



EUROPEAN COMMISSION

Brussels, 12.09.2016
C(2016) 5841 final

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Subject: Case AT.40265 – Greek horse race betting
Commission Decision rejecting the complaint
(Please quote this reference in all correspondence)

Dear Sir,

- (1) I am writing to inform you that the European Commission (the "Commission") has decided to reject your complaint against the Greek Organisation of Football Prognostics S.A. ("OPAP"), pursuant to Article 7(2) of the Commission Regulation (EC) 773/2004.¹

1. THE COMPLAINT

- (2) By letter dated 5 February 2015, you requested that the Commission launch an investigation into the granting to OPAP by the Hellenic Republic of the exclusive right to organise and conduct mutual betting on horse races in Greece (the "Concession").
- (3) You alleged in essence that the Concession infringes Article 106 TFEU in conjunction with Article 102 TFEU by providing OPAP with the basis upon which it can leverage its market power relating to the provision of horse race betting in Greece into adjacent markets.

¹ Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty, Official Journal L 123, 27.04.2004, pages 18-24.

- (4) You also alleged that OPAP infringed Article 102 TFEU by having engaged in predatory bidding so as to foreclose other competitors from the horse race betting market in Greece and possibly from adjacent markets.
- (5) The present decision (the "Decision") only concerns the alleged infringement of Article 102 TFEU (predatory bidding). The alleged infringement of Article 106 TFEU in conjunction with Article 102 TFEU is subject to a separate administrative procedure – reference number CHAP(2015)00434.

1.1. The Complainant and concerned entities

- (6) The Complaint was submitted to the European Commission by Intralot S.A., Intralot (SPV No.1) Limited and Intralot (SPV No.2) Limited (jointly the "Complainant" or "Intralot"). Intralot is a company registered under the laws of Greece which is active in the gambling sector worldwide.
- (7) OPAP is the leading operator of gambling services in Greece. OPAP has been granted the exclusive right to provide in Greece all games of chance (lottery, scratch games and numerical games) until 2030, all sports betting services until 2030 and all video lottery terminals until 2023 via "brick-and-mortar" retail outlets (i.e. the "land-based" distribution channel).
- (8) According to the Complaint, OPAP has been granted the exclusive right to provide an online version of its games of chance until 2030 and the exclusive right to operate online sports betting until 2020. However, the exclusivity of OPAP's online rights is being disputed. About 24 online gambling operators are active in Greece under a provisional license issued by the Greek State in 2012.² OPAP alleges that these companies are operating illegally in breach of its exclusive rights and the issue is currently being litigated before the national Courts.
- (9) OPAP started its online gambling operations in June 2014 and so far seems to have limited activities on the online gambling market.

1.2. The markets concerned

- (10) According to the Complaint, the Greek gambling market generated Gross Gaming Revenues ("GGR")³ of approximately EUR 5.5 billion in 2013 and entails activities such as games of chance (lottery, scratch games and numerical games), sports betting, gaming machines, horse race betting, casinos and interactive gaming/online gambling.
- (11) According to the Complaint, the Greek horse race betting activities amounted to EUR 20 million of GGR in 2012. While the Complaint states that the Greek gambling market is expected to grow, driven by the introduction of gaming machines and video lottery terminals, the diffusion of internet gaming and the growing popularity of scratch cards, it notes that horse race betting in Greece has been steadily declining since 2008, with a GGR negative growth rate of 11.2% between 2002 and 2012 and an estimated further

² Intralot is not part of these 24 operators.

³ Gross Gaming Revenues amount to the revenues minus the pay-outs to betting winners.

rate of decline of 10.2% by 2020. The horse race betting activity in Greece is expected to drop further to only EUR 7 million by 2022.

- (12) According to the Complaint, sports betting (excluding horse race betting) amounts to approximately 20% of the entire gambling market in Greece. Sports betting in Greece is however declining, with a GGR negative annual growth rate of 3.3% between 2002 and 2012 and an estimated further annual rate of decline of 3.1% by 2020. According to the Complaint, at present sports betting is primarily land-based.
- (13) According to the Complaint, online gambling in Greece forms a relatively small part of the overall Greek gambling market but is expected to grow. Based on further submissions by the Complainant, the overall Greek online gambling market amounted to EUR 200-250 million in 2014.⁴ The Commission's understanding is that online gambling includes both online sports betting and other forms of online gaming such as lottery or poker. According to the Complaint, online sports betting forms the largest part of the online gambling market in Greece.

