COMMISSION DECISION (EU) 2018/1575

of 9 August 2018

on the measures to certain Greek casinos SA.28973 – C 16/2010 (ex NN 22/2010, ex CP 318/2009) implemented by Greece

(notified under document C(2018) 5267)

(Only the Greek text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provision(s) cited above ([1])

Whereas:

1. PROCEDURE

(1) On 8 July 2009, the Consortium Loutraki SA – Club Hotel Loutraki SA ([2]) ('complainant' or 'Casino Loutraki') lodged a complaint with the European Commission ('Commission') concerning Greek legislation on a system of levies on admissions to casinos, alleging that that system constituted State aid to certain casino operators. By email of 7 October 2009, the complainant stated that it did not object to the disclosure of its identity. On 14 October 2009, the Commission services met representatives of the complainant. By letter of 26 October 2009, the complainant provided further elements in support of its complaint.

(2) On 21 October 2009, the Commission communicated the complaint to Greece and invited Greece to clarify the issues raised in it. On 27 November 2009, Greece replied to the Commission.

(3) On 15 December 2009, the Commission forwarded the reply of Greece to the complainant. On 29 December 2009, the complainant replied with observations on the reply of Greece.

(4) On 25 February, 4 and 23 March and 13 April 2010, the Commission requested further information from Greece, to which Greece replied on 10 March and 1 and 21 April 2010.

(5) By decision of 6 July 2010 ('Opening Decision'), the Commission informed Greece that it initiated the formal investigation procedure set forth in Article 108(2) of the Treaty on the Functioning of the European Union (TFEU) in respect of the measure implemented by Greece, specifically the charging of a lower tax on admissions to certain casinos ('the measure'). The Opening Decision was published in the *Official Journal of the European Union* ([1]), inviting interested parties to submit their comments.

(6) On 4 August 2010, the Commission received observations on the Opening Decision from two alleged beneficiaries of the measure: Casino Mont Parnès ([3]) and Casino Thessaloniki ([4]).

(7) By letter of 6 October 2010, the Commission received comments from Greece on the Opening Decision. On 12 October 2010, the Greek authorities submitted additional information regarding the contested measure.

(8) By letters of 8 and 25 October 2010, the complainant submitted its comments on the Opening Decision.

([1]) OJ C 235, 31.8.2010, p. 3.
([2]) Consortium — Loutraki S.A. — Club Hotel Casino Loutraki S.A. (Κοινοπραξια Δ.Α.Ε.Τ.- Λουτρακι Α.Ε.- Κλαμπ Οτελ Λουτρακι Α.Ε.), Voukourestiou 11, Akti Poseidonos 48, Loutraki, Athens 10671, Greece.
([3]) Casino Mont Parnès, société anonyme 'Elliniko Kasino Parnithas A.E.', Agiou Konstantinou 49, 15124 Marousi Attikis, Greece.
([4]) Casino Thessaloniki, 'Regency Entertainment Psychagogiki kai Touristiki A.E.', Agiou Konstantinou 49, 15124 Marousi Attikis, Greece and 13th km Thessaloniki-Polygyrou Street, 55103 Thessaloniki, Greece.

(9) By letter of 29 October 2010, the Commission forwarded the observations submitted by Casino Mont Parnès and Casino Thessaloniki to the Greek authorities. By letter of 6 December 2010, the Greek authorities presented their comments on third parties' observations.

(10) On 24 May 2011, the Commission adopted Decision 2011/716/EU ([1]) (the '2011 Final Decision'), concluding that the measure constituted incompatible unlawful State aid and ordering recovery of the aid.

(11) By application lodged at the Registry of the General Court on 3 August 2011, the Hellenic Republic brought an action for annulment against the 2011 Final Decision (Case T-425/11). Applications for annulment were also brought by Etaireia Akiniton Dimosiou AE (Case T-419/11), Casino Thessaloniki (Case T-635/11), Casino Mont Parnès (Case T-14/12) and Athens Resort Casino AE Symmetochon (Case T-36/12), a shareholder in Casino Thessaloniki and Casino Mont Parnès.

(12) By judgment of 11 September 2014 in case T-425/11, *Greece v. Commission* ([2]), ('the 2014 judgment'), the General Court annulled the 2011 Final Decision, having concluded that the Commission had failed to prove the existence of State aid within the meaning of 107(1) TFEU.

(13) On 22 November 2014, the Commission appealed the 2014 judgment. By order of 22 October 2015 in case C-530/14 P, *Commission* v *Greece* ([3]), ('the 2015 order'), the Court of Justice dismissed the Commission's appeal and upheld the 2014 judgment. As a result, the General Court declared the applications for annulment brought by Etaireia Akiniton Dimosiou AE, Casino Thessaloniki, Casino Mont Parnès and Athens Resort Casino AE Symmetochon against the 2011 Final Decision to be devoid of purpose without the need to adjudicate on them.

(14) Consequently, the Commission had to re-examine the measure and adopt a new final decision on it.

(15) On 14 April 2017, Casino Loutraki lodged a new complaint requesting the Commission to adopt a new final decision finding the measure to be in breach of Article 108(3) TFEU and incompatible with the internal market, and ordering recovery of the aid.

