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Conclusions Paper

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1. INTRODUCTION

One of the main deliverables (deliverable no. 4) from the Regulatory Co-ordination work-stream of the North West region of the ERGEG Regional Gas Initiative is the development of a Code of Practice (COP) for the regulators in the region. In order to develop this COP it was necessary to examine the regulatory powers of each of the National Regulatory Authorities (NRAs) in the region. This work was based on existing CEER analysis and resulted in a Matrix of regulatory powers for regulators in the region. This Matrix (deliverable no.1 of the regulatory coordination work-stream) was presented at the stakeholders meeting in Bonn in February 2007.

The work-stream also undertook to examine the issues relating to cross border flows most relevant to stakeholders. In December 2006 a questionnaire was issued to transporters, shippers and storage operators in the region in order to identify the issues that participants felt were important to the development of the regional market and where problems had been experienced. Additionally views were sought as to how and when regulators should cooperate with each other and how enhanced coordination could improve cross border trade. Transporters conducted their own survey (deliverable no.2 of the regulatory coordination work-stream) and the findings were presented at the SG in Bonn along with the responses of all participants to the questionnaire.

It was intended that the findings of the questionnaire would be examined together with the matrix of regulatory powers in order to develop a practical Code of Practice for regulators that would focus on the most pertinent factors inhibiting regional market development that could be improved through better regulatory co-ordination. Accordingly, this conclusions paper brings together the findings of the first two deliverables and proposes the areas where better regulatory co-ordination could further the development of the gas market in the region. These conclusions will be developed into guidelines for regulators in the region and will be incorporated into the code of practice.

This conclusions paper highlights issues for stakeholders that are dealt with in more detail in other fora. Therefore this paper should not be considered in isolation from other work-streams that are being progressed in the North West (NW) region. In some cases there may be a desire to change existing practices, however existing regulatory powers may not be sufficient to achieve this. These cases have also been highlighted in this paper and may be used to support ERGEG's efforts to enhance standardise regulatory powers in the EU. Some background to developments in this area is provided in section 4.1.

It should be noted that the focus of this paper is to highlight where immediate actions could be taken by regulators which would enhance cross border trades and investments, without the need for legislation,.

Section 2 of the paper summarises the powers of regulators in the region as presented in deliverable 1. Section 3 summarises the issues of concern to stakeholders as per deliverable 2 and the answers to the questionnaire as presented by the wider stakeholder group.

Section 4 brings together these two pieces of work and looks at the issues raised by participants and the specific examples of difficulties which have arisen. It examines participant suggestions on how regulators could coordinate better in the context of their existing powers. This section commences with reference to the EU Energy Policy proposals and the ERGEG response in the assumption that regulators will have increased regulatory powers in the future and will be better placed to deliver a more competitive integrated market. The main body of this section then addresses what regulators can do in the interim to enhance competition and provide a more stable investment climate.

The paper concludes by summarising the areas which should be incorporated into the guidelines and the Code of Practice and lists some further areas which could be addressed in the short and medium term.

2. SUMMARY OF REGULATORY POWERS IN NW REGION

2.1 Background

The regulatory coordination work-stream of the NW Regional Gas Initiative (NW RGI) recognises that ERGEG has put forward detailed proposals for the necessary regulatory powers to facilitate the development of the internal market in its response to the European Commission's Strategic Energy Review.¹ However the likely timeframe for implementation of the necessary changes is long. However there is scope for regional market development in the shorter term through possible changes in national legislation and also by enhanced cooperation of regulators within the existing regulatory framework. Deliverable 2 of this workstream examined the regulatory powers of regulators in the region with a view to determining what they could influence within the existing legislative framework. A matrix of regulatory powers was produced and the conclusions from this were presented at the SG in Bonn. These conclusions are summarised below.

2.2 Legal Framework Matrix

The legal framework matrix showed that there are significant differences in the way in which regulatory authorities (RAs) are "governed" and in the powers that they hold. Some RAs are attached to the relevant Ministries in their country but the majority of RAs are more independent of government

The level of influence of the national governments on regulatory activities can be seen in the vetoes they hold over regulatory decisions and/or in their control over regulatory resources. It can be said however that all RAs within the region can act with at least a degree of independence from their national government, particularly in the issues of significance highlighted by stakeholders in their responses to our questionnaire.

There are significant differences among regulators in regards to the penalties they can impose on participants. The Netherlands is the only regulator in the region whose powers include the imposition of all potential penalties reviewed which are: revising tariffs, reducing rates of returns, issuing fines, skimming off proceeds and revoking licences. All regulators have at least two of these penalties available to them.

