



TECHNISCHE
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Mega-Regionals and the Regulation of Unbundling Measures in the EU Energy Sector

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Europa fördert Sachsen.



SACHSEN





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EUROPEAN UNION AND ITS MEMBER STATES – CERTAIN MEASURES RELATING TO THE ENERGY SECTOR

REQUEST FOR CONSULTATIONS BY THE RUSSIAN FEDERATION

The following communication, dated 30 April 2014, from the delegation of the Russian Federation to the delegations of the European Union and its member States and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the European Union ("EU") and its Member States, pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), Article XXIII of the General Agreement on Trade in Services ("GATS"), Article XXIII of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), Article 4.1, Article 7.1 and Article 30 of the Agreement On Subsidies And Countervailing Measures and Article 8 of the Agreement on Trade-Related Investment Measures with respect to certain restrictions and requirements maintained by the EU and implemented within its territory by the EU and its Member States, including Croatia, Hungary and Lithuania, through the so-called "Third Energy Package" Directives and Regulations, implementing legislation and decisions of the EU and its Member States and the measures resulting from participation in the Treaty establishing the Energy Community (hereinafter referred to as "Third Energy Package"), and pertaining to, in particular, the unbundling of vertically-integrated undertakings involved in the production, supply, and transmission of natural gas or electricity, the discriminatory certification requirements in

What Is Ownership Unbundling?

Definition:

OU requires the complete separation of supply and production activities from network operations

Rationale:

Vertically integrated energy companies often discriminate against competitors as regards network access

What Is Ownership Unbundling? (cont'd)

Production
&
Supply

No control
No appointment of administrators
No voting rights
Only minority shareholding
Dividends allowed

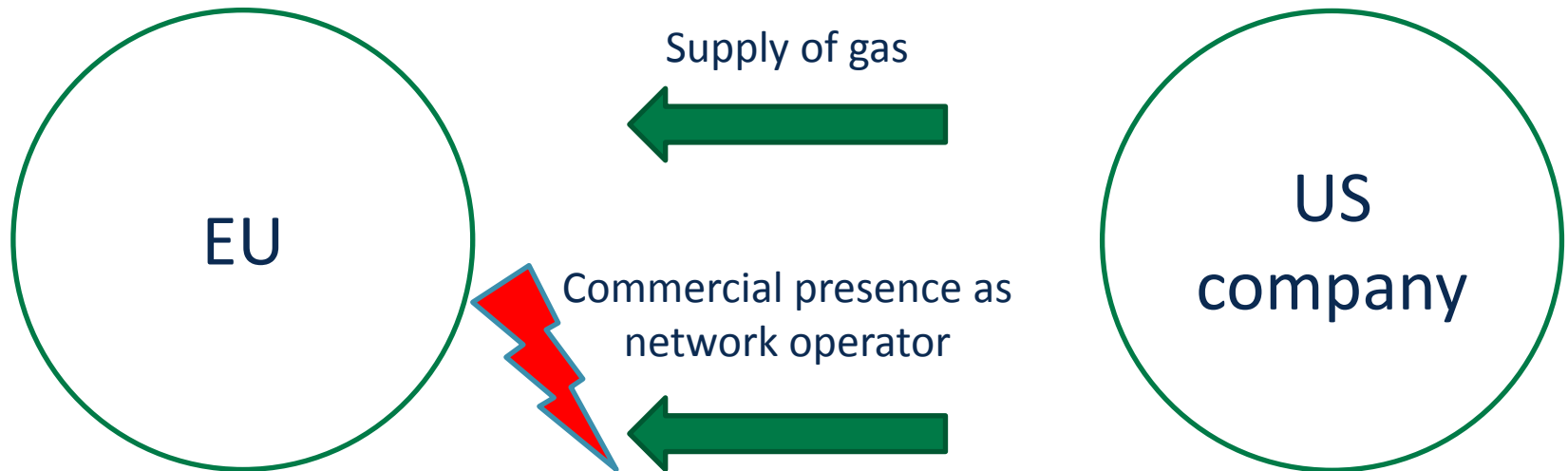
Transmission

Ownership of
network

Third Energy Package:

- Directive 2009/72/EC (electricity) and
- Directive 2009/73/EC (gas)

What Is Ownership Unbundling? (cont'd)



Linking Mega-Regionals & OU

Mega-
Regionals



Ownership
Unbundling

Effect of CETA & TTIP

Mega-Regionals may **hamper** the adoption of OU measures through provisions on:

1. Market access
2. National treatment
3. Domestic regulation

Market Access

- Far-reaching interpretation of market access obligation under GATS due to *US–Gambling*
- OU could constitute prohibited market access restriction under GATS
- Market access provisions in CETA & TTIP are modelled on the GATS



