

Albania have an ongoing electricity import dependency, imports are being realized for covering of losses of OSHEE distribution operator. As an electricity importer country Albania attracts the presence of major electricity traders in SEE region. Slovenian power trader GEN-I is one of the most active in SEE region and in Albania. Recent complaints of GEN-I on the breach of competition rules were rejected by relevant authority, the Competition council.

The Competition Authority reports that it found no direct evidence to prove the existence of prohibited agreements or cooperation between the Operator of the Electricity Distribution (OSHEE) and energy traders.

Depth investigation was launched after 18 February 2015, the Secretariat of the Competition Authority received an complaint by anonymous party, describing prohibited agreements between OSHEE and electricity traders for electricity procurement for coverage of losses in the distribution network.

Despite the fact that there are 66 operators licensed for electricity trading, OSHEE sent the invitation to tender to 22 traders and only 5 bidders participated in the tender in case. Competition commission stated in their final report that they are concerned with findings on legal and regulatory basis which created distortions, the number of bidders; the loss of confidence of majority of electricity market participants in the process of purchasing electricity to cover losses; the fact that in many cases the demand is greater than supply. Competition council found that OSHEE limited the number of participants and conducted bilateral negotiations with bidders - all this findings makes the case controversial. Competition has therefore decided to recommend to the Energy Regulatory Authority and the Ministry of Industry and Energy Distribution Operator and the Electricity Operator(OSHEE) the following:

- a- competition and transparency models needs to be aligned with existing energy law and best practices of Energy Community member states and EnC policies
- b- prohibit the participation of connected enterprises belonging to the same group or related shareholders which present special offers in procurement procedures or purchase of electricity.

Auctions and trading of electricity are constantly monitored by the Competition Authority after constant complaints of the energy trader GEN-I in the Competition Authority in relation to OSHEE purchase of electricity to cover losses in the distribution network.

To collect further evidence and facts, Competition council administered OSHEE email information system about performed procedures for the period January - December 2015. These information's are accessed in order to provide direct evidence and circumstantial evidence for possible direct cooperation in two directions: horizontal (between the participating companies) and vertical (between enterprises and OSHEE).

The analysis was conducted for each month, as energy purchase procedures for covering

the losses incurred by OSHEE are monthly procedures. Referring to the data in table 1, the operator EFT AG, has the largest share of the market for the purchase of electricity to cover losses for each month from January to November 2014.

CEZ distribution / OSHEE, during the period January - February 2014 has completed the purchase / import of electricity for covering the losses based on the decision of the Board of ERE, no. 42, dated 25.05.2009, on "standard rules and procedures of procurement of electricity by DSO JSC

Subsequently, CEZ distribution / OSHEE for the purchase of electricity for covering the losses based on the decision of ERE, no. 9, dated 06.02.2014, item 2, for the purchase of electricity to cover losses in the distribution network, has implemented the "Rules of procedures purchase by KESH (KESH Gen / WPS) of electricity from local and foreign traders to the ERE approved by Decision no. 30, dated 23.03.2011.

CEZ / OSHEE for the period March - December 2014 has applied this regulation for the purchase of electricity. According to article 9, paragraph 2, "Authority must publish on its official website any invitation to purchase electricity on the same day that invites companies listed by him, to participate in the process of purchasing electricity ". Obligation to publish reinforced in Article 19 of Regulation.

Based on Article 13/3 of this Regulation, in the presence of bidders information on quantities and prices for all bidders should be disclosed, but the company OSHEE / CEZ reads only the names and prices of the bidders.

To evaluate the behavior of OSHEE supply and demand for each month was analyzed, as the demand-supply ratio is a very important element for determining the purchase price. According to the data for the particular month, January, February, May, August, October, November and December, the amount required during these months is greater than the amount offered in the first phase of the negotiations. In the case of CEZ / OSHEE both parties claimed that available quantities and prices offered by the bidders during the procurement procedure were disclosed but during the stages of negotiations, bidders (traders) did not lowered the price of electricity.

Investigation procedure included documentation obtained during inspections and documentation administered by OSHEE, including the order confirmations to the participants communicating or collaborating with OSHEE in issuing information about the bids submitted by the operator GEN-I, they were compared and bids were investigated. When analyzing the facts and evidences, in-depth investigation concluded that Competition council have not found sufficient evidences of direct and indirect prove on the existence of prohibited agreements between companies EFT and GSA and any other vertical agreements between OSHEE on the EFT and GSA on the demand and the supply side.

