



EURELECTRIC Discussion Workshop

Brussels · 31 March 2008

The 3rd Energy Package: Alternative Models

EEU: Is the “Third Way” the way forward?

Eckart Ehlers LL.M.



www.unecom.de

Unbundling of Energy Companies: Will it be worth it?

Project Leader:
Prof. Gert Brunekreef,
Jacobs University Bremen
& Bremer Energie Institut





Topics

- Introductory remarks
- *Changes* to current requirements
- EEU: the way forward? Some *issues*



Introductory remarks (I)

- Commission proposals on their own and complemented by EEU cause imbalance of regulatory regimes in EU and are potentially in breach of Art. 56 EC (free movement of capital)
- Commission has not argued its case: social cost & benefit analysis needed

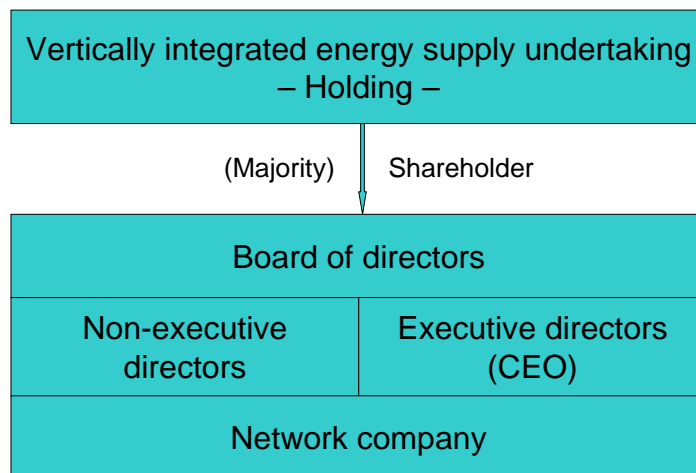


Introductory remarks (II)

- locational efficiency of generation is problem, NOT transmission grids, i.e. reduced case for transmission OU if generation efficiently sized & in efficient locations
- efficiently located generation reduces competition effect of OU significantly

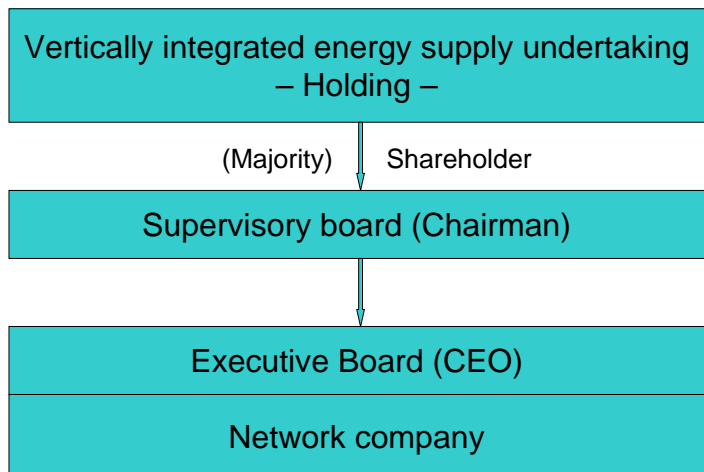


Single-tier joint-stock company structure





Two-tier joint-stock company structure



Changes (I)

Effective & efficient unbundling must be

- effective, i.e. guarantee transparent and non-discriminatory TPA
- efficient, i.e. guarantee appropriate levels of investment



Changes (II)

Effective & efficient unbundling creates TSO

- with all assets, personnel and financial resources necessary to perform its tasks
- incorporated as a joint-stock company
- with its own corporate identity and premises
- with its distinct auditor



Changes (III)

Effective & efficient unbundling safeguards independence of TSO management by

- subjecting management appointments to regulator's veto
- prohibiting management to serve elsewhere in vertically integrated undertaking after departure
- preventing remuneration to depend on factors outside TSO's sphere



Changes (IV)

Effective & efficient unbundling safeguards independence of TSO management by

- appointing independent (supervisory) board members for at least 5 years
- prohibiting chairman of (supervisory) board to perform functions in area of generation or supply elsewhere in vertically integrated undertaking



Changes (V)

Effective & efficient unbundling safeguards adequate investment by

- requiring TSO to establish & publish 10-year network development plan every 2 years
- consulting on such plans and publish results
- requiring regulator to approve of such plans and to request TSO to invest resp. to tender for specific investment



Changes (VI)

Effective & efficient unbundling

- safeguards non-discriminatory connection of new plant
- reinforces compliance monitoring
- proposes to install regional coordinators to promote regional cooperation and to facilitate cross-border investments



Changes (VII)

Effective & efficient unbundling is thus claimed to be based on two pillars:

- effective separation without violating ownership rights, and
- elimination of underinvestment

EEU is also said to provide for effective measures of further market integration



EEU: way forward? (I)

- EEU avoids constitutional conflicts OU & „deep“ ISO (deciding on investment) would cause
- EEU equally applicable to state-owned and private companies, and to gas and electricity
- EEU fosters more adequate network investment & complements measures to promote new plant
- EEU promotes regional cooperation



EEU: way forward? (II)

- EEU proposals reflect discussions on *Societas Europaea* (SE) and Corporate Governance, i.e. divide between single-tier and two-tier board systems, between shareholder and stakeholder values
- New set of Energy Directives likely to contain (again) broad terms & scope for interpretation



EEU: way forward? (III)

- Independence of non-exec./supervisory board members?
- Regulator's influence on internal management structure high
 - Regulator takes entrepreneurial position
 - potential of regulatory capture?
- EEU: effective separation questionable, BUT Commission proposals breach the law and are not the only effective and efficient alternative



Thank you!

Eckart Ehlers LL.M.

Researcher (Bochum & Tilburg)
Assessor jur. (Rechtsanwalt 1999-2006)
Solicitor (England & Wales – practising 2002-2003)

Institute for Energy and Mining Law · Ruhr-University Bochum
Gebäude NA 02/255 · Universitätsstr. 150 · D-44801 Bochum

Tel. +49 (0)234 322 6947 · Fax +49 (0)234 321 4212
Mob. (GER) +49 (0)172 612 0248 · Mob. (NL) +31 (0)6 28 575 030
eckart.ehlers@uvt.nl · www.unecom.de