OU could conflict with market access obligations in CETA & TTIP

Domestic Regulation

- OU measures could conflict with disciplines on domestic regulation
- With few exceptions, disciplines on domestic regulation are rather limited
 - Article VI:4 GATS: negotiating mandate
 - PTAs: 'best endeavors' commitments
 - CETA: no necessity test

Domestic Regulation (cont'd)

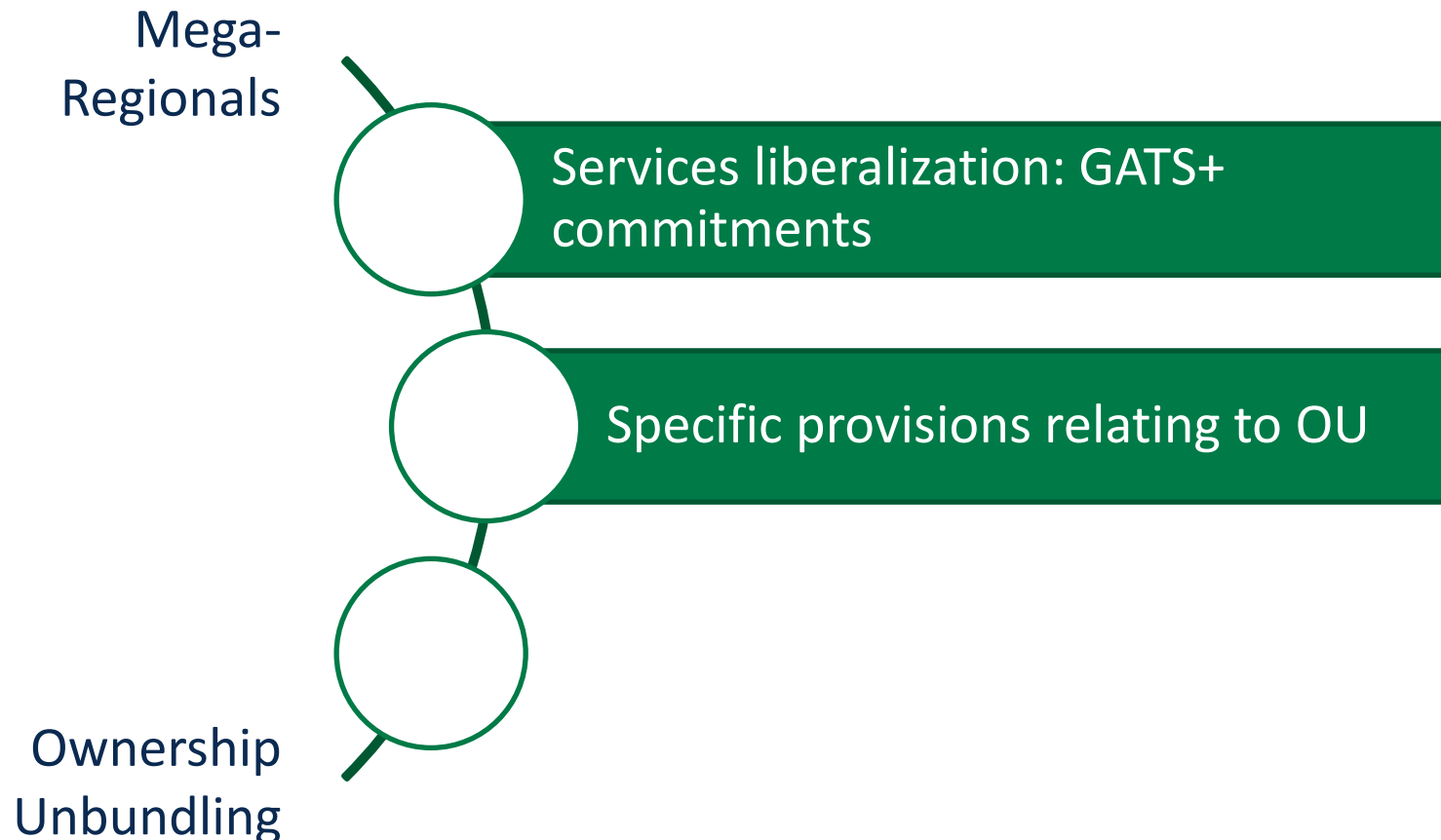
TTIP Draft

Article 30

Conditions for licencing and qualification

1. Each Party shall ensure that measures relating to licencing requirements and procedures [...] are based on criteria which preclude the competent authorities from exercising their power of assessment in an arbitrary manner.
2. The criteria referred to in paragraph 1 shall be:
 - (a) proportionate to a legitimate public policy objective; [...]

