Subject: State aid SA.35166 (2013/NN) – Greece – High Pressure Natural Gas Pipeline to Aliveri

Excellency,

The Commission wishes to inform Greece that, having examined the information supplied by your authorities on the matter referred to above, it has decided to raise no objections to the notified aid measure.

I. PROCEDURE

1. Following pre-notification contacts, by electronic notification of 21 December 2012, the Hellenic Republic notified, pursuant to Article 108(3) of the Treaty on the Functioning of the European Union (hereinafter referred to as TFEU), the project of financing a construction of the High Pressure Natural Gas Pipeline to Aliveri.

2. By letter dated 31 December 2013, the Greek authorities informed the Commission that the aid was granted with the effect on the same day.

3. The Commission asked for additional information by a letter of 5 June 2013. By letter dated 19 July 2013, the Greek authorities provided the additional information requested.
II. DESCRIPTION OF THE MEASURE

Background and objectives of the notified project

4. The notified project consists of the construction of approximately 72.086 km of high pressure gas pipeline. This will extend the national gas transmission system to the Aliveri region. The 20 inches pipeline includes an onshore part from the main pipeline to the coast of the Evian Gulf, an offshore part up to the area of Aliveri and a smaller onshore part from Evia to Aliveri. This region is at the moment reliant on two old Heavy Fuel Oil thermal power production units operated by Public Power Company (PPC).

5. According to the Greek authorities, the implementation of the project will contribute to introducing natural gas in urban, commercial and industrial sectors in the area of Aliveri, while feeding with gas a new gas-fired unit of in the region, replacing two old Heavy Fuel Oil thermal power production units. Future actions by DESFA, the Hellenic Gas Transmission System Operator, to increase the entry pressure of the pipeline at Stefani and Viota, which is connected to the main National Natural Gas System ("NNGS") pipeline, can significantly increase the transmission capacity of the pipeline to accommodate much larger consumption. The pipeline was designed in such a way as to allow future expansion to the greater area of Central and South Evia, further promoting the development of the existing national gas transmission system.

6. The main objectives of the project are:

   • Improvement of energy security in Greece and in the European Union by increasing the overall capacity of the NNGS and by adding more flexibility to the Greek market, and therefore to the EU internal market: as a result of the notified investment project, larger volumes of imported gas can be transported.

   • Development of a competitive gas market by enabling the Greek gas transmission operator to offer extra transmission capacity to the system users: all interested entities have equal access to the gas transmission system network on the basis of a third party access (hereinafter referred to as TPA) regime.

   • The introduction of natural gas to new geographical areas of Greece, which will help to contribute to the diversification of energy sources in these areas.

   • Enhancement of environmental standards by reducing CO₂ emissions, resulting from the increased use of natural gas in new areas using so far lignite or heavy fuel oil for their thermal activities.

7. The Greek authorities have stressed that, in the absence of public funding, either the project would not be implemented at all or the tariffs would have to be increased. Therefore, a further distributed and social effect of the notified project is the fact that the cost of the investment corresponding to the public funding will not be recouped from consumers in the form of an increased gas transmission tariff.
Beneficiary

8. The beneficiary of the measure is DESFA, Hellenic Gas Transmission System Operator S.A., which was established in 2007 as a wholly owned subsidiary of DEPA, Public Gas Corporation S.A.¹

9. Pursuant to Article 68 of the Law 4001/2011, “DESFA S.A operates, maintains, manages, exploits and develops the National Natural Gas System in an economically efficient, technically sound and integral way and with the aim to serve the needs of the Users in a safe, adequate, reliable and economically efficient way, to ensure the functioning of a unified natural gas market in the European Union, and to preserve the environment.”

10. DESFA is the gas Transmission System Operator (TSO) in Greece² and is the only provider of activities of gas transportation, gas storage and gasification of LNG within the Greek territory (so-called regulated activities). Within its field of activities, it is also responsible for gas balancing and congestion management and carries the responsibility for granting non-discriminatory third party access to the NNGS. In addition, it also provides other (non-regulated) services, such as for instance operation and maintenance for distribution and other transmission networks, project management, consultancy, gas equipment calibration, ships cooling, training.

