

број 01-2228/5
Подгорица, 04.08. 2014 год.

MEMORANDUM OF UNDERSTANDING

between the Government of Montenegro and A2A S.p.A.
regarding
the basis for Amendments to the Sale and Purchase Agreement, Share Subscription Agreement, Shareholders Agreement and Management Agreement, concluded between the State of Montenegro and A2A

The Government of Montenegro (hereinafter: "the Government"), on behalf of the State of Montenegro,
on one side, and

A2A S.p.A (hereinafter: „A2A“),
on the other side,
(each a "Party", collectively the "Parties")

Whereas:

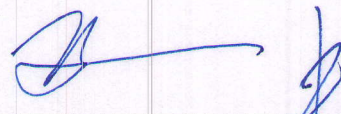
1. on 3 September 2009, the Government, on behalf of the State of Montenegro, and A2A signed the Sale and Purchase Agreement, Share Subscription Agreement, Shareholders Agreement and Management Agreement (hereinafter: the "EPCG Agreement");
2. A2A, after becoming the owner of 43.7% of the shares in EPCG, pursuant to the EPCG Agreement also acquired the right to manage EPCG until 31 December 2014;
3. The EPCG Agreement defines that EPCG management is to focus on achieving twenty indicators (defined in the EPCG Agreement as Investment Indicators and Operational Indicators, hereinafter: the "Indicators");
4. The EPCG Agreement envisages possibility of A2A, upon fulfillment of the Indicators under Appendix 14 of the EPCG Agreement (at least 80 points out of 100) and upon expiry of five year period, being entitled to submit to the Government an offer for purchase of additional package of shares which would ensure it majority ownership in EPCG;
5. The EPCG Agreement also prescribes as an additional condition in order for A2A to enjoy the rights mentioned above, that the level of profit (besides being one of the Indicators) must be at least 80% of the given target. The EPCG Agreement states that the profit targets are defined under the following assumptions:
 - "the method of price definition will not be significantly altered compared to the current state", and
 - "supply contracts for large customers (KAP and Nikšić Steelwork) will expire soon and the new contracts will be defined according to market terms".
6. The EPCG Agreement defines that eight indicators are to be valued only at the end of the five-year period (31 December 2014), while the other indicators are to be valued annually. The final value for the indicators that are to be valued annually is obtained as the arithmetic average value in respect to individual years. If A2A during the three-year management obtains a number of points which indicates as obvious that the set goal cannot be achieved at the end of the five-year period, it loses its right to manage the company. In the event that A2A fails to achieve the indicators at the end of the five-year period the Government is also entitled to purchase, at a discount proportional to the non-fulfillment of the Indicators, the EPCG shares which were acquired by A2A in the process of the capital increase and partial privatization.

- Moreover, in the event of failure to fulfill the indicators at the end of the five-year period, the Government is entitled to sell the shares owned by A2A, "together with any number of State shares", to a third party;
7. after the signing of the EPCG Agreement, a series of events occurred, beyond the control of Parties;
 8. A2A deems that the starting values of various Indicators as represented in the EPCG Agreement were different from the ones actually measured at the end of 2009, as well as that; Annex 14 to the EPCG Agreement does not give a completely precise methodology for defining and valuating certain indicators.

The Parties agreed the following:

1. Considering that:
 - the Government of Montenegro has expressed an interest in maintaining a majority ownership in EPCG and to accelerate investments in the energy sector; and
 - the priority of A2A is to ensure development of a profitable company through management of EPCG;and taking into account the above mentioned, the Parties are ready to negotiate in good faith amendments to the EPCG Agreement, in order to achieve the following goals:
2. A2A waives the right, defined under the EPCG Agreement, to deliver to the Government at the end of the five-year period (beginning of 2015) in the event of fulfillment of indicators up to the prescribed level, an offer for purchase of a package of shares that would ensure it majority ownership in EPCG and rights to acquire a majority ownership in EPCG ("Investor's Call Option and Shootout" – article 15.1 of the EPCG Agreement).
3. The Government waives the right to buy-out A2A's shares in EPCG (Seller's Call Option, Drag-Along Right – art. 15.2 and 15.3 of the EPCG Agreement).
4. A2A shall manage EPCG until 31 December 2014 and EPCG management shall be extended for another five-year period (1 January 2015 – 31 December 2019) if A2A fulfills indicators that are listed in Annex 1 hereto (Annex 1 shall be considered as a preliminary list and is to be finally defined in an annex to the EPCG Agreement).
5. If the management of EPCG by A2A is successful in the manner described under the point 4, A2A's management right shall be extended for another five years (1 January 2015 – 31 December 2019) under the conditions defined by amendments to the EPCG Agreement. If A2A's management right is extended for the period 2015-2019, A2A may not transfer EPCG shares to any third party without prior written consent from the Government which shall not be unreasonably withheld.
6. EPCG shall, by the end of 2014, prepare an Investment Plan and Business Plan for the period 2015-2019. In case the management fails to reach the planned target, the management shall be changed upon the request of the Government.
7. In the period 2012-2014 (from 1st January 2012 to 31st December 2014) A2A shall not transfer shares in EPCG to any third party without prior written consent from the Government. At the same time, the Government intends to maintain majority ownership in EPCG in accordance with the laws in force in Montenegro.

