

I. Executive Summary

Project Finance Advisors, LLC (“PFA”), of Bethesda, MD USA has conducted a multi-disciplinary study (the “Study”) examining the overall feasibility of the Empresa Nacional de Energía Eléctrica (“ENEE”), the Honduran State-owned electricity company, providing telecommunication services or transmission capacity to telecom/media operators and other customers in Honduras (the “Project”). The study is funded under a cost share arrangement with the U.S. Trade and Development Agency (“USTDA”).

Based on the results of this report, Piper will prepare a second report recommending a structure and potential terms for ENEE to consider in connection with soliciting investor and lender interest in the Project.

This report summarizes the key findings and issues identified under Honduran law for ENEE’s proposed commercial participation in the telecommunication field. The findings have been developed by local counsel, Bufete Lopez Castro & Asociados (“Castro” or “Local Counsel”) in Tegucigalpa, and Piper Rudnick LLP (“Piper”), as lead counsel to the project. In addition, Piper has discussed key issues and findings identified in this final report with in-house legal counsel to ENEE, Carolina Argueta.

This report is based upon the results of the review of those laws, regulations, policies and doctrines of Honduras relating to the electricity and telecommunications sectors, as well as public laws, including administrative, civil and commercial laws, as such laws have been identified to Piper by Castro and deemed by Castro and Piper to be relevant to the inquiry (see Annex A for a complete list of laws and their acronyms). Particular focus has been placed on those laws pertaining to ENEE’s powers and authority to enter the telecommunications field as an alternative infrastructure provider.

This section of the report relates to PFA’s legal assessment of ENEE’s regulatory position and legal power to offer Bandwidth Services as an alternative infrastructure provider in Honduras. PFA’s Market Assessment (Task 1) recommends that ENEE not offer “retail” voice, data or internet services at this point. Rather, PFA recommends that ENEE provide “Bandwidth Services” to other telecom/media operators such as voice, data and media operators and Internet Service Providers (“ISPs”). PFA’s recommendation is that ENEE not offer telecommunications services directly; rather, ENEE should sell high speed transmission capacity for media/ISP providers and traditional voice telecom license holders that is currently not available from the national incumbent, Hondutel, or available at non-monopolistic prices.

This Legal and Regulatory report examines the following:

- A regulatory and legal review of the basic issues regarding ENEE’s ability to participate in the telecommunications sector;
- ENEE’s current regulatory position in the context of the current telecommunications legal/regulatory regime;

- Certain aspects of the Honduran telecommunications legal/regulatory regime considered relevant for ENEE's potential participation in a telecom venture;
- Potential commercial structures through which ENEE could arrange for a special purpose entity to hold a telecoms interest and how may it recognize income from the Project;
- ENEE's obligation to provide access to its rights of way ("ROW") if so requested by telecom public operators and how their access and interconnection rights may affect ENEE's ability to form or participate in an affiliate;
- How current Honduran policies and laws on Open Access pertain to the proposed network;
- Necessary approvals to be obtained by ENEE specifically and the Project generally and what type of interaction may be appropriate with the national telecommunications regulator, CONATEL.

PFA's key conclusions regarding the legal assessment are as follows:

- ENEE may not offer telecommunications services directly due to limitations on the scope of its powers under its constitutive law.
- ENEE may allow other telecom operators access to its ROW, and charge a fee for such access. In fact, under the Telecommunications Law Telecom operators may demand access to ENEE's ROW (*Servidumbres*), including infrastructure permanently attached to the land. ENEE may assess fees on such operators.
- The fee payable to ENEE may be structured as a lease payment¹. The right to receive fees from the Project in the form of lease payments has precedent in practice and is implied from ENEE's constitutive law. We recommend clarification from the Comision Nacional de Electricidad (the "Electricity Commission") to ascertain whether such a move would be immune to third party challenge.
- There is no express prohibition against ENEE forming an affiliate for implementation of a fiber optic network. What matters is how the network is used by the affiliate. The affiliate may not engage in activities outside ENEE's statutory stated purposes. Operating a commercial telecoms network for purposes other than fulfilling ENEE's electricity sector mandate would be contrary to ENEE's statute, and thus the affiliate would be prohibited from engaging in such activity. An independent operator would not be so prohibited.

¹ The Financial Assessment will discuss the amount and structure of a hypothetical lease payment that would fairly compensate ENEE for granting access to its ROW and how a lease may be structured to receive an "equity" type return on invested capital.

- It is unclear whether ENEE may own passive equity in a provider of telecommunications services. . It may be that even a passive holding by ENEE could be interpreted to be in contravention of ENEE's constitutive law, albeit indirectly. This would need clarification from the Electricity Commission.
- ENEE's grant of access over its ROW cannot, in principle, be exclusive due to provisions of the Telecom law. However, in a scenario where multiple operators would demand access to ENEE's ROW, ENEE could give preference to the operator that demanded the ROW first, or in the alternative to the operator that offered the best terms.
- The applicability of Open Access principles is unclear as they pertain to a prospective ENEE network. Some elements of Open Access principles will apply such as non-discriminatory pricing. These principles will be addressed in the Commercial Initiative phase of the Study and through conversations with CONATEL.
- While a draft modification of the Telecom Law is under consideration which will provide certainty as to the proper approval process for the Project itself (separate from approvals applying solely to ENEE in its individual capacity), at time of writing this Report it appears that the Telefonía para Todos ("TpT") program may be the most appropriate regulatory pathway under current law for the Project to pursue to offer Bandwidth Services.