

European Commission
Directorate General for Energy
Unit C3 - Internal Energy Market
1049 Brussels
Belgium

Ref. No: HAES 21021
Athens, 06.09.2021

Subject: Hellenic Association of Energy Suppliers' (HAES) response to European Commission's call for a public consultation on the Greek Market Reform Plan

Dear Sir/ Madam,

Following the European Commission's call for a public consultation on the Greek Market Reform Plan, please find below the comments and opinions of the Hellenic Association of Energy Suppliers (HAES), concerning exclusively the Market Reform Plan's assessment and proposed measures with respect to the retail market only.

The comments and opinions of HAES, as expressed in this letter, only concern topics on which HAES members are in agreement, and do not in any case convey or imply any opinions of our Association with regard to the wholesale market, and the Market Reform Plan's assessment concerning the need for associated measures. HAES members hold alternate views regarding the aforementioned proposed measures as well as other topics covered² in the proposed Market Reform Plan and, as a result, such views will be expressed individually by HAES members.

Structural characteristics of the retail market

Our Association's view is that overall, the Market Reform Plan's review and analysis of the retail market overlooks a range of structural issues, which are associated with the incumbent's dominant position and continue to have an adverse impact on retail market competition. Indicatively, based solely on the diminishing competitive advantage of PPC with respect to lignite¹, the Market Reform Plan concludes that there is no scope to continue the energy release program or other asymmetric regulation measures to diminish retail market concentration. In this respect, the Market Reform Plan disregards completely the market's apparent and persistent asymmetries, which have been repeatedly documented by national and EU authorities and are at the core of an on-going investigation by the European Commission (EC)². Our Association believes that these fundamental

¹ Market Reform Plan (section 4.4): *"Nowadays, lignite-based generation is more expensive than other resources due to carbon prices, and lignite plants will be shortly phase-out. As a result, PPC has already today lost the competitive advantage related to lignite. Therefore, there is no scope to continue the energy release program or other asymmetric regulation measures to diminish retail market concentration"*.

² In reference to case AT.40278, the EC notes: *"PPC is the largest supplier of retail and wholesale electricity in Greece. PPC is majority owned by the Greek State. It controls all lignite and hydro as well as some of the natural gas and renewable power generation plants. It is also active in the supply of energy to retail and business consumers where it still has more*

structural characteristics should be fully reflected in the Market Reform Plan and due attention should be dedicated to the identification of appropriate regulatory measures or market reforms with the aim to address the dominant position of the incumbent player and enhance competition in the retail market.

In the framework of the Third Economic Adjustment Programme, the Greek Government had made the commitment, through Law 4336/2015, to take specific remedial regulatory measures, aimed at addressing the dominant position of the incumbent player in the retail as well as in the wholesale markets.³ For this purpose, a NOME-type mechanism for auctioning of electricity derivative products with physical delivery by PPC was established in 2015, aimed explicitly at enhancing competition in the retail electricity market and reducing PPC's share in the interconnected system below 50% by 2019.⁴ The auction mechanism provided access not only to lignite production of PPC but to a combination of lignite and hydroelectric production, through the application of a "Virtual Power Plant" scheme. The auction mechanism was terminated in 2019, in anticipation of the Target Model's implementation and the launching of an organized derivatives market through the Hellenic Energy Exchange (HEnEx) in 2020.

Despite the fact that concentration in the retail market has to some extent dropped since 2015, the Herfindahl-Hirschman Index (HHI) of concentration in terms of consumption in the retail market for Low Voltage (LV) and Medium Voltage (MV) customers, according to RAE's latest Annual Report⁵, stood at 4,171 for the Interconnected System and at 5,565 for the Non-Interconnected System in 2020. **RAE concludes that the value of both indices far exceeds the upper limit for a competitive market, which stands at 2,000 according to guidance from the European Commission.**⁶ In terms of connections, PPC still holds a market share of 78% among LV and MV customers and remains the sole supplier in the High Voltage (HV) market segment.

