Unbundling

Initial Recommendations

14 the March 2019

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Agenda

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02 Re-cap: Unbundling Options

03 Initial Recommendations for Transmission

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Re-Cap
In principle, Member States are free to choose one of the models. However, any TSO set up after the implementation of the EU Directive 2009/73/EC, i.e. 3 September 2009, must comply with the ownership unbundling (OU) model.

Moreover, any ISO or ITO could be transformed into OU, but the reverse is not possible.

Independent from ownership or legal structure, natural gas companies shall unbundle their accounts and submit to audit and publish their annual accounts as any other company.
Ownership Unbundling (OU)

Ownership and Functional unbundling
– Transmission ownership and transmission system operation are conducted by one entity. This entity must be independent in ownership from any gas production, import or supply business activities.
– This requires:
  – No person with dual management role in generation / supply and transmission
  – No person with majority shareholdings, power to exercise voting rights or to appoint members of supervisory or administrative board / bodies
  – No entity active in generation / supply allowed to exercise direct / indirect control over TSO (applies also to ownership by persons from third (non-EU) countries)
  – If TSO and generation / supply entities are state-owned, control is to be exercised by two separate public bodies (e.g. agencies, ministries)

Informational unbundling
– Commercially sensitive information to be preserved
– Staff possessing such information not to be exchanged between TSO and generation / supply entities
## Independent System Operator (ISO)

<table>
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<tr>
<th>Responsibilities/Tasks of ISO</th>
<th>Responsibilities of Network Owner</th>
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<tbody>
<tr>
<td>All obligations applicable to TSOs (article 13)</td>
<td>Provide cooperation and support to the ISO, including relevant information on the network</td>
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<td>Granting TPA</td>
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<td>Collection of access charges</td>
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<td>Congestion charges</td>
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<td>Inter-TSO compensation</td>
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<tr>
<td>Effective decision-making rights, independent from VIU with respect to assets necessary to</td>
<td>Covering liability related to the network, provide guarantee to facilitate financing for network expansions</td>
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<td>operating, maintain and develop the transmission system</td>
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<tr>
<td>Investment planning and obtaining necessary authorisations</td>
<td>Obligation to finance investments decided by ISO and approved by NRA</td>
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</table>

- Transmission assets remain with vertically integrated company, but technical and commercial operation of transmission system is performed by ISO, acting as a TSO
- ISO must demonstrate that it has at its disposal the required financial, technical, physical and human resources to carry out its tasks
- ISO must be independent from supply or production interests and must comply with relevant rules on ownership unbundling. Also, ISO must have a strong say in investment planning
- Transmission system owner is legally and functionally unbundled
Independent Transmission Operator (ITO): (chapter IV)

Legal and Informational Unbundling of ITO
- ITO organised in a separate legal entity with a different corporate identity (branding, premises,…)
- No shared IT systems or equipment

Responsibilities/Tasks of ITO (art. 13, 17-20)
- ITO has required financial, technical, physical and human resources under disposal
- Owns transmission assets
- Employs own staff (no leasing to and from VIU) necessary for activity of transmission (incl. corporate tasks)
- Conducts all corporate services (incl. legal, accountancy, IT services)

- Management not allowed to hold job position within integrated company 3 years prior and 4 years after management position at ITO
- No management personal with dual role in generation / supply and transmission
- Annual, long-term decisions made by supervisory body (art.20)
- Compliance programme and compliance officer (art.21)

• Functional Unbundling of ITO
- Effective decision making rights on operation, maintenance and development of transmission assets independent of holding company
- Power to raise money (borrowing / capital increase)
- Commercial and financial relations between holding and ITO shall comply with market conditions (made available to NRA on request)
- Changes in management positions to be notified to NRA
Compliance Programme and Compliance Officer

• Article 10(4) of the Directive: continuing compliance of TSOs with the unbundling requirements shall be monitored by the NRA.

• Reporting obligation on TSOs to notify the NRAs about any planned transaction which may require a reassessment of TSO’s compliance with the unbundling requirements.

• Article 21 requires that the transmission system operators establish and implement a compliance programme which sets out measures to ensure that discriminatory conduct is excluded.

• The compliance officer shall be appointed by a supervisory body subject to approval by the regulatory authority.

• Responsibilities of Compliance Officer: e.g. annual report on measures taken to implement compliance program, reporting to NRA on any commercial & financial relations between the VIU and the TSO.
EU Unbundling Options for Distribution

- Legal Unbundling
- Functional Unbundling
- Informational Unbundling
- Account Unbundling
Unbundling of distribution and the retail supply business required in 4 areas

Legal unbundling: establishment of separate legal entities for the major functions along the energy value chain of energy companies. Nevertheless, those legal entities may still belong to one company holding shares of various legal entities.