(16) On 17 November 2017, the Commission communicated the new complaint to Greece and invited Greece to comment. In reply to a request by Greece for translations into Greek, the Commission resent the documents in the Greek language on 20 December 2017. On 26 January 2018, Greece replied to the Commission.

2. **THE MEASURE CONCERNED**

2.1. **The measure**

(17) The measure under assessment is the system of levies on admissions to casinos in Greece that existed until November 2012. Under that system a differentiated tax was levied on admissions to casinos in Greece based on whether a casino was publicly or privately owned.

(18) Since 1995, all casinos in Greece are required to collect an admission fee of EUR 15 from each customer. They are then obliged to remit 80 % of that amount (EUR 12) to the Greek State as a tax on admissions. They are entitled to retain the remaining 20 % of the fee (EUR 3), which is considered to constitute a remuneration for issuing the ticket and covering their expenses.

(19) An exception as regards the level of the admission fee charged by casinos had been applied in practice for casinos owned by the State ('public casinos') and for the privately-owned Casino Thessaloniki. Those casinos are required to collect EUR 6 from each customer admitted. They are then obliged to remit 80 % of that amount (EUR 4,80) to the Greek State as a tax on admissions. They are entitled to retain the remaining 20 % of the fee (EUR 1,20), which is considered to constitute a remuneration for issuing the ticket and covering their expenses.

([1]) Commission Decision 2011/716/EU of 24 May 2011 on State aid to certain Greek casinos C 16/10 (ex NN 22/10, ex CP 318/09) implemented by the Hellenic Republic (OJ L 285, 1.11.2011, p. 25).
([2]) Judgment of the General Court of 11 September 2014, Hellenic Republic v European Commission, Case T-425/11, ECLI:EU:T:2014:768.
([3]) Order of the Court of 22 October 2015, European Commission v Hellenic Republic, Case C-530/14 P, ECLI:EU:C:2015:727.

(20) As a result of the measure, private casinos transfer to the State EUR 12 per customer admitted, whereas public casinos and Casino Thessaloniki transfer to the State EUR 4,80 per customer admitted. The law also allows casinos to admit customers for free under certain circumstances, in which case they are still obliged to pay the State a tax on admission of either EUR 12 or EUR 4,80 per customer admitted, although they do not collect an admission fee.

2.2. **The relevant national provisions**

(21) Prior to the opening of the Greek casino market in 1994, only three casinos operated in Greece, namely Casino Mont Parnès, Casino Corfu, and Casino Rhodes. At that time, those casinos were public undertakings and operated as State-owned service-clubs of the Greek National Tourism Organisation ('EOT') ([1]). The price of admission tickets charged by those casinos was set by way of decisions of the General Secretary of the EOT ([2]) at 1 500 (approximately EUR 4,50) or 2 000 drachmas (approximately EUR 6). Following the adoption of the euro by Greece in 2002, EUR 6 became the regulated fee for admission to public casinos.

(22) The Greek casino market was opened in 1994, as a result of the adoption of Law 2206/1994 ([3]), when six newly created private casinos joined the three existing State-owned casinos. Article 2(10) of Law 2206/1994 provided that the price of admission tickets to the casinos in certain areas would be set by Ministerial Decision, which would also determine the percentage of the price that would represent revenue of the Greek State. By Ministerial Decision ([4]) of 16 November 1995 ('the Ministerial Decision of 1995'), the Minister for Finance established that, from 15 December 1995 onwards, all operators of casinos under Law 2206/1994 ([5]) must charge an admission fee of 5 000 drachmas ([6]) (approximately EUR 15). According to the Ministerial Decision of 1995, casino enterprises were further subject to a legal obligation to retain 20 % of the price, including the appropriate VAT, as remuneration for issuing the ticket and covering their expenses, the remaining amount being considered public fees ([7]). The Ministerial Decision of 1995 provided that casinos may grant free entrance in specific cases ([8]). Even in those cases, 80 % of the regulated admission fee had to be passed on by the casinos to the State, notwithstanding the fact that they did not receive the admission fee in such instances ([9]). According to the Ministerial Decision of 1995, the payments of the public fees were performed by each casino on a monthly basis ([10]). The Ministerial Decision also provided for specified discounts for tickets valid for 15 or 30 days ([11]). On Greece's adoption of the euro in 2002, EUR 15 became the standard regulated price for admission to casinos.

([1]) The three casinos operated as service clubs of the EOT based on Law 1624/1951, Decree 4109/1960 and Law 2160/1993. The EOT was later replaced in the operation of the casinos of Corfu and Mont Parnès by the Hellenic Tourism Development company (ETA), fully owned by the Greek State, under Laws 2636/1998 and 2837/2000, until the grant of licenses to the above mentioned two casinos by virtue of Law 3139/2003 (the Casino in Rhodes was operated by the EOT until it was granted a license in 1996).

