

## **Extraordinary General Meeting of HELLENIC PETROLEUM S.A. – February 20<sup>th</sup> 2020**

### **Conclusion of a Memorandum of Understanding between the “Hellenic Republic Asset Development Fund S.A.” (HRADF) and “Hellenic Petroleum S.A.” (HELPE) for the participation of HELPE in tender process launched by HRADF for the disposal of its shareholding in “DEPA COMMERCIAL S.A.”**

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#### **Recommendation**

By virtue of the decision No. 206/25.04.2012 of the Interministerial Committee for Asset Restructuring and Privatisations (Government Gazette B' 1363/2012), shares corresponding to a percentage of 65% of “Public Gas Company S.A.”’s (**DEPA**) share capital were transferred to HRADF. The Government Council for Economic Policy by its decision of 13.11.2019 (Government Gazette B' 4157/2019), approved the Asset Development Plan of HRADF dated 30.09.2019, including *inter alia*, the sale and transfer from HRADF of its shares in DEPA corresponding to a percentage of 65% of DEPA’s share capital.

HRADF and HELPE are the sole shareholders of DEPA, the former holding 65% and the latter 35% of DEPA’s share capital.

Pursuant to article 80I of Law 4001/2011, as amended by virtue of Law 4643/2019 (Government Gazette A' 193), a partial demerger of DEPA’s infrastructure branch shall take place and all gas distribution activities of DEPA shall be transferred to a separate legal entity which will be named “DEPA Infrastructure S.A.” (**DEPA Infrastructure**). All international projects in which DEPA participates shall be transferred through a spin-off to a separate legal entity, which will be named “DEPA International Projects S.A.” (**DEPA International Projects**). Following the partial demerger and the spin-off of the infrastructure and the international projects activities, DEPA shall be renamed to “DEPA Commercial S.A.” (**DEPA Commercial**) and shall retain, either directly or through its subsidiaries, all current wholesale and retail gas activities.

Following the above, HRADF and HELPE will own shares issued by DEPA Infrastructure and DEPA International Projects representing 65% and 35% of the fully paid up share capital of each of the aforementioned companies respectively.

On 23/01/2020, by an invitation to submit an expression of interest, HRADF launched an international tender process for the sale of its share in DEPA Commercial. Pursuant to article 80I of Law 4001/2011, as amended and currently in force, HRADF shall sell and transfer shares corresponding to 65% of the share capital of DEPA Commercial.

On 23/01/2020 HELPE signed a Memorandum of Understanding with HRADF (**MOU**) providing for (i) HELPE’s participation as an interested party in the international tender process launched by HRADF, in accordance with the terms of such process and (ii) in the event HELPE is not selected as preferred bidder (**Preferred Bidder**), the granting by HELPE to the Preferred

Bidder of a call option (**Call Option**) and the granting by the Preferred Bidder to HELPE of a put option (**Put Option**) respectively, regarding HELPE's shareholding in DEPA Commercial, which will enable HELPE's exit from a minority participation.

The conclusion of the MOU was in principle approved by HELPE's Board of Directors' resolution no. 1358 of 06/12/2019 and is subject to the granting of a special permission by the General Assembly of its shareholders, in accordance with the provisions of article 100 of Law 4548/2018. The key terms of the MOU, as finalised by HELPE, HRADF and both parties' advisors, are listed below.

### 1. Brief description of DEPA currently, pre partial demerger

DEPA imports gas (through long term gas supply contracts with Gazprom, BOTAS and Sonatrach, or other sources). DEPA is the leading natural gas supplier of electricity producers, large customers, mostly industrial with annual consumption of over 10bcm, retail gas supply companies (EPAs), end users in remote areas non-connected to the network. DEPA also develops a gas refuelling stations network for road transport (CNG) and supplies gas to Athens Urban Transport Organisation's (ETHEL- OASA) bus fleet, garbage truck fleets and private vehicles.

