

LEGAL ANALYSIS OF HEAT FEED-IN IN AUSTRIAN DISTRICT HEATING NETWORKS

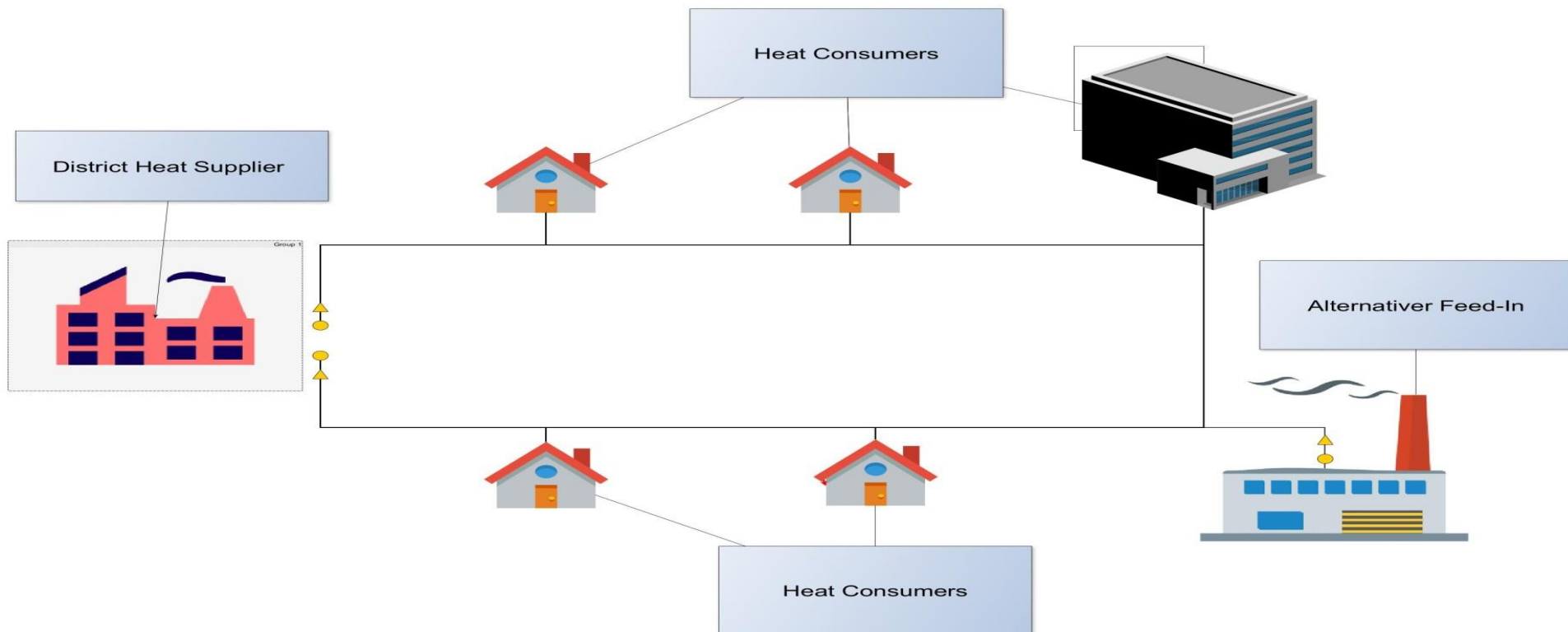
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The Scenarios – within existing legislation

Scenario 1a)