([2]) More precisely, the decisions of the General Secretary of EOT (issued in accordance with Law 1624/1951 and Decree 4109/1960) are: EOT decision 535633/21.11.1991 (setting the price of admission tickets to the Mont Parnès Casino at 2 000 drachmas); EOT decision 508049/24.3.1992 (setting the price of admission tickets to the Corfu and Rhodes Casinos at 1 500 drachmas); EOT decision 532691/24.11.1997 (adjusting the price of admission tickets to the Corfu Casino to 2 000 drachmas).

([3]) Law 2206/1994 on the creation, organisation, operation and control of casinos and other matters, Νόμος 2206, Δημοσιεύθηκε στο ΦΕΚ 62 - 20.4.1994.

([4]) Ministerial Decision Υ.Α 1128269/1226/0015/ΠΟΛ.1292/16.11.1995 – ΦΕΚ 982/Β'/1995.

([5]) Paragraph 1 of the Ministerial Decision of 1995: 'Casino operators (Law 2206/1994) are obliged from 15 December 1995 to issue an admission ticket to each person according to specific provisions included in the following paragraphs.'

([6]) Paragraph 5 of the Ministerial Decision of 1995: 'The uniform ticket price for entering the areas of "slot machines" or "table games" shall amount to five thousand (5 000) drachmas.'

([7]) The first subparagraph of paragraph 7 of the Ministerial Decision of 1995 states the following: 'From the total value of the ticket a percentage of twenty percent (20 %) shall be appropriated by the casino undertaking as fees for issuing the ticket and covering its expenses, in which the appropriate VAT is included, while the remaining amount shall be considered public fee.'.

([8]) Paragraph 6 of the Ministerial Decision of 1995 states the following: 'To record the admission of a person, from which the Casino refrains from requesting an price of admission for reasons of promotion or social obligation, the Casino shall issue tickets from a special batch or a special counter of the tax records cash register labelled "Honoris Causa"/"Free admission".'.

([9]) The second subparagraph of paragraph 7 of the Ministerial Decision of 1995 states the following: 'For tickets issued under the label "Honoris Causa"/"Free admission" public fees shall be paid based on of the value of the tickets for that day as established in paragraph 5 of the present decision.'

([10]) The first subparagraph of paragraph 10 of the Ministerial Decision of 1995 states the following: 'The public fees shall be deposited at the competent income tax office by the tenth day of each month by submitting a statement concerning the fees collected during the previous month.'.

([11]) The first and second subparagraphs of paragraph 8 of the Ministerial Decision of 1995 states the following: 'As provided under the aforementioned paragraphs 2 to 7, it is allowed [for casino operators] to issue long term tickets valid for fifteen or thirty consecutive days or one calendar month, as appropriate. A discount can be granted on the value of the above mentioned long term tickets, as follows:

(a) Forty percent (40 %) of the total value of fifteen daily tickets for the tickets valid for 15 days. In case these tickets are issued for a calendar period of two weeks, the last two weeks of each month covers the period from the 16th day until the end of the month.

(b) Fifty percent (50 %) of the total value of thirty daily tickets for the tickets valid for thirty days or a month'.

(23) Although the operation of casinos in Greece is governed, generally, by Law 2206/1994 and the Ministerial Decision of 1995, the publically owned casinos of Mont Parnès, Corfu and Rhodes were exempted from the application of that law and that decision until a licence was granted to them by the Casino Committee. More specifically, Law 2160/1993 provided that those casinos would continue to operate as services-clubs of EOT, based on the relevant EOT provisions – namely, Law 1624/1951 ([1]), Decree 4109/1960 ([2]) and Law 2160/1993 ([3]). As a result, Casino Mont Parnès, Casino Corfu and Casino Rhodes continued to apply the EUR 6 admission fee.

(24) By contrast, all new private casinos created since the adoption of Law 2206/1994 implemented the Ministerial Decision of 1995 and applied the EUR 15 price for admission tickets, with the exception of Casino Thessaloniki. Although incorporated and licensed in 1995 under Law 2206/1994, Casino Thessaloniki applied the reduced EUR 6 admission fee applied by the State-owned casinos until November 2012 by relying on Law 2687/1953 ([4]), which provided that enterprises constituted with foreign investment enjoy treatment at least as favourable as the one applicable to other similar enterprises in the country ([5]). The requirement to remit to the State 80 % of the face value of admission tickets was applicable to Casino Thessaloniki since the issuance of its license in 1995 ([6]).

(25) According to Greece, the special provisions applicable to the public casinos which existed prior to Law 2206/1994 should be considered exceptions to the application of the general provisions of that Law 2206/1994 and of the Ministerial Decision of 1995. Consequently, the Ministerial Decision of 1995 was not deemed to apply to the public casinos until the date they were granted a license under Law 2206/1994, either as concerns the standard admission fee of EUR 15 or as concerns the requirement to remit to the State 80 % of that fee. However, since for the public casinos the admission fee exceptionally remained at the level of EUR 6 on the basis of the already applicable decisions of EOT, which were considered special derogatory provisions (pre-existing *lex specialis*) unaffected by the general provisions of Law 2206/1994 and the Ministerial Decision of 1995, public casinos only paid 80 % of EUR 6. The EOT decisions were only deemed inapplicable when the casinos, following their privatisation, were no longer fully owned by the State. It was only following their privatisation that those casinos begun charging the standard admission ticket price of EUR 15 and were obliged to pay 80 % of EUR 15 as a levy to the State.

