

Summary for the attention of DG TREN

One year after the opening up of electricity and gas markets to all non-household consumers in France, this report is the opportunity for CRE to submit an initial assessment to the European Commission.

As at 1 June 2005, 205,000 electricity consumption sites and 37,000 natural gas consumption sites were supplied on the market. These figures increase by an average of nearly 25,000 sites a month in the electricity sector and more than 3,000 in the gas sector. The quantity of electricity consumed by sites which have taken up their eligibility accounts for around 50% of electricity consumed by all eligible sites. As regards gas, this accounts for about 37%. 26 alternative suppliers operate on the electricity market and 10 on the gas market.

CRE has always considered that the deadline of 1 July 2004 would not see eligible customers flocking en masse to alternative suppliers but that market deregulation would take place gradually, which was in fact the case. It estimates that the main objective set has been achieved, namely that any eligible consumer wishing to change suppliers could, from this date, do so promptly without any additional outlay. However, if most non-household consumers, large- and small-sized alike, effectively have access to several gas and electricity suppliers, there are still a few geographical areas where this is not the case. The same goes for the majority of low-consumption gas customers.

Work carried out under the auspices of CRE with all parties concerned (network operators, suppliers, consumers, etc) resulted in implementing simple fast procedures for changing suppliers. They work in a satisfactory manner for a significant number of consumers taking up their eligibility and very few problems have arisen.

In addition, in order to guarantee transparent and non-discriminatory conditions for access to networks, CRE proposes tariffs for utilisation of networks and LNG terminals, which came into force after widespread consultation. CRE has also put a lot of effort into standardising network access contracts as much as possible, taking into account consumers and suppliers' expectations. Having so far ruled on 42 requests for settlement of disputes, CRE reminded network operators of a certain number of rules governing their activities and has sometimes had to clarify rules when regulations are not sufficiently clear.

Quality of service provided by operators of public electricity and gas networks is one of the main considerations in return for payment of tariffs for utilisation of these networks. CRE is able to make a technical contribution to assessment of this quality. It will participate in

setting up economic incentive schemes for network operators based on consideration of quality of service. These contributions must fit in with those of other parties concerned by this field, such as the managing authorities for public electricity and gas distribution.

Independence of network operators is pivotal to market deregulation. In so far as they are part of groups, which also have energy generation or supply activities, it is essential, so that competition can function normally, that networks are managed in a neutral and impartial way concerning these groups' competitive activities. CRE has thus laid down rules governing unbundled accounting for various activities and has checked their proper application with audits. It is concerned that managerial independence of entities in charge of network operations is effective and no confusion is possible for consumers, especially regarding logos and abbreviations of companies respectively in charge of transmission, distribution and supply. CRE will publish a report on this issue by the end of the year, in line with the role entrusted to it by the law of 9 August 2004.

Although CRE is intent on fostering competition, it does not always have the appropriate legal means enabling competition to function effectively. For example, it does not have any jurisdiction concerning price formation mechanisms, which would have contributed to facilitating CRE's role of surveillance, especially on the generation market, where intense concentration creates strong market power for operators.

In addition, the regulatory framework of electricity and gas sectors could still be improved. For instance, CRE does not have exclusive jurisdiction concerning the setting of tariffs for utilisation of public transmission and distribution networks which is in fact shared with the Ministers for Economy and Energy.

The CRE budget is part of the State budget. Allocation of autonomous budgetary resources, like for other energy regulators, raised by contribution from electricity and gas consumers would reinforce CRE's independence from the Government, which is both supervisory authority and owner of the main companies, for which CRE's role is to regulate activities.

Lastly, although Directives 2003/54 and 2003/55 are written in identical terms, the laws for transposition of these Directives treat electricity and gas sectors differently, without that appearing to be justified by technical considerations. Thus, for example, independence of network operators is better supervised in the electricity sector than in the gas sector. For example, the law grants CRE jurisdiction to approve the transmission grid operator's investment programme in the electricity sector but does not bestow the same powers for the gas sector.

Despite a satisfactory report, a certain number of adverse factors for opening up of the market and proper functioning of competition nonetheless continue to exist.

Such is the case for coexistence of regulated tariffs and market prices characterised by differences of levels discouraging a certain number of customers from procuring their supplies on the market. Although it is not abnormal to plan for a transition period, maintenance of these regulated tariffs for categories of eligible consumers for several years constitutes "hindrance to the domestic market", according to the very terms in the European Commission report on the setting up of the domestic gas and electricity market. Their gradual phasing out, as is already the case in a majority of Member States, should be envisaged.

Competition is also restricted when alternative gas suppliers do not always have the possibility of finding enough available resources throughout the country other than from incumbent suppliers. Having encouraged temporary gas release on the market last year, CRE obtained, further to public consultation, improved conditions of access to storage facilities for suppliers. It also encourages investment with incentive measures, for example, by granting higher return on invested capital.

The Directives of 26 June 2003 announced the date of 1 July 2007 for the opening up of electricity and gas markets to all household customers. The open electricity market will then have 33.5 million consumers, constituting the second largest market in Europe. The open gas market will have 11 million consumers, constituting the fourth largest market in Europe.

In order to prepare for this deadline, CRE has decided to carry out, along with the main parties concerned, studies on procedures, information systems, consumer information and protection methods and all other actions to be implemented. Based on this work, decisions will have to be applied in a period of time enabling operators to take the measures necessary for complete market deregulation.