NNGS and planned gas transit networks

11. Greece started to develop its gas network only in the 1990s in order to diversify its energy supply and replace lignite and oil-powered power stations with less polluting gas-powered power stations. Moreover, Greece plans to become a transit country for gas originating from Central Asia and the Middle East and destined for South-East and Central Europe. Currently, the entire gas supply in Greece relies on imports. NNGS is the only gas transmission network in Greece, comprising a main pipeline from the Greek-Bulgarian border to Attiki region with a length of 512 km and branches with a total length of 779 km, and the Liquefied Gas (LNG) terminal at Revithoussa. There are two entry pipeline points to NNGS through which gas is being imported to Greece: Sidirokastro at the Greek-Bulgarian border and Kipi at the Greek-Turkish border. The LNG terminal receives supplies via sea transport from different sources, such as Algeria, Egypt, Nigeria, Trinidad and Norway. In 2012, approximately 32% of LNG regasification quantities were imported by alternative suppliers than DEPA.

¹ DEPA is, in turn owned 65% by the Greek State and 35% by Hellenic Petroleum ELPE S.A. A privatisation process of DEPA and DESFA has been launched and is on-going at present.

² Other companies have expressed to the Regulatory Authority for Energy their interest in developing transit projects connected with NNGS. However, at the same time, they have asked for an exemption from TPA rules and from tariff regulation, in accordance with the provisions of the Second Gas Directive 2003/55/EC.
12. The 72.086 km High Pressure Natural Gas Pipeline to Aliveri is one of a number of projects taking place in Greece aimed at either making natural gas available in areas where it is not found at the moment or increasing the capacity of the gas transmission system.

13. In addition, there are other transit projects currently under development or consideration, in various stages of execution or planning, as Independent Natural Gas Systems (INGS) in Greece, such as Trans Adriatic Pipeline (TAP), Interconnector Greece Italy (IGI), Interconnector Greece-Bulgaria (IGB), South Stream Pipeline and East Mediterranean pipeline. Furthermore, it is technically feasible to provide for permanent reverse flows of gas from Greece to Bulgaria by means of an additional up-grade of the compressor station in Nea Messimvria in Northern Greece.\(^3\)

14. The Greek authorities have submitted other projects for State aid approval connected with different investments to improve and extend the gas transmission network in Greece\(^4\). All those projects are included in the NNGS development programme. The Greek authorities claim that all the projects contribute to the security of gas supply and promote the development of the internal gas market. The project examined in this decision, though functionally independent from the others, is to be put in the broader

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\(^3\) The Greek authorities have explained that currently there are no short-term prospects for conducting such investments. However, following the completion of the second up-grade of the Revithoussa LNG terminal, which would increase the reverse flow capacity to Bulgaria, DESFA will examine the feasibility of upgrade of the compressor station to provide for reverse flow, evaluating also the market interest.

context of notified projects supported with State aid which all contribute to the enhancing and/or extending the operation of the NNGS. These projects are altogether expected to i) increase the potential for diversification of sources and increase of (LNG) gas supply to Greece, (ii) increase flexibility and transport capacity of the NNGS from North to South and iii) connect with geographic areas previously isolated therefrom. Furthermore according to the Greek authorities, the NNGS is expected to increase annual transportation capacity from 26483246 Nm3/day (2011) to 35409609 Nm3/day (2017). While the assessment of the project subject to the present notification is carried out within this broader context, it is without prejudice of the assessment of the other projects referred to.