1.3. The Concession

- (14) The Concession, which forms the focus of the Complaint, relates to the granting of the exclusive right to organise and conduct mutual betting on horse races (both land-based and online) in the Hellenic Republic for a 20-year period.
- (15) The Concession was organised by the Hellenic Republic Asset Development Fund (the "Fund"), a private law company the sole shareholder of which is the Hellenic Republic. Its mission is to sell exclusive rights and other assets of the State to maximise the State's revenues.
- (16) According to the Complaint, the successful bidder would have the right to access ODIE's 410 points of sale, of which 338 are currently in operation.⁵ The majority of these points of sale are operated under OPAP's license and form part of the distribution network of 4700 OPAP dedicated "brick-and-mortar" retail outlets. A successful bidder would be entitled to offer its products through these points of sale and to expand ODIE's network within the overall OPAP network.
- (17) On 3 March 2013 the Fund began the first tender process for the grant of the Concession (the "First Tender"). Intralot was the only company to participate in all phases of the First Tender.⁶ It submitted a binding financial offer of EUR 5.25 million on 31 July 2014. On the same day, and despite not having been pre-selected during the First Tender, the investment company Global Family Partners Ltd (the "GFP"), along with OPAP, submitted a bid of EUR 40 million to the Fund. Intralot submitted an improved financial offer of EUR 15 million on 27 August 2014, which was conditional upon Intralot being

⁴ Excluding (limited) revenues of OPAP in that market and revenues from unauthorised gaming websites. The information is based on a market study submitted by the Complainant on 8 April 2016.

⁵ ODIE is the Hellenic horse racing organisation – a State-owned organisation which held the exclusive right to operate horse race betting services until the Concession was awarded to OPAP.

⁶ France's operator of gambling services Paris Mutuel Urbain also participated to the tender procedure but ultimately declined to submit a binding offer.

able to benefit from additional streams of income for the Concession. On the same day, the Fund announced its decision to declare the First Tender null and void.

- (18) On 29 August 2014, the Fund published a second invitation to submit an offer (the "Second Tender"). The scope and terms of the Second Tender were similar to the First Tender, with the exception that the initially mandated technical qualification requiring that candidates demonstrate experience in the horse race sector was removed from the Second Tender. According to the Complaint, neither GFP nor OPAP had that experience, in contrast to Intralot.
- (19) On 23 September 2014, the Fund announced that OPAP Investments Ltd.⁷ had submitted the highest financial bid, amounting to EUR 40.5 million and was declared the provisional successful bidder. Intralot's financial bid in the Second Tender amounted to approximately EUR 13.2 million.
- (20) The Concession was signed on 24 April 2015 with Horse Races S.A., a 100% owned subsidiary of OPAP. The Concession was approved by the Hellenic Competition Commission under the Greek merger regulation on 19 May 2015. The Greek Parliament ratified the Fund's decision to award the Concession to OPAP on 23 October 2015. The Concession came into effect on 10 December 2015.
- (21) The decision to annul the First Tender was appealed by the Complainant. On 10 November 2014, the national court rejected the Complainant's applications for an injunction concerning the contested decisions of the Fund. The relevant substantive proceedings have not yet been concluded.

1.4. The alleged infringement

- (22) The Complaint alleges in essence that the abnormally high bid made by OPAP bears no economic relationship to the value of the Concession and can only be explained by OPAP's desire to foreclose competitors from the provision of horse race betting services and online sports betting services. The Complaint alleges that this amounts to an abusive practice of "predatory bidding" which infringes Article 102 TFEU. The Complaint claims that the predatory bidding was facilitated by revenues generated by OPAP in adjacent gambling markets.
- (23) The Complaint maintains that, in theory, as much as 20-25% of the Greek gambling market could become contestable in 2020 with the liberalisation of the online sports betting market.⁸ The Commission's understanding is that this claim is based on the assumption that such liberalisation will effectively occur and that following this liberalisation the land-based sports betting market will also be contestable by online operators.
- (24) The Complaint also states that a land-based presence is necessary to be able to compete on the online sports betting market. As explained in recital (16), the Concession entailed

⁷ OPAP Investments Ltd. is a subsidiary of OPAP. It participated in the tender procedure in its capacity as the leader of a consortium with GFP. For ease of reference, OPAP Investments Ltd. will be referred to as part of OPAP for the purposes of this letter.