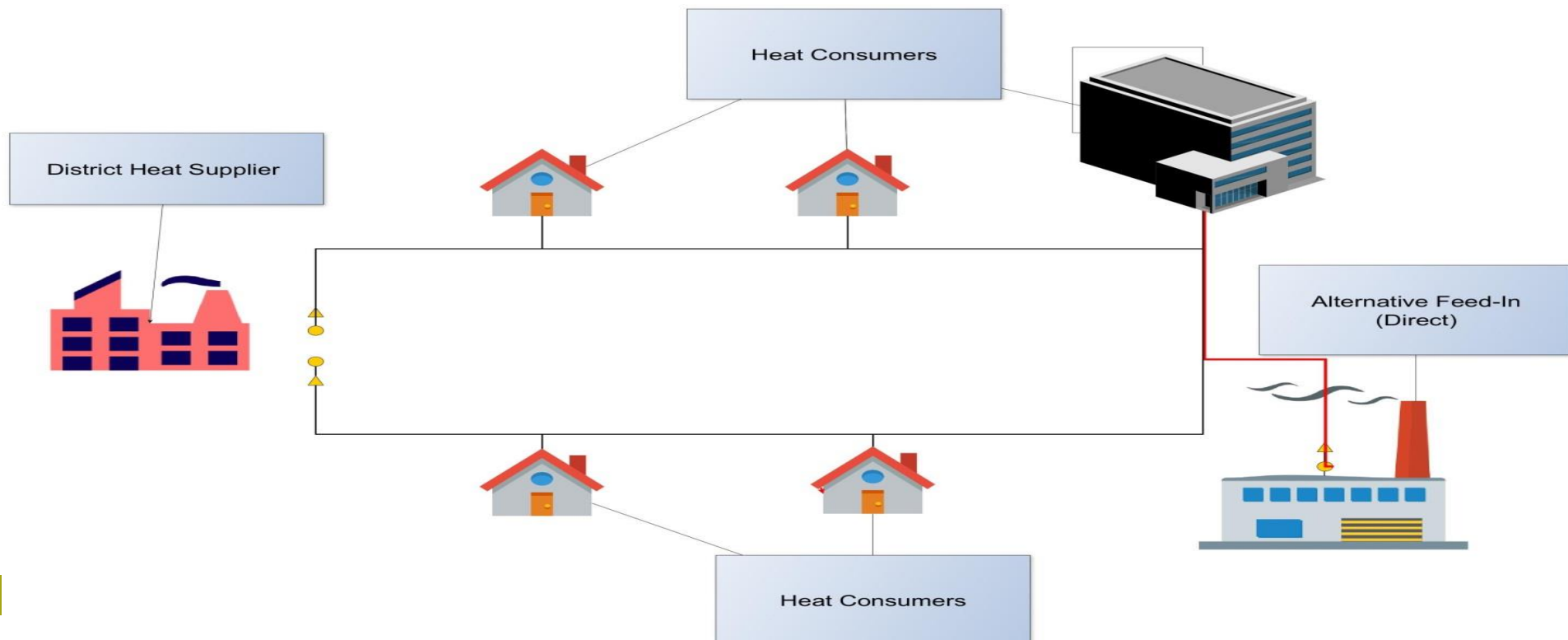
- the third party heat generator (TPHG) wants to feed in heat and the district heating (DH) network operator acts as the buyer.



The Scenarios – within existing legislation

Scenario 1b)

- THPG wants to feed in heat and “transit” it through the DH network.



Scenario 1a – “heat feed-in and purchase by the operator”

dominant market position acc. to the antitrust act (§ 4 KartG 2005) for operator of respective geographically limited DH network?

- One DH network
- operator is a vertically integrated company
- Dominant position for DH operator
- no special provisions that go beyond the general civil provisions (Civil Code ABGB, Consumer Protection Act KSchG etc.), which would prohibit or limit long contract periods

Scenario 1a – “heat feed-in and purchase by the operator”

- DH network operator is a dominant company
- TPHG has no other possibility to sell his heat
- use of the existing DH network is necessary to act as competitor on the upstream market
- the abuse of the dominant position is prohibited acc. to antitrust act
- dominant position is only abused if there is no justification for refusal of access

Scenario 1a – “heat feed-in and purchase by the operator”

Can the Operator be compelled to grant third parties access to his network for the purpose of supply?

Is there justification for refusal of access?

→ *Impossibility of feeding-in*

→ *Unreasonableness of the feed-in*

Scenario 1a – “heat feed-in and purchase by the operator”

Impossibility of feeding-in

- Different feed-in temperatures
- Missing capacities
- Local limitation
- Different pressure, temperature or aggregate state of heat (does not correspond to the condition of the conduit pipe of the DH network)
- Necessary network extension fails due to lack of space or high investment costs
 - necessary financial effort, a technical disability can be solved in many cases and then a lack of technical possibility is difficult to be argued
 - Unreasonableness?