National regulatory framework for gas transmission in Greece

15. Law 3428/2005, as amended by Law 4001/2011, sets the legal framework for the activities of supply, distribution, storage and liquefaction of natural gas and gasification of LNG within the Greek territory. Pursuant to its provisions, the activities of the operation, management, exploitation and development of the NNGS have been transferred from the incumbent operator, DEPA (Public Gas Corporation S.A.) to DESFA (Hellenic Gas Transmission System Operator S.A.) through a "spin-off", i.e. a legal, operational – functional and accounting separation. Following the transfer, DESFA acquired full and exclusive ownership and control of NNGS, including the LNG Terminal in Revithoussa Island.

16. Gas transmission infrastructure is offered by DESFA for use by interested parties on the basis of the TPA regime. That means that all interested users have equal access to the transmission system and are provided with the essential information required to ensure effective use of the system, based on the provisions and principles of Regulation (EC) 715/2009. The rules and provisions for TPA access are specified in the NNGS Network Code and the capacity allocation procedure is based on the "first come, first served" principle. Technical procedures and specifications for the TPA access are specified in the Regulation for Measurements.

17. Non-discriminatory access to the NNGS is realized by conclusion of a Standard Transportation Contract between DESFA and the network user. Minimum duration of the Transportation Contract is one day. The users have the option to conclude long term (≥365 days) and/or short term (<365 days) contracts.

18. Access to network may be refused solely for reasons of lack of capacity, pursuant to the special provisions of the NNGS Network Code or if the access to the system potentially obstructs DESFA from fulfilling the obligations assigned to it. The refusal of access must be specifically substantiated and communicated to the interested user(s) and to the Regulatory Authority for Energy (hereinafter referred to as RAE). Refusal of access is allowed as long as the procedure provided under article 48 of Directive 2009/73/EC has been observed and in case that serious economic and financing difficulties exist due to contracts containing clauses of compulsory purchase irrespectively of receipt (i.e. take-

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or-pay clauses). In all cases of access refusal, gas suppliers can appeal the decision to RAE and to the administrative courts.

19. The activities of DESFA are monitored by RAE. This includes prior approval of the tariff levels for the use of NNGS. On 1 February 2013, a new Tariff Regulation entered into force, which, among other changes, has introduced a decoupled entry-exit system in setting the tariffs, instead of fixed rates which are used to determine capacity and commodity charges (M. D. 4955/2006 - postage stamp system). The new methodology is based on distinct and independent charges among entry and exit capacities rather than a fixed-rate tariff of the transmission system. It has been introduced with a view to enhance further cost reflectivity of the charges to the maximum possible extent and to avoid any discrimination among the different types of users. With the new system, DESFA shall recover all the regulated costs with an approved return on capital (cost-plus regime), ensuring at the same time the expansion of the Greek gas network to new regions of the country.

20. Accordingly, the tariffs recover operating costs and capital costs (i.e. depreciation and return on capital employed). The rate of return on capital is calculated by RAE by reference to the Weighted Average Cost of Capital (WACC), under consideration of the actual cost of debt. Pursuant to the RAE Decision 722/2012, WACC currently amounts to 10.99% in nominal pre-tax terms.

Financing: budget, aid intensity and duration

21. The notified project is co-financed from the EU Structural Funds and the Greek State budget. Under the EU Structural Funds, the financing is implemented under the National Strategic Reference Framework (NSRF) for Greece for the period 2007-2013. The grant from the EU Structural Funds, as well as the grant from the State budget, was given to DESFA through the Public Investments Programme of the Greek State.

22. The maximum share of co-financing of a project in terms of eligible costs may not exceed the so-called funding gap applicable to all projects financed by the EU Structural Funds as laid down in the Structural Funds Regulation. The Structural Funds Regulation requires that the eligible expenditure on revenue-generating projects shall not exceed the current value of the investment cost, less the current value of the net revenue from the investment over a specific reference period for investments in infrastructure or other projects where it is possible to objectively estimate the revenues in advance. In other words, the funding gap is established on the basis of investment costs, less any foreseeable revenues resulting from operating the infrastructure after investment. That means that the aid shall be limited to these costs of the project which are not to be financed by the revenues resulting from the implementation of the project.