⁸ The Complaint, Appendix 2 (white paper on selected economic issues), page 6 paragraph 7 and page 25, paragraph 86.

the right to access some of OPAP's dedicated agency retail outlets. According to the Complaint, the Concession was therefore one of the very few realistic means of accessing land-based points of sale and establishing a brand presence in order to compete on the online sports betting market in Greece as from 2020 without having to develop its own alternative retail distribution network.⁹

1.5. Procedural steps

- (25) The Complaint was lodged on 5 February 2015. On 12 May 2015, you provided further clarifications at a meeting with DG Competition in Brussels. You made additional written submissions to the Commission by email, in particular those of 24 April, 19 May, 21 May, 1 June, 18 June, 23 June, 2 July, 21 December 2015 and by letters of 21 and 29 September, 29 October, 7 and 11 December 2015 respectively.
- (26) By letter of 2 February 2016, the Commission informed you of its intention to reject the Complaint. In response, you made additional observations in your letter of 8 March 2016 (the "Reply") where you contested the Commission's provisional findings and requested that the Commission re-consider its position as regards the rejection of the Complaint. You provided additional information in your emails of 8 March, 8, 11 and 22 April 2016, 13 May and 29 July 2016.

2. THE NEED FOR THE COMMISSION TO SET PRIORITIES

- (27) The Commission is unable to pursue every alleged infringement of EU competition law which is brought to its attention. The Commission has limited resources and must therefore set priorities, in accordance with the principles set out at points 41 to 45 of the Notice on the handling of complaints¹⁰ and the case law of the European Courts.¹¹
- (28) When deciding which cases to pursue, the Commission takes various factors into account. In particular, the Commission may attach importance to the potential impact of the alleged infringement on the functioning of the internal market.¹² The Commission may also take into account whether a national court or national competition authority might be well-placed to examine the allegations made.¹³

3. ASSESSMENT OF YOUR COMPLAINT

- (29) After an assessment of your complaint, the Commission does not intend to conduct an in-depth investigation into your claims for the reasons set out below.

⁹ The Complaint, page 101, paragraphs 201 and following.

¹⁰ OJ C 101, 27.04.2004, p. 65. See also the Commission's Report on Competition Policy 2005, p. 25-27.

¹¹ Case C-119/97 *UFEX and Others v Commission*, ECLI:EU:C:1999:116, paragraphs 88 and 89; Case C-449/98P *International Express Carriers Conference (IECC) v Commission of the European Communities, La Poste, United Kingdom of Great Britain and Northern Ireland and The Post Office*, ECLI:EU:C:2001:275, paragraph 36; Case T-432/10 *Vivendi v Commission*, ECLI:EU:T:2013:538, paragraph 22.

¹² Case T-24/90 *Automec v Commission*, ECLI:EU:T:1992:97 paragraph 86.

¹³ Case T-24/90 *Automec v Commission*, ECLI:EU:T:1992:97 paragraphs 88 to 90.