- Target of legal unbundling is to increase the independence of activities between the ‘regulated’ network and competitive business areas.
- Requires management teams and capacities for each entity.
- Requires the separation of assets and property rights from the VIU - asset register which includes all of the assets of the VIU and can serve as basis of the asset allocation.
- Nevertheless, the entities may continue using assets of other entities or the former vertically integrated utility based upon contractual agreements.
- Shared services: provision of services by other parts of the VIU to the DSO only be limited and accepted under the condition that competition is ensured and conflicts of interest excluded.
- To avoid potential cross-subsidies given to the DSO by other parts of the VIU, the shared service should be provided at “market conditions” and laid down in a “contractual arrangement.”
Unbundling of distribution and the retail supply business required in 4 areas

Functional Unbundling comprises six major components:

| Separation of organisational structures | • Management separation (no management personal with dual role in distribution and generation or supply) |
| Independence from the parent company | • Must have sufficient personal, technical, financial and material resources to operate the network.  
  • Have the full decision-making power concerning assets for operation, maintenance or expansion of the network.  
  • Effective decision-making rights on operation, maintenance and development independent of holding |
| Independent management of the unbundled companies | • VIU in principle free to choose the legal form of the DSO, provided that a sufficient level of independence of the management of the DSO from other parts of the VIU in order to fulfil the requirements of functional unbundling |
| Human resource management | Prerequisite that employees who are working for the company are not allowed to work for the parent company itself or another company which belongs to the parent company to guarantee the confidentiality of commercially sensitive information, the transfer of employees between the unbundled companies and the parent companies should be restricted. E.g. (cooling-off periods) |
| External communication | Care should be taken with its communication, activities and branding in order to prevent confusion. E.g. unbundled companies which are active in competitive markets must not benefit from the credibility of the network operator. |
| Monitoring | Compliance programme and compliance officer |

➢ Legal and functional unbundling apply only for DSOs > 100,000 connected customers
Unbundling of distribution and the retail supply business required in 4 areas

Informational Unbundling: refers to two component (1) separation of IT systems and of personnel with direct access to information (access rights), and (2) separation of data between unbundled companies.

- In order to increase transparency and to lower discrimination issues, clients for each (unbundled) company are established within the 2-Client-Model.
- Either part of the company can own and operate the IT-system.
  - Need to create separate databases, customer data needs to be doubled and subsequently maintained twice (i.e., once for each client) in parallel within the system.
  - This leads to significantly higher costs, but on the other hand it supports the consideration of other and new market participants (e.g., supplier) effectively.
- In order to achieve a maximum degree of non-discrimination, separate IT-systems for each unbundled organization have to be established within the 2-System-Model.
  - This option allows identical (market) processes between the TSO and all suppliers, including the supplier of the former vertical integrated energy company.
Unbundling of distribution and the retail supply business required in 4 areas

Accounting unbundling

- Refers to the establishment of separate book-keeping systems for major functions along the energy value chain
- This implies establishing individual profit and loss accounts and balance sheets for the separate activities.
- In cases where legal unbundling has not been implemented yet, accounting unbundling refers to a virtual separation of book-keeping.
- Accounting unbundling is the minimum form of separation
- National regulatory authorities have right of access to accounts
- In practical terms, unbundled network operators need to publish all major transactions with related companies (belonging to the same parent company), including (1) purchases and their value, (2) kind of sales and their value and (3) financing costs (e.g. dividend payments to related company).
- With respect to the cost of shared-services (e.g. IT central functions) and other overhead cost items, cost allocation schemes have to be elaborated by the parent company including a clear definition of the cost basis and cost drivers for the respective services.

Informational and accounting unbundling apply for all DSOs
Initial recommendations/options for transmission
BH-Gas

• BH-Gas: is the transmission system operator and the owner of the network and also acts as importer of gas for the entire Federation.

• The Government of the Federation BiH owns BH-Gas.

• 2 Options for TSO Unbundling to consider:

  1. Independent transmission operator (ITO); and
  2. Ownership unbundling (OU)

*ISO option is seen as unnecessary burdensome and complicated to apply.*
Ownership Unbundling Option

- This model allows for the ownership (Federal Ministry of Energy and Mining and Industry - FMERI) of the network to remain with the VIU, but requires the company to comply with a number of rules aimed at ensuring the independence vis-a-vis its wholesale supply businesses.

- Separate the BH-Gas into two new entities:
  1. BH SupplyCo (responsible for gas wholesale supply) and
  2. BH TransCo (as the transmission system operator) for example under Ministry of Transportation and Communication
Ownership Unbundling Option

• Governance and Organization Structure of BH TransCo

BH TransCo, will require departments for network planning, transmission line construction, maintenance and repairing, network operating and transmission system operating functions.

