Subject: State aid No SA.35255 2012/N – Poland
Aid to PSE Operator S.A. for the construction of Stanisławów station, part of the Poland-Lithuania electricity link Project

Excellency,

I am pleased to inform you that the European Commission has assessed the above measure notified by the Polish Republic and decided to consider the aid to be compatible with the internal market pursuant to the Treaty on the Functioning of the European Union (hereinafter “TFEU”).

PROCEDURE

1. On 9 August 2012, Poland notified to the Commission, pursuant to Article 108(3) of the TFEU, its plans to grant public funding to the construction of a station in Stanisławów, which is intended to be an integral element of the Poland-Lithuania crossborder intersystem electricity link.

2. On 9 October 2012, the Commission requested additional information on the project, which the Polish authorities provided on 6 November 2012.

His Excellency
Radosław SIKORSKI
Minister of Foreign Affairs
Al. J. Ch. Szucha 23
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POLAND
DESCRIPTION OF THE AID MEASURE

Project description

3. The public financing measure supports the construction of a grid substation in Stanisławów (hereinafter “notified project”) by Polskie Sieci Energetyczne Operator Spółka Akcyjna (referred to henceforth as “PSE Operator”) as an integral element of the Poland-Lithuania intersystem electricity link.

4. The construction of Stanisławów station is a sub-project to the cross-border electricity interconnection between Elk in Poland and Alytus in Lithuania and the necessary enhancement and upgrade of the Polish power grid in neighbouring areas of Poland (as far as the Warsaw area) in order to handle the specified power of the interconnection (hereinafter “main project”). The overall objective is to connect the market of the Baltic Region (i.e. Lithuania, Latvia and Estonia) with the market of Central and Eastern Europe, which is one of the five synchronously connected markets of continental Europe. Before the main project was initiated, no direct electricity interconnection link between Poland and Lithuania existed.

5. The main project is subdivided in two stages, a first stage which is to be implemented by 2015 and a second stage which shall be carried out between 2014 and 2020. The first stage, which consisted of originally 11 interdependent elements of infrastructure, was found compatible with the internal market in the Commission decision of 6 January 2011 in case N 542/2010.

6. The notified project was originally intended to be part of the second stage of the main project, but according to the Polish authorities, its early implementation can actually speed up the second stage, contribute to the reinforcement of the power grid in the Warsaw area and allow for the connection of wind farms to the grid. The notified project consists of the construction of Stanisławów station and of additional works at neighbouring facilities of transmission infrastructure, with a view of interconnecting the station with these neighbouring facilities and allowing correct operation of the whole grid.

7. As such, the Stanisławów grid substation is intended to provide additional transmission capacity and to reinforce the power grid in the Warsaw area. Indeed, on the first aspect, technical analyses have shown that the transfer of electricity via the interconnector needs a 400 kV double circuit line between the Warsaw area and the station in Ostrołęka\(^1\), which in turn requires an additional station in the Warsaw area, the existing infrastructure being insufficient. On the second aspect, Stanisławów station will be connected to stations in Miłosna and Siedlce Ujrzanów, which would reinforce the grid in the Warsaw area necessary to cope with the interconnection.

8. The Polish authorities have given a number of reasons for bringing forward the notified project: First, the implementation of the first stage of the main project has so far resulted in forecasted savings exceeding PLN 500,000,000\(^2\), which can be used on sub-projects which had been postponed to the second stage for lack of funding (although that does

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\(^1\) The expansion of the station in Ostrołęka was part of the sub-projects notified in case N 542/2010 as those which would be implemented in the first stage.

\(^2\) While in case N 542/2010, the total project costs had been estimated to PLN 2,645,231,000, it now appears that the main project will likely be realised at costs of about PLN 2,131,500,000.
not necessarily mean that these sub-projects could be completely financed without any additional external funding). Secondly, the Polish authorities have referred to a planned 250 MW wind farm in Korytnica, the connection of which to the grid has already been discussed and preliminarily agreed upon between the PSE Operator and the wind farm investor. The anticipated construction of the Stanisławów station could allow for an earlier connection of the wind farm. Thirdly, other sub-projects of the interconnector could be sped up accordingly: If Stanisławów station was completed by 2015, the future Ostrołęka-Stanisławów line would be operational earlier.