2.3 Operational Issues

Access to Information

Regulatory Authorities generally have access to the information they require to govern the market, however, as pointed out at the SG meeting in Bonn this does not include or extend to the right to access information from another

¹ Insert reference to ERGEG response.

jurisdiction. It is noted from the ERGEG report in December that Norway has recently changed its laws to enable it to share market information with its neighbours.

Dispute Resolution

All RAs in the region except Northern Ireland (NI) and Belgium have the powers to resolve access disputes. The laws in NI will shortly be changed so that Ofreg will have these powers in order to comply with the directive.

Tariffs

All RAs in the region have the powers to determine the methodology for setting tariffs with the exception of Great Britain (GB), Denmark and Germany. In Germany the Methodology is set in statute. In Denmark the government agency sets the tariff.

The analysis showed that all RAs, except in Norway and Denmark, set the actual tariffs for access to the gas network. In France, the decision of CRE can be overruled by the government but they must state reasons.

Licences

Only in GB, Ireland, NI, Netherlands, Norway and Sweden have the RAs the responsibility of issuing, modifying and monitoring compliance with the licences.

The sanction of withdrawing licences rests with the RAs in Belgium, GB, Ireland, NI, Netherlands and Sweden.

Rule Making Authority

All RAs, except those in Belgium and Denmark, design the rules with regards to *network access*. The *market rules* are set by all RAs except those in Sweden, Denmark and Germany and *balancing rules* are set by all RAs except those in Belgium and Denmark.

Congestion Management

Congestion management rules are approved by all RAs except GB, Denmark and Sweden. Rules relating to capacity allocation are set by all RAs except those in GB, NI, Sweden, Denmark and Norway.

Investment

The RAs in Ireland and NI are responsible for investment planning. Other RAs, including France, GB and Belgium have oversight of investment decisions. RAs in Ireland, NI, France and Norway approve investments while the RAs in Ireland, NI, France, Denmark, Netherlands and Norway set the recovery rates.

Cross Border Exchanges

RAs in GB, Ireland, NI, Netherlands, and Norway set the standards for cross border exchanges (or flows) while exemptions are the responsibility of the RAs in GB, Ireland, NI and Germany.

3. PARTICIPANT ISSUES

3.1 Specific Transporter Issues

Deliverable No 2 of the Regulatory Coordination work-stream was the identification of Transporter² issues in relation to cross border trade and how problems could be alleviated with greater co-operation between regulators. A questionnaire was sent to transporters and the response was compiled by the transporter representative. The consolidated responses were presented at the SG at Bonn.

Transporters focused on investment issues in their paper and emphasized that decisions to invest in infrastructure are based on the balance between risk and reward. Transporters wish to make sound investment decisions and risks have to be sufficiently covered before investments will take place. The reward is very much determined by the regulatory regime. A number of examples were cited where changes in the regulatory regime after the investment had been made affected the level of returns from the investment.

Transporters felt that a 'highly coordinated effort' was necessary to develop the required European gas infrastructure. In the absence of such co-ordination TSOs argued that invested assets downstream or up-stream of a network could become stranded if they are in a different Member State. It was strongly felt that regulatory co-ordination is vital for large supra regional investments. Efficient and economic cross border investment decisions therefore require coordination between TSOs and regulators at cross border points including:

- Timing of decisions and procedures
- Regulatory requirements regarding capacity allocation mechanisms
- Regulatory requirements regarding congestion management mechanisms
- Regulatory requirements regarding additional capacities on top of committed capacities
- European or regional perspective (e.g. where regulators evaluate efficiency of investments)
- Coordination of regulatory models to avoid market distortions
- Avoidance of dual regulation or conflicting regulation (e.g. for cross border pipelines)

In relation to investments TSOs felt that the regulatory decision making process should be transparent. A clear definition of the roles of all parties involved was necessary and there should be an appeals mechanism. The TSOs should make the investment decision and should cooperate with neighbouring network operators in regard to the timing of the investment and the amount of capacity offered. The regulators should ensure that the process is fair and non-

² The paper was presented on behalf of TSOs and Interconnectors, therefore for 'transporter' or 'TSO' read 'transporter and interconnectors' throughout this section.

discriminatory and that the interest of stakeholders is taken into account. Regulators should take into account benefits for all European consumers (not only those in the country they are based).

In relation to information, it should be the TSOs responsibility to provide stakeholder information about the need for investment and its investment plans (e.g. through a 10 year statement). The regulator should provide stakeholders with timely information about future changes that affect the investment climate and shippers should provide the TSO with information regarding their expected capacity needs before entering into binding commitments.

