

**THE NATIONAL COMMISSION FOR ENERGY CONTROL AND PRICES
THE GAS AND ELECTRICITY DIVISION OF THE GAS AND ELECTRICITY
DEPARTMENT**

To submit to the Commission's
meeting
Commissioner
Viktorija Sankauskaitė
Žilvinas Klimka
Chair
Inga Žilienė

**CERTIFICATION DOCUMENT
ON THE DESIGNATION OF THE TRANSMISSION SYSTEM OPERATOR AND ISSUE
OF THE NATURAL GAS TRANSMISSION LICENCE**

09/04/2015 No O5-94
Vilnius

Introduction

The National Commission for Energy Control and Prices (hereinafter – the “Commission”), having assessed the documents, data and the information submitted by the Transmission System Operator regarding the implementation of the requirements embedded in Articles 40–42 of the Law on Natural Gas of the Republic of Lithuania (hereinafter – the “Law”), by Resolution No O3-5 of 15 January 2015 *Re: Unbundling the Natural Gas Transmission Activity and the Preliminary Decision on the Designation of the Transmission System Operator* (hereinafter – the “Resolution”) has resolved as follows:

- To state that the unbundling of the *AB Amber Grid* transmission activity complies with the provisions of Articles 40–42 of the Law, and *AB Amber Grid* can be designated to operate as the Transmission System Operator;

- To inform the European Commission about the adopted preliminary decision and to submit the documents justifying this decision;

- To adopt the final decision on the designation of the Transmission System Operator according to the procedure set forth in Paragraphs 2 and 3 of Article 28 of the Law;

- In the case of the altered circumstances due to which the implementation of the requirements on unbundling the transmission activities set forth in Articles 40–42 of the Law cannot be ensured, to obligate *AB Amber Grid* to inform the Commission hereof no later than within 5 business days from the date when these circumstances become known to *AB Amber Grid*.

On 26 January 2015, the Commission correspondingly informed the European Commission about the adopted preliminary decision and submitted all available documents.

On 26 March 2015, the Commission received the European Commission's Opinion C (2015) 2135 final of 23 March 2015 regarding the unbundling of *AB Amber Grid*, whereby the European Commission provided the following essential comments proposed to be considered by the Commission when making the final decision:

- The concept of the proprietary rights of *AB Klaipėdos nafta* in *UAB Litgas*, accepted by the Government of the Republic of Lithuania, is not identical to the method proposed during the certification of *LITGRID AB*, i.e. the separation between the two state institutions will be performed only partially, but not completely.

- Although the European Commission agrees that the adopted structure of the unbundling to a large extent is efficient in order to avoid the risks that the control and development of the Transmission System Operator will not be carried out independently, the European Commission is not satisfied that the in-depth assessment of other indirect rights by the Ministry of Energy in *UAB Litgas* has not been performed in accordance with Paragraph 2 of Article 9 of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ 2009, L 211, p. 94) (hereinafter – the “Directive”).

- The European Commission is concerned that the unacceptable impact, e.g. in terms of the capacity allocation, maintenance or the investments, can be made on the undertaking *AB Amber Grid* by the financial incentives by the Ministry of Energy, which is the shareholder of the gas supplier *UAB Litgas*.

Due to the aforementioned reasons, the European Commission advises the Commission to certify *AB Amber Grid* only on condition that all shares of *UAB Litgas*, which are held by *AB Klaipėdos nafta*, will be transferred. If in performing such process it will be necessary to transfer the employees as well, a reasonable transitional period, e.g. of twelve months, can be set.

The Commission, having evaluated the Opinion provided by the European Commission, by Official Letter Ref. No R2-(T)-1025 of 27 March 2015 requested the Ministry of Energy and the Ministry of Finance, having control over the respective natural gas transmission and the supply activities, to provide the information about the possibilities to implement the condition of *AB Amber Grid* certification, stipulated by the mentioned Opinion of the European Commission, i.e. during what time period not exceeding the maximum twelve-month transitional period proposed by the European Commission the shares of *UAB Litgas*, held by *AB Klaipėdos nafta*, could be transferred to the economic entity, which is neither directly nor indirectly controlled by the Ministry of Energy.

The Ministry of Energy provided its answer to the mentioned request for information by Official Letter Ref. No 7.5-09)3-993 of 2 April 2015, and the Ministry of Finance – by Official Letter Ref. No (27.18-02)-5K-1507298-6K-1502806 of 2 April 2015 (both enclosed). These answers are provided herein below, in evaluating the comments of the European Commission (see sub-section 2.2.1).

The Commission, with regard to the deadline for adopting the final decision on the designation of the Transmission System Operator, embedded in Paragraph 2 of Article 3 of Regulation (EC) No 715/2009 of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (OJ 2009 L 211, p. 36) and in Paragraph 2 of Article 28 of the Law, evaluated the Opinion of the European Commission, as well as the answers received from the Ministry of Energy and the Ministry of Finance.

Moreover, due to the changes because of the newly appointed managers or in the Boards of the undertakings, which are jointly analyzed in performing the procedure of unbundling the Transmission System Operator, as well as the financial capacity indicators, the assessment has been updated and supplemented as compared with the information provided in Certificate No O5-2 of 14 January 2015 *Re: Unbundling the Natural Gas Transmission Activity and the Preliminary Decision Regarding the Designation of the Transmission System Operator* (hereinafter – the “Certificate”).

1. General provisions

1.1. Legal background

Article 9 of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ 2009, L 211, p. 94) provides that the member state, which has chosen the model of the full ownership unbundling, since 3 March 2012 has to ensure the separation of the transmission

activity from the supply and production activities and the commercial interests of these activities, including the unbundling of the ownership of the transmission activity.

The provisions of the Directive were transposed by the revision of the Law as well as by the Law Implementing the Law Amending the Law on Natural Gas (hereinafter – the Law on the Implementation).

Article 40 of the Law provides that the natural gas transmission activity performed in the Republic of Lithuania has to be separated from the activities of the natural gas production and supply, by unbundling the ownership of the transmission system and /or the transmission system operator from the natural gas undertakings performing the natural gas production and /or supply activities, i.e. the model of unbundling the ownership has been chosen. For unbundling the activities, the requirements involving the control over the activities and the management rights set forth in Articles 41 and 42 of the Law have been applied.

Moreover, it should be also been taken into account that, with regard to the cross-sectoral nature of the natural gas and electricity activities and the provisions of Paragraph 6, Article 9 of the Directive and, respectively, of Paragraph 6, Article 9 of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity (hereinafter – the Electricity Directive) providing that, in implementing the requirements on unbundling the ownership, two separate public entities exercising control over the transmission system operator or over the transmission system and an undertaking performing either of the production or supply functions, are not considered to be the same entity or entities. Pursuant to Paragraph 3, Article 41 of the Law, the undertakings performing either of the production or supply activities include the undertakings performing either of the natural gas production or supply or the electricity production and supply functions. Correspondingly, the transmission system operators and the specific transmission systems indicated in Items 1 and 2 of Paragraph 1, Article 41 of the Law include the natural gas as well as the electricity transmission system operators and the relevant transmission systems. In addition to that, it has been embedded in Paragraph 3, Article 41 of the Law and Paragraph 7, Article 53 of the Law on Electricity of the Republic of Lithuania that the undertaking performing the production, transmission and supply activity shall also be the undertaking performing the respective activity in the natural gas sector, as provided by the Law, and *vice versa*.

The Law on the Implementation sets forth the procedure to the undertakings not complying with the requirements of Chapter 8 *Unbundling the Activities and Accounts* of the Law (hereinafter – the natural gas undertakings not complying with the requirements of the Law) for reaching compliance with the requirements of Chapter 8 *Unbundling the Activities and Accounts* of the Law. Paragraph 2, Article 2 of the Law on the Implementation provides that the natural gas undertakings not complying with the requirements of the Law have to choose the procedure for reaching compliance with the requirements of Chapter 8 *Unbundling the Activities and Accounts* of the Law and to inform the Commission thereof till the deadline set in the Plan of Unbundling the Activities approved by the Resolution of the Government. The natural gas undertakings not complying with the requirements of the Law had the right to select one of the following procedures for reaching compliance:

- 1) The procedures for reorganizing control set forth in Article 3 of the Law on the Implementation ensuring compliance with the requirements of Chapter 8 *Unbundling the Activities and Accounts* of the Law;

- 2) The procedures for reorganizing control set forth in Article 4 of the Law on the Implementation ensuring compliance with the requirements of Chapter 8 *Unbundling the Activities and Accounts* of the Law.

The Government, abiding by the provisions of the Law on the Implementation, by Resolution No 1239 of 28 October 2011 approved the Plan for Implementing the Unbundling of the Activities of and Control over the Natural Gas Undertakings Not Complying with the Requirements of the Law on Natural Gas of the Republic of Lithuania (hereinafter – the Plan), and by Resolution No 1417 of 7 December 2011 – the Procedure Regulations on Unbundling the Activities of and

Control over the Natural Gas Undertakings Not Complying with the Requirements of the Law on Natural Gas of the Republic of Lithuania (hereinafter – the Procedure Regulations on Unbundling). Pursuant to Item 5 of the Plan, the natural gas undertaking not complying with the requirements of the Law, which is performing the natural gas transmission activity, had to make the decision on the chosen method of unbundling the activities and control and to submit to the Commission the comprehensive description of the chosen method and the Plan of Actions to be taken no later than by 31 March 2012 (with the extended deadline till 31 May 2012). The deadline for unbundling the activities and control – by 31 October 2014 – was set forth in Item 6.2 of the Plan (according to the procedures for rearranging control) and in Item 8.2 of the Plan (according to the reorganization procedures). Besides, the Plan set forth the deadlines for completing the interim actions. The Procedure Regulations on Unbundling defined the main actions to be taken by the natural gas undertakings to reach compliance with Chapter 8 of the Law as well as with the supervision of unbundling the activities and control.

The detailed list of the documents to be submitted by the transmission system operator seeking to perform the natural gas transmission activity is provided in the Licensing Rules of the Natural Gas Transmission, Distribution, Storage, Liquefaction, Supply and the Market Operator (hereinafter – the Rules) approved by Resolution No 1246 of 27 October 2011 of the Government of the Republic of Lithuania *Re: The Approval of the Licensing Rules of the Natural Gas Transmission, Distribution, Storage, Liquefaction, Supply and the Market Operator*.

Pursuant to Article 3 of Regulation (EC) No 715/2009 of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (OJ 2009 L 211, p. 36) (hereinafter – the Regulation), Paragraphs 2 and 3 of Article 28 of the Law on Natural Gas of the Republic of Lithuania:

1. The Commission, having adopted the preliminary decision on the designation of the transmission system operator and the issuance of the license no later than within 4 months from the date of receipt of all documents, without delay and no later than within 30 days after adopting the preliminary decision, shall notify the European Commission about the decision and shall provide it with all relevant information;

2. If the European Commission within 2 months from the date of receipt of the notification (within 4 months, if the European Commission addresses the Agency for the Cooperation of Energy Regulators with the request to provide their opinion), does not provide its opinion, it is considered that the European Commission does not contradict to the decision of the Commission;

3. Within two months after receiving the opinion of the European Commission, the Commission will make the final decision on the certification of the transmission system operator by giving the utmost consideration to the European Commission's opinion;

4. If the Commission fails to make the decision within two months after the receipt of the European Commission's opinion or if no opinion was provided by the European Commission, it shall be considered that the license has been issued and the natural gas undertaking has been designated to act as the transmission system operator.

Pursuant to Item 13, Paragraph 9 of Article 8 of the Law on Energy of the Republic of Lithuania, Item 1 of Article 6 and Article 28 of the Law, the Commission, as the national regulatory authority, is committed to ensure the efficient unbundling of the activities in the electricity and the natural gas sectors by ensuring the independence of the energy transmission and distribution activity from the commercial interests in the energy activity and with an aim to avoid cross-subsidies and to appropriately designate the undertaking complying with the requirements of the Law on unbundling the transmission activity to act as the transmission system operator.

1.2. Factual circumstances

It should be noted that the transmission system operator supplies the services related to the natural gas transmission and transit by the gas mains, the balancing of the natural gas system and performs the functions and assignments set forth in Articles 26 and 30 of the Law. It should be

brought to attention that Paragraph 2, Article 5 of the Law on the Liquefied Natural Gas Terminal of the Republic of Lithuania provides that the additional component to the natural gas transmission price, in line with the procedure set by the Commission, is collected, administrated and disbursed to the operator of the LNG terminal or the company by the natural gas transmission operator.

Firstly, it should be noted that till 1 August 2013 the natural gas transmission, side by side with its distribution and supply, was performed by the vertically integrated undertaking *AB Lietuvos dujos*, and after 1 August 2013 – by the newly established undertaking *AB Amber Grid*, which exclusively performs only the natural gas transmission activity. Respectively, these two undertakings will be referred to in presenting the actual proceedings of the unbundling process herein below. The procedure of the reorganization/unbundling of the vertically integrated undertaking *AB Lietuvos dujos* was the complex one and consisted of many stages, therefore, to accomplish the unbundling of the activities and control by 31 October 2014, the interim stages were implemented on the basis whereof the unbundling was *de facto* completed on 31 October 2014.

1. On 15 March 2012, the Commission received *AB Lietuvos dujos* Official Letter No 7-11-506, whereby it was requested to extend till 31 May 2012 the deadlines indicated in Items 5 and 9 of the Plan for making the decision by *AB Lietuvos dujos* on the method of unbundling the transmission activity and its control, and the method of the legal, functional and organizational unbundling of the distribution activity and for submitting to the Commission the comprehensive description of the chosen methods of unbundling the activities and control over them together with the Plan of Actions to be taken. The possibility to extend the deadline was set forth in Item 5 of the Plan. The Commission, having examined the evidences submitted by *AB Lietuvos dujos* and the explanations provided by the Ministry of Energy on the necessity to extend the deadlines for submitting the Plan of Actions, by the Commission's Resolution No O3-70 of 20 March 2012 *Re: The Deadlines for Submitting the Description of the Methods of Unbundling the Activities of AB Lietuvos dujos and Control over Them and the Plan of Actions to be Taken* (Annex 4) extended the deadline for making the decision by *AB Lietuvos dujos* on the choice of the method of unbundling the transmission activity and its control and for submitting to the Commission the comprehensive description of the chosen methods of unbundling the activities and control over them together with the Action Plan for the legal, functional and organizational unbundling of the distribution activity till 31 May 2012 (the detailed description of the actual circumstances is provided in Certificate No O5-64 of 20 March 2012 of the Gas Division of the Commission's Electricity and Gas Department *Re: The Deadlines for Submitting to the Commission the Description of the Method of Unbundling AB Lietuvos dujos Activities and Control over them with the Plan of Actions to be Taken* (Annex 5).

2. Abiding by the Procedure Regulations on Unbundling, *AB Lietuvos dujos* by Official Letter No 7-11-1069 of 31 May 2012 submitted to the Commission the description of the chosen method of unbundling the activity of the natural gas transmission activity and control over it, and the method of unbundling the distribution activity of the undertaking with the relevant action plans (hereinafter – the Plan of Unbundling), in which it was stipulated that the legal, functional and organizational unbundling of the natural gas transmission activity of the undertaking has to be completed by 31 July 2013, and by 31 October 2013 – the unbundling of the control over the transmission activity and the legal, functional and organizational unbundling of the distribution activity. The Board of *AB Lietuvos dujos* approved the Plan of *AB Lietuvos dujos* Unbundling, whereby the reorganization procedure set forth in Article 4 of the Law on the Implementation and Item 8 of the Plan was selected, i.e. it was stipulated that the unbundling of the transmission activity and control will be performed by establishing a new undertaking of the transmission system operator, and to perform the distribution activity it was planned to establish a subsidiary of *AB Lietuvos dujos* by assigning to the latter the natural gas distribution activity (hereinafter – the Distribution Plan). After performing the planned actions, *AB Lietuvos dujos* had to continue the activity of the natural gas supply and to act as the patronizing company of the distribution network operator. The Commission by Resolution No O3-145 of 15 June 2012 *Re: The Action Plans of Unbundling the Transmission and Distribution Activities of AB Lietuvos dujos and Control over*

Them (hereinafter – the Resolution No O3-145) (Annex 6) stated that *AB Lietuvos dujos* had submitted the Plan of Unbundling the Undertaking's Activities (hereinafter – the Transmission Plan) and the Action Plan for the Reorganization of the Undertaking's Activities (hereinafter – the Distribution Plan) approved by Minutes No 5 of 28 May 2012 of the Meeting of the Board of *AB Lietuvos dujos*, and directed to unbundle the natural gas transmission and distribution activities of *AB Lietuvos dujos* in line with the methods and deadlines set forth in the Transmission Plan so that no later than by 31 July 2013 *AB Lietuvos dujos* would have legally, functionally and organizationally separated its natural gas activities, and the unbundling of the activities and control over them would be completed no later than by 31 October 2014, as well as the methods and deadlines set forth in the Distribution Plan, so that the legal, functional and organizational unbundling of the distribution activity would be completed no later than by 31 October 2014 (the detailed description is provided in Certificate No O5-138 of 12 June 2012 of the Law Division of the Commission *Re: The Action Plans for Unbundling the Transmission and Distribution Activities of AB Lietuvos dujos* (Annex 7).

3. By implementing Resolution No O3-145, *AB Lietuvos dujos* by Official Letter No 7-11-1503 of 7 August 2012 submitted to the Commission the investment project *Investments in Unbundling the Transmission System Operator (TSO) and Establishing a New Undertaking* (hereinafter – the Investment Project) for its revision and approval. To accomplish the appropriate unbundling of the transmission activity from other commercial activities, *AB Lietuvos dujos* had to separate the management of the gas mains (the transmission system) from the supply activity by establishing a separate undertaking. To ensure the security and reliability of operation of the transmission system and its operational control, the information system of the operational control SCADA and the related infrastructure were used, including the software and hardware installation. The systems of the operational control and other information systems had to be reallocated into another environment by establishing a new data center and a new dispatch control center. At that time, to ensure its operations, the undertaking was using the global data transmission and telephone communication network, the data center, other structures of telecommunications and information technologies, which were jointly used by the transmission, distribution and supply units, with the data center of the undertaking located at Aguonų Str. 24 and used to satisfy the needs of all operations of the undertaking. Pursuant to the requirements of the legal acts, the transmission system operator and the undertaking, which will be involved in the distribution and supply activities, could not jointly own the IT and telecommunication facilities, therefore, to ensure the operations of the separated TSO undertaking, the new structural components of the information technologies and telecommunications had to be developed.

