import gas for consumption in Greece.

(81) The Notifying Parties submit that there are substantial objective differences between the Revithoussa LNG Terminal and the Alexandroupolis LNG Terminal, by which many customers would not consider them close alternatives.[91] When choosing import infrastructure, users consider the access conditions of each import infrastructure. For example they take into account factors such as terminal temporary storage capacity, size of vessels that can be accommodated (Revithoussa can accommodate larger vessels), and the operational model of each terminal.[92] Differences in the operational models of Alexandroupolis and Revithoussa are outlined in (76) above.

(82) Users may also consider security of supply and the diversification of the sources of gas. For such factors the terminals are complementary.[93]

(83) The Notifying Parties submit that the Alexandroupolis LNG Terminal is expected to be used primarily for exporting gas to Bulgaria and the wider South East Europe region.[94] This is reflected in GASTRADE's business rationale, which is to act primarily for exports to the wider region, and also due to the Alexandroupolis LNG Terminal's geographic location as well as the currently existing technical configuration of the Greek NNGTS.[95]

(84) In contrast, imports through the Revithoussa LNG Terminal, which has unlimited access to the Greek market and is located near Athens and the main consumption centre for natural gas in Greece, are generally consumed in Greece.[96] In addition a third LNG regasification terminal operated by Motor Oil Hellas in Ag. Theodori, located relatively close to Revithoussa, is expected to be operational around the same time as the Alexandroupolis terminal and is expected to exert competition

[91] Form CO, paragraph 538.

[92] Form CO, paragraphs 555-556. Elements of the operational model of each terminal are: the time assigned for the unloading of an LNG vessel and the possibility to re-schedule an unloading at short notice; the temporary storage period of LNG in the tanks of the LNG facility; the possibility to specify the daily regasification rate of the stored LNG, on a day-ahead and within-day basis; the amount of LNG facility losses allocated to a User; the possibility to trade capacity (including regasification capacity and storage space) in the secondary market; the possibility to conclude in-tank LNG transactions; etc. For example, it is important for a User who delivers gas to a power plant, to be able to adjust, even during the course of a day, the quantity to be re-gasified and delivered to this customer during that day.

[93] Form CO, paragraph 559.

[94] The Alexandroupolis LNG Terminal's status as being mainly export infrastructure is reflected in the Exemption Decision (chapter 3.1.2). RAE notes that in the Balkan region, the Alexandroupolis LNG Terminal is expected to boost the gas-to-gas competition in an area that still depends strongly on Russian gas. This is the main reason why Alexandroupolis has been an integral part of the infrastructure enforcement efforts in the region, along with IGB, IBS and the reverse flow of the Trans-Balkan (see Projects of Common Interest, Central and South Eastern Europe energy connectivity (CESEC) initiative, GRIs). Form CO, footnote 381.

[95] Form CO, paragraph 35.

[96] Form CO, paragraphs 539-548.

constraints on DESFA with regard to supply of LNG regasification services for use in the Greek market.[97]

Technical limitations of the NNGTS

(85) In addition to the main consumption centre being located around Athens, the Notifying Parties submit that the fact that parts of the NNGS are of smaller diameter, 24 inches and 30 inches compared to 36 inches, results in two technically narrow areas of the system: one at the north-east branch, and one at the branch south of Nea Messimvria (the interconnection point with TAP). Figure 4 above shows the current entry points to the NNGTS and the corresponding pipeline diameters.

(86) Due to this current configuration of the NNGTS (including the so-called "bottlenecks" within Greece), the amount of gas that can be injected unconditionally from each terminal differs significantly.

(87) According to the Notifying Parties:

(a) <u>For unconditional delivery into the NNGTS in Greece</u>: Under the current configuration, Alexandroupolis will be able to send around [0-5] mcm/d into the NNGTS west of Komotini on a firm basis and thus for use in the main consumption centre in the South of Greece. This amount accounts only for a small part of gas import infrastructure (around [0-5]%, see Table 2 above). Under the current configuration of the Greek transmission system, this amount could increase to up to 8.16 mcm/d (i.e. [10-20]% of the total and existing capacity) via competing capacity products, that is at the expense of a corresponding decrease in volume allocated to competing infrastructures in the (northern) entry points of the Greek transmission system, i.e. from the Turkish network and the Bulgarian and Trans Adriatic Pipeline (TAP) interconnections. Any further increases would require an upgrade of the Greek transmission system, which has not been decided yet. Therefore, while the Parties' combined market shares are high in terms of technical capacity, the actual increment brought by the Transaction for use in Greece (around [0-5]%) is relatively low given the existing limitations of the Greek transmission system. In contrast, a user of Revithoussa may inject up to [10-20] mcm/d unconditionally. Therefore, Alexandroupolis is a significantly less straightforward alternative than Revithoussa for users in Greece.[98]

(b) As mentioned above, GASTRADE has already booked between [30-40]% and [40-50]% of the Alexandroupolis LNG Terminal' capacity for ten years, and [10-20]% for the following five years, under the Exemption Decision.[99] GASTRADE estimates that those bookings at Alexandroupolis [information regarding booked capacities] the [0-5] mcm/d that can be injected into the

97 When considering the amount of gas each terminal will be able to inject into the NNGTS for use west of Komotini in 2024, Revithoussa (DESFA) will have a share of [30-40]%, Ag. Theodori (Motor Oil Hellas) [20-30]%, and Alexandroupolis (GASTRADE) [0-5]%.

98 Form CO, paragraph 39.1.1. These differences are also reflected in access to the VTP: users of Revithoussa will have full access whereas, currently, users of Alexandroupolis will have limited access to the VTP (given that only [0-5] mcm a day can be delivered from Alexandroupolis to the VTP on a firm basis and redelivered to an exit point without restrictions) (Form CO, paragraph 537).

