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USAID ENERGY PROGRAM

# DRAFT OUTLINE ON THIRD PARTY ACCESS

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30 July 2018

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# DATA

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# DRAFT OUTLINE ON THIR PARTY OPEN ACCESS

## INTRODUCTION

USAID Energy Program is a three year program focused on supporting the development of Georgian electricity and Electricity Markets that support further expansion of renewable energy projects thereby improving Georgia' security of supply. The Program's Task 1 supports the development of competitive electricity and Electricity Markets including cross-border energy trading.

The enabling environment in the Georgian Electricity sector needs further development and enhancement to meet the requirements of Georgia's Accession Protocols of the Energy Community Treaty. Under agreement between USAID Georgia and the Georgian National Energy and Water Supply Regulatory Commission (GNERC), the USAID Energy Program is supporting GNERC in drafting several secondary legislative acts during 2018.

Non-discriminatory third-party access to transportation infrastructures in electricity - transmission and distribution networks - is essential for open and effective competition in wholesale and retail electricity markets. Competition in wholesale energy markets is possible and desirable as it will lead to lower prices, increase innovation, improve the quality of the service, foster investment in energy infrastructure, and promote renewable energy sources.

However, transmission assets are generally considered natural monopolies as they are not economically duplicable. Because of their 'bottleneck' nature and their essentiality to transport electricity from generators to end consumers, network owners may use them anticompetitively. For instance, by denying access to other generators to their transmission infrastructure, grant access in discriminatory terms to exclude them (horizontal foreclosure), and/or exert vertical market power vis-à-vis buyers and consumers of electricity (downstream exploitation). To mitigate these competition risks, it is necessary to grant access to transmission networks to all electricity generators on a non-discriminatory basis through open access tariffs authorized and overseen by energy regulators.

Nonetheless, Third Party Access (TPA) alone is insufficient. TPA must be made effective in order to promote and protect competition in electricity and gas markets. This is done by imposing rules regarding the 'unbundling': the functional, control or structural-based separation of the generation and/or supply assets from the physical transmission or distribution networks.

This report analyzes a requirement for unbundled and non-discriminatory access to electricity transmission networks through regulatory and antitrust rules. Specifically, it discusses the legal measures which have imposed TPA and the different unbundling models. The contribution shows that both regimes have pursued a similar policy concerning TPA and to a large degree unbundling mechanism. Two differences are significant, however. First, the concomitant application of antitrust law to industries under the scope of sectoral regulation. Second, the preferred unbundling method: resorting either to structural forms requiring the divestiture of a vertically integrated undertaking that owned transmission and generation assets, or instead allowing companies to remain vertically integrated, separating transmission operations from generation through functional or control-based options.

## EXECUTIVE SUMMARY

On July 13, 2009 the European Parliament and the Council adopted the Third Energy Package paving a way to a fully competitive electricity and gas markets in Europe. One of the important elements in liberalization of the electricity and gas markets is assurance of the third party access to the networks, and this could be done by unbundling of monopolistic network activities from the competitive generation and supply activities.

In the EU, competition law has played an active and important role to complement and sometimes implement regulatory law in energy markets since the early 2000s as “the cornerstone to tackle a wide range of remaining obstacles to comprehensive electricity market liberalization”, as indicated back in 2002 by the EU Commission. A review of the Commission’s practice and the case law shows that EU competition law has been used (aggressively at times) to implement TPA and unbundling requirements, even in the light of regulation. When applying competition law, the Commission has resorted to a rather flexible and broad interpretation of the essential facilities doctrine, as remarked by Talus. This application of competition rules has been done through individual investigations or assessments. Further, the Commission’s practice shows that both behavioral and structural remedies have been implemented to address ex-ante and ex-post competition concerns, requiring changes of conduct, such as eliminating a discriminatory or abusive tariff or imposing an auction system for the purchase of access, or more radically by altering the structure of an undertaking. Also, the review highlights that when the Commission has enforced competition law to secure effective TPA

# LEGAL REQUIREMENTS

This report is drafted pursuant to draft Law of Georgia on Energy, Article 65 – Third party access to the transmission system and Article 88 - Third party access to the distribution system and in conformity with Georgian National Energy and Water Supply Regulatory Commission's (GNERC) Organization, Operation and Procedures Rules. This report takes into consideration and obeys where necessary the requirements under the Law of Georgia on Energy, Operational Rules for Electricity Supply by Supplier of Last Resort, Electricity Market Rules, Network Rules, Rules on Commercial Service Quality, and Electricity/Capacity Supply and Consumption Rules.

## DRAFT OUTLINE ON THIRD PARTY ACCESS

1. Third Party Access
2. Energy Industry Functions
3. Monopoly and Competitive Activities
  - 3.1. Monopoly
    - 3.1.1. Transmission
    - 3.1.2. Distribution
    - 3.1.3. Dispatch
    - 3.1.4. Market Operation
  - 3.2. Competitive
    - 3.2.1. Production
    - 3.2.2. Supply
    - 3.2.3. Services
  - 3.3. Other activities
    - 3.3.1. Metering
    - 3.3.2. Settlement
    - 3.3.3. Funds administration
    - 3.3.4. Customer registration
4. Why Deregulate an Industry
  - 4.1. Beneficial customer choices
  - 4.2. Enhanced productivity and efficiency
  - 4.3. Innovation growth
  - 4.4. Prices more accurately reflect the true market value of the services
  - 4.5. Attracting the foreign investments
  - 4.6. Introducing new entrants to the market
  - 4.7. Enhanced services standards and innovative packages
5. Competitive Market
  - 5.1. Deregulation does not eliminate regulation
  - 5.2. In deregulated market there are variety of regulatory rules
  - 5.3. Transmission and distribution sectors remain regulated
  - 5.4. Regulators decide:
    - 5.4.1. How market function
    - 5.4.2. Enforce market power and reliability
    - 5.4.3. Monitor prices and market behavior
    - 5.4.4. Set market rules
    - 5.4.5. Set capacity requirements
    - 5.4.6. Deal with quality standards
    - 5.4.7. Dispute settlement
6. Market Structure and Competition
7. What does third party access mean?
  - 7.1. Market access by any eligible party on a fair and equal basis
  - 7.2. Enabling two and more parties to use transmission or distribution network belonging to another party for electric power transfers
  - 7.3. Require monopoly structures to grant access to the infrastructure to parties other than their own customers