9. On 12 September 2011, the PSE Operator and the Polish Oil and Gas Institute, which is the competent Implementing Authority under the Operational Programme “Infrastructure & Environment” for the Priority Axis 10.1 (“Energy security, including diversification of the energy sources”), concluded a pre-agreement with a view of preparing the implementation of the given individual project, i.e. the construction of Stanisławów station.

**Relationship with EU initiatives and legal framework**

10. The main project of an electricity link between Poland and Lithuania, along with the required reinforcement of the Polish electrical energy grid (of which the notified project is a part), features on the priority axis listed as point EL.7. in Annex I to Decision No 1364/2006/EC for trans-European energy networks. It is also listed as point 2 in Annex II to Decision No 1364/2006/EC as being directed at the development of the electricity connections between Member States needed for the functioning of the internal market and to ensuring the reliability and dependability of the operation of electricity networks.

11. The main project is also one of the essential elements of the Commission initiative “Baltic Energy Market Interconnection Plan” (hereinafter “BEMIP”), launched since autumn 2008, which aims to fully integrate three Baltic countries (Lithuania, Latvia and Estonia) into the European electricity market. The BEMIP is being implemented on the basis of the Cooperation Agreement signed on 17 June 2009 by the President of the Commission and eight Member States from the Baltic Sea. The time-horizon envisaged for the completion of the market integration of the Baltic region is 2015.

**Legal basis**

12. The legal basis of the measure is

i) Ustawa z dnia 6 grudnia 2006 r. o zasadach prowadzenia polityki rozwoju (Act of 6 December 2006 on the principles of conduct of development Policy);


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iv) Lista indywidualnych projektów kluczowych dla Programu Operacyjnego Infrastruktura i Środowisko 2007-2013 (List of individual key projects for the Operational Programme “Infrastructure and Environment” 2007-2013);


vi) Kryteria wyboru projektów w ramach działania 10.1 Programu Operacyjnego Infrastruktura i Środowisko (Criteria for the selection of projects for Action 10.1 of the Operational Programme “Infrastructure and Environment”).

**Characteristics of the beneficiary**

13. The beneficiary of the public funding shall be Polskie Sieci Energetyczne Operator Spółka Akcyjna (referred to henceforth as the “PSE Operator”), a transmission grid operator that will carry out and operate the notified project. According to Polish law, the transmission grid operator handles the transmission of electricity and is responsible for grid traffic within the system, on-going and long-term operational security, maintenance and necessary expansion of the system, including cross-border connections.

14. By decision of the Chairman of the URE4 (the Polish energy regulator) of 15 April 2004, the PSE Operator was licensed to transmit and distribute electrical energy in a period until 1 July 2014. By virtue of that decision, which is subject to modification, the PSE Operator is the sole operator of the power transmission grid within the Polish territory until the license expires or is otherwise cancelled. On that basis, the PSE Operator provides transmission services to the users of the Polish transmission grid in both domestic and foreign trade activities within the interconnected power transmission system spanning the EU.

**Ownership and financing of the beneficiary**

15. The PSE operator’s shares were transferred on 31 December 2006 to the State Treasury, which is the sole owner. It is included in the list of companies of strategic importance to the national economy and defence, pursuant to the regulation of the Council of Ministers of 4 October 20105.