23. The total investment costs of the notified project are estimated at EUR 69 million. Public financing from the EU Structural Funds (EUR 10 million) and from the Greek State...
budget (EUR 3 million) accounts for 36.03% of the eligible costs under the EU structural funds, corresponding to the funding gap rate. The aid intensity in proportion of the total investment costs is 18.84%. The remainder of the total costs (EUR 56 million) is primarily financed from DESFA's own funds, obtained as on-going revenues from the activity of the company.

24. According to the Cost Benefit Analysis, submitted in the notification, financial performance of the project without the public funding is very low. After the requested public funding, the financial performance still remains very low. The financial rate of return is 0.68% without State aid and 2.64% with public spending. This means that it is unlikely that the project could have attracted private capital in general and particularly during the current economic crisis and uncertainty in Greece. Specifically, the main results of the financial analysis of the project are as follows:

Table 1: Summary of main results of financial analysis

<table>
<thead>
<tr>
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<th>without public funding</th>
<th>with public funding</th>
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</thead>
<tbody>
<tr>
<td>Financial rate of return (%)</td>
<td>0.68% (FRR/C)</td>
<td>2.64% (FRR/K)</td>
</tr>
<tr>
<td>Net present value (EUR)</td>
<td>-22 402 582 (FNPV/C)</td>
<td>-10 442 564 (FNPV/K)</td>
</tr>
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25. The Greek authorities have explained that the amount of the public financing for the notified project is subtracted from DESFA's regulatory asset base and that the part of infrastructure corresponding to the public funding does not produce depreciation for the purpose of tariff calculation; hence, it does not generate additional revenues for the beneficiary in terms of return on engaged capital (i.e. capital taken into account for the determination of the regulated tariff, thus remunerated by revenues accruing from the application of those tariffs). As a result of the notified project, DESFA's regulated asset base shall increase only to include the position of assets financed through its own means (recital 23) which will thus be regarded as engaged capital for the purpose of the tariff calculation.

26. In practical terms, DESFA requests for co-financing under the notified project upon the submission of the relevant invoices for the activities performed (procurement, construction, inspection, etc.). In addition, generally, granting aid for DESFA's projects, in case the amount received by the beneficiary is excessive, is subject to recovery including interest. In this context, DESFA is required, on a regular basis, to submit reports to the General Secretariat for Energy and Climate Change of the Ministry of Environment, which present in detail the progress implementation of the technical and financial aspects of each project.

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9 Total public funds divided by 1% of total project costs.
27. The first invitation issued to DESFA by the Managing Authority for the Operational Programme "Competitiveness and Entrepreneurship", which already foresaw public financing, was sent to DESFA on 18 June 2009, later amended on 21 January 2011. The invitation was issued specifically to cover the Aliveri project. DESFA applied for co-financing of this project on 21 July 2010 and was informed about the approval of co-financing on 21 October 2011.

28. Based on the invitation issued by the Managing Authority (see above paragraph 27), the beneficiary proceeded with the construction works in May 2010 (start of the construction works). The project has reached mechanical completion in August 2012 (onshore and offshore pipeline construction) and is already supplying customers with natural gas through a temporary metering station.

III. ASSESSMENT

Presence of state aid

29. Article 107 (1) 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”.

Aid granted by a Member State or through State resources

30. The project is co-financed from the Structural Funds of the EU and the State budget of the Hellenic Republic.

31. Before being granted to the beneficiary undertaking, the EU Structural Funds are first disbursed to the Member State in question and thus, are under the control of the Member State's authorities at the moment of the final payment to the beneficiary. In the case at hand, since the choice of the project and the final transfer of the Structural Funds depend on the discretion of the Greek authorities, and the additional co-funding comes from the budget of the Hellenic Republic, the aid is considered to be granted from State resources within the meaning of Article 107(1) TFEU.

