
Changes to legislation: There are currently no known outstanding effects for the Commission Decision of 10 May 2007 on State aid C 2/06 (ex N 405/05) which Greece is planning to implement for the early voluntary retirement scheme of OTE (notified under document number C(2007) 1436) (Only the Greek version is authentic) (Text with EEA relevance) (2008/722/EC). (See end of Document for details)

Commission Decision of 10 May 2007 on State aid C 2/06 (ex N 405/05) which Greece is planning to implement for the early voluntary retirement scheme of OTE (notified under document number C(2007) 1436) (Only the Greek version is authentic) (Text with EEA relevance) (2008/722/EC)

- Article 1 The 4 % shareholding in OTE that the Greek State is...
Article 2 This Decision is addressed to the Hellenic Republic.
 Signature

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- (1) OJ C 151, 29.6.2006, p. 2.
- (2) Idem.
- (3) See OTE Annual report 2005, at http://www.ote.gr/english/investorrelations/Files/OteAnnualReport05English_Final.pdf
- (4) According to the latest Commission Implementation Report, 'in September 2005 there were 24 authorised public fixed voice telephony operators of which 13 were commercially offering fixed voice telephony services over a leased or own network. These include the incumbent but do not include operators acting as resellers or suppliers of prepaid services. Although the incumbent is still strong in the fixed calls market, there has been some significant progress towards more competition, reflected in the fact that the incumbent's retail revenues market share fell from 85 % in December 2003 to 76 % in December 2004, while there were three additional operators, which, together with the incumbent, accounted for 90 % of the market': see the Annex to the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, 'European Electronic Communications Regulation and Markets 2005' (11th Report) COM(2006) 68 final, at p. 120, http://ec.europa.eu/information_society/policy/ecomm/doc/implementation_enforcement/annualreports/11threport/sec_2006_193-vol1.pdf
- (5) The job security that OTE employees enjoy as a result of their permanent status derives from Article 2(2)(b) of Law No 2257/94, which ratifies OTE's general employment statute. According to Articles 2 and 17 of the statute, OTE cannot unilaterally terminate an employment contract. This implies that OTE cannot freely operate in the market by deciding which employees must leave or by forcing them unilaterally to leave after offering them legal compensation in return.
- (6) This category of employees accounts for 84 % of the company's workforce.
- (7) The main pension fund for OTE employees is TAP-OTE. TAP-OTE is an independent legal body governed by public law, like all other pension funds in Greece. It has its own board of directors, administration, budget and finance departments. It covers both OTE employees and employees of other companies. It is divided into a pension division and a health division. Besides TAP-OTE, there is also an auxiliary fund. The OTE auxiliary fund has two schemes, the assistance scheme and the auxiliary insurance scheme. OTE employees are entitled to a pension under Greek social security legislation, which applies to all public law funds such as TAP-OTE. Both the main and the auxiliary pensions are obligatory under Greek law.
- (8) Employees who have already completed 30 years of service and are entitled to a pension will not qualify for the recognition of notional years, i.e. a full pension, but will be entitled to extra incentives.
- (9) A previous early retirement scheme was accepted only by around 75 % of employees, which was regarded as a very low percentage.
- (10) According to the Greek authorities, the net present value was calculated on the basis of on a discount rate of 7,83 % and reflects the estimated weighted average cost of capital (WACC) for OTE as determined by three financial analyst reports issued in 2005.
- (11) Case T-157/01 *Dansk Busvognmænd v Commission* [2004] ECR II-917.
- (12) Currently, existing law allows redundancies of up to two percent of the workforce with a cap at 30 employees per month. According to the notification, a large-scale redundancy programme would require the granting of a special authorisation from the Ministry of Labour. No such authorisation has been granted at least in the last decade and no mass redundancy scheme has been undertaken by a Greek private company on the scale of the VRS.
- (13) In this respect, the Greek authorities have made reference to a redundancy compensation package offered by a large private operator, Intracom, which offered in the past to certain categories of its employees twice the legal redundancy compensation (this coefficient was gradually reduced for higher salaries down to 1,4 times the legal redundancy compensation) within the context of an early redundancy scheme. In addition, the said company is said to have offered other advantages such as lump sum payments and extended insurance coverage for a certain period of time.
- (14) According to the Greek authorities, owing to a delay in the implementation of the VRS, some employees would no longer be eligible under the VRS since they had reached the mandatory retirement age. Moreover, given that it will take another year for OTE fully to implement the VRS, OTE would still have to continue paying (high) salaries for those eligible for early retirement. If