16. The revenues of the PSE Operator mainly accrue from the application of its tariff to the users of the electricity grid. The tariff calculation is based on the rules of the Energy Law, the Tariff Regulation, the System Regulation, and the Long-Term Contract Termination Act. The revenues of the PSE are regulated in that the tariffs are subject to ap-

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4 URE stands for Urząd Regulacji Energetyki, which is the Energy Regulatory Office of Poland.

proval of the energy regulator (the Chairman of URE)\(^6\). As a result, the actual return on invested capital for the PSE Operator depends on the revenues derived from the application of the regulated tariffs\(^7\). Although the maximum validation period for tariff applications extend up to three years, the prices, cost items and tariffs are regularly approved only for a period of 12 calendar months. The return on capital employed resulting from the tariffs approved by the Chairman of the URE between 2008 and 2011 was 10.09 % on average, with a minimum of 9.60 % (2011) and a maximum of 10.52 % (2010).

17. In 2009, the PSE Operator developed and submitted the Development Plan for Meeting Current and Future Electricity Demand in 2010-2025 for approval of the Chairman of the URE. The Chairman of the URE agreed, by an administrative decision of 29 December 2009, to the parts of the Development Plan for the year 2010. In 2011, the PSE Operator submitted an Update to the Development Plan for Meeting Current and Future Electricity Demand in 2010-2025, covering specifically the period from 2012 to 2016, which was approved by the Chairman of the URE on 29 June 2011. It follows that, even if the total project costs were included in a multiannual application for their entirety, only an annual portion of reasonable costs would be taken into account by the annual tariff approval decision. Moreover, given the mandate of the regulator to prevent unreasonable price and rate hikes, nothing guarantees that the annual portion of the costs incurred in the notified project would be recovered from the tariffs finally approved in subsequent years.

18. On the other hand, investments of the PSE Operator financed with assets originating from the so-called “external sources”, such as EU funding, are not included in the calculation of the asset values taken into account by the Polish regulator (regulatory asset value, RAV). Therefore, investment expenditures financed within the scope of the notified project through EU funding will not be included in the calculation of the regulatory asset value, nor will they be included in the calculation of a reasonable return on invested capital. The PSE Operator will, therefore, receive tariff income in respect of the use of infrastructure (transmission network and cross-border connection), but only to the extent to which assets generated in connection with the project will be financed from its own resources or capital.

**Budget, duration, eligible costs and aid intensity**

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\(^6\) The tariff prepared by PSE Operator requires ex-ante approval by the Chairman of the URE for the next regulatory period, and enters into force within 14 to 45 days from publishing in the URE Bulletin. In this process, the PSE Operator prepares and submits a tariff approval application to the Chairman of the URE, who analyses and verifies the amount of costs constituting the basis for prices and rate of the tariff, studies their compliance with the regulations of the Energy Law and the Tariff Regulation, as well as sets out the reasonable cost level, specifies a reasonable cost threshold, aimed at protecting the interests of recipients from unreasonable price and rate hikes.

\(^7\) The Chairman of the URE specifies the amount of return on capital invested in the transmission activity conducted by the PSE Operator. This is one of the constituents of the tariff calculation formula. Its amount is the product of the weighted average cost of capital (WACC) and the regulatory asset value (RAV). The RAV is specified with consideration of investments in the expansion and modernisation of the transmission network, in the amount specified in the PSE Operator network development plans, which are coordinated with the Chairman of the URE. The obligation to prepare such plans and present them for coordination with the Chairman of the URE is mandated by Article 16 of the Energy Law.
19. The total investment costs of the notified project are estimated to PLN 61,678,000 (approx. EUR 15,078,350). The project is expected to be performed and the aid be put into effect by the end of 2015.

20. Eligible expenditures have been specified, and will be calculated, in accordance with the rules set by the Ministry of Regional Development in the form of “Guidelines for eligibility of expenditures under the Infrastructure and Environment Operational Programme”, without prejudice to the rules resultant from the Regulation (EC) No 1080/2006, Regulation (EC) No 1083/2006 on EU Structural Funds and implementing rules. On the basis of those guidelines, the following categories of expenses are considered to be eligible: i) purchase of real estate rights, ii) construction works, iii) fixed assets, equipment and intangible assets, and iv) preparation, management, necessary fees and other burdens.