99 *Supra*, para. 71.

NNGTS west of Komotini. Therefore, customers who will book non-exempted capacity at the Alexandroupolis Terminal in the future will do so [information regarding booked capacities] customers choosing between Revithoussa and Alexandroupolis in the future.[100] The Parties therefore submit that for this non-exempted capacity of the Alexandroupolis Terminal, competition with the Revithoussa Terminal will be limited.

(c) For delivery to Bulgaria (or other countries thereafter): A user of Alexandroupolis may inject up to [10-20] mcm/d (assuming that the IGB is operational by 2023). A user of Revithoussa may inject up to 5.7 mcm/d through Sidirokastro. Therefore, a user looking to deliver gas from LNG from Greece to Bulgaria could in theory use any of the two LNG terminals. However, according to the Notifying Parties, greater capacity is available for exit at IGB (accessible from Alexandroupolis not Revithoussa) than Sidirokastro[101] (accessible from Revithoussa and only to a very small extent from Alexandroupolis).[102] The Parties therefore submit that for users intending to import LNG into Greece, with the aim to regasify and further import it into Bulgaria, the two terminals will not be competing closely.

5.2.4. *The Commission's assessment*

(88) The market shares in the market for gas import infrastructure into Greece, including the possible sub-segment of regasification terminals, are given in Tables 1 – 4 above.

(89) The market shares of the Parties (DESFA, BEH and GASTRADE) in the overall market for gas import infrastructure into Greece will range, from 2023, from [60-70]% to [80-90]% (depending on whether the market shares that are used are based the infrastructures' technical capacity or firm/unconditional capacity, and whether reserved capacity is included or excluded). The increment that will result from the Transaction will range from [0-5]% to [20-30]%.

(90) The market shares of the Parties (DESFA and GASTRADE) in the possible sub-segment for regasification terminals in Greece will range, from 2023, from [60-70]% - [90-100]%. The increment that will result from the Transaction will range from [0-5]% to [30-40]%.

(91) In both cases (the market for gas import infrastructure and the sub-segment for regasification terminals), the lower bound of the increment equates to the firm/unconditional capacity that GASTRADE can inject into the NNGTS for exit anywhere in Greece.

[100] Form CO, paragraph 535.

[101] The technical exit capacity of Sidirokastron is 64.8 GWh/D, while the technical capacity of the Alexandroupolis LNG Terminal that can be used for exporting gas to Bulgaria exclusively through the IGB is [100-200] GWh/D. The IGB entry point in Komotini is very close to Alexandroupolis (Form CO, paragraph 39.1.2).

[102] Form CO, paragraphs 566-569. For export to Bulgaria, there is a difference in the overall exit tariffs a user of Alexandroupolis and a user of Revithoussa will have to pay, as for the time being a user of Revithoussa would have to pay Exit/Entry to Sidirokastro/Kulata, whereas a user of Alexandroupolis would also pay the cost of using the IGB.

(92) Despite market shares being high, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with regard to horizontal non-coordinated effects, based on the reasons outlined below.

Regulated tariffs

(93) A transaction bringing about a horizontal overlap can cause a significant impediment to effective competition, by increasing the parties' market power in a way that would allow them to increase prices in their market.[103]

(94) The Commission is of the view that the present Transaction is not likely to lead to an increase of prices in the market for gas import infrastructure in Greece (including a possible sub-segmentation for LNG terminals) for the reasons set out below.

(95) The tariffs of both terminals will be subject to regulatory supervision, as outlined in (75) above. Revithoussa's tariffs are fully regulated[104], and Alexandroupolis' underlying tariff methodology and certain basic parameters, based on which the final charges for the use of the facility will be determined, are already set for 25 years.

(96) The proposed initial tariff[105] for Alexandroupolis is already set based on the Market Test[106] and agreed by the users that have booked capacity already, as approved by RAE. Alexandroupolis' tariff will be in line with the provisions of the Exemption Decision and the mechanism for the return of any overcompensation as is defined in the State Aid Decision adopted by the Commission.[107] The tariff must in principle stay stable throughout the duration of the exemption.[108]

(97) There are only three ways in which Alexandroupolis' tariff could change[109] and the methodology for each is set out in the Exemption Decision (and for over-compensation also in the State Aid Decision). GASTRADE may (with the changes overseen by RAE):

(a) Reduce the tariff if the maximum internal return rate ("IRR") permitted is exceeded (e.g. due to increased utilisation versus the business plan). The reduction to bring it in line with the maximum IRR permitted would be according to an overcompensation mechanism decided in the State Aid Decision. It will be triggered automatically;

103 See Horizontal Merger Guidelines, paragraph 8.

104 Revithoussa's revenues are regulated on a 'cost-plus' basis in the sense that the Regulated Services Tariffs are determined according to the Required Revenue recovery principle for the Regulated Services provided by DESFA (as the NNGS Operator), in such a way that the criteria described in the relevant national and European legislation are fulfilled. The Required Revenue for each Regulated Service is determined each year of the Regulatory Period by RAE's Tariff Approval. Form CO, paragraphs 617-618.

105 The average tariff calculated and signed with the users that have pre-booked capacity at Alexandroupolis via the market test.

106 The Market Test was the competitive market testing process conducted by GASTRADE, closely regulated by RAE, whereby all potential users were invited to indicate their interest in contracting capacity. As a result, GASTRADE allocated part of its capacity for 15 years under long-term agreements with ten customers (Form CO, paragraph 105).

107 SA.55526 on the approval of €166.7 million Greek public support for construction of LNG terminal in Alexandroupolis, 17.06.2021.