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- these (deferral) costs are taken into account, the total costs of the VRS increase to EUR 1,37 billion, or approximately EUR 1 billion expressed in net present value terms.
- (15) According to the Greek authorities, the permanent status has further adverse effects on the company's overall labour structure. Not only are salaries set by law at high levels, but their structure removes incentives for employee development and increased productivity since, given the legal prohibition, salaries cannot be raised. Moreover, new staff cannot be taken on at middle and senior management level since all new recruits have to be assigned to entry-level posts. Neither can new recruits assume any kind of management function since this would undermine the career progression guaranteed by the permanent status to existing staff. None of these restrictions apply to private operators.
 - (16) Commission Decision of 16 December 2003 on the State aid granted by France to EDF and the electricity and gas industries (OJ L 49, 22.2.2005, p. 9).
 - (17) See Commission's Communication relating to the methodology for analysing State aid linked to stranded costs, at http://ec.europa.eu/comm/competition/state_aid/legislation/stranded_costs_en.pdf
 - (18) In this respect, the Greek authorities have further stated that the new legislation which came into force in December 2005 (Greek Law No 3429/2005) with regard to wholly or partially state-owned enterprises provides for the removal of the permanent status for new recruits only. However, with regard to existing employees who enjoy permanent status, given that the legislation does not affect the permanent status of existing employees, OTE had no alternative other than to implement a VRS.
 - (19) For these employees, because the pension received under the VRS would equal their current salary, the scheme is less attractive compared with employees who have not reached the top of the salary scale (the latter will receive a pension exceeding their current salary because their pension is calculated based on the projected salary achieved if they continued working during the notional years). In order to ensure maximum participation in the VRS, an extra incentive to leave is therefore provided to employees having already reached the top of OTE's salary scale.
 - (20) It should be recalled that from 2005, all publicly-traded EU companies are required to prepare their consolidated accounts using the IFRS. See Commission Regulation (EC) No 1725/2003 of 29 September 2003 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council (OJ L 261, 13.10.2003, p. 1).
 - (21) The NPV represents the market value of the VRS, i.e. the amount that OTE would have to pay to a third party if this third party took over OTE's obligations accruing from the VRS.
 - (22) It should be recalled that in their earlier submission on 20 December 2005, the Greek authorities, at a time when the nominal VRS was estimated at EUR 1 161,0 million, had calculated the NPV of the VRS at EUR 863 million using as a discount rate OTE's WACC (weighted averaged cost of capital) estimated at 7,83 %.
 - (23) See footnote 13.
 - (24) This was also the approach taken by the Greek authorities in their submissions of 4 November 2005.
 - (25) In this respect, CRA International is in line with the certified accounts of OTE by KPMG, which also used a discount rate of 3 %.
 - (26) Having only the responsibility to verify OTE's pre-tax accounts, KPMG did not need to calculate the post-tax NPV of the nominal VRS.
 - (27) These extra costs are broken down as follows: burden to OTE of the permanent status: EUR 322,9 million, and burden to OTE of higher salaries: EUR 147,0 million.
 - (28) According to the Greek authorities, OTE, like all other private companies, pays compulsory employer's unemployment contributions as required under the applicable social security legislation. This amounts to 2,76 %, while an additional 1,33 % is paid by the employee.
 - (29) The Greek authorities also state that Article 24 of the recent Law No 3470/2006 clearly provides that OTE and other telecom service providers no longer enjoy a specific status that gives them the right to be exempted from the advertising tax. Pursuant to Law No 1264/1982, public companies or utilities are exempted from the advertising tax only if their share capital belongs by absolute majority to the Greek State. Accordingly, OTE and all other telecom providers are now liable to pay the advertisement tax.

