



Press and Information

General Court of the European Union  
**PRESS RELEASE No 1/2015**  
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Judgment in Case T-58/13  
Club Hotel Loutraki AE and Others v Commission

## **The exclusive right of the Greek gambling body to operate 35 000 Video Lottery Terminals and 13 games of chance does not constitute State aid**

In Greece, the organisation and operation of games of chance and betting forms are entrusted to the public limited company OPAP (Organismos prognostikon agonon podosfairou — football results forecasting body).<sup>1</sup>

In 2011, the Greek authorities notified the Commission about two measures in favour of OPAP:<sup>2</sup>

- the grant, for a period of 10 years ending in 2022, of **an exclusive licence** to operate **35 000 Video Lottery Terminals** ('VLTs') in exchange for a fee of €560 million ('the VLT Agreement');
- the **10-year prolongation** (from 2020 to 2030) of the exclusive rights for the operation of **13 games of chance by any means**, pursuant to an 'addendum' to an agreement concluded in 2000 by the Greek State and OPAP, in return for a lump sum payment of €375 million and a levy of 5% of the gross gaming revenues generated.

In April 2012, several casino operators in Greece filed a complaint with the Commission, on the ground that the VLT Agreement entailed the grant to OPAP of State aid incompatible with the internal market. They claimed that the Greek State would have been able to receive an amount higher than €560 million if it had granted more than one licence to operate the VLTs and organised a public international call for tenders for their allocation.

By decision of 3 October 2012<sup>3</sup>, the Commission held that there was no advantage<sup>4</sup> as the Greek State had left OPAP with only the minimum return necessary for an average company to cover its operational and capital costs. To arrive at that conclusion, the Commission determined the net present value of the VLT Agreement<sup>5</sup> and of the Addendum (taking into account the reasonable market return that could be left to OPAP) and then compared that value with the consideration paid by OPAP.

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<sup>1</sup> OPAP is a public limited company listed on the Athens stock exchange, which has been entrusted with the organisation and operation of gambling for a period of twenty years, until 2020. The Greek State's shareholding in OPAP was sold in October 2013.

<sup>2</sup> It should be borne in mind that, by its judgment of 24 January 2013 ([C-186/11 and 209/11](#) *Stanleybet International Ltd, William Hill Organization Ltd, William Hill Plc and Sportingbet plc v Ypourgos Oikonomias kai Oikonomikon, Ypourgos Politismou, with OPAP*), the Court of Justice held that EU law sets limits to OPAP's exclusive right to organise and operate games of chance in Greece. However, if the State finds that the liberalisation of that market is incompatible with the level of consumer protection and the preservation of order in society which it intends to uphold, it may, according to the Court of Justice, instead undertake reforms of the monopoly and make it subject to effective and strict controls (see Press Release [No 7/13](#)).

<sup>3</sup> Decision C(2012) 6777 final on State aid SA.33988 (2011/N) — Greece — Arrangements for the extension of OPAP's exclusive right to operate 13 games of chance and the granting of an exclusive licence to operate 35 000 Video Lottery Terminals for a period of 10 years.

<sup>4</sup> Within the meaning of Article 107(1) TFEU.

<sup>5</sup> The method used was that of discounted cash flows calculated on the basis of the forecasted revenues and expenses resulting from the future operation of the various games.

In its decision, the Commission evaluated the VLT Agreement and the Addendum separately and also conducted a joint assessment, since those agreements had been notified jointly by the Greek authorities and concerned the granting of exclusive rights to the same company at the same time for very comparable activities, and taking account of the announced privatisation of OPAP in the short-term. In order to assess compliance of the VLT Agreement with competition law, the Commission relied on a study provided by the Greek authorities, which was based on sales projections by an independent company specialised in the gambling sector. The Commission found that OPAP had overpaid for the Addendum.

During exchanges between the Commission and the Greek authorities in the administrative procedure, the Greek authorities committed to pay a supplement to the originally envisaged consideration<sup>6</sup> for the VLT Agreement.

Consequently, the Commission took the view that, after amendment of the original notification, OPAP would pay the Greek State an amount higher than the joint value of the exclusive rights granted by the VLT Agreement and by the Addendum. It therefore concluded that the agreements did not confer an advantage on OPAP.

The casino operators brought an action before the General Court against the Commission's decision. They claim, first, that the Commission misused its power by failing to initiate the formal investigation procedure, secondly, that it failed to fulfil its obligation to state reasons and infringed the right to good administration, thirdly, that it infringed the right to effective judicial protection and, fourthly, that it did not correctly assess the question of the existence of an advantage for OPAP.

In today's judgment, the General Court recalls, first of all, that the Commission has the power to adopt, following the preliminary investigation stage, a decision by which it finds that there is no State aid but takes note of the commitments of the Member State. It may also engage in dialogue with the State and align its position with the results achieved without that alignment establishing the existence of serious difficulties. The Court finds that, in its assessment of the notified measures, the Commission did not face serious difficulties and was not therefore required to initiate the formal investigation procedure.

The Court concluded moreover that the omission of economic data in the non-confidential version of the contested decision did not prevent the casino operators from understanding the reasoning followed by the Commission, nor from challenging the decision in court, nor prevent the Court from exercising its judicial review in the present action. The applicants' rights to effective judicial protection and the Commission's obligation to state reasons have therefore been respected.

Finally, the Court considers that the casino operators have not demonstrated that the Commission committed an error of law by jointly assessing the VLT Agreement and the Addendum, those two agreements having been concluded at the same time with OPAP in view of its privatisation.

**Consequently, the Court dismisses the action in its entirety and confirms the Commission's decision.**

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**NOTE:** An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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<sup>6</sup> It concerned an additional levy of 5% of the gross gaming revenues from the operation of the VLTs if those revenues were above a certain threshold calculated on the basis of the daily revenues obtained by each VLT.

The [full text](#) of the judgment is published on the CURIA website on the day of delivery

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