



**REPUBLIC OF ALBANIA**  
**-COMPETITION AUTHORITY-**  
**COMPETITION COMMISSION**

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**DECISION**  
**No. 334 of 31 October 2014**

**Recommendations on increasing competition in the market of procuring electricity for purposes of covering losses in the distribution network**

The Competition Commission, composed of

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|---|---------|-------------|--------------|
| • | Lindita | Milo (Lati) | Chair        |
| • | Rezana  | Konomi      | Deputy Chair |
| • | Servete | Gruda       | Member       |
| • | Koço    | Broka       | Member       |
| • | Iva     | Zajmi       | Member       |

in its meeting of 31 October 2014 reviewed the Case with:

**Subject-matter:** Review the Report on monitoring the market of electricity import by CEZ SHA for purposes of covering losses.

**Legal basis:** Law No. 9121 of 28 July 2003 “On Competition Protection”—Articles 24 (d), 26 and 70 (2).  
Law No. 8485 of 11 November 1999 “Administrative Procedure Code”.

**After reviewing** the Report on monitoring the market of electricity import by CEZ SHA for purposes of covering losses, and the relevant report of the Competition Authority Secretary-General

**THE COMPETITION COMMISSION NOTES THAT:**

1. The electricity market is a regulated market pursuant to Law No. 9072 of 22 May 2003 “On the Electrical Power Sector”, as amended. In accordance with the provisions of that Law, “Distribution” is the transport of electric power on medium-voltage and low-voltage distribution systems with the goal to distribute it to the end-use customers, excluding power supply, and “Distribution System Operator” is the person responsible for operating, maintaining and developing the distribution system. In addition, “Supply” is the sale and purchase for resale of electric power to customers. “Public retail supplier” is the person licensed to supply tariffed customers, who are supplied by the public supplier at regulated prices and tariffs.
2. The company “CEZ Shpërndarje” was established and acquired legal personality by Decision No.38587 of 19 June 2007 of Tirana District Court. It was registered with

the National Registration Centre, and received the Taxable Person Registration Certificate bearing TIN number K72410014H. By a decision of the Board of Commissioners of the Electricity Regulatory Entity, the company was licensed to carry out the business of distribution and retail supply of electricity for tariff consumers.

3. Based on the Share Purchase Agreement of 11 March 2009, which was approved by Law No. 10116 of 23 April 2009 “On approving the Agreement for Selling 76 percent of the shares in the Distribution System Operator (OSSH) between the Ministry of Economy, Trade and Energy of the Republic of Albania and CEZ AS”, 76% of the company shares were privatised and were transferred to the Czech company CEZ a.s., with 24% of the shares being held by the Ministry of Economy, Trade and Economy. CEZ Shpërndarje sh.a carries out two activities: the retail supply business, and the electricity distribution business; both activities were licensed by ERE. In this respect, the company held a licence for retail supply of electricity and a licence for electricity distribution.
4. Decision no. 5 of 21 January 2013 “On putting CEZ Shpërndarje sh.a. under Provisional Administration“, taken by ERE, decided to put CEZ Shpërndarje under provisional administration and appointed an Administrator selected in compliance with the rules laid down in Regulation No. 1 of 10 January 2013 “On the procedures for appointing administrators and their powers”, which was adopted pursuant to Article 18 of the Law.
5. Decision no. 63 of 17 July 2014 taken by ERE Board of Commissioners approved the change of the commercial name of the company from *Cez Shpërndarje SHA* to *Operatori i Shpërndarjes së Energjisë Elektrike SHA*. With Law no. 114/2014 of 31 July 2014, the Albanian Parliament approved the consensual settlement agreement between the Republic of Albania and CEZ A.S.
6. The electricity import market functions pursuant to Council of Ministers’ Decree No. 338 of 19 March 2008 Approving the electricity market model, and Paragraph 4.5 of the Regulatory Statement that ERE adopted by Decision No. 12 of 3 March 2009, stipulates that OSSH will buy electricity to cover losses in compliance with the procedures laid down in this regulation, which will be in force until the period of the Regulatory Statement ends.
7. Regarding the OSSH tender procedures, ERE took Decision No. 42 of 25 May 2009, whereby it approved the standard electricity procurement rules and procedures applicable to OSSH sh.a. CEZ Shpërndarje imported electricity to cover losses for the period until February 2014 on the basis of that Regulation.
8. Council of Ministers’ Decree no. 897 of 12.12.2012 “On some amendments to CMD No. 338 of 19 March 2008 Approving the electricity market model” as amended, amended Paragraph 4.4 by replacing “...at market prices or with regulated public wholesale suppliers and with a contract approved by ERE...” with “...or public wholesale supplier and/or Distribution System Operator, at prices specified in the purchase agreement as agreed between the parties”. So, PPE and PWS and/or the

