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SERIES OF LICENSING AND COMPETITION RELATED ISSUE PAPERS

PAPER NO. 3 WHAT WE HAVE LEARNED IN OUR LICENSING/MONITORING PRACTICES

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LICENSING/COMPETITION COMMITTEE PAPER NO. 3

WHAT WE HAVE LEARNED IN OUR LICENSING/MONITORING PRACTICES

1. STATUTORY POWER OF LICENSING/MONITORING PROCEDURES

The first section of the report discusses the different tasks and responsibilities delegated by the statutory power to the regulatory organizations of the Licensing/Competition Committee. Upon review of the various answers from committee members, it proved necessary to list the different tasks performed by the regulators in a table format in order to enable a clear comparison of similarities and differences in the member countries.

However, it is important to be aware of the following comments and additions to the tables below.

The **Lithuanian National Control Commission for Prices and Energy (NCC)** has a special status among the regulatory bodies since to date it has not been authorized to issue licenses to suppliers. However, as of January 1st, 2001 a new Law on Electricity Energy authorizes the Commission to issue licenses for transmission, distribution and supply. At the same time, a governmental authority shall grant licenses to market operators.

The situation in Kazakhstan is rather complex. The **Agency of the Republic of Kazakhstan for Natural Monopoly Regulation, Competition Protection, and Small Business Support** is another committee member not authorized to issue licenses or monitor activities in the field of electricity. The main task of the Agency is to adopt government policies in the field of price setting and development of competition and business. In the Republic of Kazakhstan, licenses are issued by the Ministry of Energy, Industry and Commerce which is also responsible for determination of energy policy. This Ministry has the authority to issue licenses to already existing companies.

The **Romanian Electricity and Heat Regulatory Authority (ANRE)** described a special case in which Government Emergency Ordinance No. 63 regarding electricity and heat authorizes local (city, town and village) councils through the authority transferred to them by ANRE, to issue licenses and authorizations according to ANRE regulations. The types of authorizations and licenses that may be issued are:

1. initiation authorizations for:
 - a) attainment of new production, transmission, storage, dispatching and distribution capacities for electricity and heat;
 - b) modification of existing energy capacities for production, transmission, dispatch and distribution for electricity and heat;
2. commissioning permissions for:
 - a) electricity and/or heat production capacities;

- b) electricity and/or heat transmission installations;
- c) systems of electricity and/or heat distribution;
- 3. operating authorizations for:
 - a) generation capacities for electricity and/or heat;
 - b) electricity and/or heat transmission installations;
 - c) electricity and/or heat storage systems;
 - d) electricity and/or heat dispatching systems;
 - e) electricity and/or heat distribution installations.

Licenses:

- 1. licenses for *generation* of electricity and/or heat;
- 2. licenses for *transmission* of electricity and/or heat
- 3. licenses for ensuring *system (ancillary) services*
- 4. *dispatching* licenses (system operator and commercial operator)
- 5. electricity and/or heat *distribution* licenses
- 6. licenses for *supply* of electricity and/or heat.

The **Energy Commission of Armenia** listed the following task: “Register supply agreements between licensed entities, develop and introduce standard agreements between consumers and distribution companies regarding supply of electric and heat energy, as well as natural gas.”

Task performed by agency	Issue licenses*	Issue initiation licenses**	Amend, suspend, withdraw licenses	Determine minimum production limits (standards)	Determine minimum financial and performance indicators	Supervise export-import	Monitor compliance with license conditions and law
Albania	◆			◆			
Armenia	◆	◆	◆	◆		◆	◆
Bulgaria	◆	◆	◆		◆		◆
Estonia	◆	◆	◆	◆	◆	◆	◆
Georgia	◆		◆			◆	◆
Hungary	◆	◆	◆				◆
Kazakhstan							
Kyrgyz Rep.	◆	◆	◆		◆ quality of delivered energy		◆
Latvia	◆		◆				◆
Lithuania							
Moldova	◆		◆				
Poland	◆	◆	◆				◆
Romania	◆	◆	◆		◆	◆	◆
Russia	◆		◆				◆
Ukraine	◆		◆	See Note. 1	◆		◆

* licenses for commercial activities: generation, transportation, distribution, supply, dispatching

** construction licenses

NOTES

1. According to the Procedures and Conditions for conducting business involving the electric power generation sector the following parameters are regulated:

a) Businesses generating electrical energy, which own or use power generation equipment with installed capacity no less than 5 MW shall be licensed.

b) All the electric power produced by the licensee's power plant with output capacity more than the minimum and produced at power plants with installed capacity of lower than 20 MW and/or produced at power plants where the total annual output of the electric power delivered to the system was less than 100 million KW, during the previous year shall be sold on the wholesale market.

