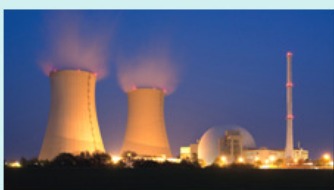


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EU: OPCOM Fined for Abusing its Dominant Position in the Romanian Market

by Mira Todorovic Symeonides (Athens)

S.C OPCOM S.A. operates the only power exchange in Romania. According to the Press Release of the European Commission issued on 5 March 2014, the Commission found that OPCOM discriminated against EU based electricity traders on the spot trading electricity market for five years (2008-2013), favouring Romania based traders, thus breaching Article 102 TFEU which prohibits the abuse of a dominant market position which may affect trade between Member States, and the Antitrust Regulation, i.e. Council Regulation (EC) No 1/2003. The Commission decided that OPCOM and Transelectrica are jointly and severally liable to pay a fine in the amount of € 1.031.000. The antitrust proceeding against OPCOM was opened in December 2012. In the reported period, OPCOM required from traders registered in other EU Member States to acquire a Romanian VAT registration, although they already had VAT registration in their home states. In order to acquire the Romanian VAT they had to have an establishment in Romania which increased the costs for their participation in the spot wholesale trade with electricity. The Commission concluded that this was against the basic principles of the Single Market and that it imposed artificial barrier to the market entry of the EU wholesale electricity traders. The liability was extended to the OPCOM's parent company CNTEE Transelectrica S.A, the TSO of the Romanian electricity transmission grid.

EU: Market Sharing Agreement between EPEX (France) and Nord Pool Spot (Norway) is Fned with 5.9 Million EUR by EC

by Anna Maria Philippa (Athens)

On 5 March 2014 a settlement was reached between EC and two leading European spot power exchanges due to a fine imposed for anticompetitive behaviour. Infringement of Article 101 of the TFEU and Article 53 of the EEA Agreement prohibiting cartels took place while EPEX and NPS were exploring a joint approach on the technical systems to be used for cross-border trade due to EC's initiative aimed at fully integrating national electricity markets. Unannounced inspections at the companies' premises carried out by the Commission and the EFTA Surveillance Authority (from February 2012) brought an end to the infringement that lasted for at least seven (7) months in 2011-2012. Specifically, by means of physical meetings, telephone - video calls and e-mails the two companies, on their own initiative and at their own risk, proceeded to agree not to compete with each other and to allocate European territories between them. The fines, totaling € 5.979.000 (€ 2.328.000 for NPS and € 3.651.000 for EPEX), were set on the basis of EC's 2006 Guidelines on fines and, under EC's 2008 Settlement Notice, the fines imposed on both companies were reduced by 10% (EC decided the settlement based on the Antitrust Regulation 1/2003) as the two leading European spot power exchanges acknowledged their participation in the infringement and their liability. It is noted that any person or firm affected by anti-competitive behaviour as described in this case may bring the matter before the courts of the Member States and seek damages.



Greece: New Vertically Integrated Electricity Company – Small PPC

by Mira Todorovic Symeonides (Athens)

The Draft Law on Establishment of a New Vertically Integrated Electricity Company (the “Small PPC”) approved by the Government, was subject of public consultation from 6 until 14 March 2014 and is expected to be submitted to the Parliament in the coming weeks. The Government’s aim is to increase the competition in the Greek electricity market by formation of a new stakeholder, competitor to the PPC, and to bring about participation of other international energy companies in the Greek market, through the privatisation of the “Small PPC”. The PPC shall contribute to the formation of the Small PPC with approximately 30% of its production capacities and supply agreements. The Draft Law regulates the bases and procedures for establishment of the Small PPC including: the list of the production capacities and rights on lignite extractions to be transferred to the Small PPC; procedures regarding the proposal and adopting, as well as the content, of the agreement on division of the companies; verification of the value of the Small PPC’s assets; information and documents to be received by the PPC shareholders; voting of the agreement on division of the PPC at the General Assembly and obtaining other necessary approvals of the agreement; legal consequences and liabilities resulting from the division; undertaking of employees and transferring of the proportional part of the supply agreements to the Small PPC.



