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**COMMISSION OPINION**

**of 24.5.2017**

**pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Articles 10(6) and 11(6) of  
Directive 2009/72/EC - Greece - Certification of ADMIE S.A.**

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## I. PROCEDURE

On 31 March 2017, the Commission received a notification from the Greek Regulatory Authority for Energy (hereinafter "RAE") of a draft decision on the certification of the "Independent Power Transmission Operator" (hereinafter "ADMIE") as a transmission system operator (hereinafter "TSO") for electricity.

Pursuant to Article 10 and 11 Directive 2009/72/EC<sup>1</sup> (hereinafter, "Electricity Directive") and Article 3(1) Regulation (EC) No 714/2009<sup>2</sup> (hereinafter, "Electricity Regulation") the Commission is required to examine the notified draft decision and deliver an opinion to the relevant national regulatory authority as to its compatibility with Article 10(2) or Article 11, and Article 9 of Directive 2009/72/EC.

## II. DESCRIPTION OF THE NOTIFIED DECISION

ADMIE is the only transmission system operator for electricity in Greece and is operating the entire high-voltage transmission system. ADMIE has been established in February 2012 following the transposition of the Electricity Directive into Greek law (Law 4001/2011).

ADMIE is 100% owned by PPC, the incumbent electricity company, which is active in the production and supply of electricity, and which is in turn majority owned by the Hellenic Republic.

ADMIE has been certified by decision of RAE (962A/2012) of 5 December 2012<sup>3</sup> as compliant with the Independent Transmission Operator (hereinafter "ITO") model, referred to in Article 9(8)(b) Electricity Directive and transposed accordingly into Law 4001/2011.

Presently ADMIE has applied for certification in accordance with the ownership unbundling model, referred to in Article 9(1) Electricity Directive. Indeed, in fulfilment of a commitment made in the third Memorandum of Understanding<sup>4</sup> of 19 August 2015 in the context of the budgetary assistance programme granted to Greece, Greek Law 4389/2016 provides for the

<sup>1</sup> Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, OJ L 211/55 of 14.8.2009

<sup>2</sup> Regulation (EC) 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, OJ L 211/15 of 14.8.2009.

<sup>3</sup> RAE's Decision No. 962A/2012 of 5 December 2012 (see RAE's preliminary Decision No.672/2012 of 26 July 2012: <http://bit.ly/2nTUyF4>). See also the Commission's Opinion of 9 October 2012 on the draft certification, C(2012)7068: [https://ec.europa.eu/energy/sites/ener/files/documents/2012\\_037\\_gr\\_en.pdf](https://ec.europa.eu/energy/sites/ener/files/documents/2012_037_gr_en.pdf).

<sup>4</sup> Memorandum of Understanding between the European Commission Acting on Behalf of the European Stability Mechanism and the Hellenic Republic and the Bank of Greece [https://ec.europa.eu/info/sites/info/files/01\\_mou\\_20150811\\_en.pdf](https://ec.europa.eu/info/sites/info/files/01_mou_20150811_en.pdf). See Section 4.3. thereof: "by October 2015, the authorities will: a) take irreversible steps (including announcement of date for submission of binding offers) to privatize the electricity transmission company, ADMIE, unless an alternative scheme is provided, with equivalent results in terms of competition and prospects for investment, in line with the best European practices and agreed with the institutions to provide full ownership unbundling from PPC (key deliverable)".

full ownership unbundling of ADMIE from PPC. More specifically Law 4389/2016 as amended by Law 4393/2016 provides for the following ownership structure of ADMIE:

- a) 51% of the shares in ADMIE shall be transferred to a holding company, HOLDING Company ENERGIAKI S.A. (Ανώνυμη Εταιρεία Ενεργειακών Συμμετοχών) (hereinafter "Energiaki Holding"), to be formed by PPC, which in turn will transfer the shares to its shareholders (carve-out).
- b) 20% – 24% of the shares in ADMIE shall be acquired by a strategic investor through an international public tender.
- c) 25% – 29% of the shares in ADMIE shall be transferred to a holding company called "Public Holding Company ADMIE (IPTO)" (Δημόσια Εταιρεία Συμμετοχών ΑΔΜΗΕ Ανώνυμη Εταιρεία, ΔΕΣ ΑΔΜΗΕ ΑΕ) (hereinafter "PHC ADMIE") set up by the Hellenic Republic, which has a unique and non-transferable share.

