



**PRESIDENT  
ENERGY REGULATORY OFFICE**

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# **ROADMAP OF PRICES LIBERALISATION FOR ALL ELECTRICITY CONSUMERS**

**Towards the customers' rights and  
effective competition in the  
power industry sector**

**Warsaw, February 2008**

## Introduction

The roadmap proposes actions which should be undertaken in order to achieve the aim of further liberalisation of electricity market and improvement of electricity customers' safety. **Being the final customer, it is the consumer that should be recognised as the fundamental and conclusive beneficiary of liberalisation processes.** Competition should serve consumers and not protect competitors' interests. Liberalisation cannot be made solely at the expense of the consumers by introducing sanctions or solidifying ineffectiveness in the power industry.

In order to achieve this aim and to liberalise the market (liberalise prices for all customers), it is necessary **to increase investments in power industry infrastructure.** The existing administrative barriers significantly limit the speed and effectiveness of the investment process, which is particularly connected with modernisation and development of generating powers and electricity networks.

The process of liberalising electricity prices requires both legislative and executive authorities to undertake immediate actions securing realisation of such approved purpose. This document proposes **a concise, one-year long plan framework which enables its completion with maximum mobilisation of all authorities responsible for the structure and realisation of many policies, such as electricity, social, ecological, or fiscal policy.**

**The Third Party Access (TPA) principle** allows final customers to choose their supplier. However, customers' interest in the possibility of using the TPA principle has so far been limited. Lack of uniform rules and procedures of switching the electricity supplier together with no standardised documents available constitute yet another barrier. A regular household customer, whose energy consumption is not very high, will not be an attractive target for electricity suppliers. The market does not provide such customers with offers attractive enough to give them the possibility of choosing the most attractive competitor.

In order to be able to apply the TPA principle efficiently, apart from providing motivation for switching the supplier, it is necessary to undertake appropriate preparatory actions, i.e. to distribute information and facilitate changes **by regulating the rules and procedures of switching the supplier in the current law.**

Under the current legal system a supplier is appointed automatically to the customers who decided not to exercise their right to change the supplier. This should,

however, be modified in such a way that **it does not limit further development of competition, but at the same time it has to guarantee safe access to energy for all household consumers.**

**The so-called vulnerable customers should be under special protection**, as they are more susceptible to risk resulting from electricity supply interruptions due to economical reasons. Such customers have not been yet defined in terms of legislation, and no system has been established to secure continuity of electricity supply on the free market. With the view to keeping the interests of power industry companies and electricity consumers in balance, the President of the Polish Energy Regulatory Office (ERO) has undertaken certain actions to create appropriate mechanisms of protection against fuel poverty and electricity impoverishment for “vulnerable” customers by setting up the **Team for Researching and Investigating Issues Related to Socially Vulnerable Customers** on 30 November 2007. The task of the Team is to collect and structure knowledge essential to work out a system of assistance for socially vulnerable customers, and to co-operate in this field with respective units of administration.

Current market processes are advanced enough to make it possible to liberalise electricity prices for industrial customers. It does not mean, however, that these processes are free of any threats, mainly due to the concentration of activities caused by the vertical consolidation of state-owned power industry companies and lack of real conditions for securing the actual independence of distribution system operators. This is why this market area still requires **utmost supervision by institutions responsible for competition and consumer protection, and strengthening the rights and entitlements thereof, as well as additional regulatory tools** aimed at limiting the possibility of taking advantage of the dominant position and potential threat of dictating the electricity prices.

Realisation of the Roadmap requires co-operation of administration authorities and institutions responsible for the functioning of power industry, as well as for competition and consumer protection.

## **1. Conditions of electricity market and electricity prices liberalisation for all customers**

### **1.1. *Current state – opening the electricity market***

Providing the customers<sup>1)</sup> with the right to purchase electricity from a freely selected supplier, ended the monopoly of the incumbents from the legal point of view, which, however, does not necessarily mean an automatic beginning of fierce competition among suppliers to win customers. In practice, in order to break the domination of incumbents (former distribution companies), especially on the market of individual customers, i.e. households and small businesses, it is crucial to provide prospective competitors with actual capacity to enter the market and to reach customers with their offers. For new suppliers to appear on the retail market, the wholesale market needs to function properly with electricity value established by the market.

After full liberalisation of electricity prices, the consumers' protection against their unjustified increase is to accept the offer of another cheaper supplier, i.e. to switch the current supplier. Under the current state of affairs these processes are not effective enough. The customers are not motivated enough to look for new offers, whereas the procedures need to be simplified, unified and automated. Therefore it is still necessary to provide protection for households, i.e. the electricity consumers who are least prepared to use market solutions. One way to protect them might be to keep up the duty of presenting the household electricity tariffs (group G) to be approved by the President of the ERO for a certain period.

### **1.2. *Situation of customers on electricity market***

Liberalisation of electricity prices has been planned in two stages: from 1 January 2008 for industrial customers (tariff groups A, B, C) and from 1 January 2009 for household customers (group G). Release from the duty to present the tariffs for approval may only be granted in case of electricity trade, and not in case of payment rates for network services (transmission and distribution), which have to and will have to be approved by the President of the ERO due to their monopolistic character. The

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1) Industrial customers obtained the right to electricity purchase from a chosen supplier on 1 July 2004, while household customers on 1 July 2007.

structure of payments made by household customers proves that electricity constitutes around 30% of the total payments, network services around 47% (including 2% for the licence fee), and taxes (VAT and excise duty) 23%. Therefore the customers who would like to exercise their right to purchase energy from a new supplier will be able to negotiate the electricity price contributing practically to around 30% of the whole charge. The electricity price covers in particular the costs of electricity generated in conventional power plants (the so-called “black energy”) together with the CO<sub>2</sub> emission purchase costs and costs of gaining possession rights in terms of energy generated by renewables (the so-called “green energy”), and in cogeneration (the so-called “red energy”).

