

EFET Gas Committee

High-level views on the 3rd EU Energy Package

October 2007

General

The overall EFET position was summarised in our press release of 19 September 2007 in which we welcomed deeper unbundling of transmission from supply, greater independence of regulators, improved regulation at EU level and measures to improve information about infrastructure use and availability. Whilst strongly supporting these initiatives EFET also expressed concern that the main thrust of the package is to establish bureaucratic processes rather than directly addressing barriers to market development

Europe's regulated, monopoly gas infrastructure should deliver a service for producers, traders, shippers, final suppliers and end-consumers. These users have the fundamental commercial exposure in the development of the European gas market and any institutional structures and responsibilities that are established should recognize this.

Further EU legislation may take several years before it is in force. It is therefore imperative that full implementation of the existing gas directive and regulation remains a priority, and that where practicable, further barriers to trade are dealt with by all parties in a timely and constructive way, for example through regional initiatives.

Unbundling

We welcome deeper unbundling of monopoly transmission infrastructure from production, import and supply businesses, to improve pipeline operators' impartiality and thereby promote non-discriminatory access.

Where the ISO model is selected it is essential that the decisions both about efficient investment in new capacity and the efficient operation of existing capacity rest with the ISO and not with the asset owner. Regulatory scrutiny, whether it is of publicly or privately owned ISOs, will need to ensure that these decisions on investment take equal account of customers solely within the national boundaries and of customers using connected systems.

The goal should be for several transmission systems to be operated by an ISO, for example as Regional ISOs, and further thought needs to be given to what incentives should be in the 3rd package to encourage moves in this direction.

It is disappointing that in its current form the 3rd package does not set out a clear goal that transmission system operation should transcend national boundaries. Instead there is a serious danger that by reinforcing national TSO structures the gas market will become further fragmented, and further from the goal of a single integrated European market.

Powers & duties of national regulators

We agree that individual energy regulators should have consistent powers throughout Europe and sufficient independence from National Governments to enable them to implement agreed policy, enforce liberalisation legislation and to promote the development of competitive energy markets.

The co-ordination of regulatory activities and powers needs to be improved between, for example, energy regulators, competition authorities, and financial regulators, to ensure that there is effective regulatory oversight without an undue bureaucratic burden on business nor duplication of regulatory effort.

EACER, the new European Agency for Cooperation in Energy Regulatory

The creation of a regulatory agency at EU level should foster deeper collaboration among national regulators. But without a clear focus on x-border issues and without decision making powers as well as a duty to take action, it is questionable that the proposed structure will solve the many remaining problems to x-border trade.

For example, EACER should at least be responsible for monitoring the x-border capacity calculations by ISOs and the actual (aggregate) use of the interconnection capacity between the grids, as well as resolving problems of unfair, discriminatory or inefficient access across national borders. EACER should then be able to impose sanctions if the barriers to x-border trade are not resolved.

Overall, the powers and duties of EACER would need to match the activities of the European Network of Transmission System Operators (if such a body were to be established – see below)

Evaluation of the effectiveness of EACER and of ENTSO(g) in respect of the power and competence retained by the Commission and the rather limited authority in hands of the Agency, as stipulated in Article 2e of the proposed Regulation will need to take place after their establishment. As a result of the evaluation, the power and competence of the Agency, the Commission and/or ENTSO(g) may be adjusted.

Transparency: Infrastructure information

Improved information on the aggregate use and availability of all Europe's main gas infrastructure remains a fundamental issue, and the proposals in the 3rd package form a useful basis to address this. In particular EFET welcomes:

- removal of the information exemption for monopoly and duopoly capacity holders
- supply and demand forecasts by system to be made available by the TSOs
- costs of maintaining the system balance to be made available by the TSOs
- the same level of detail available to the TSO should also be provided to the market

Information provision must apply to all major gas infrastructures, whether or not they are subject to mandatory regulated TPA. We recognise, however, that there may still be occasions for which the need to ensure confidentiality, for example for small independent storage sites that are not subject to TPA, will require some further aggregation of information.

Transparency: Market information

Detailed information on individual transactions to buy or sell gas or capacity must remain confidential as on other financial and commodity markets. Such information could of course be required on a confidential basis by regulators in certain circumstances. EFET has already agreed to take part in discussions on what records of transactions need to be kept and the circumstances under which a particular regulator could request such information.

Confidence in market developments could be improved through more consistent provision of information by gas hub operators (e.g. aggregate traded volumes) and market price reporting by exchanges. Promotion of liquidity on gas hubs and exchanges will provide better visibility, more consistent information and market signals necessary to regulators and market participants. These market places are also regulated by financial regulators whose aim is, among others, to help avoid market manipulation and increase trust in the market.

TPA and the vision for Europe

All infrastructures with a monopolistic nature should be regulated. Exemptions for such are only temporarily and must only be approved on a case-by-case basis.