3.2 General Stakeholder Issues

At the first stakeholder's group meeting in The Hague, it was decided that views on relevant issues should also be elicited from other stakeholders. A questionnaire was sent in December 2006 to all shippers, transporters and storage operators and representative groups. The findings which were presented at the SG in Bonn are summarized below. Respondents were asked specific questions and asked to provide specific examples of issue arising from lack of coordination. The following is a synopsis of what the stakeholders said. This does not mean that the issues referred to were caused by a lack of regulatory co-ordination nor that enhanced regulatory co-ordination would necessarily be effective in the particular circumstance outlined. Section 4 of the report focuses on the issues identified below where it is felt that regulatory co-ordination would provide benefits.

General Observations

It was noted that there are legal obligations on regulators to co-operate with each other (e.g. Article 25 of the Directive and Regulation 1775). It was considered by some respondents that all regulators already co-operate in so far as possible but that they are limited by national legislation. The proposed extension of regulatory duties under the '3rd package' was also noted in their responses. There was a suggestion that the Telecoms Framework Directive might be a good model to adopt.

How and When Regulators should Co-operate

It was considered that regulators should co-operate in developing harmonized regulations. There could be a checklist of common criteria upon which regulators could agree to consult with each other. Where cross border issues arise there should be a common 'regulatory window' in which each regulator makes its decision.

Regulators should co-operate where there were neighbouring jurisdictions or where there was interconnection. When new rules were being introduced there should also be co-operation to ensure consistency. Regulators should also co-operate where there was specific projects of mutual interest e.g. cross border investments.

Other issues where regulators should co-operate with each other include: open seasons, transport, transparency, hubs, costs, gas quality and balancing.

Impacts from lack of co-ordination

Respondents were asked to provide examples of how lack of co-ordination impacted on the market and a number of specific examples were provided. For instance, in the case of different balancing regimes, shippers tend to move the balancing to another market, which has the effect of distorting flows and could impede trade. Also a problem in one country might lead to a problem in another country due to different balancing regimes e.g. in a system based on daily balancing a temporary production outage for a few hours might not cause a balancing problem if delivered to that system but might cause balancing problems when the gas was aimed to be exported to a MS using an hourly balancing system.

Limiting exit capacity in one jurisdiction could artificially curtail flows. Different open seasons increased risks if for example a shipper had to commit in one jurisdiction before they could commit in the other. This risk would be compounded if there was no effective secondary market. The overall impact could be to restrict new entry to the market.

Dual regulation causes a number of problems, for example where there are different tariff methodologies in different jurisdictions. Furthermore, delays in decision making in one jurisdiction can cause problems and there is a need to have joint consultation between regulators at the early stages of investment projects spanning two (or more) jurisdictions. Different pricing regimes e.g. entry / exit versus postalised tariffs between neighbouring jurisdictions is also problematic. Difference in calculations of maximum capacities and differences in gas quality are also cited as problem areas for participants active in adjacent markets.

Examples of issues from lack of Co-ordination

Dual licensing of cross border pipelines by two regulators can cause issues if there are inconsistencies between the requirements. A specific example provided by one respondent was the licensing of the interconnector pipelines between UK and Ireland. While, it was noted, that this has not caused any problems as yet it was felt that there was the potential for conflict. This might also apply if storage or production facilities are licensed in a separate jurisdiction from the connection points to the Grid.

Problems can also arise where there are differences in open season. These differences can be in transportation pricing, technical access conditions or the open season process itself e.g. the open seasons between Netherlands and Belgium.

Another respondent cited interconnection auctions between Denmark and Germany as examples of problems previously experienced.

It was also noted by one participant that problems arose relating to the application of article 22 exemptions where both OFGEM and Dte were both required to make decisions and the timings of the decisions were not coincident.

It was suggested that the UK and Belgium have different approaches to gas quality and this has also been an issue in the market and discussions are ongoing between OFGEM and the operators of the Zee pipe.

Another participant cited the UK NTS exit reforms as an example of issues arising from lack of co-ordination. It was suggested that these were embarked on without prior discussions with Ireland. The potential impacts for Ireland included market foreclosure and a threat to security of supply.

