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COMMISSION DECISION

of 17.12.2014

on the exemption of Adria Link s.r.l. (Italy) , Holding Slovenske Elektrarne d.o.o. (Slovenia) and E3 d.o.o. (Slovenia) under Article 17 of Regulation (EC) No. 714/2009 for two electricity interconnectors between Italy and Slovenia

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 714/2009 on conditions for access to the network for cross-border exchanges in electricity[1], and in particular, Article 17 thereof,

Whereas:

(1) Article 17 of Regulation (EC) No 714/2009 of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity (hereinafter the “Electricity Regulation") provides the possibility for Member State authorities to exempt new electricity interconnectors from Article 16(6) of the Electricity Regulation and Articles 9, 32 and 37(6) and (10) of Directive 2009/72/EC concerning common rules for the internal market in electricity (hereinafter the "Electricity Directive")[2] provided certain conditions are fulfilled.

(2) Article 17(7) of the Electricity Regulation provides for the Commission to be notified of the decision by the national authorities on an exemption request and its Article 17(8) provides for the Commission to approve the exemption or to take a decision requesting the notifying bodies to amend or withdraw the decision to grant an exemption.

1. Procedure

(3) On 8 January 2013, Adria Link s.r.l. (Italy), Holding Slovenske Elektrarne d.o.o. (Slovenia) and E3 d.o.o. (Slovenia) (hereinafter: "the promoters") submitted two applications for an exemption to the Slovenian Energy Regulator (JAVNA AGENCIJA REPUBLIKA SLOVENIJA ZA ENERGIJO - hereinafter "AGEN-RS") and on 24 June 2013 to the Italian Ministry "Ministero dello Sviluppo Economico" (hereinafter "MSE"), in accordance with Article 17 of the Electricity Regulation.

(4) According to the relevant Italian legislation Decree Law n° 93/2011, MSE is the relevant body to grant such an exemption while the national regulatory authority, Autorità per l'elettricità, il gas e il sistema idrico (AEEGSI), is requested to issue a qualified opinion.

(5) Based on their assessment of the exemption applications, AGEN-RS and AEEGSI, on 16 December 2013, adopted two Joint opinions: "Joint Opinion of the Energy

[1] OJ L 211, 14.08.2009 p. 15.
[2] OJ L 211, 14.08.2009 p. 55.

Regulators on the “Redipuglia-Vrtojba” Exemption Application"[3] and "Joint Opinion of the Energy Regulators on the “Dekani-Zaule” Exemption Application"[4] (hereinafter "Joint Opinions") setting out the authorities assessment of the exemption requests applying to their respective jurisdictions.

(6) On 11 August 2014, MSE adopted two decrees (N. 290/ML/4/2014 for the Dekani-Zaule interconnector and N. 290/ML/5/2014 for the Redipuglia-Vrtojba interconnector) granting exemptions from Article 16 (6) of the Electricity Regulation.

(7) On 20 October 2014, AGEN-RS adopted two decisions (No 143-1/2013-8/106 for the Dekani-Zaule interconnector and No 143-2/2013-43/106 for the Redipuglia-Vrtojba interconnector) granting exemptions from Article 16 (6) of the Electricity Regulation and Article 9 of the Electricity Directive.

(8) The exemptions are granted for a period of 10 years, starting from the beginning of the commercial operations, for the Dekani-Zaule interconnector, and for a period of 16 years, starting from the beginning of the commercial operations, for the Redipuglia-Vrtojba interconnector, respectively.

(9) The Italian Exemption Decisions were notified to the Commission on 28 August 2014 while the Slovenian Exemption Decisions were notified to the Commission on 30 October 2014. All Decisions (hereafter referred to as "Exemption Decisions") were complemented by the Joint Opinions (which form an integral part of the Exemption Decisions).

(10) On 20 October 2014, the Commission services addressed to MSE a request for additional information, in order to allow for a full assessment of the Exemption Decision. MSE replied on 4 November 2014. The request resulted in the extension of the procedural deadline for the taking of the Commssion exemption decision addressed to the Italian authorities by a period of two months, until 4 January 2015, in accordance with Article 17(8) of the Electricity Regulation.

(11) On 17 November 2014, the Commission published a notice on its website[5] informing the public of the notifications of the Italian and Slovenian Exemption Decisions and inviting third parties to send their observations within two weeks. The Commission has received no observations from third parties.

2. The Project

(12) The projects under consideration are two underground alternating current ("AC") interconnectors, both linking the Slovenian and Italian networks. Since both will be built by the same companies, have been assessed together by the Italian and Slovenian authorities and notified together to the Commission, the Commission has considered them together as in effect a single project (hereinafter the "Project") for the purpose of assessing the requested exemptions. The Project is being jointly developed by an Italian company and two Slovenian ones, the promoters.

2.1. The promoters

(13) The "Redipuglia-Vrtojba" and "Dekani-Zaule" interconnectors will both be built and operated jointly by the Italian company Adria Link s.r.l., and the Slovenian companies Holding Slovenske Elektrarne d.o.o. (HSE d.o.o) and Energetika, Ekologija, Economija d.o.o. (E3 d.o.o.). The Italian and Slovenian parties will equally share costs

[3] http://www.autorita.energia.it/allegati/docs/13/630-13allb.pdf
[4] http://www.autorita.energia.it/allegati/docs/13/630-13alla.pdf
[5] http://ec.europa.eu/energy/infrastructure/exemptions/exemptions_en.htm.

and benefits (50% for the Italian partner Adria link s.r.l, 25 % each for the Slovenian partners HSE d.o.o and E3 d.o.o.).

(14) According to the information provided by the promoters in their exemption applications:

- Adria link s.r.l is owned by Enel produzione (33,3%); Acegas-Aps (33,3%); Tei Energy (33,3%).

- Holding Slovenske Elektrarne d.o.o. is a state-owned power generation company in Slovenia. It is the largest company in Slovenia and was established by a government decision on 26 July 2001. The company owns and operates hydroelectric plants based on the Drava, Sava, and Soča rivers and coal-fired power plants in Brestanica, Šoštanj, and Velenje.

- E3 (energetika ekologija ekonomija) d.o.o. is a retailer active both in the household and non-household electricity markets.

