



EUROPEAN COMMISSION
Competition DG

CASE AT.38700 – Greek lignite and electricity markets

(Only the English text is authentic)

ANTITRUST PROCEDURE

Article 106 (3) of the Treaty on the Functioning of the
European Union

Date: 10/09/2021

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Brussels, 10.9.2021
C(2021) 6595 final

PUBLIC VERSION

COMMISSION DECISION

of 10.9.2021

establishing the specific measures to correct the anti-competitive effects of the infringement identified in the Commission Decision of 5 March 2008 on the granting or maintaining in force by the Hellenic Republic of rights in favour of Public Power Corporation S.A. for extraction of lignite

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(Text with EEA relevance)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 106(3) thereof,

Having regard to the Commission Decision of 5 March 2008 on the granting or maintaining in force by the Hellenic Republic of rights in favour of Public Power Corporation S.A. for extraction of lignite¹,

Having regard to the Commission Decision of 4 August 2009 relating to a proceeding under Article 86(3) of the EC Treaty establishing the specific measures to correct the anti-competitive effects of the infringement identified in the Commission Decision of 5 March 2008 on the granting or maintaining in force by the Hellenic Republic of rights in favour of Public Power Corporation S.A. for the extraction of lignite²,

Having regard to Public Power Corporation S.A.'s applications for annulment of the two Commission Decisions cited above and to the subsequent judgments of the Union Courts, in particular the judgments of the General Court in cases T-169/08 RENV and T-421/09 RENV³, confirming in full and as final both Commission Decisions cited above,

Having regard to the Commission Decision of 17 April 2018 establishing the specific measures to correct the anti-competitive effects of the infringement identified in the Commission Decision of 5 March 2008 on the granting or maintaining in force by the Hellenic Republic of rights in favour of Public Power Corporation S.A. for extraction of lignite⁴,

Having regard to the fact that the Commission Decisions of 5 March 2008, 4 August 2009 and 17 April 2018 are final and binding and have not been implemented,

¹ Case COMP/B-1/38.700, C(2008) 824 final.

² Case COMP/38.700, C (2009) 6244 final.

³ Judgment of the General Court of 15 December 2016, *DEI v Commission*, T-169/08 RENV, ECLI:EU:T:2016:733; and judgment of the General Court of 15 December 2016, *DEI v Commission*, T-421/09 RENV, ECLI:EU:T:2016:748.

⁴ Case COMP/38.700, OJ C 245, 13.7.2018, p. 3.

Whereas:

1. SUBJECT MATTER

1.1. Infringement found in Commission Decision of 5 March 2008

- (1) In its Decision of 5 March 2008, relating to a proceeding under Article 106(3) of the Treaty on the Functioning of the European Union on the maintaining in force by the Hellenic Republic of rights in favour of Public Power Corporation S.A. ("PPC") the Commission found that the Hellenic Republic infringed Article 106(1) TFEU⁵ in conjunction with Article 102 TFEU by giving PPC privileged rights regarding the exploitation of lignite in Greece. This Decision is hereinafter referred to as "the 2008 Decision".
- (2) In the 2008 Decision, the Commission found that the Hellenic Republic had infringed Article 106(1) TFEU in conjunction with Article 102 TFEU, to the extent that it granted and maintained privileged rights to PPC for the exploitation of lignite in Greece, thereby creating inequality of opportunity between economic operators as regards access to primary fuels (i.e. lignite) for the production of electricity and enabling PPC to maintain or reinforce its dominant position on the Greek wholesale electricity market by excluding or hindering market entry by newcomers.⁶
- (3) The 2008 Decision found that PPC's competitors needed a mix of generation sources and that lignite-fired capacity would provide the flexibility they lacked in order to compete on the wholesale electricity market⁷. The 2008 Decision indicated that a divestment of around 40% of lignite reserves or lignite-fired generation capacity (representing at least one third of baseload production) was the minimum target to allow PPC's competitors to exercise competitive pressure on PPC.⁸ The Commission also indicated non exhaustively and on an indicative basis some examples of concrete measures that could be adopted by the Hellenic Republic, cumulatively or separately, to remove the effects of the infringement.⁹
- (4) Following receipt of the 2008 Decision, the Hellenic Republic communicated a number of measures it intended to adopt with a view to ensuring access by competitors of PPC to lignite and ultimately to lignite-fired generation in the Greek electricity market. Those measures were made binding by Commission Decision of 4 August 2009 ("the 2009 Decision"), establishing the specific measures to correct the anti-competitive effects of the infringement identified in the 2008 Decision on the

⁵ With effect from 1 December 2009, Articles 81, 82 and 86 of the EC Treaty have become Articles 101, 102, and 106 respectively, of the Treaty on the Functioning of the European Union ("TFEU"). The three sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101, 102 and 106 of the TFEU should be understood as references to Articles 81, 82 and 86, respectively, of the EC Treaty where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this Decision.

⁶ See recital 189 of the 2008 Decision.

⁷ See recital 215 of the 2008 Decision.

⁸ See footnote 255 of the 2008 Decision.

⁹ See recital 248 of the 2008 Decision.

granting or maintaining in force by the Hellenic Republic of rights in favour of PPC for extraction of lignite.¹⁰

- (5) However, PPC submitted applications to the Court of Justice of the European Union seeking the annulment of the 2008 and 2009 Decisions, and the measures formally accepted by the Commission in the latter decision were not implemented by the Hellenic Republic.