The results of the monitoring of 2008 price lists for industrial customers performed by the President of the ERO show differentiation of offers and a wide range of electricity price increase from 7.5% to 34.9% depending on the tariff group. Proposals of high price increase concern mainly groups A and B. The price may be changed after the customers are informed about the planned change of electricity prices and about their right to terminate the contract. This means that these prices can be negotiated by the both parties and in result lowered. The customers should also be informed about the right to switch the supplier and about the actual possibilities to make such a switch, **however this has never been made an obligation for the companies.**

The former mode of introducing electricity tariffs approved by the President of the ERO as specified in the Energy Act does not apply to the electricity prices set by the companies themselves after they have been released from the duty of presenting the tariffs for the approval of the President of the ERO. The same mode though still applies to the tariffs approved by the President of the ERO for transmission and distribution services, rendered by the network companies.

Another factor weakening the position of the customer in a dispute situation with a distribution system operator is a long time and high cost of legal proceedings and the necessity to undergo the whole complicated and highly formalised regime connected with them. For all these reasons it would be a great benefit to implement processes and techniques of Alternative Dispute Resolution (ADR) with the participation of the President of the ERO.

### **1.2.1. Preparing household customers for switching the supplier**

The former practice of co-existence of regulated prices for the final customers and free prices for the wholesale market did not encourage the customers to look for other offers than the current supplier and the suppliers to make offers to other customers than the current ones. Because of this the customers, households in particular, have little knowledge about possibilities of energy purchase from any freely selected supplier and about the rules of switching the suppliers. The consumers gradually became more interested in this for example because of press articles. Out of the ERO initiative a special website was launched, the topic of which is the electricity market opening; call centres were established in the ERO headquarters and its local branches where ERO employees provide advice and assistance; workshops were organised for Municipal and Province Consumer Ombudsmen, as well as many conferences were held on the topic. An information brochure was also prepared for every household customer which, however, due to the lack of appropriate funds never got printed and sent out. Also due to the lack of financial sources no wider media campaign was possible.

### **1.2.2. Evaluation of solutions facilitating switch of supplier**

The existing solutions connected with switching the supplier are not sufficient from the point of view of the household customers. The switching process requires dividing a complex contract into a sale contract and a distribution contract or concluding a new complex contract under which a new supplier will act for and on behalf of the customer.

The procedures of switching supplier have been specified in the distribution grid codes – a technical document – prepared by the distribution system operator and approved by the President of the ERO. From the point of view of the household consumers access to this document and its comprehensibility are limited. Because of the fact that they have not been accepted in a form of a general law, the procedures are not uniform in the whole country and as such may be changed at any time. Working out and preparing their own load profiles by every Distribution System Operator (DSO) in case of the customers without self-operating meters seems to be an acceptable solution, but it does not fulfil its target function. No smart meters with the option of remote meter readings limits effectiveness of the procedure of switching

supplier, generates additional costs connected with the customer service and prevents the customers from managing their own consumption.

Moreover, it is not required to unify framework contracts between operators and suppliers, as well as contracts between suppliers and consumers, which significantly restrict the process of switching the supplier; some of the contracts contain restricted clauses violating the rules of competition and consumers' rights. As practice shows it might be advantageous to prepare such benchmark documents and to have them periodically verified by the institutions responsible for competition and consumer protection.

The incumbent suppliers appointed automatically to the customers who do not take advantage of the TPA principle provide them with energy under complex contracts. Dividing the complex contract into the sale and distribution contracts results in the consumers receiving two separate invoices. From the point of view of the customer it constitutes yet another complication, which might be perceived as unjustified cost generating. It is essential to implement the obligation of billing the customer with one invoice only, which requires specific systemic solutions with special attention paid to the household consumers and the others for whom all the issues connected with switching supplier could be settled by the new supplier. This is already a common practice in other EU Member States, more advanced in the field of implementing a more competitive energy market.

It is also critical to find an effective solution to the problem of last resort sale, i.e. in cases when the current supplier suddenly and for reasons not resulting from the customer's default is not capable of continuing the sale. Under such conditions the consumer is more susceptible to risk connected with the lack of guarantee of continuous energy supplies or them being treated as illegal energy consumption.

The restrictions mentioned above together with these which will become visible only when applied in practice do not necessarily mean that the residential consumers who have been offered more attractive energy purchase conditions than the current ones will not be able to exercise their statutory right to purchase the energy from the chosen supplier. Similarly to the industrial customers and following the general rules, it will be possible to implement the changes in electricity prices for the household customers switching their supplier.

### **1.3. Independence and role of regulatory body**

Independence of the regulatory body constitutes the basis for natural monopoly regulation and is manifested in three fundamental aspects: independence from power industry companies, political independence, including other authorities, as well as financial independence. Ever since the Energy Act was introduced, the formal aspects of the regulatory body independence have constantly been questioned and limited.

In practice, the statutory regulations that have followed have introduced new tasks and obligations of the President of the ERO, but without increasing its budget or number of employees. In fact, the President of the ERO is not even independent in managing the office, i.e. the model of organisational structure of the office cannot be independently adjusted in a flexible way so as to match the changing conditions in which the office has to function (e.g. new tasks and competences).

