

Energy Newsletter

The Liberalisation of the Natural Gas Distribution Sector in Greece and other Attempts to Liberalise the Electricity Sector

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A. Introduction

On 14th August 2015 the Government passed a new law introducing radical changes in many aspects of the economy, most notably bringing tax, pensions and other substantial burdens on the Greek taxpayer in implementation of the Government's obligation towards its lenders to introduce new cost-cutting measures in exchange for a further loan. This law is commonly known as the "3rd Memorandum" between Greece and its lenders, and it contains the most austere measures seen so far. In it, the Government also included a new law on the liberalisation of the natural gas distribution sector in Greece. Such liberalisation was one of the requirements imposed by the country's lenders as early as 2014 and its provisions had undergone a public consultation before the change of Government in January 2015. The law, as enacted, includes very few changes in the area of natural gas from the bill put forward to the public consultation last year.

B. The Changes Brought Forward by the New Law Regarding Distribution Functions and Ownership of Distribution Systems

The new law provides for the abolishment of the existing exclusive rights of the EPAs to supply and operate their respective distribution systems. The EPAs will no longer

have a distribution function and will spin-off and transfer their distribution function to new companies by January 2017; such companies will be functionally and legally different from the EPAs, but will be in the hands of the same shareholders as the EPAs. The new companies, called EDAs, will operate the relevant distribution systems with the first right to expand their network. They will be distribution system operators and will operate under a distribution licence and a licence to operate a distribution system of a 20-year duration. Such right is however subject to revocation and third-party operators may be allowed to build independent systems within the EDA distribution systems if the EDAs do not fulfil a customer's request for connection within 18 months from the scheduled time under their development programmes. The provision is rather vague and does not clarify what happens if a connection is scheduled to be constructed at a point in time beyond the first 5-year development programme and therefore not included in the development programme.

The ownership of the distribution systems that EPAs have built will be vested to DEPA SA and the EDAs will operate such systems under licence and without paying fees to DEPA for the use of the assets. The ownership of the new systems that the EDAs will build will be vested on the EDAs.

The EDAs will be functionally independent from the vertically integrated parent companies, pursuant to the provisions similar to the unbundling obligations set out in article 26 of the Third Natural Gas Directive (EU Dir. 2009.73) applicable for distribution companies.

DEPA is also vested with the right to set up a new EDA (as a spin-off of its distribution functions) which shall obtain a distribution licence for areas covered under the vague description "the rest of Greece"; it can also set up more EDAs which will receive separate territories from the above description.

C. The Changes Brought Forward by the New Law Regarding Supply to Eligible and Non- Eligible Customers

The supply to non-eligible customers will be performed by the old EPAs pursuant to regulated tariffs approved by RAE, and such tariffs must be submitted to RAE by the EPAs for approval by the end of October 2015. The EPAs may also supply Eligible Customers, but the tariffs should clearly not allow cross-subsidisation between Eligible and non-eligible customers. The supply of eligible customers by the EPAs will not be regulated in terms of prices, but it will need to comply with the provisions of a supply licence and a supply code approved by RAE, as will be the case for all other suppliers too. Note that RAE has the power to impose caps on allowed profits to suppliers in case those prices are set at levels not justified by the conditions in the local or international market and fair competition.

In any event, all customers within the EPA territories (household and non-household) shall become Eligible on 1 January 2018; note that industrial customers with an annual consumption over 2.2 GWh are already eligible, and non-industrial customers with such consumption will also become eligible by 1 January 2017. The relevant article in the new law is not well drafted and seems, probably by oversight, to exclude from the definition of Eligible Customers the customers that have already become Eligible prior to the enactment of the new law. Furthermore, the article of the new law is unclear as to what happens to non-eligible customers who are located outside the territories of the EPAs. The bill provided that all customers located outside the territories of the EPAs would be considered Eligible Customers from the entry into force of the law; such provision is missing from the law as enacted.

The EPAs in their position as supply companies shall compete freely with other suppliers for the supply of Eligible Customers; note that DEPA SA will remain a 51% shareholder of both the new EDAs and the EPAs, therefore competing with the latter over the supply of Eligible Customers.

