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COMMISSION OPINION

of 2.12.2016

**pursuant to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of
Directive 2009/73/EC - Estonia - Certification of Elering AS**

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I. PROCEDURE

On 6 October 2016, the Commission received a notification from the Estonian regulator for energy (hereafter, "Konkurentsiamet"), in accordance with Article 10(6) of Directive 2009/73/EC¹ (hereafter, "Gas Directive"), of a preliminary decision on the certification of Elering AS (hereafter, "Elering") as a Transmission System Operator (hereafter, "TSO") for gas.

Pursuant to Article 3 Regulation (EC) No 715/2009² (hereafter, "Gas Regulation") the Commission is required to examine the notified preliminary decision and deliver an opinion to the relevant national regulatory authority as to its compatibility with Article 10(2) and Article 9 of Directive 2009/73/EC.

II. DESCRIPTION OF THE NOTIFIED DECISION

Since 2013, Elering has been certified as transmission system operator for electricity in Estonia (see Commission Opinion C(2013) 7188³). It owns and operates the entire onshore electricity transmission grid in Estonia. Until 27 January 2010 Elering belonged to the Eesti Energia AS group, Estonia's largest producer and seller of electricity. At that date, the ownership of Elering was transferred to the Estonian State. The Ministry of Economic Affairs and Communications (hereafter, "MEAC") is responsible for exercising the State's rights as an owner in Elering. The State's interests in Eesti Energia AS are administered by the Ministry of Finance (hereafter, "MoF").

In 2015, Elering merged with Vorguteenus Valdus and Elering Gaas. According to the agreement Elering was the acquiring company, while Vorguteenus Valdus and Elering Gaas were the companies being acquired. The aim of the merger was to transfer Elering Gaas as the company that owns and administers the gas transmission network to Elering. As a result, Elering became the owner and system operator of both electricity and gas transmission networks.

As a result of the merger, Elering owns and operates the Estonian gas transmission network (consisting of 885 km of pipelines including 43 km of transit pipelines), including 37 gas distribution substations and 3 gas metering stations. The import of gas to Estonia takes place through Värskä and Karksi gas metering stations.

¹ Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, OJ L 211/94 of 14.8.2009.

² Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005, OJ L 211/36 of 14.8.2009.

³ Commission's Opinion on ECA's draft certification decision for Elering, C(2013) 7188, 086-2013-EE https://ec.europa.eu/energy/sites/ener/files/documents/2013_086_ee_en.pdf

Elering has applied for certification in accordance with the ownership unbundling model. In particular Elering intends to make use of the possibility provided for in Article 9(6) Gas Directive to implement the ownership unbundling model by means of separate public bodies within the State.

Konkurentsiamet has analysed whether and to what extent Elering complies with the requirements of the ownership unbundling model as laid down in the Estonian legislation transposing the Gas Directive. In its preliminary decision, Konkurentsiamet found that Elering complies with the requirements of the ownership unbundling model. On this basis, Konkurentsiamet submitted its preliminary decision to the Commission requesting an opinion.

III. COMMENTS

On the basis of the present notification the Commission has the following comments on the preliminary decision.

Separation within the State

Article 9(6) Gas Directive opens up the possibility, within the ownership unbundling model, of the State controlling transmission activities, as well as generation, production and supply activities, provided however that the respective activities are exercised by truly separate public entities.

It should be noted that the ownership unbundling requirements are applicable across sectors - electricity and gas.⁴ The Estonian State holds participations in Eesti Energia AS, a company active on the electricity market; it does not control any activities in the production or supply of gas.⁵

Hence, even though Elering has been previously certified for the provision of electricity transmission services in Estonia, the certification as a transmission system operator for gas still requires full separation within the State between transmission activities and activities of generation and supply of electricity.

On the occasion of Elering's certification as a transmission system operator for electricity, Konkurentsiamet assessed the separation between the two Ministries – MEAC and MoF – on the basis of the legal framework governing the organisation of the State. In its present draft certification decision, Konkurentsiamet reconfirms the result of this assessment. On the basis of the Estonian 'State Assets Act', where a ministry is assigned to exercise the State's rights as an owner, it is required to do so without any conflict of interest between the different tasks of the State. A minister cannot receive instructions from another ministry. Only a limited number of high level decisions with regard to State assets, for instance on mergers and acquisitions of the undertaking, are taken by the Government of the Republic, comprising the Prime Minister and the ministers. These decisions are taken upon proposal by the administering ministry.

Based on Konkurentsiamet's assessment, the Commission is satisfied that MEAC and MoF are sufficiently separated to achieve a satisfactory degree of independence with regard to the exercise of the State's rights in Elering.

⁴ See Article 9(3) of Directive 2009/73/EC and Article 9(3) of Directive 2009/72/EC.

⁵ According to Konkurentsiamet, all gas sellers operating in Estonia, including the biggest seller Eesti Gaas, are in private ownership.

IV. CONCLUSION

Pursuant to Article 3(2) Gas Regulation, Konkurentsiamet shall take utmost account of the above comments of the Commission when taking its final decision regarding the certification of Elering, and when it does so, shall communicate this decision to the Commission.

The Commission's position on this particular notification is without prejudice to any position it may take *vis-à-vis* national regulatory authorities on any other notified draft measures concerning certification, or *vis-à-vis* national authorities responsible for the transposition of EU legislation as regards the compatibility of any national implementing measure with EU law.

The Commission will publish this document on its website. The Commission does not consider the information contained herein to be confidential. Konkurentsiamet is invited to inform the Commission within five working days following receipt whether it considers that, in accordance with EU and national rules on business confidentiality, this document contains confidential information which it wishes to have deleted prior to such publication. Reasons should be given for any such request.

Done at Brussels, 2.12.2016

For the Commission
Carlos MOEDAS
Member of the Commission