Regarding point (b), PPC's General Assembly approved on 24 November 2016 the acquisition of 24% of PPC's share in ADMIE by the State Grid International Development Ltd (hereinafter "SGID"). SGID appointed a special purpose acquisition company for the purpose of the transaction, State Grid Europe Limited (hereinafter "SGEL"), which is a wholly owned subsidiary of SGID. SGID, in turn, is a wholly owned subsidiary of the company State Grid International Development Co, Ltd (hereinafter "SGID Beijing"), which is a 100 % subsidiary of the company State Grid Corporation of China (hereinafter "SGCC") which is 100% controlled by the People's Republic of China (State Owned Assets Supervision and Administration Commission of the State Council).

Pursuant to Article 142(2) of Law 4389/2016, the direct or indirect participation of the Hellenic Republic (or of any legal entities which the Hellenic Republic holds a majority stake in or controls directly or indirectly) in the share capital of ADMIE shall not be less than 51%. Therefore, RAE notes that the Hellenic Republic exercises control over ADMIE within the meaning of Article 9 Electricity Directive. RAE underlines that ADMIE shall notify any change of its shareholding composition as well as any change of the control over Energiaki Holding and PHC ADMIE.

Article 142 of Law 4389/2016 also provides that the control over ADMIE and PPC shall be exercised by different public bodies. The Hellenic Republic holds a majority stake in PPC and is represented at the meetings of PPC's General Assembly by the Minister of Finance. In the case of PHC ADMIE, the public body in charge is the Ministry of Environment and Energy.

However, as RAE points out in its decision, according to the relevant Greek Law a joint ministerial decision of the Minister of Finance and the Minister of Environment and Energy is required for the approval of PHC ADMIE's statutes and, according to ADMIE's statutes, for the appointment and dismissal of its President, the CEO and the other members of the Board of Directors the same co-decision powers apply.

Therefore, RAE concludes that in order to comply with Article 9(6) Electricity Directive, ADMIE and PPC should be not only *de jure* but also *de facto* controlled by two different public bodies.

As regards the strategic investor, SGEL, held by SGID, RAE describes its corporate structure and its participation, directly or indirectly through its shareholders, in various activities in the fields of electricity or natural gas in the Union and Greece.

RAE concludes to preliminarily certify ADMIE as a TSO taking into account the points raised in its decision in order for ADMIE to, *de jure* and *de facto*, comply with Articles 9 and 11 of the Electricity Directive, noting in particular that:

- i) firstly, ADMIE should be controlled by a different entity within the Hellenic Republic than the one exercising control in undertakings active in generation and supply;
- ii) secondly, additional measures may be necessary by the time that RAE issues its final decision to ensure the security of supply on national and Union level; and
- iii) lastly, provision of measures to monitor and ensure the independence of the strategic investor from entities that control undertakings involved in the generation and/or the supply of electricity and natural gas as described in the preliminary decision should be accordingly made.

### III. COMMENTS

On the basis of the present notification, the Commission has the following comments on the draft decision.

#### 1. Choice of the TSO model

Article 9(1)(a) Electricity Directive determines that in the ownership unbundling model each undertaking which owns a transmission system acts as a transmission system operator.

RAE concludes that ADMIE, being certified as an ITO on 5 December 2012, owns and operates the transmission system in Greece on the basis of Greek Law and its Articles of Association.