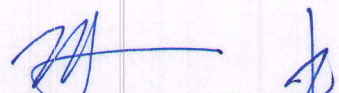
In the event A2A decides to transfer EPCG shares, in accordance with the points 5 and 7, the Government shall have a preemption right over such shares.



During the period set out in this point 7, if the Government decides to sell its shares in EPCG to a third-party purchaser, A2A shall have a tag-along right with respect to all, but not less than all, of the shares A2A holds in EPCG at the date hereof.

8. Integral parts of the agreement on amendments to the EPCG Agreement shall be the Business Plan for the period 2012-2014 (from 1st January 2012 to 31st December 2014), the Investment Plan for the same period, as well as the methodology for determining and valuing indicators and deadlines and the manner of reporting the indicators.
9. The Board of Directors of EPCG at its session of 27 May 2011 adopted a conclusion concerning the engagement of an adviser to prepare a technical and economic feasibility study of the merger and if the study shows that the merger is justified and feasible then the adviser should propose the best model for the merger of Rudnik Uglja AD Pljevlja and EPCG (hereinafter: the "Study"). The adviser is to also monitor the entire merger process until its finalization. The Government and A2A agree to make every effort, as major shareholders in both companies, in order to ensure that this activity is finalized with the greatest possible success, in accordance with the Study, if both Parties accept solutions envisaged by the Study.
10. Having regard that the Interim methodology for determining the regulatory allowed revenue is in force and that according to the Energy Act the adoption of a new methodology is required by the end of this year, the Parties expect that the Regulatory Agency will provide a more clear regulatory framework for the coming years, as a fundamental basis for the new Business Plan of EPCG in accordance with the Letter of the Regulatory Agency no. 11/1901-2 dated 22 July 2011, which is attached hereto. It is presumed that the new methodology is to implement to the greatest extent possible the standards of the European Union in this area and ensure predictability of electricity prices in the medium term.
11. The Parties agree that the period before final opening of the electricity market (1 January 2015) is to be analyzed with particular attention, especially in respect to large electricity consumers.
12. Given the existence of a partnership between the Government and A2A, through joint ownership in EPCG, the Parties shall analyze the potential of EPCG to implement the construction project for the Morača Hydropower Plants. Depending on the results of such analysis and in case that the tender for construction of the Morača Hydropower Plants is cancelled, the Parties shall consider possibility of the Morača Hydropower Plants being constructed by EPCG. It is by all means necessary to respect the principles of sustainable development in the realization of the construction of hydropower plants on the River Moraca. Hence, an environmental impact study should be conducted prior to realization of the project. EPCG's capacity to implement the foregoing project will be verified through the preparation of a Business plan for the period 2012 – 2014.
13. With the aim of harnessing the full commercial potential deriving from the additional generation capacity, from the development of international interconnections and from progressive liberalization of the energy market, A2A will make available to EPCG its energy trading expertise and know-how; the Parties will also discuss potential cooperation in this area.

The Parties agree to negotiate in good faith the terms of amending the EPCG Agreement, as stipulated by this Memorandum and to conclude an annex in this respect no later than 31 December 2011. If for any reason the conclusion of the annex to the EPCG Agreement fails



to occur by 31 December 2011, this Memorandum ceases to produce any legal effects for the Parties. For avoidance of any doubt, the Parties confirm that this Memorandum does not make any amendments to the EPCG Agreement which therefore remains fully in force, nor are any additional obligations being assumed hereunder except the commitment to negotiate the amendments to the EPCG Agreement,.