2.2. Project costs

(15) The "Redipuglia-Vrtojba" interconnector will be built for about *[BUSINESS SECRET]* km in Italian territory and for *[BUSINESS SECRET]* km in Slovenian territory; it will include a phase shifter transformer (PST) in the Redipuglia 132 kV substation in order to carry out the transformation from 110 to 132kV. The total cost is estimated at *[BUSINESS SECRET]*, with contingency.

(16) Table 1a: applicant's estimation of capital expenditures for the "Redipuglia-Vrtojba" interconnector[6] *[BUSINESS SECRET]*

(17) The "Zaule-Dekani" interconnector will be built for approximately *[BUSINESS SECRET]* km in Italian territory and for *[BUSINESS SECRET]* km in Slovenian territory; it will include a phase shifter transformer (PST) in the Zaule 132 kV substation in order to carry out the transformation from 110 to 132kV. The total cost is estimated at *[BUSINESS SECRET]*, with contingency.

(18) Table 1b: applicant's estimation of capital expenditures for the "Zaule-Dekani" interconnector[7] *[BUSINESS SECRET]*

(19) It follows from the Joint Opinions and the notified decisions of AGEN-RS that the promoters also have to cover the costs caused by the additional load expected on the Slovenian transmission network in case of increased exports of electricity to Italy.[8]

2.3. Technical and operational description

(20) The Project is composed of two AC 110 kV underground cables, each whith a nominal capacity of 125 MWA.

(21) The net transfer capacity ("NTC") of an AC interconnector is not an intrinsic property of the line, since it depends on the power system to which it is connected. The national regulatory authorities ("NRAs") informed the Commission services that certain upgrades are required in the Slovenian and expecially in the Italian domestic grid to

[6] Joint Opinion "Redipuglia-Vrtojba" p. 14.

[7] Joint Opinion "Zaule-Dekani" p. 14.

[8] Joint Opinion "Zaule-Dekani" p. 20; "Redipuglia-Vrtojba" p. 21; paragraph 2.3 of the AGEN-RS notified decisions.

enable the efficient use of the two new interconnectors; until then no NTC will be available for commercial operations.

(22) It follows from the Joint Opinion on Redipuglia-Vrtojba that an increased NTC on the Slovenian side of the Slovenia-Italy border will be possible with the increase of transformation capacity in substation Divača (only 1 transformer 400/110 kV in substation Divača was taken into consideration for the analysis, however, an additional transformer is planned in substation Divača), construction of the 110 kV double circuit lines Divača-(Sežana-Vrtojba)-Gorica and construction of the 110 kV double circuit line Divača-Koper. On the Italian side, the 380 kV Udine Ovest-Udine Sud-Redipuglia connection, the 220 kV reinforcement Monfalcone and the 132 kV AMG Gorizia enhancements of the 132 kV line "AMG Gorizia- S.Giovanni al Natisone" have been taken into account in the Joint Opinions.[9]

(23) In accordance with the notified Exemption Decisions, the two interconnectors will be operated on the basis of Technical Operation contracts with the Slovenian (ELES) and Italian (Terna) transmission system operators ("TSO"), while the promoters will own the assets and be entitled to get the congestion revenues for the duration of the respective exemption as a compensation for their investment. The Exemption Decisions state that at the end of the respective exemption period, ownership of the interconnectors is to be transferred to Terna S.p.A. for the Italian part, and ELES for the Slovenian part, subject to a financial agreement with the operators. In principle, the TSOs will pay an indemnity based on the undepreciated value of the investment.

2.4. Financial and commercial operations

(24) The promoters in their applications state they expect an internal rate of return (IRR) of *[BUSINESS SECRET]* for the "Redipuglia-Vrtojba" interconnector based on an exemption from third party access, tariff regulation and Article 16 (6) of the Electricty Regulation on the use of congestion rent for 100% of the interconnector's NTC and an IRR of *[BUSINESS SECRET]* for the "Zaule-Dekani" interconnector based on an exemption from the same provisions for 90% of the interconnector's NTC. Assuming that both interconnectors will be in operation as of *[BUSINESS SECRET]*, the applicants foresee a price differential between Slovenia and Italy of *[BUSINESS SECRET]* from *[BUSINESS SECRET]* to *[BUSINESS SECRET]*, decreasing to *[BUSINESS SECRET]* from *[BUSINESS SECRET]* onwards.

(25) The NRAs in their Joint Opinions develop ten different scenarios combining different SI-IT price differentials and different environmental compensations which resulted in an IRR variable from 6.3% up to 27.4% for the "Redipuglia-Vrtojba" interconnector and an IRR variable from 6.5% up to 29.1% for the "Zaule-Dekani" interconnector. In their assessment, the NRAs found that an average price differential of *[BUSINESS SECRET]* € from *[BUSINESS SECRET]* to *[BUSINESS SECRET]*, decreased to € *[BUSINESS SECRET]* (-20%) from *[BUSINESS SECRET]* onwards seems to be more reasonable. From 2011 to 2013, the average price differential at this border was between 12.81 and 20.97 euro/MWh.

(26) Table 2: price differential Italy-Slovenia[10]

	Average	median	min	max

[9] Joint Opinions p. 11.
[10] Joint Opinion "Zaule-Dekani" p. 31; "Redipuglia-Vrtojba" p. 32.

2013	18,17	16,14	12,41	27,13
2012	20,97	21,66	3,8	32,51
2011	12,81	12,65	8,01	19,5

(27) Commercial or technical operation has not started yet, although based on the information in the Joint Opinions, some preparatory works have been done.

3. Description of the notified decisions

3.1. No exemption from third party access and tariff setting provisions

(28) The promoters have applied for an exemption from third pary access provisions for 100% of the interconnector's NTC for *[BUSINESS SECRET]* years for the Redipuglia-Vrtojba interconnector and of *[BUSINESS SECRET]* years for the Zaule-Dekani interconnector. The promoters planned to make direct and full use of the NTC, subject to use-it-or-sell-it arrangements. The Exemption Decisions do not grant to the promoters the exemption from Third Party Access on the basis of Article 32 of the Electricity Directive. As no exemption from third party access or tariff regulation is granted and the role of TSO in Italy will be fulfilled by Terna and (via a technical operation contract with the project promoters) by ELES in Slovenia, which are also TSOs for the respective national transmission grid, the interconnectors would therefore be operated as fully integrated into the Italian and Slovenian grid. Furthermore, no exemption is granted from Article 37(6) and (10) of the Electricity Directive. The fixing or approving of conditions and tariffs for network access thus remains in the hands of the NRAs. The exemptions for third party access and tariff setting were refused by the NRAs on the basis that the exemption from Article 16 (6) of the Electricity Regulation on the use of congestion rents was sufficient to cover the risks associate dwith the proposed investment, as revenues would be comparable to those which could be expected from exclusive use of the transmission capacity. As the exemption from the rules on use of congestion rent was seen as sufficient, the NRAs rejected the exemption requests on third party access, which would have created additional risks to effective competition. Finally, as the request for an exemption from third party access was rejected, capacity allocation would not be done by the project promoters. Thus, an exemption from the rules on tariff setting was no longer seen as meaningful by the NRAs, and consequently also refused.