21. The Polish authorities emphasise that no construction works planned within the notified project have been performed yet.

22. At present, Poland plans to use EU funds to grant aid up to an amount of PLN 34,150,125 (approx. EUR 8,348,640), which is equivalent to 55.4% of the total costs for the entire notified project. The remainder of the total costs (PLN 27,527,875) will be primarily financed from the PSE Operator’s own funds, obtained as ongoing revenues from the activity of the company. It is not intended to resort to external lending, but rather, if need be, to issue debt securities, e.g. in the form of bonds or eurobonds. On that basis, at this stage, the contribution of the beneficiary would amount to about 44.6% of the total project costs.

23. Poland commits to ensuring that the public funding for the notified project shall not, under any circumstances, exceed 57% of eligible expenditure deemed to be eligible pursuant to the above rules. In addition, the aid shall in no circumstances exceed what is necessary for ensuring a maximum financial rate of return of 8% for the beneficiary, which includes the non-revenue producing assets financed through EU funds and the revenue-producing assets financed by the PSE operator through own funds.

24. Finally, the Polish authorities have submitted information that shows that in the absence of aid, the financial rate of return on capital of the notified project (FRR/K) would amount to 5.5%, while the financial net present value on capital (FNPV/K) would be negative.

The notified project in the context of the electricity market in Poland

25. The interconnection with Lithuania and the reinforcement of North-Eastern parts of the Polish grid shall be integrated in the Polish electricity market in which the PSE operator is, in principle, the sole transmission system operator until July 2014.

Rules on access to the financed infrastructure

26. As regards the provision of transmission services within the territory of Poland, the Polish authorities assert that the transmission infrastructure owned and operated by the
PSE Operator is open and available to all users on equal terms, in accordance with applicable rules in Polish\(^8\) and EU law\(^9\) ("third party access principle").

**Bearing on other investments by PSE Operator**

27. As indicated above, as a result of price regulation, the investment in the planned infrastructure does not imply that the energy regulator URE shall agree *ipso facto* that the PSE operator recovers its costs through revenues derived from increased tariffs.

28. The Polish authorities claim that, based on the PSO Operator’s *Development Plan for Meeting Current and Future Electricity Demand in 2010-2025*, the estimated value of investment expenditures amounts to approx. PLN 6 billion until the end of 2015. In consequence, even assuming solely for the purposes of model analysis that the Chairman of the URE would agree to tariff increases resulting from investment expenditures borne by the PSE Operator as a result of the notified project, and subsequently accepted the transfer of all costs in future tariffs, this increase would in practice limit or postpone other investments that the PSE Operator considers as more important for the operation of the national transmission grid, or the necessity to ensure security of energy deliveries for national recipients.

**ASSESSMENT**

**Existence of State aid within the meaning of Article 107(1) of the Treaty**

29. Article 107(1) of the Treaty on the Functioning of the European Union ("TFEU") provides that “any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, shall, in so far as it affects trade between Member States, be incompatible with the common market”. The examination of the cumulative conditions set out therein is examined hereinafter.

*State resources and selective economic advantage*

30. The aid is planned to be granted solely to the benefit of the PSE Operator from State resources within the meaning of Article 107(1) of the TFEU because the choice of the project at hand and the transfer of Structural Funds resources from the EU budget to Poland are imputable to a decision and request of Poland.

31. As regards the presence of an economic advantage to the sole beneficiary, the planned grant shall enable the PSE Operator to build and own assets at financial conditions not otherwise available on financial markets, thereby obtaining an economic advantage. Moreover, given that the notified project shall be financed both from the PSE Operator’s own funds and with the planned aid, it follows that revenues accruing to the beneficiary on the portions of investment financed with its own funds, which include a rate of return

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element, would in practice not be generated without public funding of part of the project, thereby conferring an additional advantage.