(26) A further exception to the application of the general provisions of Law 2206/1994 and the Ministerial Decision of 1995 applied in favour of Casino Mont Parnès, following its partial privatisation, based on Law 3139/2003 which explicitly stipulated that the price of admission tickets at Casino Mont Parnès would remain at EUR 6.

(27) In 2000, EOT was succeeded in the operation of Casino Mont Parnès and Casino Corfu by Ellinika Touristika Akinita AE ('ETA'), fully owned by the Greek State. From the end of 2000 and until the licensing of those casinos under Law 2206/1994 in 2003, ETA started ([7]), voluntarily in the beginning and later by virtue of Article 24 of Law 2919/2001, to gradually adapt to the obligations laid down for casinos in Law 2206/1994, in order to prepare both those formerly State-owned casino clubs to become fully licensed casinos and be privatised. During this transition period, ETA remitted to the State 80 % of the EUR 6 price of admission tickets collected by Casino Mont Parnès and Casino Corfu. According to the information provided to the Commission, no new ministerial decision has been issued and Casino Corfu continued to charge an admission fee of EUR 6 until its privatisation in August 2010 ([8]), when it started applying the EUR 15 admission fee.

([1]) Law 1624/1951 ratifying, amending and supplementing Law 1565/1950 on the creation of the Hellenic Tourism Organisation, Νόμος 1624, Δημοσιεύθηκε στο ΦΕΚ 7 - 8.1.1951.

([2]) Decree 4109/1960 amending and supplementing legislation regarding the Hellenic Tourism Organisation and certain other provisions, Νομοθετικό Διάταγμα 4109, Δημοσιεύθηκε στο ΦΕΚ 153 - 29.9.1960.

([3]) Law 2160/1993 on tourism and other matters, Νόμος 2160, Δημοσιεύθηκε στο ΦΕΚ 118 - 19.7.1993.

([4]) Law 2687/1953 on investment and protection of foreign capital, Νομοθετικό Διάταγμα 2687, Δημοσιεύθηκε στο ΦΕΚ 317 - 10.11.1953.

([5]) The Casino Thessaloniki was declared to benefit from the provisions of Law 2687/1953 according to the Presidential Decree Π.Δ. 290/1995 (approving a foreign capital investment by Hyatt Regency Hotel and Tourism Enterprise, Προεδρικό Διάταγμα 290, Δημοσιεύθηκε στο ΦΕΚ 163 - 9.8.1995) which assimilated it to the casinos of Mont Parnès and Corfu.

([6]) See paragraphs 16, 17 and 18 of the Opening Decision.

([7]) Casino Mont Parnès was operated by Elliniko Kasino Parnithas A.E. (EKP), set up in 2001 as a subsidiary of ETA, fully controlled by the Greek state.

([8]) According to information provided by the Greek authorities during the formal investigation procedure, Casino Corfu was privatised on 30 August 2010 through the sale, by international call to tender, of 100 % of the shares in the company Corfu Hellenic Casino S.A. (EKK) to V&T Corfu Casino S.A., which was set up by the successful tenderer, namely the grouping Vivere Entertainment Commercial & Holding S.A. - Theros International Gaming INC.. EKK had been set up in 2001 as a subsidiary of ETA.

(28) In the case of Casino Rhodes, the license under Law 2206/1994 was issued in 1996 ([1]). However, the casino continued to apply the reduced price of admission tickets until 1999 and switched to EUR 15 only after its privatisation which took place in April 1999.

(29) In November 2012, Greece introduced new legislation ([2]) setting an equal regulated admission fee for all casinos, public or private, at EUR 6, subject to the obligation of all casinos to retain 20 % (EUR 1,20) of the admission price as fees for issuing the ticket and covering expenses and to pass on to the State each month the remainder 80 % (EUR 4,80) constituting public fees. Greece has confirmed that this legislation is still in force at present.

3. GROUNDS FOR INITIATING THE PROCEDURE

(30) The Commission initiated the formal investigation procedure laid down in Article 108(2) TFEU expressing doubts about the discriminatory fiscal treatment in favour of several specifically identified casinos in Greece that benefit from a more advantageous taxation than the one to which the rest of the casinos in the country are subject.

(31) The Commission considered that the contested measure departed from the general Greek legal provisions establishing the normal level of levies on admissions in casinos and therefore improved the competitive position of the beneficiaries.

(32) The Commission observed that the contested measure appeared to constitute a loss of State resources for the Greek State, and it provided an advantage to the lower priced casinos. In response to the argument by the Greek authorities that the direct beneficiary of a lower price of admission tickets is the customer, the Commission observed that subsidies to consumers can constitute State aid to enterprises when the subsidy is conditional on the use of a particular good or service from a particular undertaking ([3]).

(33) The Commission also observed that the level of taxation did not appear to be set according to the circumstances of each individual casino ([4]), and it provisionally concluded that the measure was selective ([5]).