3.2. Exemption from Article 16 (6) of the Electricity Regulation on the use of congestion rents

(29) Based on an exemption from Article 16 (6) of the Electricity Regulation, in exchange for their investment, the promoters will be entitled to the revenue generated by the two interconnectors (congestion rent) for the duration of the respective exemption.

(30) The Exemption Decisions envisage such an exemption for a duration of 16 years for the Redipuglia-Vrtojba interconnector and of 10 years for the Zaule-Dekani interconnector, starting from commencement of commercial operations.

(31) After seven years of operation and every three years thereafter, the NRAs will carry out a joint financial analysis on the actual revenues transferred to the promoters by the TSOs. The analysis will be aimed at calculating the net present value (NPV) and Discounted Payback Period (DPBP) taking into account the actual revenues against

the expected costs contained in the business plan submitted by the applicants for the purpose of the present exemption request. Based on the outcome of this assessment, the duration of the exemption may be reduced by a joint decision of the two Authorities to be notified to the European Commission. For the purpose of the joint financial analysis, the applicants are obliged to deliver to the Authorities all the necessary data, contracts and other documents related to the investments and operation of the interconnectors.

(32) The effect of the Exemption Decisions will be that the interconnectors will be operated subject to normal capacity allocation and congestion management rules. In the future this means that implementing legislation adopted under the Electricity Regulation (the so-called "network codes and guidelines"[11]) will apply to the capacity of the interconnectors. However, the congestion revenues resulting from the allocation of this capacity will be handed over to the promoters for the duration of the exemption rather than being used as set out in Article 16(6) of the Electicity Regulation; specifically they will not be reinvested in additional interconnection capacity or used to reduce transmission tariffs in the Italian or Slovenian system.

3.3. Exemption from unbundling provisions in Slovenia, but not explicitly in Italy

(33) In their exemption applications, the promoters asked for an exemption from Article 9 (ownership unbundling) of the Electricity Directive.

(34) In relation to this request, the Italian notified Exemption Decision states:

"c) with reference to Italy, national legislation does not allow the exemptions from Articles 9 and 37(6) and (10) of Directive 2009/72/EC to be granted.".

(35) In fact Part 3 Section 3, first paragraph of both Joint Opinions reads:

"<u>Italian side</u>

As regard the request of the exemption from article 9 of the Directive, it has to be remarked, first, that pursuant to the Italian legislation there is only one allowed transmission system operator in the national territory, namely, Terna S.p.A. which is, in turn, subject to the unbundling and certification rules set by the Directive. Second, the applicants will not operate the new interconnector since this activity will be entrusted to Terna S.p.A. together with the task to provide the network access as if it were the owner (as specified in paragraph 2.6). As a consequence, under these circumstances, it will not be necessary to grant to the applicants an exemption from the unbundling rules which only apply to TSOs in order to promote, inter alia, a fair access to the network. In light of the foregoing, the Authorities conclude that the exemption from the provisions of Article 9 Directive is not necessary. The relative request is therefore denied."

(36) On the other hand the Slovenian Exemption Decisison does grant to Holding Slovenske Elektrarne d.o.o. (Slovenia) and E3 d.o.o. (Slovenia) an exemption from Article 9 of the Electricity Directive.

(37) The correspondent Part 3 Section 3, second paragraph of both Joint Opinions reads:

"<u>Slovenian side</u>

With reference to the existing regulatory framework in Slovenia, AGEN-RS is of the opinion that the exemption from the provision of Article 9 of the Directive shall be

[11] http://ec.europa.eu/energy/gas_electricity/codes/codes_en.htm

granted to the applicants. The Slovenian transmission system operator ELES has the exclusive right to perform public service of the transmission system operator in the Republic of Slovenia. Without the exemption the applicants – as owners of the new interconnector - cannot operate it."

3.4. Validity of the exemption decisions

(38) The preamble of the Italian Exemption Decision on the Redipuglia-Vrtojba interconnector states:

"HAVING REGARD TO letter ref. TE/P20120003998 of 10 August 2012 in which Terna S.p.A. reported that the analyses carried out jointly with Slovenian operator Eles on the NTC increase on the Redipuglia-Vrtojba line had confirmed the provisional information communicated earlier by that operator, namely that the project is based on a portion of the network which is subject to security constraints and is, therefore, monitored and controlled by defence systems to reduce breaches of voltage and current, confirming that until completion of the 380 kV Redipuglia-Udine Ovest line, authorised by Interministerial Decree No 239/EL-146/181/2013 of 12 March 2013, no increase in NTC on the Slovenian border is expected on account of the project;"

(39) The preamble of the Italian Exemption Decision on the Zaule-Dekani interconnector states:

HAVING REGARD TO letter ref. TE/P20130005377 of 30 October 2013 in which Terna S.p.A. confirmed the data on the increase in NTC already communicated, restating the possibility of an incremental NTC at the border between Italy and Slovenia and noting that an increase in NTC would be feasible only with the launch of certain development measures already planned for both the Slovenian and Italian networks, and stating that it would provide updated results by 15 February 2014;

(40) The Slovenian Exemption Decision on the Redipuglia-Vrtojba interconnector states:

Before the construction of the new interconnector, both transmission operators, ELES, d.o.o., and Terna S.p.A., have to execute new constructions and reconstructions of their transmission lines, which will provide additional transmission capacities between the Italian and Slovenian transmission systems.

For the Italian system, Terna S.p.A. has to make operational 380 kV line Udine Ovest – Redipuglia (Sredipolje), to reinforce 220 kV substation in Monfalcone, and to reconstruct 132 kV line AMG Gorizia – S. Giovaninni al Natisone; while the Slovenian TSO, ELES, d.o.o., will carry out the reconstruction of 2 x 110 kV lines Divača–(Sežana-Vrtojba)-Gorica, reconstruction of 2 x 110 kV lines Divača–Koper, and increase transformation capacity in 400/110 kV substation Divača. Only with above mentioned reinforcement of transmission systems of the Italian and Slovenian TSO the applicants will be facilitated to use available transmission facilities of the new interconnector.