Distribution System Operator may conclude purchase agreements that are negotiated and agreed by the parties.

9. During the period of August 2013 and 2014, the Competition Authority constantly received complaints from a company—GEN-I—which operates in the electricity import market. After reviewing the complaint and the respective report, the Competition Commission sent Letter no. 308/15 of 3 December 2013 to ERE, whereby it recommended that ERE “... *draft a special monthly regulation on the rules applicable to the purchase of electricity for covering losses, based on the principles of transparency, non-discrimination and equal treatment of competitors...*” and “*clarify negotiation procedures between CEZ Shpërndarje and bidders, after initial loss coverage energy purchase bids have been selected.*” This Competition Commission recommendations was taken into account by ERE.
10. ERE took Decision no. 9 of 6 February 2014, Paragraph 2 of which specifies that “... *CEZ Shpërndarje sh.a. under provisional administration, for needs of fully covering losses in the distribution system, shall purchase electricity on a monthly basis for the amount of electricity that cannot be covered by the annual procurement. When procuring electricity for covering losses in the distribution system on a monthly basis, the Administrator shall apply ERE Board of Commissioners’ Decision No. 30 of 23 March 2011 "Approving the rules and procedures for electricity purchase by KESH sh.a."*”
11. Despite the abovementioned decision, the regulation does not address the issues of this market segment, and it even fails to put it in competition conditions.
12. GEN-I, however, in its Letter No. 308/17 of 31 March 2014, submitted yet another complaint to the Competition Authority claiming that ERE had not taken any action to fully and professionally address the Competition Authority recommendations, because the approval of the application of the monthly procurement rules to Cez Shpërndarje Sh.A. in the same way as KESH Sh.A. shows lack of interest or willingness by ERE to professionally address the Competition Authority recommendations because not only were those rules adopted in 2011 but they were also draft to reflect another context and another operator with an activity with specific characteristics different from those of Cez Shpërndarje sh.A.
13. Cez Sh.a. was against the application of that regulation because, according to Cez shpërndarje, this market segment is in such a situation that it cannot operate in such competition conditions because the regulation restricts/excludes such bidders as small and independent electricity producers. Therefore, the regulation excludes small and independent energy producers because they have purchase contracts at regulated prices with the Public Wholesale Supplier. Several privatised hydropower plants, such as Bistrica 1, Bistrica 2 and Ulez-Shkopet, have been excluded from participation in tenders.
14. It would be in the interest of the market and competition that those market players were included in this market segment regarding the tender/competition process, because that would result in lower competition costs due to the elimination of

interconnection costs. In this way, KESH sh.a./PWS would be relieved of its obligation to pay this category of producers that produce and sell electricity at regulated prices.