Conflict can be driven by inconsistent approaches to market development or policy differences between MSs. Examples cited included the different application of EU legislation in Sweden has resulted in a different market model than its neighbour Denmark (and the rest of the EU). This creates unclear responsibilities between parties (including TSOs, suppliers and balance providers) acting across border. As a result ownership of gas in Swedish pipelines is unclear and the responsibility for gas quality is also unclear. These risks can create barriers to entry. In the UK the holder of a transporter licence cannot participate in the operation of an interconnection and thus the risks and rewards faced by companies wishing to build and operate interconnections between UK and other countries can be significantly different than those in other MSs. As a consequence, UK based interconnector investment will most likely proceed on the basis of exemptions from rTPA in comparison with other jurisdictions where costs can be socialized across all users. In Germany the approach to market liberalisation includes the recognition of pipe-to-pipe, pipe-in-pipe and market area competition. In fact most infrastructure enjoys regional monopolies and has to be regulated accordingly.

Respondents also suggested that different pricing regimes can cause various problems e.g. different balancing regimes, different prices for compression depending on the location of the compressor, and differences in how the regulatory asset base is treated.

Respondents also suggested that differences in access regimes e.g. different Entry / Exit regimes, calculation of maximum available capacities, and secondary capacity availability were all cited as examples of where dual regulation or differences in approach can cause difficulties for players in the market.

How to manage risks

Respondents felt that regulators should assign responsibilities in cases where there were cross border issues. One respondent suggested a framework for dealing with these issues and another suggested a checklist could be drawn up on issues where consultation between regulators was necessary. It was felt also that regulators need to consult early in cases where new pipelines were being

built and actions should be co-ordinated. Another respondent suggested guidelines for regulators based on historical case analysis of issues identified on existing cross border pipelines and how agreement was reached on these issues.

Generally it was felt that risks could best be managed with harmonized business practices. Of particular importance for cross border trade was the matching capacities on both sides of the border, common products and nomination timeframes. One respondent suggested that one regulator should be assigned responsibility for both entry and exit capacities at border points. This principle should also be applied to storage or production facilities in a different country to the grid. Most respondents agreed that a dispute resolution process should be established for cases where regulators could not resolve differences.

Market arrangements

Respondents suggested that specific issues that could be addressed included the introduction of compatible market mechanisms not necessarily harmonized. For example: entry and exit capacities should correspond, definitions of firmness should correspond, products should be harmonized and sold combined. It was proposed that this could be achieved through common auctions or open seasons. Balancing regimes should also be harmonized e.g. hourly versus daily balancing and balancing penalties. The timeliness of advising allocated quantities between neighbouring markets should also be aligned. There should be harmonized rules for secondary markets.

One respondent felt that tariffs did not need to be fully harmonized if trade was not affected. Joint consultations on tariff could be useful according to one respondent. It was also suggested that different compressor prices on each side of a border can distort trade.

Respondents also pointed out that alignment of electronic communications was also regarded as important.

Legal Structures

It was suggested by one respondent that if regulators are unable to enter agreements for co-operation it should be made compulsory. An array of different legal structures were suggested in which regulatory co-operation could be framed. Suggestions ranged from mandatory guidelines and memoranda of understanding through to an EU regulatory body. This body, it was suggested could monitor the implementation of a consistent EU code and monitor regulatory actions and decisions.

Dispute Resolution

One respondent felt that it was desirable for regulators to have a dispute resolution mechanism but it was not necessary. However, most respondents felt it was an important issue. Respondents suggested that this issue would become increasingly important as gas supplies became more diversified and were transported over longer distances.

One respondent noted that national legislation might be required to establish a dispute resolution process for regulators and another felt that rules enabling the EU Commission to take a greater role might be needed.

Proposals put forward for dispute resolution mechanisms included: Mandatory guidelines, independent mediation (non-binding), conciliation (non binding), a formal independent arbiter (binding). Some suggested ERGEG could fulfill this role by implementing guidelines and monitoring compliance and noted that more powers could be given to ERGEG under the third package to effect binding decisions. Treaties between countries could also facilitate dispute resolution between regulators.

There were differing views regarding the role of the European Courts in resolving regulatory disputes. Some respondents noted that the process was lengthy but it was felt that it might be inevitable that they could become involved if regulatory issues could not be resolved at a lower level.

4. ENHANCED REGULATORY COORDINATION IN NW REGION

4.1 Legal Framework

In their responses to the consultation of this group, many respondents noted that regulators are obliged to act within their own national legislation and have no powers to take into account the impact on other Member States. It can be seen from the Matrix of regulatory powers for regulators in the NNW region³ that the powers of regulators in this region differ.

The EU Commission in its 'Energy Policy For Europe'⁴, has noted the level of power and independence needed by energy regulators in order to harmonise regulatory structures on the basis of the highest common denominator in the EU. It states that regulators 'must be given not only the task of promoting effective development of the national market but also that of promoting the development of the internal energy market'. In this regard it has proposed two possible options to address these issues and to provide the governance required to ensure that the technical standards necessary for cross border trade to function effectively are harmonised.