The Commission agrees with RAE that in the present case the choice for the ownership unbundling model is legitimate. The Commission notes as well that the application of the ownership unbundling model is based on the commitments of the Hellenic Republic towards the Institutions made in the Memorandum of Understanding of 19 August 2015.

#### 2. Exercise of control and rights over ADMIE

Article 9(1)(b)(i) Electricity Directive prohibits the same person or persons from directly or indirectly exercising control over an undertaking performing any of the functions of production or supply, and directly or indirectly exercising control or exercising any right over a transmission system operator or over a transmission system. Article 9(1)(b)(ii) Electricity Directive prohibits the same person or persons from directly or indirectly exercising control over a transmission system operator or over a transmission system, and directly or indirectly exercising control or exercising any right over an undertaking performing any of the functions of production or supply.

##### *Control by the major shareholder*

As presented above, the Hellenic Republic is the majority shareholder of ADMIE, holding more than 51% of the shares through its direct and indirect participations in Energiaki Holding and PHC ADMIE. The Hellenic Republic is also entitled to appoint five out of nine board members in the Board of Directors of ADMIE, including its CEO. Due to the decisive influence over ADMIE granted by these rights, the Hellenic Republic can be considered to exercise at least joint control over ADMIE (see also point 5).

Among the shareholders in ADMIE, Energiaki Holding holds 51% of the shares in ADMIE. Energiaki Holding shares are held by the Hellenic Republic directly (34.12%) and indirectly through the Hellenic Republic Asset Development Fund<sup>5</sup> (hereinafter: HRADF) (17%) and by remaining shareholders (48.88%). This participation of 48.88% of the shares in Energiaki

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<sup>5</sup> According to Law 3986/2011, the Hellenic Republic Asset Development Fund (HRADF) leverages the private property of the State, which has been assigned to it, according to the country's international obligations and the Medium-Term Fiscal Strategy.

Holding will be transferred to the public investors of PPC pro rata to their participation in PPC.

It follows from RAE's draft decision that the Hellenic Republic also holds a direct participation of 34.12% in PPC, the main electricity producer and generator in Greece. HRADF also holds 17% of the shares in PPC.

RAE analyses to a certain extent whether the above structure is compatible with Article 9(1)(b)(i) Electricity Directive. Taking into account the facts presented by RAE, the Commission is of the opinion that the structure of Energiaki Holding as presented in RAE's draft decision does not comply with Article 9(1)(b)(i), since HRADF holds participations (through Energiaki Holding) in ADMIE and simultaneously holds participations in PPC.

However, the Commission notes that, pursuant to the recently adopted Greek Law 4467/2017<sup>6</sup> amending the provisions of Law 4389/2016, the shares held by HRADF in Energiaki Holding (as well as those held by the Hellenic Republic) shall be transferred to PHC ADMIE. However, the Commission invites RAE to assess in its final decision whether the transfer of these shares as envisaged in Law 4467/2017 is compliant with Article 9(1)(b)(i) Electricity Directive.

#### *Rights of public investors*

Moreover, the Commission notes that RAE has not assessed in its preliminary certification decision to what extent the rights of the remaining shareholders in Energiaki Holding (48.88%) are compliant with the requirements of Article 9(1)(b)(i), taking into account the fact that these shareholders also hold a stake in PPC equal to their participation in ADMIE. Whereas these minority shareholders do not exert control over ADMIE, they may vote on and propose the election of board members in Energiaki Holding. The Commission urges RAE to analyse before its final decision whether these minority shareholders hold interests and can exercise rights that are incompatible with the provisions of Article 9(1)(b) and (c) Electricity Directive (e.g. voting rights, appointment of members of the supervisory board, the administrative board or bodies legally representing ADMIE) or their shares are attached to purely passive financial rights.<sup>7</sup> If such conflict occurs, RAE should require measures to ensure that no such rights exist when ADMIE is certified as a TSO in accordance with Article 9 Electricity Directive to prevent the incentive for a shareholder to influence the decision making in ADMIE with the intention to favour its generation, production, and/or supply interests to the detriment of other network users.<sup>8</sup>

Such measures could comprise the introduction of additional clauses in the shareholders' agreement and the statutes of ADMIE/Energiaki Holding to provide that public investors who hold shares in Energiaki Holding and exercise control or rights over an undertaking having as business activity either the production or supply of electricity would be disabled from exercising voting rights, including the competence to appoint members in the Supervisory board, Directorate or other representative bodies of ADMIE.