Also note that until the spin-off, the EPAs (and thereafter the new EDAs) are themselves characterised as Non-Eligible Customers, having the obligation to purchase their gas needs from one of their shareholders, DEPA, at least up to a level of their contracted requirements in 2010 and insofar as such gas is used to supply Non-Eligible Customers. This obligation will remain for as long the EPAs supply Non-Eligible Customers, i.e. probably until 1 January 2018.

There is a further provision that reduces the power of the EPAs to supply Non-Eligible Customers for the restricted period while they remain Non-Eligible; customers located within the territories of the current EPAs may apply to be connected to the distribution system within a period of 3 months. If EPA (or EDA as the case may be) cannot proceed to the connection within this time period, the customer may seek supply of natural gas from other providers, i.e. the customer will become an Eligible Customer. This provision clearly puts the EPAs in a difficult position, since they are in fact obliged to proceed to connections within 3 months otherwise they lose the customer from a supply view point; it is not clear however who will proceed to connection in terms of distribution works to the customer, as the EPAs in that case have a larger timeframe within which to construct such connection.

D. Other Attempts to Liberalise the Electricity Market

Another major commitment in the energy field included in the recent law is a prohibition to all electricity producers not to produce nor import power exceeding 50% of the total annual production including imports into the country. This prohibition shall apply from 1 January 2020. This measure is aimed to reduce the market share of the ex-incumbent, Public Power Corporation (PPC), which still has a

large majority of the generation and supply market in Greece. The Competition Commission in Greece is to evaluate the progress towards achieving this target in the beginning of 2019 and propose necessary measures.

In the meantime, and although the way to achieve this target is not clarified in the new law either, there are some measures that are listed therein which could help to this direction:

- Discussion with the EU Commission with a view to introducing NOME type auctions (or measures of equivalent effect) in order to decrease PPC's dominance by reducing its market share by 25% in the supply and production, with the purpose of bringing it to less than 50% by 2020. If such agreement is not reached with the EU Commission by the end of October 2015, alternative measures will need to be introduced "immediately"
- Introduction of a temporary and of a permanent scheme of Capacity Certificates and prohibition of bidding at the wholesale pool below variable cost
- Reinforcing RAE's role
- Review of PPC Tariffs to reduce cross-subsidisation in industrial tariffs (20% discount in high-voltage customers) and bringing them closer to variable costs of each customer category
- Privatisation of ADMIE (Transmission Operator) or equivalent measures leading to full unbundling from PPC. Other measures to help the liquidity of the electricity market (review of taxation in the energy market, setoff between debts of Market and System Operators, implementation of EU Directive 27/2012 etc.)
- Introduction of an electricity Trading Market by December 2017 and a Balancing Market by June 2017
- New measures for Renewable Generation (unspecified) to be approved by December 2015

Regarding the privatization of ADMIE and PPC the situation is not yet clear.

Concerning ADMIE (the Independent Transmission System Operator) pursuant to Cabinet Act 15/24.7.2013, the sale of ADMIE by PPC commenced but since the change of Government in January 2015 it has been put on hold; the new law provides for such privatisation to continue "unless measures of equivalent effect" to the competition in the market and the investments prospects are found. The Government has proposed such measures in August but they have not been made officially public; rumours are that the proposal consists of ADMIE changing from ITO to ISO status, with the transmission assets being transferred to PPC, and ADMIE being the transmission system operator functionally and legally independent from PPC under to the ISO model of the Third Energy Directive; furthermore, the shareholding of ADMIE may be offered to funds and financial institutions, but not to other energy companies. The final proposal will be confirmed after it is made public.

The privatisation of PPC itself involved two stages: (a) First the spin-off of about 30% of its production and supply capacity and liabilities to another independent company (called 'Small PPC') and (b) the sale of 17% of PPC itself. This scheme still forms part of the privatisation programme of the Hellenic Asset Fund which forms part of the new law enacted on 14th August and which the Government is obliged to approve. However, given the ideological preference of the Syriza Government (which was re-elected on the 20th September) to "a strong national" PPC, it is to be expected that this requirement may be renegotiated and/or replaced by the other measures aiming to reduce the market share of PPC as mentioned above.

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