Importantly, the dominant player's positioning has not been achieved by way of efficient competition but has rather been the result of PPC's legacy as the vertically integrated monopoly. Competitive forces in Greece's retail electricity market remain weak to date, as evidenced by the fact that there is no correlation between the energy (competitive) segment of supply tariffs and wholesale market prices.⁷ Furthermore, the limited number of active energy suppliers in Greece's retail market which remains one of the smallest in the European Union (per number of

than two-thirds market share. The Commission is concerned that PPC may have restricted competition in the Greek wholesale electricity markets with its bidding behaviour. In particular, in light of PPC's position both at wholesale and retail levels, it may have adopted predatory bidding strategies hindering the ability of PPC rivals to compete in the wholesale and related electricity markets".

³ Law 4336/2015 (paragraph 4.3, section Γ' of Art. 3): "*In September 2015, the authorities will discuss with the European Commission the design of the NOME system of auctions, with the objective of lowering by 25% the retail and wholesale market shares of PPC, and to bring them below 50% by 2020 (...)*".

⁴ Law 4389/2016 (Art.135): «*1. A mechanism is established for the sale of electricity by Public Electricity Company SA (hereinafter "PPC SA") to Eligible Electricity Suppliers as per Art. 136, based on auctions of electricity derivative products with physical delivery, through the Day-Ahead Schedule (DAS) and with a regulated starting price. The purpose of the mechanism is to redistribute to alternative suppliers, the retail electricity market share held by PPC SA in the interconnected system in August 2015, so that it reaches a level below 50% by 2019*".

⁵ https://www.rae.gr/wp-content/uploads/2021/04/Πεπραγµένα_2020_final.pdf

⁶ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2004/C 31/3).

⁷ As per ACER's 2019 Market Monitoring Report (section 2.3.1), the correlation coefficient between the energy (competitive) segment of supply tariffs and wholesale market prices during the last decade (2008-2019) in Greece was estimated to be zero (in a scale of zero to one). The corresponding median value for EU-27 was 0.5 while in markets such as Portugal, Poland, Italy and Lithuania, the correlation coefficient exceeds 0.7.

connections)⁸, as well continued ownership of the Distribution System Operator (DSO) by PPC⁹, strongly indicate the existence of entry barriers and point to the conclusion that Greece's retail market cannot be characterized as contestable.

As a critical consequence of the Greek electricity market's structural characteristics, particularly the exceptionally high levels of concentration in the retail market (resembling conditions of monopsony) as well the fact that PPC remains the largest producer of electricity and the only one with a diversified portfolio, the Greek wholesale market suffers from poor liquidity and a complete lack of risk management (hedging) products. Due to this situation, the dominant player, who should have been the primary provider of liquidity in the market for derivative products (market maker), is in a highly advantageous position compared to other energy suppliers, since it is still able manage risks by internalizing them, taking advantage of its size and diversified production portfolio, in contrast to its competitors who lack this capacity.

In light of the well-documented structural characteristics of the Greek retail electricity market, our Association's view is diametrically opposed to the Market Reform Plan's firm conclusion that there is no scope to continue NOME-type auctions or other asymmetric regulation measures to diminish retail market concentration. Our Association believes that this conclusion is based on an analysis that overlooks a range of structural issues which are associated with the incumbent's dominant position and continue to affect adversely competition in the retail market. In any case, we would like to note that, contrary to the Market Reform Plan's underlying assumption, NOME-type auctions were regulatory measures aimed at remedying the incumbent's overall dominant position in the retail market, and not exclusively its competitive advantage in relation to lignite production.

Our Association believes that the need for remedial (asymmetric) regulation measures should be evaluated giving due attention to the above-mentioned structural characteristics of the retail market, including the persistent and exceptionally high levels of concentration, complete lack of risk management (hedging) products, the incumbent's dominant position stemming from its historic role as a vertically integrated monopoly as well as associated evidence regarding competition and market entry barriers.