The ERGEG + model envisages the formalisation of the role of ERGEG and it would be tasked with structuring 'binding decisions for regulators and market players on certain precisely defined technical issues and mechanisms relating to cross border issues'.

A new single body at community level could be set up which would have the responsibility for 'adopting individual decisions for the EU gas market related to regulatory and technical issues relevant to making cross border trade work in practice'.

ERGEG responded⁵ to the communication by stating that it was time to create a comprehensive EU-level regulatory framework. They noted that a 'stable and predictable regulatory climate is a prerequisite to provide the confidence to the capital markets to deliver the massive investments needed to build the integrated grid'. Legislation, they believed, is needed in order to, inter alia:

- place a responsibility on National regulators to oversee the secure and efficient development and operation of EU grids
- enhance an existing European regulatory group (this is best achieved by building on existing structures and enhancing the independent decision making capacity of ERGEG+.
- ensure effective market oversight and a duty to co-operate. 'There needs to be a mutual duty to co-operate placed on national

³ Deliverable no 1 – regulatory co-ordination workstream

⁴ Communication from the Commission to the European Council and the European Parliament 10/01/07

⁵ ERGEG's response to the European Commission's Communication 'An Energy policy for Europe' REF: C06-BM-09-05 - 6th February 2007

regulators to allow for cross border information exchange, investigation and enforcement’.

ERGEG recognise that the proposed new model entails an ‘ambitious package’ to meet the challenges of the ‘new energy era’ and note that the challenges cannot wait for the necessary political discussions in the negotiation of legislation. ‘We must therefore identify complementary short term goals as well as the medium term vision’.

Therefore, in addition to supporting the goals presented by the Commission ERGEG believe we must ‘facilitate practical progress and co-operation on the part of the regulators in the interim period whilst legislation is negotiated. In particular enabling a greater exchange of information, raising the domestic powers of national regulators, implementing ERGEG guidelines as soon as possible and providing full political backing to the Regional gas Initiatives in gas and electricity’.

This work-stream proposes that we could provide a valuable input to the work of ERGEG by inputting a list of issues to be addressed for which legislative changes are required. The work carried out so far by the work-stream is a good starting point for developing an appropriate list. Furthermore, it is proposed that we follow up on the suggestion of the Telecoms Framework Directive providing a good model for legislative change for the gas market.

This task force accepts that much can be done in the interim while awaiting new legislation. A Code of Practice for regulators (incorporating guidelines) could be a tool for furthering market integration in the North West Region. This section looks at the specific issues raised by respondents to our questionnaire and proposes how they should be addressed. It should be noted that responsibilities will differ between countries in the NW region and issues which are the responsibility of the regulator in one country may be a transporter responsibility in another. Of course, it is expected that TSOs will co-operate with each other and the market as will regulators.

It should be noted also that other work-streams are looking at specific problems in the region and will propose solutions to the problems and make recommendations on operational changes that need to be made to promote increased trade. There is also work being undertaken at an EU level by ERGEG on certain issues and it will be important to ensure effective co-ordination where appropriate. This report will indicate where other workstreams are addressing specific issues. In particular the issue of investment is a major focus of the investment project and the work-stream on primary and secondary capacities. The focus of the regulatory coordination workstream is on the process for coordination of regulators, the issues and circumstances where coordination is appropriate but not on the actual solutions to specific problems raised.

4.2 Investments

In their submission to the TF transporters (and interconnectors) focussed on investment as an area where enhanced regulatory coordination could have a major impact. Other respondents to the questionnaire also highlighted investment as an important area for regulatory coordination. Clearly, where there is proposed new investment in cross border pipes, there are multiple regulators (and sometimes governments) who have a role and can influence whether or not the investment proceeds. Post construction it is important to ensure that the regulatory regimes remain stable. Therefore, where it is within their remit, regulators should cooperate while the investment is at the conception stage but also post investment to ensure that the conditions remain relatively stable and the investment is adequately rewarded. The question to be addressed in this section is how to achieve this aim and how it can be done in the short term through better cooperation between regulators.

Some of the specific examples presented by the TSO of where regulatory decisions impacted on investment projects, related, not so much to cooperation but to the decision making of individual regulators. TSOs are looking for more clarity (and perhaps more consistency) around how decisions are made and the roles and responsibilities of the parties involved. They suggest a European or regional perspective when, for example, evaluating efficiencies of investment. These matters were discussed at the SG in Bonn and it was felt that they might best be effected through an ERGEG + type governance model.

