

RESPONSE TO CONSULTATION

on

ERGEG's Gas Regional Initiative Action Plan for the South-South East Europe Natural Gas Market (hereinafter Action Plan)

1 September 2006

Preface

This document presents comments of RWE Transgas Net, s.r.o., the holder of the transmission licence in the Czech Republic, on the Action Plan for the South-South East Europe Natural Gas Market, a consultation document prepared by ERGEG.

General Comments

Harmonisation

Taking into consideration the Gas Regional Initiative launched by ERGEG, an Action Plan prepared for each of the defined regions is a useful instrument for advancing the liberalisation process in the regions themselves and, onwards, in the whole single market. Any Action Plan should respect the framework set up in the acquis relevant for the gas sector, in particular Directive 2003/55/EC (hereinafter Directive) and Regulation (EC) 1775/2005 (hereinafter Regulation). The legal instrument of directive was chosen because it provides for greater flexibility needed to respect differences in the individual Member States when liberalising the market. The Regulation does not contradict that concept stipulating in Article 1 that it “*aims at setting non-discriminatory rules for access conditions to natural gas transmission systems taking into account the specificities of national and regional markets with a view to ensuring the proper functioning of the internal gas market.*” The objective is to be achieved by “*setting [...] harmonised principles for tariffs, or the methodologies underlying their calculation, for access to the network, the establishment of third party access services and harmonised principles for capacity allocation and congestion management, the determination of transparency requirements, balancing rules and imbalance charges and facilitating capacity trading*”. The wording suggests that the level of harmonisation set out in the Articles of the Regulation is, at least from the perspective of the time of approval of the Regulation, considered sufficient for the proper functioning of the internal market. Harmonisation should therefore not be understood as unification.

In our view, it is possible to have, for example, a different transmission tariff structure for different transmission systems as the difference will reflect the different character of the network. We do not think that any such difference hampers trade we indeed think that any efforts to unify the structures would lead to discrimination of users in the different systems.

The same applies to differences in capacity booking procedures. A capacity booking procedure must reflect the needs of the respective transmission system. A system congested on long-term basis will require a different approach than a system with hardly any or just short-term congestion.

We cannot agree with the statement that *“even a shipper endowed with upstream gas, who needs crossing two or three countries to reach his customers, faces an uphill task to define carriage contracts across the different systems.”* It is nowadays much more of an uphill task to arrange for supply upstream and win a customer downstream than to arrange for a transmission contract.

Stakeholders

In addition, recalling the introductory paragraphs of the consultation paper, namely the necessity of having effective rules along the whole gas chain, we would again like to stress how important it is to have producers relevant for the SSE region present at the Implementation and Stakeholders Groups meetings.

Unbundling

Given the framework for legal unbundling as set out in the Directive, it is no surprise that there came about a patchwork of unbundling regimes. We do not think that the fact that legal unbundling has taken on different forms hampers competition. Regulatory authorities should rather monitor, in accordance with Article 25 of the Directive, compliance of transmission system operators with the three guiding principles of market liberalisation, namely objectivity, transparency and non-discrimination.

Priorities for the South-South East Europe Gas Market

Discussion Point 1

Priorities should focus on work that could realistically be taken forward with deliverables. It should be clear what the objectives are, and which are the tools to achieve them. Concrete problems to be focused on within SSE REM should be based on the outcome of the monitoring exercise and the case studies.

The monitoring and case studies should not be considered as priorities but rather as prerequisites to set up, for example, transparency and interoperability arrangements in such a way as to support the liberalisation process.

Priority I

Discussion Point 2

The Regulation is applicable as of 1 July 2006 having entered into force on 23 November 2005. It is surprising that the ERGEG suggest that any monitoring exercise in respect of needed modifications to the national legislative framework should be carried out only now. We would expect all Member States, regulators and, possibly also stakeholders to have done that exercise before 1 July. In any case, Regulation as a directly applicable legislative instrument of the EU law makes void any national provisions that do not comply with it.

RWE Transgas Net complies fully with the Regulation as of 1 July 2006.

Discussion Point 3

The Directive does not give any particular powers to the regulatory authorities in respect of legal unbundling. By explicitly mentioning the monitoring function of the regulatory authorities in respect of effective unbundling of accounts, it may be argued that no such regulatory oversight was foreseen, this is obviously without prejudice to any Member State's right to grant the regulatory authorities additional powers.

Priority II

For the case study to bring expected results, we consider it absolutely essential that the respective regulatory authorities co-operate very closely from the very beginning. In fact, we think that the participating regulatory authorities should check transportation on those sections of the profile that are not subject to their regulatory oversight. The capacity request should be based on a feasible and realistic portfolio of (end-)customers.

We would also like to note that some of the questions listed under the case study would not be of interest to shippers but rather to regulatory authorities. We would argue that questions concerning the number of other shippers and their shares are of little relevance for a requesting shipper. Such shipper is more likely to be interested in the behaviour of other shippers, for example in respect of secondary trading, which is indeed reflected in the other

questions. Also, it is hard to imagine that a shipper will request capacity without having already arranged for upstream supply. This more or less applies to access to storage as well.

With regards to the question if trade is hindered by regulated end-user prices, it should be noted that a case study regarding transportation is not likely to answer that question. We would expect a well-defined case study on the behaviour of (at least) the big industrial customers in respect of energy procurement.

Finally, we would suggest that other transportation routes be considered which bring gas from the West to the East. Some of the suggested routes are more relevant for the North and North-West regions than the South South-East region itself.