1.2. The Union Courts judgments and the Remedies made binding by Commission Decision of 17 April 2018

1.2.1. The judgments of the Union Courts

- (6) By judgments of 15 December 2016 (the “December 2016 judgments”), the General Court of the European Union upheld the 2008 Decision and the 2009 Decision.¹¹
- (7) The General Court confirmed the existence of inequality of opportunity that PPC’s quasi-exclusive rights for the exploitation of lignite created against its competitors.¹² The General Court ascertained that PPC remained the only undertaking that could exploit significant volumes of lignite¹³ and that, at the same time, its competitors were left without any lignite supply options and, as a result, they were unable to compete with PPC on an equal footing in the Greek wholesale electricity market. In order to eliminate such a disparity between PPC and its competitors, the General Court confirmed that PPC’s competitors should be given access to sufficient quantities of lignite and capacity of power generation from lignite.¹⁴
- (8) The General Court also confirmed that granting PPC’s competitors access to at least 40% of the total exploitable lignite reserves was necessary and adequate to reach this goal.¹⁵ At the same time, the General Court confirmed the proportionate character of the 40% target, as PPC would continue to have access to approximately 60% of the exploitable lignite reserves in Greece, thus remaining by far the largest electricity operator in Greece.¹⁶
- (9) The December 2016 judgments have not been appealed and are now final and binding. The Hellenic Republic has therefore to implement structural measures to address the competition concerns arising from the 2008 Decision.

¹⁰ The scope of those measures is set out in detail in the 2009 Decision, which made binding on the Hellenic Republic a commitment to grant exploitation rights on the lignite deposits of Drama, Elassona, Vegora and Vevi through tender procedures to entities other than PPC.

¹¹ Case T-169/08 RENV *DEI v Commission*, ECLI:EU:T:2016:733, and Case T-421/09 RENV *DEI v Commission*, ECLI:EU:T:2016:748.

¹² Case T-169/08 RENV *DEI v Commission*, paragraphs 118-131, 143 and 150; and Case T-421/09 RENV *DEI/Commission*, paragraphs 85-86 and 150.

¹³ Entities other than PPC only have exploration and exploitation rights on a limited number of small and medium-sized public lignite deposits or privately own a limited number of lignite deposits. These entities are not active on the Greek wholesale electricity market and generally have lignite supply contracts with PPC.

¹⁴ Case T-421/09 RENV *DEI v Commission*, paragraph 150.

¹⁵ *Ibid*, paragraphs 157 and 161-162; see also Case T-169/08 RENV *DEI v Commission*, paragraphs 242-245.

¹⁶ *Ibid*.

1.2.2. *The Remedies made binding by Commission Decision of 17 April 2018*

- (10) On 17 April 2018, the Commission adopted a new decision that made binding the remedies submitted by the Hellenic Republic on 19 January 2018 (the “2018 Decision”). Those remedies took into account feedback from a market consultation on the Hellenic Republic’s initial remedy proposal.¹⁷
- (11) Under the 2018 Decision, the Hellenic Republic committed to ensure that PPC would divest two of its lignite-fired plants: the Megalopoli Divestment Business and the Meliti Divestment Business.¹⁸
- (12) However, the 2018 Decision was never implemented because the divestment process failed. As a result, the competition issues originally identified in the 2008 Decision have not been solved. In this context, the Greek authorities resumed discussions with the Commission in the second half of 2019 to identify remedies capable of correcting the anti-competitive effects of the infringement established by the 2008 Decision.

2. CHANGES IN THE GREEK POWER MARKET

2.1. Developments in the Greek energy market since 2008

- (13) The 2008 Decision specifically allowed for a revision of the corrective measures in order to take into account the changes in the Greek (and Union) CO₂ emission reduction policy.¹⁹ More generally, the Greek power market has changed significantly between 2008 and today. While this had already taken place by 2018 to some extent, it has changed even further since then.
- (14) First, while PPC’s wholesale market share has fluctuated it has remained at quite high levels. From 2009 to 2018, PPC’s wholesale market share decreased to an annual average of 72%, and has continued decreasing to an annual average below 50% in 2020.²⁰
- (15) Second, lignite-fired generation itself has decreased significantly in importance and is now far from being the predominant energy source it used to be in Greece’s electricity supply. In 2018, the use of lignite was still significant, as over one third of all electricity in Greece was generated using lignite as a fuel. However, due to the increase in the costs for emission allowances over the last years,²¹ lignite has lost its competitive cost position: in 2020, its share in the total generation mix was only 13.3%²² and it is very unlikely to return to previous levels.²³

¹⁷ The Hellenic Republic submitted the initial set of remedies to the Commission on 1 December 2017.

¹⁸ Together, the Divestment Businesses represented up to 1220 MW of lignite-fired capacity and, on average, up to 35.6% of PPC’s total forecasted lignite-fired capacity over the period 2018-2035.

¹⁹ See recital (249) of the 2008 Decision.

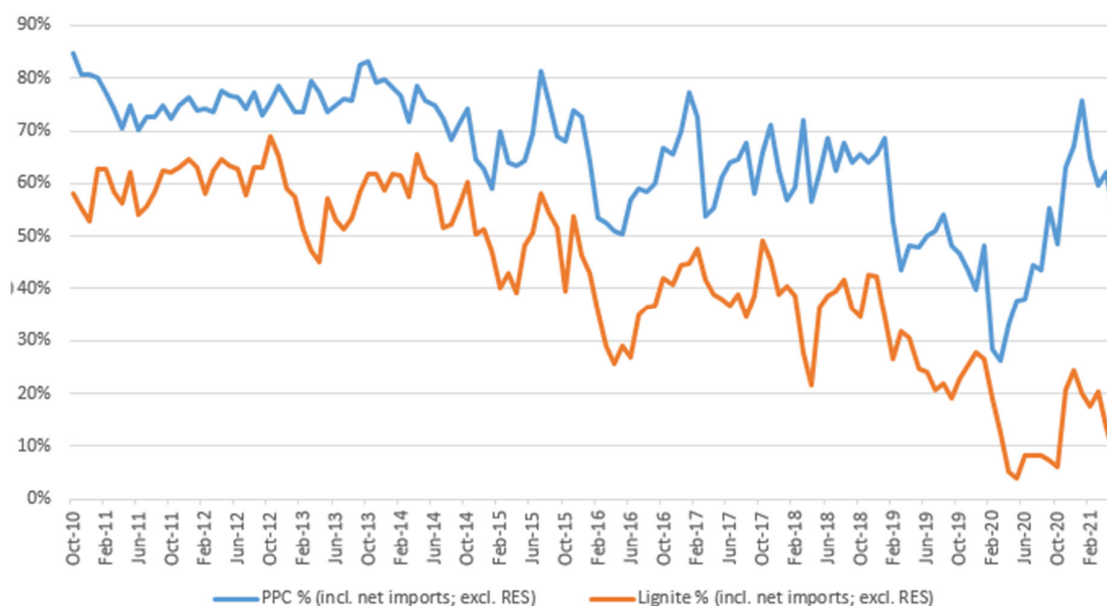
²⁰ Source: Commission’s calculation on the basis of monthly market reports issued by the Hellenic Energy Exchange (HEEx).