(41) The Slovenian Exemption Decision on the Zaule-Dekani interconnector states:

Prior the request for exemption, the applicants from the Ministry of Economics of the Republic of Slovenia obtained Energy permit No 360-178/2007-3 of 5 July 2007, which summarizes the TSO's, the company ELES, d.o.o., conditions, and refers to the transmission network necessary reinforcement and reconstruction in order to enable additional cross-border capacities of the new interconnector. To state the terms clearly, transmission system operators, ELES, d.o.o, and Terna S.p.A, carried out a *joint analysis, and adopt a decision, which was sent to the Energy Agency by an email on 31 October 2013, setting the conditions for determining the available transmission capacities of the new interconnector.*

Only with those mentioned additional transmission capacities the maximum availability on the border between Slovenia and Italy may be increased.

(42) In other words, the actual commencement of commercial operation of the two interconnectors and the consequent generation of a congestion rent to be transferred to the promoters is subordinated to the completion of another domestic line, i.e. a circumstance that is outside the promoters' control.

(43) As a consequence Article 3 of the Italian Exemption Decisions states:

The exemption granted shall cease to be effective if, within two years of the completion of the works already planned to upgrade both the Slovenian and the Italian networks and needed to increase the NTC, the interconnector is not operational and if, within five years of the date when the exemption was granted, the infrastructure is not yet operational, unless the Ministry, after obtaining the European Commission's prior approval, accepts that the delay is due to serious obstacles outside the control of the entity to which the derogation has been granted

(44) Paragraph 2.1 of the Slovenian Exemption Decisions states:

The applicants are in accordance with paragraph eight of Article 17 of Regulation No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 required no later than within 2 years after the European Commission's approval of an exemption decision to start the construction of a new interconnector, and within 5 years to start the operation of the new interconnector.

4. Assessment of conformity with the criteria set out in Article 17 of the Electricity Regulation

(45) Pursuant to Article 17(1) of the Electricity Regulation, new direct current interconnectors may, upon request, be exempted, for a limited period of time, from the provisions of Article 16(6) of this Regulation and Articles 9, 32 and Article 37(6) and (10) of Directive 2009/72/EC under the following conditions:

(46) (a) the investment must enhance competition in electricity supply;

(47) (b) the level of risk attached to the investment is such that the investment would not take place unless an exemption is granted;

(48) (c) the interconnector must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that interconnector will be built;

(49) (d) charges are levied on users of that interconnector;

(50) (e) since the partial market opening referred to in Article 19 of Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity, no part of the capital or operating costs of the interconnector has been recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnector; and

(51) (f) the exemption must not be to the detriment of competition or the effective functioning of the internal market in electricity, or the efficient functioning of the regulated system to which the interconnector is linked.

(52) Pursuant to Article 17(2) of the Electricity Regulation, Article 17(1) may also apply in exceptional cases to AC interconnectors provided that the costs and risks of the investment in question are particularly high when compared with the costs and risks normally incurred when connecting two neighbouring national transmission systems by an AC interconnector.

4.1. Article 17(1)(a): the investment must enhance competition in electricity supply

(53) Article 17(1)(a) of the Electricity Regulation requires that the investment project enhances competition in electricty supply. Article 17(1)(f) of the Electricity Regulation requires that the exemption is not detrimental to competition or the effective functioning of the internal market in electricity, or the efficient functioning of the regulated system to which the interconnector is linked. While these two requirements are not identical, they imply that the project must be pro-competitive and thus create benefits for consumers.[12]

4.1.1. Ensuring new investments in much needed interconnectors

(54) As stated in the Joint Opinions[13], the increase of the transfer capacity between Italy and the neighboring countries has since a long time been perceived as a priority. An analysis carried out for the European Commission in 2001[14] identified the economic value of transmission capacity at the Italian border as remarkably high. According to this study's estimates, the network density appeared lower at this border than inside the adjacent countries, a circumstance calling for new investment measures.This has also been confirmed by the achieved congestion rent at this border. In fact, in 2013, the price achieved for allocated cross-border transmission capacities from Slovenia to Italy was 16.61 euro/MWh. This was more than four times as much as was paid for the second most expensive cross-border capacity at the Slovenian borders (Austria to Slovenia, 3.71 euro/MWh).[15]

(55) Moreover, the 10-Year Network Development Plan of ENTSO-E[16] suggests that an increase of the transfer capacity through the Alps would be necessary to improve the affordability and security of supply of the electrical system. At the same time the development of a north-south transmission corridor would also help to integrate renewables in the power system.

(56) Total gross installed generation capacity was 124.749,9 MW in Italy[17] in 2013, against 3.274 MW in Slovenia. Currently Italy's interconnection capacity with other countries

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12 Commission staff working document on Article 22 of Directive 2003/55/EC concerning common rules for the internal market in natural gas and Article 7 of Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity – New Infrastructure Exemptions, §30.

13 Zaule-Dekani joint opinion p. 16; Redipuglia-Vrtojba joint opinion p. 17.

14 "Analysis of Electricity Network Capacities and Identification of congestion", Institute of Power Systems and Power Economics (IAEW) of Aachen University of Technology (RWTH).

15 AGEN-RS Report on the Energy Sector in Slovenia for 2013, http://www.ceer.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/NATIONAL_REPORTS/National%20Reporting%202014/NR_En/C14_NR_Slovenia-EN.pdf, p. 37.

16 See Regional Investment Plan Continental Central South, https://www.entsoe.eu/Documents/TYNDP%20documents/TYNDP%202014/141031%20RgIP%20CCS.pdf.