Cancelling the fixed term of office principle of the President of ERO has deprived the regulatory body of the most crucial attribute of its independence.

Throughout the legislative process pertaining to power industry regulation the common practice was not to take into account the regulator's experience and recommendations, which has undermined its position even further.

The examples of the application of Art. 49 of the Energy Law Act show how important it is to provide the regulator with appropriate tools to regulate the whole market efficiently. The fact that no regulatory tool is available that would secure in short term the same conditions for all the entities present on the electricity market, and that there is no possibility of public hearings involving sector organisations, consumer organisations and power industry companies, have all led to formal and legal problems, limiting and weakening the possibility of effective implementation of systemic solutions, as well as the institution of the Polish regulatory body. *De lege lata* such tool cannot be employed in the administrative proceedings involving the President of the ERO.

Basing on the rules compiled in the Constitution of the Republic of Poland and Administrative Code, the regulatory body is not entitled to pass regulations or administrative acts that would be applied generally. These are the tools that regulatory bodies in other countries have at their disposal.



In fact the only tool that the regulator has been provided with under the idea of promoting the market opening to the customers is resolving disputes regarding transmission services. Additionally, the degree to which this instrument may be applied is limited due to its construction: the President of ERO may in fact settle the disputes only in case of newly concluded contracts, the proceedings may only be initiated upon the request of one of the parties involved and the Administrative Code procedures are very long and complex.

The independence and power of the regulatory body is particularly essential in the current state of concentration on the electricity market, resulting from the vertical consolidation of power industry companies.

Under the current legal construction, the same regulatory tools (equally burdening and limiting the freedom of economic activity) apply to the companies with dominant position on the market as to the others not powerful enough to significantly influence the situation on the market. Such “overregulation” of some companies constitutes in itself a barrier for competition development. The right approach would require limiting the regulatory tools, specifying the leading entity with dominant position and imposing on it more duties and obligations than on the remaining entities.

Taking into consideration the current law and division of competence between the President of the Office of Competition and Consumer Protection (OCCP) and the President of the ERO, under the conditions of the electricity market liberalisation it is the President of the OCCP that holds the full range of competences *ex-ante* and *ex-post* as far as fighting against anti-competitive practices is concerned. The energy regulatory body on the other hand is specialised and has a wide knowledge about the electricity market at its disposal, which is exactly why these two bodies should closely co-operate.

Under the conditions of the vertically consolidated structure of the power industry the regulatory body’s entitlement to financial controlling of the leading power industry companies need to be reinforced, particularly in order to enable the identification of the flow of internal transfers among the activities of different kind. The rules of regulatory accounting should be defined and described in detail in the executive regulation added to the Energy Act, whereas the regulator should have the right to set the basic indicators and indexes by its individual decision.

#### **1.4. Competition evaluation on electricity market**

The conditioning connected with electricity prices liberalisation has been specified in Art. 49 of the Energy Act. The rules contained in the Article have not been combined with the objectives and solutions accepted in so-called secondary market directives when they were implemented into the Act. The current practice and expectations of the European Commission, especially in light of the results of the power industry overview<sup>2)</sup> and the proposal of the third legislative package<sup>3)</sup>, point out that it is necessary to carry out another analysis of the compatibility of the Polish regulations with the EU ones.

##### **1.4.1. Entity structure on the electricity market**

The current structure and the concentration degree of the power industry activity have resulted first from the horizontal and then from vertical consolidation of state-owned power industry companies. The consolidation process, which has negatively affected the competition conditions on the domestic market, will carry on to substantially affect competition development on the wholesale market.

In view of decreasing power surplus in electric power system (particularly in peak loads hours), it seems that the market share of the two biggest energy groups: PGE SA and TAURON Polska Energia SA is significant enough for these two companies to be able to take advantage of their leading market position and to dictate the price conditions. The study of the electricity market structure present on it is not unequivocal certain doubts have also been raised by the President of the OCCP. An in-depth analysis is necessary to prepare for taking preventive action aiming at limiting the possible threat of market monopolisation, particularly by the entities that concentrate in their structure vertically the whole technological chain – starting from coal extraction, through energy generation, distribution and its selling to the final customer.

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2) COMMUNICATION FROM THE COMMISSION of 10 January 2007 - Inquiry pursuant to Article 17 of Regulation (EC) No 1/2003 into the European gas and electricity sectors (Final Report).

3) Available at: [http://ec.europa.eu/energy/electricity/package\\_2007/index\\_en.htm](http://ec.europa.eu/energy/electricity/package_2007/index_en.htm).

#### **1.4.2. Rules of electricity market functioning**

Although the current limitations of wholesale market development have been systemically disposed of (long-term power purchase agreements (PPA) or faulty and ill-functioning balance market rules), the consolidation of generating companies with distribution companies, and establishing four vertically integrated companies may substantially diminish the effects of these actions.

Even though wholesale market prices have been released from the duty of their prior presentation to the President of the ERO for approval since 1 July 2001 and despite the presence of production surplus in electric power system for a few years, by the end of 2007 on the energy market the term-contracts prevailed: long-term (PPA) and medium-term (yearly) contracts. The volume of energy trade on spot markets is still not important for energy value calculation and reference price setting. Under the present conditions, after the PPA termination, it is difficult to point out guidelines for changing this model.

The current structure of tariffs for transmission services, under which all customers are charged with the balancing and congestion management costs, does not send appropriate economical signals for the market participants. It does not take into account the topography and uneven development of the Polish electric power system, although it does, however, play an important role as far as chances of less developed regions are concerned.