108 Form CO, paragraphs 482-484.

109 Form CO, paragraph 485.

(b) Increase the tariff in case the actual revenues of GASTRADE are below the "Required Revenues" (the Revenues that cover the maximum 10.5% Weighted Average Cost of Capital (WACC)); or

(c) Increase the tariff, as per the provisions of the Bidding Phase Guidelines and the ARCAs, if […]. Such proposed increases in tariffs need to be submitted to RAE and shall remain within the terms of the Exemption Decision and the provisions of the ARCAs. […].

(98) Therefore, while Alexandroupolis' tariff could change, GASTRADE cannot make any changes that are outside the methodology and all changes would be overseen by RAE (the Greek Energy Regulator).

(99) In relation to the tariffs, one respondent to the market investigation submitted that, although the Revithoussa tariffs are regulated and approved by RAE, it is DESFA who proposes the methodology and utilisation forecasts to conclude on the appropriate level of the tariffs.[110] In that sense according to this respondent, DESFA might have some room to influence the tariffs in the two terminals, in a way that would allow for costs and expenses shifting.

(100) However, this concern is not confirmed by the overall results of the market investigation. A clear majority of the customers and a majority of competitors submitted that sectoral regulation adopted by RAE is effective in preventing the operators of LNG terminals from exercising any form of market power.[111] One respondent noted in this regard "*The fact that the access and the tariff levels are monitored closely by the Greek regulator, is preventive for LNG terminal operators to exercise market power*". Another respondent commented "*The regulatory framework safeguards the effective operation of the market in Greece*".

(101) The Commission notes that, even if certain parameters of the tariff calculation methodology are proposed by DESFA, such proposals must be in accordance with criteria described in the relevant national and European legislation.[112] In addition, the tariffs coefficients are recalculated by the operator and approved by RAE on a regular basis, based on the actual data of revenues for the past year.[113]

(102) The Commission therefore considers that changes to Alexandroupolis' tariff are beyond the control of its shareholders and that the Parties will not be able to influence them in order to impact competition between the Alexandroupolis and Revithoussa terminals. Therefore, the Parties are prevented from exercising market power and there is no scope for Transaction-specific effects on pricing.

Closeness of competition - different business models and tariff levels

(103) The Commission considers that competition between the Alexandroupolis terminal (controlled by GASTRADE) and the Revithoussa terminal (controlled by DESFA) is

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[110] See confidential replies to question 44.1 of Questionnaire 1 to customers.

[111] See replies to question 38 of Questionnaire 1 to customers; question 32 of Questionnaire 2 to competitors.

[112] L. 4001/2011 and Regulation (EC) 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005.

[113] Form CO, para. 412 et seq.

limited (at least in the short term) because of the limited capacity of the Greek transmission infrastructure to accept additional gas from Alexandroupolis under the current configuration. As explained in recital (87):

(a) For unconditional delivery into the NNGTS in Greece a user of Alexandroupolis may only inject up to [0-5] mcm/d, while a user of Revithoussa may inject up to [10-20] mcm/d. <u>The actual increment brought about by the Transaction in the market for gas import infrastructure into Greece is therefore relatively low</u>, accounting for only [0-5]% of the gas import infrastructure capacity in Greece (see Table 2 above) or only [0-5]% of the regasification capacity in Greece.

(b) For delivery to Bulgaria (or other countries thereafter) a user of Alexandroupolis may inject up to [10-20] mcm/d (assuming that the IGB is operational by 2023), while a user of Revithoussa may inject up to 5.7 mcm/d through Sidirokastro. The Commission therefore considers that for users intending to import LNG into Greece, with the aim to regasify and further import it into Bulgaria, the two terminals will not be competing closely.

(104) While competition between the two terminals for the import of gas is limited due to the current configuration of the NNGTS, the Commission does note that:

(a) Excluding the reserved capacity, the capacity of Alexandroupolis from 2023 will be [5-10] mcm/d. From 2023 it will [information regarding capacities] be able to inject up to [0-5] mcm/d unconditional delivery into the NNGTS for use in Greece. However, that could change. Depending on the competing capacity products that may be introduced, the volume of gas that could be injected from Alexandroupolis into the NNGTS for exit to Southern Greece (West of Komotini) could increase and, therefore, all of the [5-10] mcm/d of non-reserved capacity of Alexandroupolis (representing [10-20]% of the total existing and planned capacity for gas import infrastructure into Greece) could potentially be fully injected into the Greek system for consumption in Greece (depending on the outcome of the competition with, e.g., TAP and Botaş for the competing capacity products). In that scenario, Alexandroupolis would be in direct competition with gas import capacities in Revithoussa and other gas importers for imports of gas into Greece.

(b) Revithoussa and Alexandroupolis could compete for users intending to import gas into Greece, with the aim to further export that gas into Bulgaria and other countries in south eastern Europe, even if the transmission of the gas booked in each terminal takes place through different pipelines (via IGB in the case of Alexandroupolis, and via Sidirokastro in the case of Revithoussa).[114]

[114] The Notifying Parties state that, while it is possible that some of the gas imported via the Revithoussa LNG Terminal has historically been exported to Bulgaria, they cannot identify definitively which of the LNG unloaded at the Revithoussa LNG Terminal is consumed in the Greek market or exported because DESFA implements an entry/exit gas transmission system (Form CO, paragraph 571). The Notifying Parties submit that users do not base their infrastructure choice on the cost of gas transmission, noting that, for gas transmission, DESFA charges for entry to and exit from the system, not the distance between particular entry and exit points (Form CO, paragraph 338). Therefore, looking at transmission costs, for

(105) Therefore, both terminals could potentially compete for additional sales of gas into Greece and outside Greece via Bulgaria.