Favouring certain undertakings or the production of certain goods

32. The contribution to the financing of the project from State resources by means of the EU Structural Funds and the Greek State budget provides the beneficiary undertaking, DESFA, with additional funds to cover investment costs of installation of the High Pressure Natural Gas Pipeline to Aliveri. The funds are provided as a grant with no costs. Under normal market conditions, the beneficiary would have to bear those costs from its own means. Therefore, the Commission considers that DESFA receives an economic advantage within the meaning of Article 107(1) TFEU.

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11 This amendment included an increase of the budgeted public expenditure, which was related to the adoption of the final routing of the pipeline and the consequent incorporation of the final budget of the corresponding tendering procedures.
33. As this advantage is only granted to DESFA, the Commission concludes that it has a selective nature.

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

34. DESFA is active on markets other than gas transportation, such as gas storage and gasification of LNG, operation and maintenance for distribution and other transmission networks, project management, consultancy, gas equipment calibration, ships cooling and training. The public support provided for the purpose of the notified project is capable of having the effect of improving DESFA’s ability to compete on the LNG operation market, where other undertakings could be present in the future. Moreover, the aid, by strengthening the position of DESFA and favouring the development of the gas infrastructure at hand, has the potential of influencing the patterns of competition between energy sources which are partly substitutable with gas, such as coal or lignite, for instance, as concerns electricity generation in Greece. Also with respect to the activities of gas supply which DEPA, Public Gas Corporation S.A., carries out through other subsidiaries in competition with other gas suppliers, the public support to DESFA is capable of having the effect of improving DEPA’s ability to compete on gas supply, which is a market open to competition. It is therefore likely, first, that, since gas and other energy products are traded across Member States, through the implementation of the notified project with the public co-financing, the trading conditions are affected across the EU. Secondly, since the public support thus has at least the potential to distort competition on markets open to competition, it is not necessary to establish that the planned aid actually restricts competition on the possible markets affected12.

35. Trade of natural gas takes place between Greece and other Member States in the EU and in the European Economic Area (EEA). The same is true with respect to the other markets on which DESFA is active. It is therefore likely that, through the implementation of the notified project with the public co-financing, the trading conditions are affected across EEA.

*Conclusion with regard to the presence of state aid*

36. Taking the above into consideration, the Commission concludes that the financing of the project involves state aid within the meaning of Article 107 (1) TFEU.

*Legality*

37. By disbursing the aid under assessment on 31 December 2012, the Greek authorities have put the aid measure into effect before a final Commission decision. Thus, the Hellenic Republic has breached the stand-still obligation set out in Article 108(3) TFEU.

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12 Case T-303/05, AceaElectrabel v Commission, ECR 2009, p. II-137, paragraph 48 et seq.
Compatibility under Article 107(3) (c) TFEU

38. The Commission notes the measure aims at installation of the High Pressure Natural Gas Pipeline to Aliveri. As regards support for gas infrastructure, aid for such projects does not fall within the scope of the 2008 Environmental Aid Guidelines.\textsuperscript{13}

39. The project covered by the measure is located within areas eligible under the European Regional Development Fund, as well as assisted areas under Article 107(3)(a) TFEU within the meaning of the \textit{Guidelines on national regional aid for 2007-2013}.\textsuperscript{14} However, regional aid is designed to contribute to regional development by supporting investment and job creation. It promotes the expansion and diversification of the economic activities of enterprises located in the less-favoured regions, in particular by encouraging firms to set up new establishments there. In the case at hand, job creation is temporary and constitutes a secondary objective of the aid. As stated by the Greek authorities and assessed below, the measure primarily aims at providing a Natural Gas supply to areas that at present are not supplied and increasing the capacity of the network to transport gas.

40. The Commission therefore considers, in line with recent decision-making practice\textsuperscript{15} that the assessment of the compatibility of the measure with the internal market requires an evaluation of the contribution of the measure to the development of the European Union markets for gas and the contribution to the security of supply in the European Union. Therefore, the measure is assessed directly on the basis of Article 107(3)(c) TFEU which states that: “\textit{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.