Systemic costs are not singled out or transferred to the market participants in the form of market fee (as it is for example in Sweden), which is why the same volume of energy generated at any point of the system always has the same value ("copper plate" model). In reality it is much cheaper and more effective (with the costs of system usage taken into account) to generate the energy close to its load point, which should be promoted by the tariff system. The so-called socialisation of network costs is the reason why the already limited network resources are not optimally used. There are not enough of locational signals for new generating powers and big load centres.

Network investments are still limited due to significant administrative barriers connected with gaining new lands for their location.

Processes connected with the sector consolidation and activity concentration have delayed the market processes pertaining to modification of the functioning rules

of the balancing market, increase of share and significance of the spot markets, and modification of rules for setting the tariffs for the operators.

#### **1.4.3. Independence of distribution system operators**

The legal unbundling of distribution system operators as of 1 July 2007 aimed at removing significant legal barriers for electricity suppliers to enter the market. Following Art. 9d, section 1, the distribution system operator that belongs to the structure of a vertically integrated company should remain independent legally, organisationally and in the field of decision making<sup>4)</sup>. Research results of this process show that it has not been finalised yet, and in some cases the practice does not match the aim and its function.

The capital group and the domination of its interests constitute a substantial threat to the public mission of the distribution system operator, i.e. the actual possibility of protecting the consumers against the unjustified electricity price increase by an effective switch of the supplier.

The President of the ERO does not have appropriate tools to have an effect on business relations within the capital group, e.g. the lack of compliance programmes or their incorrect specification do not result in legal consequences for the DSOs themselves and their owner, i.e. the capital group.

Bearing in mind the legal costs of legal unbundling of the DSOs, it is necessary to turn this selection into a benefit for the market. Basing on the experiences of the transmission system operator it is possible to state that due to the lack of entrepreneurial independence and network assets, the possibility to exercise the operator's entitlements to develop a competitive market has been substantially limited.

#### **1.5. Other implications affecting competition and electricity prices**

At the time being it is necessary to bear in mind that the increasing share of electricity generated by renewable energy sources and in cogeneration technologies,

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4) The obligation of dividing the activity into the network and trading one does not apply to the energy companies with the number of customers connected to their network not exceeding one hundred, and to the companies operating electromagnetic systems, with yearly electricity consumption not exceeding 3 TWh, and with less than 5% of yearly electricity consumption stemming from other electric power systems connected to them (Art. 9d, section 7 of the Energy Act).

decreased CO<sub>2</sub> emission limits allocated to Poland, and the necessity to launch the national energy saving programme, will all have a strong impact on electricity prices. One of the most important tools of economic policy in market economy is its fiscal policy. Without an effective coordination of the actions in this area, the process of optimisation will be even more difficult and cost-generating.

It is essential to point out that the President of the ERO so far has not had any influence on the state policy within this area, but has dealt with its results by approving the electricity tariffs. Stressing the importance of selected aspects of this policy is meant to draw attention to relations among its particular fields and potential possibilities of using the institution of the regulatory body in the process of active creation of such policy.

#### **1.5.1. Environment protection**

Outlining the functions of electricity market participants is especially important, particularly in light of energy policy aimed at providing competition, safety, sustainable development and the possibility to fulfil the environmental target (20% reduction of greenhouse gases emission, 20% increase in energy effectiveness, and up to 20% share increase of the energy generated by renewable sources) until 2020.

#### **EU Emissions Trading Scheme**

Not surprisingly EU Emissions Trading Scheme is EU wide, thus the prices of emission allowances are established on the European level. The predicted increase of these prices in the nearest years will influence the energy prices in Poland. The predicted prices will amount to around 20-30 €/tonne of CO<sub>2</sub>. Undercalculation of the number of allowances accounting for around 30%, as reported by the energy sector, could result in the energy price increase by 23 PLN/MWh for 2008 only.

It cannot be ruled out that for some power plants it would be economically reasonable to stop the production and thus to gain some income from selling allowances for further investments in development and ecology. Such an attitude in short term could significantly decrease the level of energy safety and contribute to the increase of energy prices. It is necessary to carry out an in-depth analysis of such threat and to work out a coherent mechanism of optimal reactions to be undertaken by power industry companies.

## **Support for renewables and CHPs**

The current renewables supporting scheme, based on the certification system, has fulfilled its role from the point of view of competition development. Bearing in mind its substantial influence on energy prices, it is essential to evaluate the reasons for financial support system financing the process of co-incineration in big power boilers. According to power engineering experts technical and technological impact on these machines is presently underestimated. The support seems to be not rational from the point of view of the costs imposed on the final customers.

The mechanism of support for small distributed energy industry based on biomass and wind power needs to be improved and strengthened, in particular in the area of network development for further connection to new, small generating plants.

## **Promoting energy effectiveness and energy saving**

The current set of regulatory tools for promoting energy effectiveness and competition seems to be insufficient. In fact the procedure of extracting information pertaining to energy effectiveness of the machines applied by producers and importers usually boils down to proceedings connected with applying a financial penalty resulting from the control conducted by the Trade Inspection.

Due to the fact that by 17 May 2008 the Member States are obliged to implement Directive 2006/32/EC on energy end-use efficiency, the range of tasks and tools available to the President of the ERO, as well as other authorities and institutions should be fundamentally modified.

### **1.5.2. Fiscal policy**

At the moment it is crucial to redefine fiscal policy instruments of the state in reference to the energy sector, the high advancement of which has significantly limited the range of its regulation. Under such conditions the fiscal policy turns into a fundamental instrument for the state to influence and stimulate the demand and supply, competitiveness of particular technologies and development possibilities for this sector, as well as its customers such as other selected sectors.