Some practical steps were proposed by TSOs and other stakeholders in relation to the process of managing cross border investments. It was suggested that regulators should consult early and regularly where such pipelines were proposed. Where decisions were required these should, as far as possible, be made contemporaneously. The possibility of joint meetings with the TSOs and regulators of each MS affected by the investment was also raised. The TF feels that that these are areas which can be addressed now by regulators which would improve the investment climate. It would help to bring better understanding on the decision making criterion, would streamline the decision making process and would lead to better and more timely decision making. It is proposed therefore to develop a guideline⁶ for regulators regarding approach to new cross border investments that focuses on the process for decision making – recognising that the responsibilities and duties of regulators may differ under the existing legislative framework.

4.3 Dual Regulation

With cross border pipelines there is the issue of dual regulation and the possibility of requirements in one jurisdiction conflicting with that of another. Regulators therefore need to consult with each other in advance of issuing

⁶ The guidelines will be incorporated in the Code of Practice for Regulators – deliverable no. 4 of the Regulatory Co-ordination workstream of the NW region.

licences to try and ensure consistency of approach (or at least understand and justify why differences may be needed) and to avoid uncertainty.

Regulators do have the possibility to respond to licence consultations alongside other stakeholders. However, it would be advantageous if regulators could discuss and (hopefully agree) on key issues affecting both jurisdictions prior to going 'public' with a consultation – although this should not be seen as replacing the normal consultation process to which all stakeholders including regulators should contribute. These issues could include tariffs, access rules and dispute resolution. It is proposed therefore to develop a guideline for regulators regarding avoidance of dual regulation with respect to cross border pipelines.

Tariffs

The matrix of regulatory powers shows that tariffs is an area where most regulators in the NW region are autonomous. Therefore, it should be possible to reach agreement on the principles for tariffing of cross border pipelines. Respondents to the questionnaire felt that this was an area where regulatory co-operation was important and inconsistency could result in market distortions. It was pointed out by one respondent that tariffs do not have to be the same, but should be harmonised. This TF agrees that regulators need to consult on tariffing of cross border pipelines and if possible should agree pricing principles where the pricing in one country affects another memberstate. If the pipeline is predominately a transit pipeline the primary responsibility for tariffing should rest with the regulator of the jurisdiction where the gas is delivered to the final customer. It is proposed to incorporate these principles into the guideline on dual regulation.

Rules for Pipeline Access

With a few exceptions⁷ most Regulators in the NW region have the powers to set rules for access to pipelines. Clearly where there are cross border pipelines regulators should aim to agree how access will be determined with the objective of minimising distortions and/or uncertainty for the investment decision. This is particularly important where a pipeline has been built primarily as a transit pipeline to serve a downstream market. Where possible licence conditions and/or access rules should reflect the principles of capacity allocation in these circumstances and provision should be made for on-going dialogue between regulators to allow for changing situations. These principles should be incorporated into the guidelines for dual regulation.

Access Disputes

Almost all regulators⁸ have the powers to determine access disputes. Regulators should also agree in advance how such disputes should be dealt with. In accordance with EC/55/2005 such disputes should be determined by the

⁷ Sweden, Norway and Denmark

⁸ Except Belgium (Northern Ireland will soon be getting these powers)

regulator of the jurisdiction of the TSO. This should be provided for in the licence conditions where appropriate. Where such disputes arise regulators should consult each other prior to making a decision. It is also suggested by one respondent that regulators should establish procedures to deal with the different cases of disputes that can arise. A common procedure would be useful and regulators could consider this approach. However it should be noted that regulators may be limited by national legislation. Also, the matrix of powers shows that the appeals mechanism for regulatory decisions in each jurisdiction is different. Nevertheless, this workstream believes that this approach has merit and would be worth progressing.

4.4 Market Arrangements / Harmonised Business Rules

Some respondents commented on the benefits of harmonised business rules and many examples were cited of how lack of consistency thwarted the development of the market. It is considered that the proposals for solving these issues will be delivered by other task forces in the Region. However, regulatory cooperation will be necessary to implement some of the recommendations emanating from these workstreams and a process for such co-operation needs to be developed to ensure that these are acted upon. It might be appropriate that the RCC of the RGI could facilitate this process. It should be noted that most regulators have the powers to set market arrangement and balancing rules so such a process at RGI level could prove effective. Some of the specific areas cited by the respondents to the consultation include the following:

Capacity Allocation

The following areas were listed by TSOs as areas where enhanced regulatory coordination would be useful. These included harmonised rules for capacity allocation, congestion management, and requirements for additional capacities. Other respondents also highlighted the importance of capacity allocation. This was particularly important where there was congestion at intersections between two member states. It was suggested that regulators should co-operate to ensure that

- products are harmonised
- products are combined (bundled entry / exit product)
- common auctions and / or open seasons

Other respondents also raised the issue of the need for agreement on open season processes and timings. The calculation of maximum capacity is another important factor, as entry and exit capacities need to correspond. Also rules on the secondary market need to be harmonised.