**Distortion of competition and affectation of trade between Member States**

32. Although there is no competition at present on the Polish market for electricity transmission, the aid granted for the main project will allow the PSE Operator to own and operate transmission assets that will make it more unlikely that any alternative operators bid for a transmission licence when the current one expires in 2014. This again will be reinforced by the aid to support the notified project, i.e. the construction of an additional station within PSE Operator’s infrastructure. The measure is thus liable to threaten to distort competition on the markets on which these undertakings are active.

33. Electricity is traded across the EU. At present, there are electricity trade flows between Poland and other Member States, which are likely to increase in the future as a result, e.g. of the main project between Poland and Lithuania. The interconnection investments and electricity flows affected are also cross-border by nature and, as regards Polish businesses, the measure is not confined to those carrying out activities which are not subject to trade between Member States within the meaning of Article 107(1) TFEU. It follows that the planned aid is likely to distort or threaten to distort competition and affect the patterns of trade between Member States.

**Conclusion on existence of the aid**

34. Taking the above into consideration, the Commission concludes that the measure involves State aid within the meaning of Article 107(1) of the TFEU.

**Lawfulness of the aid**

35. Poland confirmed to the Commission that the payment of the aid is subject to the approval by the European Commission. Therefore Poland has fulfilled its obligation according to Article 108(3) of the TFEU by notifying the aid measure before its implementation.

**Compatibility under Article 107(3)(c) of the TFEU**

36. The Commission notes that the measure primarily aims to contribute to upgrading the electricity transmission network and its interconnection in Poland with unlikely prospect for these investments financed on regular commercial conditions, i.e. from the company funds and recouped from tariffs, in the near and medium term. The Commission also notes that the measure does not fall under one of the existing frameworks and guidelines. In particular, whilst Poland does not claim that the project should result in improved environmental protection, aid for such projects does not fall within the scope of the 2008 Environmental Aid Guidelines.\(^\text{10}\)

37. Likewise, in its decision in case N 542/2010, the Commission held that although the areas covered by the main project were eligible under the European Regional Development Fund, as well as Article 107(3)(a) TFEU assisted areas within the meaning of the Guide-

\(^{10}\) OJ C 82 of 1 April 2008, p. 1.
lines on national regional aid for 2007-2013\textsuperscript{11}, the aid was not primarily designed to contribute to regional development by supporting investment and job creation through the expansion and diversification of the economic activities located in the less-favoured regions. The same is true for the notified project, which again is concerned with expanding of existing network and transmission capacities. Neither job creation, nor setting up new businesses are the main objectives of the aid.

38. As stated by the Polish authorities and assessed below, the main objective of the aid is the development of the Polish electricity transmission system and its improved interconnection with the Baltic region, of which the construction of Stanisławów station is one component, thereby contributing to the enhancement of the basic infrastructure for the operation of the internal electricity market in the European Union.

39. The Commission therefore considers that the assessment of the compatibility of the measure with the internal market requires an assessment of the contribution of the measure to the development of the European Union market for electricity and needs to be based directly on Article 107(3)(c) TFEU which states that: “aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest” may be considered to be compatible with the internal market.

40. It is established Commission practice, that State aid measures in the area of energy infrastructure may be declared compatible directly under Art. 107(3)(c) TFEU, if they are necessary and proportionate and if the positive effects for the common objective outbalance the negative effects on competition and trade. In this regard, the Commission considers it appropriate to assess the following three questions:

(1) Is the aid measure aimed at a well-defined objective of common interest\textsuperscript{12}?  

(2) Is the aid well designed to deliver the objective of common interest? In particular:

(a) Is the aid measure an appropriate and necessary instrument, i.e. are there other, better-placed instruments\textsuperscript{13}?  

(b) Is there an incentive effect, i.e. does the aid change the behaviour of market participants?  

(c) Is the aid measure proportional, i.e. could the same change in behaviour be obtained with less aid?  

(3) Are the distortions of competition and the effect on trade limited, so that the overall balance is positive?