²¹ Emission allowances constitute a significant cost component in the production of electricity generated with fossil fuels, and have gone up significantly, from €14,3 per million tonnes (“mt”) on 2 August 2010, to €17,6/mt on 2 August 2018, and €54,7/mt on 2 August 2021 (European Energy Exchange European Union Allowance spot). To generate the same amount of power, gas generation usually requires around half the emission certificates required by lignite generation.

²² Including imports, excluding Renewable energy sources (“RES”). RES are excluded, as these are considered not to compete directly, since RES in Greece operate outside the market (i.e., they are always

- (16) The decrease in PPC's wholesale market share and in the share of lignite generation in Greece's electricity supply are illustrated in Figure 1. The blue trendline shows that PPC's wholesale market share decreased significantly in particular after 2018 (although it briefly picked up again after the launch of a new market model in late 2020²⁴) and has been more volatile since then. The share of lignite generation in Greece's electricity supply, in orange, shows a steady decline which further accelerated in 2020: from just below 60% in October 2010 to less than 10% in February 2021.

Figure 1 – PPC's wholesale market share (blue), and share of lignite generation in Greece's electricity mix (orange)²⁵



- (17) At retail level, PPC still has a market share above 60%. As illustrated in Figure 2, PPC has a retail market share of 63.81%, followed by Mytilineos (8.23%), Heron (7.26%), NRG Trading House (4.53%), and Elpedison (4.51%). Watt & Volt, the largest non-integrated supplier, has a market share of only 2.51%.

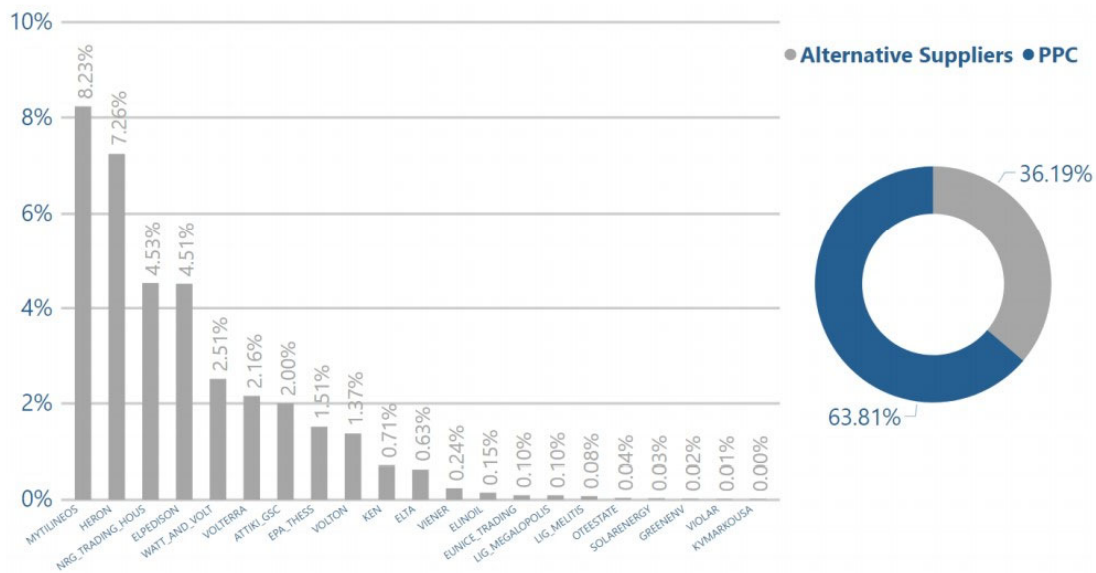
run when available) and so are not in direct competition with fossil fuels. Source of data: Commission's calculation on the basis of monthly market reports issued by HEnEx.

²³ There can, however, be exceptional and temporary situations where lignite is still called upon. For example, in August 2021 Greece experienced extreme heatwaves which required an increased usage of lignite-fired generation. However, these situations do not change lignite-fired generation's competitive position overall. While it is not excluded that lignite-fired production might be called upon in the near future to meet system demands in some scenarios, the lignite-fired plants are foreseen to be decommissioned and only operated in a strategic reserve (pending State aid approval) where they can be called upon to produce solely by the transmission operator, and can thus not be used by PPC to participate commercially in the Greek wholesale electricity market.

²⁴ In November 2020, Greece implemented a series of significant regulatory changes to align its electricity markets with the target model for a single European market for electricity. The target model envisages the creation and structuring of four wholesale electricity markets (which would in turn be coupled into single European markets): the day-ahead market, the intraday market, the forward market, and the balancing market.