41. In order to be compatible under Article 107(3)(c) TFEU, the aid measure must pursue an objective of common interest in a necessary and proportionate way. In this regard, the Commission considers it appropriate to assess the following questions:

\begin{enumerate}
\item Is the aid measure aimed at a well-defined objective of common interest \textit{(i.e. does the proposed aid address a market failure or another objective of common interest)}?\textsuperscript{\textcolor{red}{13}}
\item Is the aid well designed to deliver the objective of common interest? In particular:
\end{enumerate}

\textsuperscript{13} OJ C 82 of 01.04.2008.
\textsuperscript{14} OJ C 54, 4.3.2006, p. 13.
\textsuperscript{15} See, in particular Commission Decision in case SA.34938 Aid to increase the capacity of PGNiG's gas storage facility in Husów and among other energy infrastructure cases, Commission Decisions in cases SA.35255 Aid to PSE Operator S. A. for the construction of Stanisławów power station; N 594/2009 Gas pipelines in Poland; SA.33823 (2012/N) Electricity cable Aland – Finland (mainland); SA.31953 (2011/N) Construction of a LNG Terminal in Świnoujście, Poland; SA.29870 (N 660/2009) Aid to PGNiG for underground gas storage, Poland; SA.34235 (2012/N) Gas pipeline Rembelszczyzna – Gustorzyn (phase III).
• Is the aid measure an appropriate instrument, *i.e.* are there other, better-targeted instruments?

• Is there an incentive effect, *i.e.* does the aid change the behavior of firms?

• Is the aid measure proportionate, *i.e.* could the same change in behavior be obtained with less aid?

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

*Objective of Common Interest*

42. The aid measure has to aim at a well-defined objective of common interest. When an objective has been recognised by the EU as being in the common interest of the EU Member States, it follows that it is an objective of common interest.

43. According to Article 194 TFEU, "in the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim, in a spirit of solidarity between Member States, to:
   a) ensure the functioning of the energy market;
   b) ensure security of the energy supply in the Union; (...)"

44. The construction of the High Pressure Natural Gas Pipeline to Aliveri contributes to the development of the Greek system for the transmission of natural gas, as it improves the system’s efficiency by increasing its capabilities. The notified project reinforces the still under-developed gas transmission network in Greece by making supply available to new customers and increasing its flexibility, and therefore makes a contribution to objectives of common interest, such as an enhancement of the internal natural gas market and increased security of energy supply in keeping with Article 194 TFEU as well as the improvement of the so far poorly developed gas infrastructure Greece.

45. The notified project has strategic value not only for Greece, but also as an alternative element of the system linking the markets of European Member States in the South-Eastern region. As described above in recital 13, a number of gas transit projects on the Greek territory are under different stages of development or implementation, with a view to connect gas networks between EU and non-EU Member States in the region.

46. In particular, construction of the High Pressure Natural Gas Pipeline to Aliveri contributes to introducing natural gas in urban, commercial and the industrial sectors while feeding with gas the new unit of Public Power Company (PPC) in the region replacing two old Heavy Fuel Oil thermal production units. Until the introduction of this pipeline the replacement of conventional fuels was not possible. The introduction of a gas supply has helped diversify the means by which power can be obtained and offers the customer a greater choice. Furthermore, increased gas penetration in Greece has
positive effects from the environmental point of view, given that it substitutes oil and lignite in electricity generation, which pollute more than natural gas\textsuperscript{16}.

47. Moreover, additional gas pipelines can be used to maintain the pressure in the system. This will help in case of emergency because gas stored in LNG terminals could be more easily transported to the North of Greece and further to Bulgaria when reverse flow facilities take up its operation.

48. The public co-financing provided with a view to cover investment costs of the High Pressure Natural Gas Pipeline to Aliveri contributes to achieving the above-mentioned goals. The Commission considers therefore that the implementation of the notified project contributes to the effective performance of the internal natural gas market and to improved energy security. It can thus be concluded that the project aims at a well-defined objective of common interest.