3.1. The impact on the functioning of the internal market

- (30) At the outset, it should be noted that the definition of a relevant product market in the sector of gambling is unclear. Neither EU legislation, nor the Commission's decisional practice, nor the case law of the EU courts, provides a conclusive definition of the relevant market in the area of gambling. This is so especially with respect to the existence of gambling in different areas and through different means (most notably, through online and land-based gambling). For the purposes of this letter, the Commission has based its conclusions on the relevant market as set out in the Complaint, without having taken further investigative steps to verify the correctness of those proposed definitions.
- (31) The Complaint alleges that OPAP's conduct when bidding for the Concession constitutes a breach of Article 102 TFEU and has the effect of foreclosing competitors from the horse race betting market in Greece to which the Concession relates. Therefore, the Commission will first assess the impact on the functioning of the internal market of the alleged foreclosure of the horse race betting market in Greece (Section 3.1.1).
- (32) The Complaint also alleges that the granting of the Concession will have an impact on competitors' future ability to compete on the online sports betting market. For this reason, the Commission assesses whether the granting of the Concession is likely to have an impact on competitors' future ability to compete on the online sports betting market, and therefore whether the online sports betting market has to be taken into account when assessing the impact of the alleged predatory bidding conduct on the functioning of the internal market (Section 3.1.2).
- (33) Your Reply further alleges that the granting of the Concession will have an impact on competitors' ability to compete on the broader online gambling market and on the entire (online and offline) sports betting market. For this reason, the Commission assesses whether the granting of the Concession is likely to have an impact on these markets, and therefore whether these markets have to be taken into account when assessing the impact of the alleged predatory bidding on the functioning of the internal market (Section 3.1.3).
- (34) For the reasons set out below, the Commission has decided to reject your complaint on the basis that even if the alleged breach of Article 102 TFEU could be established, the conduct complained of would only have a limited impact on the functioning of the internal market.

3.1.1. The impact on the Greek horse race betting market

- (35) The Concession relates to the horse race betting market. The Complaint alleges that Intralot has been foreclosed from that market in breach of Article 102 TFEU. Therefore, the Commission first analyses whether the size of the horse race betting market is sufficient to have an impact on the functioning of the internal market.
- (36) Based on the information provided in the Complaint, the Commission is of the view that the size of the market concerned appears to be relatively limited both in terms of its geographical scope and in terms of trade volumes.
- (37) As regards the geographical scope, the effects of the alleged infringement essentially concern Greece, that is one Member State. The fact that Intralot is active abroad and a French operator participated in parts of the tender procedure, does not change that conclusion. In fact, the Complaint itself considers that gaming and betting markets

appear to be national in scope.¹⁴ While Greece forms a substantial part of the internal market, the Commission generally gives priority to cases that concern multiple Member States or that have a strong cross-border dimension.

- (38) As regards trade volumes, the Greek horse race betting market amounted to EUR 20 million of GGR in 2012 (see recital (11)), i.e. 0.36% of the broader Greek gambling market.¹⁵ Moreover, according to the Complaint, this is a declining market which is expected to drop to EUR 7 million by 2022. Since the broader Greek gambling market is expected to grow, the relative size of the declining horse race betting market (compared to the broader Greek gambling market) will become even more limited in the future.
- (39) In view of the centre of gravity of the alleged infringement being essentially confined to one Member State¹⁶ and, more importantly, of the size of the Greek horse betting market being limited and anticipated to decline further, the Commission considers that, even if established, the alleged anti-competitive conduct would only have a limited impact on the functioning of the internal market.
- (40) In your Reply, you claim that horse race betting is still important in relative terms when compared to horse race betting in other Member States. In particular, the relevant Greek GGR in 2014 was higher than the respective GGR of a number of other Member States. You also claim that the decline in horse race betting is not a Greek idiosyncrasy, but a pattern which can be found in other Member States.
- (41) The Commission is of view that these arguments do not negate its findings on the limited size of the Greek horse race betting market. The fact that the decline in horse race betting is a pattern found in other Member States rather reinforces the limited impact of the case on the functioning of the internal market.

3.1.2. The impact on the Greek online sports betting market

- (42) Whereas the Concession relates to horse race betting only, the Complaint alleges that the granting of the Concession will have an impact on competitors' ability to compete on the broader market for online sports betting if this market is liberalised in 2020. The Complainant argues that the Concession is one of the very few realistic means of accessing land-based points of sale and establishing a brand presence in order to compete on the online sports betting market in Greece as from 2020. Therefore, the Commission also analysed whether the award of the Concession – and consequently the alleged anti-competitive conduct – could have and impact on the online sports betting market.
- (43) First, the Commission notes that OPAP's current exclusive right to operate online sports betting will end in 2020. However, on the basis of the information provided in the Complaint, the Commission notes that the possibility that the right to organise and conduct online sports betting in Greece will be subject to future liberalisation, is uncertain.

¹⁴ The Complaint, page 52, paragraph 99.

¹⁵ The ratio is calculated based on the estimated GGR of the broader Greek gambling sector in 2013.

¹⁶ As regards the admissibility of this criterion, cf. Case T-5/93, Tremblay, at paragraph 65.