The question as to whether the direct and indirect participations of the Hellenic Republic in ADMIE and PPC, respectively, comply with Article 9(1)(b)(i) in combination with Article 9(6) Electricity Directive, are analysed under point 4.

<sup>6</sup> Νόμος υπ' αριθ. 4467 ΦΕΚ 56 - 13.04.2017, Τροποποιήσεις Διατάξεων της Δασικής Νομοθεσίας και άλλες Διατάξεις (article 14).

<sup>7</sup> Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (2008/C 95/01), paragraphs 65 - 80.

<sup>8</sup> The Commission's practice in assessing the presence of a conflict of interest including in case of financial investors is described in: Commission Staff Working Document on Ownership unbundling, 8 May 2013, SWD(2013) 177 final, p. 3.

### *Strategic investor*

Among the shareholders in ADMIE, SGEL (24%) is under the control of SGID, SGCC and ultimately of the People's Republic of China. According to RAE's draft decision, both SGID and SGCC are active in generation or supply of electricity in territories outside of the European Union, i.e. in Brazil and China. RAE concludes that, as these activities are performed in territories without any direct or indirect geographical link to the Greek network, these participations in generation/supply activities do not give SGEL/SGID an incentive to use their influence over ADMIE in a way so as to favour their interests in the aforementioned activities.

Thus, RAE concludes that there is no risk of conflict of interest or influence in the decisions of the TSO and that Article 9(1)(b)(i) of the Electricity Directive is complied with.

However, RAE also referred to a memorandum of understanding that was signed between PPC and a Chinese company, i.e. China Machinery Engineering Corporation (CMEC), controlled by Sinomach, a company also controlled by the Government of People's Republic of China. This memorandum of understanding relates to the construction of a lignite power plant in Greece and the creation of a joint venture between the two companies and the owners of the lignite mines which will supply the power plant. RAE underlines that in the course of realising this project, RAE should be provided with evidence about the independence of SGID from CMEC, given that both companies are indirectly controlled by the government of the People's Republic of China.

In addition, RAE requested to be informed of any future acquisitions of controlling participations by the People's Republic of China in any undertakings active in electricity and gas generation and supply within the European Economic Area.

The Commission also notes that the restrictions on activities in energy production and supply pursuant to Article 9 Gas Directive are not geographically limited to the territory of the European Union. However, the Commission agrees with RAE that in the present case, to the extent that SGID and its owners perform activities in the field of electricity or natural gas generation outside of the European Economic Area, this does not lead to a risk of discriminatory behaviour via privileged access to transmission services for affiliated companies to the detriment of other network users.

However, the Commission agrees with RAE that it is of crucial importance to obtain and analyse any new participations of the People's Republic of China or its state-owned companies in undertakings active in electricity and gas generation and supply within the European Economic Area.

Regarding the potential conflict that could arise with regard to the activities of CMEC in Greece, the Commission agrees that no concern arises under the current certification process regarding the independence of SGID from CMEC as the common project of PPC and CMEC has not yet been realised. The Commission underlines that it is for RAE to monitor whether the circumstances on which the assessment is based remain unchanged. In case of change, the Commission urges RAE to reassess the certification requirements and take concrete measures to avoid any conflict of interest and ensure the compliance with Article 9 Electricity Directive.