\textsuperscript{11} OJ C 54, 4 March 2006, p. 13.  
\textsuperscript{12} Judgement of the Court of First Instance of 14 January 2009, Kronoply v. Commission (T-162/06, Rec. p. II-1; especially points 65, 66, 74, 75).  
41. When an objective has been recognised by the EU as being in the common interest of the EU Member States, there is no doubt that it is an objective of common interest.

42. Pursuant to Article 170(2) TFEU, within the framework of a system of open and competitive markets, action by the Union shall aim at promoting the interconnection and interoperability of national networks as well as access to such networks, taking into account the need to link, inter alia, peripheral regions with the central regions of the Union. Moreover, pursuant to Article 194(1)(d) TFEU, the Union shall aim at promoting the interconnection of energy networks. In line with those Treaty provisions, the main project, i.e. the Poland-Lithuania electricity interconnection, shall connect the market of the Baltic Region, which is peripheral to the EU, and ensure the transmission of electricity via Poland, with the market of Central and Eastern Europe, itself connected with other EU electricity market regions.

43. In addition, according to Decision No. 1364/2006/EC\(^\text{14}\), and in particular Article 8 and Annex I thereof, the Poland-Lithuania electricity link is declared to be of European interest. It is also the main objective of the Commission’s Baltic Energy Market Interconnection Plan (BEMIP).

44. Consequently, the Conclusion of the Commission that the main project as such can be related to an objective of common interest\(^\text{15}\) also holds for the notified project. The Polish authorities have demonstrated that the construction of the Stanisławów station contributes to the realisation of the main project, in that it is part of the line linking Warsaw to Ostrołęka and in that it contributes to the reinforcement of the grid in the Warsaw area.

45. It follows that the aid measure aims at a well-defined objective of common interest.

**Aid well designed to deliver the objective of common interest**

**Appropriate and necessary instrument**

46. As the Commission held in its decision on case N 542/2010, the main project of interconnecting the Polish and the Lithuanian grids as a whole already was likely not to attract the interest of private investors and operators. Indeed, private investors would need to coordinate with and to rely on the PSE Operator, the sole network operator in Poland so far, and on its efforts to upgrade and maintain the Polish grid, which already constituted a factor of uncertainty. Moreover, from a pure business perspective, the financial viability of the main project was put into question by the fact that other interconnections were planned and that any electricity link operator would still have to grant third-party access at fair and non-discriminatory conditions.

47. These reasons apply *a fortiori* to the notified project. The construction of Stanisławów station cannot be viewed separately from the main project. It would not make sense for private market participants to invest in one single transformer station without building up

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\(^{14}\) See para. 10 and footnote 3 above.

\(^{15}\) See the Commission’s decision in case N 542/2010, paras. 50 et seq.
own transmission infrastructure, the economic prospects of which would be uncertain in view of the amount of coordination required with the PSE Operator.

48. Consequently, the Commission considers that, in the circumstances and given the nature of the investments concerned, State aid is an appropriate and necessary instrument to realise the notified project.

_Incentive Effect_

49. The PSE Operator is entrusted with ensuring the security, maintenance and expansion of the whole Polish electricity grid. On this basis, the Polish authorities have submitted a list of several priority investments with a view of safeguarding the supply of electricity in the Polish system for the coming years (including investments required by the EU climate and energy package). These investments which are scheduled to be made until 2015 amount to approx. PLN 6 billion. The list does not include the construction of Stanisławów station.

50. In particular, the fact that the main project has already started being implemented does not create an incentive effect of its own which would make State support for the construction of Stanisławów station superfluous. The aforementioned list of investments shows that there are still higher priority investments to be made than the main project as such.

51. Moreover, the Polish authorities have submitted evidence that demonstrates that in the absence of aid, the financial rate of return on capital for the notified project would be limited to approx. 5.5%, well below the regulated rates of return accepted for the beneficiary and that the financial net present value would be negative. Under these circumstances, it can be assumed that no operator would undertake the investments necessary to the realisation of the notified project.

52. Consequently, in order to achieve the positive effects in term of contribution to the objective of common interest, the planned investments can only be financed with a proportion of public support. Therefore, it can be concluded that the aid will provide for the necessary incentive effect.