Retail market outlook

The Market Reform Plan's assessment with respect to prospective competition in the retail electricity market rests almost exclusively on the argument that the diminishing competitiveness of lignite plants and their eventual withdrawal, combined with the introduction of RES-PPAs, will be powerful enough drivers to achieve low market concentration in the coming years. A key element of this development, according to the Market Reform Plan, is that PPC's share in the supply of high voltage customers will decrease drastically in short to medium term. The critical assumption on which the Market Reform Plan's assessment rests, is that *"(...) the emerging possibility of forming portfolios with RES to supply customers bilaterally evenly spreads across the competitors, and PPC cannot dominate this future market"*. Based on this assumption, the Market Reform Plan reaches

⁸ As per ACER's 2019 Market Monitoring Report, the number of active energy suppliers per 1 mil. connections is 2.5 in Greece, 5 in Portugal and the Netherlands, 8 in Poland, 15 in the Czech Republic and 25 in Latvia.

⁹ ACER Market Monitoring Report (section 4.1.1, paragraph 121): *"(...) the presence/ non-presence of incumbent suppliers owned by local distribution system operators (DSOs) provides an indication of the existence/ non-existence of entry barriers."*

the conclusion that “(...) *the formation of dominant generation and supply portfolios are not possible anymore*”.

Indeed, the expected restructuring of the power generation mix will be a powerful driver, that could potentially lead to enhanced competition in the retail market. However, the Market Reform Plan focuses almost exclusively on the impact of RES-PPAs in the HV market, disregarding conditions in the LV market, which accounts for approx. 61% of consumption and 99% of connections in the interconnected system. Moreover, the Market Reform Plan’s conclusion critically rests on the erroneous assumption that market participants (suppliers) will compete on an equal footing in the market for RES-PPA contracts. Considering the asymmetries between retail market participants, stemming from the incumbent’s legacy as the state-owned and former vertically integrated monopoly, it can hardly be argued that this will be the case. The incumbent is clearly in an advantageous position compared to competitors to attract and manage a very large number of RES-PPAs under favourable terms, due to its ability to internalize the risks associated with the management of various consumption and balancing profiles. The incumbent’s capacity to internalize these risks stems from the size of its customer base (approx. ten times larger than that of the next biggest supplier) as well as the size and diversity of its generation portfolio.

Moreover, the incumbent’s creditworthiness benefits from the company’s access to various sources of income, its ownership status, and the perception that “it is too big to fail”, all stemming from its dominant position and legacy as the former vertically integrated monopoly. The incumbent’s sources of income include the regulated and thus stable dividends from the DSO and the distribution network assets. In case the divestment of a 49% stake in the DSO and the distribution network assets is completed, PPC will also benefit from a significant amount of extraordinary proceeds. Additional income is expected from PPC’s planned investments in the development of a fiber optics network that would take advantage of existing and future distribution network infrastructure. Due to its ownership status, the incumbent also benefits from stable income as the supplier of the General Government (e.g. schools, municipal lighting, etc.) as well as from advance payments with respect to this activity, based on a special arrangement with the Greek Government. The above-mentioned instances are just indicative of the incumbent’s advantageous positioning with regard to RES-PPAs and are by no means an exhaustive account of the benefits associated with its dominant position and legacy as the former vertically integrated monopoly.

Additionally, our Association is skeptical of the Market Reform Plan’s assessment that, the remedies to be implemented in the framework of the European Commission case AT.38700 will contribute substantially towards enhancing competition and reducing concentration in the electricity retail market. Based on the proposal of European Commission regarding the intended measure, PPC will be required to offer a specific volume of electricity in the forward market on a quarterly basis, which in total will not exceed 5% of total electricity consumption during the measure’s implementation, from Q4 2020 until Q4 2023 at the latest. Additionally, it is expected that due to the Hellenic Republic’s plan for decommissioning of lignite plants, each year the absolute volume of lignite-based generation of PPC will decline, and so will the volumes that will be offered under the remedial measure. Therefore, although the measure is indeed a positive development, as it might increase liquidity in the forward market under some conditions, it can hardly be expected that it will have a lasting impact on competition and concentration in the retail market, considering its limited duration and scope, specifically the small and progressively declining volume of electricity to be offered by PPC.