(34) The Commission found that the contested measure was liable to distort competition between casinos in Greece, as well as in the market of European business acquisition. The Commission noted that it fully respected the right of Member States to regulate gambling on their territory subject to Union law, but could not accept that these arguments deprive the measure at issue of any effect of distortion of competition or on trade between Member States. The operators in the sector were often international hotel groups, whose decision to invest could be affected by the measure, and in fact casinos might act as an attraction to tourists to visit Greece. The Commission therefore concluded that the measure was capable of distorting competition and affecting trade between Member States ([6]).

(35) The Commission reached the preliminary conclusion that the measure constituted unlawful aid, since it had been implemented by the Greek authorities without the prior approval of the Commission, and that it was therefore subject to the application of Article 15 of the Procedural Regulation that was applicable at the time (Council Regulation (EC) No 659/1999 ([7])) as regards recovery ([8]).

(36) The Commission did not identify any grounds for considering the contested measure compatible with the internal market since it was considered to represent undue operating aid to the beneficiary casinos ([9]).

(37) The Commission finally observed that if its doubts that the measure contains incompatible State aid were confirmed, then under Article 14(1) of the Procedural Regulation it would be obliged to order its recovery by Greece from the beneficiaries, unless this would be contrary to a general principle of law ([10]).

([1]) By virtue of ministerial decision T/633/29.5.1996
([2]) Law 4093/2012, Government Gazette I 222 of 12 November 2012.
([3]) See paragraphs 19-23 of the Opening Decision
([4]) See paragraphs 26, 27, 28 and 37 of the Opening Decision.
([5]) See paragraphs 24-29 of the Opening Decision.
([6]) See paragraphs 30, 31 and 32 of the Opening Decision.
([7]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the treaty on the functioning of the European Union (OJ L 83, 27.3.1999, p. 1).
([8]) See paragraphs 34 and 35 of the Opening Decision.
([9]) See paragraphs 36, 37 and 38 of the Opening Decision.
([10]) See paragraphs 39 and 40 of the Opening Decision.

4. COMMENTS FROM GREECE AND INTERESTED THIRD PARTIES

(38) During the formal investigation procedure, the Commission received comments from Greece, Casino Mont Parnès, Casino Thessaloniki and Casino Loutraki.

4.1. Comments from Greece and from Casinos Mont Parnès and Thessaloniki

(39) Since the comments submitted by the representative of the beneficiary casinos of Mont Parnès and Thessaloniki are essentially identical to the comments submitted by the Greek authorities, their summary is presented together under this Section.

(40) Both Greece and Casinos Mont Parnès and Thessaloniki contest the existence of State aid, on the grounds that the State does not forgo any revenue or that, even if it does, then the casinos do not gain any advantage.

(41) The Greek authorities argue that the price differentiation is only a price regulation issue, since the tax raised is a uniform proportion of the respective value of the price of admission tickets issued.

(42) According to the Greek authorities, the objective of the setting of a price of admission tickets and the payment to the State is not to raise revenue for the State but to discourage persons of low income from gambling. The fact that the practice of admission tickets also results in public revenues does not alter its nature as a control measure. Thus, the imposition of a price of admission tickets on casino customers entering the gaming area of casinos is regarded by the Greek authorities as constituting an onerous administrative control measure, which however lacks the character of a tax and cannot be regarded as a tax burden according to Judgement No 4027/1998 of the Council of State (the supreme administrative court of Greece).

(43) As for the differences between the prices of different casinos, Greece argues that the economic and social circumstances of the various casinos are different and not comparable. The Greek authorities contend that the distinction between charges is justified on public policy grounds, including that 'the conditions applying to each casino, justify and are fully in line with the practice of setting a different ticket price for casinos located near large urban centres […] and for casinos in the countryside […] which is mainly inhabited by rural populations who — in their majority — have lower incomes and educational levels and are more in need of being discouraged from playing games of chance than the inhabitants of urban areas'.

(44) On the observation of the complainant (Casino Loutraki) that the price of admission tickets for Corfu Casino changed from EUR 6 to EUR 15 when it was privatised in 2010, the Greek authorities respond that the remote geographical location of the island of Corfu makes it uncompetitive compared to all other Greek casinos (therefore it does not distort competition). The authorities further argue that it is imperative to make the price of admission tickets dissuasive for the sake of protecting the inhabitants of Corfu, because the change in the operating conditions of the casino following privatisation will inevitably lead to a dramatic increase in its operating hours, its activities in general and its attractiveness.

(45) The Greek authorities and Casinos Mont Parnès and Thessaloniki contend that, even if there was an advantage to lower priced casinos (because they attract more customers), then by the same token there is no loss of State resources. Furthermore, it is not certain that with a higher ticket price these alleged beneficiaries would generate more revenue for the State, and the alleged loss of revenues is therefore hypothetical. The Greek authorities and Casinos Mont Parnès and Thessaloniki also point out that the benefit of the lower price of admission tickets is received by the customer, and that the proportion of the price kept by the casino is a higher amount in the casinos with a EUR 15 admission, which is therefore a benefit to them.

(46) The Greek authorities and Casinos Mont Parnès and Thessaloniki also maintain that there is no effect on competition/trade on the basis that each casino serves a local market. They dispute the possibility of competition with other forms of gambling cited in the Opening Decision, noting that internet gambling is currently illegal in Greece.