- (44) The Complaint acknowledges itself that *"it remains to be seen whether the Hellenic Republic will choose to maintain a (limited) level of competition on the relevant market [online betting], or to decide to grant OPAP the legal monopoly also on that market"*.¹⁷ The Complaint refers to the uncertainty inherent to the liberalisation process in several other places.¹⁸
- (45) Without taking any position prejudging the outcome of the liberalisation process, the Commission notes that the opening up of the Greek online sports betting market is still uncertain since it cannot be excluded that the Hellenic Republic could re-award the exclusive right to operate online sports betting directly to OPAP.
- (46) Your Reply alleges that liberalisation will effectively occur, based on (non-binding) statements and declarations of intent by the current Greek Government. These declarations do not modify the Commission's view that it is not possible at this point to assess whether, and if so how, the Greek government will liberalise the online sports betting market.
- (47) Second, even if it were assumed that the Greek government will liberalise the online sports betting market in Greece, the Complaint still rests on the assumption that the right to sell horse race betting services, and in particular the land-based presence and direct access to OPAP's dedicated agency retail outlets through the Concession, are of paramount importance for accessing and competing on the online sports betting market.
- (48) In this respect, the Commission notes that these OPAP dedicated agency retail outlets could not be used for the land-based selling of sports betting services since OPAP holds the exclusive right to provide all sports betting services until 2030 through a land-based presence.
- (49) The Commission also notes that, although the Complaint claims that Intralot had the intention to expand its land-based presence in the future if it were awarded the Concession, according to the Complaint, the Concession only guarantees a limited land-based presence by providing access to about 8% of the existing OPAP's dedicated agency retail outlets (see recital (16)).
- (50) In those circumstances, it is not apparent that the sale of horse betting services, which is a very narrow market (the horse betting market amounted to 0.36% of the Greek gambling market in 2012), would have contributed decisively to a potential service provider's ability to compete for the provision of online sports betting services in Greece in 2020.
- (51) This is even more so given that, even if the online sports betting market in Greece were to be liberalised, there is no indication of how the opening of such market would be organised. If, for instance, the online sports betting market is subject to a tender for exclusive rights in 2020, it would be speculative for the Commission to assess today how the grant of the Concession to OPAP (and consequently OPAP's alleged anti-competitive behaviour) would have any impact on that tender. In particular, the eligibility and award

¹⁷ Complaint, page 16, paragraph 20f, footnote 13.

¹⁸ *"Alleged opening of online sports betting market in 2020"*. Complaint, page 73 paragraph 136. *"Online betting activities which are allegedly due to be liberalised in the year 2020"*. Complaint, page 101, paragraph 202.

criteria of the tender for online sports betting are yet to be defined and may bear no relation to the award of the Concession.

- (52) In view of the foregoing assessment, the Commission considers that, on the basis of the information supplied by the Complainant, it is likely that the award of the Concession would have only a limited and hypothetical impact on the online sports betting market, which rests on assumptions that are difficult to verify. The Commission therefore maintains its assessment at recital (39) above.

3.1.3. The impact on the Greek online gambling market and on the Greek entire sports betting market

- (53) Your Reply alleges that the Commission has taken an overly narrow approach by not assessing the potential impact of OPAP's alleged conduct on the broader online gambling market in Greece.
- (54) Based on the information provided by the Complaint and further submissions (see recital (13)), the online gambling market, which entails the online sports betting market but also other forms of online gaming, amounts to 3.5-4.5% of the entire Greek gambling market.¹⁹
- (55) Even though the Commission's understanding is that the Complaint focuses on the ability to compete in the online sports betting market in 2020, the Commission also analysed whether the award of the Concession could have effects on the broader online gambling market.
- (56) The Commission has explained in the previous section why, on the basis of the information supplied by the Complaint, it is likely that the award of the Concession would have only a limited and hypothetical impact on the online sports betting market, which forms the largest part of the online gambling market.
- (57) The Commission's understanding is that the other forms of online gaming include games such as lottery or poker. The opening of some of these forms of online gaming seems uncertain since, according to the Complaint, OPAP has been granted the exclusive right to provide an online version of its games of chance, such as lottery, until 2030.
- (58) Moreover, it is not apparent that the sale of horse betting services would have contributed decisively to a potential service provider's ability to compete for the provision of these other forms of online gaming, for the same reasons as set out in Section 3.1.2 with respect to online sports betting.
- (59) Your Reply also alleges that the effects of OPAP's anti-competitive conduct extend to the majority of the relevant gaming markets in Greece, including the offline sports betting market.
- (60) In this respect, the Commission reiterates that OPAP dedicated agency retail outlets, access to which forms part of the Concession, cannot be used for the land-based sale of

