

Eni response to the Consultation Paper on an Action Plan for the South-South East Europe Natural Gas Market

The aim of this Document is to point out some aspects related to the consistency of the Italian Gas market with the Action Plan for the South-South East Europe Natural Gas Market and to suggest, on the basis of Italian market situation and Eni experience, some points about the global approach and single steps foreseen to be taken. These points constitute an integration, considering the specificity of the national context, of the Eurogas position that Eni contributed to define.

Hub services

One of the priorities of the Regional Initiative is the increasing of market liquidity through the hubs development. To create effective liquidity, avoiding and removing obstacles that hinder the development of the existing hubs, in Eni's view it would be necessary:

- to define not compulsory contractual schemes providing for general conditions for hub transactions. The introduction of standard contracts on the one side should favour decreasing transaction costs and contractual transparency and simplification, on the other side their compulsory nature would avoid operators to define specific and tailored contractual contents;
- to avoid speculative uses of hub. It should be granted by specific procedures to admit operators to sell or buy in the hub, verifying the ownership of adequate features, first of all in term of gas availability, financial and technical ability. In particular, rules and penalties mechanism shouldn't allow speculative behaviours (i. e. gas selling without effective gas availability);
- to conceive, initially, hubs as balancing points. Nowadays, different balancing and metering regimes in force in the SSE regional area, are not consistent and do not allow timely information on data related to gas allocations. For this reason initially hubs should be conceived as balancing point where operators are allowed to compensate their imbalanced gas position. The harmonization and development of balancing and metering regimes could lead to the development of hubs conceived as supply and trading points;
- to develop and harmonize metering regimes in view of their interdependency with gas allocation and balancing rules, with the aim of the future development of hubs working as effective Gas Stock Exchanges. That's an important matter considering that accuracy of gas allocation, and consequently of balancing terms and penalties, depends even on metering methods and timetable.

One stop shop

With regard to the "one stop shop" principle (OSS) Eni favours a service which would facilitate gas transportation through different TSOs, but before commenting in detail on the proposal in the Consultation Paper we would like to know more about what ERGEG understands by the term.

In a wide interpretation the OSS principle could imply improperly the introduction of a single independent system operator in the regional/european market. In Eni's view this point is not realistic considering the very different legal, industrial and market framework in SSE regional market. Eni believes that activities related to the OSS principle are linked to the commercial part of the natural gas chain (i.e. shipping, optimization of capacity booking).

The simplification of access to gas transportation system managed by different TSOs should be obtained through the harmonization of regulatory frameworks avoiding the administrative introduction of single operators, thus in practice imposing legal monopoly on shipping activities.

In an harmonized regulatory framework the activities linked to the OSS principle should be left to the market forces. Currently nothing prevents any market operator or independent player

from providing services equivalent to OSS aimed to reduce the complexities of several transportation contracts.

Open season

Eni favours the principle that investments on new capacity have to be supported not only by technical feasibility but also by economical viability and right incentives based on long term commitments by the shippers and on a clear and stable regulatory framework.

Moreover, we support the principle that regulatory framework cannot imply any investment obligation charged to the TSOs which do not have any legal nor de facto (in particular considering new capacity) monopoly on the transportation activity. Both Directive 2003/55 and Regulation 1775 expressly exclude any obligation to compulsory investments.

If the TSO is not willing to build the new investment, it should be set up a process open for interested investors to finance the capacity extension. The Regulator should not decide the way of financing the investment that can be funded either through equity contribution and risk sharing by third parties or through long term commitments to pay transportation tariffs.

Italian market situation

Concerning the description of the Italian regulatory context at page 14, Eni would like to clarify some aspects.

With respect to the so called gas release, it has to be pointed out that every rule concerning Eni, in particular contracts, tender type, number and size of the lots, participation criteria, were approved by the Italian antitrust Authority (Autorità Garante della Concorrenza e del Mercato). For this reason, Eni did not play any opportunistic role on this procedure.