Montenegro: Regulatory Reform in Hydrocarbons

by Mira Todorovic Symeonides (Athens)

In December 2013 and January 2014 the Parliament and the Government of Montenegro issued and enacted several pieces of regulation in respect to exploration and exploitation of hydrocarbons in Montenegro, while at the same time the deadline for submission of applications in the Tender for Hydrocarbons Production Concession Contract was extended until 15 May 2014. The said reform includes: amendments to the Law on Exploration and Production of Hydrocarbons (Official Journal 41/10 and 62/13) voted on 31 December 2013; the Government Decree on the Manner of Calculation and Payment of Levy on Production of Hydrocarbons issued on 30 January 2014 (Official Journal 13/14 as of 14 March 2014) which came into effect on 20 March 2014; the Government Decree amending the Decree on the Method of Retrieval of Blocks and Third Party Access to Upstream Facilities (Official Journal 56/13 as of 6 December 2013); the Rulebook on Requirements for Drilling of Wells and Construction of Facilities for Hydrocarbons Production, issued on 30 January 2014 by the Minister of Economy; and the Rulebook on Development and Production of Hydrocarbons, issued on 30 January 2014 by the Minister of Economy. On 30 January 2014 the Government also adopted the following draft model documents: Production Concession contract for Upstream Activities, Joint Operating Agreement for Upstream Activities and Accounting Agreement.

The Decree on the Manner of Calculation and Payment of Levy on Production of Hydrocarbons imposes an annual levy in the amount of €300 per km² and in case of prolonging of the exploration for additional two years, after the initial 6 years for shore or 7 years for off shore hydrocarbons, in the amount of €3.000 per km²; and a monthly levy on the production of oil, gas or other accompanying hydrocarbons by the application of the following rates: for oil (up to 10K barrels per day 5%; 10-20K bbl per day 7%, 20-30K bbl per day 10% and below 30K bbl per day 12%), and for the extracted gas and accompanying hydrocarbon the rate is of 2%. The Decree further regulates the valuation of the hydrocarbons price and refunding of expenses. A Draft Law on Hydrocarbon Tax, introducing a tax rate of 59% to the income from upstream operations and regulating issues such as income and expenditures from upstream operations, not recognised expenditures and the reference price, has been adopted by the Government and proposed for the Parliament procedure.

Croatia: New Law on Oil and Petroleum Market adopted

by Vuk Stankovic (Belgrade)

In February 2014 the National Assembly of Croatia passed the Law on Oil and Petroleum Market which, among others, transposes the not yet implemented parts of the EU Directive 2009/119/EC imposing an obligation on Member States to maintain minimum stocks of crude oil and petroleum products. Foremost goal of the new Law is to ensure independence of the Croatian Mandatory Oil Stocks Agency (hereinafter: HANDA) in regard to its financing, to establish an open market pricing structure and to define oil-related energy activities and permitting process. In regard to HANDA financing, the new Law provides three financing sources: (i) directly from state budget fund; (ii) from incomes resulting from mandatory stock operations; and (iii) from donations and related sources. However, the last two sources shall be performed via state budget fund and not directly. Major change on the market brings Article 9 of the new Law, introducing deregulation of prices of all oil and petroleum products. However, the Croatian Government may prescribe the highest level of retail prices for certain petroleum products, for a limited period of time (up to 90 days), for the purpose of customer protection, market regulation, or other legitimate reasons. In line with the Croatian Energy Act (hereinafter CEA), the new Law defines that there are 12 energy activities in the field of oil and petroleum, and provides in more details obligations of undertaking in oil and petroleum market. The new Law also extends the list of activities for which the energy permit is not required by including the following activities: liquefied petroleum gas stock holding and oil stock holding, if stocks are held for self use.

Greece: Extension of the Gas Supply Agreement between DEPA and Gazprom Export Introducing Price Reduction

by Lazaros Sidiropoulos (Athens)

As a result of several months' negotiations, on 25 February 2014 the business press reported that an agreement was finally reached between DEPA, the main gas supplier in the Greek market, and one of its main suppliers from abroad, Gazprom Export, introducing a reduction of the price of natural gas supply by 15 %, thereby approaching the European average gas supply. Some days later, on 11 March 2014, DEPA published an official announcement that the respective new supply contract was signed on that day, providing for the aforementioned priced reduction, which shall apply retroactively from 1 July 2013, allowing for respective refunds by DEPA to its customers in Greece. Although the exact content of the new contract was not made public, several -other than the price reduction- favorable terms and conditions are said to have been included, such as an amendment to the conditions for activation of the take-or-pay clauses. Through this new contract, the agreement between DEPA and Gazprom Export for supply of Russian gas to Greece was extended for ten (10) further years.