(47) The Greek authorities and Casinos Mont Parnès and Thessaloniki also contend that even if the view were taken that the reduced price of admission tickets of EUR 6 might have influenced or may influence the decision of a foreign company to invest in a casino business in Greece, the foreign company could always avail itself of Law 2687/1953, as did the company Hyatt Regency Hotels and Tourism (Thessaloniki) S.A. in the case of the Thessaloniki casino.

(48) As regards the allegations of the complainant that the beneficiaries are able to grant admission gratuitously, while the 80 % contribution still has to be paid and which therefore illustrates most clearly the aid character of the measure, the Greek authorities claim that the practice is 'exceptional', as casinos allegedly make use of this exception to offer free admission (as a courtesy) mainly to VIPs or famous customers and as this practice is contrary to tax law (Law 2238/1994), since the expenditure from paying 80 % of the ticket price to the State from own resources is not recognised as productive expenditure and cannot be deducted from the company's revenues (which would expose the company applying this practice to substantial tax burdens).

(49) The Greek authorities and Casinos Mont Parnès and Thessaloniki further draw the attention of the Commission to other differences between casinos in terms of various fiscal/regulatory measures. Thus, these differences which allegedly favour Casino Loutraki (the complainant) would counter-balance the advantages that the beneficiaries enjoy due to the lower price of admission tickets. The main measure invoked is that each casino pays a proportion of annual gross profits to the State but under the law the proportion is lower for Casino Loutraki than for others. On this point however, the Commission firstly observes that these other measures invoked by the Greek authorities and Casinos Mont Parnès and Thessaloniki, in case of existence, might constitute a separate aid measure in favour of Casino Loutraki, if all conditions provided by the applicable Union State aid law are met. In any event these measures are distinct from the measure under assessment and therefore they are not covered by the present Decision.

(50) The Greek authorities and Casinos Mont Parnès and Thessaloniki have not submitted any observations concerning the compatibility and the legality of the aid.

(51) In reaction to the complainant's new submission of 14 April 2017 and, in particular, the allegation that the higher attractiveness of the beneficiary casinos, as a result of the lower admission fees and the extensive practice of granting free tickets, led to a deviation of demand and an increased total income and thereby conferred an advantage (see below recital (56)), the Greek authorities contend that neither lower admission fees nor the granting of free tickets correlate with an increase in the total income of the casinos concerned.

4.2. **Comments from Casino Loutraki**

(52) Casino Loutraki argues that the measures provided by national legal provisions constitute a fiscal discrimination in favour of certain casinos insofar as the requirement to remit to the State the uniform 80 % levy on admission in casinos applies to a different tax basis – the two different admission prices set by the State. As the admission price for the beneficiary casinos is significantly inferior to that of the other casinos (EUR 6 instead of EUR 15), this constitutes a loss of revenues for the State and thus amounts to State aid, in light of the distortion of competition it creates.

(53) Casino Loutraki further argues that the measure is not objectively justified, as the imposition of a lower price of admission tickets in the beneficiary casinos is actually contrary to the social objective and the justification and characteristics of the setting of a price of admission tickets to casinos as described by the Judgement n° 4027/1998 of the Greek Council of State. Casino Loutraki contends that it cannot be reasonably argued that administrative control and social protection could be achieved by different prices of admission tickets – in casino Mont Parnès, only ca. 20 km from Athens city centre, by a ticket of EUR 6 while in Casino Loutraki, ca. 85 km from Athens city centre, by a ticket of EUR 15, or respectively, in casino Thessaloniki, only ca. 8 km from Thessaloniki city centre (also at EUR 6), as opposed to casino Chalcidice, ca. 120 km from Thessaloniki city centre (at EUR 15).

(54) Casino Loutraki observes that, although Greece had previously argued that the reduced price of admission tickets of EUR 6 is justified in consideration of special circumstances applicable to each beneficiary casino, mainly related to the geographical situation of each casino (which determines certain economic, social, demographic and other specificities), nevertheless, in August 2010, the Corfu Casino passed to EUR 15 upon its privatisation, without any explanation as to why the abovementioned special circumstances no longer applied.

(55) As concerns the separate measures invoked by Greece and Mont Parnès, which would allegedly favour Casino Loutraki (mainly that Casino Loutraki would pay a lower proportion of annual gross profits to the State as compared to other casinos), Casino Loutraki asserts that in practice it has paid the same amount as its competitors under a separate agreement with the authorities.

(56) In its new submission of 14 April 2017, following the annulment of the 2011 Final Decision by the General Court, Casino Loutraki emphasises that the advantage conferred by the measure in question consists in the higher attractiveness of the beneficiary casinos, as well as the resulting inflation of the beneficiaries' total income. According to Casino Loutraki, the Commission should establish such an advantage and adopt a new final decision finding that the measure concerned has conferred such an advantage to the beneficiaries, taking into account all information submitted by the Greek authorities during the procedure prior to the 2011 Final Decision.