### **3. Composition of the board**

Article 9(1)(d) Electricity Directive prohibits the same person to be a member of the supervisory board, the administrative board or bodies legally representing the undertaking, of both an undertaking performing any of the functions of generation or supply and a transmission system operator or a transmission system.

RAE mentions that the current members of the Board of Directors of ADMIE are not holding any positions in bodies legally representing undertakings performing any of the functions of generation or supply, based on the information provided in the draft statutes of ADMIE. It is not clear though whether RAE has been provided with corresponding self-declarations by the members of the Board of Directors. RAE should ensure that these declarations are provided before its final decision.

The Commission also invites RAE to carry out the same analysis with respect to the members of ADMIE's Supervisory Board or any other bodies legally representing ADMIE to ensure full compliance with Article 9(1)(d) Electricity Directive.

#### **4. Separation within the State**

Article 9(6) Electricity Directive opens up the possibility, within the ownership unbundling model, of the State controlling transmission activities, as well as generation, production and supply activities, provided however that the respective activities are exercised by separate public entities. For the purpose of the rules on ownership unbundling, two separate public bodies should therefore be seen as two distinct persons and should be able to control generation and supply activities on the one hand and transmission activities on the other, provided that it can be demonstrated that they are not under the common influence of another public entity in violation of the rules on ownership unbundling. The public bodies concerned must be truly separate. In these cases, it must be demonstrated that the requirements of ownership unbundling of Article 9 Electricity Directive are enshrined in national law and are duly complied with.<sup>9</sup>

RAE points out in its decision that according to the relevant Greek Law, a joint ministerial decision of the Minister of Finance and the Minister of Environment and Energy is required for the approval of PHC ADMIE's statutes and, according to the draft statutes of ADMIE, a similar joint decision is required for the appointment and dismissal of its President, the CEO and the other members of the Board of Directors.

The Hellenic Republic holds a majority stake in PPC (owning directly a 34.12% share as well as 17% through HRADF) and it is represented at the meetings of PPC's General Assembly by the Minister of Finance. Therefore, RAE concludes that in order to comply with Article 9(6) of the Electricity Directive, ADMIE and PPC should be not only *de jure* but also *de facto* controlled by two different public bodies.

The Commission agrees with RAE that a separation of control over activities in generation and supply on the one side and transmission activities on the other side within the Hellenic Republic is required in order to comply with Article 9(6) Electricity Directive. Apart from the concerns raised in relation to the shares held by HRADF and the compliance with Article 9(1)(b)(i) Electricity Directive, the direct participation of the Hellenic Republic in ADMIE through Energiaki Holding raises concerns regarding its compliance with Article 9(6) Electricity Directive.

However, the Commission notes that the recently adopted Law 4467/2017 amending the provisions of Law 4389/2016 stipulates that a different public body shall exercise control over ADMIE than the public body exercising control over undertakings active in generation or supply of electricity or gas. The same law provides that the shares of the Hellenic Republic (34.12%) and the HRADF (17%) in Energiaki Holding shall be transferred to PHC ADMIE, i.e. PHC ADMIE will hold the majority of the shares in Energiaki Holding. Moreover, the Hellenic Republic as shareholder in ADMIE will be represented via the Ministry of Environment and Energy or its legal representative.

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<sup>9</sup> The Unbundling regime, Commission staff working document, 22 January 2010, p. 10.

Therefore, the Commission invites RAE to reassess in its final decision whether, subject to the amended national rules, compliance with Article 9(1)(b)(i) in combination with Article 9(6) Electricity Directive is fully ensured. The assessment should include any changes necessary as regards the requirements of a joint ministerial decision of the Minister of Finance and the Minister of Environment and Energy for the approval of PHC ADMIE's statutes, and for the appointment and dismissal of ADMIE's President, CEO and other members of the Board of Directors of ADMIE.

The assessment should also include the role of the Prime Minister in Greece and in particular if he would be able to exercise influence over multiple ministers (including the Minister of Finance and the Minister of Environment and Energy) and/or give orders or instructions as regards Minister's responsibilities in transmission of electricity.