Energy Community: A Reasoned Opinion against Serbia Was Submitted by the Secretariat due to Serbia's Failure to Comply with Gas Unbundling Rules

by Marilena Sotirchou (Athens)

After the completion of the preliminary procedure initiated via Opening Letter dated 24 October 2013, the Energy Community Secretariat submitted a Reasoned Opinion on 24 February 2014 against Serbia in which it maintains its view that Serbia, in violation of the Energy Community Treaty, has failed to successfully unbundle two vertically integrated gas undertakings. Serbia is given two months to remedy the issues relating to non-compliance as the main concern is that the lack of unbundling of the two transmission system operators hampers the proper development of a competitive gas market in Serbia and the greater region, as well as that it hinders the attraction of much needed gas infrastructure investment.



Bulgaria: Reductions of Fees for Access of Producers of Electricity from RES to Transmission and Distribution Grids

by Svetla Stoykova (Sofia)

New fees for access of producers of electricity from renewable energy sources to electricity transmission and distributions grids have been approved by Decision N 4-6 of 13 March 2013 of the Bulgarian energy regulator State Energy and Water Regulatory Commission (SEWRC). Pursuant to this Decision, Renewable Energy Sources (RES) producers are exempted, retroactively from 14 September 2012, from paying fees for grid access. Only producers of electricity from solar or wind power shall pay a minimum fee for access to the transmission network of the Electricity System Operator JSC amounting to 2.45 BGN/MWh, excluding VAT, but shall pay no fee for access to any of the three distribution grids: CEZ Distribution Bulgaria JSC, EVN Bulgaria Electricity Distribution JSC and Energo-Pro Grid JSC. The reason for this differentiated approach is the need to compensate the System Operator's costs for providing additional capacity at the electricity transmission grid, in order to maintain the balance of the electricity system and due to the inconstant nature of solar and wind energy production, depending on weather conditions. The new decision repeals the preceding Decision N 4-33 of 14 September 2012 of SEWRC which determined significantly higher, temporary fees, in the range of 1.20 to 236.04 BGN/MWh, depending on the installed capacity and the specified preferential prices for the purchase of RES generated energy. As the approved final access prices differ from the temporary access prices specified in the previous decision, the Commission has adopted by another Decision (№ -1 KM of 13 March 2014) measures to compensate electricity producers for exceeding amounts of fees already paid in the period between the adoption of two decisions, i.e. from 14 September 2012 until 13 March 2014.

Greece: New Measures to Affect Renewable Energy Producers

by Anna Maria Philippa (Athens)

It is the Government's intention that a new set of draft proposals that went out for consultation from 8 to 14 March (a so called "New Deal") concerning all RES, be voted by the Greek Parliament by the end of March, aiming to eliminate the Greek Electricity Market Operator's (LAGIE's) fund deficit by the end of 2014, reduce the cost of electricity for consumers so that all RES power producers in Greece will have similar investment returns. The new bill introduces the following provisions: (1) Solar photovoltaic energy producers shall have to contribute 35% of their 2013 income to LAGIE. All other energy producers shall contribute 10% of their 2013 income to LAGIE. Only rooftop solar PV installations are exempted. (2) Retroactive feed-in-tariffs (FIT) reductions for operational RES plants: More specifically, for solar PV installations a reduction of 29,5% (weighted average) of the initial tariffs is applicable whereas retroactive FIT reductions also apply to rooftop installations. For wind energy producers 6.4% and for hydro energy producers 5.4% FIT reductions are applicable. Finally, small PV installations that are not installed on buildings up to 20 kW and energy projects owned by farmers up to 100 kW are presented with a 10% lower rate of the otherwise applicable reductions. (3) Renewable energy producers operating for less than 12 years (on January 2014) are presented with an option to extend their Power Purchase Agreements with LAGIE by five years, and they can sell to the energy market according to the market rules or sell to the grid (being obliged to prioritize on RES) at a price of €80/MWh. (4) Upon enactment, relevant suspension lift will be enforced in order for the country's Regulatory Energy Agency to receive again new applications for solar PV projects and process pending applications for new projects. It should be noted that, the new Bill makes no provision with regard to amending the terms and conditions of the bank loans of RES producers. Finally, considerable concern has been expressed as to the alleged unconstitutional and anti - EU law nature of the aforementioned proposed clauses for retroactive measures, as well as great dismay due to the fact that the Government, in trying to pass the Bill, implies that, otherwise, there would be no other option left than to proceed to an excessive raise of the Special Duty for Renewable Energy Sources (ETMEAR) that is payable by consumers and is integrated in electricity bills.