Currently the most important problem is the fact that the system of excise duty collection is not adjusted to the EU solutions. It is therefore necessary to change the

point of collecting the excise duty from the power generated and delivered to the network to the power sold to the final recipient. The present electricity-related tax duties are ones of the highest in the EU. Because of that and also due to possible further electricity price increase, it is essential to verify the reasons for maintaining the excise duty at the level of 20 PLN/MW, i.e. significantly higher than minimum requirements resulting from tax directives and higher than the level applied in other EU Member States.

## **2. Roadmap of energy market and electricity prices liberalisation – plan of actions in transition period**

Energy prices liberalisation should be conducted under the strict regulation of network activities and with the customer's interest taken into account, while the widely understood safety of energy supplies is guaranteed, both short-term (operational) and long-term (in reference to investments). A key safety element in case of household consumers is to secure the supplies and to protect them from suppliers' dishonest practices.

The aim of releasing the companies from the obligation of presenting the electricity tariffs to be approved by the President of the ERO in reference to all final customers is:

- to secure the full freedom of electricity trade by making it possible for the customers to exercise their right to choose the supplier,
- to enable the market electricity evaluation as a traded good both short- and long-term.

Competition on the market is to improve and stimulate the effectiveness of the undertaken actions and to optimise the costs on the side of the supply, and also to improve the effectiveness and rationalisation of energy consumption on the side of the demand (by providing appropriate economical signals). Through their daily choices and decisions the customers will be provided with the possibility of exercising actual influence on the trade offer they are to receive. In order to achieve this the energy purchase from a chosen supplier, next to formal entitlements, needs to be possible in practice in a fast, smooth way without unnecessary complications and free of charge.

The table below shows the matrix of short- and long-term objectives with their various aspects. These objectives are compatible with the general aims of the European energy policy, and include competitiveness, sustainable development and energy safety.

Further actions initiated and carried out in reference to energy and electricity policy should consider a harmonised realisation of all the aims and objectives enumerated, and the evaluation of the process of their achievement should be subject to regular monitoring.

**Table 1. Objectives of electricity market liberalisation**

<b>Aspects</b>	<b>Short-term</b>	<b>Long-term</b>
<b>Technical</b>	maintaining power generation, transmission and distribution infrastructure in the appropriate state	investing in revitalisation and development in the area of power generation and transmission/distribution; new power generation technologies; improving the power generation and transmission effectiveness; development and expansion of cross-border networks and connections
<b>Economic</b>	price for energy supplies covers the costs of its generation and delivery; appropriate organisation of energy trade without restricting access to the market (among others the unjustified participation costs); effective protection system	price for energy supplies covers the costs of investments; developing market mechanisms of electricity trade towards the right evaluation of energy and its delivery; moving away from costs "socialisation"; effective protection system



	against anticompetitive practices and abusing the leading position by power industry companies	against anticompetitive practices and abusing the leading position by power industry companies
<b>Economic and social</b>	protecting vulnerable customers; appointing the supplier automatically (in case of emergency); social programmes; maintaining periodical <i>ex-ante</i> price controls; protecting consumers from energy suppliers and distributors' dishonest practices; promoting energy saving	systemic protection of socially vulnerable customers without limiting competition mechanisms; protecting customers from suppliers' dishonest practices; energy consumption effectiveness; stable energy consumption and economic growth

The transition period with the mandatory tariff system of electricity prices for the households will prevail not longer than until the end of 2008. In this period it is necessary to implement a set of actions particularly in the following areas:

- **strengthening the position of the recipient on the electricity market and protecting the most vulnerable customers;**
- **strengthening the position of the regulatory body and implementing additional regulatory tools;**
- **strengthening competition on the electricity market.**

Actions in particular areas are discussed in greater detail in the following sections of this document.

### ***2.1. Strengthening the position of recipient on electricity market and protecting the most vulnerable customers***

In order to protect the most vulnerable costumers effectively, it is required to create government programmes aiming at establishing assistance programmes and

conducting actions by energy sector companies under the principles of the Corporate Social Responsibility (CSR). The energy sector companies need to accept their corporate social responsibility for the consumers who for various reasons, independent of themselves, might be more susceptible to the phenomenon of fuel poverty and being cut from energy supplies.

It is the UK with its programmes that may serve as a very good example to follow, mainly due to successful functioning of several government programmes launched in this country<sup>5)</sup>.

The situation of the consumers in their relations with their energy supplier may also be improved by the reinforcement of the catalogue of competences possessed by the regulatory body and pertaining to practices and behaviours not in line with or against the recipient's interest.

Implementation of the methods of the Alternative Dispute Resolution (ADR) with the participation of the President of the ERO may serve as a good example. The catalogue of available tools and measures should at least include **mediation practices** initiated and performed by the President of ERO **either upon the customers' request or automatically** if consumer protection is at stake. **Arbitration courts** could be established at the office of the President of ERO, with the possibility of using the ERO Area Branches for conducting the court hearings and proceedings.

