

Can Uncovered Transaction Application Affect the Electricity Trade Agreements, especially in the times of coronavirus?

The concept of uncovered sale transactions entered into the lives of electricity market participants with the Method regarding the Uncovered Market Transactions (“**Method**”) issued by the market operator, EPIAŞ. Whether the implementation of this new regulation will affect the electricity trade agreements and what the effects will be, have been a great topic of discussion among the market participants since the Method entered into force in October 2019.

It is understandable that EPIAŞ felt the need to put a limit to and cancel the sale transactions exceeding the purchases and generations considering that the market participants abused their ability to sell electricity without any limitation in the recent past. However, the Method stipulating a mechanism where one market participant’s uncovered transactions due to its breach may also result in the cancellation of the sale transactions of the parties that bought electricity from that breaching party (which is called “iterated cancellation” as per the Method) complicated things, as market participants which have no faults or breaches actually end up being punished by having their transactions cancelled.

The Method permits each market participant to sell 600 MW per day *via* bilateral agreements, without being subject to any risk of cancellation. However, in the event that the sum of the total amounts of day-ahead sale transactions and bilateral agreement sale transactions for the following day exceeds 1,1 of the sum of total amount of (i) daily bilateral agreement purchase transactions, (ii) the day-ahead market purchase transactions, (iii) the day-ahead generation program (for generation companies), (iv) the unlicensed electricity generation amount (for the authorized supply companies) and (v) the amount to be imported from non-parallel synchronous connection lines (*e.g.* for those importing electricity from Georgia or Iraq) for the following day or 600 MW, whichever is higher, then the exceeding sale amount is considered as uncovered bilateral agreement sale transaction; and EPIAŞ sends a notification to the parties stating that they have uncovered transactions by 16:10 of the relevant day. As EPIAŞ does not find itself authorized to choose which of the transactions will be deemed the uncovered ones, in practice, it notifies the cancellation of all the transactions and grants a limited time of 50 minutes to the relevant party to eliminate the existence of uncovered transactions as per such calculation. Accordingly, the relevant party will have to choose and give up at its discretion certain transactions and re-enter the other ones. If the party does not rectify its situation by doing so, all its sale transactions will be cancelled. In the event that the sale between two parties is cancelled for more than once in a month (herein after Party A to be referred to as the seller, and Party B as the buyer), upon the second cancellation, Party B’s uncovered sale transactions are re-calculated taking into consideration its updated purchase amounts (*i.e.* total purchase amounts minus the cancelled amount purchased from Party A). If such calculation proves that Party B has uncovered transactions, this results in the cancellation of Party B’s sale transactions as well. On the other hand, the chain of cancellations will cease with the cancellation of Party B’s sale transactions and the sale transactions of the Party B’s purchasers will not be affected.

Looking from a legal perspective, cancellation of uncovered sale transaction under the Method may result in contract breaches and ultimately lead to disputes, which were not foreseen at the time of execution of the electricity trade agreements by the Parties. On the other hand, as the implementation of the Method by

EPIAŞ and the perception of the Method in the eyes of the market participants are still somewhat vague, we see that the market participants prefer to remain reluctant on making any amendments in their electricity trade agreements for the moment. We believe that whether the party being subjected to iterated cancellation can claim its indirect damages from the party actually causing the cancellation, or claim force majeure towards the party to whom it was supposed to sell electricity are all important subjects to take into consideration when entering into new contracts and deciding whether the existing contracts should be amended. It is even more so with the possible generation problems that may occur due to the new coronavirus spread, which might actually result in many more uncovered transactions than anticipated and might get out of the control of the parties.