Other possible functions to ensure reliable and efficient functioning of transmission activities following the unbundling. These could include for example: Legal Advisory; Human Resources, Administrative and Finance; Network and Assets Management; Natural Gas System Operations, Strategy Development and Regulatory Affairs;

• Supervisory Board:

According to the EU Acquis, important decisions such as annual or long-term financial planning concerning the assets and the stakeholders of the transmission company are taken in Supervisory Board. The Supervisory Board would usually consist of owner’s representatives, in this case the Ministry of Transport and Communication.

• Certification Process

Energy Community Secretariat: assess whether the two public bodies (Ministry of Transportation and Communication and Federal Ministry of Energy and Mining and Industry) have separate decision-making powers. It should be demonstrated that the two public bodies are not under the common influence of another public entity in violation of the unbundling rules.
ITO Unbundling Option / Requirements

- Allows for the ownership of the transmission network to remain with the VIU (Federal Ministry of Energy, Mining and Industry), but requires the company to comply with a number of rules aimed at ensuring the independence of its wholesale supply businesses. For example:
  - Employs own staff (no leasing to and from VIU) necessary for activity of transmission (incl. corporate tasks),
  - No management personal with dual role in generation / supply and transmission,
  - Management not allowed to hold job position within integrated company 3 years prior and 4 years after management position at ITO
  - Separate IT systems, separate legal entity with a different corporate identity (branding, premises)

- Compliance
  - The ITO (BH-Gas): establishment of compliance programme and appoint a Compliance Officer.
  - The Compliance Officer appointed by the Supervisory Body of the ITO, subject to the approval by the Regulatory Authority.
  - Full time position and is a non-voting member of the Board of Directors.
  - Main task is to report regularly on the compliance program of the ITO separation to the NRA (e.g. direct reporting, annual reports etc.)
# Summary of ITO and OU option for BH-Gas

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<th>Areas</th>
<th>Ownership Unbundling</th>
<th>Independent Transmission Operator (ITO)</th>
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<tbody>
<tr>
<td>Dismantling of vertical integration</td>
<td>Yes, however BH SupplyCo can have non-controlling minority shares in BH TransCo.</td>
<td>Yes</td>
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<tr>
<td>Public ownership</td>
<td>Yes, however BH Transo and BH Supply are separate legal entities owned by different ministries</td>
<td>Yes</td>
</tr>
<tr>
<td>Shared service restrictions</td>
<td>N/A</td>
<td>Strong restrictions for hiring / exchange of personnel and/or lease of services within VIU</td>
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<tr>
<td>Model flexibility</td>
<td>Irreversible, once certified under OU, cannot transfer to ISO or ITO option</td>
<td>Leaves the option for OU/ISO open</td>
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<tr>
<td>Administrative effort</td>
<td>Small administrative burden due to ensuring coordination between different ministries</td>
<td>High level of administrative burden for compliance requirements – Establishment of Compliance Program and Compliance Officer</td>
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Lunch
Options for TSO Unbundling for Sarajevo-gas a.d. Istočno Sarajevo and Gas Promet

1. ISO – keeping the same structure (reinforcing) the current status
2. Combined System Operator or
3. Restructuring of the TSOs
Independent System Operator

- Sarajevo-gas a.d. Istočno Sarajevo is the owner of its transmission infrastructure (40 km of pipeline between Zvornik and Kladanj), whereby Gas Promet is the transmission system operator of this network.

- Gas Promet operates another network, a 24 km pipeline between Karakaj and Zvornik.

- Gas Promet would need to be certified as an ISO and as OU separately.

- Currently, Gas Promet holds two licences, gas transport and one for gas transport system operator.
TSO Unbundling Options

Combined System Operator

- A gas transportation and distribution (infrastructure) company.
- Owning and operating the transmission and distribution network. (Background - Sarajevo-gas a.d. Istočno Sarajevo considering the possibility to operate as a combined system operator)

- EU Gas Directive Article 29 - Combined Operator can only be active in the network business and cannot own or operate any gas wholesale or retail supply business.
- Sarajevo-gas a.d. Istočno Sarajevo currently holds 4 licences:
  - License for natural gas transport for 40 km of pipeline between Zvornik and Kladanj but does not operate this the pipeline (Gas Promet is the system operator)
  - License for distribution and operation of the natural gas distribution system,
  - License for supply of tariff customers with natural gas supply of tariff customers and
  - License for trade and supply of natural gas.
## TSO Unbundling Options

### Combined System Operator

- **2 Options:**
  - Ownership unbundled (combined operator) infrastructure company; or
  - Independent transmission operator (ITO model) with strict re-fencing operational structure with the vertically integrated undertaking (VIU).