Scenario 1a – “heat feed-in and purchase by the operator”

Unreasonableness of feed-in

- Amortization interest
- Reduction of own use to raise capacity
- possible threat to the supply of the own customers through the opening of the DH network

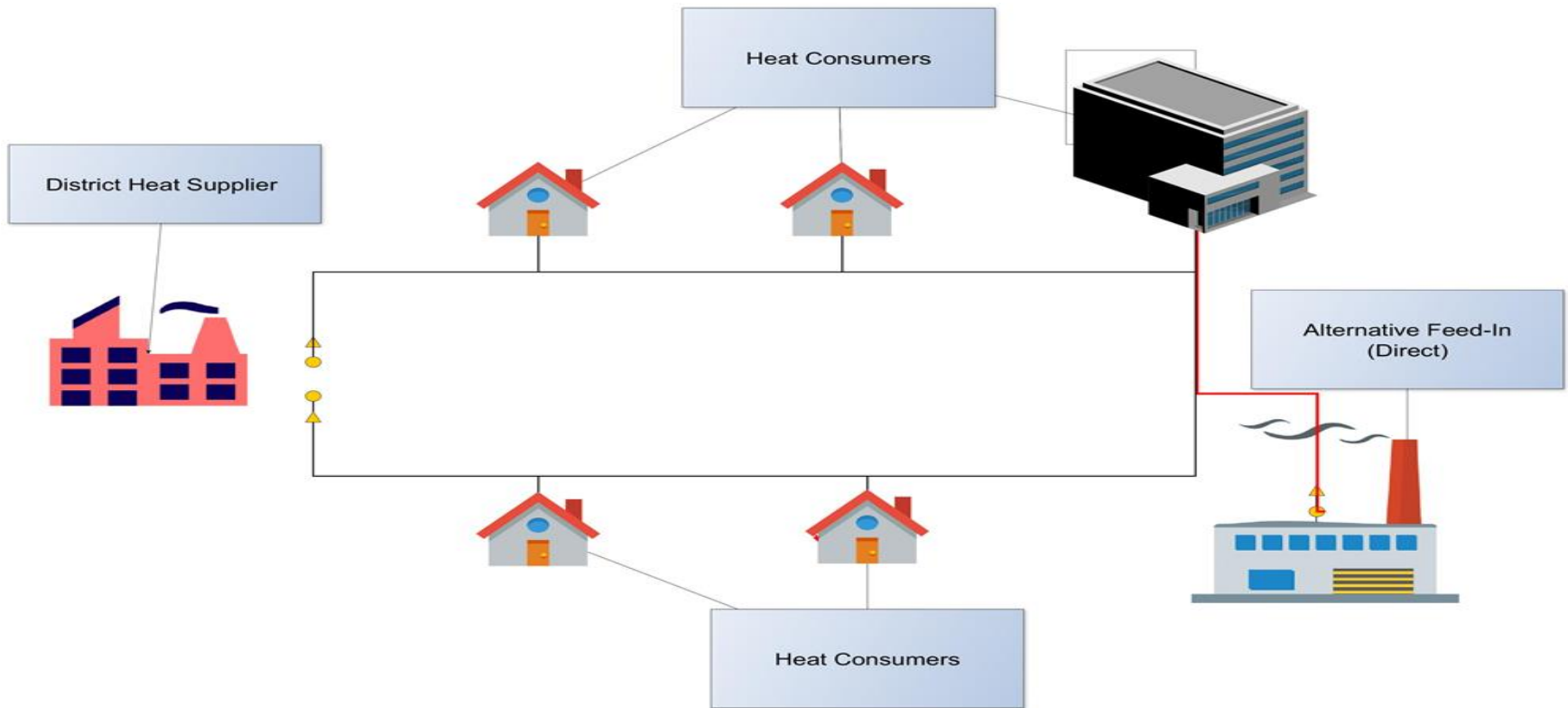
Scenario 1a – “heat feed-in and purchase by the operator”

Conclusions with regard to heat feed-in

- **claim of the TPHG according to the antitrust act (§ 5 para 1 KartG) on the feed-in of generated heat (for a fee) into an existing DH network is likely to fail due to existing justification reasons**
- **private-contractual agreements between the TPHG and the DH network operator**

The Scenarios – within existing legislation

Scenario 1b)



Scenario 1b – “Heat Transit”

- TPHG seeks to supply other consumers with its generated heat, intends to act as a competitor to the DH network operator in the downstream market
- Duplication of network inefficient
- Another distribution possibility not presentable
 - Dependent on existing network
 - *objectively justified reasons for denial of access to network?*

Scenario 1b – “Heat Transit”

- High entrepreneurial risks for network operator as well as the high investment costs in the local DH network have to be taken into account
 - Amortization interest
 - Requirement for long contract periods (which may use all available DH network capacity)
 - Reliable pricing
 - Investment in the service
- not reasonable for the DH network operator to terminate these long-term contracts in order to free capacities needed by the competitor