Key Financial Data (DEPA Company)	2018 (€m)
Turnover	€ 997
EBITDA	€ 324 * / € 20**
Net Income after Taxes	€ 243 *
Non-current Assets	€ 1,107
Net Cash	€ 226
Equity	€ 913

*Source: DEPA 's published Financial Statements, which do not take into account the effects of the partial demerger*

*\* Includes non-recurrent income as follows:*

*i) €181m relating to profit from DESFA share capital return ,*

*ii) €42m relating to profit from the sale of EPA Thessaloniki – Thessalia (ZENITH) and*

*iii) €51m relating to income from dividends, of which €45.5m from DESFA and €5m from EPA Thessaloniki – Thessalia (ZENITH)*

*\*\* EBITDA of wholesale gas supply*

The dividend that HELPE received from DEPA for the financial year 2018 amounted to €28m, while HELPE's share in the company's equity amounted to €337m as at 30/09/2019.

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**EPA Attikis S.A.**

EPA Attikis S.A., a 100% subsidiary of DEPA (with trade name Natural Gas – Hellenic Energy Company), was formed following the spin off of the supply branch of EDA Attikis S.A. in 02/01/2017, pursuant to the provisions of Laws 2166/1993, 3428/2005 and 4001/2011. In December 2018, DEPA acquired 49% of the company's share capital from Shell for a consideration of €39m.

The company supplies gas to retail, commercial and industrial customers. In 2018, the company launched its activity in the low and medium voltage electricity market in Greece.

<b>Key Financial Data</b>	<b>2018 (€m)</b>
Turnover	€ 163
EBITDA	€ 8
Net Income after Taxes	€ 5
Non-current Assets	€ 3
Net Cash	€ 42
Equity	€ 33

*Source: Published Financial Statements*

**2. Brief description of DEPA Commercial post partial demerger, pursuant to article 80I of Law 4001/2011, as amended by virtue of article 16 of Law 4643/2019 (Government Gazette A' 193)**

By virtue of the above law, DEPA Commercial shall maintain at least the following activities:

- a) DEPA's participation in EPA Attikis S.A.;
- b) import of natural gas into the country (either through pipeline or in the form of LNG) through the long term supply contracts of the existing DEPA or any other source;
- c) supply of natural gas through the gas transportation systems or Natural Gas Distribution Networks, or other means;
- d) import, supply and trading of electricity;
- e) Refueling of vehicles with compressed natural gas through proprietary service stations or through partner service stations, including all relevant contracts and the use of the trademark "FISIKON";
- f) Supply to end customers, not connected to a natural gas distribution network or the Natural Gas National System or a Natural Gas Independent System, with compressed natural gas or

LNG, including for the purpose of using natural gas as a transport fuel in marine and ground applications;

g) Supply of remote natural gas distribution networks and customers;

h) any other activity associated with the supply of natural gas, including rights and obligations of DEPA in international projects, such as commercial commitments in the interconnector pipeline between the Hellenic Republic and the Republic of Bulgaria (IGB) or the new floating storage regasification terminal (FSRU) in Alexandroupolis, and

i) the rights and obligations arising from memoranda or agreements associated with the future participation of DEPA in companies engaged in the construction, development and management of the new floating storage regasification unit (FSRU) in Alexandroupolis.

DEPA Commercial shall undertake the responsibility to implement DEPA's projects co-funded by European structural and investment funds relating to the wholesale and retail gas activities.

### **Financial Data of DEPA Commercial**

DEPA Commercial's pro forma financials will become available post the spin off of the infrastructure and the international projects branches from DEPA. For the purposes of the partial demerger and spin off, DEPA will prepare financial statements per business unit / activity, outlining balance sheet items including reserves as per article 7 of Law 2364/1995 (A' 252), relating to the activities of infrastructure and international Projects respectively, and which are an integral part of the demerger plan for the respective activity.

As the financial figures of DEPA and EPA Attikis S.A. (as shown in the above section) include inter-company transactions between them or with the activities of infrastructure and international projects, they should not be considered as the final financial figures of DEPA Infrastructure. These will be made available following the spin off of the activities of Infrastructure and International Projects.

