



Commission for Energy Regulation
An Coimisiún um Rialáil Fuinnimh

Regional Gas Initiatives

North West Group

Regulatory Co-ordination

Deliverable No. 4

Code of Practice for Regulators

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1. Introduction

This Code of Practice is the key deliverable of the regulatory coordination work-stream of the NW RGI. It has been developed following consultation with the stakeholders in the region and taking into account the regulatory powers of regulators in the NW region. The matrix of regulatory powers was presented as deliverable no. 1 in February 2007 and was presented for discussion at the stakeholder workshop in Bonn. The issues of importance to transporters (deliverable no 2) was also presented at the workshop in Bonn as well as the responses to the questionnaire to the stakeholders in the region. Submissions and comments were analysed in the conclusions paper (deliverable no 4) and this has resulted in the development of the guidelines presented in this Code of Practice.

The goal is that all regulators in the NW region will sign up to this code of practice. It will provide RAs with the tools to create more compatibility of business rules, it will help to avoid dual regulation and associated conflicts and will provide all stakeholders with increased opportunities for having their views heard in a structured and transparent manner.

2. Sharing Information

It is accepted that regulators do share information on an informal basis and also through formal structures such as CEER and ERGEG. The focus of these structures is the promotion of the single internal energy market and the development (and influencing the development of) rules and regulations to effect that goal. At an informal level they facilitate the sharing of information relating to general approaches to market design and development. The existing structures do not lend themselves to the identification of and resolution of specific issues affecting individual MSs or impacts on one MS due to the actions of another or local issues (such as congestion or proposed investments) affecting more than MS.

The transposition of EU legislation pertaining to the single energy markets has been enacted with a national rather than a community focus and regulators are required to consider the impacts of their decisions in this context only. The requirement of regulators to consider the impact of decisions on other MSs may be incorporated into the next tranche of EU legislation. In the interim this workstream has identified the need for regulators to share information in a formal and informal manner with each other where decisions could impact on other MSs. It is agreed that this may not be possible under current national legislation but it is assumed that if agreement can be reached with participants that this can be done on a voluntary basis. It is proposed that this approach be adopted.

Decisions relating to market design, operation or development made in one MS can impact on neighbouring markets. Potential negative effects of market changes can be

mitigated either by a neighbouring country effecting changes in their regime or in the host country making exceptions or modifying the proposed changes to accommodate the neighbouring country. In the first instance the host country should inform the neighbouring countries of potential changes to allow them to assess any impacts of possible changes in both the neighbouring and host country. The host country should discuss the changes with its neighbours and regulators should aim to achieve an agreement where possible on a way forward.

These mitigation measures can only be effected if the neighbouring MS is aware that there are proposals for change. Regulators cannot be expected to inform neighbours of all market changes as this would be very time consuming and inefficient. Neighbours should only be advised where there is a potential impact on their markets – although it may not be possible for the host regulator to identify all possible impacts in a neighbouring country. One suggestion was that a checklist of issues be drawn up that can impact neighbouring countries and regulators should inform / consult each other where such issues arise. This work-stream proposes to develop this checklist over the next few months in consultation with stakeholders.

It may be desirable also for regulators to share stakeholder information with each other. This is particularly relevant where there are cross border pipelines. In these cases it may be necessary to obtain voluntary agreement from the stakeholders involved and regulators should actively seek such agreement.

Guideline 1

Regulators should share relevant information with each other. The issues on which regulators should inform / consult each other will be contained on the issues check list and this should be used as a reference base. Where there is no legal basis to share market participant information, voluntary agreement should be sought with the relevant stakeholders.

3. Requirement to Consult

Where changes are occurring in one market which significantly impacts on another the requirement to provide information may be insufficient. In these cases it is more appropriate for regulators to consult each other with a view to working together to implement the changes. This requirement to consult is particularly relevant where there are significant cross border investments. For significant projects regulators should consult at an early stage of the project. They should work together to establish a common timeframe for the overall project – commensurate with their respective duties and possibly in consultation with network companies. Where decisions are required in more than one jurisdiction regulators should endeavour to work to a common timeframe (where this is within their remit) and to make decisions contemporaneously. The decision

making process should be transparent and the criteria for decision making should be known in advance.

Where investments span multiple countries it may also be desirable that joint meetings be held between all the regulators and TSOs involved. This would lead to efficiency of decision making and will support the project planning and construction processes.

Guideline 2

Where changes are being introduced in one market that may have an impact on neighbouring countries, the host country should consult with the regulators in the neighbouring countries. Consultations should take place at an early stage of the project development. Decision making should be transparent and where decisions are required in two or more jurisdictions, where possible, these should be made contemporaneously. If appropriate joint meetings should be held with transporters or other stakeholders.