### **Action 2.1.1: Defining the group of vulnerable customers and establishing their protection programme**

The full market liberalisation makes it necessary to introduce the system of protection for the poorest customers without affecting competition mechanisms at the

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5) These include as follows: Social Action Strategy (The UK Fuel Poverty Strategy), Warm Front, Warm Zone, Energy Smart, Energy Efficiency Commitment (EEC). Moreover, Energy Saving Trust, a government foundation, has launched its own programmes, whereas numerous energy sector companies run their own programmes within their Corporate Social Responsibility (CSR) and EEC obligations, e.g. Staywarm or Age Concern Partnership – Powergen (for elderly people), Health Through Warmth or Spreading Warmth – Npower (trainings for National Health Service employees who help identify economically vulnerable or weak households and may offer their help and assistance in paying the bills), Home Heat Helpline – the Helpline works in co-operation with distribution companies, it is free of charge and offers information and advice concerning for example financial support available or alternative ways of paying the bills; Switch payment method – changing the ways of paying the bills and making it simpler; Winter fuel payments – consumers at the age of over 60 years in this season have their bills covered up to £200, and those over 80 – up to £300. It is worth pointing out that there also exist partnership initiatives such as Energywatch, undertaken in association with municipal authorities and energy sector companies, together with voluntary work and actions launched and performed by scientific centres.

same time. This problem needs to be addressed in the system and in particular it is crucial to:

- 1 Prepare a statutory definition of the category of the so-called vulnerable customers, as well as of the criteria of their categorisation. Basing on other countries' experience, such customers might be defined as customers who due to their difficult life and material situation are not capable of covering the market costs of energy supplies.
- 2 Work out a statutory system of financial support for vulnerable customers and to suggest the sources of its financing. In many countries its functioning is financed from licence fees and charges in connection with the already existing social care system. Under the Polish conditions such system could operate similarly to the system of residential allowances.
- 3 Create for entrepreneurs and companies special incentives, free of the obligation of presenting the tariffs for approval, aiming at the implementation of voluntary assistance programmes realised in association with local self-government offices responsible for social care.
- 4 Limit the protection range only to the customers categorised as vulnerable; the pre-paid system might be a good solution for those not paying for other reasons.

#### **Action 2.1.2: Specifying rules and procedures for switching supplier**

In order to protect the customers and to make it possible for them to execute their right under Art. 4j of the Energy Act, i.e. the right to purchase electricity from an individually chosen supplier, it is necessary to prepare for the customers an appropriate, not time-consuming and the least troublesome procedure of switching the supplier, which would be included in the Act and which in particular would include as follows:

1. **Period of switching supplier not exceeding 30 days**, starting from the day of reporting the reception of a sale contract from a new supplier. In case of customers already prepared from the technical (their metering devices comply with the requirements as specified by respective legal regulations), as well as formal and legal (they have concluded a separate contract for distributions services) point of view and in whose case remote reading the smart metering is possible, the process of switching the supplier should not exceed 14 days.

2. **Redefining the last resort supplier and describing public responsibilities of the general interests of emergency sales.** In order to guarantee the full protection of electricity consumers from disconnection, it is essential to add appropriate regulations to the Energy Act, which will secure the continuity of supplies for the customers in case of a sudden withdrawal of a given supplier, and which will motivate the customers to look for a new supplier on the energy market. The prices of obligatory and emergency sales are closely connected with the wholesale market prices and would be calculated according to an algorithm set by the President of the ERO and made public by the suppliers *ex ante*. The President of the ERO would be entitled to control the prices after their introduction and to check if their application is performed in compliance with the algorithm. The emergency sale price should be higher than the market price, which will motivate the customers to choose their supplier.
3. **Simplification and standardisation of contracts and documents** connected with switching the supplier.
4. Making DSOs responsible for **publishing market information** essential for a safer and more effective switch of the supplier.
5. **Regulation of the rules of exchanging information about energy consumption and the flow of the data connected with the invoices and payments, so that every customer can get one invoice only.**

**Action 2.1.3: Dissemination of information regarding customers' rights to choose the supplier.**

Actions undertaken in this area aim at making the customers realise their rights and responsibilities on the liberalised energy market, at securing access to the knowledge and practical information about the possibilities of switching the supplier. The effectiveness of this process to a large extent is dependent on the way the educational and informative actions are carried out. Irrespective of this it is important to establish appropriate infrastructure to support the customers in their relations with energy sector companies. Because of that such actions should particularly include the following:

1. Government informative programme with the participation of large scale public media.

2. Printing and distributing brochures with information for the household customers.
3. Continued operation of the ERO Infoline.
4. Constant revising and updating of the “Customer’s Guide” on the ERO website.
5. Continuation of co-operation of the ERO experts with Municipal and Province Consumer Ombudsmen.
6. Initiating co-operation with NGOs.

#### **Action 2.1.4: Programme of exchanging the meters (AMM)**

Equal access to the customers’ meter readings data is crucial for the process to be effective from the point of view of the consumers and procedure of switching the supplier. In order to solve this problem it is necessary to provide all customers, including household customers, with **advanced smart metering for remote data transfer and with the possibility of demand management**. Changing manual meters to the automatic ones will **affect the demand** by rationalising the energy consumption and improving the energy usage effectiveness, while providing the suppliers with the possibility of verifying and diversifying their price offers (greater differentiation of prices).

Preparing a programme of general exchange of the meters, deciding who should be responsible for collecting the readings (an independent operator or the one connected with the DSO), who should own the meters and what responsibilities the reading operator should have, followed by the implementation of new legal regulations and solutions eventually will allow the ongoing monitoring of distribution networks, which in result will lower their exploitation costs, the costs of reading the meters and energy losses due to commercial thefts.

Currently a feasibility study for such action on the national scale is being carried out by the ERO with the 2005 Transition Facilities.

#### **Action 2.1.5: Offer comparability – applying the so-called “tariff calculator”**

**Defining the standard energy purchase and sale contracts and applying the tariff calculator** for comparing the offers would enable the household customers to choose the most optimal offer. This action should be performed with the voluntary participation of suppliers, for whom an extra possibility of presenting their offer to the customers might constitute a great incentive.