Task performed by agency	Inspect documents related to licensed operations	Impose punitive sanctions	Approve/consent to significant changes in ownership structure	Supervise the commercial activities of participants	Promote competition	Set wholesale and retail rates	Serve as court of arbitration between licensees and consumers
Albania	◆			◆		◆ (Approve and refine methodology)	◆
Armenia	◆			◆	◆	◆	
Bulgaria	◆		◆	◆	◆	◆	
Estonia	◆	◆		◆	◆	◆	◆
Georgia	◆	◆	◆	◆	◆	◆	◆
Hungary	◆	◆	◆				
Kazakhstan							
Kyrgyz Rep.		◆					
Latvia	◆				◆	◆ (approve and elaborate methodology)	◆
Lithuania				◆ (oversee pricing)		◆ (establish principles, check calculations, negotiate prices)	
Moldova				◆	◆		
Poland		◆				◆ (set wholesale rates)	◆
Romania	◆	◆	◆	◆	◆	◆	◆
Russia	◆	◆		◆	◆	◆	◆
Ukraine	◆	◆	See Note 2.				

Note. 2. Regulations and Conditions regarding conduct of business in the electric power industry require all licensees to apply to the NERC to determine if they are in compliance with these Regulations and Conditions in cases of liquidation, reorganization, such as merger, affiliation, participation in associations, as well as purchase or sale of more than 25 percents of total shares, or assets.

When committee members were asked whether they felt there were shortcomings in the current law in the country that required amendment, the majority who provided an answer stated they were satisfied with current relevant legislation..

“ The law currently in effect gives NERC broad authority sufficient for efficient licensing and monitoring work.” **(NERC Ukraine)**

According to **ANRE Romania**, relevant Romanian legislation is very precise and clear regarding the process of granting, modifying, suspending and withdrawing licenses and authorizations. (*Government Decision No. 567/99*)

ANRE Moldova thinks that a penalty mechanism should be included in their law. A bill requesting amendment has already been submitted to the Parliament, however, it has not been approved yet.

HEO Hungary reported that a new law (an amendment of the existing one) was approved by the government and was sent to the Parliament. This law provides HEO with additional autonomy but price setting remains in the power of the Minister. HEO Hungary is satisfied with its statutory power in the field of licensing/monitoring.

Some suggestions regarding the licensing process were also elicited:

GNERC Georgia would like to see the following addition to their authorized powers:

- To require a company to fire the management if their non-compliance was a result of the company’s managing personnel.
- To suspend a license for a specific period without termination of operations it controls and to transfer all revenue for this period to the state budget.
- In the case of non-compliance with the conditions of the license NERC would like to be empowered to apply penalty sanctions.

2. PREPARATION OF OPERATING LICENSES

Question No. 2 asked committee members about the preparation of operational licenses, specifically, who prepared the draft and the final version of these licenses and whether the regulatory organizations discussed the conditions of the licenses with the applicants and with their customers. In addition, they were asked who was authorized to issue licenses to existing companies and how many operating licenses had been issued to date.

According to the responses received, in the majority of the cases the regulator itself was responsible for the draft and final versions of the licenses. This was true in **Bulgaria, Estonia, Georgia, Hungary, Latvia, Moldova, Poland, Romania, the Kyrgyz Republic and Ukraine** where the draft and the final version of operating licenses were prepared by the regulatory authorities. **ANRE Romania** intends to delegate the power to grant authorizations

to local authorities (in the case of small capacities, less than 10 MW). In **Hungary, Ukraine** and **Romania**, license conditions were discussed with the applicants. HEO personnel consulted the applicants and customers' representatives throughout the preparation process. Foreign and domestic advisors were also consulted. **ANRE Romania** has a process allowing negotiations between the authorizing agency and the applicant with respect the provisions of the license.