Considering transportation and storage, it is to be stressed that the regulatory framework in Italy is one of the most effective. In this context the control of the regulated companies is not affecting the liberalization process: as a matter of fact neither the Authorities nor the other operators have never found SRG or STOGIT discriminatory behaviours in favour of ENI.

We also would like to point out that what happened last winter is due to some specific occurrences that were unpredictable, such as: a cold season, an unexpected increase in gas consumption for power generation due to the reduction of importation and the increase of export of electricity and the well known crisis between Russia and Ukraine, which caused the reduction of gas imports from Russia. These three factors were also meant to be the causes of the emergency by the Italian Ministry of Economic Development.

Discussion Point 2/3

Timely and correct implementation of the Regulation 1775 and of the 2nd Directive is essential. There is need to address areas that are not being implemented and where gaps have already been identified. When it is correctly implemented, there will be a basis for deciding if amendments are necessary, in conjunction with impact assessments. In conclusion, regulatory coordination should be fostered to close gaps asymmetries in regulatory frameworks.

Discussion Point 7

Concerning the reference to the implications of the European Court of Justice decision, of 7 June 2005, C-17/03 it should be observed that they are referred to electricity market and so it is not possible to apply them to gas due to different peculiarities characterising the business.

Discussion Point 8

Eni in principle favours entry exit systems; cross-subsidies and stranded costs should be avoided. It is to be considered that an entry exit system does not only refers to tariffs but also to capacity definition; the existence of bottlenecks within the regional network could easily cause an entry exit system to reduce current available capacity in certain points.

This section raises other important points. Eni agrees that the regulatory gap can impede investment. A national regulator may not put in place the right conditions to encourage investment necessary in another Member State; this point put in evidence the problems related to the sharing of costs and, consequently, tariffs between different Member States/Regions. Therefore there has to be a better co-ordination on this issue.

Discussion Point 9

First of all it should be underlined that so far doesn't exist any European legislative reference to the Open Season (OS) or any other capacity allocation procedure. Furthermore, with reference to the wished "Guidelines for the treatment of new gas infrastructure", similar to the ones discussed in the Gas Regulatory Group for the Energy Community of South East Europe (GGIIRR) and including the reference to OS principle, it should be recalled that the latter have not been approved yet, because not responding to the *acquis communautaire*.

In any case, in our opinion, the OS principle for capacity request should not be applied to existing capacity; OS should be applied only to new capacity with the only possible exception of available capacity.

With regard to the initial allocation of new investment, any form (even the open season principle) cannot imply any investment obligation charged to the TSOs. This should, however, be accompanied by a commitment (obligation to pay for booked capacity or investment). Differing solutions may be appropriate depending on the circumstances and the relevant market.

Appropriate funding arrangements should be in place to underpin TSOs' investments, ensuring that the investment environment is:

- predictable
- stable
- commensurate and complete

TSOs should be robust enough to cope with some risk, and be prepared to invest in response to market signals although recognising that it may be parties other than the incumbent TSO who invests. "Open season" should not be an obligation.

The need for new infrastructure should be determined through market signals (in a system of competing networks, more consideration may need to be given to firm commitments). Eni favours the principle that regulatory framework cannot imply any investment obligation charged to the TSOs which do not have any legal nor de facto monopoly on the transportation activity. Both Directive 2003/55 and Regulation 1775 expressly exclude any obligation to compulsory investments.

The Directive 2003/55/CE "require transmission system operators to comply with minimum requirements for the maintenance and development of the transmission system" (art 8.3) thereby also expressly excluding an unrestricted obligation to compulsory investment;

Such minimum requirement, in order not to determine an undue encroachment on market players' proprietary rights, must be restricted to Public Service Obligation as defined by each Member State in accordance with the criteria set in art. 3 (2) of the Directive 2003/55/CE.

"The Directives do not themselves contain comprehensive measures relating to the development of interconnection infrastructure. The regulatory framework, for example, is left open for the Member States affected to determine": see European Commission, Commission Staff Working Document, Report on Progress in Creating the Internal Gas and Electricity Market, Technical Annex.