The Association of Energy Trading has already prepared an instrument which will allow to compare the offers of all interested entities offering the energy to the final customers. The customers will be able to use the calculator free of charge, whereas the regulatory body will monitor the conditions of its application and access to it. This idea might be developed further if the companies are interested in it.

## ***2.2. Strengthening the position of the regulatory body, effective surveillances of supervision and regulation***

In order to secure an effective and efficient regulation and to guarantee the possibility of undertaking objective and impartial actions for promoting competition in the electricity sector, it is necessary to accordingly regulate the issues of the regulatory body's independence and to verify the division of competences among the bodies responsible for the regulation of the energy sector, as well as competition and energy consumers protection.

### **Action 2.2.1: Legislative changes strengthening the regulatory body's independence and strengthening the market supervision tools.**

It is critical to amend the regulations pertaining to the functions of the President of the ERO, particularly in the following areas:

1. Restoring the fixed term of office principle and prolonging the period of the term of office and/or the possibility of its single renewal; the choice should be made by the legislative and executive authorities of the highest level (e.g. the Prime Minister; Sejm with the approval of Senat, Sejm or President) by open competition, the procedure of which needs to be clear and transparent. Because of that it seems reasonable to accept the solution based on having the candidates interviewed for example by the Polish Sejm Commission of Economy.
2. Assuring the financial independence by specifying the rules of making an independent budget which would enable an effective and efficient realisation of all the appointed regulatory tasks.
3. Granting the right to create an independent and flexible structure of the regulatory body and division of tasks in a way that matches the constantly changing tasks and requirements.

4. Granting the President of the ERO the competence to act in the Alternative Dispute Resolution area, including the regulation of procedures and rules connected with calling arbitration courts and with their funding.

**Action 2.2.2: Legislative changes extending the catalogue of regulatory tools.**

Due to the market and competition development the role of the regulatory body needs to evolve, while existing regulatory tools need to be modified and new ones introduced, particularly the following:

1. Granting the regulatory body the right to pass general administrative acts and executive regulations. Having said that, it is necessary to amend the Administrative Code or the Constitution of the Republic of Poland respectively. Should a debate upon changing the latter one ever take place, it needs to take into consideration the possibility of passing similar acts and statutory regulations by various regulatory bodies (and not only be the energy regulatory body). Until the appropriate solutions have been made in the system, the regulatory body may be allowed to prepare drafts of executive acts which could be discussed and afterwards presented to the respective bodies and institutions for their approval.
2. Granting the regulatory body the right to supervise and control the practical application of the compatibility programme, including the right to order the initiation of or withdrawal from certain actions which according to the regulatory body do not contribute to the realisation of operators' tasks, as well as the possibility of punishing members of the board of the DSO and capital group in cases when the rule of DSO independence as specified in respective legal regulations is not complied with.
3. Granting the President of the ERO the competence within the area of analysis of relevant markets and appointing the entrepreneur with a significant position on the relevant market (with taking into account the guidelines specified by the European Commission and in agreement with the President of the OCCP)<sup>6)</sup>.
4. Diversifying the regulatory tools applied to the entities with a dominant position on the market (advanced *ex-ante* regulatory tools and *ex-post* control tools) as

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6) This solution is the same as the one in the Telecommunications Act of 16 July 2004 (Journal of Laws, Dz. U. of 2004, No. 171, section. 1800).

well as to the others which do not have a leading position on the market or which act under the conditions of effective competition (*ex-post* tools mainly)<sup>7)</sup>.

5. Institutionalisation of co-operation between the President of the ERO and the President of the OCCP in order to improve the effectiveness of the actions aiming at competition and consumer protection or handing over some rights to the President of the ERO connected with launching and performing anti-monopolistic actions and practices in the energy sector companies.
6. Specifying in detail the rules of running the energy regulatory accounting and granting the regulatory body the right to impose on the energy sector companies the responsibility to run the regulatory accounting and of financial audits in the companies which are told to do so. Audits of annual regulatory accounting reports and of cost calculation results should be performed within the period of 6 months from the end of the given turnover year at the cost of the company and by an independent chartered accountant<sup>8)</sup>.

### **2.3. Increasing competition on electricity market**

In order to increase competition and safety on the wholesale and retail energy market, in particular it is necessary to:

- increase the flow of the wholesale market by implementing the rule of market evaluation of the products offered on the given market and by modification of the rules of the functioning of the balancing market,
- secure the conditions for DSO independence,
- increase the investment in network infrastructure and new generation sources, especially the small and dissipation renewable energy sources.

Due to the significant position of the consolidated energy sector groups its is essential to monitor their market power and to analyse the need of applying any measures necessary to their limitation.

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7) See above.

8) See above.



### **Action 2.3.1: Monitoring anti-competition practices and actions limiting the market power**

Higher concentration of the energy and electricity sector has resulted in an increased risk of entrepreneurs taking advantage of their market power. Such practices are against honest competition and cause an increase of energy delivery costs above the optimal market level. In similar cases fast actions need to be undertaken in order to penalise such behaviour. In order to achieve this it is necessary to:

- prepare and implement a methodology of market power evaluation for the wholesale market, including the balancing market and energy exchange market, together with the ways of limiting such market power (in co-operation with the transmission system operator and TGE SA),
- monitor on a regular basis the behaviours of entrepreneurs on the market and react on signals of possible abuse, to initiate anti-monopolistic practices in co-operation with the President of the OCCP.