(57) In addition, Casino Loutraki contends that the extensive practice of the beneficiary casinos to grant free tickets constitutes an independent, third element of the advantage conferred. In relation to that element, Casino Loutraki asks the Commission to provide all information and evidence needed in order to establish that the practice of granting free tickets was common and extensive and went beyond the objectives of the exception provided for in the 1995 Ministerial Decision.

(58) Casino Loutraki contends that the measure also fulfils the other State aid criteria and is not compatible with the internal market and that, therefore, the Commission should adopt a new final decision finding that the measure has been unlawfully put into effect in breach of Article 108(3) TFEU and ordering recovery of the advantage.

5. **ASSESSMENT OF THE MEASURE**

(59) According to Article 107(1) TFEU, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the provision of certain goods shall be incompatible with the internal market, in so far as it affects trade between Member States. For a measure to be categorised as aid within the meaning of that provision, all the conditions set out in that provision must be fulfilled. First, there must be an intervention by the State or through State resources. Second, the intervention must be liable to affect trade between the Member States. Third, it must confer a selective advantage on the recipient. Fourth, it must distort or threaten to distort competition ([1]).

(60) As regards the third condition for a finding of aid, a distinction is made between the conditions of advantage and selectivity to ensure that not all State measures that confer an advantage (i.e. that improve an undertaking's net financial position) constitute State aid, but only those which grant such an advantage in a selective manner to certain undertakings or certain categories of undertakings or to certain economic sectors ([2]).

(61) An advantage is any economic benefit which an undertaking could not have obtained under normal market conditions, that is to say in the absence of State intervention ([3]). Only the effect of the measure on the undertaking is relevant, and not the cause or the objective of the State intervention ([4]). Whenever the financial situation of an undertaking is improved as a result of State intervention on terms differing from normal market conditions, an advantage is present. To assess this, the financial situation of the undertaking following the measure should be compared with its financial situation if the measure had not been taken ([4]). Since only the effect of the measure on the undertaking matters, it is irrelevant whether the advantage is compulsory for the undertaking in that it could not avoid or refuse it ([5]).

([1]) Judgment of the Court of Justice of 21 December 2016, joined Cases C-20/15 P and C-21/15 P Commission v World Duty Free Group, ECLI:EU:C:2016:981, paragraph 53, and the case-law cited therein.
([2]) See Cases C-20/15 P and C-21/15 P Commission v World Duty Free Group, ECLI:EU:C:2016:981, paragraph 56 and Case C-6/12 *P Oy*, ECLI:EU:C:2013:525, paragraph 18.
([3]) Judgment of the Court of Justice of 11 July 1996, SFEI and Others, C-39/94, ECLI:EU:C:1996:285, paragraph 60; judgment of the Court of Justice of 29 April 1999, Spain v Commission, C-342/96, ECLI:EU:C:1999:210, paragraph 41.
([4]) Judgment of the Court of Justice of 2 July 1974, Italy v Commission, 173/73, ECLI:EU:C:1974:71, paragraph 13.
([5]) Commission Decision 2004/339/EC of 15 October 2003 on the measures implemented by Italy for RAI SpA (OJ L 119, 23.4.2004, p. 1), recital 69; opinion of Advocate General Fennelly of 26 November 1998, France v Commission, C-251/97, ECLI:EU:C:1998:572, paragraph 26.

(62) The precise form of the measure is also irrelevant in establishing whether it confers an advantage on the undertaking ([1]). Not only the granting of positive economic advantages is relevant for the notion of State aid, but relief from economic burdens can also constitute an advantage. The latter is a broad category which comprises any mitigation of charges normally included in the budget of an undertaking ([2]). This covers all situations in which economic operators are relieved of the inherent costs of their economic activities ([3]).

(63) In the 2014 judgment, the General Court held that the differentiated tax levied on admissions to public casinos and private casinos in Greece did not constitute a tax reduction to the benefit of public casinos giving rise to an advantage for the purposes of Article 107(1) TFEU. According to the General Court, 'it is apparent from the measure in question that the amounts paid to the State by the casinos in respect of public fees on the admission tickets are simply a proportion of what each casino receives as admission fees. Accordingly, […] the measure under examination does not amount to a reduction in the tax base, since the sums to be paid by each casino amount to 80 % of all admission fees actually collected. […] [S]ince the levy of 80 % paid to the State by all of the casinos is calculated in proportion to what they actually received in admission fees on the tickets sold' ([4]), 'the fact that, as a result of the measure under examination, the casinos charging an admission fee of EUR 6 pay less to the State than the casinos charging an admission fee of EUR 15 is not sufficient to demonstrate the existence of an advantage in favour of the casinos falling within the first category.' ([5]).

(64) In the 2015 order, the Court of Justice upheld that reasoning stating that 'the General Court was justified in relying on the fact that the difference between the two absolute amounts to be paid back to the Greek State corresponds to the same percentage of the different amounts received by the two categories of casinos' ([6]).

(65) In light of the foregoing, the Commission concludes that the measure in question does not confer an advantage for the purposes of Article 107(1) TFEU.