In **Moldova**, the regulatory authorities prepared draft licenses with substantial assistance from USAID consultants. These drafts were discussed by all the interested ministries and power companies.

In **Georgia**, both the draft and the final versions of licenses are generated by GNERC. During preparatory work, discussions are held with future license holders and a consulting firm.

EMI Estonia mentioned that the procedures for issuing, extending, and revoking licenses, as well as monitoring licensed operations were established by Government regulation. However, the licenses themselves were drafted by EMI.

In **Ukraine**, procedures and regulations approved by NERC requires licensed operations to also be registered with the Ukraine's Ministry of Justice. NERC periodically reviews the procedures and regulations relating to all types of licensed operations in order to modify those documents on the basis of experience and to render them consistent with the government legislation. A set of Conditions and Regulations Governing of the Business Operations in the Energy Sector of Ukraine (Conditions and Regulation) has been developed by NERC in accordance with the following laws of Ukraine: "On Private Business," "On Private Business in Ukraine," "On Electric Power," "On Natural Monopolies." NERC also received consultation assistance from USAID in generating licensing conditions.

In **Armenia**, the Commission prepared the draft license. The final version was issued after discussion with the applicants and other stakeholders. According to the "Law on Energy" in effect in the Republic of Armenia, only the Commission has the authority to issue licenses to the pre-existing businesses.

In **Bulgaria**, drafts and final versions of licenses were prepared by the Commission in compliance with the requirements of the Energy and Energy Efficiency Act and statutory documents concerning {either licensing or the licensed operations.}. For each particular case, both general and specific provisions were stipulated. The conditions of the license condition were discussed with applicants' representatives and other interested parties during an open session before the licenses were issued.

Kazakhstan again is an exception since the Ministry of Energy, Industry and Commerce drafts licenses that are then approved by the government. These procedures were modified in July 2000.

In **Albania, Hungary, Latvia, Moldova** and **Romania**, granting of licenses to existing companies falls under the authority of the regulatory organizations of these countries.

The number of issued licenses is summarized in the tables below

1. ELECTRICITY

	GENERATION	TRANSMISSION	DISPATCHING	DISTRIBUTION	SUPPLY	WHOLESALE
Albania	1	1	1	4	4	1
Armenia	25	3	1	4 (6)		
Bulgaria	7 + in process of licensing	1		7		
Estonia	7	1		85	85	60
Georgia	74	2	2	105		
Hungary	12	1***			3****	
Kazakhstan						
Kyrgyz	3	1				46
Latvia	32	1		11	12	
Lithuania						
Moldova	6	1	1	5	5 with restricted rates 15 with unrestricted	
Poland	71	206		206(Transmission distribution)	259 (trade)	
Romania *	11	1	1	3	10	n.a.
Russia						
Ukraine	126	47				39 with restricted rates 654 with unrestricted

2. GAS

	WHOLESALE	DISTRIBUTION	TRANSMISSION	SUPPLY	DISPATCHING
Albania					
Armenia		1	1		
Bulgaria		15	1(In addition 1 transport license, 1 gas storage license)		
Estonia	2	4	6	6	
Georgia		29	2	34	
Hungary	1			9	
Kazakhstan					
Kyrgyz	1				
Latvia	1	1	1	1	
Lithuania					
Moldova		16	1	17 with regulated rates 7 with unregulated	
Poland	43	43	43	43	
Romania *	n.a.	n.a.	n.a.	n.a.	n.a.
Russia					
Ukraine			2 by main pipelines 45 by distributive???	43 with regulated rates 459 with unregulated tariffs	

*ANRE-Romania is not responsible for regulating the gas sector

** Ukraine listed three other operations that are licensed:

*** In Hungary the transmission company has dispatching and wholesale function as well

**** Supply and distribution together

Storage of natural gas – 2

Transportation of petroleum by main oil pipelines – 2

Transportation of petroleum products by main oil pipelines - 1

3. HEAT

	GENERATION	SUPPLY
Albania		
Armenia	3 (25)	3
Bulgaria	22	22
Estonia	15	30
Georgia		
Hungary	14	5
Kazakhstan		
Kyrgyz	5	
Latvia	89	41
Lithuania		
Moldova		
Poland	816	811
Romania *	22	22
Russia		
Ukraine		

* on 10/22/2000

The **Kyrgyz SEA** listed another type of license issued that is not included in this table. This is a license for oil processing for which one such license has been issued.