Linking Mega-Regionals & OU

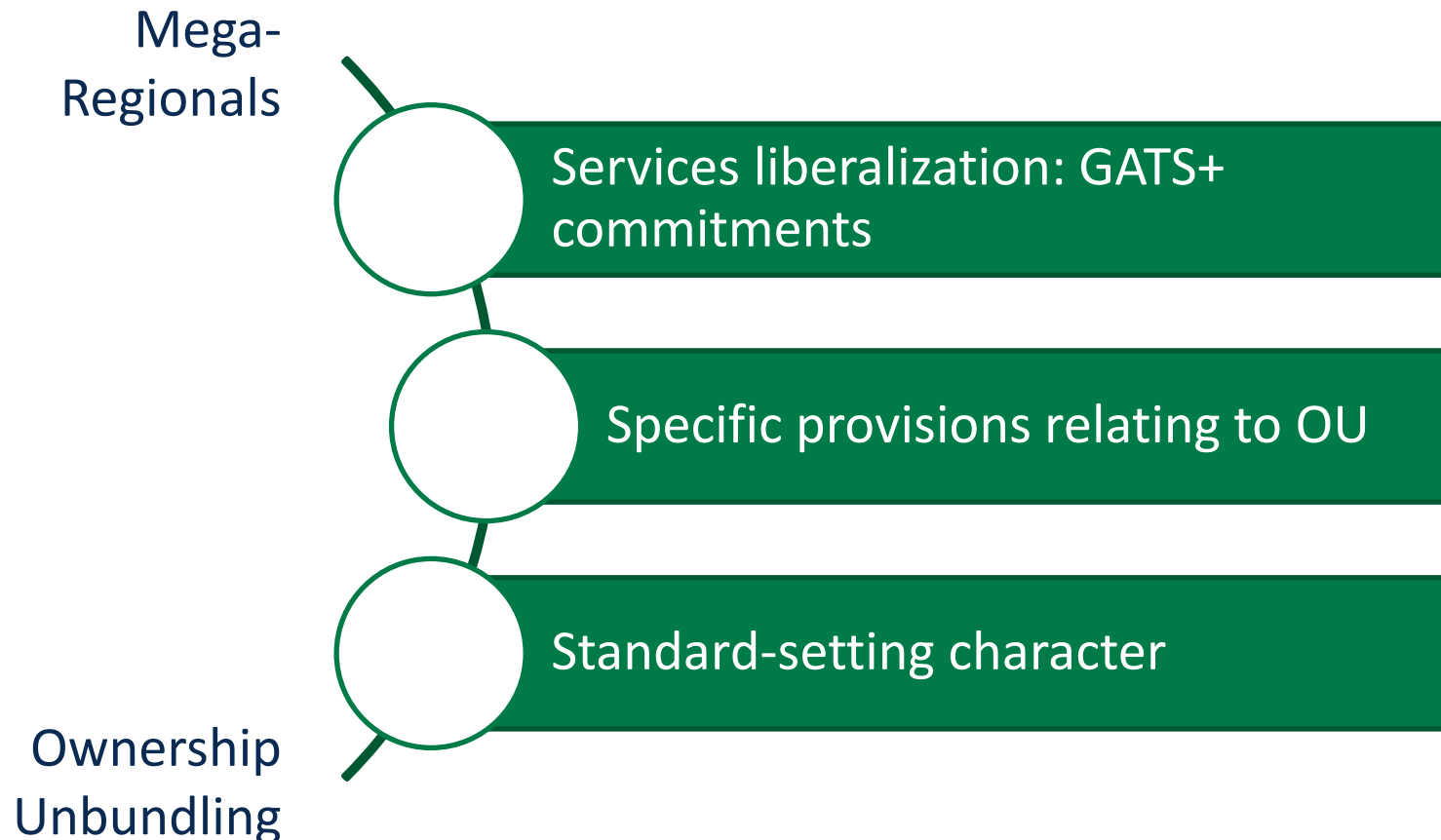


Market Access (cont'd)

CETA Consolidated Text Article X.4: Market Access

1. ...
2. For greater certainty, the following are consistent with paragraph 1 of this article; (...)
 - b) Measures requiring the separation of the ownership of infrastructure from the ownership of the goods or services provided through that infrastructure to ensure fair competition, for example in the fields of energy, transportation and telecommunications.

Linking Mega-Regionals & OU



Conclusions

1. OU is a **central feature** of the EU competition policy in the energy sector
2. CETA's explicit **carve-out** for OU measures can serve as a **blueprint** for future trade negotiations
3. OU is a **cross-sectoral** issue: energy, transportation and telecommunications

Thank you for your attention!