17 Terna statistsical data: http://www.terna.it/LinkClick.aspx?fileticket=Hc%2bV7%2fxE7yc%3d&tabid=418&mid=2501

is 9.335 MW (including 630 MW with Slovenia). Italy therefore does not currently meet the interconnection target of 10 % of installed generation capacity agreed by the European Council in 2002.[18]

4.1.2. Competition on Slovenian and Italian markets

(57) Concerns about effective access to the market apply to both of the national markets in question. According to the Joint Opinions (which as noted above form an integral part of the Exemption Decisions), the electricity market in the North of Italy is the most competitive amongst the electricity markets of the country. The Herfindahl–Hirschman Index (HHI) dropped over time from a value of 1474 in 2005 to 1323 in 2013 (-10%).[19]

(58) ENEL, which holds 33.3% of the Italian promoter (Adria Link srl), maintains the strongest position in the Italian retail market for electricity supply.[20]

(59) Table 3: market shares on the Italian market for retail electricity supply:[21]

GROUP		NON HOUSEHOLDSS			TOTAL
	HOUSEHOLDS	Low Tension	Medium Tension	Hiigh & very high Tension	
Enel	45.483	31.824	9.179	3.397	89.884
Edison	1.735	3.554	9.337	4.083	18.709
Eni	2.070	1.916	4.262	2.193	10.441
Acea	2.188	2.209	3.520	2.023	9.940
Hera	815	2.899	4.431	270	8.415
Green Network Luce & Gas	8	377	2.050	5.271	7.706
A2A	1.493	2.342	2.667	379	6.879
Sorgenia	705	2.254	3.491	371	6.821
E.On	177	1.567	3.679	462	5.885
Axpo Group	0	721	1.818	3.279	5.818
GALA	4	1.603	3.852	142	5.602
Iren	1.010	1.239	2.117	527	4.892
C.V.A.	130	1.677	2.725	1	4.533
Energetic Source	72	1.586	2.230	210	4.099
Repower AG	0	1.861	1.652	1	3.514
Egea	22	379	2.843	252	3.496
Dolomiti Energia	436	1.232	1.619	82	3.370
GdF Suez	685	228	559	1.743	3.216
Exergia	0	1.032	1.711	118	2.861
Metaenergia	42	263	2.407	109	2.821
Others	2.451	13.113	27.776	5.222	48.562
TOTAL SUPPLIERS	59.528	73.875	93.927	30.135	257.465

18 http://ec.europa.eu/invest-in-research/pdf/download_en/barcelona_european_council.pdf, p. 15.

19 Joint Opinion "Zaule-Dekani" p. 20-21; "Redipuglia-Vrtojba" p. 21-22.

20 According to Joint Opinion "Zaule-Dekani" p. 22; "Redipuglia-Vrtojba" p. 23, ENEL holds a market share of 25.4 % on the wholesale supply market.

21 AEEGSI Annual report 2014 p. 77, http://www.autorita.energia.it/allegati/relaz_ann/14/RAVolumeI_2014.pdf.

(60) The NRAs consider in their Joint Opinions that the HHI may in certain circumstances lead to misleading results and decided to carry out a complementary analysis based on the Pivotal Supplier Index (PSI) in order to identify to what extent certain companies are essential to meet the electricity demand. The NRAs found that without the additional interconnection capacity provided by both interconnectors, ENEL is expected to be pivotal for *[BUSINESS SECRET]* hours in 2014. The NRAs found in their Joint Opinions, that even if ENEL withheld an amount of capacity in the new interconnectors equal to its investment share (16.6 %), once both interconnectors will be operational, ENEL would be pivotal for only *[BUSINESS SECRET]* hours. The Commission wishes to underline that as no exemption from third party access provisions has been granted, the role of the TSO will not be fulfilled by Adria Link srl but by TERNA, ENEL has no right and should not have the possibility to withhold any transmission capacities on the interconnectors. Thus, ENEL should be pivotal for significantly less than *[BUSINESS SECRET]* hours per year once the interconnectors become operational. The Commission recalls the obligation of the NRAs to ensure effective implementation of regulated network access requirements.

(61) As detailed in the Joint Opinions, the Slovenian promoters (HSE d.o.o. and E3, d.o.o.) play different roles on the Slovenian market. HSE d.o.o. is the largest Slovenian power generator and the largest trader with electricity on the wholesale market in Slovenia. HSE trade activities represent 5,9% of market share on Slovenian domestic supply to end consumers. HSE, which in 2013 generated 64.2% of Slovenian electricity (70.6% with respect to production on the transmission network)[22], also supplies electricity to other suppliers in the Slovenian market, which have as main activities the supply of end customers in Slovenia. One of these suppliers is E3, d.o.o. which had in 2012 8.1% market share for end customers in Slovenia, which dropped to 7.8% in 2013.

(62) Table 4: market shares on the Slovenian retail market for electricity in 2013[23]

Supplier	**Supplied electricity (GWh)**	**Market share**
GEN-I	3,367.4	25.7%
Elektro Energija	2,275.4	17.4%
Elektro Celje Energija	1,838.4	14.0%
Elektro Maribor Energija plus	1,337.3	10.2%
TALUM Kidričevo	1,198.5	9.1%
E3	1,025.3	7.8%
Elektro Gorenjska Prodaja	725.5	5.5%
Petrol Energetika	679.7	5.2%
Petrol	459.4	3.5%

[22] AGEN-RS 2013-2014 annual report, table 19 page 47: http://www.ceer.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/NATIONAL_REPORTS/National%20Reporting%202014/NR_En/C14_NR_Slovenia-EN.pdf

[23] Joint Opinion "Zaule-Dekani" p. 24; "Redipuglia-Vrtojba" p. 25.

HSE	146.7	1.1%
Others	51.0	0.4%
Total	**13,104.6**	**100.0%**
HHI of suppliers to all end consumers		1,479

(63) In 2012 HSE had booked 12.8% of the available cross-border capacities (yearly, monthly, daily and intradaily), while E3 did not carry out cross-border trade.[24]

(64) As the Joint Opinions foresee that, during the period of the proposed exemptions, the electricity price differential between the Italian and Slovenian market in most hours would be higher than *[BUSINESS SECRET]*[25], it can be expected that the increase in available transmission capacities will result in higher flows of electricity from Slovenia to Italy. The NRAs nevertheless do not expect the new interconnectors to have an impact on prices in the Slovenian retail market. The Commission understands that this is due to the still limited transmission capacities preventing an alignment of wholesale prices.

(65) As access will be fully regulated, it is not to be expected that this additional capacity strengthens the competitive position of market leaders in both Member States. To the contrary, notwithstanding the limited additional transmission capacity provided by the new interconnectors, the Commission concludes that the additional transmission capacity will allow generators and suppliers from both Member States to increasingly compete with each other.

(66) The new capacity would be available to all market participants from the beginning of operation, granting beneficial effects to the two interconnected areas. The Commission therefore concludes that the two interconnectors would be beneficial to competition in Italy and Slovenia.

