

# Privatisation tender for 66% of Greek gas TSO relaunched

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## Previous privatisation

DESFA, the national natural gas transmission system operator (TSO), is a 100% subsidiary of the public gas corporation DEPA and was unbundled by the latter in 2007, in compliance with Presidential Decree 33/2007<sup>(1)</sup> and Law 3428/2005.<sup>(2)</sup> The Hellenic Republic Asset Development Fund (HRADF) currently holds a 65% share in DESFA, while Hellenic Petroleum (HELPE) holds a 35% share.

Following the first memorandum of understanding concluded between the Hellenic Republic and its international lenders in May 2010, the Greek government decided to privatise its remaining shares in the state-owned enterprises to the extent needed in order to collect €50 billion in the medium term, which was necessary to repay its international debts. Three years later, the privatisation of DESFA was initiated through the sale of 66% of DEPA's shares to a strategic investor via a public tender procedure. The share purchase agreement was concluded with the State Oil Company of the Republic of Azerbaijan (SOCAR). Nevertheless, following the extended procedure to acquire the respective merger control, the agreement was not concluded, as SOCAR withdrew from the prolonged sale process in November 2016 after it failed to reach an agreement with the Greek government.

Further, in 2015 the third memorandum of understanding was concluded. Among others, it provides for the reform of network undertakings and the privatisation and reform of the energy market (especially the natural gas market), which is expected to lead to its full liberalisation by 2018. In June 2016 Greece signed the supplementing memorandum of understanding, according to which the government has agreed to proceed with an ambitious privatisation programme following the establishment of a 'hyper fund', which was enacted by virtue of the Law 4389/2016.<sup>(3)</sup> The Asset Development Plan approved by HRADF on April 26 2016 and by Greece's Government Council for Economic Policy on May 25 2016 encompasses, among others, the privatisation of DESFA.

On March 1 2017 Decision 51 of the Government Council for Economic Policy was published, approving the process for a new international tender for the acquisition of a 66% stake in DESFA – 31% owned by HRADF and 35% owned by HELPE, with the remaining 34% stake in HRADF being transferred to the Greek state.

## Initiation of new tender

The new tender was launched by HRADF on June 26 2017. Following the prolongation of the tender procedure that was initially expected to be closed to potential interested stakeholders on July 24 2017, the new tender will remain open to receive respective expressions of interest until August 7 2017.

More precisely, following HRADF's invitation on June 26 2017, interested parties must submit their expressions of interest for the acquisition of a 66% stake in DESFA in order to participate in this

competitive bidding tender. The tender will be conducted in two phases: a pre-qualification phase and a binding offers phase.

Expressions of interest that successfully qualify in the first phase will be notified regarding their participation in the second phase. Further, the shortlisted participants will be informed of the details of the second phase by the means of a process letter and invited to submit their binding offers, which will then be evaluated by the sellers. Finally, the preferred investor will be selected. Interested parties must meet the qualification requirements as outlined in the invitation.

On June 19, a few days before publication of the aforementioned invitation, the Ministry of Environment and Energy submitted an amendment to Article 63A of Law 4001/2011<sup>(4)</sup> regarding the eligible participants in the new tender procedure for the sale of 66% of DESFA's shares, which was included in the Ministry of Justice's draft law entitled Ratification and Adaptation of the Greek legislation to the Convention of Warsaw of 16 May 2005 of the Council of Europe concerning laundering, detection of seizure and confiscation of proceeds from criminal activities and terrorist financing.

Following this amendment, eligible participants must be either:

- certified TSOs in compliance with Articles 9 and 10 of EU Directive 2009/73/EC, as well as:
  - members of the European Network of Gas Transmission System Operators;
  - legal entities solely controlled within the context of Regulation 139/2004 by such a TSO;
  - legal entities that have direct sole control over such a TSO; or
  - legal entities solely controlled by the legal entity that has direct sole control over such a TSO; or
- consortia, provided that at least one member of the consortium falls under the subcategories of paragraph a) above and exercises at least joint control of this consortium.

In this way, the aforementioned amendment resolves the concerns expressed by certain interested parties regarding the potential obstacles in relation to the approvals required if the purchaser is from a non-EU country, as was the case in the previously attempted privatisation of DESFA. Moreover, it should be noted that the companies that fulfill the criteria of the first phase may submit their binding offers either individually or by forming consortia with other companies. Any new potential stakeholder will be unable to submit a binding offer individually, unless it cooperates with a company already accepted to the second phase.

After the prolongation of the deadline for expressions of interest, it is expected that there will be discussions by the interested parties regarding the potential creation of competitive consortia, under which at least two consortia (including both EU and non-EU partners) will submit binding offers. In any case, the investors are bound to ask for sufficient guarantees concerning the future operation of DESFA in order to gain a clear picture of their potential investment. The whole privatisation process, as an obligation of Greece to its international lenders, is to be finalised within 2017.

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## **Endnotes**

(1) *Official Journal A'* 31/2007.

(2) *Official Journal A'* 313/2005.

(3) *Official Journal A'* 94/2016.

(4) *Official Journal A'* 179/2011.

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