



COMMISSION OF THE EUROPEAN COMMUNITIES

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**Subject: State aid N 633/2007 – Greece – Road infrastructure - Public financing of the motorway sections between Maliakos and Kleidi (part of Pathe programme), between Tembi and Skotina, and between Evangelismos and Leptokaria**

Sir,

**1 PROCEDURE**

- (1) By electronic transmission of 5 November 2007 of their Permanent Representation to the European Union, the Greek authorities, in accordance with Article 88(3) of the EC Treaty, notified to the Commission the above-mentioned measure.
- (2) By electronic transmission of 28 December 2007, the Greek authorities provided the Commission with further information requested by letter of 30 November 2007<sup>1</sup>.

**2 DESCRIPTION OF THE FACTS**

**2.1 Description of the project**

- (3) The notified measure concerns the partial financing through State resources of a road infrastructure project (thereafter the Project)
- (4) The Project includes:

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<sup>1</sup> Reference TREN(2007) D/329537.

- the design and construction, operation, maintenance and exploitation of a new 26-km motorway linking Tembi (Evangelismos) to Skotina consisting mainly of tunnels and bridges;
  - the upgrading, financing, operation, maintenance and exploitation of the sections a) Raches – Evangelismos (approximately 135,5 km.), b) Rapsani – Platamonas (approximately 5,5 km) and c) Skotina – Kleidi (approximately 63,6 km) of the Patras-Athens-Thessaloniki-Evzoni (PATHE) Motorway;
  - and the upgrading, financing, operation, maintenance and exploitation of the old national road from Evangelismos to Leptokaria.
- (5) The Project is one of the largest infrastructure projects to be implemented in Greece. The Greek authorities indicated that it is of importance to Greece for three main reasons. Firstly, it forms part of the Trans European Transport Networks (Roads) - Decision No 1692/96/EC linking important urban centres and in particular Athens and Thessaloniki. Secondly, the implementation of the Project is expected, according to the Greek authorities, to increase road safety, especially in sections that were constructed in the 50's and 60's and to lead to a reduction in travel time and energy consumption. Thirdly, the construction and operation of the Project will generate , according to the Greek authorities, new job opportunities.

## **2.2 Selection of the concession holder**

- (6) The project was indeed put out in 2001 to competitive tender. The Invitation to Tender was published in the Supplement to the Official Journal of the European Union.
- (7) The tender was held using a restricted procedure in two phases and was awarded, on the basis of the technical offer focusing on specific and binding construction issues and on the evaluation of the Financial Dossier, carried out through a mathematical formula in order to achieve minimal cost to the State.
- (8) This specific mathematical formula, set out in Paragraph (24) of the call for tenders, consisted of financial and economic indicators, specifically designed to indicate the most economically advantageous tender by ranking the offers by order of achieving the minimum "project weighted cost" for the State, taking into consideration in particular the level of financial contribution of the State and share of the State in revenues from the infrastructure. The award criteria has thus led to the selection of the most economically advantageous offer in terms of requested financial contribution from the project owner, requested maximum operation subsidy, revenue amounts that nullify the operation subsidy and maximum toll level.
- (9) A summary of the pre-qualification notice was published in the Supplement to the Official Journal of the European Union<sup>2</sup>. The award criteria were set in phase B' of the tender providing for the most economically advantageous tender in terms of requested financial contribution from the project owner, payments to the State from the Project's revenues and requested level of investors' internal rate of return that is established by a profit sharing mechanism between the State and the concession-holder. The Project

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<sup>2</sup> 2001/S-12-008206 dated 18 January 2001

was awarded by Ministerial Decision of 29 September 2006 to AEGEAN MOTORWAY S.A. (thereafter the "concession-holder"). The concession-holder is a special purpose company formed by HOCHTIEF PPP SOLUTIONS GmbH (a German company), A.E.G.E.K. S.A. (a Greek company), ATHINA S.A. (a Greek company.), ELLINIKI TECHNODOMIKI – TEB S.A. (a Greek company), J & P AVAX S.A. (a Greek company), VINCI S.A. (a French company).