Scenario 1b – “Heat Transit”

- Amount of remaining capacity in the DH network is free for third party requests
- Unreasonable for the DH network operator to throttle its own generating plants for the purpose of “heat transit” by third parties
- Unreasonable for the operator having the sudden need to buy heat from elsewhere because of an unexpected missing or reduced heat feed-in by the third party
- Operator would have to provide backup capacities (by other TPHG)
- *However*, customer losses as a result of a new entrant is not an objectively justified reason for excluding the feed-in request

Scenario 1b – “Heat Transit”

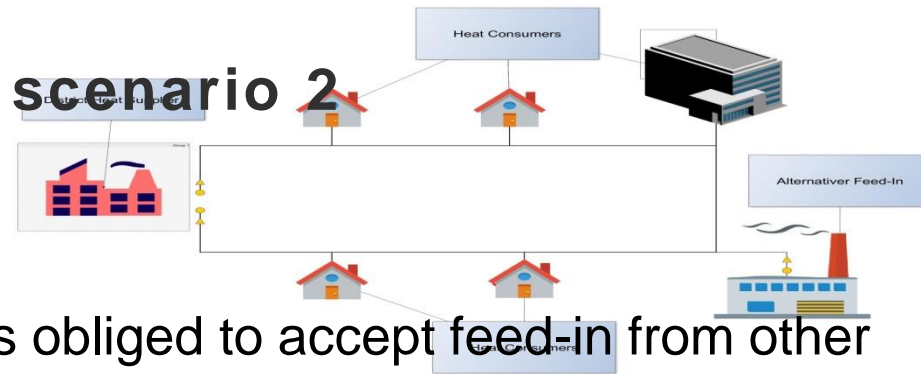
Conclusions with regard to heat transit

- **technical reason, but also some economic reasons are eligible as objectively justified reasons**
- **In individual cases, if there are no technical or economic justifications, there may be a right to transit the heat from a TPHG**
- **Otherwise private-contractual agreements between the TPHG and the DH network operator**

The Scenarios – designed scenario 2

Scenario 2)

Assumption: DH network operator is obliged to accept feed-in from other generators.



- Network connection costs are covered by the TPHG.
- The DH network operator is obliged to pay the costs not incurred (i.e. primary energy) as feed-in tariff to the generator.
- Accordingly, in this scenario the DH network operator is obliged to grant access and allow feed-in in a cost-neutral manner.
- A critical aspect of this concept is that DH networks have limited capacities.

Scenario 2) – “obligation to accept a feed-in demand“

A critical aspect of this concept is that DH networks have limited capacities.

Network operator obliged to purchase third party heat

- network expansion obligation is necessary
- precise specifications of the DH network operator (individually for each DH network) regarding the amount of heat to be fed in, the location, the timing and the nature of the heat (pressure, temperature, etc.) are required
- a supervisory authority would have to be provided for disputes, supervisory functions or establishment of framework conditions by law

Scenario 2) – “obligation to accept a feed-in demand“

Open Questions?

Since the TPHG have to pay the investment costs for the network connection themselves, it is an open question whose amortization interest should be satisfied first; if there are several requests for feeding in:

- Who gets network access first, if the capacities are already exhausted or the expansion is not yet completed?
- How to do if another heat generator could feed in cheaper, but the capacities are exhausted?

Scenario 2) – “obligation to accept a feed-in demand“

Conclusions with regard to an obligation to grant access

Some legal rules have to be adopted when implementing the concept:

- Acceptance obligation for the DH network operator
- Determination of a cost-neutral feed-in tariff
- Obligation to expand the DH network , if required (on the third party's costs)
- Clear (individual) specifications for each DH network operator regarding the status, quantity, time, location, etc. of the heat to be fed in
- Establishment of a kind of supervisory authority

Conclusion

“obligation to accept feed-in demands”

- positive effects on the integration of waste heat
 - technical conditions make mandatory network access difficult
 - Obligation to be very complex or very unspecific due to the particularities of the individual regional DH networks
- obligation to accept a feed-in can not be clearly recommended

Conclusion

”private contract”

- requires a longer-term and clear agreement to ensure investment security
- creates acceptance, being a prerequisite for a positive and longer-term cooperation
- gives contractors maximum flexibility in financing and determining the technical parameters of the feed-in

→ ”private contract“ is an appropriate choice

Open Heat Grid

FFG-Nr. 845161

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THANK YOU FOR THE DISCUSSION

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