Finally, our Association considers that the introduction of the new Market Monitoring and

Surveillance Mechanism (MMSM) is crucial and will be a very positive development. The MMSM should allow the implementation of ex-ante regulatory measures through algorithmic identification of anti-competitive conduct and automatic application of mitigation measures, as well the development of procedures for the ex-post imposition of fines and administrative sanctions in case of abusive behavior. Importantly, through the MMSM, RAE should not only identify and mitigate anti-competitive conduct but also diagnose and evaluate failures of the market associated with its structural characteristics. The MMSM should enable the assessment of potentially anti-competitive behavior across the entire supply chain, including Target Model markets, interconnection capacity markets and in particular retail markets. The mechanism should examine the underlying cost elements of the supply tariffs per voltage level as well as how these are reflected in the suppliers' financial statements, without of course inhibiting commercial policies of suppliers.

Our Association's main proposals

Considering the Greek electricity market's structural characteristics as well as the conditions under which the market for RES-PPAs is expected to develop in the following years, our Association believes that appropriate regulatory measures should be examined, and implemented with immediate effect, in order to address asymmetries between energy suppliers and enhance current and prospective levels of competition.

Such measures should inter alia aim to limit existing structural disparities between energy suppliers with respect to their risk management capabilities, by substantially increasing liquidity in the forward market. As long as the market for appropriate risk management (hedging) products remains shallow or non-existent, the development of effective competition in the retail market, exemplified through the provision of superior and more competitive products (e.g. in terms of their price, characteristics, etc.), will be inhibited.

Additionally, it is important to take appropriate measures in order to ensure that PPC's stable or extraordinary proceeds, associated with its ownership of the DSO and of the distribution network assets, do not confer an undue financial advantage to the incumbent with respect to its activities in the retail market (e.g. ability to sustain exceptionally high levels of bad debt from its customers, capacity to finance various promotional activities and marketing channels).

Moreover, the incumbent's relationship with the Government should be maintained at an arm's length, in terms of procurement processes and contractual conditions for the purchase of electricity by the General Government, as well in terms of the Government's stance with respect to asymmetric State Aid schemes intended for the benefit of specific market participants (e.g. strategic reserve mechanism).

Importantly, structural asymmetries between energy suppliers, affecting their respective creditworthiness and thus their positioning with respect to RES-PPAs, should be addressed through appropriate remedial measures. Structural disparities in the creditworthiness of energy suppliers, associated with the incumbent's legacy as the vertically integrated monopoly, confer a noticeable advantage to PPC in terms of its capacity to form a dominant RES-PPA portfolio and secure access to low levelized cost of energy, thus sustaining exceptionally high levels of concentration in the retail market. For this purpose, our Association considers that a measure of state guarantees, similar to the one foreseen by the Market Reform Plan for the energy-intensive industries, will be required in order to remedy such structural disparities in the creditworthiness of energy suppliers and ensure that energy suppliers are able to compete on an equal footing in the market for RES-PPAs, thus

catalyzing the reduction of concentration in the retail market. In light of the expected restructuring of the power generation mix, our Association believes that a remedial measure of this type is necessary, in order to ensure that the possibility of forming RES-PPA portfolios evenly spreads across the competitors, thus preventing the formation of dominant generation portfolios and facilitating the enhancement of competition in the retail market.

Finally, our Association considers that, potential remedies to be implemented in the framework of European Commission anti-trust investigations (e.g. cases AT.38700 and AT.40278), should be appropriately coordinated with the Market Reform Plan's assessment and recommendations, taking due account of the market's current as well prospective characteristics, most noticeably persistent structural disparities between energy suppliers as well as the advent of RES-PPAs and the diminishing volume of lignite-based generation. Specifically, we consider that any remedies associated with European Commission investigations should be forward-looking and should be devised in conjunction with measures stemming from the Market Reform Plan, in order to ensure compatibility between respective schemes and facilitate stability regarding the regulatory framework.

Concluding remarks

The Greek retail market has well documented and persistent structural characteristics affecting current as well as prospective conditions of competition, that cannot be overlooked. Our Association strongly believes that the Market Reform Plan should include a thorough review of these structural characteristics and that due attention should be given to the assessment of appropriate regulatory measures or reforms, aimed at addressing asymmetries between energy suppliers in order to enhance retail market competition, including inter alia with respect to the development of RES-PPAs.

We remain available for any clarification or further cooperation.

Yours sincerely,

Miltos Aslanoglou
HAES General Manager