In January 2014 EFT AG sold 294 MW with 69.75Euro / MWh. GSA quantity 64.57Euro/MWh with sold 55 MW with price which is higher than the price of the first bid in the third round (

64.57Euro 64.25 / MWh), but lower than the weighted price of two offers (64.25 and 66.75), winning announcement was made to the cumulative amount of the two bids. GEN-I was excluded from the proceedings after refusing to waive the requirements set for the time of payment of the invoice (within 30 days) and payment of all arrears from the previous period (November-December 2013).

If we analyze the prices in terms of a possible agreement between bidders, it turns out that offerings and prices awarded have significant differences with each other for about 5 euros per MWh.

The possibility of information leaks from OSHEE to tender participants is not excluded, but this hypothesis must be proved and the complain party did not bring any evidence, either inspections of the documents could not prove these allegation. However, it remains outside of the scope of law "on protection of competition" but these aspect may be subject of the internal audit of OSHEE and SSA, to see if these actions caused harm to 100% state ownership in OSHEE.

But elements of the alleged flow of information as claimed by the applicant can not be proven among other things due to the fact that the applicant changed his claim from the possibility of the existence of coordination of bids among its competitors in the possibility of a vertical agreements between OSHEE and other energy providers.

- The procurement for the month February 2014, the analysis of schedules / Faxed bids found that the applicant's competitors offerings are sent later than the GEN-I offer.

Regarding the claim of the complainant that "prices of competitors are a few cents lower than the GEN-I, enabling the elimination of the other participants of the market" by analyzing the results of the auction results that are awarded to all competitors and prices range from 70.5 euros / MWh to 63.55 EUR / MWh with significant changes from one bidder to another and none of its competitors has not priced in cents lower than Gen-I.

In February 2014, the operator GEN-I, has removed the conditions imposed (by the deadline of payment of bills). GSA operator has submitted two bids and is awarded with two bids. Inspection of the documentation for the procurement procedure of February 2014, there were no similar signs or evidence to prove the cooperation of traders and OSHEE during the drafting of tenders.

The procurement of March 2014 seems to prove the hypothesis of Gen-I that "by submitting final tenders with prices that are a few cents lower than the GEN-I, enabled the elimination of other traders "as the difference between the three winners is 0.05 euro / MWh. Winners of March 2014, GEN-I Tirana 5 MW Sh.pk quantity price 55.90Euro / MWh; GSA quantity 120 MW priced 55.80 Euro / MWh and the amount EFT AG for 260 MW with 55.85Euro price / MWh.

But the hypothesis that prices of competitors are few cents lower from Gen-I due to the claim that there have been leaks from OSHEE to traders, in this auction does not prove as

schedules of sending the offers are not synchronized.

After examination of the informations and documentation, there were no records to prove the cooperation of traders during the drafting and reviewing of bids for procurement of March 2014.

The procurement of April 2014, there were no similar marks or other evidence to prove cooperation or coordination of operators during the conduct of drafting and reviewing the bids for procurement of April 2014.

Procurement for May 2014, review of documentation verify that bids between EFT and GSA differ by only 0.1 euro, but this fact is not sufficient to prove cooperation between traders (horizontal agreements) and between OSHEE and traders (vertical agreements). During the examination of schedules of sent offers and electronic Correspondence analysis of the bids for the procurement of May 2014 report found no irregularities.

The claim that OSHEE may have informed the other participants in the proceeding disclosing offer from Gen-I, did not prove as solid as the the minutes concerned note that the time of delivery of a final offer of GEN-I Tirana is later than the schedules of bids submitted by other companies, ie their competitors.

Procurement June 2014. Referring to the winning bid, report noted that the final prices of the bids from EFT and GSA for the month of June 2014 were different for 0.04 Euro, while initial offerings vary more.

Report reads that final bids for EFT and GSA were sent to OSHEE in 60 and 40 minutes after supply of GEN-I. Proximity is so obvious and pricing between traders , margin of just 0.1 euros and 0.6 euro with Gen-I generates doubts about the application of a “game theory” with asymmetric information between competitors in the market, but that in the absence of the direct evidence of horizontal communication (EFT-GSA) and vertical (OSHE with EFT and GSA) remains reasonable hypothesis, but without facts and evidence available.