The Commission by Resolution No O3-293 of 9 October 2012 *Re: The Investment Project of AB Lietuvos dujos in Unbundling the Transmission System Operator (TSO) and Establishing a New Undertaking* (Annex 8) made a decision to approve the investment project of *AB Lietuvos dujos* the value thereof would not exceed LTL 8475 thousand (the detailed description is provided in Certificate No O5-250 of 28 September 2012 of the Gas Division of the Electricity and Gas Department of the Commission *Re: The Approval of the Investment Project of AB Lietuvos dujos in Unbundling the Transmission System Operator (TSO) and Establishing a New Undertaking* (Annex 9).

4. *AB Lietuvos dujos*, abiding by the Plan of Unbundling, by Official Letter No 7-11-195 of 30 January 2013 submitted to the Commission the Conditions of *AB Lietuvos dujos* Unbundling. The Conditions of Unbundling contained the information about the undertakings involved in the unbundling, the method of the unbundling, the legal conditions of the unbundling, the description of the assets, rights and liabilities of the undertaking being unbundled and their allocation to the undertakings which would be operating after the unbundling, as well as the information about the existing assets, the balance sheets of the undertaking and other information deemed necessary to assess the compliance of the Conditions of Unbundling with the requirements of the legal acts. After evaluating the submitted data and other additional information collected during the assessment, the Commission by Resolution No O3-64 of 28 February 2013 *Re: Conditions of*

AB Lietuvos dujos Unbundling and the Composition of the Assets Transferred to the Transmission System Operator (Annex 10) stated that *AB Lietuvos dujos* had submitted the Conditions of Unbundling by keeping to the deadlines set forth in the Plan of Unbundling approved by Minutes No 5 of *AB Lietuvos dujos* Board of 28 May 2012; the Conditions of *AB Lietuvos dujos* Unbundling approved by Minutes No 1 of *AB Lietuvos dujos* Board of 30 January 2013 established the conditions to appropriately implement the unbundling of the natural gas transmission activity in accordance with Item 8.1 of the Plan so that no later than by 31 July 2013 *AB Lietuvos dujos* would have legally, functionally and organizationally unbundled the natural gas transmission activity; the composition of the assets to be transferred to the undertaking which would perform the natural gas transmission activity corresponds to the principles of the Procedure Regulations on Accounting *AB Lietuvos dujos* Operations approved by the Commission's Resolution No O3-363 of 28 October 2011 *Re: The Procedure Regulations on Accounting AB Lietuvos dujos Operations* and to the investments approved by the Commission's Resolution No O3-293 of 9 October 2012 *Re: The Investment Project of AB Lietuvos dujos in Unbundling the Transmission System Operator (TSO) and Establishing a New Undertaking* (the detailed analysis is provided in Certificate No O5-72 of 9 October 2012 of the Gas Division of the Electricity and Gas Department of the Commission *Re: The Conditions of AB Lietuvos dujos Unbundling and the Composition of the Assets to be Transferred to the Transmission System Operator* (Annex 11).

5. To enforce the requirements of the Law and of the related legal acts implementing the provisions of the Third EU Energy Package on unbundling the ownership of the natural gas transmission activity and control from the supply and production activities, the Commission by Resolution No O3-292 of 18 July 2013 *Re: Issuing the Temporary Natural Gas Transmission License to AB Amber Grid* (Annex 12) issued to *AB Amber Grid* the temporary natural gas transmission license, which is valid from 1 August 2013 till the date of coming into validity of the Commission's decision on the certification of the natural gas transmission operator. Respectively, by the Commission's Resolution No O3-311 of 18 July 2013 *Re: The Termination of the Validity of the Natural Gas Transmission License Held by AB Lietuvos dujos* (Annex 13), the natural gas transmission license of *AB Lietuvos dujos* was withdrawn. Starting from 1 August 2013, a new undertaking *AB Amber Grid* has started performing the natural gas transmission activity, i.e. *AB Lietuvos dujos* implemented the requirement of the Plan of Unbundling to legally, functionally and organizationally unbundle its natural gas activities by 31 July 2013 (the detailed information is provided in Certificate No O5-253 of 11 July 2012 of the Gas Division of the Electricity and Gas Department of the Commission *Re: Issuing the Temporary Natural Gas Transmission License to AB Amber Grid* (Annex 14).

6. On 27 March 2014, *AB Amber Grid* Board approved the Preliminary Plan for Implementing the Unbundling of the Control over *AB Amber Grid* and submitted it to the Commission. *AB Amber Grid*, abiding by Paragraph 2, Article 3 of the Law on the Implementation providing that the undertakings not complying with the requirements of the Law have to get the Commission's approval prior to concluding the transaction to be concluded in order to reach compliance with the unbundling requirements laid down in Chapter 8 *Unbundling the Activities and Accounts* of the Law, on the basis thereof the control set forth in Article 41 of the Law is altered or can be altered (occur, disappear, increase or to be reduced) by Official Letter No 7-110-806 of 8 May 2014 informed the Commission that *UAB EPSO-G*, whose 100 percent of the shares by the right of trust are managed by the Ministry of Energy of the Republic of Lithuania, intends to acquire 38.91 percent of the undertaking's shares from *E.ON Ruhrgas International GmbH*. By implementing the requirements of the Law on Securities, *UAB EPSO-G* by a subsequent transaction intends to acquire the remaining shares of the undertaking, i.e. to acquire 100 percent of *AB Amber Grid* shares. *AB Amber Grid* requested the Commission to give its consent to the mentioned transactions.

To evaluate the transaction, the Commission examined the documents submitted by *AB Amber Grid* and *UAB EPSO-G*, indicated in Items 21.1.1-21.1.12 of the Rules, which would

confirm that no impermissible control, as defined in Paragraph 1, Article 41 of the Law, exists between Amber Grid, performing the transmission activity, and *UAB EPSO-G*.

The Commission by Resolution No O3-125 of 9 May 2014 *Re: The Implementation of the Plan of Unbundling the Control over AB Amber Grid* (Annex 15) stated that: *AB Amber Grid* by Official Letter No 7-110-811 of 8 May 2014 submitted the data and documents evidencing that the control will be reduced by the concluded transaction, as defined in Paragraph 1, Article 41 of the Law, and enabling to appropriately implement the unbundling requirements laid down in Chapter 8 *Unbundling the Activities and Accounts* of the Law; *AB Amber Grid* by Official Letter No 7-110-811 of 8 May 2014 indicated that the planned transaction on the acquisition of 38.91 percent of the undertaking's shares will be financed from the LITGRID AB dividends received in 2013-2014 and from the borrowings; The bulk of the financing sources of this transaction will be from the dividends; (*confidential information*) The Draft Agreement on the transfer of the shares had not been submitted to the Commission. Respectively, the Commission approved the transaction on the transfer of the shares to be concluded between *UAB EPSO-G* and *AB Amber Grid* as well as the shares of *AB Amber Grid* planned to be acquired by the subsequent transactions in accordance with the Law on Securities, and resolved that the transaction to be concluded between *UAB EPSO-G* and *E.ON Ruhrgas International GmbH* can not impact the prices of the regulated services (the detailed information is provided in Certificate No O5-109 of 9 May 2014 of the Gas Division of the Electricity and Gas Department and the Law Division of the Commission *Re: The Implementation of the Plan for Unbundling the Control over AB Amber Grid* (Annex 16).

7. *AB Lietuvos dujos* by Official Letter No 7-11-532 of 12 May 2014 informed the Commission that *Lietuvos energija*, whose 100 percent of the shares by the right of trust are managed by the Ministry of Finance of the Republic of Lithuania, intends to acquire *AB Lietuvos dujos* shares held by *E.ON Ruhrgas International GmbH* and requested to evaluate whether the provision of Paragraph 2, Article 3 of the Law on the Implementation is applicable in the case of *AB Lietuvos dujos*, and requested the Commission to adopt the appropriate decision.

Lietuvos energija informed that the transaction on the acquisition of the *AB Lietuvos dujos* shares portfolio will be financed from of *Lietuvos energija* equity, by using the accrued cash and the held securities of the Government of the Republic of Lithuania.

To evaluate the transaction, the Commission, in line with Paragraph 2, Article 3 of the Law on the Implementation, Chapter 8 *Unbundling the Activities and Accounts* of the Law, Procedure Regulations on Unbundling and with regard to Item 21 of the Rules, by Official Letter No R2-1307 of 14 May 2014 requested to submit all data and documents indicated in Items 21.1.1-21.1.12 of the Rules, which would confirm that no impermissible control, as defined Paragraph 1, Article 41 of the Law, is existing or at least is not increasing between *Lietuvos energija* and *AB Lietuvos dujos* then performing the supply and distribution activity, as well as between *AB Amber Grid* performing the transmission activity and *UAB EPSO-G*, which is the shareholder of *AB Amber Grid* and LITGRID AB (the electricity transmission system operator), in order to implement the appropriate unbundling of the activities.

The Commission, having examined the submitted documents and the data available to the Commission, found out that the transaction to be concluded between *Lietuvos energija*, *UAB* and *E.ON* would reduce the control over the economic operator performing the transmission activity in the undertaking *AB Lietuvos dujos* performing the supply activity: the Ministry of Finance would indirectly manage 56.6 percent of the shares, and in accordance with the information provided by *AB Lietuvos dujos* Official Letter No7-14-545 of 14 May 2014 it was planned to acquire all 100 percent of the shares, and this would imply that the natural gas supply undertaking will not be controlled by the electricity or natural gas transmission operator, and *vice versa*.

The Commission by Resolution No O3-127 of 19 May 2014 *Re: The Implementation of the Plan for Unbundling the Control over AB Lietuvos dujos* (Annex 17) approved the transaction on the transfer of the shares to be concluded by *Lietuvos energija*, *UAB* and *E.ON Ruhrgas International GmbH* and well as planned to be acquired shares of *AB Lietuvos dujos* by concluding

subsequent transactions in accordance with the procedure set forth in the Law on Securities, and resolved that the transaction concluded between *Lietuvos energija, UAB* and *E.ON Ruhrgas International GmbH* and the planned subsequent transactions can not impact the prices of the regulated services (the detailed information is provided in Certificate No O5-122 of 19 May 2014 of the Gas Division of the Electricity and Gas Department and the Law Division of the Commission *Re: The Implementation of the Plan for Unbundling the Control over AB Lietuvos dujos* (Annex 18). By subsequent transactions *UAB EPSO-G* and *Lietuvos energija, AB* acquired the shares portfolio held by *OAO Gazprom*.

8. The Distribution Plan provided that the private limited company, which would perform the natural gas distribution activity, will be established and its authorized capital will be increased in accordance with the procedure and conditions set forth by the Civil Code, the Law on Companies and other legal acts. It was planned to establish the company in two stages: by establishing a subsidiary in the first stage and by increasing the authorized capital of the company in the second stage by paying for the newly issued shares by non-pecuniary contributions of *AB Lietuvos dujos*. It was planned that, after the establishment of the subsidiary, its authorized capital will be increased by transferring to the latter the natural gas distribution activity (the property complex) together with the assets allocated to this activity, the rights and liabilities and the non-pecuniary contribution for the shares, which will be newly issued by the subsidiary and signed by *AB Lietuvos dujos*. According to the Distribution Plan it was planned that the authorized capital of the established company performing the distribution activity will be registered and the license for the distribution activity will be issued by 31 October 2014, and thus the legal, functional and organizational unbundling will be implemented by keeping to the deadline set forth in the Plan of Unbundling.

The Commission, by exercising the rights and responsibilities set forth in the Procedure Regulations on Unbundling, stated by Resolution No O3-145 (Annex 6) that *AB Lietuvos dujos* had submitted the descriptions of the methods of unbundling the transmission activity and control over it as well as of unbundling the distribution activity together with the action plans approved by Minutes No 5 of *AB Lietuvos dujos* Board of 28 May 2012, and directed to carry out the reorganization of the undertaking by keeping to the methods and deadlines set forth in the mentioned description and the action plans.

After the shareholders of *AB Lietuvos dujos* changed, the undertaking by Official Letter No 7-11-826 of 21 July 2014 submitted to the Commission for its evaluation the amended description of the methods of unbundling the natural gas distribution activity of *AB Lietuvos dujos* (hereinafter – the Amended Distribution Plan) as well as the Action Plan for reorganizing the activity of *AB Lietuvos dujos* (selling the supply activity) (hereinafter – the Amended Action Plan), approved by Minutes No 7 of 21 July 2014 of the Board of *AB Lietuvos dujos*.

AB Lietuvos dujos has chosen the method of unbundling the distribution and supply activity by transferring the part of the supply activity together with the assets, rights and liabilities allocated to this activity to the company controlled by the main shareholder of *AB Lietuvos dujos*:

- *Lietuvos energija, UAB* establishes the undertaking for performing the natural gas supply activity (hereinafter – the Supply Company);

- *AB Lietuvos dujos* transfers to the Supply Company the property complex (a part of the undertaking), i.e. the natural gas supply activity together with the assets, rights and liabilities allocated to this activity;

- *AB Lietuvos dujos* continues the natural gas distribution activity, upholds the license of the natural gas distribution activity, the held proprietary and other rights to the assets necessary to perform the distribution activity, as well as other rights, duties, employees, etc., and, as prescribed by the Law on Natural Gas, performs the activity of the guaranteed natural gas supply.

The chosen method of unbundling the transmission and distribution activity preeminently corresponds to the management model and the strategy of operations of the *AB Lietuvos dujos* main shareholder's group and enables to simplify the management of the group of the main shareholder

and individual subsidiaries, and creates conditions to consolidate the operations in the future in a more facilitated way.

Whereas the undertaking continues the natural gas distribution activity, the process of unbundling the activities is simpler, demands for less time and financial resources, because it will not be necessary to return the distribution license and to obtain the new one, to reregister a considerable part of the non-current assets in the name of another company, and it will be required to transfer a smaller number of the employees.

The supply activity to be separated from the company consists from the natural gas import to the Republic of Lithuania, the wholesale trade in natural gas, trade at the Natural Gas Exchange, the natural gas supply to household and non-household customers as well as other related activity.

The transfer of the supply activity to the Supply Company was carried out abiding by the Civil Code of the Republic of Lithuania, other legal acts, the Articles of Association of *AB Lietuvos dujos*, *Lietuvos energija*, *UAB*, the Supply Company and other documents.

The Commission by Resolution No O3-332 of 28 July 2014 *Re: The Amendment of the Plan of Actions for Unbundling AB Lietuvos dujos Distribution Activity* (Annex 19) stated that after the occurrence and emergence of the circumstances which impact the implementation of the Distribution Plan, the Commission reserves the right to give the respective instructions to *AB Lietuvos dujos* concerning the submitted Distribution Plan. The Commission instructed to keep to the methods and deadlines specified in the Distribution Plan so that the legal, functional and organizational unbundling of the distribution activity would be completed no later than by 31 October 2014, and to submit to the Commission the documents indicated in the Distribution Plan on the dates specified therein and to immediately inform the Commission about the cases of the delayed implementation of the actions specified in the Distribution Plan or the failure to implement them, as well as about other circumstances which are important for the implementation of the Distribution Plan (the detailed information is provided in Certificate No O5-197 of 23 July 2014 of the Gas Division of the Electricity and Gas Department of the Commission *Re: The Amendment of the Plan of Actions for Unbundling the Distribution Activity of AB Lietuvos dujos* (Annex 20).

9. On 2 September 2014, a new natural gas supply company – *UAB Lietuvos dujų tiekimas*, to which the supply activity of *AB Lietuvos dujos* had been transferred, was registered in the Register of Legal Persons.

The Commission by Resolution No O3-824 of 13 October 2014 *Re: Issuing the Natural Gas Supply License to Private Limited Company Lietuvos dujų tiekimas* (Annex 21) issued the natural gas supply license to *UAB Lietuvos dujų tiekimas*, which came into validity on 1 November 2014. It should be noted that *AB Lietuvos dujos* also has the valid natural gas supply license and performs the distribution activity as well (the detailed information is provided in Certificate No O5-275 of 10 October 2014 of the Gas Division of the Electricity and Gas Department of the Commission

Re: The Natural Gas Supply License to Private Limited Company Lietuvos dujų tiekimas (Annex 22).

10. The unbundling of control over the transmission activity was *de facto* completed and the natural gas distribution activity of *AB Lietuvos dujos* was legally, functionally and organizationally separated till 31 October 2014. *AB Amber Grid* by Official Letter No 7-302-1569 of 20 October 2014 (hereinafter – the Official Letter) (Annex 2) submitted to the Commission the information about the full unbundling of the undertaking from the vertically integrated company *AB Lietuvos dujos*. *AB Amber Grid* by the mentioned Official Letter submitted an application to the Commission (hereinafter – the Application) to designate *AB Amber Grid* to act as the transmission system operator and to issue a permanent license for the natural gas transmission activity. Respectively, the Commission has been evaluating whether the *de facto* unbundling of *AB Amber Grid* complies with the requirements of the Law and the secondary legislation on unbundling the transmission activity (hereinafter – the Requirements) and also whether *AB Amber Grid* complies with the requirements of the licensed activity.

2. Compliance with the requirements

2.1. *Item 1, Paragraph 5, Article 20 of the Law (corresponding to Article 9 (1)(a) of the Directive): The entities seeking to obtain the licenses of the transmission system operator shall manage the transmission <...> systems by the proprietary rights as prescribed by this Law, or on other lawful basis.*

The Commission has to evaluate the technological capacity of *AB Lit Grid* in line with the requirements of Item 1, Paragraph 5, Article 20 of the Law, Item 13 of the Licensing Rules, the Procedure Regulations on assessing the economic operator's technological, financial and management capacity (hereinafter – the Procedure Regulations) approved by the Commission's Resolution No O3-6 as of 29 January 2009 (hereinafter – the Procedure Regulations).