- (10) The Concession Agreement (thereafter the "CA") was signed on 28 June 2007 between the Hellenic Republic and the winner of a tender process. The award notice was published in the Supplement to the Official Journal of the European Union dated 31 July 2007<sup>3</sup>. The Greek Parliament ratified the CA in 1 August 2007 by Law 3605/2007<sup>4</sup>.

### **2.3 Description of the Concession Agreement**

- (11) The Project is structured as a co-financed BOT (build, operate and transfer back) project that, following completion of construction, is to be operated by the concession-holder for a period of 30 years. After the expiry of the concession the constructed infrastructure will be handed-over to the Greek State.
- (12) The infrastructure in question will be open and accessible to all potential users on non-discriminatory terms

### **2.4 Sharing of risks**

- (13) The concession holder bears all the risks related to the construction of the Project including risks related to mismanagement of the Project and to construction over-costs resulting from miscalculations or underestimations on its part.
- (14) The Hellenic State takes:
- (1) part of the risk associated with Antiquities. The State shall bear any other cost for additional Archaeological Test Excavations or Archaeological Investigations and certain archaeological research and monitoring of work and excavations. Such risk allocation aims to not unduly burden the Concession holder neither with the cost of carrying out extensive archaeological excavations nor with the consequences of lengthy delays caused by the excavations. This is appropriate since such works benefit the Greek cultural heritage and any archaeological findings belong to the Greek State. On the other hand the concession holder bears the risk of:
- (a) a possible 5-month delay in the "design – construction period time schedule", as defined in the CA, due to works related to antiquities in areas designated in the CA as "*possible locations of Antiquities*"

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<sup>3</sup> S145-179498.

<sup>4</sup> GG A 190/8-08-2007

- (b) a possible 2-month delay in the aforementioned schedule, due to works related to antiquities in all other areas of the Project; and
  - (c) performing at its own cost "archaeological test excavations" of a total length of 80 km.
- (2) the risk of a potential future need for “*supplementary land*” but exclusively for the need of developing new additional toll stations<sup>5</sup>.
- (3) the risk of “*additional works*”. Pursuant to the CA, the award of additional works which are ancillary to the Project is considered by the Greek authorities to be consistent with Article 61 (Awarding of additional works to the concessionaire) of Directive 2004/18. Consequently this provision can only be triggered in the event of “*unforeseen circumstances*” that should not burden the concession holder.
- (4) the risk of “force majeure” In view of the fact that the concession holder is required to place an extensive series of insurance policies covering the whole spectrum of the design and construction activities, the State’s risk regarding Force Majeure events is limited to certain excluded force majeure events (i.e. war, radiation, terrorism act & sabotage etc.) – but to the extent that they are not actually insured and to potential “*extensive*” force majeure events (the duration of which is already defined in the CA). Nevertheless the risk of financial consequences of force majeure events due to the non observance by the concession holder of the Project’s specifications lies with the concession holder.
- (5) the risk of “*excessive*” cost or “*unavailability*” of insurance. Under the CA, “*unavailability*” refers to “*acknowledged insurers in the EU*” and “*excessive*” is linked to a threshold of at least a double premium. If such events are established then the State has the option either to pay the additional amount of the premium or release the concession holder from his obligation to insure the affected risk in whole or in part.
- (15) Such provision is appropriate given the volatility of the insurance premiums generally and the difficulty of obtaining certain insurance covers for projects at times of heightened security concerns or awareness of vulnerability. It also does not release the concession holder from obtaining general insurance cover.

## **2.5 Financing of the project by the State**

### **2.5.1 Direct grant from the State**

- (16) The total project cost amounts to € 1,296 million. The concession-holder will bear € 1,018 million and the State will bring € 278 million.

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<sup>5</sup> *Strictu sensu* this is not a construction risk since any such need may possibly arise in the future mainly depending on the evolution of the traffic volume and characteristics over the 30 year concession period. In any case any such additional land will remain at all times property of the State and will be handed back to the Greek State at the end of the Concession.