- 7.4. Goal: Providing reliable and economic electric service
- 7.5. Regulatory construct:
  - 7.5.1. Rights of the parties
  - 7.5.2. Obligations of the parties
  - 7.5.3. Operational procedures
  - 7.5.4. Economic conditions
  - 7.5.5. Incentives for networks expansion
8. What does third party access require?
  - 8.1. System operator which maybe ISO or TSO
  - 8.2. Market Operator
  - 8.3. Independent and effective Regulation
    - 8.3.1. Network Code
    - 8.3.2. Market Rules
    - 8.3.3. Network Tariffs
    - 8.3.4. Third Party Access Rules
    - 8.3.5. Procedures, terms and conditions for TPA
    - 8.3.6. Procedures, terms and conditions for Connection
    - 8.3.7. Terms and Conditions for CACM
9. Third Party Access Format
  1. Electric system structure
    - Single dispatched utility
    - Multiple independently dispatched entity levels
  2. Transaction characteristics
    - Transactions access is granted to some, but not to all participants
    - Restrictions to the independently dispatched entities to exchange power only between themselves
    - Access is open to independent generators and large or all customers
10. An effective regulator
 

To avoid market risk regulator needs to be:

  1. Independent
  2. Understand industry
  3. Understand market
  4. Understand principles of competition
  5. Understand principles of commerce and finance
  6. Unbiased
  7. Open
  8. Consistent
  9. Rational
  10. Long term view
11. Network Tariff Regime
12. Obligations of GNERC
  - The third party access refers to the payment for and use of transmission and distribution networks if a generator of electricity wants to sell to a customer.
  - Customers have always - paid network related charges, but the introduction of private generators and the emergence of bilateral transactions between producers and consumers have raised a debate around the appropriate network charges for generators.
  - Art 29 of New Law of Georgia on Energy granted authority to GNERC for:
    - Approving and revising of “rules on fair and non discriminatory third party access to electricity and natural gas transmission and distribution systems”.
    - Natural Gas storage and LNG facilities
    - Monitoring of implementation of these rules.
13. Responsibilities of System Operator for TPA



- Responsibilities in case of ISO:
  - ISO is responsible for granting and managing TPA
  - Transmission owner is not responsible for TPA
- Responsibilities of TSO:
  - Develop an annual TYNDP
  - Implement procedures and terms and conditions for TPA
  - Implement procedures and terms and conditions for connection to the system
  - Implement terms and conditions for CACM

#### 14. TPA to the Transmission System

1. Non-discriminatory and unrestricted access to the transmission system
2. Equivalent contractual terms and conditions for identical services for different system users
3. Conclusion of long-term contracts if they comply with the competition rules in the legislation and the Energy Community Treaty
4. Publication by TSO on its website about TPA:
  - a. Procedure, terms and conditions for TPA,
  - b. Requirements for TPA in the transmission Grid Code
  - c. Charges for TPA, set by GNERC
  - d. Technical and quantitative data relevant to access and use of the transmission system
5. Where appropriate – guarantees for system services from users
6. Access to other TSO from neighboring countries

#### 15. Refusal of Access to the System

- Lack of capacity or connection, regulated by Network Code
- Motivated reasons shall be given by TSO for any refusal for access:
  - Time period for the refused access
  - Measures that would be necessary for removal of stated reasons
- Evidence for refusal based on objective, non-discriminatory, technically and economically justified criteria in 5 business days
- Enhancements of the system in lack of capacity or connection
- Information to GNERC on measures taken by TSO for enhancement of the system
- Dispute settlement of refusal shall be settled by GNERC according the Dispute Settlement Rules

#### 16. Inter-TSO Compensation Mechanism

- Regulation EC 714/2009 on cross-border exchange of electricity
- Fair rules for cross-border exchanges of electricity
- TSO shall receive compensation for the costs incurred for hosting of cross-border flows on their networks
- Compensations should be paid by the operators where electricity flows originate and where the electricity flows end
- Costs for hosting cross-border flows based on forward-looking long-run average incremental costs
- Payments should be taken into account when setting the network tariffs
- Harmonization is necessary for avoiding distortions in trade

#### 17. Capacity Allocation and Congestion Management

- Capacity Allocation shall be arranged in the Network Code
- Creation of Coordinating Auction Office/s for coordinating auctions for cross-border capacities
- TSO develops rules for CACM based on instructions from the National Regulator
- Congestions shall be addressed with non-discriminatory market based solutions
- Congestions problems shall be solved with non-transactions based methods
- Transmission curtailment shall be used only in emergency situations

- Revenues for CBT shall be used for:
    - Guarantee of actual available capacity
    - Increasing the interconnection capacities
18. Market Monitoring and Cooperation in EU
- ESMA – European Securities and Markets Authority
  - REMIT – Wholesale Energy Market Integrity and Transparency
  - MAD – Market Abuse Directive

**USAID Energy Program**

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