²⁵ Data on the graph shown covers the period up until May 2021, and is on the basis of electricity generated in Greece, plus net imports excluding RES (as explained in footnote 22).

Figure 2 – Retail market shares (June 2021)²⁶



- (18) Therefore, despite some changes in the market, PPC remains a dominant incumbent player at both the wholesale and retail level in the Greek power sector, with potential or actual competitors having failed to enter or expand significantly since 2008/2009.

2.2. Lignite decommissioning plan and the strategic reserve

- (19) At the end of 2019, through a legislative act of its Governmental Economic Policy Council, the Hellenic Republic ratified its National Energy and Climate Plan.²⁷ During the discussions between the Greek authorities and the European Commission in the second half of 2019, Greece presented its decommissioning plan (included in the National Energy and Climate plan) which involved the closure of all existing lignite-fired plants by, initially, 2028 and now tentatively by 2023.²⁸

²⁶ Source: Monthly market report issued by HEnEx, June 2021.

²⁷ Government Gazette B' 4893/31.12.2019 available online at:

https://www.depa.gr/wp-content/uploads/2020/06/fek-v-4893_31.12.2019-kyrosi-toy-esek.pdf

²⁸ The decommissioning plan involves decommissioning plants from commercial operations under the following schedule: Kardia 1-2 (275 MW, 275MW) by 2019, Amyntaio 1-2 (273 MW, 273 MW) by 2020, Kardia 3 (280 MW) and Kardia 4 (280 MW) by 2021; Ag. Dimitrios 1-4 (274 MW, 274 MW, 283 MW, 283 MW) and Megalopoli 3 (255 MW) by 2022; Ag. Dimitrios 5 (342 MW), Meliti (289 MW) and Megalopoli 4 (256 MW) by 2023 (Government Gazette B' 4893/31.12.2019, National Energy and Climate Plan, table 14, page 55679). In parallel, PPC is constructing a new power plant, Ptolemaida V, which is expected to start commercial operation in 2023. Ptolemaida V is envisaged to run on lignite for the first one or two years and then be converted into a gas-fired power plant (with infrastructure enabling also the use of hydrogen) to become operational by 2025 (Market Reform Plan for Greece, Version 8, July 29, 2021).

- (20) In late 2020 the Hellenic Republic also announced the Just Transition Master Plan²⁹ setting out a roadmap for the post-lignite era, which will be monitored by a special Governmental Committee.³⁰
- (21) At the time of this Decision, the Hellenic Republic is planning to put several of PPC's lignite plants into a strategic reserve ("SR"), for which it has sought State aid approval.³¹
- (22) The removal of lignite-fired electricity generation from Greece's electricity mix would alleviate the competition concerns identified in the 2008 Decision. In addition, it will enable Greece to make progress as regards the green transition, and is fully in line with the objectives of the Commission's Green Deal in terms of moving away from polluting fossil fuel energy sources towards more sustainable power generation.

3. COMPETITION ON THE GREEK WHOLESALE ELECTRICITY MARKET AND RELEVANCE OF LIGNITE-FIRED GENERATION

- (23) The distortion of competition that the Commission found in the 2008 Decision has so far not been remedied. The inequality of opportunity due to PPC's privileged access to lignite has contributed to a distortion of competition that also reinforced PPC's position in Greek retail markets, where PPC remains dominant today.
- (24) Another advantage that PPC has derived from operating lignite-fired generation is that this type of generation can provide a stable baseload, which is used to hedge against price volatility.³² This is required to compete in the Greek electricity markets because, before the forward market in Greece is fully developed, electricity suppliers will continue to depend, to a large extent, on having production capacity to hedge their position from price volatility.³³
- (25) This advantage, in so far as it stems from its exclusive access to lignite, is diminishing in line with the decreased usage of lignite-fired power in Greece, and will cease once Greece's lignite-fired power plants are decommissioned, as foreseen by the Hellenic Republic. However, until the full decommissioning takes place, PPC still enjoys privileged access to lignite and the resulting hedging advantage.

²⁹ Just Transition Master Plan – Developmental transition of lignite areas, 11 December 2020, available online at: https://www.sdam.gr/sites/default/files/2020-12/%CE%95%CF%80%CE%B9%CE%BA%CE%B1%CE%B9%CF%81%CE%BF%CF%80%CE%BF%CE%B9%CE%B7%CE%BC%CE%AD%CE%BD%CE%BF%20%CE%A3%CE%94%CE%91%CE%9C_11.12.2020_0.pdf, page 2.

³⁰ Government Gazette A' 213/24.12.2019, available online at: https://www.kodiko.gr/nomologia/download_fek?f=fek/2019/a/fek_a_213_2019.pdf&t=e2be66a84a813701cd78829ae47f5803.

³¹ According to the Greek energy regulator, the national electricity grid will not be able to absorb the loss of capacity resulting from the closure of all PPC's lignite-fired units before 2022.

³² Retailers (i.e. those supplying consumers) typically have to offer a fixed price to their customers over a relatively long-term period. However, these retailers have to purchase energy from the wholesale market, which is predominantly a day-ahead spot market in Greece. Therefore, retailers are exposed to the volatility of the price at which they source electricity. A retailer owning generation capacity is hedged against such price volatility, as a price increase in wholesale electricity is then not only a cost for its retail activity, but also an income for its generation business.

³³ With forward products, electricity is delivered in a future timeframe at a predetermined price. Without having access to such products, retailers are not covered against price volatility in the Greek wholesale market where they have to buy the electricity they sell to consumers.

Therefore, remedies are required to address the competition concerns identified in the 2008 Decision to the extent they apply today.