In this context, the Commission recommends that RAE render the certification of ADMIE conditional on any changes necessary to ensure *de jure* and *de facto* compliance with Article 9(1)(b)(i) in combination with Article 9(6) Electricity Directive.

### **5. Application of Article 11 – certification in relation to third countries**

Article 11 Electricity Directive determines that where certification is requested by a TSO that is controlled by a person from a third country, the regulatory authority shall refuse certification if it has not been demonstrated that the entity concerned complies with the requirements of Article 9 and that granting the certification would not put at risk the security of supply of the Member State and the Community. In considering the latter question, three relevant aspects need to be taken into account. Firstly, the rights and obligations of the Community vis-à-vis the third country arising under international law, including any agreement concluded with one or more third countries to which the Community is a party and which addresses the issues of security of supply. Secondly, the rights and obligations of the Member State with respect to that third country arising under agreements concluded with it, insofar as these are in compliance with Community law. Thirdly, other specific facts and circumstances of the case and the third country concerned.

#### *Exercise of control by SGID/SGEL*

Article 11 Electricity Directive applies only where a TSO is controlled by a person from a third country. RAE does not assess in detail whether there is indeed at least joint control by a person from a third country, i.e. on whether SGEL/SGID exercise a decisive influence over ADMIE jointly with the Hellenic Republic. However, based on the facts presented in the draft decision and the attached information related to the shareholders' agreement between the strategic investor and the other shareholders, the Commission notes that the strategic investor, even though a minority shareholder, has a number of decisive rights which include veto rights in the appointment of the CEO and the right to appoint three out of nine members of the Board of Directors of ADMIE. In addition, certain actions, such as the approval of the business plan and/or annual budget, including updates, amendments, modifications thereto as well as any material departure from such business plan and/or annual budget can only take place if at least one member of the Board of Directors appointed by the strategic investor consents. The same applies for the approval of the ten year network development plan to be submitted for public consultation and to RAE.

It follows from the Electricity Directive<sup>10</sup> and the Commission interpretative note on the unbundling regime of the Third Energy Package<sup>11</sup> that the concept of control should be

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<sup>10</sup> As regards the concept of "control", the Electricity Directive refers (see recital 13) to Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ L 24/1, 29.1.2004 (hereinafter, "Merger Regulation"). This concept should therefore be interpreted accordingly.



understood and assessed in accordance with the Merger Regulation and in particular of the Jurisdictional Notice<sup>12</sup>, from which follows that in the present case, the Hellenic Republic and SGEL/SGID together exercise a joint control over ADMIE. Joint control exists where two or more undertakings or persons have the possibility of exercising decisive influence over another undertaking. Decisive influence in this sense normally means the power to block actions which determine the strategic commercial behavior of an undertaking. Joint control is characterised by the possibility of a deadlock situation resulting from the power of two or more parent companies to reject proposed strategic decisions, thereby requiring parties to cooperate to reach a common understanding in determining the commercial policy of their joint venture.<sup>13</sup>

### *Assessment*

In its draft decision, RAE assessed the compliance with Article 11 Electricity Directive. First, RAE referred to the existing framework of cooperation between the Union and the People's Republic of China in the field of energy. Second, it assessed the security of supply concerns regarding the maintenance and the development of the Greek network and the rights of ACER in this regard and concluded that a threat to the security of supply does not appear to exist for the following reasons:

- (a) RAE assesses the ten-year network development plan as well as its compliance with the ENTSO-E ten-year network development plan and it is competent to take any measures to ensure its fulfilment;
- (b) in general, RAE is entitled to take any measure necessary, including by imposing fines, to ensure the fulfilment of ADMIE's obligations enshrined in the Greek Energy Law 4001/2011 and related legislation (e.g. technical codes for the network operation);
- (c) in addition the Hellenic Republic is required by national law to remain the majority shareholder of ADMIE which excludes the possibility that persons from third countries can acquire sole control of ADMIE; and
- (d) finally, the Hellenic Republic has the right to appoint the majority of the members of the Board of Directors of ADMIE whereas the strategic investor only three out of nine members. The Board of Directors is the main body of ADMIE which sets the strategic and political development of ADMIE's assets and in particular the maintenance and operation of the transmission system and the development of the ten years network development plan.