Serbia: New Rulebook on Guaranties of Origin for the Electricity Generated from RES

by Vuk Stankovic (Belgrade)

In February 2014, the Ministry of Energy, Development and Environmental Protection of the Republic of Serbia adopted the Rulebook on guaranties of origin for the electricity generated from RES (Official Gazette RS 24/2014) (hereinafter: REGO Rulebook) establishing a National Registry for Guarantees of Origin (hereinafter: NREGO) for RES generated electricity and introducing a specific regulatory framework for such guarantees, in compliance with Directive 2009/28/EC, particularly Article 15 thereof. NREGO shall be established within the Transmission System Operator and shall be in charge for keeping registry of accounts and side documentation of RES producers, in order to confirm that the corresponding 1 MWh of electricity was produced from RES. Apart of NREGO, REGO Rulebook deals with the content of the guarantees of origin, the procedure of their issuance, their transfer, cancellation and expiration, as well as the submission method for data on the generated electricity measured at the point of entry to a transmission or distribution system. However, the requirement laid down in Article 15.9 of Directive 2009/28/EC regarding the recognition of foreign guarantees of origin is not regulated.

Montenegro: Levy for Promotion of RES Production

by Mira Todorovic Symeonides (Athens) and Dejan Radinovic (Podgorica)

On 23 January 2014 the Government of Montenegro issued the Decree on the Levy for Promotion of Electricity Production from Renewable Energy Sources and Cogeneration (Official Journal 8/14 as of 14 February 2014). It provides the methodology for calculation of the levies to be collected from the end-consumers and be used to cover the feed-in tariffs payable to the qualified producers (producers of electricity from RES or waste or cogeneration of electricity and heat or cooling) and the expenses of suppliers and eligible consumers from the imbalance caused by qualified producers. The methodology for the calculation of the levy takes into consideration: i) the planned annual expenses of all suppliers and eligible consumers in relation to the sale of electricity purchased from qualified producers through the market operator at prices which include the feed-in-tariffs; ii) the planned annual expenses of all suppliers and eligible consumers due to imbalance caused by qualified producers; iii) the planned annual income of all suppliers and eligible producers from the sale of electricity purchased from qualified producers at the supply prices (not including the regulated prices covering the expenses of transmission, distribution, public supplier and market operator); iv) the difference between the expenses and income during the last 12 months; and v) the reserves' coefficient.

BiH: Set of Rulebooks for RES Presented for Public Consultation

by Vuk Stankovic (Belgrade)

In February 2014 the Energy Regulatory Agency (ERA) of the Federation of Bosnia and Herzegovina (FBiH), one of the two Entities in BiH, drafted three Rulebooks regarding renewable energy sources (hereinafter: the Rulebooks) and presented final drafts of them for public discussion from 27 February 2014 until 17 March 2014, planning to adopt them in the near future. The Draft Rulebooks consist of: the Rulebook on acquiring status of privileged producer, the Rulebook on mandatory offtake and share of electricity generated from RES and the Rulebook on small RES generating facilities, all predominantly resulting from recently adopted laws in FBiH, particularly the Law on Electricity (Official Gazette FBH no. 65/13) and the Law on Use of Renewable Energy Sources (Official Gazette FBH no. 70/13). In regard to Privileged Producers the Rulebooks bring forward more accurately defined conditions for acquiring such status whereas definition of the small RES generating facilities, construction issues and connection to the grid of such facilities have also been determined. Above all, ERA's intention is to establish the procedures and obligations for mandatory offtake of the electricity produced from RES, to encourage RES production and to ensure achievement of the goals in regard to the share of energy produced from RES in the total electricity consumption in the FBiH.



Greece: New Regulatory Decisions Aiming at Completion of Unbundling of the Electricity Distribution Network Operator

by Lazaros Sidiropoulos (Athens)

On 10 March 2014, Decisions no. 82/26.2.2014 and 83/26.2.2014 of the Greek energy regulator (RAE) were published, regulating the exclusive ownership rights of PPC (Greece's major electricity producer and supplier) on the Greek electricity distribution network on the one hand, and granting a network operation licence to HEDNO (i.e. the Greek electricity distribution network operator, a 100% subsidiary of PPC), on the other hand. Aim of the joint issuance of those two Decisions was to comprehensively regulate and clarify all open issues regarding the implementation of unbundling procedures in the Greek electricity distribution market. Among others, the main principles of the contractual relationship between the distribution network owner, i.e. PPC, and its operator, i.e. HEDNO, are set out, by defining the reciprocal rights and obligations in relation to the operation, maintenance and development of the network, within the framework of the management and functional unbundling of HEDNO. Decision no. 83/26.2.2014 also addresses other issues relating to the distribution services of HEDNO, including: metering and pricing, effective access to the network, introduction of customer service procedures, transparency obligations, environmental protection, cooperation with RAE, and the obligation to draft and submit to RAE for approval a distribution network code.