(106) Some respondents to the market investigation considered this to be the case, noting "*…that both terminals are suitable for delivering gas into Bulgaria and other Southern European countries*" and "*GASTRADE could also serve the whole of Greece (as Revithoussa can serve also the north of Greece at this moment)*".[115] However, while the views of respondents on whether Revithoussa and Alexandroupolis will compete for imports to customers in Bulgaria and South East Europe was inconclusive, a slight majority of respondents thought Revithoussa and Alexandroupolis will not compete for customers for gas imports both into Greece as a whole or into the South of Greece.[116]

(107) The Commission does nonetheless consider that the two terminals will not be close competitors for the reasons set out below.

(108) Even for the gas that the Alexandroupolis terminal will be able to provide in the Greek market[117], there would be no close competition with the Revithoussa terminal due to the different operation models followed by the two terminals (see recital (76)), which translate into significantly different tariff methodologies and different tariff levels applied. As noted in (77) above, Alexandroupolis' tariff is [10-20]€/1,000m^3, while Revithoussa's tariff for 2021 is 4.73 €/1,000m^3.

(109) Alexandroupolis operates under a commercial regime subject to regulatory constraints and the Exemption Decision, and the same tariffs will be applicable for the exempted and for the non-exempted part of Alexandroupolis' capacity, without any discrimination.

(110) Revithoussa on the other hand is not a merchant/commercially driven business; but rather it operates a fully regulated business model (due to its historically important role of ensuring security of supply and diversification of natural gas sources). The cost of Revithoussa is socialised (i.e. paid by all transmission system users) due to its role in Greece's security of supply.[118] Currently, 50% of Revithoussa's Required Revenue[119] cost is socialised to the transmission system tariffs and is thereby borne by all transmission system users. This leads to the Revithoussa tariff being significantly lower than the tariff that will be applied at the Alexandroupolis Terminal.

(111) The results of the market investigation, while mixed, indicate that the main criteria users will consider when choosing between Alexandroupolis and Revithoussa for their gas imports are the available capacity in the transmission system, the tariff

exporting gas to Bulgaria (and beyond), it appears that Revithoussa is a viable competitor and that Alexandroupolis, despite its location, does not have a competitive advantage.

115 See replies to question 36 of Questionnaire 1 to customers; question 30 of Questionnaire 2 to competitors.

116 See replies to questions 30-32 of Questionnaire 1 to customers.

117 *Supra*, para. (65)

118 Form CO, paragraph 39.3.

119 See footnote 103.

applied by the terminal and the location of the terminal.[120] These are not factors the parties will be able to impact after the Transaction.

(112) Therefore, the Commission considers that a user of Alexandroupolis is more likely to choose that terminal mainly due to the available capacity, in particular to further export gas via the IGB, and the different operational model.

(113) In this respect, the Commission notes that although the tariff that will be applied in the Alexandroupolis Terminal is [difference in tariff] higher than the one in the Revithoussa Terminal, users have nonetheless already booked in advance between [30-40]% and [40-50]% of the Alexandroupolis LNG Terminal's capacity for ten years.[121] The Commission considers that these users were likely attracted by the different operational model offered by the Alexandroupolis terminal vis-à-vis the Revithoussa Terminal, as well as the fact that the Alexandroupolis Terminal is more suitable for the import of gas into Greece with the aim of further importing it into Bulgaria[122]. Indeed, these users would have no incentive to opt for a more expensive LNG Terminal, if their needs could have been equally satisfied by a [difference in tariff] more inexpensive LNG Terminal (i.e. Revithoussa), given that the latter would also have the capacity to accommodate such users.[123] The Commission considers this as a clear indication that the two terminals are not close competitors.

(114) The Commission is therefore of the view that the Revithoussa Terminal and the Alexandroupolis Terminal will not be close competitors.

Guaranteed access and regulated Third-Party Access (TPA)

(115) The Commission identified a potential theory of harm from its preliminary market investigation that because Revithoussa's revenues are guaranteed, while Alexandroupolis' revenues are not, DESFA could have an incentive to divert users from Revithoussa to the more expensive terminal in Alexandroupolis, while still earning the regulated revenues at Revithoussa.

(116) Against this possibility, the Notifying Parties' submit that, for the limited volume for which users may have a choice between Revithoussa and Alexandroupolis, DESFA has neither the ability nor incentive to deviate users from the Revithoussa to Alexandroupolis because:[124]

(a) it has no ability to influence users to divert, as capacity at Revithoussa is subject to TPA and is allocated via open auctions which, as a rule, involve pre-defined standard products, take place according to pre-defined rules set out in the NNGS Network Code, and the tariffs for which are set by RAE;

(b) it has no incentive to reduce its 100% revenues in Revithoussa – and put at risk their recoverability over the long term – for a short term increase in its GASTRADE dividends (in which DESFA has only 20% of the shares).

[120] See replies to question 33 of Questionnaire 1 to customers; question 27 of Questionnaire 2 to competitors.

[121] *Supra*, paragraph 71.

[122] *Supra*, paragraph 80 et seq.

[123] In 2020 the Revithoussa Terminal was utilised at 44% of its capacity. See Form CO, paragraph 39.4.

[124] Form CO, paragraphs 625-635.

(117) A majority of the respondents to the Commission's market investigation stated that TPA regulation and other regulatory measures are effective in preventing LNG operators from exercising market power.[125] In this respect, one market participant noted that "*[t]he regulatory framework safeguards the effective operation of the market in Greece",* while another submitted that *"[t]he fact that the access and the tariff levels are monitored closely by the Greek regulator, is preventive for LNG terminal operators to exercise market power."*[126]

(118) Furthermore, RAE told the Commission that "*There are no concerns whatsoever about violation of third-party access rules*".[127]

(119) Therefore, the Commission concludes that the TPA rules are effective in preventing DESFA from discriminating in relation to granting access or forcing users to use one terminal over the other.

