

legal person in a foreign country if the application is submitted in bad faith (which includes those filed by representatives of a person without his/her permission).

Such changes in the current legislation facilitate an effective protection of brands which operate successfully in foreign markets but have not yet been launched in Ukraine. When entering the Ukrainian market, such right-holders often face situations in which their trademarks are already registered here. In this respect, they are often forced either to start expensive legal procedures or to buy a trademark from an unfair owner.

Under the Draft Laws, third parties may not only file oppositions regarding applications for trademarks, but also appeal final decisions of Ukrpatent in the Appeals Chamber without first referring to a court. At the same time, Ukraine does not

recognize the concept of so-called post-grant oppositions in relation to trademarks. If an interested party fails to file an opposition in due course, he/she may invalidate the trademark certificate only in court. As a result, services for tracking submitted applications are becoming increasingly important.

One more expected provision is the opportunity to demand a fine of 10 to 50,000 minimum wages (from USD 1,750 to USD 8.7 million) in case of a certificate invalidation and the violation of third parties' rights being established by the court.

Although the results of all of the above are yet to be seen, these legislative improvements demonstrate Ukraine's readiness to follow the European standards of IP protection and will definitely benefit fair businesses. ■

UKRAINIAN GAS TRANSMISSION SYSTEM UNBUNDLING – MISSION POSSIBLE AND COMPLETED

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2019 was an outstanding year for Ukrainian gas sector, as the country managed to complete the most critical parts of the unbundling of the gas transmission system in a timely manner. The year was also remarkable because, in twelve months, we saw three different unbundling models proposed by the

Government, forcing the participants of

the unbundling process and the key stakeholders to quickly adapt to the new rules and scenarios. For most of the year the country planned to implement an ownership unbundling model. However, in September 2019, before the third round of trilateral Ukraine-Russia-EU talks on gas transit, the unbundling plan took a U-turn, when the newly appointed Ukrainian Government, in its Resolution 840 (the "New Unbundling Resolution"), decided to switch to the independent system operator (ISO) model.

We addressed and covered the general design and developments of the then-anticipated unbundling of the Ukrainian

gas transmission system in an Experts Review article titled "The Gordian Knot of Ukrainian Gas Transmission System Unbundling" in the September 2019 issue of the CEE Legal Matters magazine, and in a subsequent online update.

However, adoption of the New Unbundling Resolution was only the first of many crucial steps to be completed on the way to completing the successful unbundling before January 1, 2020. The new ISO model foresaw the transfer of GTS-related assets to the Gas Transmission System Operator limited liability company (GTSO) – the specially established subsidiary of JSC Ukrtransgaz – and the subsequent transfer of 100% of GTSO to the ownership of JSC Main Gas Pipelines of Ukraine (MGU). All MGU shares were then supposed to be transferred from the Ministry of Energy of Ukraine to the Ministry of Finance of Ukraine – which was designated as the independent "transmission system owner" on behalf of the state.

By adopting the New Unbundling Resolution the Government managed to preserve and combine most of the results of the preparatory work undertaken both by Naftogaz (the former manager of the gas transmission system and former owner

of the current GTSO) and by MGU, which was specifically established, initially, to become the transmission system operator. As a result of the completion of the unbundling MGU serves as a holding company in relation to the GTSO and is an important component in the corporate governance structure and compliance with the TSO certification conditions.

Following the adoption of the New Unbundling Resolution the Government and the Parliament of Ukraine demonstrated unprecedented unity in addressing unbundling-related commitments. Apparently the combination of a parliamentary mono-majority with the newly appointed Government played a decisive role. On October 31, 2019, the Parliament adopted the Law of Ukraine "On Amendments to Certain Laws due to Unbundling of Natural Gas Transmission Activity" No. 264-IX (the so-called "Unbundling Law"). The entry of the law into force was a bit bumpy but was eventually achieved on November 17, 2019. The Unbundling Law was a milestone in the unbundling process and the key element in Ukraine's natural gas market reform. It ensured the market's liberalization, efficiency, transparency, and further integration with neighboring European markets. Among other things, the Unbundling Law allowed governmental institutions to transfer state-owned assets (related to GTS) into so-called "commercial management" by the GTSO (as per amendments to the Commercial Code); introduced the supervisory role of the National Energy and Utilities Regulatory Commission (NEURC) over the ministry responsible for management of GTS assets (as per amendments to the Gas Market Law); and gave the NEURC the power to resolve disputes between GTSO and the ministry responsible for management of GTS assets (as per amendments to the NEURC Law).

Soon after, on November 2, the NEURC issued its preliminary certification decision, which was confirmed by a final decision on December 24, 2019. The NEURC final certification decision reflected and relied on the positive opinion of the Energy Community Secretariat of December 17, 2019.

All of these steps eventually contributed to the conclusion, in December 2019, of a new 5-year gas transit contract with Russia's Gazprom and the settlement of open arbitration claims between Naftogaz and Gazprom.

Today, four months after the final completion of the gas transmission system unbundling (effected via transfer of 100% share in GTSO to MGU on January 1, 2020) Ukraine takes pride in maintaining the uninterrupted transit of gas to Europe and remaining its reliable partner. ■

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