ANRE Moldova noted that 3 distribution and 3 supply licenses were withdrawn due to the privatization of 3 distribution companies. These privatized distribution companies were issued new licenses.

3. INITIATION LICENSES FOR NEW GENERATORS

Member organizations were asked if they issue licenses for initiation (construction, start-up, etc), how many different types of initiation licenses they prepare and what factors are taken into consideration when they receive an application.

ANRE Moldova, NERC Ukraine, GNERC Georgia, the Kyrgyz SEA and ERC Latvia do not issue initiation licenses. In **Kazakhstan**, licenses to construct different energy facilities are issued by a third organization – the Committee on Construction Affairs. In **Georgia**, this function is carried out by the Ministry of Fuel and Energy. In **Moldova**, the government must approve the construction of power stations with capacity exceeding 20 MW, of gas transmission mains and of gas reservoirs with volume exceeding 0.1 million m³.

In **Hungary**, initiation licenses are granted by HEO. HEO has drafted and issued 8 preliminary power plant initiation licenses, 11 power plant initiation licenses and 4 power plant commissioning licenses to date. When it received an application HEO reviews the a feasibility study conducted by the applicant, the environmental impact of the project, a statement on environmental feasibility, a letter of intent to buy power, financial feasibility and the availability of professional personnel.

In **Armenia**, the Commission issues licenses for construction of power and heat generating plants. The following main factors are considered in the process of reviewing an application for a license: 1. The licensed party shall have the status of a legal person and all approvals necessary under Armenian legislation., 2. Creditworthiness and availability of own resources, 3. Rational utilization of natural resources (mainly for hydropower plants), 4. Minimal environmental impact.

In **Bulgaria**, when issuing construction licenses, SERC requires compliance with both the country's energy policy and its development plans. The main analysis is made on the basis of least-cost planning and advanced technologies. There are also specific requirements regarding the technical and economical status of the applicant.

The **Kyrgyz SEA** issues construction licenses to power generation stations, substations and transmission lines.

Romanian law specifies different categories, such as an *initiation authorization* for a new capacity, a *commissioning permit* for start-up and an *operation authorization* for long term operation. ANRE Romania so far has not issued establishment initiation licenses. When issuing a license they examine the structure and the competency of the personnel and management, financial creditworthiness, and whether there is environmental authorization.

In **Poland** a so-called promise of license is issued by ERA. There have been 54 such documents issued. During the licensing procedure the financial standing of the company, its technical and environmental issues are examined by Polish regulators.

4. LICENSING EXPERTS

A natural question regarding licensing involves the expertise of regulatory organization personnel. In order to evaluate the situation in this area, we asked committee members what types of experts are employed in their agency and what type of additional expertise they feel they lack.

The answers to this question were quite similar; virtually all of the regulatory organizations employ lawyers, economists and engineers on their staffs. **ANRE Moldova** employs three engineers and a lawyer; and to improve their monitoring performance they would like to hire financial-auditing experts and well-trained regulators who are expert not only on the energy industry but also in the legal matters and economics.

ANRE Romania added that in some cases they would welcome the expertise of neutral specialists in order to get a more intensive evaluation.

In **Hungary**, outside consultants with intensive knowledge in a particular subject are used from time to time.

ERC Latvia expressed the need for economists on staff. Consulting experts are used in certain cases.

5. GENERAL COMMENTS ON LICENSING PROCEDURE

Committee members were asked what about the strengths and weaknesses of their licensing procedures. This question elicited the following comments.

NERC Ukraine replied. “NERC strictly oversees the wholesale market for electricity because of the problem of failure to pay for supplied power. Careful attention is given to supply of power at a restricted rate provided by Oblenergos, and in particular to financial transactions on the wholesale market. NERC has issued punitive sanctions (fines, license suspension, and provisional license cancellation) to Oblenergos for violating NERC decisions and applicable laws. These sanctions were not very effective because of lack of procedures to implement them. For example, fines were contested in Arbitration Court, and cancellation of license was not possible because of lack of an alternative power supply service in the area.