Transmission pipelines should be regulated and operated in combined and coordinated ways across the EU. EFET's directional thinking for this regional coordination is set out in our paper, "Regional gas grids – Towards the single European market" October 2007.

Once there are large balancing zones within Europe and a reduction of market dominance, for example as has been argued now is the cases with the UK entry-exit system and the NBP, then it is credible for certain other infrastructure to offer competitive services. In particular a competitive storage market could develop and competitive access to LNG reception terminal capacity can become a realistic goal.

We suggest that there should be better clarity about the direction that the 3rd package should lead. Whilst all transmission infrastructure should be regulated, in our view the goal should be to create conditions that will allow competitive storage and LNG terminal access to flourish.

Storage

EFET supports the main proposals of the Commission regarding:

- making the principles in the guidelines legally binding
- legal and functional unbundling of storage system operators who are part of supply undertakings, unless a competitive market has been established in the particular storage services offered by the SSO.
- empowering national regulatory authorities to oversee access to storage;
- clarity on the regulatory regime that is applied to storage facilities.

But we have some concerns about the approach that is taken to implement these changes. In particular we are concerned that the opportunity has not been taken to clarify in the Directive that:

- a) the goal is a competitive storage market with clear economic signals that encourage investment – to ensure that this is not undermined the existing GGPSSO might need to be amended before it is given legislative force
- b) there should also be legal and functional unbundling of Storage Operators from Transmission System Operators, unless a competitive market has been established in the particular storage services offered by the SSO.
- c) regulators should not aim to perpetuate a national regulatory regime if a competitive storage market could be established in their region. The emphasis should be on convergence and harmonisation of the approach taken to storage across Europe, in particular regarding the provision and use of information, the annual allocation of bundled capacity and facilitation of trading throughout the year.

- d) rather than leaving it to different interpretations by each Member State as to which (parts of) storage facilities are subject to TPA and, for these facilities, which access regime should apply, the decisions should have the same basis for all storage facilities and include an assessment of genuine competition between storage facilities of the same characteristics under different ownership within the same balancing zone.

Balancing

The 3rd package needs to provide greater impetus for Europe to converge on market-based balancing in which information provision is sufficient and timely to enable market participants to take corrective action within the balancing period.

The overriding principle of a balancing regime should be founded on objective market based criteria so that it is fair, non-discriminatory and transparent. Balancing rules should reflect genuine system and market needs taking account of the resources available to the TSO and to the network user.

Security of supply

To manage security of supply sufficient physical infrastructure to deliver gas must be built and made available to the market. Traded markets can help provide investment signals, but for transmission networks, major, long-term changes in interconnection capacity must be made on the basis of regional grid analyses and wide consultation overseen at EU level, for example by EACER.

To avoid undue risk leading to increased gas prices for consumers, there must be sufficient transparency on any mutual assistance agreements or any other bilateral government arrangements that would affect the gas flows or prices.

ENTSO(gas)

The structures to be set up now for the gas market must help deliver what market participants need for an effective single market, not just what is convenient for the network operators.

Most gas market rules have a direct financial effect on the operations and financial performance of a wide range of gas market participants and there must be a forum or industry-wide 'platform' involved in setting the objectives and drafting the main requirements in these areas.

TSOs have a key role, not only regarding implementation of all their parts of the industry-wide codes and standards but also all those issues that focus on the optimum development and management of the European gas grid. It is by no means clear that a formal body of TSOs is necessary, or even helpful to carry out these tasks.

If ENTSO(gas) were to be established then it would have to be:

- focussed on the actual role of the TSO
- matched by powers in AECER
- governed by the principle of equality between the TSOs and System users.

The approach EFET prefers and recommends, however, would be to:

1. recognise an industry-wide platform as responsible for drafting binding documents on topics that affect wide parts of the industry
2. place clear obligations on TSOs both severally and jointly to implement the network parts of those documents and other network-related tasks that are specific to TSOs
3. empower EACER to step in if the industry cannot agree or the TSOs fail to deliver

Overall this provides a more equitable distribution of powers and duties in which the regulators can be made responsible for the economic rationale of their decisions.

Capacity between transmission systems

There are a number of simple and effective remedies that could be included in the legislation, but are so far missing in the proposals, particularly for gas for which the existing regulation is weak compared with the electricity x-border regulation. EFET would suggest:

- under the approval of EACER, a clear obligation on TSOs jointly and severally to build sufficient interconnection capacity between their regulated infrastructure to satisfy an efficient overall market assessment and security of supply criteria
- a clear obligation on TSOs jointly and severally to maximise the firm x-border capacity that they offer to the market (e.g. to offer all forecast unused capacity to the market on a timely basis)
- a clear responsibility on the Regulators to ensure that TSOs are rewarded for building all agreed capacity that satisfies appropriate economic tests.