RAE concludes that it is of crucial importance to ensure that the shares of the strategic investor do not increase to the extent that it can appoint the majority of the members of the Board of Directors responsible for deciding on inter alia, the business plan and the budget of ADMIE. In addition, it should be avoided that the strategic investor is entitled to appoint all members in the so-called "Strategic Committee" which now consists of two members appointed by the Energiaki Holding and two by the strategic investor. The Commission notes that RAE has not assessed in depth what are the rights of the Strategic Committee.

Moreover, the Commission is of the view that at least an assessment of the following potential risks should be included in greater detail in RAE's final decision:

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<sup>11</sup> [https://ec.europa.eu/energy/sites/ener/files/documents/2010\\_01\\_21\\_the\\_unbundling\\_regime.pdf](https://ec.europa.eu/energy/sites/ener/files/documents/2010_01_21_the_unbundling_regime.pdf).

<sup>12</sup> Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (2008/C 95/01).

<sup>13</sup> *Id.*, paragraph 62.

- (a) the risk of governmental acts by the People's Republic of China that render it impossible or difficult (such as by creating legal uncertainty or conflicts of law between Chinese and EU legislation) for ADMIE or SGID to comply with EU energy law, other relevant EU law or Treaty obligations, including the exercise of investigative powers and enforcement action;
- (b) the risk that the People's Republic of China could exercise its ownership rights in SGID and its mother company in a manner that could result in ADMIE or SGID acting contrary to EU energy law, other relevant EU law or Treaty obligations, including the exercise of investigative powers and enforcement action;
- (c) the risk of acts by the People's Republic of China, SGID and/or companies affiliated to them that may directly or indirectly impose sanctions on ADMIE or SGID for complying with EU law and policies, notably related to security of supply.

Regarding the concerns of security of supply for the Union, RAE presented the interconnection between Greece and neighbouring Member States, i.e. Italy and Bulgaria, as well as the flows between these countries. It noted that the interconnection capacity and the exports from Greece to these Member States represent a limited percentage of their import needs. Further, RAE referred to the participation of SGID/SGEL in the Italian Cassa Depositi e Prestiti reti S.p.S (CDP Reti) which does not lead to exercise of control in the Italian electricity and gas transmission system operators Terna and Snam. Also other participations of SGID in the Union energy markets, as the Portuguese transmission system operators though REN SGPS do not raise concerns as these markets are not directly linked to the Greek network.

As a result of its assessment, RAE concluded that no incentive seems to exist for SGID to exercise control over ADMIE in a manner that would endanger the security of supply of Greece and the Union, in particular as undertakings owned by the People's Republic of China are not active in generation or supply activities in Greece or the Union to the extent or in such a way as to pose risks for the security supply.

Even though in general the above arguments may not safeguard against potential influence, the Commission agrees that if the non-EU country concerned is active in the field of electricity generation or supply but it can be excluded with reasonable certainty that the produced energy will be supplied to the European Union, it is less likely that the TSO controlled by the person from a non-EU country is operated in a manner contrary to security of supply interests of Greece or the Union. The People's Republic of China as a country currently does not have energy interconnections allowing for the direct transmission of electricity or gas to Europe. In the absence of commercial activities of energy supply to the EU and/or interests in the energy production in the EU, the incentives and opportunities for exercising influence over ADMIE to the detriment of EU energy security of supply are limited, and thus security of supply concerns within the meaning of Article 11 Electricity Directive are unlikely to arise under the present circumstances.