An examination of the documents also noted that bids from companies Sh.pk GEN-I Tirana and Belgrade GEN-I, which are part of the same group. In this case where the number of operators who continue negotiations is limited (only 5 operators) while two operators are the same group, have competing risks.

The procurement of July 2014, delivery schedules verify the offers and report notes that delivery schedules of final bids from the companies GEN-I Group has been presented with the latest schedules compared with other bidders . GenI claim that there have been cooperation and communication between bidders on GenI prices, leak of information from OSHEE.

Also proximity of winning bids leaves doubts about a “game theory” with the exchange of information between competitors in the market, but analysis show that bids from other two participants compared with Gen-I does not contain vertical exchange of information between OSHEE and bidding companies on demand and supply side.

In this procedure offers made by companies GEN-I (GEN-I Tirana Sh.p.k and Serbia GEN-I), they are part of the same group and are signed by the same person, presented with offerings and compete as two independent society.

The procurement of August 2014. The proximity of the winning bids creates doubts for an unequivocal “game theory” with doubts that there might be the exchange of information between competitors in the market.

An examination of the documentations found that schedules of delivery of bids and electronic correspondence analysis of e-mails, found that there were noticeable behavioral signs of coordination or cooperation between OSHEE, EFT and GSA. But report note that the bids presented by companies GEN-I Tirana GEN-I LLC and SB, compete with special offers as they are independent society.

The procurement of September 2014. The proximity of winning bids of EFT and GSA leaves doubts about a “game theory” with the exchange of information between competitors in the market but the when these two bids compared with Gen-I make vertical agreement through the exchange of information between OSHEE on the demand side and the GSA’s EFT supply side.

The companies GEN-I Group have submitted bids later the GSA, while EFT has submitted a bid last min before GEN-I Tirana and a min after gen- SB. Thus on the basis of timing of sent offers to OSHEE, complainant GENI claim that OSHEE may have collaborated with EFT and GSA and informed them about the prices of GEN-I.

Commision found that there are not enough evidences and documentations Electronic Correspondence, e-mails, to prove the cooperation agreement between OSHEE, EFT and GSA.

The procurement of October 2014. From the documentation of relevant companies reported noted that the GEN-I Group, have submitted bids later the GSA and EFT. Thus on the basis of the timing of sending the offers to OSHEE, GENI that OSHEE may have collaborated with EFT and GSA and informed them about the prices of GEN-I.

Prices of first offer until the final bid are reduced. So there is not sufficient evidence in the procedure and Electronic Correspondence e-mails to prove cooperation agreement between OSHEE, EFT and GSA. In the proceedings of October contracted amount of energy is greater than the energy required to cover the losses.

Procurement for month of November 2014. Analysis of appropriate documents showed that schedules of the delivery of final bids of GEN-I Tirana, GEN-I and GEN-I SB Athens are at 17:59, while EFT 18:05 pm, 17:41 pm and is AXPO GSA time is 17:56. In this case the offer EFT has sent 6 min after the GEN-I Group, while offering GSA sent later that GEN-I Group. Procurement procedure in November 2014, the GEN-I Group submitted three different bids, out of a total of 6 companies competing. So from 6 companies entering the competition process three belong to group GEN-I, and three are awarded. Even in this case vertical

cooperation can't be proved. In the proceedings of the month November contracted amount of energy is greater than the energy required to cover the losses.

The procurement of December 2014. Analysis concluded that GEN-I offers are sent later than the bids of other companies. So, no communication or signs prove coordination between the participating companies (EFT and GSA) and OSHEE to information leaks about the offer of GEN-I.

Procurement procedure in December 2014, report found that the GEN-I Group presented three different offers out of total 7 offers/companies. So from 7 companies that entered the competition in the process, three belong to the same group of GEN-I, and three are awarded. EFT Group also participated with two related companies EFT EFT AG and EFT Albania presenting relevant offers and emerged as winners with both companies.

In the proceedings of December contracted amount of energy is greater than the energy required to cover the losses

Results of the investigation found no evidence of collusion

An examination of the documentations and schedules of delivery of bids and analysis of electronic e-mail Correspondence, reported did not find the signs of coordination or cooperation between OSHEE, EFT and GSA. Also the analysis of the schedule of bids did not produced doubts that competitors had preliminary informations on the price of the complainant, after competitors offerings are sent almost later than the company offers GEN-I.