Pursuant to Item 7.4 of the Procedure Regulations, the technological capacity of the economic operator is evaluated as being sufficient when the equipment managed by the economic operator as well as the economic operator's rights to the equipment (including the content of these rights, their validity period and other important criteria) are appropriate and sufficient to perform the respective regulated activity according to the procedure set forth by the laws, and, pursuant to Item 9.2.1 of the Procedure Regulations, the economic operator, whose technological capacity is being evaluated, has submitted to the Commission the Certification issued by the State Energy Inspectorate under the Ministry of Energy, granting him the right to operate the relevant energy equipment, or a copy of the long-term Agreement on the operation and maintenance of the relevant equipment concluded with an undertaking, which has got the Certification giving the right to perform this activity. Pursuant to Item 9.2.2 of the Procedure Regulations, the economic operator, whose technological capacity is being evaluated, shall submit to the Commission the information about the equipment managed by him (Annex 1 to the Procedure Regulations) containing the following:

- The form of managing the equipment (owned by the proprietary right or used by other lawful methods (by indicating the method)), which shall be specified in accordance with the Certification or Certificate evidencing the proprietary rights and issued by the State Company *Center of Registers*, or in accordance with the Agreement on the lawful management of the equipment or any other documents evidencing the lawful management or usage of the equipment;
- The undertaking (division, sub- division) performing operation and maintenance, which shall be indicated in line with the Certification issued by the State Energy Inspectorate under the Ministry of Energy granting the right to perform the operation and maintenance of the relevant energy equipment, or a copy of the long-term Agreement on the operation and maintenance of the mentioned equipment concluded with an undertaking, which has got such Certification;
- The place of business, which shall be indicated in line with the location on the map and/or other documents. There shall be specified the municipality and the residential area (city, town, village) where the equipment is installed;
- The projected territory where the regulated activity will be performed, which shall be defined in line with the projected territory of this activity specified in the economic operator's application for issuing or amending the licence and by taking into consideration the location of the equipment managed by the economic operator.

AB Amber Grid, in compliance with the requirements on the technological capacity set forth in the Procedure Regulations, by its Official Letter submitted the following information:

1. *The list of the energy facilities owned by AB Amber Grid by the proprietary right* – the filled in Annex 1 *The Assessment of AB Amber Grid Technological Capacity* to the Procedure Regulations (Annex 14 to the Official Letter). The list includes the gas mains and their branches, natural gas distribution stations, compressor stations, dispatch centers, gas installation units, buildings of measuring and metering equipment, premises of technological equipment, their locations and the form of their management.

The undertaking, together with the Official Letter, submitted the copies of the documents evidencing the proprietary right to the natural gas equipment:

- a) The Unbundling Conditions of *AB Lietuvos dujos* approved by Minutes No 1 of 30 January 2013 of the Board of *AB Lietuvos dujos* (Annex 15 to the Official Letter) ;
- b) The Hand-over – Acceptance Certificate (hereinafter – the Certificate) (Annex 16 to the Official Letter), Annex 2 to the Certificate with the list of the assets to be registered (Annex 17 to the Official Letter), Annex 3 to the Certificate, together with the list of the construction-in-progress items allocated to *AB Amber Grid* ;
- c) Extracts from the Central Data Bank of the Real Property Register issued by the State Company *Center of Registers* (Annex 19 to the Official Letter).

The information about the equipment managed by the undertaking by the proprietary right is presented in Table 1.

Table 1. The Assessment of the Undertaking's Technological Capacity

Equipment managed by the undertaking	Management form	Operation and maintenance	Location	Serviced area of the licensed activity
Gas mains and their branches, natural gas distribution stations, compressor stations, dispatch centers, gas installation units, buildings of measuring and metering equipment, odouration unit, premises of technological equipment, building of gasometers, boiler house building and other equipment designated to transmit natural gas	By the proprietary right (100 percent)	<i>AB Amber Grid</i>	Republic of Lithuania	Alytus, Kaunas, Klaipėda, Marijampolė, Panevėžys, Šiauliai, Tauragė, Telšiai, Utena, Vilnius Councils

2. *Certification No GD-0354* (Annex 2 to *AB Amber Grid* Application) issued by Decree No 7015 of 28 June 2013 of the State Energy Inspectorate under the Ministry of Energy of the Republic of Lithuania to operate the natural gas equipment. The Certification provides that in accordance with the Law on Energy of the Republic of Lithuania, the undertaking has the right to perform the following works of natural gas equipment operation:

- a) Repair works of the gas mains pipelines and distribution stations;
- b) Testing of the gas mains pipelines and distribution stations;
- c) Maintenance works of the gas mains pipelines and distribution stations;
- d) Works of the technological control of the gas mains pipelines and distribution stations;
- e) Repair works of the compressor stations equipment;
- f) Testing of the compressor stations equipment;
- g) Maintenance works of the compressor stations equipment;
- h) Works of the technological control of the compressor stations equipment;
- i) Operation of the equipment of electrochemical protection against the gas pipelines' corrosion;
- j) Automation and control works of the natural gas equipment;
- k) Operation and maintenance works of the gas pipelines' underwater ducts;
- l) Start-up and commissioning works of the gas pipelines and other equipment;
- m) Operation works of the gas instruments and technological equipment.

It should be mentioned that the Certification expires on 27 June 2018.

3. *The scheme of the natural gas transmission system* (Annex 20 to the Official Letter of AB Amber Grid);

4. *AB Amber Grid performs the natural gas transmission activity* in Alytus, Kaunas, Klaipėda, Marijampolė, Panevėžys, Šiauliai, Tauragė, Telšiai, Utena and Vilnius Councils. The serviced area where the transmission activity is performed is defined in the temporary license for the energy activity issued by the Commission's Resolution No O3-292 of 18 July 2013 (Annex 12).

With regard to what has been said hereinabove, it should be stated that AB Amber Grid by the proprietary rights manages the transmission network, its technological connected facilities and other assets necessary to properly perform the natural gas transmission activity, and complies with one of the requirements for issuing the license for the natural gas transmission activity set forth in Article 20, Paragraph 5, Item 1 of the Law.

2.2. Item 1, Paragraph 1, Article 41 of the Law (corresponding to Article 9(1)(b)(i) of the Directive): The same person or persons have no right to directly or indirectly control the undertaking performing the production and /or supply activity and to directly or indirectly control the transmission system operator or the transmission system, or to exercise the control or management rights in respect of the transmission system operator or the transmission system.

Item 2, Paragraph 1, Article 41 of the Law (corresponding to Article 9(1)(b)(ii) of the Directive): The same person or persons have no right to directly or indirectly control the transmission system operator or the transmission system and to directly or indirectly control the undertaking performing the production and /or supply activity, or to exercise the control or management rights in respect of such undertaking. Analyzing the requirements of this paragraph, must be assessed Paragraph 4, Article 41 of the Law which fundamentally establish means of control (corresponding to Article 9(2) of the Directive): (1) the power to exercise voting rights, (2) the power to appoint members of supervisory bodies, administrative bodies and other bodies lagally representing the undertaking, (3) the management and holding of a majority share. First of all, attention should be brought to the regulation regarding the appropriate unbundling of the natural gas/electricity transmission and distribution activities from the commercial activities of the natural gas/electricity supply and production and the absence of control, stipulated by the European Union and national legal frameworks.

Firstly, the model of the ownership unbundling in the natural gas sector, which was embedded by the Directive and transposed to the national legislation by the Law, is based on the following main requirements: one and the same person or persons have no rights: (1) to directly or indirectly control the undertaking performing the production or supply activity, and to directly or indirectly control the transmission system operator or the transmission system, or to exercise the control or management rights in respect of the transmission system operator or the transmission system; (2) to directly or indirectly control the transmission system operator or the transmission system and to directly or indirectly control the undertaking performing the production or supply activity, or to exercise the control or management rights in respect of such undertaking; (3) to appoint the members of the transmission system operator's Supervisory Council, the Board or the bodies representing the undertaking and to directly or indirectly control the undertaking performing the production or supply activity or to have the controlling or management rights in respect of such undertaking. These rights primarily consist of: (a) the authority to exercise the voting rights; (b) the authority to appoint the members of the supervision bodies, management bodies or other body representing the undertaking; (c) the management and disposition of the controlling portfolio of the shares (pursuant to Paragraph 4, Article 53 of the Law on Electricity, the controlling portfolio of the shares consists of more than 1/3 of the shares and votes at the general shareholders meeting). It has been also set forth in the Directive, the Law and in the Law on Electricity that the transmission

system operators and the transmission systems involve both the natural gas and the electricity transmission systems operators and the relevant transmission systems.

The concept of “control” is defined in Item 36, Article 2 of the Directive, where “control” means any rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by: (a) the ownership or the right to use all or part of the assets of an undertaking; (b) the rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking. Such concept of control complies with the concept of control defined in Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ 2004, L 24, p. 1) (hereinafter – the Regulation) and the non-finite list of the cases when it is considered that the control is held. Moreover, Paragraph 5, Article 3 of the Regulation provides that control is acquired by persons or undertakings which: (a) are holders of the rights or entitled to such rights under the contracts concerned; or (b) while not being holders of such rights or entitled to the rights under such contracts, have the power to exercise the rights deriving therefrom.

The provisions of the aforesaid legal acts of the European Union have been elaborated in the Law on Consolidated Financial Statements of the Republic of Lithuania (hereinafter – the Law on Financial Statements), by indicating the conditions when it is considered that the direct decisive influence is made to the undertaking. Pursuant to Paragraph 10, Article 3 of the Law on Financial Statements, the decisive influence on another undertaking arises due to at least one of the following conditions: (1) the undertaking has more than one half of the voting rights of the participants in the other undertaking; (2) the undertaking, being the participant in the other undertaking, has a right to elect or to dismiss the chief executive officer, most members of the management or supervision bodies of that other undertaking; (3) the undertaking has the right to make a decisive influence on the other undertaking according to the Agreement concluded with this undertaking, or the Incorporation Agreement or the Articles of Association; (4) the undertaking, being the participant in the other undertaking, according to the agreements with other participants in that other undertaking, can decide how to use more than one half of votes of that other undertaking.

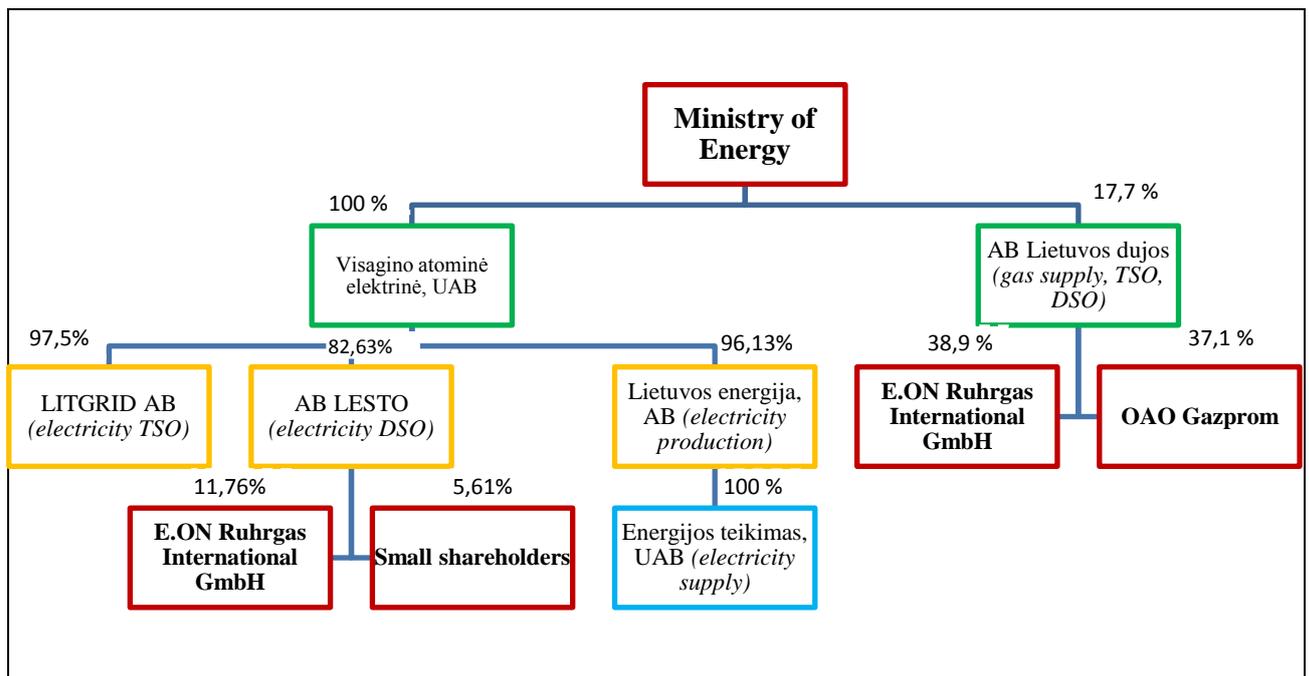
The indirect decisive influence is in the cases when it is made by the other company through its subsidiaries or through the subsidiaries of these subsidiaries due to at least one of the aforesaid conditions (Paragraph 8, Article 3 of the Law on Financial Statements).

With an aim to transparently and thoroughly evaluate the changes in the control of the undertaking performing the transmission activity, it would be expedient to systemically analyze the scheme of the overall control over the undertakings performing the electricity and natural gas activities in the Republic of Lithuania and the correlation relations among these undertakings and the adjustments in their control from the date of validity of the Law till the date of drafting this document.

During the period of 30 June 2011– 27 September 2012, i.e. after coming into validity of the new wording of the Law, the composition of the shareholders of the vertically integrated undertaking *AB Lietuvos dujos* was as follows: *E.ON Ruhrgas International GmbH* (an operating company, a constituent part of *E.ON AG*. *E.ON AG* is one of the biggest electricity, gas, utility services and renewable energy companies worldwide) held 38.9 percent of the shares, *OAO Gazprom* (an energy company performing geological research of gas and other hydrocarbon mixtures, their production, shipment, storage, refining and sales, as well as the production and supply of heat and electric energy) – 37.1 percent, the Republic of Lithuania, whose shares by the right of trust were managed by the Ministry of Energy, – 17.7 percent, and the small shareholders held 6.3 percent of the shares. *AB Lietuvos dujos* had one subsidiary *UAB Palangos perlas*, 100% owned by the undertaking. The main field of activities of the subsidiary: hotel and other accommodation and catering services, organizing seminars and conferences. *AB Lietuvos dujos* made a decision on the liquidation of the subsidiary *UAB Palangos perlas* since 28 February 2013,

and the company was withdrawn from the list of the Register of Legal Persons on 8 August 2013 (the data of the RLP, verified on 08/01/2015). The Ministry of Energy indirectly, through the company *UAB Visagino atominė elektrinė*, which was 100 percent controlled by the Ministry by the right of trust, controlled the undertakings performing the activities of the electricity transmission, production, distribution and supply – *UAB Visagino atominė elektrinė* directly owned 97.5 percent of *LITGRID AB* shares, 96.13 percent of *Lietuvos energija, AB* shares and 82.6 percent of *AB LESTO* shares. Besides, *UAB Visagino atominė elektrinė* had indirect control over *UAB Energijos tiekimas* (100 percent of *UAB Energijos tiekimas* shares are held by *Lietuvos energija, AB*). Besides, *E.ON Ruhrgas International GmbH* held 11.76 percent of *AB LESTO* shares.

Figure 1. The structure of the undertakings operating in the natural gas and electricity sectors till 27 September 2012



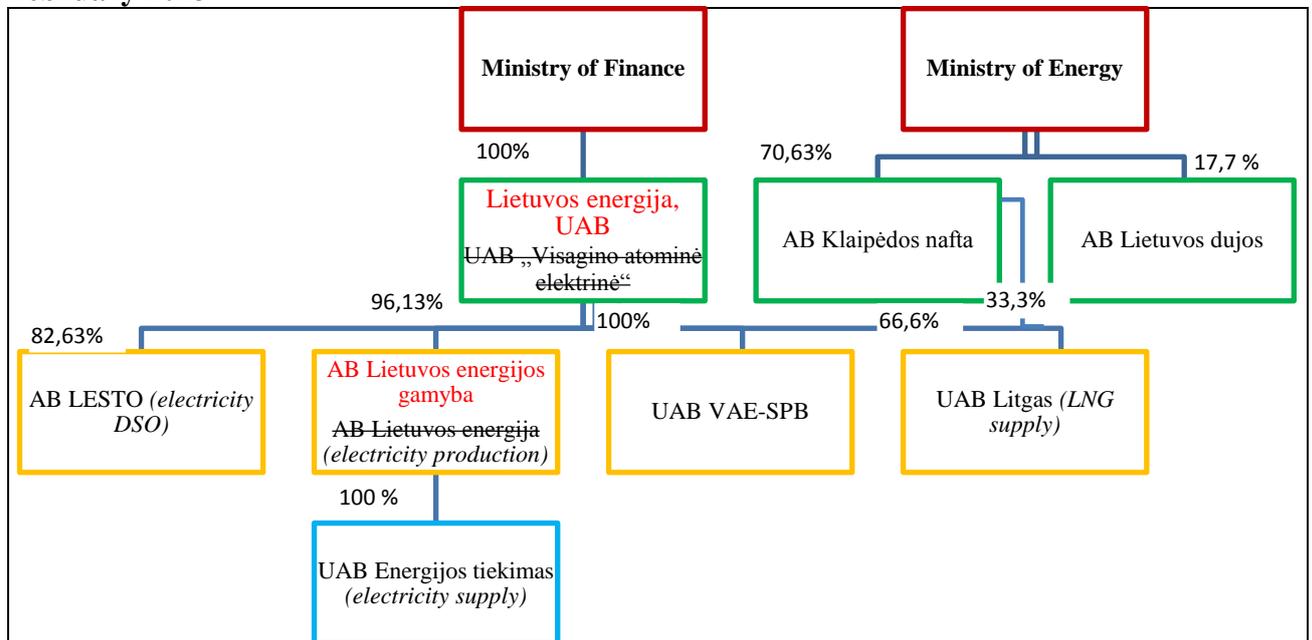
After the Government of the Republic of Lithuania had passed Resolution No 826 *Re: Establishing the Public Limited Liability Company and Investment of the State-owned Assets* as of 25 July 2012 (hereinafter – the Resolution), on 25 July 2012, for the purposes of managing *LITGRID AB*, *EPSO-G UAB* (company code 302826889, registered address: A. Juozapavičiaus str. 13, LT-09311, Vilnius) was established and on the same day registered in the Register of Legal Persons. 100 percent of the shares of the newly established company by the right of trust are managed by the Ministry of Energy of the Republic of Lithuania and on 27 September 2012, the shares of *Visagino Atominė Elektrinė UAB* (company code – 301844044, headquarters address – Žvejų g. 14, Vilnius), which till 27 September 2012 had been owned by the state by the proprietary right and managed by the Ministry of Energy by the rights of trust, were assigned to the Ministry of Economy. Respectively, to implement the provisions of the Resolution, on 27 September 2012, the shares of *LITGRID AB*, granting 97.5 percent of the votes at the general shareholders meeting of *LITGRID AB* were by reimbursement transferred to *EPSO-G UAB*.