(67) On the basis of the above, the Commission concludes the investment would enhance competition.

4.2. Article 17(1)(b): the level of risk attached to the investment is such that the investment would not take place unless an exemption is granted.

(68) The risk attached to the investment must be such that the investment would not take place unless an exemption is granted. This can be assessed in particular on the basis of the projected revenue streams and risks related to this projected income, as well as construction and operational risks.

4.2.1. Revenue streams

(69) The Joint Opinions do not include an explicit description of expected revenue streams, but set out (for each interconnector) ten different scenarios each with different combinations of Net Present Values (NPV), Internal Revenue Rates (IRR) and Discounted Payback Period (DPBP).

[24] Joint Opinion "Zaule-Dekani" p. 24; "Redipuglia-Vrtojba" p. 25.
[25] Joint Opinion "Zaule-Dekani" p. 24; "Redipuglia-Vrtojba" p. 25.

(70) The Joint Opinions conclude that on the basis of comparable projects, and taking into account other possible investments with low risks (such as ten-year Italian treasury bonds), a WACC of *[BUSINESS SECRET]* would be appropriate.[26]

(71) Due to high uncertainty about the future revenue streams the NRAs come to the conclusion that the remuneration based on the regulated tariff would not allow the investors to recover their investment costs and conclude that granting of an exemption for a reasonable number of years seems to be the only possible way to implement the project.

(72) Conversely in order to avert the risk that the actual cumulative revenue over the exemption period diverges too much from that typical for regulated infrastructures, the NRAs decided that starting from the 7th year of operation of the interconnectors, they will carry out every three years a financial analysis of the actual revenues and costs incurred by the promoters. Thereby, the duration of the exemption could be accordingly reduced, if it turns out that the investors would recover the investment costs before what was indicated at the time of the exemption request. The Commission considers this evaluation as highly important, as there is a considerable likelihood that the future price differences have been underestimated by the project promoters, which would otherwise result in significant overcompensation due to excessive congestion rents.

4.2.2. Risks to projected revenue streams

(73) The Commission considers that the higher revenues could only be justified based on a different risk profile of the project compared to what would normally be allowed under the regulated regime.

(74) In the case of this particular investment, there are a number of reasons why revenues could differ from those projected. These include in particular construction and operational risks as well as market risks related to short-term revenues.

(75) The connection of the two interconnectors into the national networks of Slovenia and Italy will not be firm until Terna completes reinforcement work. Therefore the start of operations, and consequently the start of recuperation of the investment, depends on actions of third parties not under the control of the project promoters. Taking into account the significant delays which can occur in expansions of electricity transmission networks, this risk is non-negligible.

(76) From a technological perspective, uncertainties are due to the fact that the new interconnectors' transfer capacity may be constrained much below its rated capacity. Moreover, the NTC represents a major risk especially in the case of 110kV lines, which are more frequently subject to reliability and bottleneck problems. The NTC definition for an AC interconnector is in fact only partly related to the nominal capacity of the line as it mainly depends on the power systems to which it is connected. This consideration makes the capacity attributable to an AC line only a variable parameter not totally controlled by the project promoters. As the line in question will be built at 110 kV, it could be even more influenced by the surrounding networks of higher voltage level; therefore, for the project applicants, the NTC capacity definition represents a major element of technical risk.

(77) The economic factors of risk concern the volume of revenues, which will depend on the actual prices in the two countries/zones involved. The proper estimation of the

[26] Joint Opinion "Zaule-Dekani" p. 32; "Redipuglia-Vrtojba" p.32.

future price differentials is a matter of great debate. Several variables at a time should be taken into account, namely, the cost of the current and future generation; the possible peak loads; the future network development, etc. Such a wide variety of factors makes it really difficult to achieve a reliable and consistent forecast of the price dynamics, especially on long time horizons as those considered in the business plans.

4.2.3. Commission assessment of the risk criterion

(78) There are two main risks for sunk costs[27]: the risk of non-use of the investment and the risk of a change in costs and/or revenues in the future. This has been reflected in the approach of the Commission in previous exemption decisions.

(79) The Commission also recognises, as is the case for this project, that risks may originate from changes in flows caused by changes elsewhere in the system. In the present case, the use of the planned interconnector will depend on relative prices in Italy and Slovenia and on network developments by the Slovenian and Italian TSOs.

(80) Two specific aspects have to be taken into consideration:

– The lower the risk, the higher the likelihood for the project in question to enjoy an unchallenged position;

– The level of risk would tend to be lower where an integrated energy company builds a new piece of infrastructure.

(81) However, in the present case neither reason applies (directly or indirectly). There is already an alternative interconnection operational between Slovania and Italy, with several at an advanced stage of planning; in particular the Joint Opinions make reference to the planned 2x400 kV overhead line between Okroglo (SI) and Udine (IT) and to the 400 kV DC underground cable between Beričevo (SI) and Salgareda (IT). These two projects are also included in ELES' Development strategy of the Slovenian electric power system – Development plan of the Slovenian transmission system for the period 2013-2022 and in the ENTSO-E Ten-Year Network Development Plan 2012. Both projects are also on the list of Projects of Common Interest (PCI).[28] Nevertheless these projects are still under discussion and no authorisation procedure has yet begun.

(82) While the promoters are indeed energy companies, they will not have full control over the use of the infrastructure. Indeed, they are not integrated energy companies which will control the use of the network, but will only be using the capacity on a non-discriminatory basis as any other network user.

(83) As a general rule, project promoters are required to test market demand before they can obtain an exemption, as this is a crucial element to evaluate the riskiness of a project and to assess to what extent the planned project enhances competition.[29]

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27 Commission staff working document on Article 22 of Directive 2003/55/EC concerning common rules for the internal market in natural gas and Article 7 of Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity – New Infrastructure Exemptions –, http://ec.europa.eu/energy/infrastructure/infrastructure/gas/doc/sec_2009-642.pdf, paragraph 41.

28 Commission Delegated Regulation (EU) No 1391/2013 of 14 October 2013 amending Regulation (EU) No 347/2013 of the European Parliament and of the Council on guidelines for trans-European energy infrastructure as regards the Union list of projects of common interest, sections 3.20 and 3.21, http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1391&from=EN.