- (17) Construction is allowed to take four and a half years (54 months) according to the CA and according to the concession holder's Design – Construction Time Schedule is expected to take four years (48 months). In current prices, the total investment is expected to be in the region of € 1,296 million (including construction period operational cost of approximately € 167 million), consisting of equity of € 136 million, senior debt of about € 571 million, a State grant of approximately € 278 million and Design-Construction Period Revenues of approximately € 303 million.

### **2.5.2 Toll levied by the concession holder**

- (18) The toll revenues, that the Greek State will forego over the concession period, can also be considered as State resources.
- (19) The "maximum toll rate limit" imposed by the State in the tender documents was € 0.04 (without value added tax) per km and per passenger cars units at real prices of 1 January 2003, with the exception of the Tembi and Platamonas tunnels (total section length 32 km.) where the maximum toll rate limit is set to € 0,05 per km. at real prices of 1/1/2003.
- (20) The toll rates for the categories of vehicles are regulated through equivalence factors. The "maximum toll rate limit" is updated annually according to the evolution of the Greek consumer price index.
- (21) Subject to the compliance with the "maximum toll rate limit" and the equivalence factors, the concession holder is allowed to apply the most efficient toll policy taking into consideration the quantitative and qualitative traffic parameters of the Project. Therefore the concession holder is permitted to set the toll rates at a lower level if it considers that, due to demand elasticity, a lower rate will increase traffic and consequently its revenues.
- (22) In addition, as set out below, the CA provides for a mechanism ensuring that the concession holder cannot benefit from excess revenues "maximum toll rate limit". As described in Section **Error! Reference source not found.** above, the CA establishes a retrocession system whereby 85% of excess revenues earned by the concession-holder are claw-backed by the Greek State

### **2.5.3 Operation Subsidy**

- (23) The invitation to tender requested the bidders to include in their offer the "traffic - revenue risk limit" (TRRL) that they were committed to undertake for any of the six-month periods of the "subsidised operation period". It also requested to give the "maximum operation subsidy" (MOS) that the bidder, if successful, would request from the State for all six-month periods in question. Therefore both the TRRL and the MOS were specified by the bidders under the competitive environment of the Tender.
- (24) The operation subsidy payments by the State are calculated separately for each six-month period of the "subsidised operation period" on the basis of three parameters i.e. (a) the total direct revenues of the concession holder for the same period, (b) the TRRL of this period and (c) the MOS of this period, according to the following formula:

$$\text{Operation Subsidy} = \text{MOS} - 85\% \times \max [0, (\text{Direct Revenues} - \text{T.R.R.L.})]$$

- (25) If the operation subsidy result turns negative, the concession holder must then pay to the State an amount equal to the negative result of this calculation.
- (26) In conclusion, this mechanism has the appropriate flexibility so as to ensure:
- (i) a cap on the subsidy amounts since it cannot exceed the MOS fixed by the CA (in case the direct revenues remain lower than the TRRL);
  - (ii) the retrocession to the State of 85 % of any increase in the concession holder's revenues above the agreed TRRL<sup>6</sup>.

#### 2.5.4 Benchmark

- (27) Prior to the award of the CA, the awarding authority asked its financial adviser to compare the various offers on the basis of the own parameters and estimations of the State. The results of this comparison were the following:

<b>MALIAKOS – KLEIDI MOTORWAY PROJECT</b>			
	<b>State Financial Model</b>	<b>concession holder's Offer</b>	<b>Second Bidder's Offer</b>
	(amounts in € '000)		
<b>Construction Cost (net of value added tax)</b>	793.690	717.550	922.500
<b>Committed Investment (Equity &amp; Subordinated Debt)</b>	100.000	100.000	107.991
<b>Capital Grant</b>	245.000	225.000	161.000
<b>EBITDA*</b>	3.011.050	4.737.249	5.118.726
<b>Payments to the State</b>	0	2.837.796	1.515.962
<b>Net present value of Payments to the State (2003 value)</b>	0	609.907	269.730
<b>Real Committed Investment internal rate of return</b>	12,43%	9,79%	13,40%
<b>* Earnings Before Interest, Taxes, Depreciation &amp; Amortisation (excluding Payments to the State)</b>			

<sup>6</sup> The 15% allowance (i.e. 100% minus 15%) has been introduced in the Tender Documents, and consequently to the CA, as a motive to the concession holder for optimising its Direct Revenues.