“A new Law, “On Changes in the State Law On Electric Energy,” has given NERC additional authority, particularly in the area of punitive sanctions for violation of license conditions regarding trade on the wholesale market. A new sanction has been introduced. Now NERC may appoint a temporary manager for a power supply company that does not pay on the wholesale market and violates consumer rights. However, the specific procedures of this

sanction have not been developed yet. Thus, we expect to increase the efficiency of NERC's role in the area of license holder control.

“Thus, NERC would like to receive information from fellow commissioners who have had experience in appointing provisional managers for power supply company. We are sure that such information would be useful to others besides our Commission.”

GNERC Georgia names the following licensing procedures as being efficient: economic analysis, open public discussions of conditions and stipulation of licenses. They think that license revocation is not as efficient as it is impossible in the case of natural monopolies

ANRE Romania added that there are non-discriminatory and transparent (clear) rules for granting licenses to current and new participants in the Romanian electricity and heat market. Each license is issued in a public meeting. On the other hand, the primary legislation specifies the rather low maximum of 250 kW for authorizing energy capacity. The Romanian committee member considers this to be too low.

With regard to Hungarian practice, the **HEO** thinks that stricter conditions should be set for mergers and buy-outs of companies. A possible solution could be a more accurate amendment of the existing law.

SERC Bulgaria emphasized that licensing procedures were developed to provide sufficient public awareness and to assure the applicant of objectivity during the decision making process. However, considering the short period available for analyzing a large number of applications, some of the economic and technical aspects can only be clarified after the licenses are issued.

ANRE Moldova is satisfied with their thorough procedure of the examining submitted documents. However, problems may occur because the statutory basis for the licensing procedures has not been completed yet and because certain statutes of the “Law on Licensing” and the “Law on Electricity and Gas” contradict each other.

EMI Estonia noted that, to comply with the Energy Act, they cannot refuse to issue licenses to new (inexperienced entrepreneurs. This causes the Inspectorate problems in the case of fuel enterprises.

ERC Latvia commented that “issuing licenses and the information gathering analysis process used to be easier.”

Armenia noted that: “The applicant must spend considerable time to obtain all approvals necessary under Armenian law and based on the maximal amount of time needed by all corresponding institutions to issue licenses.”

6. MONITORING

We were interested in whether the statutory power granted the regulator and/or the licensing provisions enabled the monitoring activities of the regulatory organization. We also asked the committee members whether they had a structured, planned monitoring system in place that allows them to follow up on the activities of the license holders. As one can see from the

answers, monitoring is quite well developed in many regulatory bodies and many of them have a well-structured system.

In Hungary the statutory power has definitely enabled **HEO's** monitoring activities. The Office has a structured monitoring system to evaluate compliance with license conditions and with different regulations, financial stability, efficiency and improvements.

ANRE Romania is entitled to carry out monitoring of licensees. Each license contains a special provision that requires the license holder to report its technical and financial performance to ANRE annually. There is also a special unit responsible for the monitoring and audit of licensees. ANRE will establish a database for the electricity and heat sector that will make it possible to compare the cost, quality of service etc. of similar businesses.

The “Law On Electric Energy” delegates the right to monitor to **NERC Ukraine**. The Department of License Control and Local Representation performs this monitoring. This department is responsible for resolving conflicts related to non-compliance with regulations and also coordinates the activities of the regional offices.

Statutory power has a positive influence on **GNERC Georgia's** monitoring activities. A structured system of monitoring is being established now and should be implemented in the near future. The commissioners of Georgia would support the Licensing/Competition Committee's development of recommendations for the system for monitoring licensed companies.

ANRE Moldova described their monitoring activities in detail. Monitoring activities are divided between three different departments. The Licensing Department is responsible for monitoring production and the necessary technical/economic indices. The Rate and Economic Analysis Department is responsible for monitoring the financial and economic activities of the license holders. The Customers' Rights Protection Department checks on whether customers' complaints are answered and also monitors the quality of supply. There is no separate monitoring department within ANRE.

However, ANRE Moldova, stated that they are not performing monitoring in the requisite manner. This is partially due to a lack of sufficient experts and expertise to the fact that the department is heavily occupied with the development and implementation of basic standard and regulatory documents. ANRE trusts that monitoring activities will be improved and strengthened since it is an important component of the regulation process.

ANRE performs other forms of monitoring using information from the Statistics Office and from other government agencies such as the Ministry of Justice, Ministry of Foreign Affairs, Customs Office, Privatization Agency etc.