\textit{Appropriate Instrument}

49. The market had failed to provide for a similar project to the High Pressure Natural Gas Pipeline to Aliveri on its own motion. The project generated a financial rate of return of 0.68\% and it is highly unlikely that if it had been funded purely by private funds that this low rate of return would have attracted the interest of market investors. The construction of a new pipeline to Aliveri, in order to bring a gas supply to new customers and diversify the energy mix in the region by replacing the so far exclusive use of lignite oil is primarily of interest to the TSO, namely DESFA. For any other investor, the economic risks are factors to reject such kind of investment.

50. In the absence of public financing, the project would have to be financed by way of an increase of the regulated tariff. However, this might result in a significant postponement of the execution of the notified project, which would undermine the objective of common interest in the form of security of supply. In addition, the application for co-financing of the entire project was submitted under the CSF III before the start of the construction works in 2010.

51. Consequently, the Commission considers that co-financing of the notified project from the EU Structural Funds and the Greek State budget is an appropriate instrument to accelerate investments in the gas transmission system network in Greece and thereby to fulfil the objectives of common interest, as identified above.

\textit{Incentive effect}

52. An incentive effect is present, if the aid changes the recipients' behaviour towards reaching the objective of common interest.

\textsuperscript{16} It has been submitted by the Greek authorities that the CO2 emission for the production of, 1 MWh of electricity produced from natural gas is 0,45 tn while from lignite and fuel oil is 1,4 tn and 0,7 tn respectively. Also, when combusted natural gas does not emit sulfur oxides or other pollutants (aromatic hydrocarbons, particulates, etc.).
53. The analysis presented in recital 24 above on the financial performance indicates that the notified project would have not been financially profitable without public co-financing from the EU Structural Funds and the Greek State budget. Indeed, the financial rate of return is very low and the net present value is negative, which means that the revenue generated by the project would not cover the expenses incurred. Accordingly, a rational investor would not undertake it. Even with the public co-financing, the projects financial performance is still below the regulated return on capital that the beneficiary can presently expect from its investments (10.99%, as shown in recital 20 above). It is therefore most unlikely that the beneficiary, or any hypothetical alternative investor, would carry out the project without public financial support.

54. In addition, the construction of the pipeline started in May 2010, only after DEFSA had been invited by the Managing Authority to apply for co-financing for this specific project. This shows that the beneficiary relied on granting public financing by the Greek authorities for the Aliveri pipeline.

55. In the light of the above considerations, it can be concluded that the aid to the notified project provides for the necessary incentive effect.

Proportionality

56. A state aid measure is proportionate if the measure is designed in a way that the aid as such is kept to the minimum.

57. In the case at hand, the financial analysis presented at recital 24 indicates that even with the planned aid, the project would still yield very low profitability. In this context, the aid intensity of 18.84% does not seem inadequate. In particular, the funding gap methodology (recital 22) for the determination of the planned aid amount ensures that all benefits which can be predicted for the relative long lifetime of the project are deducted from the aid and financed entirely by the operator. It follows that the planned aid amount can be seen as preventing that any excess return is achieved and proportionate to incentivise the beneficiary.

58. Moreover, the amount of planned aid will not be taken into account for the purposes of tariff remuneration and hence will not contribute directly to any revenue formation. This indicates that the aid shall not provide DESFA with significant profits on the planned infrastructure, exceeding comparable investments undertaken by the beneficiary. In addition, appropriate mechanisms are put in place to ensure that the benefits are properly calculated and any surpluses are controlled and recovered if they arise unduly (see above at recitals 25-26).