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- (30) According to the Greek authorities, the Administrative Court concluded that the characterization of a company as a public utility does not relate to its legal status, or to the legal framework within which it operates, but depends solely on the nature of the services it provides. Therefore, according to the Court, undertakings offering goods and services deemed vital for society, such as telecommunications, water supply and energy, constitute utilities.
- (31) Case C-305/89 *Italy v Commission* [1991] ECR I-1603, paragraph 19.
- (32) Joined Cases C-278/92, C-279/92 and C-280/92 *Spain v Commission* [1994] ECR I-4103, paragraph 22.
- (33) Case C-305/89, loc. cit., paragraph 22.
- (34) See, *inter alia*, the judgments in Case 30/59 *De Gezamenlijke Steenkolenmijnen in Limburg v High Authority* [1961] ECR 1; Case C-387/92 *Banco Exterior de España* [1994] ECR I-877, paragraph 13; Case C-241/94 *France v Commission* [1996] ECR I-4551, paragraph 34; and Case C-256/97 *DM Transport* [1999] ECR I-3913, paragraph 19.
- (35) Case 173/73 *Italy v Commission* [1974] ECR 709, recital 15; to the same effect, judgment in Case C-301/87 *France v Commission* [1990] ECR I-307, recital 41.
- (36) Case T-157/01, loc. cit., recital 57.
- (37) Case 173/73 *Italy v Commission* [1974] ECR 709, paragraph 13; Case C-310/85 *Deufil* [1987] ECR 901, paragraph 8; Case C-241/94 *France v Commission* [1996] ECR I-4551, paragraph 20.
- (38) Case C-387/92 *Banco Exterior* [1994] ECR I-877, paragraph 13; Case C-241/94 *France v Commission* [1996] ECR I-4551, paragraph 34.
- (39) Case C-5/01 *Belgium v Commission* [2002] ECR I-1191, paragraph 39.
- (40) Case C-30/59 *Gezamenlijke Steenkolenmijnen* [1961] ECR 3, paragraphs 29 and 30; Case 173/73 *Italy v Commission* [1974] ECR 709, paragraphs 12 and 13; Case C-241/94 *France v Commission* [1996] ECR I-4551, paragraphs 29 and 35; Case C-251/97 *France v Commission* [1999] ECR I-6639, paragraph 40 and 46-47; see also Case T-109/01 *Fleuren Compost* [2004] ECR II-127, paragraph 54.
- (41) Case 173/73 *Italy v Commission* [1974] ECR 709, paragraph 26; Case C-387/92 *Banco Exterior de España* [1994] ECR I-877, paragraphs 12 and 13; and Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* [2003] ECR I-9919, paragraph 84, and the judgments cited therein.
- (42) Case C-482/99 *France v Commission* [2002] ECR I-4397, paragraph 40.
- (43) Case T-187/99 *Agrana Zucker und Stärke AG v Commission* [2001] ECR I-1587, paragraph 74.
- (44) These obstacles are due to the fact that entry to the Greek electronic communications market through the acquisition of OTE is prevented, to date, by the extremely inflexible employment conditions applied in OTE and by the fact that OTE employees enjoy a *de facto* permanent status, which prevents OTE from being taken over by other business groups. On the other hand, and for the same reasons, exit from the market, in the form of a relinquishment by the State of its control, seems at present extremely unlikely.
- (45) For instance, employees with 30 years of service (right to a pension) could continue to work until they reached the age of 58 or completed 35 years of service, whichever happened first. Such employees would rather choose to continue working until mandatory retirement in order to increase the calculation base of their pension. As the Greek authorities pointed out, salaries grow at a higher rate than pensions, and OTE employees generally prefer to continue working for the company since pensions are calculated by reference to the last salary.
- (46) As mentioned in recital 56, the 'regular' VRS concerns only employees who have already acquired pension rights but have not yet fulfilled the conditions for mandatory retirement. The regular VRS does not involve 'notional' years and therefore its costs are not covered by the Greek State's contribution.
- (47) See footnote 34.
- (48) See above, footnote 17.
- (49) Reference should also be made to the Commission's decision in the *EDF* case (see footnote 16). In *EDF*, the Commission declared compatible a measure whereby the French State relieved enterprises

