Joint stock company

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Position paper of SPP-preprava, a.s. to the Draft ERGEG Guidelines of Good Practice on Functional and Informational Unbundling - An ERGEG Public Consultation Paper

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Introduction

SPP-preprava, as the operator of the transmission network in the Slovak Republic with a transit capacity of more than 90 BCM/a, welcomes the invitation to comment on the draft Guidelines of Good Practice on Functional and Informational Unbundling.

We consider this document as a justified effort of the regulators to outline further navigating hints for implementation of functional and informational unbundling measures. We understand that this guidance is formulated in a general manner, irrespectively of the stage of unbundling implementation, which any concerned company might have meanwhile reached.

SPP-preprava sees the measures proposed in the Guidelines from a viewpoint of a legally unbundled TSO, whose founding per se has proven the materialization of requirements of European and Slovak legislation. As such, we have already implemented most of the steps, described in the document,. However, we can only support any advisory initiative, which aims at amelioration of conditions for a competitive energy market in Europe by enhancing transparent and neutral acting of the infrastructure operators.

Responses of SPP-preprava to the main questions:

1. General: Do you think that these Guidelines are sufficient to guarantee a level playing field in view of vertically integrated companies?

Position of SPP-preprava:

We fully acknowledge that the Guidelines contain valuable conclusions and guidance how to further eliminate non-equal treatment of network users, from the structural unbundling measures, through the information flow barriers, up to the job contracts of the employees. As already mentioned, SPP-preprava has gained certain experience with implementation of many of the measures mentioned.

A consequent application of the measures, described in the Guidelines, will undoubtedly very much improve the creation of a level playing field for both well-established companies and new market entrants. However, it cannot be the Guidelines as such that would mean the guarantee. The guarantee should be provided by the standard binding legal instruments.

2. Are unbundling requirements already today included in Corporate Governance Guidelines or your Quality Management Systems? Do you think that these measures may harmonize implementation of unbundling in Europe?

Position of SPP-preprava:

In connection to the answer to the question No. 1, we would like to add that elimination of discriminatory approach of the network operators could be achieved by a combination of tools with the following subordination:

a) national legal framework (in particular regulatory, energy and antimonopoly laws) consequently transposing all relevant EU directives, supplemented by directly applied EU regulations, as long as needed and applicable;
b) functioning national regulatory authorities, vested with both independency and powers to enforce the legal requirements;
c) cooperation, consultations and discussions on the level of EU bodies and forums;
d) as an additional contribution, voluntary closer co-operation and harmonisation of behaviour of the network operators.

As long as these tools are in place and functioning well, especially the obligatory and legally enforceable ones, there is no chance that Corporate Governance Guidelines, Quality Management Systems or any other intra-company standards could be in contradiction to them. As an example, the articles of associations, all internal directives or rules of SPP-preprava must be in full compliance with the binding legal framework (in particular the Act No. 656/2004 Coll. on energy industry and Act No. 658/2004 Coll., amending and supplementing Act No. 276/2001 Coll. on regulation in the network industries; as well as the respective secondary and tertiary legislation). The state bodies, including especially the Office for Regulation of Network Industries, have sufficient supervising powers, as well as sanctioning instruments to control this compliance. Except that, SPP-preprava (and other energy industry companies on the domestic market) have established internal supervising structures and measures, let them be prescribed by the legislation (the Compliance Officer) or by a company decision (internal auditing procedures, etc.).

3. G06: Does unbundling in your view necessitate a restriction of information flows to the mother company further than those necessary for a pure financial investor? Do you experience conflicts of governance regulations in your country with unbundling requirements? Would it be possible to install trustees who act on behalf of the mother company (investor) in supervisory boards and who are to protect financial interests of the investor without disclosing commercial information to the mother company?

Position of SPP-preprava:

We would like to emphasize our conviction that the basic rights of the shareholder, i.e. to invest on condition the return of investment enables this, should not be violated in a way that the regulators would have the right to force the shareholders to invest even where the rates of return of investments would be set up at an inappropriate level.

To come back to the core question, SPP-preprava fully understands the importance of the information flow restrictions, which would exclude any interference of the mother company with the day-to-day operations of the network operator, any privileged access to information, which would mean an advantage for the market position of the mother company, any intervention of the mother company into

the independence of the staff of the network operator, etc. On the other hand, we see no necessity to create artificial information flows barriers there, where significant synergies could be reached to the benefit of all market participants. As an example, a group-coordinated policy between a transmission network company and a distribution network company in the area of procurement or outsourcing services in order to increase their efficiency should be admitted as a general industrial incentive, improving in the end the conditions of access to both networks for the whole market.
Finally, we think that the mentioned installation of trustees within the supervisory bodies would inevitably bring by certain legal and factual difficulties. This new institute would to our mind lead to a new additional interface between the mother company and the network company's organs, with unclear competence subordination between the supervisory board and the trustee, as well as with certain so far unanswered questions related to the legal status, i.e. how can a person represent a shareholder in a body of the affiliated company, while being limited by additional confidentiality obligations towards the company he represents.

4. G08: Do you think that these rules can guarantee the independence of the management and employees? Or do you think that the possibility for management and employees to be assigned to the network company and the back to the competitive business after some time as part of the internal career should be prohibited?

Position of SPP-preprava:

We uphold the opinion that the rules as described in the Guidelines are sufficient for the independence of the management and the employees of the separated companies and will certainly translate into their "mental" unbundling and independent decision making. Basically, we believe the answer does not consist in excessive administrative registration of each step and action taken by individual employees (by the way, the additional administrative burden for the concerned companies would most probably need more detailed analysis). Rather than additional new rules, emphasis should be put on a well-performed training of the staff in relation to unbundling issues, and, certainly, on sufficient and reliable application of investigative and legal procedures, related to leakage of protected information, which are generally applied also outside the energy industry.