### **3. HELPE position**

In view of the upcoming sale of HRADF's stake in DEPA Commercial (65% of share capital), it is in HELPE's interest to participate in the HRADF tender, retaining the flexibility to act either as an interested party to buy HRADF's share, or as a seller, thus avoiding the eventuality of remaining a minority shareholder in DEPA Commercial, in case it is not selected as the preferred bidder (**Preferred Bidder**). In this way, HELPE maximises the value of its minority participation, either through acquiring of full control of DEPA Commercial, or by divesting its participation at a consideration defined by the tender process.

HELPE shall not participate in the design of the transaction's tender process, which shall be set by HRADF. However, the MOU provides the main terms stipulating HELPE's binary role in the tender process, aiming to safeguard the transparency of the tender process and the equal treatment of all participants thereto.

Pursuant to the MOU, HELPE shall participate as an interested party in the tender process conducted by HRADF. . At the same time, the MOU provides for option rights for HELPE and

the Preferred Bidder (in the event it is not HELPE), for the sale / acquisition respectively of the HELPE shares. Option rights and other MOU terms are outlined in section 4 below.

The participation of HELPE in the tender process in the aforementioned binary role up to the submission of binding offers is the optimal strategy for HELPE, as it would help accomplish the following:

### **Phase A: Tender Process up to Binding Offers**

Pursuant to the MOU, HELPE undertakes the obligation to participate in the tender process by submitting an expression of interest (non-binding), but at the same time retains flexibility in order to:

- Fully assess strategic development options in the electricity and natural gas sectors, following a due diligence of the position and prospects of DEPA Commercial.
- Assess the tender information and act accordingly and in a way to protect the value of its participation in DEPA.

### **Phase B: Submission of Binding Offers**

At this stage of the tender process and following the assessment of all of its options from Phase A, HELPE will need to decide whether or not to submit a binding offer and its level.

#### ➤ ***Alternative A: HELPE submits a Binding Offer and is selected as the Preferred Bidder***

The strategic benefits of acquiring HRADF's shareholding (65%) are:

- The assumption of full control of DEPA Commercial and full consolidation of its financial statements
- The enhancement of HELPE's position in the gas sector (via DEPA), in accordance with HELPE's strategic planning and with material synergies for the HELPE Group

#### ➤ ***Alternative B: HELPE submits a Binding Offer but is not selected as the Preferred Investor, or HELPE does not submit a Binding Offer***

In the event that HELPE either: a) decides to submit a binding offer but is not selected as the Preferred Bidder, or b) does not submit a binding offer, the MOU grants the Preferred Bidder the option to require HELPE to sell its shareholding in DEPA Commercial (Call Option), while HELPE retains its right to sell its shareholding (Put Option) in the event that the Preferred Bidder chooses not to exercise the Call Option.

Pursuant to the MOU, the exercise price of the Put and Call Options shall bear a discount of 10% of the enterprise value after due diligence adjustments. For the avoidance of doubt, this discount shall not be applied on the net cash position. Applying a discount on the consideration is deemed reasonable in instances of transactions relating to disposals of minority participations.

The key merits of the joint sale of HELPE's shareholding jointly with HRADF to a third investor are outlined below:

- Exit from DEPA Commercial, taking advantage of the tender process conducted by HRADF, at a consideration for its minority shareholding very close to the full control price received by HRADF.
- Exit from a minority participation, in the event that the Preferred Bidder does not exercise its Call Option, as HELPE will still be able to sell by the exercise of the Put Option.
- Estimated proceeds may be used to implement HELPE's strategic plans in the natural gas sector via a number of other alternatives.

#### **4. MOU between HRADF and HELPE relating to HELPE's participation in the tender process conducted by HRADF for the sale of its share in DEPA Commercial**

The MOU is a binding agreement which provides for the participation of HELPE in the tender process conducted by HRADF for the sale of its 65% shareholding in DEPA Commercial. The MOU grants HELPE the flexibility of acting either as an interested party to acquire HRADF's share or as a seller, jointly with HRADF.. The main terms of the agreement are the following:

- (a) HRADF will exclusively manage the tender process in relation to the sale of its shares in DEPA Commercial (65%).
- (b) HELPE will participate in the tender process as an interested party as per the tender rules.
- (c) In the event that HELPE is not selected as the Preferred Bidder, then HELPE shall grant the Preferred Bidder the right to acquire its shares in DEPA Commercial (Call Option) and shall be granted by the Preferred Bidder, respectively, the right to sell its shares (Put Option). The Call and Put Options shall be exercised sequentially over a period of a total of ten (10) business days following the signing of the DEPA Commercial sale and purchase agreement.
- d) The exercise price of the Put and Call Options, i.e. the consideration HELPE is to receive in the event it is not the Preferred Bidder (and either of the two options is exercised), shall bear a discount of 10% of the enterprise value, after due diligence adjustments. For the avoidance of doubt, this discount will not be applied on the net cash position.