It should be mentioned that the Government of the Republic of Lithuania, with an aim to ensure the appropriate and efficient management of the energy undertakings, by Resolution No 141 of 13 February 2013 *Re: Selling the Shares Owned by the State and Amendment of Resolution No 826 of 4 July 2012 of the Government of the Republic of Lithuania on the Establishment of the Private Limited Company and Investment of the State-Owned Assets* transferred to the Ministry of Finance the shares *UAB Visagino atominė elektrinė*, which were

100 percent owned by the state by the proprietary right and then by the right of trust managed by Ministry of Economy, in order to manage them by the right of trust, to use and to have them in the disposition by the Ministry of Finance, and this is evidenced by the extract from the Register of Legal Persons (the detailed information is provided in Certificate No O5-288 of 26 August 2013 of the Electricity Division of the Electricity and Gas Department and the Law Division of the Commission *Re: The Designation of the Transmission System Operator and Issuing the License for the Electricity Transmission Activity* (posted on the Commission's website, in the information notice *Unbundling in the Electricity Sector*, and this document was also submitted in the CIRCABC information system to the European Commission on 6 September 2013, during the certification of LITGRID AB. The information in English is also posted on the Commission's website, in the column *Electricity*, under the heading *TSO unbundling*).

It should be noted that on 30 August 2013 *UAB Visagino atominė elektrinė* was renamed *UAB Lietuvos energija*, and *AB Lietuvos energija*, performing the electricity production activity, on 5 August 2013 was renamed *Lietuvos energijos gamyba, AB*.

Figure 2. The control of the group of companies *UAB Visagino atominė elektrinė* from 17 February 2013

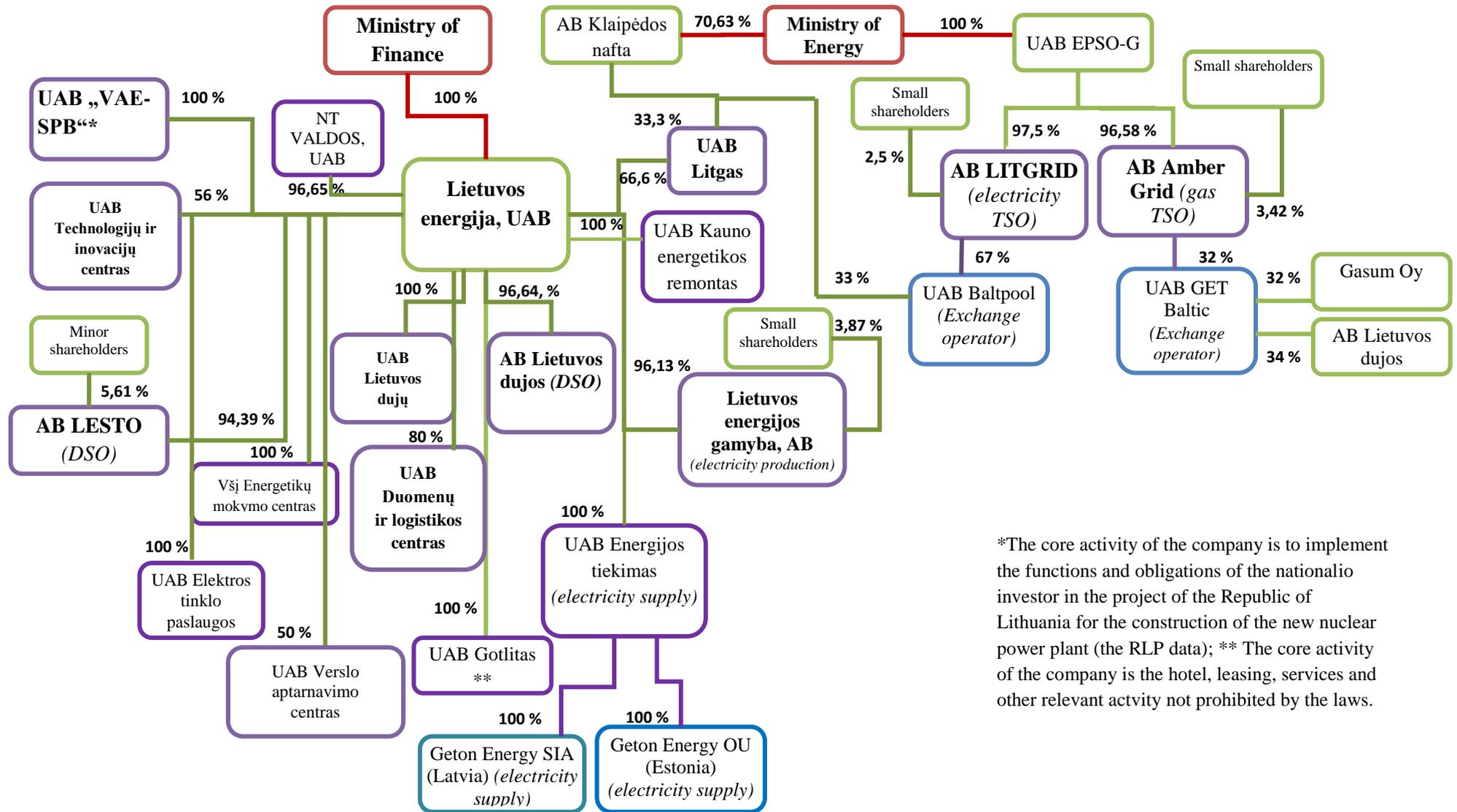


Thirdly, the Commission by Resolution No O3-292 of 18 July 2013 *Re: Issuing the Temporary Natural Gas Transmission License to AB Amber Grid* (Annex 12) issued to *AB Amber Grid* the temporary natural gas transmission license, which is valid from 1 August 2013 till the date of coming into validity of the Commission's decision on the certification of the natural gas transmission operator. Starting from 1 August 2013, a new undertaking started performing the natural gas transmission activity – *AB Amber Grid*, the shareholders and the proportion of the held shares whereof were identical to that of *AB Lietuvos dujos*, i.e. *E.ON Ruhrgas International GmbH* controlled 38.9 percent of the shares, *OAO Gazprom* – 37.1 percent, the Ministry of Energy – 17.7 percent, and the small shareholders – 6.3 percent of the shares. In May 2014, the shareholders of the economic operators operating in the natural gas sector – *AB Amber Grid* and *AB Lietuvos dujos* – changed. The Commission by Resolution No O3-125 of 9 May 2014 *Re: The Implementation of the Plan of Unbundling the Control over AB Amber Grid* (Annex 15) and by Resolution No O3-127 of 19 May 2014 *Re: The Implementation of the Plan for Unbundling the Control over AB Lietuvos dujos* (Annex 17) approved the transaction on the transfer of the shares, by which from *E.ON Ruhrgas International GmbH* the shares of the following undertakings were bought out: 38.9 percent of *AB Amber Grid* shares were acquired by *UAB EPSO-G*, and 38.9 of *AB Lietuvos dujos* shares were acquired by *UAB Lietuvos energija*. Besides, the Competition Council expressed their opinion on the permission to *UAB EPSO-G* to increase the concentration by

acquiring up to 100 percent of *AB Amber Grid* shares thus obtaining the exclusive control over the latter undertaking, as well as the permission to *UAB Lietuvos energija* to increase the concentration by acquiring up to 100 percent of *AB Lietuvos dujos* shares thus obtaining the exclusive control over the latter undertaking, whereby the Competition Council stated that due to the planned concentration the dominating position will be neither created nor strengthened, and the competition in the relevant markets will not be considerably restricted, and allowed to effectuate the concentration. (*Resolution No 1S-81/2014 of 19/05/ 2014 of the Competition Council Re: The Permission to UAB EPSO-G to Effectuate the Concentration by Acquiring up to 100 percent of AB Amber Grid Shares and Obtaining the Exclusive Control Over the Undertaking, Resolution No 1S-80/2014 of 19/05/ 2014 of the Competition Council Re: The Permission to UAB EPSO-G to Effectuate the Concentration by Acquiring 38.9 percent (with the already held shares, totally – 56.6 percent) of AB Amber Grid Shares thus Obtaining the Joint Control over AB Amber Grid together with OAO Gazprom, Resolution No 1S-79/2014 of 19/05/ 2014 of the Competition Council Re: The Permission to UAB Lietuvos energija to Increase the Concentration by Acquiring up to 100 percent of AB Lietuvos dujos Shares thus Obtaining the Exclusive Control Over the Undertaking, Resolution No 1S-78/2014 of 19/05/ 2014 of the Competition Council Re: The Permission to Lietuvos energija, UAB to Effectuate the Concentration by Acquiring 38.91 percent (with the already held shares, totally – 56.61 percent) of AB Lietuvos dujos Shares thus Obtaining the Joint Control over AB Lietuvos dujos together with OAO Gazprom.* These Resolutions are posted on the website of the Competition Council www.kt.gov.lt¹).

¹ The full address of the link: http://www.kt.gov.lt/index.php?show=konc_nut&metai=2014&tipas=1

Figure 3. The control of the undertakings in the natural gas and electricity sectors (08/04/2015)



*The core activity of the company is to implement the functions and obligations of the nationalio investor in the project of the Republic of Lithuania for the construction of the new nuclear power plant (the RLP data); ** The core activity of the company is the hotel, leasing, services and other relevant activity not prohibited by the laws.

Fourthly, pursuant to Article 4 of the Law on the Liquefied Natural Gas Terminal of the Republic of Lithuania, Resolution No 199 of 15 February 2012 of the Government of the Republic of Lithuania *Re: The Construction of the Liquefied Natural Gas Terminal (the Implementation of the Law on the Liquefied Natural Gas Terminal of the Republic of Lithuania, AB Klaipėdos nafta*, which by the right of trust is managed by Ministry of Energy (holding 70.63 percent of the shares) is the project development company of the liquefied natural gas terminal (hereinafter – the LNG terminal). The LNG terminal was launched into operation on 3 December 2014.

On 17 December 2012, UAB *LITGAS*, the subsidiary of *AB Klaipėdos nafta*, which performs the natural gas supply through the liquefied natural gas terminal, was established and registered.

2.2.1. *The comment of the European Commission regarding the shares of UAB Litgas managed by the Ministry of Energy*

The European Commission noted that the accepted structure of the unbundling to a large extent is efficient in order to avoid the risks that the control and development of the Transmission System Operator will not be carried out independently, however the European Commission is not satisfied that the in-depth assessment of other indirect rights by the Ministry of Energy in *UAB Litgas* has not been performed in accordance with Paragraph 2 of Article 9 of the Directive, and that the impact can be made with respect to *AB Amber Grid* by means of the financial incentives.

The Commission emphasizes that the comprehensive analysis of the appropriate implementation of the requirements on unbundling the transmission activity, including the option to manage up to 1/3 of *UAB Litgas* shares by the Ministry of Energy, was performed in issuing the Supply Licence to *UAB Litgas*. As it has been indicated in the Certificate, the Commission, after evaluating all data, by Resolution No O3-756 of 27 December 2013 *Re: Issuing the Licence for Natural Gas Supply to UAB Litgas* (Annex 23) issued the Licence for Natural Gas Supply to *UAB Litgas* (the detailed information and analysis is provided in Certificate No O5-490 of 27 December 2013 of the Gas Division of the Electricity and Gas Department of the Commission *Re: Issuing the Licence for Natural Gas Supply to UAB LITGAS* (Annex 24). During the assessment, the provisions of the Directive, the Electricity Directive, the Law, the Law on Electricity, the Law on Financial Statements as well as other legal acts were analyzed (see subsection 2.2 of the Certificate) by additionally taking into consideration the Interpretative Note on the Implementation of Unbundling under the Third Energy Package of 22 January 2010².

With reference to the comment of the European Commission, the aspects provided herein below should be emphasized.

1. 9(1) and 9(2)(c) of the Directive and Electricity Directive, Items 2 and 3 of Paragraph 3, Article 53 of the Law on Electricity, Items 1 and 2 of Paragraph 1, Item 3 of Paragraph 4 of Article 43 of the Law on Natural Gas: *Not owning the majority of shares*: The Government by its Resolution No 730 of 21 August 2013 *Re: The Acquisition of the Shares of the Company Indirectly Controlled by the State* (hereinafter – Resolution No 730) committed the Ministry of Finance, by the right of trust managing the shares of *UAB Lietuvos energija* owned by the state by the proprietary right, to make the decisions whereby *UAB Lietuvos energija* or other company controlled by *UAB Lietuvos energija* would acquire the newly issued shares of *UAB Litgas*, the sole shareholder whereof is *AB Klaipėdos nafta*, whose shares owned by the state by the proprietary right are managed by the Ministry of Energy by the right of trust, so that, after the increase of *UAB Litgas* authorized capital, *UAB Lietuvos energija* or other company controlled by *UAB Lietuvos energija* would hold no less than 2/3 of the voting shares at the *UAB Litgas* general shareholders meeting, and would pay the price of the emission of the shares by the pecuniary

²http://ec.europa.eu/energy/gas_electricity/interpretative_notes/doc/implementation_notes/2010_01_21_the_unbundling_regime.pdf

contribution. Thus the remaining 1/3 part of the shares is further managed by *AB Klaipėdos nafta*, which is controlled by the Ministry of Energy.

Thus, pursuant to the regulation stipulated by Resolution No 730, *AB Klaipėdos nafta* owns 33.3 percent of the voting shares. Taking into account that the Ministry of Energy holds 70.63 percent of *AB Klaipėdos nafta* shares, the Ministry of Energy indirectly controls 23.52 percent of *UAB Litgas* voting shares. Pursuant to Paragraph 8 and Item 1, Paragraph 10 of Article 3 of the Law on Financial Statements, the control would be acquired by holding more than one half of the voting rights of the stakeholders, however, by taking into consideration the special legislation regulating the principles of and the requirements for unbundling the transmission activity as well as the cross-sectoral nature of these requirements (pursuant to Paragraph 3 of Article 41 of the Law and Paragraph 7 of Article 53 of the Law on Electricity) – by Item 3, Paragraph 4 of Article 41 of the Law and by Item 3, Paragraph 4 of Article 53 of the Law on Electricity it has been fundamentally embedded that the controlling portfolio of the shares cannot grant more than 1/3 of the voting shares at the general shareholders meeting. Having considered these circumstances, it should be stated that the Ministry of Energy, which has indirect control over the transmission system operators *AB Amber Grid* and *LITGRID AB*, does not have the indirect control in the case of *UAB Litgas*, as the held portfolio does not exceed 1/3 of the voting shares.

2. *9(1)(b) and 9(2)(a) of the Directive and Electricity Directive, Items 2 and 3 of Paragraph 3 of Article 53 of the Law on Electricity and Items 1 and 2 of Paragraph 1 and Item 1 of Paragraph 4 of Article 41 of the Law: The entity having direct or indirect control over the supply/production activity, or an entity having control over the transmission activity would not be able to directly or indirectly exercise the voting rights (in the undertaking performing the transmission activity (if the entity has control in respect of the production/supply activity) or in the undertaking performing the production/supply activity (if the entity has control in respect of the transmission activity)).* The content of Resolution No 730 implies that the voting rights have been given to *AB Klaipėdos nafta* as well, therefore the conclusion should be drawn that *AB Klaipėdos nafta* would be able to exercise the voting rights. This means that the Ministry of Energy, which indirectly controls the natural gas and electricity transmission system operators *AB Amber Grid* and *LITGRID AB*, would have a lawful possibility to indirectly exercise the voting rights. Therefore this requirement was not duly complied with by the Resolution. However, on 23 December 2013, *AB Klaipėdos nafta* and *UAB Lietuvos energija* concluded the Shareholders Agreement, whereby, *inter alia*, the rights of *AB Klaipėdos nafta* to vote at the general shareholders meeting of *UAB Litgas* were restricted, and the procedure for enforcing such restriction was set forth along with other conditions, such as e.g. Item 4.1 of the Shareholders Agreement provides that *AB Klaipėdos nafta* shall not elect (shall not appoint) the Chief Executive Officer and the members of the Board of *UAB Litgas*, as well as the members of the supervisory bodies, should the decision be made on the formation of any of the *UAB Litgas* supervisory bodies, and Item 4.3.3 of the Shareholders Agreement provides that *AB Klaipėdos nafta* by the Shareholders Agreement shall transfer to *UAB Lietuvos energija* the right to take part and to vote at the general shareholders meeting of *UAB Litgas* in accordance with all voting rights granted by the shares owned by *AB Klaipėdos nafta*.

Taking into consideration that the rights of *AB Klaipėdos nafta* to vote at the general shareholders meeting of the undertaking were restricted by the mentioned Agreement, it should be stated that the activity of *UAB Litgas* has been properly unbundled from the commercial electricity/natural gas activities and there is no impermissible control among the mentioned energy undertakings, as defined in Paragraph 1 and 4 of Article 41 of the Law on Natural Gas.