4. THE REMEDIES PROPOSED BY THE HELLENIC REPUBLIC

- (26) Following the failure to divest the Megalopoli and Meliti Divestment Businesses as foreseen under the 2018 Decision, and the subsequent adoption by the Hellenic Republic of a plan to decommission all existing lignite-fired power plants by 2023, the Hellenic Republic submitted a new remedies proposal to the Commission on 1 February 2021. The rationale for the new remedies proposal is based on the need to adjust the corrective measures to the new market reality as described in Section 2.1 of this Decision, and, in particular, on the fact that under the Hellenic Republic's new environmental policy as described in Section 2.2 of this Decision, it will soon not be possible to operate lignite-fired power plants.

4.1. The Initial Remedies offered by the Hellenic Republic on 1 February 2021

4.1.1. Description of Initial Remedies

- (27) The Hellenic Republic's remedies proposal of 1 February 2021 (the "Initial Remedies") focused on providing electricity to PPC's competitors. Unlike the remedies foreseen in the 2018 Decision, this proposal no longer included the sale of lignite-fired power plants to PPC's competitors. By releasing this electricity through Power Purchasing Agreements³⁴ ("PPAs") instead of through the divestiture of lignite-fired power plants, buyers would not have to incur the costs that would have arisen from the intended decommissioning of the plants.
- (28) Under the Initial Remedies, PPC would have been obliged to sell electricity to its competitors through PPAs for a specific quarter or year in the future, at a pre-determined price and quantity.
- (29) The total quantity to be sold by PPC would be calculated as a share of its lignite-fired generation in the quarter of the preceding year. In the first year, volumes to be sold would amount to 50% of PPC's lignite based output in the preceding year and to 40% in subsequent periods. While this quantity would be calculated on the basis of lignite-fired production, there was no requirement for PPC to supply the volumes under the Initial Remedies using lignite-fired production.
- (30) The Initial Remedies foresaw that the Greek Regulatory Authority for Energy ("RAE") would have been responsible for the pricing and the sales process of the PPAs. In particular, RAE would have had to publish a pricelist and issue calls for expression of interest for the volumes to be sold.
- (31) In order to determine the pricelist, RAE would have had to refer to the average price of future contracts cleared in the Hellenic Energy Exchange ("HEEx") in the month preceding the issuance of the calls for expression of interest, and discount this price by a factor corresponding to the estimated volatility of the price on the Greek day-ahead market over the course of the term of the PPAs.

³⁴ PPAs are contracts for the sale of electricity over a certain duration, where the seller is typically a producer of electricity.

4.1.2. *The results of the February 2021 market test*

- (32) On 2 February 2021, the Commission launched a consultation with market participants and potentially interested third parties through a questionnaire regarding the Initial Remedies (the "Initial Market Test"). The Commission's questionnaire contained questions aimed at assessing whether the Initial Remedies were capable of increasing, under the new market circumstances, the competitive pressure brought by PPC's actual or potential competitors in the Greek wholesale market.
- (33) The Commission sent the questionnaire to more than 40 market participants active in the Greek wholesale and retail market, as well as potential entrants.³⁵ The Commission received 19 responses.
- (34) Respondents to the Initial Market Test recognised that access to lignite-fired production no longer provided PPC with the same degree of competitive advantage as when the 2008 Decision was adopted, and explained that this was mainly due to the cost of CO₂ emission rights which had significantly increased since then.
- (35) In the Initial Market Test, a large number of respondents raised concerns that the method for determining the price of the PPAs as foreseen by the Initial Remedies was not sufficiently clear and would have threatened the sales process as a whole. In particular, many respondents considered that RAE was not in a position to determine what the price of the PPAs should be. While the Initial Remedies foresaw guidance on how to determine the price, respondents considered that this was not transparent enough and would have left RAE with too large a degree of discretion.
- (36) Some respondents raised concerns that the Initial Remedies could have led to a prolonged use of lignite-fired generation. While lignite-fired plants would no longer have the competitive cost position that would justify them to be selected to operate on the market, for technical reasons the Initial Remedies would ostensibly have given priority to PPC to operate its lignite plants over alternative plants.
- (37) Finally, some respondents also considered that the physical delivery of electricity following the execution of bilaterally traded PPAs would have had the effect of reducing liquidity from the day-ahead market, where most wholesale electricity is traded. Being able to purchase wholesale electricity via the PPAs, buyers of wholesale electricity would have had a reduced need to purchase on the day-ahead market, which would have made it less useful as a price marker for Greek wholesale power supply.

4.2. **The Revised Remedies submitted by the Hellenic Republic on 31 May 2021**

- (38) The Commission informed the Hellenic Republic of the observations received in response to the Initial Market Test on 29 March 2021.
- (39) The Hellenic Republic proposed a new set of remedies on 31 May 2021 (the "Revised Remedies"). While broadly maintaining the approach of the Initial Remedies in terms of PPC selling electricity to its competitors, the Revised Remedies included a number of modifications and clarifications aimed at improving the effectiveness of the proposed measures.

³⁵ The market participants were suggested by the Hellenic Republic in order to gather a variety of different views and cover a large spectrum of interests and expertise.