Having said this, in the current case the Commission notes that SGID/SGEL has extensive co-decision rights in strategic matters of ADMIE such as the strategic plan, the annual budget and the investment plans of the company. In light of these circumstances, the Commission invites RAE to assess to what extent it is able to ensure that Greek and thus Union law will be complied with at all times. The Commission also agrees that future developments regarding the activities of SGID, its mother company and in general the government of the People's Republic of China in Greece and Europe need to be monitored to ensure that the security of supply assessment remains unchanged.

Further, the Commission underlines in this context the importance of the security and reliability of information systems and networks across the Union, which are essential to economic activities and in particular for the functioning of the internal energy market. Cybersecurity plays an increasing role in the economic activities, in particular in the operating of networks that are essential for providing essential services to citizens and businesses.

To this end, the Directive on security of network and information systems (the NIS Directive)<sup>14</sup> lays down measures with a view to achieving a high common level of security of networks and information systems. The NIS Directive establishes security and notification requirements for so-called 'operators of essential services'. ADMIE is likely to qualify as such an operator of essential service under the provisions of the NIS Directive, and therefore will have to meet the requirements set out in the NIS Directive, which Member States have to transpose into national law by 9 May 2018.

In light of the requirements set by the NIS Directive and in general in terms of the requirement to respect confidentiality of sensitive information, the Commission notes that safeguards are needed to ensure that ADMIE as well as its shareholders controlled by a person from a third country comply with such requirements. RAE noted in its draft decision that it has assessed the documentation submitted by ADMIE on the basic rules on operation of ADMIE and concluded that sufficient tools exist to ensure that confidentiality of sensitive information is respected. The Commission recommends that RAE takes into account also the requirements set out in the NIS Directive in its final decision and requires that ADMIE and its shareholders from a third country, already now, properly identify potential cyber-incidents as a risk and commit to take appropriate technical and organisational measures to prevent and minimise the impact of the incidents affecting the security of networks in Greece and in the Union.

#### **6. Monitoring of compliance of unbundling rules by shareholders**

ADMIE under the new structure will be a listed company in the Greek stock exchange market. Energiaki Holding has a stake of 51% in ADMIE, while 48.88% of Energiaki Holding will be held by public investors pro rata to the shares in PPC. As the shares held by public investors may be transferred to other public investors or SGID/SGEL, mechanisms should be clearly defined to guarantee the compliance with unbundling provisions of the Electricity Directive as transposed into Greek national legislation.

In order to comply with the unbundling requirements the Commission considers that it is necessary to at least introduce mechanisms that enable RAE to monitor shareholdings in ADMIE on a regular basis and decide whether or not a shareholder meets the requirements of Article 9(1)(b)(i) of the Electricity Directive. A violation of the unbundling rules is considered a severe infringement and RAE should have the power to impose effective, proportionate and dissuasive penalties on the persons responsible for such violations.

#### **IV. CONCLUSION**

Pursuant to Article 3(2) and Article 11(8) Electricity Regulation, RAE shall take utmost account of the above comments of the Commission when taking its final decision regarding the certification of ADMIE, and when it does so, shall communicate this decision to the Commission.

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<sup>14</sup> Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union, OJ L 194, 19.07.2016, p. 1-30.

The Commission's position on this particular notification is without prejudice to any position it may take vis-à-vis national regulatory authorities on any other notified draft measures concerning certification, or vis-à-vis national authorities responsible for the transposition of EU legislation as regards the compatibility of any national implementing measure with EU law.

The Commission will publish this document on its website. The Commission does not consider the information contained herein to be confidential. RAE is invited to inform the Commission within five working days following receipt whether it considers that, in accordance with EU and national rules on business confidentiality, this document contains confidential information which it wishes to have deleted prior to such publication. Reasons should be given for any such request.

Done at Brussels, 24.5.2017

*For the Commission*  
*Miguel ARIAS CAÑETE*  
*Member of the Commission*