3. *9(1) and 9(2)(b) of the Gas and Electricity Directives, Item 4 of Paragraph 3 of Article 53 of the Law on Electricity, Item 3 of Paragraph 1 and Item 2 of Paragraph 4 of Article 41 of the Law on Natural Gas: The entity having direct or indirect control over the supply/production activity has no powers to designate the Transmission System Operator, and the entity having control over the transmission activity has no powers to appoint the members of the supervisory bodies, management bodies or the members of the administration of the undertaking performing the supply/production*

activity: According to the data of the Register of Legal Persons, presently in the Board of *UAB Litgas* there are no representatives of the Ministry of Energy or *AB Klaipėdos nafta* (see Table 2), therefore this requirement has been met as well.

4. *Other potential impact on the undertaking's operations is appraised.* The European Commission provided additional comments and other potential means of making the impact on the undertaking's operations, which can influence the transparent unbundling of the activities, by taking into consideration that, whereas the Ministry of Energy has control over up to 1/3 of *UAB Litgas* shares, the impact in respect of *AB Amber Grid* can be made by the financial incentives, e.g. the issues of the capacity allocation, maintenance or the investments, which have not been stipulated by the provisions of the concluded Shareholders Agreement. Therefore the European Commission advises the Commission to certify *AB Amber Grid* only on condition that all shares of *UAB Litgas*, which are held by *AB Klaipėdos nafta*, will be transferred.

As it has been already mentioned hereinabove, the Commission, having evaluated the Opinion provided by the European Commission, by Official Letter Ref. No R2-(T)-1025 of 27 March 2015 addressed the Ministry of Energy and the Ministry of Finance, respectively having control over the natural gas transmission and the supply activities, with the request to provide the information about the possibilities to implement the condition of *AB Amber Grid* certification, set forth in the mentioned Opinion of the European Commission, i.e. during what time period, without exceeding the maximum twelve-month transitional period proposed by the European Commission, the shares of *UAB Litgas*, held by *AB Klaipėdos nafta*, could be transferred to the economic entity, which is neither directly nor indirectly controlled by the Ministry of Energy.

The Ministry of Energy by Official Letter Ref. No 7.5-09)3-993 of 2 April 2015 indicated that, having assessed the opinion of the European Commission on the conditional certification of *AB Amber Grid* and the Commission's position on the issue, the Ministry of Energy, within its competence and without exceeding a twelve-month period proposed by the Commission, will perform the actions deemed necessary to transfer the shares of *UAB Litgas*, held by *AB Klaipėdos nafta*, to the economic entity, which is neither directly nor indirectly controlled by the Ministry of Energy, and will immediately inform the Commission about the progress in implementing this process.

The Ministry of Finance by Official Letter Ref. No (27.18-02)-5K-1507298-6K-1502806 of 2 April 2015 noted that the issue of the compliance of the control model of *UAB Litgas* had been analyzed in issuing the Licence for Natural Gas Supply to *UAB Litgas*, and asked for an explanation whether some significant circumstances had occurred or had been altered during the time period from issuing the Licence for Natural Gas Supply to *UAB Litgas* till the application to the European Commission, which resulted in different interpretation of the provisions of the Directive or the Law, or any other legal acts stipulating that the activity of *UAB Litgas* would be appropriately unbundled from the transmission activity only after transferring the shares of *UAB Litgas*, held by *AB Klaipėdos nafta*, to other economic entity instead of having restricted the right of *AB Klaipėdos nafta* to vote at the general shareholders meeting of *UAB Litgas* by the Shareholders Agreement. The Ministry of Finance also noted that if the impermissible control can be repealed only by transferring the shares of *UAB Litgas* to other economic entity, which is neither directly nor indirectly controlled by the Ministry of Energy, the Ministry of Finance will make all efforts and will search for appropriate means to ensure the completion of such transfer of the shares of *UAB Litgas*, held by *AB Klaipėdos nafta*, within the time period not exceeding 12 months.

In response to the issue raised by the Ministry of Finance whether there are any altered circumstances in respect to *UAB Litgas*, due to which the restrictions imposed by the Shareholders Agreement on *AB Klaipėdos nafta*, which is indirectly controlled by the Ministry of Energy, are insufficient, it should be noted that the additional means of making the potential impact on the undertaking's operations, which had not been analyzed during issuing the Licence for Natural Gas Supply to *UAB Litgas* or by adopting the preliminary decision in respect of *AB Amber Grid*, were identified by the European Commission when providing its Opinion of the issue of the certification of *AB Amber Grid* that the impact in respect of *AB Amber Grid* can be made by the financial

incentives, e.g. in terms of the capacity allocation, maintenance or the investments, which had not been resolved by the provisions of the concluded Shareholders Agreement. It should be emphasized that the Opinion of the European Commission is important in order to appropriately complete the unbundling of the transmission activity so that the European Commission, if its opinion would be insufficiently/ inappropriately taken into consideration or the requirements on unbundling the transmission activity would not be transparently and clearly implemented, would not initiate against the Republic of Lithuania the procedure of the infringement of Article 9 of the Directive.

Taking into consideration that the Ministry of Energy, which indirectly controls *AB Amber Grid* and holds up to 1/3 of *UAB Litgas* shares confirmed that it will take the necessary actions to transfer the shares of *UAB Litgas*, held by *AB Klaipėdos nafta*, to the economic entity which is neither directly nor indirectly controlled by the Ministry of Energy, the Ministry of Finance informed that it will make all efforts and will search for the appropriate means to ensure the completion of such transfer of *UAB Litgas* shares, held by *AB Klaipėdos nafta*, within the time period not exceeding 12 months.

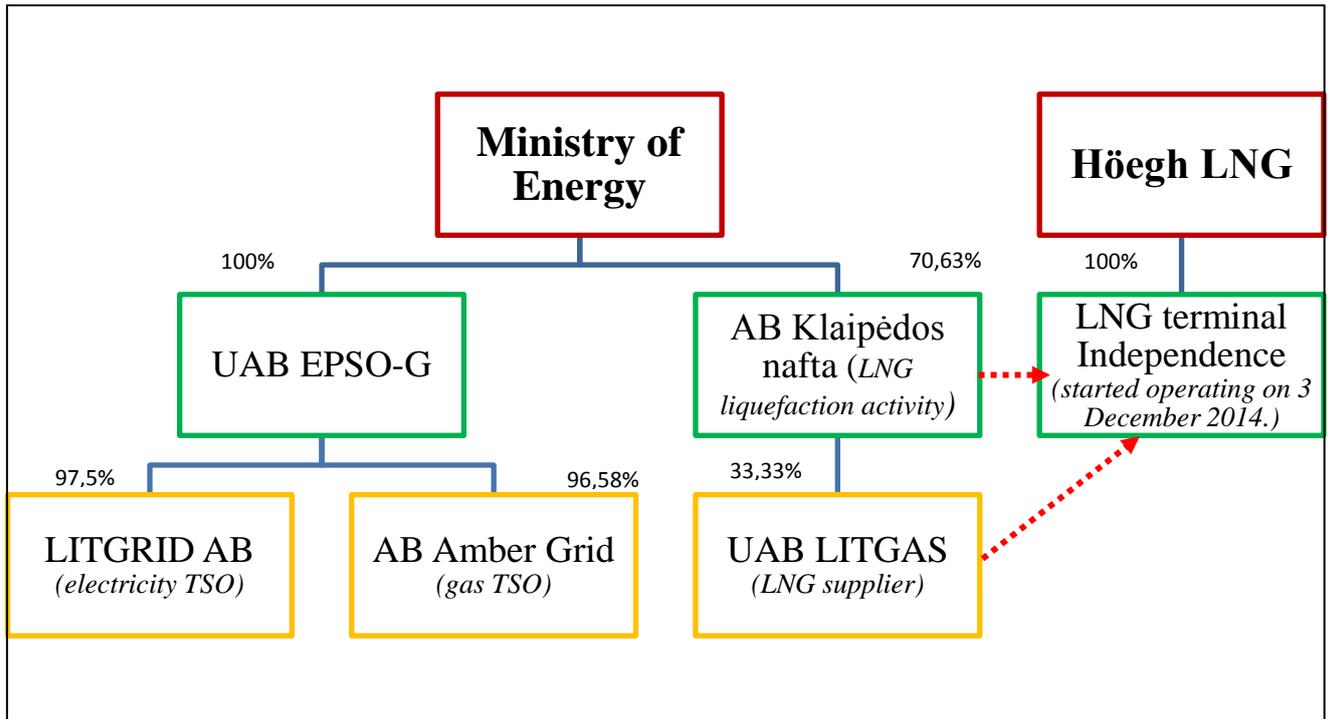
With regard to the circumstances indicated hereinabove, the conclusion should be drawn that the provisions of Articles 9(1) and 9(2) of the Directive, Paragraphs 1, 2 and 4 of Article 41 of the Law have been implemented, but the issue of the additional means of making the potential impact on the undertaking's operations, which had been identified by the European Commission, has remained outstanding, and by taking this into consideration, it is possible to certify AB Amber Grid on condition that the Ministry of Energy will take all actions to transfer the shares of UAB Litgas, which are indirectly through AB Klaipėdos nafta controlled by the Ministry of Energy, to the economic entity which is neither directly nor indirectly controlled by the Ministry of Energy.

It should be mentioned that the Commission by Resolution No O3-907 of 27 December 2014 *Re: Issuing the Natural Gas Liquefaction License to AB Klaipėdos nafta* (Annex 25) issued the natural gas liquefaction license to *AB Klaipėdos nafta*, which had implemented the project of the liquefied natural gas terminal and, having completed the start-up – commissioning works, started this activity on 27 November 2014 (the detailed information is provided in Certificate No O5-350 of 26 December 2014 of the Gas Division of the Electricity and Gas Department of the Commission *Re: Issuing the Natural Gas Liquefaction License to AB Klaipėdos nafta* (Annex 26). The liquefaction activity is not assigned to the activities which are impermissible by the requirements of the Directive and the national legal acts.

Fifthly, on 2 September 2014, a new natural gas supply company *UAB Lietuvos dujų tiekimas* was registered in the Register of Legal Persons, to which the supply activity of *AB Lietuvos dujos* was transferred. The Commission by Resolution No O3-824 of 13 October 2014 *Re: Issuing the Natural Gas Supply License to the Private Limited Company Lietuvos dujų tiekimas* (Annex 21) issued the natural gas supply license to *UAB Lietuvos dujų tiekimas*, which came into validity on 1 November 2014.

Thus at present, after the completed transactions for the acquisition of the shares, the shareholders of *AB Amber Grid* are: *UAB EPSO-G*, which holds 96.58 percent of the undertaking's shares and the small shareholders who hold 3.42 percent of the shares. According to the information submitted by *AB Amber Grid* by the Official Letter, *AB Amber Grid* holds 32 percent of the shares in the company *UAB GET Baltic*, which is jointly managed with *AB Lietuvos dujos* (34 percent of the shares) and *Gasum Oy* (32 percent of the shares), and which organizes trade in natural gas at the Natural Gas Exchange. *AB Lietuvos dujos* basically performs the distribution activity, and *Gasum Oy* is a vertically integrated undertaking, the natural gas transmission system operator of Finland importing and supplying gas.

Figure 4. The control of the undertakings directly related to the activity of the LNG terminal



-----> At present *AB Klaipėdos nafta*, *UAB LITGAS* do not manage the LNG terminal by the proprietary right. A ten-year Leasing Agreement of the terminal has been concluded between *Höegh LNG* (Norway) and *AB Klaipėdos nafta*, after the expiration of the leasing it will be possible to buy out the terminal. It should be noted that according to Paragraph 2, Article 9 of the Law on the Liquefied Natural Gas Terminal, the LNG terminal and the LNG link can be transferred to the transmission system operator controlled by the state, which had implemented the requirements on unbundling the activities and independence set forth in the Law.

The unbundling of the transmission system operator from the vertically integrated undertaking was performed by applying Paragraph 5, Article 41 of the Law (corresponding to Article 9(6) 9(6) of the Directive), providing that if an entity is a member state or other public entity, two individual public entities having control over the transmission system operator or the transmission system or an undertaking performing either of the production or the supply functions shall not be considered as the same entity or entities.

The transmission system operators *AB Amber Grid* and *LITGRID AB* and the entities performing the commercial production and supply activity (*UAB Lietuvos dujų tiekimas*, *AB Lietuvos energijos gamyba*, *UAB Energijos tiekimas*, *UAB LITGAS*) were assigned for management by the different state institutions. The control over the production, supply and distribution activities through *UAB Lietuvos energija* was assigned to the Ministry of Finance, and the transmission activity through *UAB EPSO-G* – to the Ministry of Energy, and in the management of *UAB LITGAS* the Ministry of Energy does not hold the controlling portfolio of the shares and cannot exercise any voting rights or make any decisions.

It should be noted that the Ministry of Energy and the Ministry of the Finance are the state authorities, which are not subordinate to each other and the spheres of the activity thereof are clearly separated by the Laws of the Republic of Lithuania. Article 98 of the Constitution provides that the Minister is in charge of the Ministry and solves the issues assigned to the competence of the Ministry; Article 26 of the Law on the Government of the Republic of Lithuania *inter alia* provides that the Minister is in charge of the Ministry, solves the issues assigned to the competence of the Ministry and is directly responsible for the implementation of the Program of the Government and the yearly priorities of the Government activity as well as the accomplishment of the planned results in the areas the control thereof is assigned to the Ministry; in addition to that, Article 29 of the mentioned Law provides that the Ministry is established in order to set the state policy as well as to

organize, coordinate and control its implementation in the specific control areas assigned to the Minister. The functions of implementing the state policy can be assigned to the Ministry only in the cases prescribed by the laws and only for a set time period. The activity of each Ministry is financed from the state budget. Pursuant to Article 91 of the Constitution, the Ministers, together with the Prime Minister, constitute the Government, which, pursuant to Articles 94 and 95 of the Constitution, coordinates the activity of the Ministries and solves all issues as a collegial body, by the majority of votes. Pursuant to Article 96 of the Constitution, the Ministers, in accordance with the controlled areas assigned to their responsibility, report to the Seimas, President of the Republic and are directly subordinate to the Prime Minister.

The key principles of organizing the activity of the Government are embedded in the Constitution (Articles 95-97) – (i) the Government is a collegial institution, (ii) it shall adopt resolutions by majority vote of all the members of the Government, i.e. by majority vote of the Ministers, (iii) it shall be jointly and severally responsible to the Seimas for the general activities of the Government.

The constitutional principles have been elaborated in the Law on the Government. It should be emphasized that Article 34 of the Law on the Government provides that the Government, i.e. only by adopting the collegial decision, shall have the right, according to the procedure set forth in the Regulations of the Government's activity, to repeal legal acts of the Ministers and institutions under the jurisdiction of the Ministries, as well as of the Governmental institutions if they contradict the Constitution of the Republic of Lithuania, the international agreements of the Republic of Lithuania, the laws, other legal acts adopted by the Seimas, Decrees of the President of the Republic, Resolutions of the Government of the Republic of Lithuania and the orders of the Prime Minister. The Prime Minister solely, without the joint decision of the Government, has no right to repeal the orders of the Minister of the specific field.

The framework set in the Constitution for managing the state, which is valid in Lithuania, in the essence does not differ from the principles of the activity of the Government, other state authorities and their interaction embedded in the other countries of the continental law³. After evaluating the national legal regulation, the conclusion should be drawn that the existing legal framework does not grant the right to the Prime Minister to make influence on the Ministers of the specific fields.

It should be noted that the specific objectives of the activity and the functions of the respective institution were defined in the Statute of the Ministry of Energy, approved by the Resolution No 86 of the Government of 11 February 2009, and in the Statute of the Ministry of the Finance, approved by the Resolution No 1088 of the Government of 8 September 1998 (amended by Resolution No 1453 of the Government of the Republic of Lithuania 13 October).

Pursuant to the Statute of the Ministry of Energy, the main objectives of the Ministry of Energy are as follows:

- To set the energy security policy of the state;
- To set the nuclear energy policy of the state;
- To set the state policy in the areas of fossil energy resources, renewable energy resources, electricity and heat energy, efficiency of energy consumption and to ensure the implementation of this policy.

Pursuant to the Statute of the Ministry of Finance, the main objectives of the Ministry of Finance are as follows:

- To set the state policy in the field of public finance, to organize, coordinate and control its implementation;
- To set the policy concerning financial markets, to organize, coordinate and control its implementation;

³ For example, Germany: Die Übersetzung berücksichtigt die Änderung(en) des Gesetzes durch Gesetz vom 21.7.2010 (BGBl. I S. 944), Art.52, Italy: The Constitution of the Italian Republic (Official Gazette, December 27, 1947, n. 298), Art.95, Finland: The Constitution of Finland 11 June 1999 (731/1999, amendments up to 1112/ 2011 included) Art. 60, etc.

- To set the policy of financial reporting and audit, to organize, coordinate and control its implementation;
- To set the policy of statistics, to organize, coordinate and control its implementation;
- To set the policy of managing the state-owned assets, to organize, coordinate and control its implementation;
- To set the structural and cohesion policy of the European Union, to organize, coordinate and control its implementation;
- To set the policy of assets and business evaluation, to organize, coordinate and control its implementation;
- To set the policy of technological security of documents, to organize, coordinate and control its implementation;
- To set the policy of state supervision of noble metals, precious stones and their artware, to organize, coordinate and control its implementation.

With regard to what has been said hereinabove, the Ministry of Finance and the Ministry of Energy are separate public legal entities, the executive authorities which are not subordinate to each other, implementing the state policy in the individual areas of activity assigned to them. Respectively, the Ministry of Finance has indirect control over the activities of the production, distribution and supply, while the Ministry of Energy - the transmission activity in the natural gas and electricity sector, thus it should be stated, that the requirements of Article 41, Paragraph 1, Items 1 and 2 have been complied with.

The Government is acting collegially, therefore the Prime Minister has no right granted by the legal acts to solely, without the joint decision of the Government to repeal the orders of the Minister of the specific field and thus to influence the Minister's activity.

2.3. Item 3, Paragraph 3, Article 41 of the Law (corresponding to Article 9(1)(c) of the Directive): The same entity or entities shall not appoint the supervisory bodies, management board of the transmission system operator or the bodies representing the undertaking, and shall not exercise the direct or indirect control over the undertaking performing the production and / or supply activity and shall not have any control or management rights in respect of such undertaking.