ANRE suggested the following proposal regarding monitoring: if it is to achieve high quality operational monitoring, a regulatory organization must have a clear understanding of the spectrum of monitoring indices, the list of necessary documents, what should be required of the personnel in charge of monitoring, and of the optimal conditions for on-site checks.

Pursuant to the **Armenian** “Law on Energy,” monitoring of licensed activities is the responsibility of the Commission. The revisions of this Law and the licensing conditions had a

positive effect on monitoring performance. Realizing the importance of monitoring licensed operations, on September 1, 2000 the Commission created a Monitoring Department.

In **Latvia**, monitoring is performing by requiring companies to submit annual report to ERC. In addition to ERC, the Competition Council, the Environmental Protection Inspection, the State Income Board have monitoring functions.

In **Estonia**, EMI has a Market Supervision and Technical Department. A plan-based monitoring system is currently being developed.

In **Bulgaria**, SERC is planning to establish a Monitoring Section that will monitor compliance with license conditions.

In **Lithuania**, in the future the Commission will be authorized to monitor the license holders regarding compliance with the license conditions. The Commission has the right to demand all information necessary to perform its duties.

In the **Kyrgyz Republic**, the Gosenergo Inspection of Electricity and Gas operating under SEA is responsible for monitoring, but they lack a structured monitoring system.

In **Albania**, ERE has statutory power to perform monitoring but as they state, “electricity is a natural monopoly and for this reason we have many economic problems.”

In **Poland ERA** has a Control and Analysis Department responsible for monitoring licensed activities. However, because of the high number of the license holders, it is very difficult to effectively monitor the power sector.

7. RIGHTS AND PRACTICES IN AMENDING EXISTING LICENSES

The next question focused on amending energy licenses. We asked program participants whether their organizations have the statutory power to amend licenses and whether they have actually had such cases. The situation again seems to be rather homogeneous, practically all the regulatory organizations are empowered to amend licenses. However, we received a slightly different answer from **Hungary** where only the license holder can initiate the amendment of the license. In the case of non-compliance with the law, HEO is entitled to withdraw the license. At the same time, HEO would welcome being authorized to amend a license.

Amendment of the Conditions and Regulations can be initiated either by the license holder or by **NERC Ukraine** if the Ukrainian laws in effect have been amended or there is a resolution of the Ukrainian Antimonopoly Commission or of the court. Amendments suggested by the licensee must be well justified and submitted in written format. They will then be discussed jointly by the NERC and the licensee.

ANRE Romania is empowered by law to amend the provisions of licenses in certain situations, such as changes in the regulatory framework, new developments in the structure of the market, etc. This already has occurred (new businesses appearing after CONEL’s last restructuring). All licenses issued contain a provision stating that during the first year their conditions are subject to change, through negotiations with the licensee.

A Law in **Moldova** provides for the amendment of licenses both on the initiative of the regulator and of the license holder, with the consent of both parties. During the first year of the enactment of this law it authorized the regulator to amend the license without the consent of the license holder with the objective of protecting consumers' rights. The regulators have exercised this right.

According to the **Armenian** Law on Energy, the Commission has a right to amend licensing conditions with the consent of the licensee. However, to date no such amendments have been made. Licensing conditions can be also amended at the request of a licensee with the agreement of the Commission.

EMI Estonia is also entitled to amend licenses and they have often done so.

SERC Bulgaria is authorized to amend licenses, but they have not yet done so.

ERC Latvia has the right to amend licensing conditions and have done so.

GNERC Georgia also frequently exercises its right to amend existing licenses.

ERA Poland is entitled to amend the licenses. The number of amendment decisions reached 2281.

8. MARKET POWER ISSUES

We asked if the market share is controlled exclusively by the regulatory organization or conjointly with other agencies such as the Antimonopoly Committee, the Competition Office or any other. We also asked if there is a legal justification provided for Market share. Finally, we asked committee members whether they had ever experienced problems in this area. In answering these questions, all the participants tried to describe the market situation and conditions in their country which provides us a with very complex picture.