¹⁹ The ratio is calculated by using the GGR of the Greek online gambling market in 2014 and the GGR of the whole Greek gambling market in 2013.

sports betting services since OPAP holds the exclusive right to provide all sports betting services until 2030 through a land-based presence.

- (61) The Complaint nevertheless alleges that, at least in theory, the whole land-based sports betting market would be contestable in 2020 (see recital (23)). The Commission's understanding is that this allegation rests on the assumption that the ability to compete in the online sports betting market would itself give the rightholder the ability to compete for the whole of the land-based sports betting market where OPAP has an exclusivity right until 2030. In other words, the Complaint alleges that, at least in theory, all consumers would be susceptible to switch from land-based sports betting to online sports betting.
- (62) The Commission notes, firstly, that even if it were assumed that a competitor's ability to compete on the online sports betting market were capable of enabling the rightholder to compete for the whole of the land-based sports betting market, for the reasons set out in section 3.1.2 above, it is likely that the award of the Concession would have only a limited and hypothetical impact on the online sports betting market, which rests on assumptions that are difficult to verify. Because access to the land-based sports betting market is predicated on access to the online sports betting market, the Commission's findings in section 3.1.2 with respect to the limited impact of the Concession on the online sports betting market applies equally to the alleged impact of the Concession on the land-based sports betting market.
- (63) Secondly, as the Complaint itself seems to indicate, the assumption that access to the online sports betting market could enable the right holder to compete for the whole of the land-based sports betting market is only theoretical.²⁰ Neither the Complaint nor the Reply demonstrate how in practice the whole land-based sports betting market would be contestable by an operator of online sports betting services in 2020. By contrast, your Reply seems to indicate that contesting the entire sports betting market through only online services is not viable by acknowledging that *"the relatively low levels of broadband penetration in Greece render the "online betting only" option for most Greek citizens not viable"*.²¹
- (64) In view of the foregoing assessment, on the basis of the information supplied by the Complainant, it is likely that the award of the Concession would have only a limited and hypothetical impact on the broader online gambling market or on the land-based sports betting market, which rests on assumptions that are difficult to verify. The Commission therefore maintains its assessment at recital (39) above.

3.2. National courts and authorities appear to be well-placed to handle the matters raised

- (65) The Commission has also decided to reject your complaint on the basis that the Greek competition authority and national courts are well placed to handle the matters raised in

²⁰ Complaint, page 103 paragraph 207 or Complaint, Appendix 2 (white paper on selected economic issues), page 25 paragraph 86. In these two paragraphs, the wording *"in theory"* and *"at least notionally"* is used with respect to the allegation that the whole land-based sports betting market would be contestable by an operator of online sports betting services.

²¹ Reply to the letter intending to reject the complaint of 8 March 2016, page 13.

your complaint, in accordance with the principles set out at points 8 and 9 of the Notice on cooperation within the Network of Competition Authorities.²²