4. Avoidance of Dual Regulation

Regulators should endeavour to avoid dual regulation. However, where there are cross border pipelines, there may be a requirement on regulators in both jurisdictions to regulate the pipeline. For new pipelines regulators should consult before issuing licences to ensure that the terms in both jurisdictions are not inconsistent.

Regulators should endeavour to agree in advance key operational issues in relation to the proposed investment and if appropriate these should be incorporated into the licence conditions. These should include conditions for access to the pipeline, tariff principles and process and for resolving access disputes.

Access Rules

Regulators should be clear as to access rules for cross border pipelines when the pipeline is commissioned and provision should be made to allow for changes to be made at a later date e.g. a pipeline may be built primarily as a transit through one jurisdiction to serve another and if this is the case this should be recognised by each regulator. In this case it should be decided in advance what the process and procedures are if a customer in the transit country wishes to connect to the pipeline. Provision should also be made for a change of use of the pipeline e.g. if it were to integrate with the transit countries network at a future date.

Dispute Resolution for Pipeline Access

Customers seeking access to pipelines should have a clear dispute resolution process and these should be consistent along the route of the pipe. Where access to a pipeline is disputed the regulator in the customers' jurisdiction should resolve the dispute. The process for dispute resolution should be similar in each jurisdiction and regulators should co-operate in devising a similar process for each MS. Regulators in other jurisdictions along the route of the pipe should be advised of any decisions made regarding access. This does not bind them to make similar decisions but they could be of persuasive character.

Tariff Principles

Where a pipeline crosses a border and there are off-takes on both sides, regulators on each side should consult on tariffing principles. Where the pipeline has off-takes in one jurisdiction only, the responsibility for tariffing should be with the regulator in that jurisdiction only. Regulators should agree with each other in advance how cross border pipelines should be recompensed.

Guideline 3

Regulators should consult each other before issuing licences for cross border pipelines and should endeavour to ensure that licence conditions in each jurisdiction are not inconsistent with each other.

Where appropriate regulators shall agree licence conditions on access, tariffs and dispute resolution.

Regulators should endeavour to establish a common dispute resolution process for customer seeking access to pipelines. They should advise each other of any access decisions made.

Regulatory coordination should not be confined to the initial phases of a cross border pipeline project. Where there are cross border pipelines regulators should engage in regular dialogue with each other so that issues can be resolved at an early stage. As mentioned above there would also be a need to share information with each other on a regular basis and monitor the performance of the operator. Other issues emerging for existing pipelines will be signalled through the use of the 'issues list' on which regulators will consult each other.

5. Harmonising Business Rules

It is imperative that regulators work together to make business rules compatible and where possible harmonise rules. Where changes are being made to market rules regulators should consult each other and endeavour to make market rules converge. It is important to establish compatible and where possible harmonised business rules with regards to capacity allocation, nomination procedures, balancing, transparency and trading hubs across the RGI for the market to function properly. Where appropriate capacity allocation mechanisms such as open seasons and capacity auctions at border points should be coordinated if possible and should be run contemporaneously.

Where guidelines are developed (in ERGEG fora or through the RGI) regulators should seek to bring these into effect in a coordinated fashion.

Guideline 4

Regulators should seek to make business rules compatible and where possible and harmonised subject to the safe and economic and secure operation of the network in its jurisdiction. Where guidelines are developed (in ERGEG fora or through the RGI) regulators should seek to bring these into effect.

6. Resolution of Regulator Disagreements

Where there are cross border pipelines regulators should aim to agree in advance how it will be regulated, who takes responsibility for what aspects of the regulation, and how they will manage the regulation of the pipeline. To formalise this consideration should be given to entering Memoranda Of Understandings (MOUs) on case-by-case basis which set out the objectives, rules and processes for cooperation in relation to common pipelines or other infrastructure.

The discipline of putting in place such an MOU should minimise the possibility of regulatory disagreements arising in the future as there will be a common understanding of how the pipeline will be managed.

Where regulators in neighbouring jurisdictions cannot agree in relation to terms of regulation of a pipeline straddling both jurisdictions regulators should seek to have the matters resolved through an agreed conciliation process.

Guideline 5

Regulators should enter into Memoranda of Understandings in relation to operation of common infrastructure.

Where there is cross border pipelines regulators should seek to avail of an agreed conciliation process where agreement between regulators cannot be reached on issues relating to the regulation of the infrastructure.