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Gas sector

Significant obstacles to smooth running of the gas market in France were removed throughout 2004 and at the beginning of 2005, especially through temporary gas release programmes, restructuring of network operating companies and management of third party access to storage facilities.

1/ GAS RELEASE PROGRAMMES

Faced with the absence of competition on the gas market in the south of France at the beginning of 2004, CRE asked Gaz de France and Total (through its subsidiary GSO) to implement temporary gas release programmes as from the 1 January 2005. This request was reiterated to Gaz de France by the European Commission within the framework of Gaz de France's commitments for settlement of the Marathon case. Temporary gas release is essential to strengthening of competition in the south of France, pending construction of the LNG terminal in Fos Cavaou (Fos 2) and of an interconnection with Spain (Euskadour Project)

2/ RESTRUCTURING OF TRANSMISSION NETWORK OPERATORS

In January 2003, as soon as it was put in charge of gas market regulation, CRE asked Gaz de France and Total to untie their joint stakes in transmission network operating companies, CFM and GSO. An agreement protocol was signed between Gaz de France and Total in November 2003. Agreements following on from this protocol were signed on 17 October 2004 and came into effect on 1 January 2005. As from this date, Total took over 100% of GSO and Gaz de France 100% of CFM. In addition, on 27 October 2004, CRE proposed tariffs for utilisation of natural gas transmission networks, mainly incorporating changes caused by the agreements mentioned above.

Upon completion of these operations:

- Gaz de France and Total's trading activities were completely separated: part of the CFM's customer base and all of that of GSO were transferred to Total Energie Gaz (TEGAZ), Total's natural gas trading subsidiary;
- Management of gas transmission in France was simplified and streamlined: CFM's infrastructures were integrated in those belonging to Gaz de France and the borderline between networks belonging to Gaz de France Transmission Network Division and those of TIGF was redefined.

The agreements also arranged for Total to take a 30% stake in the future LNG terminal of Fos Cavaou (Fos 2) and for Gaz de France Transmission Network Division and Total Infrastructure Gaz France (TIGF) to coordinate requisite joint investments to be made for importation of gas from Spain and guarantee gas transmission from the future LNG terminal in Fos Cavaou.

These agreements and the pricing proposal made by CRE constitute a significant stage in the development of competition on the French gas market resulting in:

- Effective competition between Total and Gaz de France throughout the country, whereas, previously, certain areas were serviced by jointly owned trading subsidiaries;
- Simplification of gas transmission pricing in France, with abolition of two balancing zones.

3/ MANAGEMENT OF THIRD PARTY ACCESS TO STORAGE FACILITIES

The law of 9 August 2004 only provided for negotiated access of third parties to underground natural gas storage facilities, thus transposing the Directive 2003/55/CE of 26 June 2003, which left the choice open to Member States between regulated access (access tariffs and arrangements laid down by an independent regulator) and negotiated access (tariffs and general conditions of access set by operators). Previously, new suppliers did not have any direct access rights to storage facilities. The law of 9 August 2004 provides for transparent and non-discriminatory access to storage facilities and bestows on CRE powers to settle disputes in this field similar to those it possesses for access to other electricity and gas infrastructures.

The law imposes that all suppliers operating on the French market must store up gas before the winter depending on:

- Other means of flexibility at the supplier's disposal,
- Characteristics of each supplier's customer base.

The law also provides for transfer of storage capacities to the new supplier in the case of a customer changing suppliers. The methods for applying these measures will be defined by a decree.

Electricity sector

Projects embarked upon in 2004 and at the beginning of 2005 aim to improve running of the electricity market in France and its surveillance, with especially the implementation of market monitoring, surveillance of quality of service of distribution networks and new interconnection management methods.

1/ MARKET MONITORING

During 2004, CRE set up a system for monitoring the opening up of the electricity wholesale and retail markets to competition. It is based on collecting information from suppliers, consumers and transmission and distribution grid operators. Since January 2005, analyses

carried out have been partially made public through quarterly observatory. They thus contribute to improved level of market transparency, which the regulator is in charge of by virtue of provisions in the 2003 Directive.

This monitoring constitutes the stage prior to analysis of smooth running of the market but CRE is only in charge of surveillance of transactions made on organised markets and border exchanges.

2/ QUALITY OF SERVICE OF DISTRIBUTION GRIDS

In July 2004, CRE asked the main public electricity distribution grid operators to provide indicators describing quality of service of their grids. These indicators concern continuity of supply and quality of service characterised by the number and duration of long and short power cuts experienced by users connected to low voltage and to HTA, breakdown of these power cuts according to their origin and quality of management of the grid operator's contractual commitments. Eventually, CRE wishes to set up a regulation mechanism in order to improve grid operators' performance concerning continuity of supply, quality of service and overall service provided.

So that users of public distribution grids can exercise their rights under the same conditions as users of the public transmission grid, CRE has drawn up the framework and implemented technical guidelines to be published by public electricity transmission grid operators.

3/ DEVELOPMENT OF INTERCONNECTION MANAGEMENT METHODS

At the end of 2004, CRE took several initiatives together with regulators in neighbouring countries so as to improve allocation methods and current interconnection management in 2005. This fulfilled the double aim of advancing towards compliance of French interconnection management mechanisms with European regulation 1228/2003 provisions and develop standardisation of methods applied to various French interconnections so as to facilitate international electricity exchanges and make a significant contribution to setting up the domestic electricity market.