These issues relating to capacity allocation are being addressed in the Capacity workstream. The implementation of recommendations arising may be facilitated through processes or guidelines introduced through this TF. Guidelines for Open Season are being developed by ERGEG who will monitor the implementation.

Nominations Procedures / Balancing

Differences in nominations procedures also hinder trade. Problems cited ranged from the varying time basis of nominations (daily versus hourly), nomination procedures, and different timelines for allocating quantities.

A number of respondents highlighted issues relating to different balancing regimes. It was noted that an imbalance in one market has the potential to cause problems in another.

Issues relating to nomination procedures and balancing are being addressed in the capacity workstream. The implementation of recommendations arising may be facilitated through processes or guidelines introduced through this workstream. ERGEG has published guidelines for good practice for gas balancing (GGPGB) and provided this to the European Commission as advice on its interpretation of Article 6 of the Gas Regulation. Full implementation of the GGPGB by TSOs and regulators will facilitate greater transparency and coordination between balancing mechanisms. Regulator Guidelines adopted by the NW RGI should focus on ensuring consistency of adoption of such guidelines within the region and with at ERGEG level. This principle should also apply to other recommendations from NW RGI work-streams or ERGEG recommendations or guidelines.

It was also noted that TSOs have different communications systems to inform shippers about their positions and shippers would benefit from electronic communications systems keeping them up-to-date of their balancing position. It is considered that compatible IT systems are essential to the efficient operation of a single market and it is proposed that this issue be considered at the RCC.

Transparency

Transparency is important particularly at intersections. As pointed out by one respondent, parties active on both sides of a border can have an advantage over parties active on one side only and they can take advantage of this. Lack of transparency can also restrict new entry to a market as the risk is higher. Issues relating to transparency are being addressed in the transparency workstream. The implementation of recommendations arising may be facilitated through processes or guidelines introduced through this work-stream.

Trading hubs

Trading hubs are, according to one respondent, a prerequisite to developing trading. Issues relating to hubs are being addressed in the hubs work-stream. The implementation of recommendations arising may be facilitated through processes or guidelines introduced through this work-stream.

4.5 Information Exchange / Communications between Regulators

It was noted that the powers do not extend to sharing information with another jurisdictions. As mentioned in section 4.1, this is an issue which may be addressed in the new EU legislation. In the interim it may be possible for regulators to share information by agreement with the affected parties. Given the responses received to our questionnaire it is highly likely that such co-operation among participants would be forthcoming particularly where cross border investments were being considered. It is proposed therefore that a guideline should be developed for regulators to share information (by agreement with affected parties if necessary) in relation to relevant cross border issues.

One respondent to our questionnaire proposed that a checklist of relevant issues be drawn up and we consider that this proposal should be followed through. The regulatory guideline could reference a checklist. The checklist could include cross border investment proposals, proposed changes to market rules, compliance issues and relevant incidents occurring on the network (emergencies, congestion etc.). This workstream could develop such a checklist in association with the other workstreams of the RGI.

Regulators in the region should be working towards harmonised regulation in advance of the new regulations. A guideline requesting regulators to consult each other with a view to harmonising rules and procedures would be useful. One respondent suggested that regulators should meet and discuss up and coming regulations on a regular basis and it was suggested that the agendas should be made public. This could be facilitated through the RCC in the future. Others suggested that joint meetings with regulators and operators could be useful. These fora could be used to obtain agreement on issues such as gas quality in conjunction with traders and shippers.

Some respondents noted that there was existing requirements on regulators to cooperate with each other and assumed that this was happening at present. This was confirmed at the SG in Bonn where it was noted that the CEER provided a formal consultative platform for regulators. It was also noted that an informal network had arisen from this forum and consultations / requests for information were common place among regulators. However there is undoubtedly a need for more interactions of regulatory authorities. From the discussions above it is clear that enhanced communications are required between regulators where specific projects are being undertaken. It may also be desirable for more meetings between 'local' regulators whose markets more directly impact on one another. This is becoming increasingly important as the EU membership increases. The RCC of the RGI could provide a forum where regulators can meet to discuss common issues and to set priorities for market convergence. Such a forum could also be used to monitor implementation of regulatory guidelines and to assess the effectiveness of these.