4.2.1. *Description of the Revised Remedies*

- (40) Under the Revised Remedies, PPC would no longer sell to its competitors through PPAs but would instead be obliged to sell the agreed volumes of wholesale electricity to its competitors in the form of quarterly products on the forward markets on HEnEx or on the European Energy Exchange (“EEX”).
- (41) Specifically, in order to ensure that the foreseen volumes are eventually sold to competitors, PPC would be required to hold a net seller’s position, meaning that its sales should exceed its purchases by the volumes foreseen in the remedy proposal.³⁶
- (42) As a result, the increased volumes of wholesale electricity available in the Greek forward markets would allow PPC’s competitors to hedge against price volatility on the day-ahead market, where most wholesale electricity is traded. In doing so, the Revised Remedies would facilitate rival electricity providers’ ability to compete on the Greek retail market, where customers expect to be offered a fixed price for a relatively long (e.g. yearly) term.
- (43) By requiring PPC to sell a certain volume of wholesale electricity and leaving it discretion as regards the price, the Revised Remedies no longer require the regulator to determine the price, which was a criticism expressed by respondents to the Initial Market Test (see recital (35)).
- (44) Under the timeline foreseen in the Revised Remedies, PPC would have to obtain a net seller’s position for the delivery of electricity in the fourth quarter of 2021 by 28 September 2021. Subsequently, and until the remedies lapse, it is required to hold a net seller’s position in the last quarter of each calendar year of contracts for the delivery of electricity in the four following quarters (i.e., by Q4 of year 1 it must hold a net seller’s position for Q1, Q2, Q3 and Q4 of year 2). This would allow purchasers to hedge against price volatility significantly in advance.
- (45) Similarly to the Initial Remedies, the volumes which PPC would have to sell to its competitors would be calculated based on PPC’s lignite-fired production in the preceding period.³⁷ While this quantity would be calculated on the basis of lignite-fired production, there is no requirement for PPC to supply the volumes under the Revised Remedies using lignite-fired production (as in the Initial Remedies proposal). This was made explicit in the text of the Revised Remedies, in response to comments by respondents to the Initial Market test on this matter (see recital (36)).
- (46) Finally, PPC and the buyers can choose whether the contracts sold by PPC would be delivered physically or financially. Market participants are therefore able to enjoy the hedging opportunities of the Revised Remedies while continuing to procure wholesale electricity only from the day-ahead market. The financial settlement would compensate market participants for the difference between the price paid on the day-ahead market and the price fixed for the relevant period of the traded contract. This addresses the criticism expressed by respondents to the Initial Market Test (see recital (37)) that the Initial Remedies would have diverted liquidity from the day-ahead market.

³⁶ In other words, PPC would remain free to purchase volumes on the forward markets (provided that its sales outweigh those purchases).

³⁷ Lignite-fired production from plants that are no longer commercially active do not count for the calculation of the relevant volumes.

- (47) The Revised Remedies would be in force until the end of the calendar quarter when the last of the existing lignite-fired power plants is commercially decommissioned,³⁸ or, at the latest, by 31 December 2024.
- 4.2.2. *The results of the July 2021 market test*
- (48) The Commission launched a market test on 5 July 2021 (the “Market Test”) on the Revised Remedies. The Commission's questionnaire contained questions aimed at assessing whether the sharing of PPC's lignite-based production by means of its net seller's position on the Greek forward market would increase the competitive pressure of PPC's actual or potential competitors in the Greek wholesale market.
- (49) The Commission sent the questionnaire to more than 40 market participants and potential entrants on the Greek wholesale and retail markets.³⁹ The Commission received 18 responses.
- (50) Overall, the feedback received on the Revised Remedies was broadly positive. Most respondents that took a position considered that the Revised Remedies would improve liquidity on the Greek forward market. Respondents also indicated that access to liquid Greek forward markets is very important, in particular to hedge against price volatility. In addition, respondents stated that a liquid forward market is important for price discovery, meaning that functioning forward markets provide market participants with an indication of where prices in the spot markets would be moving to. Furthermore, most respondents stated that they would be interested in purchasing the volumes to be sold by PPC, if they were priced competitively.
- (51) Finally, a number of respondents also submitted comments that aimed at improving the effectiveness of the Revised Remedies. In particular, the three main points raised by the Market Test were the following:
- (1) Respondents raised the potential concern that PPC would not comply with the Revised Remedies, in particular by pricing too high and thereby not attaining the sales volumes required to achieve a net seller's position.
 - (2) Some respondents indicated that it would be important to verify whether PPC had already obtained any position in EEX. The concern was that, to circumvent the Revised Remedies, PPC could buy the same volumes on the market before it has an obligation to obtain a net seller's position, after which it could comply with its obligation by selling back those volumes, without having to take a real net seller's position. Respondents argued that the Revised Remedies should discard any pre-existing position that PPC may have taken at the moment the Revised Remedies enter into force.
 - (3) It was indicated by some respondents that the start and end dates of the time frames in which PPC would have to hold a net seller's position under the Revised Remedies do not necessarily correspond to the days on which trading is possible on HEnEx and EEX.

³⁸ A plant is considered to be commercially decommissioned when it is (i) physically decommissioned, (ii) converted into a gas-fired generation plant, or (iii) when it is operating in a strategic reserve.

³⁹ The same addressees invited to respond to the Initial Market Test, with the addition of EEX.

- (52) Subsequently, the Commission finalised its assessment of the potential pro-competitive effects arising from the Revised Remedies and informed the Hellenic Republic of the observations received from the Market Test.

5. THE REMEDIES OF 1 SEPTEMBER 2021

5.1. Description of the Remedies of 1 September 2021

- (53) On 1 September 2021, the Hellenic Republic submitted an amended set of remedies addressing the issues identified in the Market Test and raised by the Commission (the “Remedies” and attached in the Annex).
- (54) The Remedies contain a number of modifications and clarifications aimed at improving the effectiveness of the proposed measures. These modifications consist in particular of the following:
- (1) the Remedies further strengthen the obligation for PPC to sell the necessary future contracts by imposing a best efforts standard. Specifically, the Remedies mandate that PPC achieve its net seller’s position with the only condition being that it must not sell at a price below [...] * when fulfilling this obligation. Should PPC not achieve its net seller’s position despite making best efforts to [...], the Remedies stipulate that any unsold volumes will be rolled over to the same quarter in the subsequent year. [...];
 - (2) ensuring that PPC will not circumvent the Remedies by obtaining a net seller’s position prior to the adoption of the Commission’s Decision; and
 - (3) aligning the timeframe in which PPC must attain a net seller’s position with the actual trading periods on HEnEx and EEX and ensuring the timeframes allow the net seller position to be correctly calculated.

