

General remarks on the Dlgs.130/2010 – “Misure per la maggiore concorrenzialita' nel mercato del gas naturale ed il trasferimento dei benefici risultanti ai clienti finali” – Virtual Storage Decree

EFET makes the following comments on the above decree based on its current understanding of it.

- However it is unclear, even to our Italian members, how the mechanism will work in practice or how it is expected to enhance competition in the Italian gas market as information provided to date has been sketchy and many of the rules associated with its implementation have yet to be issued by the MSE.
- EFET firmly believes that competition in the wholesale markets should be improved firstly by removing obstacles within the regulatory framework to promote competition. We mostly consider that:
 - ▶ a market based reform of the balancing regime is highly needed;
 - ▶ it is necessary to enlarge the access to the market and to flexibility resources revising, for example, the criteria to access storage capacity according to EU Commission Interpretative Notes.

GENERAL BACKGROUND

We appreciate the reference with regard to the **reform of the balancing regime** to be settled by the Authority on the basis of MSE directives by April 2011. We recommend that Institutions will effectively involve all stakeholders in the process and that any proposal of a market based balancing regime will be based on best practices across Europe and on the ongoing work stream on framework guidelines in order to promote competition and market integration and avoid too specific methods that might segregate the Italian gas market.

Beside this provision, we note only minor specific provisions for the development of a real EU wholesale gas market. More generally we note a lack of references and measures on harmonisation in the context of the integration of European markets.

The decree seeks to promote additional investments in storage facilities by allowing a specific class of end user (industrial customers and power producers) to participate in financing storage projects and to secure the benefits from such investment in advance of the project being commissioned (“virtually”).

The decree also seems to be linked to the cap on the maximum quantity of gas that can be imported or produced in Italy by a single company, which expires on 31st December 2010¹. It does this by allowing companies with a market share above 40%² to commit themselves to build 4bcm of storage capacity (which industrial customers and power producers help finance) within 5 years.

¹ Cap set out in the Decree n.164/00

² ENI is the only company with a market share in excess of 40% and so would be able to maintain a 55 % market share by committing to build storage capacity, presumably through its storage subsidiary Stogit

Subject to this commitment, a company is then allowed to grow its market share in the Italian wholesale market up to 55%. In case the market share is above 55%, the company must launch for two (2) consecutive years a gas release for a total amount of 4 bcm.

This highly unusual decree pre-supposes that a certain amount of new storage capacity is required to enhance the competitiveness and security of the Italian gas market and that such capacity is required only for a single class of customer. EFET fundamentally disagrees with this approach and believes that an efficient level of storage capacity will be determined by providing all market participants with equal access to storage capacity and by building new capacity in response to efficient market signals.

However, storage capacity is only one element of the solution to enhancing competitive and secure markets and market based balancing with access to import capacity and other forms of flexibility (such as demand side response and LNG) are equally important. To the extent such new storage is technically and/or economically necessary for providing efficient access to the system for the supply of customers, which we assume it is, access to it is subject to the provisions of Gas Directives 2003/55/EC and 2009/73/EC.

As such, natural gas undertakings and eligible customers either inside or outside Italy shall have a right to access such storage based on published tariffs, or be able to negotiate access, unless certain specified conditions are met sufficient for it to be exempted by the National Regulatory Authority (NRA). Under Gas Directive 2009/73/EC before granting an exemption the NRA shall decide upon the rules and mechanisms for management and allocation of capacity and the rules shall require that all potential customers are invited to indicate their interests in contracting capacity before allocation takes place.

Also under Gas Directives 2003/55/EC and 2009/73/EC where an authorisation is required for the construction or operation of a natural gas facility, Member states shall lay down (and make public) objective and non-discriminatory criteria which shall be met by the natural gas undertaking applying for an authorisation. Storage operators shall also refrain from discriminating between system users or classes of users, particularly in favour of its related undertakings.

Whilst not yet having a full understanding of the decree and how it will be implemented we believe that there are reasonable doubts as to whether it complies with various provisions of the Gas Directive currently in force (and that which will come into effect in March 2011) in only allowing access to a certain class of user.

In particular, we note that article 21(1) of the Gas Regulation states that *EU directive Balancing rules shall be market-based* and Article 21(3) of the Gas Regulation specifies that *Imbalance charges shall be cost-reflective to the extent possible, whilst providing appropriate incentives on network users to balance their input and off-take of gas*. Additionally in the Interpretative Notes is clearly stated the Commission's view on storage access "*Not per storage client and not excluding storage clients on the basis of their portfolio of customers. The internal market legislation decouples infrastructure operation from supply. Therefore, the access regime and the basic rules for access may not depend on which customers a supplier intends to supply. It is therefore not possible to exclude certain suppliers from access to storage based on the customer portfolio*"

We are also concerned about the distortionary effect the decree could have on the development of competition in the Italian gas market and on progress towards a single European gas market.

Moreover many rules on how the mechanism should work are postponed to consequent decrees to be issued by the Ministry and detailed rules to be defined by the National Energy Regulator AEEG and this increase the uncertainty of potential impacts of the whole measure.

Finally, as storage projects invariably face consenting difficulties and delays, we are concerned about the potential for cross subsidy which may arise from rewarding certain types of customer with the benefits derived from virtual assets should these assets get delayed, or never materialise.