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## The Estonian Competition Authority accepts commitment proposed by a vertically integrated electricity network operator to offer to all electricity suppliers the option of issuing joint invoices (*Elektrilevi*)

**Unilateral Practices, Abuse of dominance, Essential facility, Estonia, Remedies (antitrust), Electricity**

Estonian Competition Authority, Elektrilevi, 29 December 2015

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With its 29 December 2015 decision, the Estonian Competition Authority (“ECA”) closed proceedings concerning an alleged abuse of dominance by the leading vertically integrated electricity network operator in Estonia, Elektrilevi OÜ. The proceedings were closed without a decision on whether a violation occurred or not as the ECA accepted the commitments proposed by Elektrilevi to improve the competitive situation. This is one of the few commitment decisions made by the ECA since the introduction of this possibility to the Estonian Competition Act in 2013.

The proceedings were initiated in June 2014 based on a complaint received from five electricity suppliers not vertically integrated with Elektrilevi, who has approximately 87.5% of the electricity network services market in Estonia, claiming that the latter offers the option of issuing joint invoices only to its parent company Eesti Energia, the leading electricity supplier in Estonia. According to the complaint, the possibility to offer customers joint invoices gives a competitive advantage to Eesti Energia on the market for the retail supply of electricity to household customers. This is due to the fact that a joint invoice for network services provided by a network operator and electricity sold by an electricity supplier gives the customers a better overview of the total costs related to electricity consumption and helps to save on bank transfer fees.

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The ECA came to a preliminary conclusion that Elektrilevi had likely abused its dominant position on the network services market by offering the possibility of issuing joint invoices only to its parent company. The ECA classified the refusal to offer this possibility to other electricity suppliers as discriminatory behaviour and refusal to supply. According to the ECA, Elektrilevi is obligated to ensure the possibility to issue a joint invoice for network services and electricity to all electricity sellers on conditions similar to its parent company Eesti Energia.

Although Elektrilevi did not agree with the ECA's preliminary finding that Elektrilevi had likely abused its dominant position, it proposed a commitment to start offering the option of issuing joint invoices to all electricity sellers on equal conditions. After several rounds of changes to the proposed commitments, the ECA finally approved the commitments with its 29 December 2015 decision.

In short, Elektrilevi undertook to develop by the 1 January 2017 an IT solution for electricity suppliers for issuing joint invoices for both electricity and network services. There is a two month testing period for the new IT solution and it is supposed to be fully operational by 1 March 2017. Electricity suppliers will be entitled to choose whether they want to issue joint invoices to only household customers, only commercial customers, both household and commercial customers or none of the two customer groups. If the electricity seller decides to issue joint invoices, customers will be paying the network fees to the seller and the seller will be bearing the credit risk of such customers. Data exchange necessary between sellers of electricity and Elektrilevi for issuing joint invoices will take place through the data exchange platform of Elering AS, the national transmission system operator.

Possibly one of the most interesting parts of the commitment decision is the regulation of securities required from sellers of electricity to ensure that the sellers pay for the network services provided by Elektrilevi. Sellers of electricity are required to provide a security only if the seller's credit rating is lower than Baa3/BBB-. Securities can be either bank guarantees or deposits paid to Elektrilevi's bank account, whereas a bank guarantee may be replaced with a parent company guarantee if the credit rating of the parent company is at least Baa3/BBB-.

It will be interesting to see whether there will be a need to come back to the disclaimer added to the proposed and approved commitments by Elektrilevi. Namely, Elektrilevi will organise a public procurement for developing the necessary IT solution and has pointed out that the actual time of achieving efficient joint invoicing depends on the outcome of the public procurement.

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