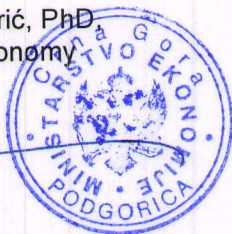
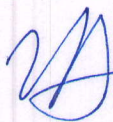
This Memorandum shall be executed in six (6) original versions, three (3) of which original versions shall be in the Montenegrin language and three (3) of which original versions shall be in the English language. In the event of any discrepancies or inconsistencies between the two versions of this Memorandum, the English language version shall prevail.

In witness whereof, the below signed representatives, being duly authorized, have signed this Memorandum.

Signed in Podgorica on 4th August 2011

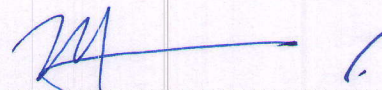
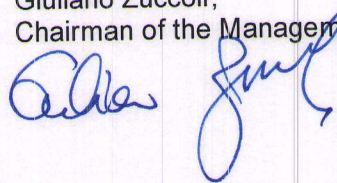
The Government of Montenegro

Vladimir Kavarić, PhD
Minister of Economy



A2A S.p.A.

Giuliano Zuccoli,
Chairman of the Management Board

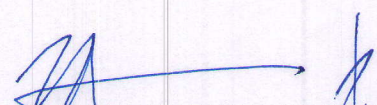


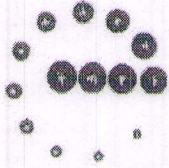
ANNEX 1

In the period from 1 January 2012 to 31 December 2014 the management shall be evaluated against seven indicators which shall be agreed in detail between the Parties:

- Indicator 1: Average annual reliability of all EPCG generation Power Plants
- Indicator 2: Air emission of SO_x in TPP Pljevlja
- Indicator 3: Installation of a certain number of new electricity meters
- Indicator 4: Relocation of a certain number of existing electricity meters
- Indicator 5: Collection rate
- Indicator 6: annual EBITDA: the value shall be defined following definition of the agreed Business Plan for the period 2012-2014.
- Indicator 7: Specific investment projects

In order to consider the management of EPCG successful, the management needs to earn at least 80 points. In this case, the management right will be extended for an additional five years (1 January 2015 – 31 December 2019).

A handwritten signature in blue ink, followed by a horizontal arrow pointing to the right, and a small vertical mark at the end of the arrow.



Regulatorna agencija
za energetiku

Broj: 11/1901-2
Podgorica, 22.07.2011. godine

МИНИСТАРСТВО ЕКОНОМИЈЕ
ПОДГОРИЦА

Примљено:	22.07.2011		
Одј. ред.	Број	Прилог	Врхундност
01	511	1/2	

MINISTARSTVO EKONOMIJE

N/r Ministra Vladimira Kavarića

PODGORICA

Poštovani g-dine Kavariću,

Trenutno su na snazi Privremena metodologija za određivanje regulatornog prihoda i cijena za korišćenje distributivnog sistema električne energije i Privremena metodologija za određivanje regulatornog prihoda javnog snabdijevača i regulisanih tarifa za snabdijevanje električnom energijom.

Prema Zakonu o energetici potrebno je da se do kraja ove godine usvoje trajne metodologije u kojima će se obezbijediti jasan stav o regulatornom okviru za sljedeće godine, i to će biti suštinska osnova za novi Biznis plan Elektorprivrede Crne Gore AD Nikšić. U trajnim metodologijama se u najvećoj mogućoj mjeri implementiraju standardi Evropske unije u ovoj oblasti i obezbjeđuje predvidljivost cijena električne energije u srednjoročnom periodu.

S poštovanjem,



Predsjedavajući Odbora Agencije,

Dragutin Martinović

Energy Regulatory Agency

No: 11/1901-2

Podgorica, 22 June 2011

MINISTRY OF ECONOMY

Attn. Minister, Vladimir Kavacic

PODGORICA

Dear Mr. Kavacic,

Currently the Interim methodology for determining the regulated revenue and prices for the use of the electricity distribution system and the Interim methodology for determining the regulatory revenue of the public supplier and regulated electricity supply tariffs are in force.

According to the Energy Law it is required to adapt a permanent methodology by the end of this year, which is to provide a clear view on the regulatory framework for the next years, becoming a substantial base for the new Business Plan of Elektroprivreda Crne Gore AD Niksic. Permanent methodologies implement to the greatest extent possible standards of the European Union in this area and ensure predictability of electricity prices in the medium term.

Respectfully,

Chairman of the Board

Dragutin Martinovic