On the condition that either of the above Options is exercised, the Preferred Bidder and HELPE shall proceed with the execution of the Bilateral Transaction SPA for HELPE's share in DEPA Commercial. The closing of the DEPA Commercial's transaction (for the sale of HRADF's shareholding in DEPA Commercial), shall be a condition precedent for the closing of the sale transaction for the disposal of HELPE's shares in DEPA Commercial..

- (e) Together with its binding offer, any shortlisted party shall have to provide a letter of guarantee covering its financial obligations under the Call Option and the Put Option, as well as proof of funds for the disbursement of the respective amount.
- (f) HELPE shares in DEPA Commercial shall be put in escrow, directly following the DEPA demerger effective date, as per section 1 above, and for a duration as per term (j) below.

(g) Corporate Governance of DEPA Commercial:

- (i) Within one (1) month from the time of publication of the invitation to submit an expression of interest, the members of the company's Board of Directors appointed by HELPE shall resign from their positions..
- (ii) During the tender process, the above mentioned directors shall be replaced by independent ones. The independent directors shall be selected by HRADF from a list which will be prepared by a reputable consulting firm, specialised in executives' hiring, shall meet the independence criteria pursuant to article 4 of Law 3016/2002 on corporate governance, and shall be persons adequately skilled and experienced in corporate matters in general and / or DEPA's scope. The term of office for the independent directors shall be identical to that of the MOU.
- (iii) General Meeting. HRADF and HELPE agree that, during the course of the tender process, a General Meeting shall be convened only for matters falling under its exclusive competence. In the event that a General Meeting is convened to decide on any issues other than those which are mandatorily reserved to the General Meetings' exclusive competence, the parties shall abstain from participating in such meeting, so that a quorum is not formed.

(h) HELPE's rights as shareholder in DEPA Commercial

- (i) Management Audit. HELPE shall be entitled to request the management audit of the company subject to HRADF's consent, such consent not to be unreasonably withheld.
- (ii) Information on upcoming General Meetings. HELPE shall retain its right to receive information on upcoming General Meetings, according to the law and DEPA Commercial's statutes. Any information made available to HELPE, together with the respective General Meeting minutes, shall be made accessible to all shortlisted parties.

(i) HELPE shall grant the same representations and warranties as HRADF.

(j) MOU Termination events:

- (i) HRADF's written notification to HELPE that the DEPA Commercial tender process is in any way abandoned; or
- (ii) the invitation to submit an expression of interest (or an equivalent action) in relation to the sale has not been published within a six (6) month period from the date of execution of the MOU; or
- (iii) the execution of the DEPA Commercial sale and purchase agreement and any documents related thereto in respect to the tender process has not been performed within twelve (12) months from the date of publication of the invitation to submit an expression of interest ( or an equivalent action) ; or
- (iv) completion of the transactions provided for in the tender documents for the sale of DEPA Commercial (or termination of such documents in accordance with their terms, whichever comes first).

The aforementioned 12 month period may be extended for another three (3) month period , either by (a) mutual agreement of the parties, or (b) by any party following notification to the other party.

(k) the MOU is governed by and construed in accordance with the laws of Greece and all disputes shall be settled by the Courts of Greece.

## **5. Process**

Given that HELPE is a listed company , this recommendation is accompanied by a fairness opinion performed by KPMG, an international audit firm. The fairness opinion assesses whether the MOU with HRADF is fair and reasonable for HELPE and the shareholders who do not constitute a related party , including the minority shareholders, pursuant to paragraph 1 of article 101 of Law 4548/2018.