### **Action 2.3.2: Ensuring independence of distribution system operators**

Distribution system operators play a key role on the retail electricity market and their activities should be performed in such a way that equal treatment for all the entities existing on the given market is guaranteed. Equal conditions and equal treatment for all market entities is a prerequisite for creating the possibility for new entities dealing with energy trade to enter the market, as well as for small distributed generation based on cogeneration and local renewable sources of energy (wind, biomass).

This is why it is crucial to specify precisely and to amend already existing regulations under the Energy Act and other executive regulations (secondary legislation, particularly in the following ways and areas:

- specifying precisely the rules of participation in the retail market by eliminating preferential treatment by distribution system operators for trading companies within the same capital group (e.g. by offering better conditions in distribution contracts [general distribution contracts]),
- introducing the obligation of publishing market information (detailed transparency rules), uniform standards of information exchange among

distribution system operators and market participants, limiting the participation costs of retail market suppliers handled by certain DSOs<sup>9)</sup>,

- strengthening the role of the compliance programmes issued by the DSOs and setting the regulatory body's supervision over the distribution system operators to check if their statutory obligations are respected by them in practice, with the possibility of taking administrative decisions, valid even when they interfere with the distribution operators' activities,
- unification of the distribution grid codes and their approval by the President of the ERO.

### **Action 2.3.3: Changing the wholesale and balancing market rules, introducing the intra-day market.**

The fundamental and long-term aim of the evolution of the wholesale market rules, and the balancing market in particular, is to develop the balancing mechanism leading to the market evaluation of the market products (such as: active energy, power reserves, ancillary services) and market methods for managing the congestions of the limited national network resources, which take into account the locational aspects of the system balancing. The evolution of the balancing market should make market participants to balance their commercial positions easier and should lead to rationalisation of electricity prices and of costs of the energy delivered under the conditions forced upon for the wish of granting safe functioning of the system.

This action will be undertaken by the transmission system operator in the consecutive stages of modifying the rules of the functioning of the balancing market after they have been approved by the President of the ERO. Most of the implemented changes will in fact constitute the implementation of the ordinance of the Minister of Economy referring to the detailed conditions of the functioning of the electric power system, whereas the others will require this regulation to be amended prior to their implementation.

The first stage of the modification will include:

- introducing rules and procedures for intra-day balancing market,

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9) The EDIEL system on the Scandinavian market and the ebIX system in continental Europe are examples of such standard practices.

- introducing the marginal prices serving as the basis for electricity evaluation, settling and calculation on the balancing market,
- taking into account the full model of operational costs of electricity generation (the cost of starting the production and variable costs) when generation is forced upon granting reliable functioning of the electric power system,
- introducing special rules for balancing the wind generation.

Afterwards the twenty-four-hour market of the power reserves should be introduced.

#### **Action 2.3.4: Removing formal and administrative barriers for investments in networks and generation plants – new regulations making investing easier**

Underdeveloped transmission and distribution networks constitute the reason for the lack of or low-quality energy supplies. This may turn into a barrier for economic development, particularly for some regions. It is important to aim at the elimination of unnecessary requirements and too time-consuming processes. Incentives should be created for investors together with possible mechanisms of support for low return rate investments.

This action should probably be realised within a wider public action based on removing and abolishing administrative barriers for entrepreneurs. It seems reasonable to combine the development of electricity networks with the development of road and motorway network.

Influencing market relations and competition development should guarantee the energy evaluation at the level necessary for decision-making processes pertaining to investments in new generating powers. This process should additionally be supported by respective financial tools such as white or blue certificates.

### **3. Summary and conclusions**

The Roadmap hereby presented does not offer a full range of all actions possible and necessary to be implemented in the period under discussion. Even at the stage of designing and preparing solutions within the scope of the system, for the realisation of the Roadmap to be possible, it is crucial to initiate and continue the co-operation of all the bodies and institutions responsible for structuring and carrying out the energy, social, ecological or fiscal policies.

At the implementation stage additionally the co-operation with system operators, sector associations and consumer organisations will be of crucial importance.

The process needs to be monitored on the regular basis and appropriate measures have to be undertaken in case when the realisation of the Roadmap is somehow limited or restricted. The monitoring shall be conducted by the President of the ERO and the President of the OCCP, whereby they both shall act within the scope of the tools available to them respectively.

It is also suggested that the inter-ministerial **Team for the Protection of Competition and Electricity Consumers** shall be established, the aim of which will be to conduct a periodical evaluation and to coordinate the works as specified by the Roadmap. The Team should be set up by the Minister of Economy and its members should include the representatives of the Minister of Economy, Minister of Finance, Minister of the Treasury, Minister of Labour and Social Policy, President of the Office of Competition and Consumer Protection and the President of the Energy Regulatory Office.

The Roadmap after is discussed and approved by the Council of Ministers may be presented to the European Commission in order to show that Poland has fulfilled its requirement to submit the documents justifying the reasons for the transition period in which the regulatory body carries on to approve the energy prices, together with the whole programme of actions necessary for the energy market and energy prices to be fully liberalised for all the customers involved.

#### **4. Schedule of Roadmap implementation <sup>10)</sup>**

A short, one-year transition period for adjusting the legal and institutional solutions aiming at full liberalisation of electricity prices and energy market opening to all its customers requires the appropriate involvement and mobilisation of all the respective bodies, followed by financial support granted from the budget funds. The works need also to be carried out in the right order so as to secure the maximum effectiveness and efficiency until 1 January 2009.

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10) The Roadmap schedule presented to the Minister of Economy is no longer valid, which, however, shall not affect the possibility of achieving its aim and objectives.