Discussion Point 4

N/A

Priority III -- Transparency requirements covering access to storage and hub services

Issues discussed under this section do not concern transparency as such but deal with the regulatory framework for storage and the concept of storage/hub services. As indicated above, for SSE REM to achieve any progress, it must be clear what the work will focus on.

Priority IV -- Interoperability issues

The fact that there are interconnection agreements in place does not mean that interoperability issues have been solved.

Gas quality does not seem to be a problem now, as suggested also by a preliminary analysis by the Commission of the interoperability questionnaire even if that does not exclude any problems to arise in the future as a consequence of changing flow patterns.

Preliminary conclusions

Most conclusions listed under the preliminary conclusions do not concern the behaviour or activities of infrastructure operators but rather the behaviour and activities of suppliers active on the market. It is necessary to clearly state that infrastructure operators can only facilitate trade and liquidity of the market but not create it.

Proposals for an Action Plan

The preliminary assessment seems to be based on data collected in the 2nd half of 2005, or more specifically on generalised conclusions based on that data. We therefore do not think that any preliminary assessment should be done before the monitoring of implementation of the Regulation has been carried out.

Also, the proposals do not correspond with the priorities as set out at the beginning of the document.

In addition, it is not clear what joint implementation as suggested in the text means. The Regulation aims at harmonisation of principles not implementation of the same rules and procedures in all transmission systems. It should be pointed out that any extension of existing framework of regulation and the role & function of ERGEG may be done only through amending the existing gas acquis, incl. the Commission Decision 2003/796/EC on establishing the European Regulators Group for Electricity and Gas.

Discussion point 7

Without prejudice to what has been pointed out above, if any guidelines should be developed then they should be developed by the relevant TSOs in accordance with Article 5 and Section 2 of the Regulation. In anyway, procedures would have to be avoided that would treat same users in a different way.

Discussion point 8

It is highly probable that neither the priorities nor the associated tools are likely to identify issues hindering investment. In that respect, we would like to refer to the conclusions drawn from a survey conducted recently by GIE and reflected in the GIE response to the Green Paper. A key hindrance to investment, as identified by participating TSOs, turns out to be the Regulation & Access regime.

We think that sensible allocation of costs and risks with regards to investments may be achieved by making greater use of the exemption procedure set out in Article 22 of the Directive. This tool, unlike the compensation mechanism, is provided for by the current gas acquis. Moreover, the compensation mechanism as foreseen in the ERGEG proposal is not suitable for application in the gas market due to different physical characteristic of gas flows, compared with electricity, and may indeed lead to discrimination (cross-subsidisation) of users that would contract capacity in the regional Entry-Exit system.

Discussion point 9:

See response to Discussion point 8

Discussion point 10

The ERGEG have proposed GGP for Gas Balancing. This document had been subject to public consultation which ended on 20 June. The ERGEG have received a number of responses from all stakeholders (TSOs, suppliers, traders, gas exchanges). It would be instrumental to first have the conclusions drawn from that public consultation before any decision is made on voluntary implementation of any such guidelines.

Moreover, it is not clear, why any other guidelines for balancing should be defined for SSE REM.

Discussion point 11

Generally speaking, it is not necessary to have guidelines on every aspect of gas market organisation. Transparency requirements, incl. the information management, are an integral part of all other guidelines that are now implemented or in the process of discussion. As regards the information management governance (as described in the Transparency and Information Management Guidelines for electricity, the document launched for public consultation on 16 June this year) any such procedure should be part of the gas fora meetings, be it the Madrid Forum or the Regional Fora.

Discussion point 12

There is no need to conclude a memorandum of Understanding or any other similar document in order to achieve full and correct implementation of the Directive and Regulation.

As concerns any provisions that should go beyond those legislative instruments, they should not set out any rules concerning arrangements that clearly do not hamper liberalisation of the gas market.

Aspects that hamper liberalisation must be first determined on the basis of a thorough analysis that is not concentrated only on the behaviour and activities of the infrastructure operators but also on the behaviour and activities of all other stakeholders.

Conclusions

Harmonisation of rules must allow for specificities of national markets. Harmonisation should therefore not be understood as unification.

The Action Plan priorities should focus on work that could realistically be taken forward with deliverables. It should be clear what the objectives are, and which are the tools to achieve them. Concrete problems to be focused on within SSE REM should be based on the outcome of the monitoring exercise and the case studies.

For the case study to bring expected results, we consider it absolutely essential that the respective regulatory authorities co-operate very closely from the very beginning. In fact, we think that the participating regulatory authorities should check transportation on those sections of the profile that are not subject to their regulatory oversight. The capacity request should be based on a feasible and realistic portfolio of (end-)customers. We would also like to suggest that other transportation routes be considered which bring gas from the West to the East. Some of the suggested routes are more relevant for the North and North-West regions than the South South-East region itself.

Most conclusions listed under the preliminary conclusions do not concern the behaviour or activities of infrastructure operators but rather the behaviour and activities of suppliers active on the market. It is necessary to clearly state that infrastructure operators can only facilitate trade and liquidity of the market but not create it. A preliminary assessment should be done on the basis of up-to-date information, that is only after the monitoring of implementation of the Regulation has been carried out.

The submitted proposals for an Action Plan do not correspond with the priorities as set out at the beginning of the document.

Any extension of existing framework of regulation and the role & function of ERGEG may be done only through amending the existing gas acquis, incl. the Commission Decision 2003/796/EC on establishing the European Regulators Group for Electricity and Gas.