59. Bearing in mind the above, it can be concluded that the state aid granted for the notified project is proportionate, as it is limited to the minimum necessary to achieve the above-identified objective of common interest.
Distortion of competition and balancing test

60. The TSO on the market of gas transmission in Greece has been assigned by the State, therefore the aid granted for the project under assessment allowed DESFA to own and operate transmission assets that would make it more unlikely for any alternative operators to apply for a TSO concession and invest in the envisaged infrastructure on its own based on supplies from INGS referred to in recital 13, at least in the long term. Therefore the financing of the notified project, in so far as it contributes to development of existing network, has the effect of discouraging an operator from investing in new gas transmission networks.

61. However, the existence of a single national TSO is widespread in the EU. Moreover, the impacts on potential competition on the market for transmission of gas are mitigated on the downstream markets, as the beneficiary of the aid is obliged to ensure the third party access to its network for all suppliers of gas.

62. Pursuant to the Gas Directive, TSOs are required to develop the transmission system notably as regards throughput of their reciprocal interconnectors. In addition, the Member States must ensure access to the transmission system for third parties. In the context of such requirements, implementation of the notified project may be perceived as compliance with the duties imposed on Greece under these provisions. Indeed the full implementation of the provisions of the Gas Directive, notably the third party access to the gas transmission infrastructure strengthens the EU dimension of the envisaged investments.

63. Third party access rules to transmission pipelines ensure satisfactory access rights of gas companies to the gas transmission network in Greece. Accordingly, appropriate third party access provisions ensure that access to the networks is granted in a non-discriminatory manner and the notified project ensures positive effects in terms of increased interpenetration of gas systems within the internal market. Increased gas flows within the Greek transmission network which are made possible by the notified project should have a positive effect on competition on the market for gas supply. In addition, there are relatively low negative effects on potential competition from the aid, namely any crowding-out effect on a potential competitor as regards the construction (in theory) of a pipeline similar to the one planned. Indeed, for such an alternative project to make sense, any such operator would need to develop a high pressure gas transmission network alternative to the TSO's (DESFA), which is entirely hypothetical and, as shown above, as happened in none of the other Member State of the EU. It follows that these limited negative effects of the aid (on potential competition) are largely outweighed by the identifiable and significant positive effects.

64. In the context of implementation of the Gas Directive, steps have been taken to unbundle the beneficiary DESFA from its parent-company DEPA S.A. Furthermore, Greece has implemented the provisions of the Gas Directive regarding the third party access rules to transmission pipelines. Access cannot be denied if technical possibilities of transmission exist, the supplier is legally entitled to use the transmission network, there is measurement equipment in place which measures the quantity and quality of the gas supplied and the transmission of gas will not result in an increase in tariffs of transmitted gas for other suppliers. In all cases of denying the access, gas suppliers can appeal the
decision to the RAE and to the administrative courts. These provisions seem to ensure that the rights of gas companies to access the gas transmission network in Greece are satisfied.

65. The Commission also notes that the capacity allocation procedure within the gas transmission system is governed by transparent rule of first-come-first-served.

66. Therefore, it can be concluded that the possible distortions of competition and trade resulting from the State aid for the envisaged measures are limited, and that the overall balance with regard to the objective of common interest is positive.

Conclusion with regard to the compatibility of the measure

67. In light of the above, the Commission considers that the notified project financing pursues an objective of common interest in a necessary and proportionate way and thus, is compatible with the internal market on the basis of Article 107 (3) (c) TFEU.

IV. CONCLUSION

68. The Commission regrets that the Hellenic Republic put the aid for the construction of the High Pressure Natural Gas Pipeline to Aliveri into effect, in breach of Article 108(3) TFEU.

69. However, it has decided, on the basis of the foregoing assessment, to consider the aid compatible with the internal market pursuant to Article 107(3)(c) TFEU.

70. The Commission reminds the Greek authorities that, in accordance with article 108 (3) TFEU, any 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 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (now Article 108 TFEU).17

71. 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:


Your request should be sent by registered letter or fax to:
European Commission
Directorate-General for 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 correspondence.

Yours faithfully,

For the Commission

Joaquin ALMUNIA
Vice-President