5.2. Assessment of the Remedies

- (55) As no remedy was implemented to address the infringement found in the 2008 Decision, PPC remains the sole operator of lignite plants and the concerns found in the 2008 Decision and confirmed by the General Court remained unaddressed.
- (56) As explained in Section 6, the Commission retained the right to adopt a further Decision pursuant to Article 106 TFEU with a view to establishing specific measures to correct the anti-competitive effects of the infringement established by the 2008 Decision.⁴⁰
- (57) The Remedies should therefore address the issues arising from the 2008 Decision taking into consideration the Hellenic Republic’s plan to commercially decommission all existing lignite units by 2023, and other developments set out in Section 2 of this Decision.
- (58) The Remedies need to be effective and proportionate.

5.2.1. Effectiveness of the Remedies

- (59) Remedies should be effective in addressing the competition concerns identified by the Commission in the 2008 Decision, to the extent that these competition concerns

* *Business Secret*

⁴⁰ 2008 Decision, recital (252), and 2009 Decision, recital (5).

are still relevant today. As set out in Section 2 of this Decision, the inequality of opportunity enjoyed by PPC at the time of the 2008 Decision has diminished in line with the decreased usage of lignite-fired electricity generation in Greece.

- (60) Under the Remedies, PPC will be required to sell wholesale electricity volumes to other participants in the forward markets, allowing its competitors to have access to electricity on a longer term basis, as would have been the case following the sale of PPC's two lignite units under the 2018 Decision. The wholesale electricity volumes that would be released on the market under the Remedies, namely 40-50% of PPC's lignite-fired output in the preceding period, are in line with the targets set out in the 2008 Decision. In this regard, the 2008 Decision indicated that a divestment of around 40% of lignite reserves or lignite-fired generation capacity was the minimum target to allow PPC's competitors to exercise competitive pressure.⁴¹ This was also confirmed by the General Court.⁴²
- (61) By linking the amount of electricity to be released on the market to PPC's actual lignite-fired output, the Remedies address the competition concerns identified in the 2008 Decision while taking into account the diminished importance of lignite-fired generation in Greece. Furthermore, the Remedies mimic to some extent the advantage that PPC enjoys as a vertically integrated producer (being a supplier in both retail and wholesale markets), and seek to address the competitive advantage that PPC has enjoyed in the Greek retail markets as a result of its exclusive access to lignite.
- (62) More specifically, consumers of retail electricity expect to be offered a fixed price over a relatively long time period (e.g. a year). Retailers that do not have their own generation assets⁴³ must source their electricity on the Greek day-ahead market, which is the predominant market where electricity is traded. This exposes them to the price fluctuations of that market.⁴⁴ While the Remedies concern the sale of quarterly products, the timeline foresees that products for the first three quarters of a given year are sold in the last quarter of the preceding year and products for the last quarter of given year are sold in the first quarter of the same year. This gives potential purchasers on the wholesale market the possibility to fix their prices in advance for most of the following calendar year.
- (63) Furthermore, to the extent that the Remedies would be successful in developing the forward markets (by attracting liquidity), retailers could become less dependent on sourcing on the day-ahead market for their needs, allowing them to more easily use the forward markets to hedge against price volatility on the day-ahead market and compete more actively in the retail market.

⁴¹ Footnote 255 of the 2008 Decision.

⁴² Case T-421/09 RENV DEI v Commission, paragraphs 161-162.

⁴³ As set out in the 2008 Decision, PPC's exclusive access to lignite substantially increased barriers that deterred entry to the Greek wholesale market, see for instance recitals 189 and 228 of the 2008 Decision.

⁴⁴ A retailer with a generation capacity that is equivalent to its retail output is hedged against such price fluctuations. When prices in the day-ahead market increase, a retailer's costs to source are increased, but these are offset by a retailer's increased revenue from selling on the day-ahead market at increased prices. The exposure to price volatility is not only borne by non-integrated retailers, but also by retailers whose retail presence exceeds their presence in the wholesale market.

- (64) In response to concerns raised by respondents that the Remedies could lead to a prolonged use of lignite-fired generation, it should be pointed out that, while the volumes that PPC has to sell under the Remedies are calculated on the basis of PPC's lignite production in a preceding period, PPC is not obliged to supply its competitors using its lignite-fired generation plants. Furthermore, while the Remedies create an obligation for PPC to sell wholesale electricity to its competitors whereby the volumes it has to sell are linked to its lignite output, they also create a disincentive for further lignite-fired generation. This is because any lignite-fired electricity generation by PPC will oblige it to release to competitors an electricity amount equivalent to 40% of the electricity generated by lignite units, thereby diminishing its own capacity for hedging against price fluctuations.
- (65) Regarding the potential reduction of liquidity on the day-ahead market, as raised by respondents to the Initial Market Test, to the extent that the concern is about volumes being taken out of traded markets and into bilateral PPAs, this is fully addressed in the Remedies since trading will now happen in organised exchanges and no longer through bilateral agreements. In addition, forward markets have been introduced in Greece only recently, in November 2020. The integration of a working forward market in the Greek power market may mean that in the future, wholesale trading of electricity on spot markets will decrease.
- (66) Furthermore, the contracts that PPC has to sell under the Remedies can be delivered either physically or financially. Therefore, buyers can continue to source their needs from the day-ahead market and opt to have the contracts with PPC settled financially. Such financial settlement effectively compensates the buyers for the difference between the price paid on the day-ahead market and the price fixed in their contracts with PPC.
- (67) Finally, the Commission considered the issue of Ptolemaida V, a PPC power plant that is still under construction. Ptolemaida V is intended to ultimately be operated as a gas-fired power plant, but was originally designed as, and is being built to operate as, a lignite-fired power plant prior to its conversion to gas. At the time of this Decision, it is still unclear when the plant will start operating, although it is expected to begin operating in 2022.
- (68) If Ptolemaida V were to start generating power only after the existing lignite-fired plants are decommissioned or after 31 December 2024 and this Decision is no longer in force, it would not be covered by the Remedies. This will not impact the effectiveness of the Remedies, taking into account that: (i) the Ptolemaida V plant will be converted to gas (currently planned for 2025) so this plant will also be decommissioned along with all the other lignite-fired power plants in the coming years; (ii) the Ptolemaida V plant is not expected to give PPC any significant cost advantage, with lignite becoming increasingly marginalised by the high costs of emission allowances; (iii) Ptolemaida V's nominal capacity is 660 MW⁴⁵, significantly less than the lignite-fired power plants to be decommissioned, which have 2,816 MW of combined nominal capacity.
- (69) The Commission therefore considers that the Remedies are appropriate and sufficient and are therefore effective to address the competition concerns identified in the 2008