In **Hungary**, market share is controlled jointly with the Economic Competition Office (ECO) with regard to share acquisition rules. In compliance with the current Electricity Law, HEO requests a so-called competition policy opinion from ECO if shares of licensed companies exceed 25 or 50%. The new law (to be amended in 2001) will have provisions regarding capital concentration as well (based on the draft). [Capital concentration a) of an outsider in a licensed company, b) of a licensed company in another licensed, c) outsider or licensed indirectly.] A legal explanation justification for market share is provided in the Hungarian Competition Law.

In **Romania**, ANRE is authorized to survey the market and propose measures to the government in order to prevent the abuse of dominant market position. There are certain provisions in some licenses preventing the licensee from performing activities which could contribute to the establishment of a monopoly company. These measures shall be performed in collaboration with other authorities involved in market control, such as the Council of Competition (an autonomous body responsible for regulation s of competition) and the Office of Competition (a government agency authorized to carry out investigations to prevent monopoly practices).

According to the current law, **NERC Ukraine** controls only the wholesale electricity market of electric power supply. The “Energorynok” state enterprise provides the day-to-day performance parameters of the Unified Energy System of Ukraine with respect to: price bids from heat power stations, volume of power produced, volume of power supplied, amount to be paid to the generators, amount to be paid by the suppliers, price of electricity on the wholesale power market. To prevent a price increase for electricity under these limited competition conditions, NERC regulates the rate for electricity from heat power stations by limiting both the price bid and the fixed cost element. NERC has created an efficient control system and a regulated economic environment for the Unified Energy system of Ukraine under conditions of a multi-party agreement negotiated with wholesale market operators. This agreement coordinates the legal, economic and administrative aspects of activities on the wholesale market.

In **Moldova**, the natural gas market was deregulated in 1999, meaning that every consumer has the right to choose his supplier and every supplier has free access to any transport or distribution lines. On the other hand, in the electricity market every producer or supplier can sell only to the distribution company. This is connected with the fact that in Moldova the local energy generation sources do not own more than 30% of electric power. This market is expected to be deregulated only after 2001. In Moldova the term market control is not employed, rather the term market regulation is used. There are no other organizations authorized to perform market control.

Market control is the authorized responsibility of **GNERC Georgia**. The function of the commission is to approve market regulations and to supervise the activities of the energy market within the framework of its delegated authority.

In **Bulgaria**, in addition SERC there are two other organizations responsible for market power issues. The State Agency of Energy and Energy Resources is responsible for general policy in the field of energy and energy resources. SERC issues licenses for energy-related activities and the State Agency of Energy Efficiency is responsible for energy efficiency related issues.

In **Estonia**, EMI works very closely with the Estonian Competition Board in market share issues.

Armenia answered, “There is no competitive market at the present time. The single buyer model is in place.”

ERC Latvia described the situation in their country as follows: “an electricity market does not yet exist yet.” The **Kyrgyz SEA** gave exactly the same answer.

In **Lithuania** if one producer owns more than 25% of the market, the Commission must establish rules regarding price regulation of that producer.

The answer received from **Albania** is that **ERE** does not control the market share at all.

In **Poland** there is an Antimonopoly Office in place responsible for regulating market power issues. ERA is responsible only for licensing and tariff related issues.

9. ADDITIONAL ISSUES RELATED TO LICENSING/MONITORING

Finally, we asked program participants to express their general thoughts and ideas regarding licensing and monitoring.

Commenting on this topic, **NERC Ukraine** described a very special situation. According to them, the operational problems of the Unified Energy Market are rooted in the fact that many of its fundamental principles have never been implemented. There is an inefficient market because of non-payment by consumers and non-performance of financial contractual obligations on electricity purchases by energy suppliers. This has resulted in the power generators being unable to purchase fuel and this in turn resulted in insufficient competition and rate increase instead of the reduction expected. These problems are the result of the state administrative and executive bodies' involvement in the financial transactions of market operators; the lack of a self-regulatory mechanism (i.e. arbitration court and audit); the absence of penalties and other sanctions for non-compliance with contractual agreements; and, ignorance of reasonable proposals for changes in the market regulations.

The inequitable energy market in Ukraine demands state involvement, which could help eliminate the above problems. However, it must be stated that NERC's role and its level of authority are very unpopular and there have been many attempts to reduce its power. NERC is witnessing attempts to eliminate the economic mechanism (law of supply and demand) from the energy market's operation. The Ministry of Finance, particularly, wants to terminate NERC's funding the only items included in the budget are salaries. Thus, it is clear that there has been a direct attempt to eliminate NERC as a regulator and to transfer its functions to administrative methods.