AB Amber Grid submitted all necessary information, as set forth in Item 14 of the Rules, which is assigned to evaluate the compliance of the AB Amber Grid unbundling with the requirements of Articles 40-42 of the Law.

In addition to the aspects analyzed in Subsection 2.2 of this Certificate, to evaluate that in terms of the corporate governance there would not be any potential uncertainties regarding the appropriate unbundling of the transmission activities in both – the natural gas and electricity sectors (these undertakings are sister companies among themselves) from the commercial interests, the activity of UAB Lietuvos energija group of companies should be analyzed separately. It should be noted that the Minister of Finance of the Republic of Lithuania by Order No 1K-205 of 7 June 2013 approved the Guidelines of Corporate Governance of the State-Owned Energy Undertakings⁴ (hereinafter – the Guidelines), which in the essence provide the foundation for the development of the uniform management and control system by applying the uniform principles of managing the programs, processes and projects in UAB Lietuvos energija group of companies.

According to the new management model, the Supervisory Councils and the Boards have been elected in the patronizing company UAB Lietuvos energija and in the subordinate daughter companies AB LESTO and Lietuvos energijos gamyba AB, which are listed in the Stock Exchange. The Supervisory Council is elected by the general shareholders meeting, it consists of 7 members

⁴ http://www.vae.lt/files/2013-06-07_KORPORATYVINIO_VALDYMO_GAIRES_%28FM_1K-205%29.pdf

(however it is emphasized that the compliance with the provisions of the Law on Electricity regarding unbundling the transmission and distribution activities should be ensured), among these 3 members are independent, and 4 members represent the Ministries of Finance, Energy and the Economy and the Office of the Government. The Supervisory Council elects the Board (however, the members of the Supervisory Council, the members of the transmission system operator's supervision, management bodies or the members of the administration and the members of the management bodies or the employees of the administration of the distribution network operator cannot be the members of the Board), and the Board members among themselves elect the Chairman. The Chief Executive Officer of the undertaking can be elected the Chairman. In practice the model of formation of the Supervisory Council has to be applied in such a way that it would create the conditions for reconciling the objectives of the energy policy, profit earning, public interests, for ensuring the versatile competency of the members of the Supervisory Council and would prevent the dominance of an individual person or persons in making decisions by the Council (Item 18.2 of the Guidelines). The functions and responsibility of the Supervisory Council cover (but are not limited to) the following areas: the election and revoking of the members of the Board, supervision of the activity of the Board and the Chief Executive Officer, providing comments on the undertaking's strategy, financial statements, distribution of profit (loss), annual report to the general shareholders meeting. The Supervisory Council also solves other issues assigned to its competence. The Supervisory Council acts on the dimension of the entire group of companies, i.e., if necessary, it solves the issues related not only to *UAB Lietuvos energija*, but with its subsidiaries or with the management or supervision bodies of these companies as well (Item 18.5 of the Guidelines). The members of the Board of the undertaking are in charge of the specific assigned areas: management of finances and treasury, strategy and business development, production and services (core activities), organizational development (human resources, communication, and social responsibility (Item 19 of the Guidelines).

In summarizing, the Guidelines in detail describe the structure of management of the group of companies, the general competencies of the members of the Supervisory Council and the Board, stipulates that in electing the members of the Supervisory Council the compliance with the requirements of the Law on Electricity on unbundling the transmission and distribution activity has to be ensured, as well as that the members of the Supervisory Council, members of the transmission system operator's supervision, management bodies or the members of the administration and the members of the management bodies or the employees of the administration of the distribution network operator cannot be the members of the Board. By taking into consideration that Paragraph 7, Article 53 of the Law on Electricity clearly provides that in implementing the requirements on unbundling the electricity transmission activity, the undertaking performing either of the production, transmission or the supply activity will also be the undertaking performing the respective activity in the natural gas sector, as set forth in the Law, and the latter restrictions should be considered as sufficient to state that on the level of the corporate governance it has been ensured that *UAB Lietuvos energija* would properly implement the requirements on unbundling the transmission activity in both – the electricity and natural gas sectors.

With regard to what has been said hereinabove in Subsection 2.2, it should be emphasized that all UAB Lietuvos energija shares are held by the Ministry of Finance and the latter has no rights with regard to UAB EPSO-G, all shares of which are held by the Ministry of Energy. Moreover, by taking into consideration the provisions of the Guidelines, which stress the requirement to comply with the provisions on unbundling the transmission activity, the conclusion should be drawn that the Ministry of Finance has no right to appoint the members of the supervision or management bodies or the administration of the transmission system operator.

2.4. Paragraph 2, Article 41 of the Law: An undertaking performing either of the natural gas production or supply functions in some other state the natural gas transmission system thereof is interconnected with the natural gas transmission system of the Republic of Lithuania, shall not have

any right to directly or indirectly control the transmission system operator or to exercise any other right in his respect.

The natural gas system is interconnected with the gas systems of Belarus, Latvia and the Russian Federation. The cross-border links with Belarus, Latvia and Russia are regulated by the Agreements. The cross-border capacities between Lithuania and Belarus ensure the capacities necessary for the Lithuanian consumers, the transit to Russia (the Kaliningrad Region) and in the direction of Latvia. The natural gas transit through the territory of Lithuania goes only to the Kaliningrad Region of the Russian Federation, i.e. by crossing the external borders of the European Union.

The natural gas transit through the territory of Lithuania is performed in accordance with the Agreement No 1ГЛИИ-2000 on the Natural Gas Supply to the Republic of Lithuania, signed on 16 December 1999 between *ОАО Gazprom* and *AB Lietuvos dujos*, which, by taking into account the adjustments in the quantities, investments, capacities and other relevant conditions, is valid till the end of 2015. On 1 August 2013, *AB Amber Grid* took over all rights and liabilities arising from the mentioned Agreement. The Agreement provides that if this Agreement is extended or the new Agreement regulating transit through the territory of Lithuania is concluded, the conditions of providing the transit services should remain in effect till the end of 2025.

It should be noted that *ОАО Gazprom* is a globally operating energy company, performing the geological research of gas and other hydrocarbon mixtures, their production, shipment, storage, refining and sales, as well as the production and supply of heat and electric energy. In May 2014 the transaction on selling-purchasing the shares of *AB Amber Grid* was concluded between *UAB EPSO-G* and *ОАО Gazprom*, and 37.1 percent of the shares were bought out from *ОАО Gazprom*, and *UAB EPSO-G* became the sole holder of the controlling portfolio. Moreover, the small shareholders do not have the sufficient number of the shares enabling them to control the transmission system operator – the small shareholders the number whereof is rather changeable, are controlling only 3.42 percent of the shares.

Thus, taking into consideration that neither AB Amber Grid nor ОАО Gazprom take part in the management of AB Amber Grid or other related undertakings, the conclusion should be drawn that in any other member state there is no entity which would directly or indirectly control the transmission system operator or would have any other rights in respect to the TSO.

2.5. Article 41, Paragraph 4 of the Law (corresponding to Article 9(2) of the Directive): With regard to the requirements of Article 41, Paragraphs 1 and 2 of the Law, the rights specified therein first of all comprise: 1) the power to use the voting rights, 2) the power to appoint the members of the supervisory bodies, management bodies and the administration, 3) control over and having in its disposition the controlling portfolio of the shares.

1) Regarding the powers to exercise the voting rights. As it has been already mentioned in Subsection 2.2. herein, the held shares give to *UAB EPSO-G* the right of the exclusive control over the transmission system operators in the electricity and natural gas sectors. The *UAB Lietuvos energija* group of companies is also exclusively controlled through the Ministry of Finance, and there does not exist any relationship with the transmission system operators. The Ministry of Energy, although indirectly, through *AB Klaipėdos nafta* holding 1/3 of the shares in *UAB LITGAS*, has no voting rights. According to the data available to the Commission, the Ministry of Energy and the Ministry of Finance and/or *UAB Lietuvos energija* and *UAB EPSO-G* or their subsidiaries among themselves have not concluded any transactions due to which the control of the undertakings could change. Therefore, by taking into account all these circumstances, the conclusions should be drawn that the Ministry of Finance and the undertakings controlled by it do not have any voting rights in respect of *AB Amber Grid*, and the Ministry of Energy and the undertakings controlled by it have no right in respect of the *UAB Lietuvos energija* group of companies.

2) *Regarding the powers to appoint the members of the supervision bodies, management bodies or any other body representing the undertaking.*

As it has been specified in the previous Subsections herein, the controlling portfolio of the shares is held by *UAB EPSO G*, the small shareholders, who hold only 3.42 % of the shares, pursuant to the provisions of the Law on Companies do not have the powers to appoint the members of the supervision bodies, management bodies or any other body representing the undertaking even though it would perform either of the electricity production, gas production or the natural gas / electricity supply functions. *UAB EPSO G* is 100 % controlled by the Ministry of Energy which does not have control over the activities of the electricity production, gas production or the natural gas / electricity supply functions. See Subsection 2.6 of the Certificate.

3) *Regarding the control and having in disposition the controlling portfolio of the shares.* As it has been already mentioned, whereas the control over the transmission, production and supply activities is assigned to different Ministries, which hold nearly 100 percent of the shares portfolio of the respective energy undertakings, there are no uncertainties regarding the controlling portfolio. The case of *UAB LITGAS* has been comprehensively described in Subsection 2.2. herein by indicating that although the Ministry of Energy through *AB Klaipėdos nafta* controls 1/3 of *UAB LITGAS*, performing the LNG supply activity, shares which in the specific cases grant the freedom in making decisions as prescribed by the Law on Companies, *AB Klaipėdos nafta* by the Shareholders Agreement has waived the voting rights.

In addition, it should be noted that on the basis of the information provided by the *AB Amber Grid* Official Letter (Annex 2 to the Official Letter) it was evaluated whether the data indicated in Items 14.2–14.6 of the Rules were submitted on:

1) The sole participant in *AB Amber Grid* holding more than 1/10 of shares and votes at the general shareholders meeting is *UAB EPSO-G* holding 96.58 % of the shares;

2) In the undertaking there are 7 participants from the third countries, but they are assigned to small shareholders (Annex 2 to the Official Letter);

3) There are no participants without the voting rights;

4) Since 1 August 2013, *AB Amber Grid* controls 32 % of the shares of the Exchange Operator *UAB GET Baltic*. The undertaking has no direct decisive influence in the meaning prescribed by the Law on Financial Statements, i.e. it has no direct control in respect of *UAB GET Baltic* because it is not seeking to acquire 33.3 % controlled shares, as set forth by the Law on Financial Statements and the Law on Electricity. It should be mentioned that, taking into account that *UAB GET Baltic* is the market operator, i.e. the trade platform where the trade in natural gas is organized, but the trade platform itself does not perform the functions of supply or production, the fact that *AB Amber Grid* has the shares of this company should be considered as not contradicting to the provisions of the Directive and the Law.

Thus, taking into consideration what has been said herein above, it should be stated that the requirements of Article 41, Paragraph 4 of the Law have been complied with.

2.6 Article 42 of the Law (corresponding to Article 9(1)(d) of the Directive): The same person has no right to be at the same time the member of the supervisory bodies, management bodies or the administration of the undertaking performing the activity of the production and/or supply and of the Transmission System Operator or a sole manager of these undertakings. .

As it has been mentioned in Subsection 2.2 herein, the Ministry of Finance does not have any rights in respect of *UAB EPSO-G*, and accordingly – in respect of *AB Amber Grid* and *LITGRID AB*, and the Ministry of Energy does not have any no rights in respect of *UAB Lietuvos energija*, and accordingly – in respect of *AB Lietuvos energijos gamyba*, *AB LESTO* and *UAB Energijos tiekimas*.

It should be noted that at the time of making the decision on the designation of the transmission system operator *AB Amber Grid*, there were no persons either in *UAB EPSO-G*, or in *AB Amber Grid*, or in *LITGRID AB*, who would be the members of the Board or the managers of the structural divisions of *UAB Lietuvos energija* or *AB Lietuvos energijos gamyba*, *AB LESTO*, *UAB Energijos tiekimas* (see Table 2).

It should be noted that according to the data of the Register of Legal Persons (verified on 6 January 2015) the objective of the activity of *UAB EPSO-G* – to manage the portfolio of the shares of the electricity and the natural gas transmission operators of the Republic of Lithuania. *UAB EPSO-G* has the right to be involved in other activity which would not contradict to the laws of the Republic of Lithuania.

(Confidential information)

The objectives of the undertaking are defined in Chapter II of the *AB Amber Grid* Articles of Association – to ensure the long-term and reliable natural gas transmission (transportation through the high-pressure pipelines) to the users of the natural gas transmission system and other market participants, including the natural gas transit to the third countries through the territory of the Republic of Lithuania, the development of the gas business, the safe operation of the national gas transmission system and the rational use of the undertaking's assets and other resources, to earn profit in order to secure the property interests of the shareholders.

The Chief Executive Officer, members of the Board, medium rank managers of *AB Amber Grid* have signed the independence declarations whereby the mentioned persons have confirmed that they have familiarized themselves with the requirements embedded in Articles 40-42 of the Law on Natural Gas of the Republic of Lithuania, and they declare and confirm that they are not and will not be in charge, do not and will not participate in the collegial bodies of the undertaking performing either of the activities of the natural gas production, supply and the electricity production, distribution, supply (Annex 13 to the Official Letter).

Saulius Bilyš, the Chief Executive Officer of *AB Amber Grid*, indicated in his independence declaration that he is involved in the activity of the Lithuanian Gas Association as the member of the Council. Vytautas Ruolia, the Commerce Director of the undertaking, indicated that he is the Chairman of the Board of *UAB GET Baltic*, the subsidiary of *AB Amber Grid*. Skirmantas Junevičius, the Director of the Engineering Department of the undertaking, indicated that he is the member of the Science Council of the Energy Institute of Lithuania. *(Confidential information)*, the Head of the Law Division, is also the Director of the company *(Confidential information)* performing the activity of the office space rental. The additional activity of all mentioned persons is not related to the commercial interests in the natural gas or electricity sectors. The Lithuanian Gas Association should be mentioned separately, as it unifies not only the transmission system operator *AB Amber Grid*, but the companies performing the natural gas supply activity as well. In the Articles of Association of the Lithuanian Gas Association⁵ it is provided that the Association is a voluntary alliance of legal entities of the Republic of Lithuania interested in economic and technical development of the Lithuanian gas sector and comprising the largest companies engaged in the natural gas supply, transmission and distribution activities as well as the associated members engaged in the natural gas and liquefied natural gas activities, training and research institutions related to the energy sector. The objective of the Association – to promote the technical and economic progress in the gas sector of Lithuania, to defend the legitimate interests of its members interested in the progress. Hence in the essence the Lithuanian Gas Association unites the natural gas undertakings on the whole segment, but the objective is to promote the cooperation, to thoroughly assess changes in the gas industry, emerging risks, etc. Whereas the natural gas market operates in an integrated way, the alliance aimed at cooperation is allowed and does not breach the requirements of Articles 40-42 of the Law.

It should be noted that in the declarations of interests all members of the *AB Amber Grid* Board indicated that there are no circumstances which could arouse the conflict of interests. The

⁵ <http://dua.lt/lietuvos-duju-asociacija/istatai/>

members of the Board indicated their positions in other companies or institutions – the Ministry of Energy, *LITGRID AB*, State Enterprise *Ignalinos atominė elektrinė*, *AB Klaipėdos nafta*, *UAB Baltpool*, public organization *The Association of Financial Analysts*. These activities are not related to the supply /production activity, thus there is no conflict of interest. The detailed information about the members of the Supervisory Councils and the Boards of the undertakings performing the activities of the natural gas and electricity transmission system operators, the supply, production and distribution undertakings is provided in Table 2.