29 Commission staff working document on Article 22 of Directive 2003/55/EC concerning common rules for the internal market in natural gas and Article 7 of Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity – New Infrastructure Exemptions –,

Moreover, Article 17(4) of the Electricity Regulation explicitly requires that the NRAs, while assessing the need for an exemption, should take into account the results of the capacity allocation procedure. The absence of such a test is however not a major shortcoming in the submission presented as all the available capacity will be marketed under normal regulatory rules and no exemption from third party access is granted.

(84) On the basis of the above, the Commission concludes that the risks attached to the investment in the two interconnectors are sufficient to justify the granted exemption from Article 16(6) of the Electricity Regulation.

4.3. Article 17(1)(c): the interconnector must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that interconnector will be built

(85) The new interconnectors will be built and owned by the applicants, on the basis of a Technical Operation contract entered into together with the TSOs.

(86) Therefore, legal unbundling from existing TSOs is fulfilled as the promoters are a separate and independent legal entity from ELES and Terna, the system operators in whose systems the interconnectors will be built.

(87) It follows that the promoters are separate in their legal form from existing TSOs within the meaning of Article 17(1)(c) of the Electricity Regulation.

4.4. Article 17(1)(d): charges are levied on users of the interconnectors

(88) The interconnectors will be subject to regulated tariff setting, as no exemption from the tariff setting provisions has been granted. Thus, charges will be levied on users of the interconnectors, including on the promoters.

4.5. Article 17(1)(e): No part of the capital or operating costs of the interconnector has been recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnector

(89) In the case of cross-border electricity interconnectors the transmission rights are allocated to the operators carrying out import/export activities through explicit capacity auctions and market coupling[30]. The NRAs, who would be responsible for approving any such transfers, have accepted that this criterion is met.

(90) The Commission concludes that no part of the capital or operating costs of the interconnectors has been recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnectors. Therefore, the requirement of Article 17(1)(e) of the Electricity Regulation is met.

4.6. Article 17(1)(f): the exemption must not be to the detriment of competition or the effective functioning of the internal market in electricity, or the efficient functioning of the regulated system to which the interconnector is linked

4.6.1. Detriment to competition

(91) This criterion has a different approach to the criterion set out in Article 17(1)(a) of the Electricity Regulation as discussed in section 4.1 above, because it focuses on the possible negative effects of the exemption rather than the competitive effect of the investment itself. The concern is therefore on possible effects of granting an

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http://ec.europa.eu/energy/infrastructure/infrastructure/gas/doc/sec_2009-642.pdf Box 3: Testing of market demand

30 The Italian and Slovenia markets are coupled since January 2011.

exemption on other competing projects, whether regulated, exempted or submitted for exemption. The potential detriment to competition is two-fold: Firstly, it is necessary to ensure that competing infrastructure projects are able to compete on a fair basis with the beneficiary of the exemption (e.g. on the availability of connection agreements etc.). Secondly, a negative impact on competing projects from the exemption could undermine the potential for competition more generally in the internal electricity market (as increased interconnection will generally enhance competition).

(92) In relation to competing interconnector projects, there are at least two additional interconnector projects in development between Slovenia and Italy. The projects mentioned further above will have a capacity many times larger than the two under consideration. The Joint Opinions have come to the conclusion that significant price differentials between Italy and Slovenia are expected to exist also subsequent to the realization of these interconnectors, so that the economic case for the other planned projects is upheld. The Commission also understands that there are no technical reasons why, completed under the conditions set forth in the Exemption Decisions, the planned interconnectors would restrict either the capacity of feasible alternative interconnection projects, or cause a delay in their completion.

4.6.2. Effective functioning of the internal market

(93) The effective functioning of the market could be undermined if the exemption hindered the overall optimisation of the energy network, for example by scheduling flows on the interconnector regardless of implications for congestion or production costs in other parts of the network.

(94) The regulated access to the interconnectors has as a consequence that its use takes fully into account the price situation in both markets and any congestion in other network elements.

(95) The result of the conditions attached to the Exemption Decisions is that the physical use of the two interconnectors will be fully integrated with wider capacity allocation and congestion management methods developed to ensure the effective operation of the internal electricity market.

4.6.3. Efficient functioning of the regulated system

(96) The construction of a new infrastructure may require the expansion or reinforcement of the existing regulated infrastructure due to substantially increased energy flows. It is therefore necessary to consider how the exemption influences the costs of operating the regulated system if, for example, the users of the regulated system could be faced with substantially increased higher network tariffs.

(97) In the present case, the Commission understands that upgrades are not required solely as a result of the connection of the two interconnectors, but are also related to the general need to upgrade the network in both Slovenia and expecially in Italy. The conditions attached to the notified Exemption Decisions foresee that the promoters will have to finance any additional costs to the Slovenian system resulting from increased flows of electricity to Italy. Furthermore, as full regulated third party access on the basis of regulated tariffs will be ensured, the interconnectors will contribute to the efficient functioning of the regulated systems in both Italy and Slovenia. Therefore, the Commission comes to the conclusion that the granted exemption from Article 16(6) of the Electricity Regulation is not to the detriment of the efficient functioning of the regulated system.

(98) As regards the role of Terna and ELES respectively with respect to the two interconnectors, the Commission understands that for both TSOs, the NRAs apply requirements at least equal to those for independent system operators under Article 13 (2) of the Electricity Directive. Terna has been certified as ownership unbundled[31] whereas the certification of ELES is ongoing.

(99) In so far as financing obligations for the transmission system owner are foreseen in Article 13 (5) of the Electricity Directive, the Exemption Decisions oblige the project promoters to finance all costs incurred to ELES as a result of cross-border flows of electricity from Slovenia to Italy in the form of technical network losses, required network reinforcements and other operational costs.[32] Due to the existing and predicted differences in electricity prices between Slovenia and Italy, it can be expected that electricity flows during the exemption period occur primarily from Slovenia to Italy, thus this requirement is the most relevant and seems satisfactory.

(100) Furthermore, as regards the obligation to comply with investment planning, the TSOs are subject to the planning obligations resulting from the respective national law. Furthermore, the exemption decisions make reference to several infrastructure investments required for the operation fo the interconnector (see section 3.4 of the present decision).

4.6.4. Commission assessment of detrimental impacts of exemption

(101) Based on the analysis above, the Commission concludes that granting an exemption to the two interconnectors as set out in the NRAs Joint Opinions and the national Exemption Decisions will not be to the detriment of competition or the effective functioning of the internal market in electricity or the efficient functioning of the regulated system to which the interconnector is linked.