Influence of GASTRADE's other shareholders

(120) Further to existing regulatory constraints, DESFA's ability to influence GASTRADE's activities is limited as it will only hold a 20% stake. The Commission considers that the interests of the other four shareholders (each of whom will also have a 20% stake) will prevent DESFA from imposing decisions that may go against GASTRADE´s commercial interest (e.g. delaying the accommodation of customers, reducing the quality of service) and favour Revithoussa.

Future entry in the market for gas import infrastructure

(121) The gas market in Greece is still developing and a number of recent and new entries of considerable value are identified in the market for infrastructure of gas imports. As set out in Tables 1 and 2 above, there is a number of planned gas import infrastructures that will inter into operation by 2023. The overall capacity of the market in 2023 will be [60-70] mcm/d, which is roughly double of the current overall capacity of 32.3 mcm/d. In 2023, the competitors of DESFA, GASTRADE and BEH will account for [30-40]% of the overall import capacity to the NNGTS[128]

Through-put agreements

(122) A respondent to the market investigation raised concerns that the Transaction would grant DESFA the ability to prevent the Alexandroupolis Terminal from concluding so-called through-put agreements with future operators of LNG regasification terminals in Greece. According to this respondent, such through-put agreements would enable LNG Terminal operators to combine their capacity products, in a way that would create a single virtual LNG tank, from which customers could buy natural gas regardless of which part of the NNGTS they are located in.[129] This way, the parties to a through-put agreement would not be constrained by the bottlenecks of

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[125] See replies to question 38 of Questionnaire 1 to customers; question 32 of Questionnaire 2 to competitors.

[126] See replies to question 38 of Questionnaire 1 to customers

[127] See replies to DG COMP from RAE dated 25/05/2021 and 29/09/2021.

[128] See Table 1.

[129] See this respondent's reply to Request for Information (RFI) dated 9 November 2021.

the transmission system affecting their location, and would thus be able to provide their LNG services throughout Greece. [130]

(123) With respect to this concern, the Parties submit[131] that such through-put agreements are not provided for in the relevant legal framework, and therefore there is no clear understanding of how such agreements would operate. In any case, under the current legal framework, such agreements could only amount to agreements according to which one terminal would regasify LNG on behalf of the other. Accordingly, the Parties submit that such agreements could only be envisaged through mutual bookings between LNG terminal operators of regasification capacity at each other's terminals and not through actual trade of natural gas quantities between two terminals, since such trade would not be allowed to operators of natural gas system in Greece, pursuant to sectoral regulation.[132] In this light, GASTRADE would not be able to enter into such agreements with other LNG Terminal operators, as the allocation of their capacities is subject to TPA rules. Any amendment to such rules, allowing for the facilitation of such through-put agreements, would entail prior involvement and approval of RAE and the adoption of transparent rules in this respect.

(124) In addition, the Parties argue that GASTRADE never envisaged entering into any form of through-put agreements with other operators of LNG terminals, as is evidenced by the absence of any such reference in GASTRADE's business plan.

(125) Finally, the Parties submit that even if in the future GASTRADE would have an interest in entering into any exchange-agreement with another LNG terminal operator, DESFA would have no ability to veto it. The conclusion of such an agreement either would fall under the competences of the Managing Director of GASTRADE, or would constitute a reserved matter of the Board of Directors or a Shareholder Reserved Matter. In the latter case, a decision is adopted by shareholders holding 70% of the shares. Since DESFA will hold 20%, it would not have the ability to veto such a decision.

(126) In correspondence with the Commission, RAE submitted that it was not aware of the nature of such through-put agreements.133 RAE confirmed that the only agreements between infrastructure operators foreseen in the regulatory framework are Interconnection Agreements that pertain to issues such as quality of gas, measurements and matching of daily nominations. Based on the current regulatory framework, no other agreements can be concluded between LNG terminal operators, as any such agreements would have to be reflected in their Access Codes. According to RAE, any other agreements with regard to LNG capacities would have to either be concluded between an LNG terminal operator and its users, or between different users of LNG terminals. RAE could therefore not endorse the concern of this respondent.

(127) The Commission notes that the respondent who raised the concern on through-put agreements did not provide clear information on how such agreements operate. This

[130] See replies to question 19.1 of Questionnaire 2 to competitors.

[131] See para. 2.1 et seq. of the Parties' response of 11 November 2021 to RFI 9.

[132] L. 4001/2011 and EU Directive 2009/73.

[133] See RAE's response to the Commission's RFI dated 9 November 2021.

is likely due to the fact that such agreements are not well established in the LNG market.[134]

(128) In any case, the Commission does not consider the concerns raised on through-put agreements as substantiated for the following reasons:

(129) *First,* and to the extent that such through-put agreements do not pertain to mutual capacity reservations between LNG terminal operators, their conclusion is not possible under the current regulatory regime, as confirmed by RAE.[135]

(130) *Second,* as noted in para. (120), DESFA will not have the ability to influence GASTRADE with regard to the signing or rejecting of through-put agreements. As DESFA will hold only 20% of the shares in GASTRADE, the interests of the remaining shareholders will prevent GASTRADE from declining or not pursuing agreements with other market participants, which would be to its own benefit, in order to favour DESFA.

(131) *Third,* as noted in para. (115) et seq. and to the extent that through-put agreements, as envisaged by the respondent raising the relevant concern, pertain to mutual capacity reservations between LNG terminal operators, the Alexandroupolis Terminal, as well as any future LNG terminals will be subject to stringent TPA obligations. A future entrant in the supply of LNG infrastructure would suffer no detriment from the Transaction in respect to through-put agreements, since it would still be able to book capacities at the Alexandroupolis Terminal under the TPA scheme, on a non-discriminatory basis and under pre-defined tariffs, to the extent this would be foreseen by sectoral regulation.