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in the French electricity and gas sectors of the payment of some of the specific pension rights the employees had acquired in the past, at a time when companies were operating under a legal monopoly. The Commission considered that at that time the companies were shielded from any intra-industry competition and could thus bear the higher pension rights without suffering any significant economic disadvantage. The Commission acknowledged that these ‘past liabilities’ represented a significant difficulty for these enterprises, once they were operating in competition with other electricity or gas enterprises that did not have to bear similar costs from the past (recital 143 of the Decision). The Commission regarded the aid granted ‘with the view to such sectoral reorganization’ as necessary and proportionate on the grounds that the other aspects of the sectoral reform did not involve any State aid (recital 146 of the Decision). Although in the present case the Greek State does not compensate OTE for past pension liabilities, nor is the measure aimed at a wider sectoral reorganisation, the principles laid down in *EDF* are applicable by analogy.

- (50) Namely, 19 623 315,16 × OTE share price.
- (51) Quite the reverse, by a series of legislative acts from 1994 to 2001 (Laws No 2257/1994, 2768/1999, 2843/2000 and 2937/2001), the Greek State required OTE to make certain *ad hoc* (capped) payments to TAP-OTE in order to cover the pension fund’s operating deficits. More particularly, in 2001 OTE was obliged by law to pay a lump sum of GDR 120 billion (around EUR 4 billion) to cover TAP-OTE’s deficits calculated for the years 2002-2011. Since OTE had no obligation whatsoever to guarantee the viability of TAP-OTE, these were payments made over and above OTE’s own pension contributions as an employer.
- (52) OJ L 108, 24.4.2002, p. 33.
- (53) See Commission Decisions (no comments), Case EL/2006/0493: call origination on the public telephone network provided at fixed location, Case EL/2006/0494: call origination on individual public telephone networks provided at fixed location, and Case EL/2006/0495: transit services in the fixed public telephone network. http://circa.europa.eu/Public/irc/info/ecctf/library?l=/ellda/adopted_measures&vm=detailed&sb=Title
- (54) Commission Decision (no comments) Case EL/2006/0372: wholesale broadband access in Greece.
- (55) Commission Decision (no comments) Case EL/2006/0491: the minimum set of leased lines in Greece.
- (56) Pursuant to Article 7(3) of Directive 2002/21/EC, the Commission has also examined the above mentioned decisions and remedies imposed by the regulatory authority on OTE and has not expressed any serious doubts as to their compatibility with Community law and in particular with the objectives referred to in Article 8(2)(b) of the Framework Directive, including the obligation on national regulatory authorities to ensure, through their decision-making powers ‘that there is no distortion or restriction of competition in the electronic communications market’.
- (57) Thus, on 29 November 2006, the regulatory authority fined OTE a total of EUR 3 million, that is EUR 1 000 000 for breach of the existing regulatory framework (carrier pre-selection) and EUR 2 000 000 for an abuse of a dominant position (refusal to provide network access, leverage of market power, and abuse of a relation of economic dependency). Finally, on 2 March 2007, in the context of an injunction relief procedure, the authority issued two temporary orders, following a request filed by a number of alternative providers which OTE threatened with interconnection interruption, invoking the fact that these providers allegedly owed OTE significant debts. The measure temporarily prohibits OTE from interrupting the interconnection until the authority has decided on whether OTE’s claims are founded in the context of a dispute settlement procedure in accordance with the current regulatory framework. See press release issued by EETT on 2 March 2007.
- (58) As the Greek authorities have confirmed, even if it is true that OTE did not pay the tax in the past, it has always been in the same position as its competitors since no other telecommunication service provider was liable to pay the tax under Greek law. In accordance with Article 19(2) of Law No 1264/1982, public undertakings or utilities were exempted from the payment of the advertisement tax. In 2005, the Administrative Court of First Instance (Decision No 9564/2005), ruled that the notions of ‘public service’ and ‘utilities’ in Law No 1264/1982 should be interpreted as meaning that any licensed telecoms operator providing telecommunications services is eligible for exemption from the advertising tax irrespective of its status as a public or private company. As a result, the exemption did not put OTE in any advantageous position vis-à-vis its competitors.

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