_Proportionality_

53. A State aid measure is proportional if the measure is designed in a way that the aid as such is kept to the minimum. As regards proportionality of the aid, the aid intensity will, on the basis of current forecasts, amount to 55.4% of the total costs. In case the forecasted costs would be adapted, the Polish authorities have assured that the cap on the aid would be 57% of costs eligible, in application of and in line with the Operational Programme “Infrastructure and Environment”.

54. The Commission also notes that operating revenues are considered over a relatively long period of time, i.e. 30 years.

55. Furthermore, the amount of the aid will be calculated on the basis of a method warranting that the lifetime financial IRR of the project would be limited to 8%, as committed to by Poland. The Polish authorities have indicated that for similar investments of the PSE Operator, the Chairman of the URE approved weighted average costs of capital (WACC) that where, in the period from 2009 to 2011, on average two percentage points higher
than the financial IRR in the notified project. Moreover, Poland undertakes that the amount of planned aid shall not be taken into account for the purposes of tariff remuneration of the PSE Operator, which will thus not derive direct revenues therefrom.

56. This indicates that the aid shall not provide the PSE Operator with significant profits on the planned infrastructure, exceeding comparable investments undertaken by the PSE Operator. In this respect, the Commission noted in its decision in case N 542/2010 that, given the sole activity and statutory limitations of the PSE Operator to carry out other activities, the aid or any other ensuing profits should be devoted to further the quality of the Polish transmission grid and should not be used directly or indirectly to fund activities on other markets.

57. In view of the above it can thus be concluded that the State aid granted for the envisaged measures is proportional, and is limited to the minimum necessary.

**Distortion of Competition and Balancing Test**

58. On the one hand, as held in the decision on case N 542/2010, as even the construction of an additional station entrenches the status quo, the aid in the case at hand shall reinforce the position of the PSE Operator, by making it even more unlikely that alternative transmission operators appear on the Polish market in the future and that other interconnectors with Lithuania are timely constructed as an alternative to the one envisaged.

59. However, on the other hand, the notified project, in that it contributes to the realisation of the electricity link with Lithuania, shall also contribute to increasing competition by opening markets to electricity trade flows to and from Poland. Furthermore, the infrastructure shall be operated pursuant to effective third party access rules both within the Polish territory and as regards the interconnection itself. Access rules should ensure that benefits from the planned infrastructure accrue fairly to prospective customers.

60. Finally, given that the notified project is concerned with one single station and the appendent works on neighbouring infrastructure, its impact on competition will be very limited.

61. On balance, it can therefore be concluded that these positive effects and contribution to common EU objectives of the notified measure outweigh the negative effects on competition identified above.

**Conclusion on the compatibility of the aid**

62. The Commission thus concludes that the aid measure supporting the construction of Stanisławów station, a project which contributes to the realisation of the electricity interconnection between Poland and Lithuania and the related network upgrading necessary to handle the power to be traded from and to Lithuania, pursues an objective of common interest in a necessary and proportionate way and is therefore compatible with 107(3)(c) of the TFEU.

**CONCLUSION**

63. The Commission has accordingly decided to consider the aid to be compatible with the Treaty on the Functioning of the European Union.
64. The Commission reminds the Polish Authorities that, in accordance with article 108(3) of the TFEU, plans to refinance, alter or change this aid have to be notified to the Commission pursuant to provisions of the Commission Regulation (EC) No 794/2004\(^\text{16}\).

65. If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

\[\text{http://ec.europa.eu/competition/elojade/isef/index.cfm}\]

Your request should be sent by registered letter or fax to:

European Commission  
Directorate-General of Competition  
State Aid Registry  
B-1049 BRUSSELS  
Telefax no.: +32-2-296.12.42

Please, mention the name and number of the case in all the correspondence.

Yours faithfully,

For the Commission

\[\text{Joaquín ALMUNIA}\]  
Vice-President