Regulators could of course agree to cooperate along more formal lines. One suggestion which was made was that regulators should undertake to sign memoranda of understandings. This initiative could be undertaken in the short-

run and has been done before where regulatory co-operation on cross jurisdictional issues were required⁹. This could be a valuable instrument where regulators cooperate on cross border investments or other issues affecting two markets. A proposal along these lines could be incorporated into the guidelines for regulators – and may be useful/appropriate on a case-by-case basis. Such a facility should also have the effect of decreasing the occasions of disputes arising between regulators.

4.6 Resolving Regulators Disagreements

The issue of a formal dispute mechanism for regulators was raised by participants at the SG in the Hague. It is considered that with enhanced co-operation and information exchanges between regulators, as proposed in this paper, the occasions for disputes should be limited. Nevertheless the existence of a mechanism for resolving regulator disputes is seen as important to participants and would clearly reduce risks.

Many respondents cited the ERGEG⁺ type model as a potential dispute resolution body for regulators and this would seem to be the best method in the medium term. Other suggestions such as formal arbitration do not seem achievable in the short term.

Alternatively regulators could agree to conciliation with a peer group such as CEER. For more local issues the RCC of the RGI may be able to provide such a service. A guideline could be developed for regulators to avail of nonbinding conciliation where such disputes or disagreements arise.

⁹ All island electricity market between Ireland and Northern Ireland

5. Conclusions and Recommendations

This paper draws together the matrix of regulatory powers, transporter and other stakeholder issues and makes recommendations for improved cooperation among regulators in the NW region. It examines a number of issues to cross border trade and investment that have been highlighted by stakeholders in the different member states and proposes a number of possible solutions that the RCC of RGI may seek to implement to improve cross border relations. It outlines a number of guidelines and deliverables that should be included in the different work-streams of the North North-West Regional Gas Initiative group. The suggested guidelines are:

- Guidelines for regulators regarding approach to new cross border investment. This guideline will include the suggestions that regulators consult early in the process when cross border pipelines are being considered. The decision making process should be transparent and where decisions are required in two or more jurisdictions these should, where possible, be made contemporaneously. If appropriate joint meetings should include transporters / interconnectors.
- Guidelines for regulators regarding avoidance of dual regulation with respect to cross border pipelines. This would include principles for tariffing of pipelines (i.e. process for determining tariffs) and rules for network access (e.g. priority access). Regulators should agree in advance who has what responsibilities.
- Guidelines for the resolution of access disputes. Regulators should establish in advance procedures for resolving disputes where the pipeline spans more than one jurisdiction.
- Guidelines for harmonised business rules with regards to capacity allocation, nomination procedures, balancing, transparency and trading hubs. Regulators should consult each other where changes are being made to their market.

Guidelines for the provision of shared information between regulators with regards to cross border issues. Voluntary agreements should be obtained to share information in the absence of legislation.

- Guidelines for regulators to consult with each other with the view to harmonising rules and procedures
- Guidelines for the development of a non-binding dispute resolution mechanism for cross-border issues. Regulators should seek conciliation where agreement cannot be reached.

Consideration should be given to entering MOUs on specific issues (on a case-by-case basis) which set out the objectives, rules and processes for cooperation in relation to common pipelines or other infrastructure.

The analysis in section 4 identified a number of other key deliverables that would enhance the flexibility of cross border trades in the region. These include:

- A checklist identifying issues relevant to cross border trades on which regulators should exchange information and consult upon if necessary. It is proposed that this be developed as a further deliverable of this work-stream.
- A formal or informal forum allowing regulators to meet to discuss common issues and to set priorities for market convergence. The RCC might be able to facilitate such a forum.
- Compatible IT systems between different TSOs to allow for non-discriminatory access to information in all jurisdictions. It is proposed that this work-stream undertake a survey to establish the current situation as part of this work-stream.
- Development of a process for obtaining regulatory support for recommendations arising from the work of this and other work-streams in the region. This may involve the development of additional regulatory guidelines for regulators in the region.
- Develop a list of issues to be addressed for legislative changes are required
- Examine the suitability of the Telecoms Framework Directive as a possible model for the gas

These conclusions highlight the number and range of issues that inhibit the completion of the internal gas market. Each of the guidelines will be developed and incorporated into the Code of Practice for Regulators in the NW Region ¹⁰. Other recommendations if agreed can be included as additional deliverables of this work-streams. It is hoped that these recommendations when implemented will support the aim of enhancing cross border trades between network users in different member states of this NW Region.

¹⁰ Deliverable no. 4 of this workstream