- (66) As explained in recital (37), the centre of gravity of the case is Greece, even though Intralot is an international operator and a French operator participated to the tender procedure. In those circumstances, the Commission considers the Greek competition authority and courts to be well-placed to examine the allegations made,²³ which are essentially confined to the territory of the Hellenic Republic.
- (67) Your Reply alleges that the Greek competition authority does not have the necessary independence to examine this case, referring to recent press articles regarding proposed changes to the law impacting the Greek competition authority. It also alleges that the Greek competition authority and the Greek courts do not have the analytical framework to analyse a "predatory bidding" case which may raise complex legal and economic issues.
- (68) The Commission notes that Council Regulation (EC) No 1/2003 creates a system of parallel competences in which the Commission and the Member State's competition authorities cooperate closely in order to protect competition. The purpose of the greater participation of the Member States's competition authorities in the implementation of EU competition rules is precisely to ensure that their effective application is attained. Accordingly, the requirement to ensure the effective application of EU competition rules cannot have the effect of imposing an obligation on the Commission to verify whether the competition authority concerned has the institutional, financial and technical means available to it to enable it to accomplish the task entrusted to it by that regulation.²⁴
- (69) In any event, the Commission notes that Law 3959/2011 (the Greek Competition Act) grants the Greek competition authority with the necessary powers to gather the factual information necessary to determine whether OPAP's conduct constitutes an infringement of Article 102 TFEU and, if so, the Greek competition authority has the power effectively to bring such conduct to an end. The Greek national courts are able to review the competition authority's decision and apply Article 102 TFEU in full. The Greek national courts can make a reference for a preliminary ruling to the Court of Justice of the European Union pursuant to Article 267 TFEU concerning the compatibility of OPAP's conduct with Article 102 TFEU²⁵ and also have the power to award damages for breaches of Article 102 TFEU.²⁶ There is no indication, therefore, that the Greek authorities are not capable of protecting your rights under Article 102 TFEU in a satisfactory manner.

²² OJ C 101 of 27.4.2004, page 2.

²³ As regards the admissibility of this consideration, cf. Case T-575/93, *Koelman*, at paragraph 79.

²⁴ Judgment of the General Court in case T-201/11, *Si.mobil*, ECLI:EU:T:2014:1096, paragraphs 56 and 57.

²⁵ Case T-24/90 *Automec v Commission*, ECLI:EU:T:1992:97, paragraph 92.

²⁶ Case T-119/09 *Protégé International v Commission*, ECLI:EU:T:2012:421, paragraph 79. Article 914 of the Greek Civil Code.

4. CONCLUSION

- (70) For the reasons set out above, the Commission concludes that, even if established, the alleged anti-competitive conduct would only have a limited impact on the functioning of the internal market. In addition, the Commission considers that the national courts and authorities appear to be well-placed to handle the matters raised in the complaint with respect to Article 102 TFEU ("predatory bidding"), and are capable of protecting your rights in a satisfactory manner. Therefore, the Commission has come to the conclusion that the complaint does not display sufficient Union interest to justify further investigation. This conclusion does not prejudge whether the conduct is anti-competitive or not, in respect of which the Commission does not take a position at this time.
- (71) It has been consistently held in the case-law that the Commission is not required to establish the existence or non-existence of an infringement when deciding to reject a complaint.²⁷ In particular, the Commission considers that it does not have the obligation to verify the alleged absence of economic relation between the value of the Concession and the bid made by OPAP. According to the case-law, the fact that the Commission has not verified the information supplied cannot affect the lawfulness of a decision, if the assessment of the Union interest does not depend on the material accuracy of that information.²⁸
- (72) In view of the above considerations, the Commission, in its discretion to set priorities, has come to the conclusion that there are insufficient grounds for conducting a further investigation into the alleged infringement(s) and consequently rejects the complaint pursuant to Article 7(2) of Regulation No. 773/2004.

5. PROCEDURE

5.1. Possibility to challenge this Decision

- (73) An action may be brought against this Decision before the General Court of the European Union, in accordance with Article 263 TFEU.

5.2. Confidentiality

- (74) The Commission reserves the right to send a copy of this Decision to OPAP. Moreover, the Commission may decide to make this Decision, or a summary thereof, public on its website.²⁹ If you consider that certain parts of this Decision contain confidential information, I would be grateful if within two weeks from the date of receipt you would inform [REDACTED]. Please identify clearly the information in question and indicate why you consider it should be treated as confidential. Absent any response within the deadline, the Commission will assume that you do not consider that the Decision contains confidential information and that it can be published on the Commission's website or sent to OPAP.

²⁷ This point has been reiterated in the judgement in case C-159/08, ECLI:EU:C:2009:188, paragraphs 7 and 12.

²⁸ Cf. Case T-306/05, *Scippacercola*, ECLI:EU:T:2008:9, at paragraph 129-134.

²⁹ Paragraph 150 of the Commission notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU, OJ 2011/C 308/06.

- (75) The published version of the Decision may conceal your identity upon your request and only if this is necessary for the protection of your legitimate interests.

For the Commission

Margrethe VESTAGER
Member of the Commission