5.2.5. Conclusion on horizontal non-coordinated effects

(132) Based on the foregoing, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to horizontal non-coordinated effects in the market for infrastructure for gas imports (and its possible sub-segment including regasification terminals).

5.3. Horizontal coordinated effects in the market for infrastructure for gas imports

5.3.1. Analytical framework

(133) GASTRADE, DESFA and BTG are active in the market for gas import infrastructures for Greece. There are no other markets where GASTRADE and at least two of its parents remain active. In this light, the possibility of the Transaction giving rise to coordinated effects between DESFA, GASTRADE and BEH in the market for gas import infrastructure is assessed below.

(134) As set out in the Horizontal Merger Guidelines,[136] to find coordinated effects evidence is needed that the horizontal merger changes the nature of competition in

[134] In response to question 1 of RFI dated 9 November 2021, this respondent points to the recent introduction of an "LNG virtual hub" in Spain, as an example of through-put agreements in the LNG sector. According to the cited press release dated 1 April 2020, this "LNG virtual hub" was at that point the only one in the world. See https://www mibgas.es/en/news/mibgas-launches-unique-lng-hub-world-press-release.

[135] *Supra,* para. (126)

such a way that firms that previously were not coordinating their behaviour are now significantly more likely to coordinate and raise prices or otherwise harm effective competition. A merger may also make coordination easier, more stable or more effective for firms that were coordinating prior to the merger.[137]

5.3.2. *The Notifying Parties' view*

(135) The Notifying Parties submit that the Transaction will not give rise to coordinated effects and that GASTRADE cannot be construed as an instrument for producing or reinforcing coordination between the parent companies.[138] In particular, the Notifying Parties emphasise the stringent sectoral regulation at EU and national level, which results in there being no scope for coordination between DESFA and BTG's activities outside of the GASTRADE joint venture in the market for gas imports infrastructure. Other than that market, the Notifying Parties submit that there are no closely related neighbouring markets nor any markets upstream or downstream from GASTRADE where at least two parent companies are active.

5.3.3. *The Commission's assessment*

(136) According to the Horizontal Merger Guidelines, coordination is more likely to emerge if competitors can easily arrive at a common perception as to how the coordination should work.[139] Generally, the less complex and more stable the economic environment, the easier it is for the firms to reach a common understanding on the terms of coordination.[140]

(137) As regards the overall market for infrastructure for gas imports in Greece, the Commission considers that the Transaction will not lead to an economic environment that will favour coordination between DESFA, GASTRADE and BEH.

(138) *First*, as explained above[141], tariffs applied by operators of gas import infrastructure are extensively regulated and operators are subject to TPA rules. It is therefore unlikely that DESFA, GASTRADE and BEH will have the ability to coordinate with the aim of increasing tariffs, reducing overall gas import capacity in the market or denying access to their infrastructure.

(139) *Second*, a number of operators, with different market shares and different infrastructure (pipelines, regasification terminals), will remain active in the market. Currently, apart from DESFA and BEH, there are another two operators of gas import infrastructure in Greece, namely TAP, operating the TAP pipeline, and Botas, operating the Turkish gas transmission network, which is interconnected with the NNGTS, and which together account for [20-30]% of the overall import capacity to the NNGTS. […].[142] By then, the competitors of DESFA, GASTRADE and BEH will account for [30-40]% of the import capacity to the NNGTS. The significant number of different gas import infrastructure operators in Greece and their respective

136 Horizontal Merger Guidelines, paragraphs 22, 39 et seq

137 Horizontal Merger Guidelines, paragraph 22(b).

138 Form CO, paragraphs 753-765.

139 Horizontal Merger Guidelines, paragraph 43.

140 Horizontal Merger Guidelines, paragraph 44.

141 See Table 1.

142 *Idem.*

capacities will render coordination between DESFA, GASTRADE and BEH unlikely.[143]

(140) *Third*, the gas market in Greece is still developing and a number of recent and new entries of considerable value are identified in the market for infrastructure of gas imports. Apart from the imminent entrants set out in Tables 1 and 2 above, there are a number of planned interconnecting pipelines, namely the Interconnector Greece – North Macedonia, Poseidon and EastMed.[144] Such volatility with regard to market participants would generally not allow for sustainable coordination between competitors.[145]

(141) *Fourth*, as illustrated in Table 1, the different operators will also be highly asymmetrical in terms of market shares and capacities. Furthermore, as indicated by the significant difference between the tariffs of the Revithoussa and the Alexandroupolis LNG terminals[146], cost structures are also likely to be highly asymmetric. Such asymmetry in the market for gas import infrastructure would render coordination between the competitors unlikely.[147] The Transaction will therefore not change the nature of competition and the competitors would remain differentiated, implying a limited risk of increased coordination.

(142) *Lastly*, DESFA, GASTRADE and BEH operate different kinds of gas import infrastructure (i.e. regasification terminal and interconnection pipeline). Comments provided by a number of respondents in the market investigation indicate that the two types of infrastructure are more complementary than substitutable solutions.[148] Respondents pointed specifically to the different costs and timelines involved in the planning of gas imports, as well as the complementary needs served by the different import infrastructure. In this respect, one customer submitted that "*[p]ipeline gas provides a steadier supply stream - LNG terminals usually cater for flexibility, system reserves, seasonal spikes etc., but may also be partly used as a long-term supply solution*".[149] Furthermore, the Parties note that utilisation of the Revithoussa LNG Terminal has historically been dependent on price differences between LNG and piped gas,[150] which are not controlled by the import infrastructure operators. With respect to the LNG terminals operated by DESFA and GASTRADE, they also present significant differences between them regarding their operational models and tariffs applied.[151] In this respect, the Transaction would have limited impact on the nature of competition between DESFA, GASTRADE and BEH in the market for gas import infrastructure in Greece and would not make a coordination between them more likely.