⁴⁵ Its production capacity could still be increased to 1 000 MW, although it is understood that this will be part of the conversion of the unit to a gas-fired power plant.

Decision to the extent these still apply today, and should replace the Remedies set out in the 2018 Decision, taking into account developments in the Greek energy market since 2008 and, in particular, the Hellenic Republic's plan to decommission all lignite-fired generation.

5.2.2. *Proportionality of the Remedies*

- (70) In line with the general principle of proportionality, the proposed remedies should not exceed what is appropriate and necessary for attaining the desired outcome.⁴⁶
- (71) In the December 2016 judgements, the General Court clarified that the 2008 Decision did not require the Hellenic Republic to adopt any specific measure and ultimately left it to the Hellenic Republic to choose the measures to be adopted.⁴⁷ The Hellenic Republic has to comply with the 2008 Decision and has chosen to revise the 2018 Remedies due to their failed implementation and to its new lignite decommissioning plan.
- (72) The legislative and regulatory measures that the Hellenic Republic has undertaken to adopt in relation to the Remedies are necessary and appropriate to allow the sale of future contracts at market conditions without incentivising the use of lignite-fired generation (which is being phased out pursuant to the Greek lignite decommissioning plan⁴⁸).
- (73) The Remedies also preserve PPC's financial interests because they allow it to determine the prices of the future contracts on HEnEx or EEX at its sole discretion. Furthermore, the Remedies stipulate that the pricing of the electricity sold by PPC cannot be set at a level [...].⁴⁹
- (74) The Commission considers that the Remedies are therefore appropriate and necessary for addressing the competition concerns identified in the 2008 Decision, and the Remedies set out in the 2018 Decision should therefore be replaced, taking into account developments in the Greek energy market since 2008 and, in particular, the Hellenic Republic's plan to decommission all lignite-fired generation. They therefore satisfy the principle of proportionality.

6. **LEGAL BASE FOR A REVISION OF THE 2018 DECISION**

- (75) The 2008 Decision obliged the Hellenic Republic to adopt effective measures with a view to removing the effects of the infringement.⁵⁰
- (76) The measures accepted under the 2009 Decision and subsequently revised with the 2018 Decision have never been implemented by the Hellenic Republic. It is of utmost importance that the competition law infringement described in the 2008 Decision is removed once and for all with appropriate and effective measures.
- (77) Pursuant to recital (252) of the 2008 Decision, the Commission retained the right to adopt a further Decision pursuant to Article 106 TFEU thereby establishing specific

⁴⁶ Case T-421/09 RENV, *DEI v Commission*, ECLI:EU:T:2016:748, paragraphs 147-149 and case law cited.

⁴⁷ Case T-169/08 RENV *DEI v Commission*, paragraphs 230 and 242. See also the 2008 Decision, recitals 248-250.

⁴⁸ Section 2.2. above.

⁴⁹ Recital (54).

⁵⁰ See recital (249) of the 2008 Decision.

measures to correct the anti-competitive effects of the infringement established by the 2008 Decision.

- (78) The grounds put forward by the Hellenic Republic in order to implement a new set of measures to offset the negative effects of the infringement justify a revision of the 2009 Decision and 2018 Decision.
- (79) This Decision is based on the premise of the Hellenic Republic following the decommissioning plan as presented in Section 2.2 of this Decision. The Commission retains the right to reopen the proceedings where there has been a material change in any of the facts on which this Decision is based.

7. CONCLUSION

- (80) The revised remedy package proposed by the Hellenic Republic with the Remedies is effective and proportionate to the objective sought of ensuring that third parties have access to a sufficient amount of wholesale electricity from PPC so that they can exert more competitive pressure in the Greek wholesale electricity market.
- (81) The Remedies proposed by the Hellenic Republic on 1 September 2021 and made binding by this Decision will correct the anticompetitive effects of the infringement identified in the 2008 Decision. The measures described in Section 5 and set out in the Annex, which is an integral part of this Decision, constitute an effective and proportionate remedy to address the consequences of that infringement.
- (82) The Commission recalls the general obligation set out in its 2008 Decision that the Hellenic Republic shall abstain from adopting any measure that may aggravate the situation,

HAS ADOPTED THIS DECISION:

Article 1

In order to remedy the anticompetitive consequences of the State measures identified in the Commission Decision C(2008) 824 final of 5 March 2008 on the granting or maintaining in force by the Hellenic Republic of rights in favour of Public Power Corporation S.A. for extraction of lignite, this Decision obliges the Hellenic Republic to comply with the measures set out in the Annex to this Decision by adopting all the necessary measures within the deadlines provided therein.

Article 2

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 10.9.2021

For the Commission

(Signed)

*Margrethe VESTAGER
Executive Vice-President*