(66) As regards the practice of granting free tickets, in the 2014 judgment the General Court held that 'the casinos charging an admission fee of EUR 6 are placed at an advantage, since they pay less in fees to the State than the casinos charging an admission fee of EUR 15 in respect of the same admission fee received (EUR 0).' ([7]). However, it subsequently held that since the system of admission fees to casinos in Greece does not confer an advantage on casinos which charge an entrance fee of EUR 6, the system of free tickets cannot be considered to reinforce the advantage granted by that system ([8]). It then held that '[s]ince the casino admission fees system does not confer an advantage within the meaning of Article 107(1) TFEU as regards admission tickets sold, and since the Member State concerned can permit tickets to be issued free of charge for specific and justified reasons, such as for promotional purposes and for reasons of social obligation, it is reasonable for that Member State to require — as an additional condition — that the fees it would otherwise have been paid are also paid to it in the case of free tickets.' ([9]). Consequently, the General Court excluded the existence of a separate and specific advantage deriving from the practice of granting free tickets ([10]).

(67) In the 2015 order, the Court of Justice upheld that reasoning stating that since 'the General Court correctly held that the sole difference between the sums paid to the State per admission ticket sold confers no advantage on the casinos for which an entry fee of EUR 6 applies' the practice of granting free tickets cannot reinforce that advantage ([11]).

(68) In light of the foregoing, the Commission concludes that the practice of granting free tickets does not confer an advantage for the purposes of Article 107(1) TFEU.

([1]) Judgment of the Court of Justice of 24 July 2003, Altmark Trans, C-280/00, ECLI:EU:C:2003:415, paragraph 84.
([2]) Judgment of the Court of Justice of 15 March 1994, Banco Exterior de España, C-387/92, ECLI:EU:C:1994:100, paragraph 13; judgment of the Court of Justice of 19 September 2000, Germany v Commission, C-156/98, ECLI:EU:C:2000:467, paragraph 25; judgment of the Court of Justice of 19 May 1999, Italy v Commission, C-6/97, ECLI:EU:C:1999:251, paragraph 15; judgment of the Court of Justice of 3 March 2005, Heiser, C-172/03, ECLI:EU:C:2005:130, paragraph 36.
([3]) Judgment of the Court of Justice of 20 November 2003, GEMO SA, C-126/01, ECLI:EU:C:2003:622, paragraphs 28 to 31.
([4]) 2014 judgment, paragraph 55.
([5]) Ibid, paragraph 57.
([6]) 2015 order, paragraph 35.
([7]) 2014 judgment, paragraph 76.
([8]) Ibid, paragraph 77.
([9]) Ibid, paragraph 78.
([10]) Ibid, paragraph 80.
([11]) 2015 order, paragraph 55.

(69) Finally, the complainant claims that the system of admission fees to casinos in Greece results in the public casinos' higher attractiveness for customers as a result of the lower regulated admission fee and a higher total income (i.e. the generation of other sources of income, such as gambling, accommodation, bar and restaurant services) resulting from the additional customers attracted by the lower admission fee. Just like for the free tickets, given that the system of admission fees to casinos in Greece does not itself confer an advantage on public casinos, any increased attractiveness or additional revenue from additional customers attracted by the lower admission fee cannot be said to give rise to an advantage. In any event, even if such an advantage could be shown to exist, only advantages granted directly or indirectly through State resources can constitute aid within the meaning of Article 107(1) TFEU ([1]). According to the Court of Justice, a negative indirect effect on State revenues stemming from regulatory measures does not constitute a transfer of State resources where it is an inherent feature of the measure ([2]). For example, national regulation which sets a minimum price for certain goods does not entail the transfer of State resources ([3]). Whereas a loss of State resources is involved in the differentiated tax remitted to the Greek State by public and private casinos, no loss of State resources is involved in the mere fact that public casinos were allowed to charge a lower admission fee than private casinos. Consequently, the Commission concludes that the advantage claimed by the complainant, even if it were shown to exist, is not granted from State resources within the meaning of Article 107(1) TFEU.

(70) Since a measure needs to fulfil all four *cumulative* conditions laid down in Article 107(1) TFEU to constitute State aid, there is no need to examine whether the other conditions are fulfilled in the present case.

6. **CONCLUSION**

(71) In the light of the foregoing, the Commission concludes that the system of levies on admissions to casinos in Greece that existed until November 2012 does not constitute aid within the meaning of Article 107(1) TFEU,

HAS ADOPTED THIS DECISION:

Article 1

The system of levies on admissions to casinos in Greece that existed until November 2012 does not constitute aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

Article 2

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 9 August 2018.

For the Commission
Margrethe VESTAGER
Member of the Commission

([1]) Judgment of the Court of Justice of 24 January 1978, Van Tiggele, 82/77, ECLI:EU:C:1978:10, paragraphs 25 and 26; judgment of the General Court of 12 December 1996, Air France v Commission, T-358/94, ECLI:EU:T:1996:194, paragraph 63.
([2]) Judgment of the Court of Justice of 13 March 2001, Case C-379/98 Preussen Elektra EU:C:2001:160, paragraph 62.
([3]) Judgment of the Court of Justice of 24 January 1978, Van Tiggele, 82/77, ECLI:EU:C:1978:10, paragraphs 25 and 26.