143 See Horizontal Merger Guidelines, paragraph 45.
144 Form CO, paragraph 717.
145 See Horizontal Merger Guidelines, paragraph 45.
146 *Supra*, (77)
147 See Horizontal Merger Guidelines, paragraph 48.
148 See replies to question 8.1 of Questionnaire 1 to customers; question 4.1 of Questionnaire 2 to competitors.
149 See replies to question 8.1 of Questionnaire 1 to customers.
150 Form CO, paragraph 505.
151 *Supra*, (77) et seq.

(143) Apart from the likelihood of coordination to emerge in a market, the Commission also assesses whether such coordination would be sustainable and successful in attaining the expected outcome.

(144) Coordination is not sustainable unless the consequences of deviation are sufficiently severe to convince coordinating firms that it is in their best interest to adhere to the terms of coordination (i.e. deterrent mechanisms).[152]

(145) In the present case, no credible deterrent mechanism could be applied by either DESFA, GASTRADE or BEH, with the aim of preventing deviation from coordination, as all competitors in the market for gas import infrastructure have no option but to provide their services under the regulated tariffs and in accordance with TPA rules. Furthermore, the market's existing transparency, which results from sectoral regulation, would make any attempt of a competitor to apply such deterrent mechanisms visible to RAE, who is in charge of supervising the market and enforcing adherence to regulation.

(146) Coordination is also not effective in attaining the expected outcome by the coordinating competitors, if actions of non-coordinating firms are able to jeopardize such outcome.[153]

(147) As mentioned above,[154] in 2023 there will be 6 undertakings active in gas import infrastructure in Greece 2023, whereas in 2020 the undertakings active on that market were only 3. Likewise, the overall capacity of that market will be [60-70] mcm/d in 2023, which is roughly double of the current overall capacity of 32.3 mcm/d.[155] These additional entrants and the capacity that will be brought by them will be sufficient to offset any attempt by DESFA, GASTRADE and BEH to coordinate with the aim of increasing tariffs, reducing capacities or reducing innovation.

5.3.4. *Conclusion on horizontal coordinated effects*

(148) In light of the above considerations, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to horizontal coordinated effects in the market for gas import infrastructure in Greece.

5.4. Non-horizontal effects

(149) Customers of regasification terminals (i.e. LNG gas importers) need transmission and/or storage capacity in order to deliver the commodity to their customers once their LNG loads are processed and converted back to a gaseous state. Therefore, the Transaction will bring about a vertical relationship in Greece between the upstream market for infrastructure for gas imports (and its possible sub-segment including

[152] See Horizontal Merger Guidelines, paragraphs 52.

[153] See Horizontal Merger Guidelines, paragraph 56.

[154] *Supra*, (139)

[155] See Table 1.

regasification terminals), where DESFA and GASTRADE are both active, and the downstream market for gas transmission, where DESFA has a natural monopoly.[156]

5.4.1. *Analytical framework*

(150) Non-horizontal effects may principally arise when mergers give rise to foreclosure. A merger is said to result in foreclosure where actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing these companies' ability and/or incentive to compete. Such foreclosure may discourage entry or expansion of rivals or encourage their exit. Such foreclosure is regarded as anti-competitive where the merging companies — and, possibly, some of its competitors as well — are as a result able to profitably increase the price charged to consumers.[157]

5.4.2. *The Notifying Parties' view*

(151) The Notifying Parties submit that there is no risk of foreclosure as a result of this Transaction because (with its ownership of the Revithoussa LNG Terminal) DESFA is already vertically integrated, so there is a pre-existing vertical relationship between DESFA's NNGTS activities and the upstream market of gas import infrastructure, and access to gas transportation in Greece is subject to a strict regulatory framework, including third-party access at tariffs defined on the basis of the criteria established by RAE.[158]

5.4.3. *The Commission's assessment*

(152) DESFA is the only Transmission System Operator in Greece and the market for gas transmission constitutes a natural monopoly. The Transaction therefore gives rise to vertically affected markets for gas import infrastructure upstream (where both DESFA and GASTRADE are active) and gas transmission downstream (where DESFA holds a natural monopoly).

(153) The Commission notes that the vertical effects in the affected markets are not adequately represented through the classic schemes of input and customer foreclosure.[159]

(154) First, although the market for gas import infrastructure is upstream the market for gas transmission, operators of such gas import infrastructure cannot conceivably foreclose input from a gas transmission operator, as in the case of Greece there is only one gas transmission system, to which all gas import infrastructure is connected.

(155) Second, DESFA as operator of the gas transmission system in the downstream is in fact not a customer of the gas import infrastructure in the upstream. Therefore,

[156] The Existing Shareholders are also active in the following vertically-related markets: LNG transport (in light of GasLog's activities) and wholesale natural gas supply (in light of DEPA Commercial's activities). However, as these vertical relations exist already, independently of and prior to DESFA's entry into GASTRADE, they will not be discussed further in this Decision.

[157] Non-horizontal Merger Guidelines, paragraph 29.

[158] Form CO, paragraph 650.

[159] See Guidelines on Non-Horizontal Mergers, paragraphs 31 et seq,: 58 et seq.

DESFA could not foreclose operators of gas import infrastructure, by not purchasing their services, since there is no customer/supplier relation between the two markets. It is in fact the gas importer/wholesaler who is the customer of both the gas import infrastructure and the gas transmission system.

(156) Instead, the Commission considers that the two relevant foreclosure theories are a) the restriction by DESFA of the provision of gas transmission services to upstream gas import infrastructure providers; b) the strategic limitation of investments by DESFA in the NNGTS, in order to limit the interconnection of competing projects to the NNGTS, and thus favour its own regasification projects.