Table 2. Companies under the Ministry of Energy of the Republic of Lithuania

Company	Members of the Board					Members of the Supervisory Council			Chief Executive Officer
EPSO-G UAB									Rolandas Zukas
AB LITGRID	Daivis Virbickas Chairman of the Board, CEO at AB LITGRID	Karolis Sankovski Member of the Board, Director of Strategic Infrastructure Department at AB LITGRID	Vidmantas Grušas member of the Board, Director of Transmission Grid Department at AB LITGRID	Rimantas Busila Member of the Board	Rolandas Masilevičius Member of the Board	Aleksandras Spruogis Chairman of the Supervisory Council, Vice Minister of Energy of the Republic of Lithuania, Chairman of the Board at AB Amber Grid	Audrius Misevičius Member of the Supervisory Council, Advisor to the Prime Minister	Mindaugas Vaičiulis Member of the Supervisory Council	Daivis Virbickas Chairman of the Board, Chief Executive Officer at LITGRID AB
<i>AB Amber Grid</i>	Aleksandras Spruogis Chairman of the Board of Directors, Vice Minister of Energy of the Republic of Lithuania, Chairman of the Supervisory Council at AB LITGRID	Nerijus Datkūnas Independent member of the Board of Directors, member of Financial Analyst Association	Agnė Amelija Petravičienė Vice-Chairman of the Board of Directors, Head of Law Division in the Ministry of Energy, Chairperson of the Supervisory Council at AB <i>Klaipėdos nafta</i> , member of the Board of SE Ignalina NPP	Dainius Bražiūnas Member of the Board of Directors, Head of Oil and Gas Division at the Ministry of Energy, member of the Board at <i>AB Amber Grid</i> , member of the Board at <i>AB Klaipėdos nafta</i> , member of the Board at Baltpool UAB					Saulius Bilys
Klaipėdos nafta AB	Mantas Bartuška Member of the Board of Directors, Chief Executive Officer (CEO)	Dainius Bražiūnas Head of Law Division in the Ministry of Energy, member of the Board of <i>AB Amber Grid</i> , member of the Supervisory Council of <i>AB Klaipėdos nafta</i> , member of the Board of Baltpool UAB	Mindaugas Jusius Member of the Board of Directors	Rytis Ambrazevičius Chairman of the Board of Directors, member of the Board of Directors at UAB <i>Baltik vairas</i>		Agnė Amelija Petravičienė Chairperson of the Supervisory Council, Vice Chairperson of the Board of Directors at <i>AB Amber Grid</i> , Head of Law Division at the Ministry of Energy	Romas Švedas, Member of the Supervisory Council, member of administrative Board of ACER	Eimantas Kiudulas Member of the Supervisory Council, Member of the Board of <i>Klaipėda laisvosios ekonominės zonos valdymo UAB</i> , member of the Board of <i>UAB LEZ projektų valdymas</i> , Chief Executive Officer at <i>UAB PO7</i>	Mantas Bartuška Member of the Board, Chief Executive Officer

Companies under the Ministry of Finance of the Republic of Lithuania

Company	Members of the Board					Members of the Supervisory Council				Chief Executive Officer
<i>UAB Lietuvos energija</i>	Dalius Misiūnas Chairman of the Board, CEO at <i>UAB Lietuvos energija</i> , Chairperson of the Supervisory Council at <i>AB Lietuvos energijos gamyba</i>	Iona Daugėlaitė Member of the Board, Director for Organizational Development at <i>UAB Lietuvos energija</i> , member of the Supervisory Council at <i>AB Lietuvos dujos</i> , member of the Supervisory Council at <i>AB LESTO</i>	Darius Kašauskas Member of the Board, Finance and Treasury Director at <i>UAB Lietuvos energija</i> , member of the Supervisory Council at <i>AB Lietuvos dujos</i> , chairman of the Supervisory Council at <i>LESTO AB</i>	Mindaugas Keizeris Member of the Board, Strategy and Development Director at <i>UAB Lietuvos energija</i> , member of the Supervisory Council at <i>AB Lietuvos energijos gamyba</i> , member of the Board at <i>Energijos tiekimas UAB</i> , member of the Board at <i>Lietuvos dujų tiekimas UAB</i> , chairman of the Board of <i>UAB LITGAS</i>	Dalia Andrulionienė Production and services Director at <i>UAB Lietuvos energija</i>	Šarūnas Kliokys Chairperson of the Supervisory Council, Chair of the Board at <i>UAB Ekonovus</i> and <i>UAB Šiaulių plento grupė</i> , CEO at <i>Avestis</i> and Chairperson of the Board	Antanas Danys Independent Member of the Supervisory Council, member of the Board of SE <i>Lietuvos Junior Achievement</i> , Partner at <i>United partners</i>	Virginijus Lepeška Independent Member of the Supervisory Council, Incorporator and Chairman of <i>Organizacijų vystymo centras UAB</i>	Dalius Misiūnas Chair of the Board, Chief Executive Officer of <i>UAB Lietuvos energija</i> , Chair of the Supervisory Council of <i>Lietuvos energijos gamyba AB</i>	
						Tomas Garasimavičius Member of the Supervisory Council, Advisor on Energy issues to the Prime Minister	Rasa Noreikienė member of the Supervisory Council, Vice Minister of Economy	Aloyzas Vitkauskas member of the Supervisory Council, Vice Minister Finance		
						Rokas Baliukovas Member of the Supervisory Council, Vice Minister of Energy of the Republic of Lithuania				
<i>LESTO AB</i>	Aidas Ignatavičius Chair of the Board, Chief Executive Officer	Virgilijus Žukauskas Member of the Board, Director of Electricity Network	Andrius Bendikas Member of the Board, Director of Finance and Administration Division	Sergejus Ignatjevas Member of the Board, Director of Customer Service division		Darius Kašauskas Chairman of the Supervisory Council, Finance and Treasury Director at <i>Lietuvos energija</i> , <i>UAB</i> , member of the Board, member of the Supervisory Council at <i>Lietuvos dujos AB</i> , member of the Supervisory Council at <i>AB Lietuvos dujos</i>	Iona Daugėlaitė Member of the Supervisory Council, „Director for Organizational Development at <i>Lietuvos energija</i> , member of the Supervisory Council at <i>Lietuvos dujos AB</i> ,	Petras Povilas Čėsna Member of the Supervisory Council, Chairperson of the Board at <i>LITEXPO</i> ,	Aidas Ignatavičius Chairperson of the Board at <i>LESTO AB</i> , Chief Executive Officer	
<i>AB Lietuvos energijos gamyba</i>	Juozas Bartlingas Chairperson of the Board, Chief Executive Officer	Adomas Birulis Member of the Board, Director of Business Development	Darius Kucinas Member of the Board, Director of Department of	Eglė Čiužaitė Member of the Board, Chief Financial Officer of <i>AB Lietuvos</i>	Vidmantas Saliotis Member of the Board, Director	Dalius Misiūnas Chairperson of the Supervisory Council, Chairman	Pranas Vilkas Member of the Supervisory Council	Mindaugas Keizeris member of the Supervisory	Juozas Bartlingas Chair of the Board, Chief	

	the Supervisory Council, member of the Board of UAB Lietuvos dujų tiekimas, Member of the Board of „Lietuvos energija”, Member of the Board of UAB Lietuvos energija, Board of UAB LITGAS								
Lietuvos Dujos AB	Liudas Liutkevičius Chairman of the Board at Lietuvos Dujos AB, CEO at Lietuvos Dujos AB,	Giedrė Glinskienė Member of the Board, Director for Finance and Treasury	Dalius Svetulevičius Director for Gas network services	Nemunas Biknius member of the board, Director for Service and Development	Valentina Birulienė Member of the Board, Director for Organizational Development	Iona Daugėlaitė „Lietuvos energija“, Director for Organizational Development at Lietuvos energija, member of the Supervisory Council at LESTO AB	Darius Kašauskas Chairman of the Supervisory Council, Finance and Treasury Director at Lietuvos energija, UAB, member of the Board, member of the Supervisory Council at LESTO AB	Petras Povilas Čėsna Chairman of the Board at LITEXPO, Member of the Supervisory Council at LESTO UAB,	Liudas Liutkevičius Member of the Board, CEO at Lietuvos Dujos AB, Chairman of the Board of Lietuvos Dujos AB,
Lietuvos Dujų tiekimas UAB	Ieva Lauraitytė member of the Board, Director of LawDivision at Lietuvos energija	Mindaugas Keizeris member of the Board, Strategy and Development Director of Lietuvos energijos gamyba, UAB, Chair of the Board of Energijos tiekimas UAB, Chair of the Board of UAB Lietuvos dujų tiekimas, Member of the Board of „Lietuvos energija, Board of UAB LITGAS.							Mantas Mikalajūnas

Source: Data from SE Center of Registers (8 April 2015),

<http://www.litgrid.eu/index.php/apie-litgrid/valdymas/stebetoju-taryba/1472>, <http://www.ambergrid.lt/lt/apie-mus/valdymas/valdyba>,
<http://www.oil.lt/index.php?id=594>, <http://www.le.lt/lt/apie-mus/9#grupes-imones>, <http://www.gamyba.le.lt/>, <http://litgas.lt/apie-mus/vadovybe/>,
<http://www.lietuvsdujos.lt/index.php/apie-mus/vadovybe/19>, <http://www.ldtiekimas.lt/index.php/apie-mus/valdyba/37746>, <http://www.lesto.lt/lt/apie-mus/valdymo-struktura-ir-vadovybe.html>, <http://www.etiekimas.lt/Bendroves-valdymas>, <http://litgas.lt/apie-mus/vadovybe/>

With regard to what has been said hereinabove, it should be stated that, at the time of preparation of this decision regarding the designation of AB Amber Grid as the Transmission System Operator, at UAB EPSO-G, AB Amber Grid and AB LITGRID there were no physical persons who would act in the capacity of the Members of the Board or the managers of the structural divisions of AB Lietuvos energija or AB Lietuvos energijos gamyba, UAB Energijos tiekimas and UAB Lietuvos dujų tiekimas. Moreover, all persons at AB Amber Grid have submitted the Independence Declarations where they assumed the obligation not to take part in the collegial bodies or in any other form manage the undertaking performing the electricity production, distribution, supply activities and the gas production, supply activities and to ensure compliance with the Requirements prescribed by the Law, thus the requirement set forth in Article 42 has been complied with.

2.7. Article 41, Paragraph 3 of the Law (corresponding to Article 9(3) of the Directive):

In Items 1 and 2 of Paragraph thereof, the said undertakings that are engaged in any of the functions with regard to production or supply, include the undertakings that perform one of the natural gas production/transmission or electricity production/supply functions. Accordingly, the transmission system operators and the transmission systems indicated in Items 1 and 2 of Paragraph thereof include both natural gas and electricity transmission system operators and transmission systems.

With regard to information in Subsection 2.1.-2.5., it should be emphasized that at this time the Ministry of Energy has no rights to directly or indirectly control the undertakings engaged in natural gas and (or) electricity production/supply activities. It should be noted that the 2352% of share package of UAB LITGAS does not provide to the Ministry of Energy the right in respect of UAB LITGAS, as the Ministry of Energy controlled by Shareholders agreement of AB Klaipėdos nafta, has been declined voting rights.

2.8. Article 32, Paragraph 1 of the Law (corresponding to Article 9(7) and 16 of the Directive): Without prejudice to the statutory obligations to disclose information, each transmission, storage and (or) LNG system operator must keep confidential any information obtained as commercial (industrial) or professional secret, and ensure that information providing commercial advantage about their own activities is not disclosed in a discriminatory manner.

This requirement is described by Item 14.13 of the Rules, providing that the transmission system operator must provide procedures that protect to transfer commercially sensitive information to undertakings that engaged in the natural gas production, transmission, supply and electricity generation and supply activities.

The undertaking has submitted in written form the *List of Commercial (Production) Secrets of AB Amber Grid* approved by Minutes No 4 of 30 October 2013 of the meeting of AB Amber Grid Board, wherein among other things, the detailed list of information that consists of a list of commercial secrets (Item 7), in addition - the CEO and his deputies were granted the right to specify the list (Item 3).

One of the key provisions in the list of commercial secrets is Item 7.1, providing that the commercially sensitive information hold by the undertaking, as a transmission system operator in the gas and electricity markets, as well as the information about the transmission system operator, which can result in a commercial advantage within the electricity and gas markets, its disclosure in a non-discriminatory manner, is regarded as a trade secret. Also the list of commercial secrets provides that the Chief Executive Officer shall decide on the classification of commercial (industrial) secrets and confidential information, as well as marking, keeping to deadlines, usage and establishment of security rules in the undertaking (Item 2).

Since AB Amber Grid has not provided such rules, and there were no procedures on the use and access of commercial secrecy in the said list, the Commission on 6 January 2015 by Official

Letter No R2- (T) -15 approached *AB Amber Grid* asking to provide the Commission with the Rules or analogous documents and /or additional explanations as provided in Paragraph 2 of the list of commercial secrets, that justify appropriate compliance with the requirements of Item 14.13 of the Rules i.e. that the undertaking has secured all the procedures that the relevant information is adequately protected from commercially sensitive information transfer to the undertakings engaged in the natural gas production, transmission, supply and electricity generation and supply activities, and ensure the compliance with the Directive and the Rules.

AB Amber Grid by the *Official Letter* No 7-302-37 of 9 January 2015 submitted the *Description on Information Management Procedures and Protection Rules* (hereinafter - *Information Description*) approved by No 1-4 of 7 January 2015 of Chief Executive Order.

The Information Description establishes the rights and responsibilities of the undertaking employees, management and supervisory bodies (their members) in receiving, collecting, processing, using and providing of confidential information of the undertaking. The purpose of the *Information Description* is to ensure the security of confidential information and its disclosure to the Third Parties.

The Information Description shall be approved and amended by the Chief Executive Officer of the undertaking, while the Board shall approve the list of the commercial (industrial) secrets and confidential information. Information that does not fall into the undertaking's approved list of commercial secrets, but by essence is intended for use only within the undertaking, is also considered confidential. Provisions of *the Information Description* required complying with all the requirements of the Company's employees, who are acquainted with him in person. Essentially analogous requirement enshrined in the company's shareholders, the management body, and the members of the Supervisory Council.

Item 8.1 of *the Information Description* provides that Company's employee owning the confidential information may not disclose such information to any Third Party. Third persons are all persons who are not shareholders of the undertaking, the Supervisory Council members, management bodies, employees, auditors or other competent authority (Item 2.3). *The Information Description* has got a *Confidentiality Agreement Template* enclosed to *the Description* that shall be signed by company's employees.

The Information Description in detail presents the classification of undertaking confidential information, its marking, as well as protection obligations, access to confidential information, the disclosure and procedure on information storage.

In addition, the Statute of the Board of the undertaking provides for compliance with the requirements of confidentiality as much as stated in the *Official Letter* No 7-302-37 of 9 January 2015 by *AB Amber Grid*, the company's employees working with commercially sensitive information, are committed to abide the rules as set forth in their Labor Agreement not to disclose confidential information provided to any third parties. In addition, in accordance with the *Description on Information Management Procedures and Rules* of *AB Amber Grid* employees have signed confidential obligations corresponding to the content of Annex 3 of *AB Amber Grid Information Management Procedures and Rules*.

It should also be noted that *AB Amber Grid*, in accordance with Item 14.14 of the Rules provided information about the new hired employees, covering the six months prior to the unbundling of activities (i.e., by 19 June 2014 when *UAB EPSO-G* has acquired 39.96% of the shares from *OA O Gazprom* and other minority shareholders, as well as after unbundling by the submission date of the *Official Letter*. The detailed list of employees has been provided and it has been noted that the employees who were hired to *AB Amber Grid* did not include employees who worked in other natural gas production, supply, electricity generation and supply companies. It should be noted that the requirement to provide information about employees is also for the natural gas companies seeking to obtain a supply license (Item 21.1.12), thus the Commission may control that the employees of the transmission system operator's will not leave to supply / production companies and vice versa.

In summary, it follows that the Information Description in detail regulates the procedure of confidential / commercial information storage, access and disclosure to third parties – this list comprises production or supply undertakings, that in this way did not provide rights of access to confidential information of the undertaking to individuals engaged in the production and (or) supply activities. It should also be noted that according to the available data employees of the undertaking shall not provide service and shall not be transferred to the undertakings engaged in electricity or natural gas production/supply. In view of the foregoing, it follows that Article 32, Paragraph 1 is fulfilled.

2.9. Conclusions.

In summarizing what has been said in Section 2 of the Certificate, it should be noted that the shares of *UAB EPSO-G* (100 percent) by the right of trust are controlled by the Ministry of Energy, and on 17 February 2013 the Government of the Republic of Lithuania in order to ensure proper and efficient management of the power undertakings, transferred the state-owned shares (100 percent) of *Visagino Atominė Elektrinė UAB* (currently *UAB Lietuvos energija*) by the right of trust controlled by the Ministry of Economy to the Ministry of Finance.

The Ministry of Energy and the Ministry of Finance are the two institutions, which are not subordinate to each other, acting in the fields assigned to them according to their competences. The persons taking part in the management of *AB Amber Grid* – the members of the Board and the members of the Management Council – have signed the Declarations of Impartiality, whereby they confirmed that they would not take part in the control of the undertakings, which are involved in the activity of the electricity production and /or supply or the activity of the gas production and /or supply, and/or would not take the top management positions in these companies.

After the submitted documents, data and information, have been analyzed, no non-compliances with the requirements set forth in the Law (and with the provisions of the Directive), the Rules and the Procedure Regulations on the full ownership unbundling by ensuring unbundling of the transmission activity from other activities unrelated to transmission as well as from the commercial interests of these activities, including unbundling the ownership of the transmission activity, were identified.

Respectively, the conclusion should be drawn, that the Requirements of the Directive and Article 40-42 of the Law on unbundling the transmission System Operator from the vertically integrated group of companies, which is directly or indirectly responsible for the regular activity of electricity production and/or supply, have been complied with, i.e. *AB Amber Grid* is indirectly, through *UAB EPSO-G*, controlled by the Ministry of Energy, while the Ministry of Finance has got the direct control over *UAB Lietuvos energija*, which manages *AB Lietuvos energijos gamyba* in charge for electricity generation activities, and *UAB Energijos tiekimas* which is responsible for electricity supply (and owns daughter supply companies in Latvia and Estonia), as well as *UAB Lietuvos dujų tiekimas* engaged in natural gas supply. Thus enforced the unbundling in compliance with the provision of Article 9(6) of the Directive.

2.10. Regarding protection of confidential information

The Commission, abiding by Article 44, Paragraph 4 of the Law and with regard to the provision set for in Article 10(8) of the Directive, has to ensure the confidentiality of the information submitted by the Transmission System Operator, which is considered to be its industrial (commercial) or professional secret. Moreover, with regard to the requirements of the EC Staff Working Paper as of 21 September 2011 on the electricity and gas transmission system operators (SEC(2011) 1095 final) stating that, in order to protect the confidentiality of the information submitted by the Transmission System Operator, the scope of the confidential information has to be indicated to the European Commission, we have to point out that *AB Amber Grid* by its Official Letter No 7-302-37 of 9 January 2015 submitted the *Procedure Regulations on*

Information Management and Protection of AB Amber Grid approved by Order No 1-4 Officer of 7 January 2015 (Annex 27) by Chief Executive of *AB Amber Grid*. In addition the undertaking has submitted the List of *AB Amber Grid* Commercial (Industrial) Secrets (Annex 12 to the Official Letter). The above mentioned document defines what information should be treated as confidential.

3. Regarding the issue of termless natural gas license to AB Amber Grid

The Natural Gas Division and the Law Division of the Gas and Electricity Department ascertained that the Commission, together with the application to issue the termless license for the natural gas transmission activity, has received all documents, which are mandatory according to the procedure set forth in Paragraph 14 of the Rules.

3.1. Article 15, Paragraph 5, Item 1: technological capability.

The technological capacity of *AB Amber Grid*, as simultaneous to one of the requirements for the certification of the Transmission System Operator, has been assessed in Subsection 2.1 of the Certificate, and it has been stated that the technological capacity is sufficient.