15. Given that the setting of the distribution tariff is related to the assessment of such components as the level of losses accepted into the tariff as reasonable cost, the amount of energy delivered in the distribution network, investments made, the price and amount of purchased energy to cover losses related to the performance indicators of the distribution company as specified in the Regulatory Statement, we think that the consequences of the application of those regulations to the purchase of imported electricity will have a direct negative impact on the new tariffs that the companies will propose in their applications in late 2014.
16. The Report shows that ERE has not taken into consideration the recommendations given in the Competition Commission Decision No. 159 of 19 November 2010 regarding the real functional and financial separation of the “Distribution System Operator” and the “Public Retail Supplier”, thus failing to establish the required space for competitive transactions and increased competition in those market segments.
17. In addition, the adoption of Law No. 138/2013 of 2 May 2013 “On Renewable Energy Sources” did not take into consideration the Competition Authority proposals. Article 15 of this Law ensures the selling market between the generating undertaking(s) and the Public Supplier for a period of 15 years, and specifies that the energy selling tariff will be approved by ERE. Thus, under this Law, operators producing renewable energy will not be able to compete in the free market, but will sell their produced energy at the guaranteed price to one buyer, which is KESH sha (PWS), for a period of 15 years.
18. There are significant discrepancies between the data included in the Report on the amount of electricity losses in the distribution system, which was submitted by ERE, and the data presented by INSTAT. In addition, large differences in billions of Albanian leks exist between the data on the amount of network losses and distribution losses and the energy used by consumers, as presented by INSTAT, for the first half of 2013 and the figures adjusted for this year. This could be another consequence of the failure to ensure real reparation of the Public Retail Supplier from OSSH and the Wholesale Supplier from KESH sha, resulting in abuse and misuse.

#### **FOR THESE REASONS:**

The Competition Commission, pursuant to Article 24 (d) and (f) and Article 70 (2) of Law no. 9121 of 28 July 2003 “On Competition Protection”, as amended, with the proposal of the Secretariat,

#### **HAS DECIDED:**

I. In order to ensure good functioning of the electricity market and increased competition in the relevant market of purchasing electricity, recommend the following to the Regulatory Entity of the Electricity Sector:

1. Given the changed conditions, revise the monthly and annual electricity purchase procedures for OSHEE, based on the following principles:

- a) Encourage participation in the energy purchase procedures;
- b) Promote competition among buyers;
- c) Ensure equal and non-discriminating treatment of all participants in the energy purchase procedure;
- d) Ensure integrity, public trust and transparency for the electricity purchase procedures and the lowest costs possible for this type of transactions.

2. In the short run (given that tenders are monthly) until a new regulation on the electricity purchase by the Electricity Distribution Operator is adopted, revise ERE Decision No. 30 of 23 March 2001 "Approving the rules and procedures for electricity purchase by KESH sh.a."

- by changing Article 13(4) so that the acceptance, evaluation and negotiation of bids is made in the presence of bidders, thus increasing confidence in the process and competition among bidders;

- by changing Article 7 of the Regulation, which currently excludes from the tender procedures the licensed domestic producers, by opening up the market and allowing all market players to participate in the tender procedures thus making the process more competitive.

3. When drafting the energy purchase rules for the Distribution Operator, also take into account the provisions of Decision No. 30 of 23 March 2011 "Approving the rules and procedures for electricity purchase by KESH sh.a.", particularly Article 9/2 (Invitation publication), Article 11 (Bid evaluation criteria based on the lowest price/unit), Article 19 (Publication of purchase procedures on the official website).

In addition, adapt the method of determining the winning bid to Ministry of Finance Regulation No. 31 of 27 December 2013 "On bond issuance", Article 13(6) of which specifies that **"competitive bids shall be accepted as winning ones starting with those which have the lowest price until the required amount of energy has been reached."**

4. Given that currently in Albania all public procurement procedures are carried out electronically on online platforms, this is also provided for in the rules on the purchase of electricity.

5. In order to increase the transparency and reduce any possibility of abuse, ERE should monthly and annually publish the quantity and average price of imported electricity.

II. Pursuant to Articles 69 and 70 of the Law, ERE and the Ministry of Industry and Energy must, prior to adopting any laws or regulations on the functioning of the energy market, submit them for comments to the Competition Commission, because that would help the energy market develop and be more competitive.

III. The Competition Authority Secretary-General shall notify this Decision to the Ministry of Industry and Energy, ERE, the complainants and any interested entities.

This Decision shall enter into force immediately.

### **COMPETITION COMMISSION**

**Servete Gruda**

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**Member**

**Koço Broka**

(\_\_\_\_\_)  
**Member**

**Iva ZAJMI**

(\_\_\_\_\_)  
**Member**

**Rezana Konomi**

(\_\_\_\_\_)  
**Deputy Chair**

**Lindita Milo (Lati)**

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**CHAIRPERSON**