From the examination of complaints, alleged hypothesis is not consistent among the schemes presented, even the applicant has not supported the investigation with clear arguments to prove the allegation of agreement in horizontal or vertical direction.

Purchase of electricity to cover losses in the distribution network by the Operator Distribution System is under market regulation, in terms of price, while the procedure of procurement of electricity is exempted from the rules of the Law "On Public Procurement" and regulations for its implementation.

The dynamics of price changes in several rounds of negotiations, which OSHEE performed to optimize the portfolio of economical purchase, but the process itself has been criticized about the lack of transparency, report notes that negotiation prices were not disclosed in some cases and in some cases only the quantities.

The analysis show that in the months where demand for electricity is lower than the price of winner is lower, these also increased competition between the companies participating in the proceedings.

While in January, February, May, August, October, November of 2014, demand for electricity to cover losses in the distribution network is greater than the initial offer of the traders participating in the procurement procedure which is diminishing competition between traders that provide electricity to market.

During the months of October, November, December 2014, OSHEE has purchased more electricity than the requested amount. During January, February 2014, the amount of contracted / purchased electricity is less than the amount requested.

Reference data for each month (which are considered as separate relevant markets) operator EFT AG, has the largest market share ranging from 42% - 80% for each month (January - December 2014).

The number of companies that participate in the procedure and has concluded supply contracts with OSHEE is limited. They are almost the same companies that participate and awarded after four negotiation processes, then four or five companies, which has led to the reduction of competition between participants.

During the procurement procedures of enterprises belonging to the same group of enterprises such as GEN-I, in seven months they have participated and have emerged victorious with special offers. This has led to reduced competition because they can not compete with each other belonging to the same enterprise group. Also, in the month of December 2014 also EFT has emerged as the winner with two bids from EFT EFT AG and EFT Albania.

Limited number of participants in the tenders makes the process less transparent and reliable and thus makes the market vulnerable with supply leading to shrinkage in the number of bidders, impacting negatively on competition in the market, and the rising costs of electricity.

Offers that companies send by electronic mail to OSHEE persons responsible for the procurement process, ie not through an address of special procurements, which opens and read in the presence of the participants, it makes the process not a reliable and transparent. Report states that there are signs that direct communication can restrict competition under Article 4 of Law no. 9121, dated 28.07.2003 "On Protection of Competition" (as amended).

Competition council issues following warnings and remarks:

(I) the number of bidders,

(Ii) the loss of confidence of registered traders in the process of purchasing electricity to cover losses,

(Iii) the fact that in many cases the demand is greater than supply, as well as limiting the number of traders to be included in further proceedings of negotiation with bidders belonging to the same group,

(Iv) bilateral negotiations carried out between bidders and OSHEE makes the process distrustful.

While it had completed the investigation the Competition Commission before making the final decision, informed OSHEE that during the period January-September 2015 the Supreme Audit Institution of the State exercised audit at OSHEE on other related

procedures purchase of electricity.

JSC with nr.19157 OSHEE protocol, dated 10.21.2015, informs us that the audit of the Supreme State Control found irregularities in the implementation of procedures of purchasing electricity for covering energy losses in the distribution system, as companies from the same group realized prohibited agreements in procedures of purchase of electricity, have hidden their position and have completed double direct bids, creating illegal advantage by not respecting the rules of competition.

Competition Authority letter No. 418/1 dated 10.29.2015 asked the SAI to make available to the Authority any evidence or proof to prove the cooperation between participants in the proceedings.

Supreme State Control through letter no. 90/3 protocol dated 11.8.2015 sent the audit report to which the Competition Authority found no evidence and evidence which prove the cooperation of the participants.

Recommendations

At the end of the investigation, the Competition Authority has decided to “Close procedure of preliminary investigation in the market of purchasing electricity to cover losses in the distribution system, for enterprises GSA, EFT, group GEN-I, OSHEE, since there are no signs of restriction of competition as a result of the behavior of undertakings “.

Commission also decided to recommend to the Energy Regulatory Authority and the Ministry of Industry and Energy Distribution Operator and the Electricity (Oshea) the following:

a- OSHEE needs to apply best practices of Energy Community and current energy and procurement legislation

b- prohibit the participation of related enterprises belonging to the same group or related shareholders which participate with special offers in procurement procedures or purchase of electricity, transmits Serbia-energy.eu