

To the attention of:
DG Competition, European Commission

ACER – Agency for the cooperation of energy regulators

**COMPLAINT
BY**

Mr. Vassil Velev
**Chairman of the Bulgarian Industrial Capital
Association**
Mr. Tsvetan Simeonov
**President of the Bulgarian Chamber of
Commerce and Industry**
Mr. Kiril Domuschiev
**Chairman of the Confederation of Employers
and Industrialists in Bulgaria**

Subject: Infringement of the national competition legislation – art. 15, art. 21 and art. 22 of the Law on protection of competition

DEAR SIR/MADAM,

With the following complaint, we invite DG Competition and ACER to investigate the actions of a group of participants in the liberalized wholesale electricity market in Bulgaria, which we consider to be inadmissible in violation of the principles of free negotiation and competition laid down in the Bulgarian legislation.

Our factual claims are based on an analysis of publicly available information. The specific facts and circumstances are as follows:

A substantial part of the electricity produced from electricity generations (power plants) which are private property on the territory of the country is under direct or indirect control of entities that are related persons within the meaning of § 1 of the Additional Provisions of the Commercial Act. We refer to the following companies:

	UIC	Electricity power generation in MW
District heating Burgas EAD	102011085	18
District heating Pernik EAD	113012360	60
District heating Pleven EAD	114005624	68
District heating Rousse EAD	117005106	120
District heating VT EAD	104003977	3
District heating Vratza EAD	106006256	6
District heating Sliven EAD	119004654	12
District heating Gabrovo EAD	107009273	12
TPP Brikel EAD	123526494	130
TPP Bobov Dol EAD	109513731	600
TPP Maritza 3 EAD	126526421	120

Total installed capacity - 1149 MW

The electricity produced by the aforementioned companies is sold on the liberalized electricity market by the company Grand Energy Distribution, which is related to the production power plants. We should also point out the fact that the Grand Energy Distribution, by virtue of a contract, represents on the market Toplofikacia Sofia EAD (Sofia district heating) regarding the sale of the electricity generated by the CHP of a total -186 MW.

The existence of connectivity between the owners of the production power plants (companies) and the electricity traders company is a concentration that objectively creates conditions for market manipulation.

There are also conditions for artificially creating an electricity shortage by limiting the production by the aforementioned production plants (companies) and at the same time buying through related traders the whole quantity of electricity offered by the state-owned companies – producers (NPP Kozloduy, TPP Maritza East 2, NEK EAD)

Apart from this, under the control of the owners of the production facilities is also an insurance company.

The insurance company issues insurance policies as a form of collateral for the purchase of electricity predominantly to the group of traders associated with the producer, which directly creates a competitive advantage. This circumstance suggests that it is also possible to buy the purchased energy and to strengthen the non-market advantage.

A reasoned assumption of the existence of an unacceptable concentration within the meaning of the Law on Protection of Competition can be made from the circumstances.

On the other hand, the market behavior of the above mentioned participants in the electricity market raises doubts about the existence of a cartel in the following direction:

"Grand energy distribution", "European Trade of energy", "Saga Commodities", "TM Technologies", "Energy Invest Europe" – are all related to the owners of the production power plants (companies) which participated in the sessions of the Bulgarian Independent Energy Exchange (IBEX) during the period from November 2018 to January 2019, in which quantities of about 500 MW of electricity were sold by the Kozloduy NPP (state owned through BEH – Bulgarian energy holding).

Each of the listed traders purchased on the basis of a bilateral contract electricity from the one proposed by the Kozloduy NPP, and the limitation in the tender documentation for the purchase of quantities up (upper limit) to 10 MW and 20 MW respectively by one buyer was in line. Virtually, all of the electricity offered during these trading sessions was bought by the listed companies.

There is a clear tendency for a substantial part of the electricity offered on the liberalized market to be purchased by the listed companies when the other traders are eliminated. Our data indicate that the purchased electricity was subsequently traded between the above-mentioned traders on the basis of bilateral contracts. Reallocation of electricity between these traders is sold to their customers - private entities and public purchasers under conditions and prices that circumvent the market exchange mechanism.

On 19.06.2019 NEK organized a tender for the sale of 98 MW for the period 01.07-30.09.2019, in which only one potential buyer with a potentially disposable hourly amount between 0 MW and 490 MW was preferentially favoring. After the intervention of the employers' organizations, this scandalous auction was terminated, NEK organized two more auctions for the same day, again with conditions dubious favoring a potential participant, but these auctions were also cancelled. NEC eventually held the desired auction on July 1, 2019, and realized electricity with a potentially disposable hourly amount of between 0 MW and 250 MW, which amount to 80% was purchased by two of the related companies mentioned above. Consequently, the tendency towards concentration has intensified with the active cooperation of NEK, which is state owned through BEH. We insist that you check this auction.

The IBEX registration system also allows verification of the relationship between the forecasted positions (quantity and price) of the "Day-ahead" segment of the aforementioned connected companies and those of NEK for the period 01.12.2018 to 14.07.2019 - we have grounds to assume coordination and the resulting high equilibrium hourly prices.

Also noteworthy is the study of coordinated behavior between the mentioned traders and major electricity exporters such as GEN-I, Danske Commodities, Alpiq, again for the same period 01.12.2018 -14.07.2019, ascertainable both through bilateral agreements between them and through the biddings (quantity and price) of the Day-ahead segment. In this respect, attention should also be paid to cross-border exchange data from the ESO system, closed domestic transactions between those companies (without physical cross-border transfer) and hourly prices achieved during the Day ahead segment.

The facts set out give clear indications of manipulation of the liberalized electricity market and the application of certain non-market commercial practices by certain entities. The direct consequence of the actions of the economically linked entities is to limit the ability of other traders in the free electricity market to purchase electricity under clear and competitive conditions.

The above-described pattern of behavior of the above listed companies violates the functioning of the liberalized electricity market. This creates conditions for permanent electricity shortage and non-market price formation. This process directly and negatively affects the functioning of the whole Bulgarian economy. The seriousness and scale of the problem motivated us to take all legal action to prevent this trend from worsening and illegal practices to be terminated.

We would like to request that you institute proceedings and order verification of the above facts and circumstances in order to ascertain whether there is a legal situation of inadmissible concentration and / or a cartel between the free market participants listed in the complaint of electricity.

We express our readiness to provide additional information if necessary.

Sincerely yours,

Mr. Vassil Velev
Chairman of the Bulgarian Industrial Capital Association

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President of the Bulgarian Chamber of Commerce and Industry

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