Greece: Greek Energy Regulator Issues Various Decisions in regard to the Realisation of the TAP Project

by Lazaros Sidiropoulos (Athens)

The Greek energy regulator RAE announced on 25 February 2014 that it approved by its Decision no. 63/11.2.2014 the first Compliance Programme proposed by the company TAP AG for the Trans Adriatic Pipeline (TAP), the pipeline that will bring Azeri gas to Italy, through Greece and Albania. TAP AG obtained respective approvals also from the other two competent national regulatory authorities of Albania ERE and Italy AEEGSI. The main objective of this Compliance Programme is to ensure compliance to the Final Joint Opinion which was issued in June 2013 by the three regulators on TAP AG's exemption from certain provisions of the Gas Directive (2009/73/EC) regarding unbundling, third party access and regulated tariffs. The Compliance Programme sets out measures aiming to ensure that discriminatory conduct is excluded as well as that no commercially sensitive information is communicated to the shareholders. In addition to the above, RAE also announced on 27 March 2014 that it approved by its Decisions no. 112/5.2.2014 and 137/12.3.2014 the (jointly issued by the three competent regulators) Guidelines for the binding phase of the Market Test ("first Booking Phase") under paragraph 6 of article 36 of the Gas Directive, providing the general framework for capacity allocation and management procedures on the TAP pipeline. This phase, during which binding offers shall be submitted to book capacity exceeding the initial capacity already reserved, has started on 17 March 2014 and is expected to close in autumn 2014.

EU: ACER Annual Report Contractual Congestion at Interconnection Points

by Georgia Ilianna Karamani (Athens)

On 28 February 2014 ACER published its annual report on Contractual Congestion at Interconnection Points (IP). The Report based its findings and recommendations on data from 1 October to 31 December 2013 and capacity booking data for the years 2014 and 2015. To the extent that the data received remained incomplete, said findings and recommendations remain somewhat inconclusive. ACER finds that at least one third of IP sides (entry and exit for each flow direction at the IP), in the EU are congested. At least 45 of the congested IP sides are potentially subject to the mandatory application of the Firm day-ahead Use-It-Or-Lose-It mechanism that, if booked capacity is not fully used, makes available to the market firm daily capacity one day before the gas flow. Furthermore, Congestion Management Procedures of the Commission Guidelines were not widely applied across the EU and secondary trading of unused capacity was also limited. ACER recommends that ENTSOG and TSO make more data available and increase quality and consistency on their platforms. Finally, ACER states that the National Regulatory Authorities should check often TSO data to ensure the quality, validity and completeness of information.



Energy Community: Secretariat Initiates Dispute Settlement Case against BiH for Incomplete Transposition of the Directive on Energy End-use Efficiency and Energy Services

by Marilena Sotirchou (Athens)

The Energy Community Secretariat sent an Opening Letter to Bosnia and Herzegovina on 3 March 2014 for failure to meet its obligations, by the end of 2011, undertaken under the energy end-use efficiency and energy services Directive 2006/32/EC. The Secretariat, via the implementation report, stressed the need for Bosnia and Herzegovina to take significant steps towards implementation and transposition of the said Directive. The new dispute settlement case requests from Bosnia and Herzegovina, within a three-month window, to comply with the Treaty Establishing the Energy Community requirements or to offer justifications regarding its position.



Poland: New Polish Nuclear Power Program

by Agnieszka Binieda (Warsaw)

On 28 January 2014 the Council of Ministers adopted a resolution on the Polish Nuclear Power Program, which determines a schedule of actions aiming to enhance the use of nuclear power, ensure safe and efficient operation of nuclear power plants and introduce mechanisms for safe management of spent fuel and radioactive waste. In accordance with the schedule, the first step will consist in signing by the end of 2014 a contract for the realisation of the first power plant. By the end of 2018 the technical design will be prepared, and the opinions and decisions necessary for the construction will be issued. The first nuclear plant is meant to start operating by the end of 2024, while the completion of construction of the second plant is scheduled for 2035. It must be noted that the program is a document of coordinating nature and the final decision regulating the introduction of nuclear power in Poland will be a legal document called "fundamental decision for the first reactor", which should be expected not earlier than 2017. Nevertheless, the adoption of this program strongly signifies that the government intends to consistently pursue the implementation of the nuclear program.

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