Thus, at this point the main problem is trying to maintain the independent status of NERC. A proposed solution could be consideration of international experience in the field of regulation of natural monopolies in terms of maintaining distance from private interests between the regulator on one side, and the consumer and the state on the other, in order to avoid political pressure on NERC's decisions. Another solution could be to provide NERC with an autonomous organizational mechanism with a sufficient and stable source of funding from license fees paid by license holders – and thus ensuring efficient licensing control, rate policy, and protection of the rights of license holders and consumers.

ANRE Romania commented as follows:

“In our opinion the process of granting licenses and authorizations provides the regulator with an intensive knowledge of the regulated economic agents of the sector, in both its technical and economical aspects.

”License conditions impose very clear provisions on the licensee. The most important of these are: quality of service (performance standards), establishment and compliance with financial guarantees, separation of financial- accounting records, provision of a normal competitive environment and equal treatment for other market participants and consumers, elimination of cross subsidies, informing the appropriate authority about share transactions or sale of assets. Consistent supervision and control are critical.

ERC Latvia put the question, “How can the regulator influence licensing conditions if the energy supply companies simply ignore them?”

ERE Albania would like to obtain information pertaining to their unique situation where the regulatory body is authorized by statutory power but at the same time is unable to perform its regulatory duties because the power sector is organized as a vertically integrated, 100% state-owned natural monopoly.

SERC Bulgaria wanted to emphasize that their agency is only 1 year old and currently their main focus is on licensing the energy companies that were active on the market prior to the Energy and Energy Efficiency Act. So far, 130 applications have been submitted to SERC and only about half of them have been answered.

ANRE Moldova asked the following questions regarding this topic:

- Is it necessary to designate the geographic area for a licensee and in what form (including expansion of the net to neighboring territories)?
- Can other licensees compete in the geographic area assigned to a specific license holder with similar operations since that may provide better service to the customers and higher customer satisfaction (as the designated licensee is a monopolist on the designated territory)?
- Is the license holder on a designated territory compelled to develop its net and under what conditions?

ENERGY REGULATORY AUTHORITIES IN CEE/EURASIA

Abbreviation	Country	Energy Regulatory Agency
	Kazakhstan	Agency of the Republic of Kazakhstan for Natural Monopoly Regulation, Competition Protection and Small Business Support
ANRE	Moldova	National Energy Regulatory Agency
ANRE	Romania	National Electricity and Heat Regulatory Authority
ECRA	Armenia	Energy Commission of the Republic of Armenia
EMI	Estonia	Energy Market Inspectorate
ERA	Latvia	Energy Regulation Council
ERA	Poland	Energy Regulatory Authority
ERE	Albania	Electricity Regulatory Authority
FEC	Russian Federation	Federal Energy Commission of the Russian Federation
GNERC	Georgia	Georgian National Energy Regulatory Commission
HEO	Hungary	Hungarian Energy Office
NCC	Lithuania	National Control Commission for Prices and Energy
NERC	Ukraine	National Electricity Regulatory Commission
SEA	Kyrgyz Republic	State Energy Agency under the Government of the Kyrgyz Republic
SERC	Bulgaria	State Energy Regulatory Commission

List of documents necessary for obtaining a license in the Kyrgyz Republic

To obtain a license an applicant shall submit the following documents to SEA:

- An application in the accepted format;
- A copy of a Certificate of State Registration;
- Copies of the Charter;
- Documents confirming payment of the licensing fee;
- A summary describing the abilities and the level of qualification of the applicant;
- Complete information about financial and technical capabilities, information about the presence of qualified experts who will provide quality and safe services as a part of the licensed activities, as well as financial status report, including a list of funding sources, and others;
- A list of standards and technical documentation based on which the licensed activities will be conducted;
- A precise description of the area where the licensed activities will be conducted;
- An impact statement issued by the State Sanitary Inspection and Environmental Control Agency (if necessary);
- A note from the Social Fund confirming the act of registration and allocation of resources to the Fund.

When necessary, SEA may request additional information:

- Confirmation of registration from the Tax Agency;
- Calculation of cost of a KW/h of power sold or transmitted (if obtaining a license to sell or transmit power).