3.2. Article 20, Paragraph 5, Item 7: financial capability.

In accordance with the provisions of Item 14 of the Procedure Regulations, providing that the entity's financial capacity is evaluated by its recent two-year balance sheet and income (loss) of reporting and is assessed as being sufficient when the indicator of its total financial capability (during the two most recent years or the years of projected activity) exceeds the lower value of the normative financial capability indicator set by the Commission for the relevant activity in the respective sector. The Commission calculates the lower value of normative financial capacity indicator of infrastructure activities by using eight financial benchmarks t. y. operating profit, net profit, return on equity, return on assets (income protection indicators), the rate of debt, leverage ratio, current liquidity ratio (leverage ratio), trade receivables (coefficient of commercial activity rate). Accordingly, taking into account the said financial indicators, i.e. having converted indicator values to scores based on the conversion matrix in the Procedure Regulations, each undertaking's overall financial capacity indicator is calculated.

The Commission by Resolution No O3-216 of 7 June 2013 concluded that the overall financial capability indicator (3.5) of *AB Lietuvos dujos* is higher than lower values of normative indicators determined by the Commission for the relevant activities. The Resolution No. O3-215 as of 7 June 2013 by the Commission established the lower value as of 1.36 of financial capability indicator for activities in natural gas infrastructure sector in 2012.

The Commission by Resolution No O3-182 of 30 June 2014 concluded that the overall financial capability indicator (2.88) of *AB Amber Grid* is higher than lower values of normative indicators determined by the Commission for the relevant activities in 2013. The Commission by Resolution No O3-183 of 30 June 2014 established the lower value as of 1.33 of financial capability indicator for activities in natural gas infrastructure sector in 2013.

The Commission by the Official Letter No R2-(D)-3024 of 3 December 2014 asked *AB Amber Grid* to present financial statements (balance sheet, profit (loss) statement, cash flow statement, statement of changes in equity, explanatory notes) as of 31 October 2014. The undertaking on 8 December 2014 by Official Letter No 7-302-1756 submitted the financial statements (Annex 3) of *AB Amber Grid* of 31 October 2014. The evaluation of the reports and the calculation showed that on 31 October the weighted sum of the company's financial capability ratio totals 3.13.

AB Amber Grid on 2 March 2015 by Official Letter No 7-302-361 submitted the financial statements (Annex 29) of *AB Amber Grid* of 2014. The evaluation of the reports has been calculated company's financial capability ratio. It should be noted that Commission on 16 March 2015

changed the Procedure Regulations on assessing the economic operator's technological, financial and management capacity approved by the Commission's Resolution No O3-6 as of 29 January 2009. In view of the aforementioned, for calculation of the financial ratio has been used 4 financial benchmarks by the new procedures, but to compare the financial capability scores, the calculation was made with 8 financial benchmarks. The evaluation of the reports and the calculation showed that on 2014 the weighted sum of the company's financial capability ratio totals 2,5 (in Certification document there was – 2,13). The comparison of the financial ratios is provided in the Table 3.

Table 3. Comparison of *AB Amber Grid* financial status in 2012- 2014.

Item No	Ratio and formula	Year 2014*	Year 2014	Year 2013	Year 2012
1.	Profitability of operations (Operating income / sales and services) x 100	-	-256,16	4,76	3,7
2.	Net profitability (Net income / sales and services) x 100	-213,6	-213,6	6,84	4,0
3.	Return on assets (Net income /assets) x 100	-	-30,38	0,14	2,4
4.	Return on equity (Net income / capital and reserves) x 100	-	-47,93	0,42	3,7
5.	Debt ratio (Total liabilities / assets) x 100	36,62	36,62	30,90	29,7
6.	Debt to equity ratio (Total liabilities / owners' equity) x 100	-	57,77	44,71	42,3
7.	Current liquidity ratio Current assets / current liabilities	0,63	0,63	1	1,9
8.	Trade debts ratio (360 d.) (Trade receivables / sales and services) x 360 (d.)	46	46	78,55	36,7
9.	Indicator of financial capability (scores)	2,5	2,13	2,88	3,5
10.	The set lower value of the normative financial capability	-	-	1,33	1,36

*Calculated by the new Procedure Regulations on assessing the economic operator's technological, financial and management capacity

In view of the aforementioned and evaluation of financial statements as of 31 October 2014 of AB Amber Grid, the Company's financial capability is sufficient for performing the licensed activity. It should be mentioned that in the meaning of Article 2, Paragraph 5 of the Law, UAB EPSO-G is not an energy undertaking because it does not perform the regulated activity and is not seeking to obtain a licence for the respective activity in the field regulated by the Law, but the undertaking is responsible for the management of the Transmission System Operator. Besides, the requirements as prescribed in Procedure Regulation in respect to the technological, financial and management capability of the electricity/natural gas undertakings are not applicable.

3.3. Article 20, Paragraph 5, Item 8 of the Law: management capability.

The Requirement of Article 20, Paragraph 5, Item 8 of the Law and Item 20 of the Procedure Regulations provide that for issuing the license an applicant must have employees for performing the licensed activity and preparing the reports, for managing separate accounts of the licensed activity, disseminating information and providing consultations to customers and examining the claims regarding the licensed activity, and if the requirements have been met, this management capability is evaluated as being sufficient.

Pursuant to Item 21 of the Procedure Regulations, the economic operator whose management capability is being assessed, provides the Commission with the information about the divisions, branches and management bodies in line with Annex 6 to the *Assessment of management capability of an economic operator*, by indicating the structural divisions (departments) performing these functions and the number of the employees.

In order to evaluate the management capability *AB Amber Grid* has submitted as follows:

1. The copy of the Articles of Association registered in the Register of Legal Persons on 25 June 2013 (further – the Articles) (Annex 1 to the Official Letter). Item 5.1 of the Articles provides for that Company’s management structure shall be approved by in General shareholders meeting, by the Board and by the Chief Executive Officer – General Director of the Company;

2. The Organizational Chart of *AB Amber Grid* approved by Minutes No 1 of 11 June 2013 of the meeting of *AB Amber Grid* Board(Annex 8 to the Official Letter) and the completed Annex 6 of the Procedure Regulations Assessment of Management Capability of *AB Amber Grid* (Annex 22 to the Official Letter);

3. The undertaking states that the relevant operational functions will be assigned to managers, (*confidential information*) – a total of 358 employees. The relevant activities of accounting, consumer information and consulting functions, respectively, will be assigned to the Accounting department (6 employees) and the Sales department (5 employees). Complaints concerning the appropriate operating conditions for the examination will be handled by Law and Sales department (8 employees). Detailed information is provided in Table 4.

Table 4. Table for the assessment of the management capability of *AB Amber Grid*

Indicator	Performance of the licensed activity	Accounting of the licensed activity	Information dissemination and consultations to customers	Examination of claims on the conditions of the licensed activity
Department/division performing the functions	Managers and other employees, (<i>Confidential information</i>)	Accounting Division	Sales Division	Law Division, Sales Division
Total number of employees	358	6	5	8

It should be noted that *AB Amber Grid* has submitted:

1. Regulations of the Board of Directors and the Administrative Office approved by Minutes No 1 of 11 June 2013 of the meeting of *AB Amber Grid* Board (Annex 4 and 9 to the Official Letter);

2. The copy of Job Regulations of *AB Amber Grid* Chief Executive Officer, Finance Director, Commerce Director, Technical Director approved by Minutes No 1 of 11 June 2013 of the meeting of *AB Amber Grid* Board (Annex 11 to the Official Letter);

3. The Activity Regulations of the (*Confidential information*) Division, Panevėžys Compressor Division, Jauniūnai Compressor Division, Facilities and Transportation Division that were approved by the Order No 1-38 of the Chief Executive Officer of 1August 2013 of *AB Amber Grid* (Annex 22 to the Official Letter);

4. Job Regulations of the (*Confidential information*) (Annex 22 to the Official Letter).

With regard to the above, the submitted information on Company’s employees responsible for the performance of natural gas transmission activity, customer information provision and consulting, reporting, handling of separate accounting, investigation of customer complaints due to transmission activity , allows to conclude that the management capability of AB Amber Grid is in compliance with the requirements of Paragraph 20 of the Procedure Regulations and is evaluated as being sufficient for performing the licensed activity.

3.4. Conclusions.

With regard to what has been said in Article 3 of the Certificate, it should be stated that *AB Amber Grid*, that has submitted to the Commission the Articles of Association approved by the Chief Executive Officer and sealed by the company's seal, the copy of payment transfer that proves the fixed fee has been paid to the State, the documents supporting the Company's technological, financial and management capability and administrative bodies i.e.:

a) Owns by the proprietary right the transmission grid, its technological connected equipment and other assets required for proper performance of the natural gas transmission activity, therefore the technological capability of the undertaking is sufficient;

b) The total indicators of the financial capability are higher than the set lower value of the normative financial capability in the infrastructure segment, therefore the financial capability of the undertaking is sufficient;

c) After having evaluated the submitted information about the main goals of the activity of the undertaking's structural divisions ensuring due performance of the Transmission System Operator's activity, the management capacity is sufficient

Respectively, the conclusion should be drawn that *AB Amber Grid* complies with the requirements for issuing the license for the natural gas transmission activity as set forth in Paragraph 5 Article 20 of the Law, the Rules and the Procedure Regulations.

4. Conclusions and proposals

By summarizing what has been stated herein above, the conclusion should be drawn that the undertaking has submitted all documents deemed necessary for certifying the Natural Gas Transmission System Operator and issuing the natural gas transmission license as set forth in the Rules and The Procedure Regulations. The content of these documents has met the Requirements embedded in Article 40-42 of the Law on the Transmission System Operator's unbundling and the requirements embedded in Article 20 on issuing the license. With regard to the objective of the Directive – in Paragraph 9 of the Preamble it is indicated that one of the goals of the Directive is the effective separation of natural gas and electricity networks from commercial interests of generation and supply – and the requirements of Article 9 of the Directive on unbundling the transmission activity, as well as pursuant to the requirements of Article 40-42 of the Law, the Gas and Electricity Division of the Gas and Electricity Department are of the opinion that the requirements of Article 40-42 of the Law have been complied, but the risk of other potential impact on the company's activities aren't fully solved which were identified in Opinion of the European Commission with regard to *AB Amber Grid*, because the Ministry of Energy indirectly owns 1/3 *UAB Litgas* share and are proposing to the Commission:

1. To state that the unbundling of the transmission activity performed by *AB Amber Grid* complies with the provisions of Articles 40–42 of the Law, and *AB Amber Grid* can be designated to operate as the transmission system operator provided that the Ministry of Energy of the Republic of Lithuania within the time period not exceeding 12 months from the date of validity of Commission Resolution will perform the actions for transferring the shares of *UAB Litgas* held by *AB Klaipėdos nafta* to the economic entity, which is neither directly nor indirectly controlled by the Ministry of Energy, as it has been set forth in the Opinion of the European Commission.

2. To revoke the Commission's Resolution No O3-292 of 18 July 2013 *Re: Issuing the Fixed-term Licence to AB Amber Grid*.

3. To issue the Open-ended Licence of the Transmission System Operator to *AB Amber Grid* (enclosed) provided that the Ministry of Energy of the Republic of Lithuania within the time period not exceeding 12 months from the date of validity of Commission Resolution will perform the actions for transferring the shares of *UAB Litgas* held by *AB Klaipėdos nafta* to the economic entity, which is neither directly nor indirectly controlled by the Ministry of Energy as it has been set forth in the Opinion of the European Commission.

4. To obligate *AB Amber Grid*:

4.1. To ensure that within the time period not exceeding 12 months from the date of validity of the draft Resolution the actions deemed necessary for transferring the shares of *UAB Litgas* held by *AB Klaipėdos nafta* to the economic entity, which is neither directly nor indirectly controlled by the Ministry of Energy, will be performed as it has been indicated in the Opinion of the European Commission, and to inform about the progress in effectuating this process within 10 calendar days after the expiration of the reported quarter.

4.2. In the case of the altered circumstances, which are other than those indicated in Item 4.1 of this draft Resolution, due to which the implementation of the requirements for unbundling the transmission activity set forth in Articles 40–42 of the Law is not ensured, to inform the Commission hereof no later than within 5 business days from the date when these altered circumstances became known to *AB Amber Grid*.

With regard to the aforesaid circumstances, the Electricity Division and the Gas division of the Gas and Electricity Department are proposing to approve the submitted Draft Resolution.

ENCLOSED:

1. Draft Resolution on unbundling the natural gas transmission activity and certification of the Transmission System Operator, 4 pages;
2. A copy of the Official Letter No 7-302-1569 of 20 October 2014 of *AB Amber Grid*, 593 pages;
3. A copy of the Official Letter No 7-302-1756 of 8 December 2014 of *AB Amber Grid*, 16 pages;
4. Commission Resolution No O3-70 of 20 March 2012 *Re: The Deadlines for Submitting the Description of the Methods of Unbundling the Activities of AB Lietuvos dujos and Control over Them and the Plan of Actions to be Taken*, 1 page;
5. Certificate No O5-64 of 20 March 2012 of the Gas Division of the Commission's Electricity and Gas Department *Re: The Deadlines for Submitting to the Commission the Description of the Method of Unbundling AB Lietuvos dujos Activities and Control over them with the Plan of Actions to be Taken*, 2 pages;
6. The Commission Resolution No O3-145 of 15 June 2012 *Re: The Action Plans of Unbundling the Transmission and Distribution Activities of AB Lietuvos dujos and Control over Them*, 2 pages;
7. Certificate No O5-138 of 12 June 2012 of the Law Division of the Commission *Re: The Action Plans for Unbundling the Transmission and Distribution Activities of AB Lietuvos dujos*, 4 pages;
8. The Commission Resolution No O3-293 of 9 October 2012 *Re: The Investment Project of AB Lietuvos dujos in Unbundling the Transmission System Operator (TSO) and Establishing a New Undertaking*, 1 page;
9. Certificate No O5-250 of 28 September 2012 of the Gas Division of the Electricity and Gas Department of the Commission *Re: The Approval of the Investment Project of AB Lietuvos dujos in Unbundling the Transmission System Operator (TSO) and Establishing a New Undertaking*, 13 pages;
10. The Commission Resolution No O3-64 of 28 February 2013 *Re: Conditions of AB Lietuvos dujos Unbundling and the Composition of the Assets Transferred to the Transmission System Operator*, 1 page;
11. Certificate No O5-72 of 9 October 2012 of the Gas Division of the Electricity and Gas Department of the Commission *Re: The Conditions of AB Lietuvos dujos Unbundling and the Composition of the Assets to be Transferred to the Transmission System Operator*, 10 pages;
12. The Commission Resolution No O3-292 of 18 July 2013 *Re: Issuing the Temporary Natural Gas Transmission License to AB Amber Grid*, 1 page;
13. The Commission Resolution No O3-311 of 18 July 2013 *Re: The Termination of the Validity of the Natural Gas Transmission License Held by AB Lietuvos dujos*, 1 page;

14. Certificate No O5-253 of 11 July 2012 of the Gas Division of the Electricity and Gas Department of the Commission *Re: Issuing the Temporary Natural Gas Transmission License to AB Amber Grid*, 8 pages;
15. The Commission by Resolution No O3-125 of 9 May 2014 *Re: The Implementation of the Plan of Unbundling the Control over AB Amber Grid*, 3 pages;
16. Certificate No O5-109 of 9 May 2014 of the Gas Division of the Electricity and Gas Department and the Law Division of the Commission *Re: The Implementation of the Plan for Unbundling the Control over AB Amber Grid*, 8 pages;
17. The Commission by Resolution No O3-127 of 19 May 2014 *Re: The Implementation of the Plan for Unbundling the Control over AB Lietuvos dujos*, 3 pages;
18. The Certificate No O5-122 of 19 May 2014 of the Gas Division of the Electricity and Gas Department and the Law Division of the Commission *Re: The Implementation of the Plan for Unbundling the Control over AB Lietuvos dujos*, 17 pages;
19. The Commission by Resolution No O3-332 of 28 July 2014 *Re: The Amendment of the Plan of Actions for Unbundling AB Lietuvos dujos Distribution Activity*, 2 pages;
20. Certificate No O5-197 of 23 July 2014 of the Gas Division of the Electricity and Gas Department of the Commission *Re: The Amendment of the Plan of Actions for Unbundling the Distribution Activity of AB Lietuvos dujos*, 6 pages;
21. The Commission by Resolution No O3-824 of 13 October 2014 *Re: Issuing the Natural Gas Supply License to Private Limited Company Lietuvos dujų tiekimas*, 1 page;
22. The Certificate No O5-275 of 10 October 2014 of the Gas Division of the Electricity and Gas Department of the Commission *Re: The Natural Gas Supply License to Private Limited Company Lietuvos dujų tiekimas*, 11 pages;
23. Resolution No O3-756 of 27 December 2013 *Re: Issuing the Natural Gas Supply License to UAB LITGAS*, 1 page;
24. Certificate No O5-490 of 27 December 2013 of the Gas Division of the Electricity and Gas Department of the Commission *Re: Issuing the Natural Gas Supply License to UAB LITGAS*, 12 pages;
25. Commission Resolution No O3-907 of 27 December 2014 *Re: Issuing the Natural Gas Liquefaction License to AB Klaipėdos nafta*, 1 page;
26. Certificate No O5-350 of 26 December 2014 of the Gas Division of the Electricity and Gas Department of the Commission *Re: Issuing the Natural Gas Liquefaction License to AB Klaipėdos nafta*, 8 pages;
27. *The copy of AB Amber Grid Official Letter No 7-302-37 of 9 January 2015*, 19 pages;
28. Copies of the extracts on legal entities from the SE Center of Registers of the Republic of Lithuania, 20 pages.
29. The copy of AB Amber Grid Official Letter No 7-302-361 of 2 March 2015, 18 pages;
30. The copy of Ministry of Energy Official Letter No (7.5-09)3-993 of 2 April 2015, 1 page;
31. The copy of Ministry of Finance Official Letter No (27.18-02)-5K-1507298-6K-1502806 of 2 April 2015, 1 page;

Head of Electricity Division
of Gas and Electricity Department

Rimgailė Baliūnaitė

Chief Specialist of Gas Division
of Gas and Electricity Department

Rimas Valungevičius

To the Hearing shall be invited:

1. Representatives of the Ministry of Energy,

2. Representatives of *AB Amber Grid*,
3. Representatives of *UAB EPSO-G*,
4. Representatives of the of the Ministry of Finance