(157) Regardless of DESFA's monopoly in the gas transmission market, the Commission considers that the Transaction will not raise serious doubts as to its compatibility with the internal market with respect to non-horizontal effects with respect to both foreclosure theories defined above, for the reasons explained below.

A. Restriction by DESFA of the provision of gas transmission services to upstream gas import infrastructure providers

Ability to foreclose

(158) Gas transmission is subject to national legislation[160] monitored by RAE in order to guarantee all users of the network the freedom of access on equal terms to the transmission network, as well as impartiality and neutrality of the respective service. In communications held with the Commission,[161] RAE expressed its confidence in the effective implementation of such legislation. Likewise, the majority of those respondents in the market investigation who expressed an opinion submitted that sectoral regulation for gas transmission is effective to prevent DESFA from exercising market power on the downstream gas transmission market.[162] DESFA would therefore have no ability to restrict the provision of gas transmission services to upstream gas import infrastructure providers.

Incentive to foreclose

(159) As described above, although the market for gas transmission is downstream to the market for gas import infrastructure, there is no customer relationship between the operator of gas import infrastructure and the TSO or vice-versa. It is in fact the users of the gas import infrastructure (e.g. gas importers / wholesalers) who book capacity with the Transmission System and are charged for such capacities by the TSO. There is therefore no direct vertical link between DESFA and GASTRADE with regard to the supply chain of natural gas, but rather between DESFA as TSO and GASTRADE's users. DESFA would therefore have no incentive to foreclose competing gas import infrastructure from access to the NNGTS.

B. Strategic limitation of investments by DESFA in the NNGTS, limiting the interconnection of competing projects to the NNGTS.

[160] L. 4001/2011 as amended, transposing the Gas Directive to Greek law.

[161] RAE's replies dated 25.05.2021 to the Commission's questions.

[162] See replies to question 45 of Questionnaire 1 to customers; question 38 of Questionnaire 2 to competitors.

(160) The Commission notes that a vertical link exists between the TSO and gas import infrastructure with respect to interconnection of such infrastructure to the NNGTS. In this regard, some respondents raised concerns that DESFA may have an incentive to strategically limit investments in the NNGTS in order to limit the interconnection of competing projects to the NNGTS, and thus favour its own regasification projects.[163] The Commission notes, however, that DESFA is already vertically integrated with its ownership of the Revithoussa LNG terminal, so there is a pre-existing vertical relationship between DESFA's role as TSO and the upstream market of gas import infrastructure. Thus, any harm based on a strategic limitation of investment to the NNGTS would not be merger specific.

(161) In any case, the Commission does not consider that DESFA would have neither the ability, nor the incentive to limit the interconnection of competing projects to the NNGTS.

<u>*Ability to foreclose*</u>

(162) DESFA has no discretion on whether to undertake or reject investments in the NNGTS with respect to interconnection of competing projects.[164] Such investments are undertaken under the "Ten Year Development Plan" ("TYDP"), which is updated each year based on a regulated procedure. In particular, each year DESFA submits an updated TYDP to public consultation, where DESFA's competitors may provide their feedback on the investment proposals. After assessing the outcome of the consultation, DESFA submits the TYDP to RAE for approval. RAE, taking into consideration the results of the public consultation, may require modifications to the TYDP, particularly in relation to the inclusion or removal of proposed investments.

(163) If RAE is convinced about the necessity of an investment to the NNGTS, DESFA is obliged to undertake it even if it would benefit a competitor. Likewise, if RAE concludes that an investment proposed by DESFA fails a cost-benefit analysis, DESFA may not include it in the TYDP. RAE monitors and evaluates the implementation of the TYDP on a continuous basis. In this light, DESFA has no ability to limit investments which would benefit is competitors, or promote investments which favour its own interest.

<u>*Incentives to foreclose*</u>

(164) DESFA has no incentive to limit investments in the NNGTS. DESFA has rather a financial interest in undertaking such investments, even if those would benefit its competitors. As the TSO, DESFA earns a regulated return from every project it invests in the NNGTS.[165] In addition, DESFA will keep earning its regulated returns from the Revithoussa Terminal, which are not subject to price competition.[166]

(165) With respect to the investment for the connection of the Alexandroupolis LNG terminal with the NNGTS, the decision has already been taken by DESFA pre-

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[163] See replies to question 19.1 of Questionnaire 2 to competitors; confidential replies to question 44.1 of Questionnaire 1 to customers.

[164] Form CO, paragraph 668 et seq.

[165] Such projects are included in the Regulated Asset Basis (RAB) and remunerated by the Weighted Average Cost of Capital (WACC), which is currently at 7.5%. See Form CO, paragraph 681.

[166] Form CO, paragraph 627.2.

Transaction. This project is already part of the TYDP 2021-2030, as approved by RAE.[167]

(166) That DESFA has neither the ability nor the incentive to foreclose access to the NNGTS from its competing gas import infrastructure is confirmed also by the result of the market investigation. The majority of both customers and competitors who expressed an opinion were of the view that DESFA would have no ability or incentive to hinder access to the NNGTS for its competitors, or treat its own gas import infrastructure preferentially vis-à-vis those of its competitors.[168]

5.4.4. *Conclusion on non-horizontal effects*

(167) In light of the above considerations, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to non-horizontal effects in the markets for gas import infrastructure in the upstream (where both DESFA and GASTRADE are active) and gas transmission in the downstream.

6. CONCLUSION

(168) For the above reasons, the European Commission has decided not to oppose the Transaction and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President

[167] "NNGS Development Plan 2021-2030", page 16. Available at https://www.desfa.gr/userfiles/5fd9503d-e7c5-4ed8-9993-a84700d05071/TYDP%202021%202030%20-%20fin_clean.pdf

[168] See replies to question 44 of Questionnaire 1 to customers; question 37 of Questionnaire 2 to competitors.