4.7. Article 17(2) – exceptional cost and risks for alternating current (AC) interconnectors

(102) It results from Article 17(1) and (2) of the Electricity Regulation that AC interconnectors typically do not involve the high costs and particular risks which justify an exemption. Nevertheless, in exceptional circumstances, exemptions can also be granted to these interconnectors.

(103) It results from the decision-making practice of the Commission that these exceptional conditions are to be assessed on the basis of criteria similar to the general risk assessment. It is thus not required that exceptional types of risks are of relevance for the interconnector in question, as long as the total risk is exceptional for the investment in an AC interconnector.

(104) This has been confirmed in the past for the interconnection Arnoldstein-Tarvisio.[33] Therein, the Commission has established that the risk is particularly high on the basis of the following grounds:

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31 See Commission Opinion pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC - Italy - Certification of Terna S.p.A., http://ec.europa.eu/energy/gas_electricity/interpretative_notes/doc/certification/2012_052_it_en.pdf

32 Decision of AGEN-RS paragraph 2.3 and reasoning p.12.

33 Commission request of 26 October 2010, SG-Greffe (2010) D/16980, http://ec.europa.eu/energy/infrastructure/exemptions/doc/doc/electricity/2011_tarvisio_decision_it.pdf and http://ec.europa.eu/energy/infrastructure/exemptions/doc/doc/electricity/2010_arnoldstein_travisio_decision_de.pdf.

– There is a significant need for interconnection capacities at the border in question, which has been established for a long time, but not been resolved on the basis of the regulated system, indicating the particular difficulty of the investment;

– Use of the interconnector depends significantly on prior investments into and use of the linked national transmission networks, which are not under the control of the promoters;

– The geographical and network conditions at the border make the investment particularly costly.

(105) These criteria also apply in the present case. Furthermore, the AC interconnectors will be constructed underground. Underground laying of cables is several times more expensive and often also more time-consuming than overhead construction. The decision to execute an interconnector as an underground connection in order to minimize the impact on the environment thus results in the costs of both interconnectors being exceptionally high for an AC interconnector. Thus, as has also been established in the notified Exemption Decisions, the risk and cost for the planned interconnectors exceeds those of a normal AC interconnector.

4.8. Exemption from Article 9 of the Electricity Directive – Unbundling

(106) The Commission notes that Article 9(1)(a) of the Electricity Directive requires that each undertaking which owns a transmission system acts as a transmission system operator. This means that undertakings owning transmission systems must themselves take responsibility for ensuring that all the functions and obligations of transmission system operator are carried out.

(107) Furthermore, undertakings which (like the project promoters) are active in generation or supply may according to Article 9(1)(b) of the Electricity Directive not exercise control or exercise any right over a transmission system operator or over a transmission system. In the case at hand, the project promoters would own the transmission assets and therefore exercise a right over the transmission system, even in so far as the role of the TSO is fulfilled by the established national TSOs. After the end of the exemption period, on the basis of Articles 2.10 and 2.11 of both Joint Opinions, ownership of the assets will have to be transferred to the respective TSO.

(108) Undertakings which own transmission systems are required to apply the ownership unbundling rules set out in Article 9(1) et seq. of the Electricity Directive, unless they are entitled to apply the independent system operator model or the independent transmission operator model. In accordance with Article 9(8) of the Electricity Directive, the possibility to apply the independent system operator model or the independent transmission operator model is restricted to situations where the tramsission system belonged to a vertically integrated undertaking on 3 September 2009. Consequently, these models cannot apply to new transmission systems such as the interconnectors at issue which cannot be seen as mere extensions of existing networks. Thus, the interconnectors have to apply the rules on ownership unbundling, unless an exemption from Article 9 of the Electricity Directive is granted.

(109) The Commission notes that while the Joint Opinions do not consider that an exemption from the ownership unbundling rules is necessary on the Italian side, they describe arrangements which presuppose the existence of such an exemption. Notably, the splitting of the ownership and the operation of the interconnectors between different undertakings implies that the ownership unbundling rules could not

be complied with. Non-compliance with ownership unbundling however would be possible only if an exemption from Article 9 of the Electricity Directive is explicitly granted on the Italian side, as is already the case on the Slovenian side.

(110) Therefore, the Commission considers that the two Exemption Decisions should be aligned with each other, to make clear that the separation of ownership of the interconnectors from the system operator function as well as the ownership of transmission assets by undertakings active in generation or supply requires an exemption from the obligation of the owner of a transmission system to act as transmission system operator in Article 9(1) of the Electricity Directive.

5. Conclusion

(111) The Commission is of the view that the Dekani-Zaule interconnector and the Redipuglia-Vrtojba interconnector meet the criteria set down in Article 17(1) and (2) of the Electricity Regulation and that an exemption can be granted to these interconnectors from Article 16(6) of the Electricity Regulation and Article 9 of the Electricity Directive, provided that the Exemption Decisions are amended in the manner as set out in the operative part of the present Decision.

HAS ADOPTED THIS DECISION:

Article 1

The Exemption Decisions by the Italian Ministero dello Sviluppo Economico (MSE) notified to the Commission on 28 August 2014 shall be amended so as to provide that, to the extent and for the period that the owners of the interconnectors are not to be regarded as their transmission system operators, an exemption from the application of the rules on ownership unbundling in Article 9 of Directive 2009/72/EC shall be required.

Article 2

In line with Article 17(8) of Regulation (EC) No 714/2009, the Commission's approval of the Exemption Decisions as regards the Dekani-Zaule interconnector shall expire 2 years after the date of adoption of the present Decision in the event that construction of that interconnector has not started by that date and 5 years after the date of adoption of the present Decision if the interconnector has not become operational by that date, unless the Commission decides that the delay is due to major obstacles beyond the control of the promoters.

In line with Article 17(8) of Regulation (EC) No 714/2009, the Commission's approval of the Exemption Decisions as regards the Redipuglia-Vrtojba interconnector shall expire 2 years after the date of adoption of the present Decision in the event that construction of that interconnector has not started by that date and 5 years after the date of adoption of the present Decision if the interconnector has not become operational by that date, unless the Commission decides that the delay is due to major obstacles beyond the control of the promoters.

Article 3

This Decision is addressed to the Ministero dello Sviluppo Economico and Javna Agencija Republika Slovenia Za Energijo.

Done at Brussels, 17.12.2014

For the Commission
Miguel Arias Cañete
Member of the Commission