- (28) In light of this, the Awarding authority took the following conclusions:
- (i) The construction cost according to the offer of the concession holder was approximately € 75 million (9%) lower than the respective estimation of the Greek State and 28.5% lower than the cost than the respective estimation of the second bidder.
  - (ii) The estimation regarding the EBITDA made by the Greek State appears to have been conservative compared to the respective amounts provided by the concession holder and the second ranking bidder.
  - (iii) The amount of payments to the State offered by the successful bidder, both in nominal and net present value terms, was substantially higher than the amount offered by the second ranking bidder. This was due to the following facts:
    - The concession holder has a high forecast of EBITDA (60% higher than the estimation of the Greek State);
    - The concession holder has a lower internal rate of return requirement than the estimation<sup>7</sup> of the Greek State.
- (29) The net present value of operating subsidy, together with the payment of the capital grant, was here the most important factor in selecting between the two offers.

### 3 ASSESSMENT OF THE MEASURE

- (30) According to Article 87(1) of the EC Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the provision of certain goods shall be incompatible with the common market, in so far as it affects trade between Member States, save as otherwise provided for in the Treaty.
- (31) The Commission must in the first place determine whether the notified measure constitutes a State aid within the meaning of Article 87(1) of the EC Treaty. One of the criteria of the definition of State aid is to determine whether the public financing of transport infrastructure under examination offers an economic advantage in favour of both the users and at the level of the builder/manager of the infrastructure in question<sup>8</sup>.
- (32) With respect to potential advantages in favour of the infrastructure users, consistent with a well established practice, the Commission has always maintained the view that, in general, no State aid elements within the meaning of Article 87(1) of the EC Treaty are present at user's level where transport infrastructure is open to all potential users on equal and non-discriminatory terms.

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<sup>7</sup> based on a combination of a risk free rate plus a reasonable compensation for the business risk associated with the specific project

<sup>8</sup> See Commission Decision N 60/2006, *Project Main Port Development Rotterdam*, point 39.

- (33) In the case under examination, as stated in Point (12) above, the infrastructure will be open to all users on a non-discriminatory basis. Therefore, it will not favour any particular user. The Commission accordingly considers that there are thus no State aid elements in favour of the infrastructure users.
- (34) The Commission also notices in light of the information set out in Section 2.4.4 above that the total price paid by the State to the concession holder for executing the CA corresponds to the market conditions and even lower than the prior estimates of the financial advisor to the Greek State. As described in Section **Error! Reference source not found.** above, the CA establishes a retrocession system whereby 85% of excess revenues earned by the concession-holder are claw-backed by the Greek State. The Commission thus considers that the award of the CA does not entail State aid element.
- (35) Finally, in light of Section 2.4 above, the Commission considers that the CA does not reduce the risk that a concession holder should normally bear and thus does not alleviate the undertaking from a financial risk, that could materialise as a financial burden. The CA also prevents the Greek State from granting discretionary subsidies and advantages to the concession holder. As a consequence, the Commission considers that the CA in itself could not lead over the concession period to State aid in favour of the concession holder.
- (36) Therefore, the Commission concludes that the measure does not entail any advantage in favour of the concession-holder as the CA guarantees market conditions for conducting the project and as the measure will not have the effect of putting the company in a more favourable position than the undertakings competing with it.
- (37) The Commission thus concludes that the notified measure does not constitute State aid within the meaning of Article 87(1) of the EC Treaty.

#### 4 DECISION

The Commission has accordingly decided to raise no objection to the measure, considering it not to constitute State aid within the meaning of Article 87(1) of the EC Treaty.

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