- **TSO certification purposes,** this new infrastructure company (combined operator) whether it chooses to be ownership unbundled or as an ITO would need to demonstrate that it meets the unbundling provisions for each option.

- **ITO model:** RERS would have some additional tasks mainly associated with assessing compliance with the additional requirements of the ITO model. (Article 17-23 of the Gas Directive)
  - strict re-fencing operational structure with the vertically integrated undertaking (VIU). separating the combined operator from the other areas of the VIU
  - Rules on assets, equipment, staff and identity of the ITO, independence of the ITO, independence of the staff and management of the ITO, supervisory board, network development and powers to make investment decisions

- **Gas Promet** under this option, would still remain as transmission owner and transmission system operator for its own pipeline and therefore need to apply for its own TSO certification. To our understanding Gas Promet does not have any other activities in the gas sectors, therefore the OU model would be applicable here.
Example of Combined System Operator: Luxembourg

- Creos owns and manages electricity and gas networks in Luxembourg.
- In the natural gas sector it acts as TSO and main DSO with 2,100 km of pipelines under management with 50,000 customers. The gas distribution grid is also managed by two other DSOs.
- The Regulator issued a TSO and DSO licenses to Creos.

- Luxembourg has been granted a derogation from the unbundling provisions of the Third energy package on the basis of Article 49 of the Gas Directive (emergent and isolated market).
  - No formal unbundling certification requirements.
- The legislative framework, however, guarantees a relative degree of independence of system operators through legal, functional and financial requirements and practically makes Creos unbundled from the Enovos (VIU).
TSO Unbundling Options

Restructuring of the TSOs

- Previous two options, would involve a multiple TSO structure for a very small network (around 65 km),
- Alternative option:
  - consider restructuring in terms of ownership of the network.
- Facilitate better management, investment decisions and possibly even improved and more efficient operations of the network.
- EU unbundling requirements can be challenging, even more so for smaller size companies currently operating in the Republika Srpska.
- For the relatively small network, is to have less TSOs to own, operate and maintain the whole network (not just parts of it) - encourage economic efficiency
- The transmission pipeline from Šepak to Bijeljina (approximately 20km), an establishment of another TSO for this pipeline?
  - Consideration to merge with the other TSOs creating one TSO for Republika Srpska.
- Agreements would need to be made between the TSOs as the current owners of the two TSOs (both joint-stock companies) would need to be aligned.
Initial recommendations/options for distribution
Distribution & Supply

- Four gas distribution companies each have less than 100,000 connected customers (Sarajevogas d.o.o, JP Visoko Ekoenergija doo Visoko, Sarajevogas Istocno Sarajevo and Zvornik Stan)
- Exempt from the distribution unbundling provisions as per Article 26(4) of the Gas Directive.
- The four companies can continue to operate the distribution network and its supply activities with the same legal entity.
- Legal and functional unbundling would not apply.

> **Informational unbundling and accounting unbundling** would be applicable


Next Steps
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<th>Summary</th>
<th>Transmission Options</th>
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<td>BH-Gas</td>
<td>ITO or OU</td>
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<tr>
<td>Gas Promet</td>
<td>- ISO (current status)</td>
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<td></td>
<td>- OU for ist own network</td>
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<tr>
<td>Sarajevo-gas a.d. Istočno Sarajevo</td>
<td>Combined System Operator (OU or ITO)</td>
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<td>Restructuring: alternative option.</td>
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<td>Distribution Options</td>
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<td>Sarajevo gas a.d. Istočno Sarajevo</td>
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<td>Zvornik Stan a.d. Zvornik</td>
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<td>Sarajevogas d.o.o</td>
<td>Informational and accounting unbundling</td>
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<td>Visoko – Ekoenergija</td>
<td>Informational and accounting unbundling</td>
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## TSO Unbundling Options

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<td><strong>Transmission</strong></td>
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<tr>
<td>- Decision of which TSO option to adopt</td>
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<tr>
<td>- Ensure it meets the requirements for certification: e.g if ITO model is chosen, demonstrate strict ring-fencing of TSO within VIU.</td>
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<td>- Compliance Officer / Compliance Programe</td>
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<td>- Supervisory Body</td>
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<tr>
<td><strong>Distribution</strong></td>
</tr>
<tr>
<td>- Sarajevogas d.o.o, JP Visoko Ekoenergija doo Visoko, Sarajevo-gas a.d. Istočno Sarajevo and Zvornik Stan each have less than 100,000 customers, therefore only informational and account unbundling would apply.</td>
</tr>
<tr>
<td>- Accounting Unbundling: establishing individual financial reports - profit and loss accounts and balance sheets for the separate activities / Cost Allocation for cost of shared-services</td>
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<tr>
<td>- Informational Unbundling: IT / Databases / access of personnel of information</td>
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