

## EFET Gas Committee Access to Gas Transit Pipelines

### 1. Summary

Restricted access to pipeline capacity is one of the main barriers to cross-border gas trade and a significant reason for the slow development of a competitive EU gas market.

This paper sets out the high-level views of the European Federation of Energy Traders regarding access to existing and future high-pressure pipelines used for the intra-EU transfer of natural gas across one country for delivery in another country.

In all cases the principle of transparency of aggregated information is essential if market confidence is to develop. Information transparency,<sup>1</sup> while respecting commercial confidentiality of individual trader information, is particularly important where there is a requirement for non-discriminatory third party access (TPA).

The high-level actions that are required include:

- **Rapid adoption of the Gas Transmission Regulation** in line with the 20 April 2004 amendments by the European Parliament **and immediate enforcement of the required TSO standards for Transit Lines** particularly for the provision of information, as agreed in the Madrid Gas Forum Guidelines for Good Practice September 2003;
- Active co-operation between National Regulators, with Regulators and the European Commission exercising their authority to **ensure that there is non-discriminatory TPA to all existing gas transit lines;**
- National Regulators and the EU Commission ensuring that **all new transit lines comply with pro-competitive requirements** including an open season for capacity booking (including the possibility of long term capacity reservations), transparency (e.g. publishing daily aggregate flows) and that the Operators facilitate Secondary Capacity Trading<sup>2</sup> and enforce 'Use-it-or-lose-it' regimes.

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<sup>1</sup> See EFET Gas Market Information Requirements May 2004, [www.efet.org](http://www.efet.org).

<sup>2</sup> See EFET Capacity Trading Presentation April 2004, [www.efet.org](http://www.efet.org).

## **2. The Importance of Third Party Access to Transit Lines**

The development of sustainable competition depends on a number of factors including the availability of gas which competing parties may supply. Some countries have indigenous reserves, which are made available to competing suppliers. Elsewhere (and even in interconnected countries which have indigenous reserves) delivery of gas through neighbouring countries will have an important influence on competition. Competitors must either be able to bring gas to and across the border, or rely on others who have the ability to do so.

The development of liquid trading points at borders of Member States relies on multiple counterparties having the ability to arrange transportation of gas from the production sites, LNG regasification plant or storage facilities. Without access to transit, the availability of competitive gas will continue to be severely restricted.

In a few Member States, transit is undertaken through dedicated pipelines which are essentially separate from intra-state transportation. In most, however, there is either a common pipeline system, or a significant degree of interconnection between transportation and transit systems. This creates a degree of substitutability of capacity. Preferential access terms for transit would not only lead to market distortion but could also provide the incumbent supplier with an unfair competitive advantage in their home market. For example, it may confer priority of access, particularly at peak times; it may provide a means of avoiding expensive capacity overrun charges, it may also allow avoidance of balancing terms through preferential access to linepack and balancing services.

Lack of access to transit and cross-border capacity also limits the extent to which storage or flexibility in one Member State can be used to help balance a shipper's portfolio in another.

Any undue limitation of access to transit lines and cross-border capacity would also lead to an artificial reduction in security of supply, particularly for customers of new entrant suppliers.

Currently there is a lack of harmonisation that needs to be addressed as Member States implement the Gas Market Directive (2003/55/EC) and the EU principle of the freedom of movement of goods and services between Member States. For example, some Member States have accepted different access regimes for transportation or transit, or have treated the primary allocation of capacity differently, increasing the complexity of the systems and allowing only historical capacity holders to access arbitrage opportunities in neighbouring pricing areas.

### 3. Existing Transit Lines

Art. 25 of the Gas Market Directive gives Regulators the authority and the obligation to ensure that there is fair and non-discriminatory access to all downstream high pressure pipelines in the EU other than those new pipelines for which there is an exemption from regulated TPA. Access to all existing high-pressure transit routes is the responsibility of the regulatory authorities.

The logic of the regulatory responsibilities for existing transit lines is as follows:

- The term ‘transmission’ in the Gas Market Directive applies to all downstream high-pressure transportation of natural gas. (Art 2 (3) Gas Market Directive)
- Transit means transmission that crosses one or more intra community frontiers (Art. 2 (1.c) Transit Directive 91/296/EEC).
- Transmission System Operators (TSOs) must not discriminate between transmission system users, i.e. they must provide fair and non-discriminatory access to transmission pipes (Art. 8 (1b) Gas Market Directive).
- Regulators have the responsibility to ensure that TSOs provide fair and non-discriminatory access for all transmission pipes. The Regulators’ duties include approving at least the methodology for tariffs (Art 8 (1(b) and (2) and Art. 25 (1(g), 2(a) and 3) of the Gas Market Directive)
- Because “existing transit” is included in the definition of transmission they are all subject to regulatory scrutiny. New interconnectors between Member States that fulfil special pro-competitive criteria would be exempt from regulated TPA (Art. 22 of the Gas Market Directive).
- However, transit contracts signed under the repealed Transit Directive remain valid (Art. 32 (1) of the Gas Market Directive) and all concluded transit contracts should have been notified to the Commission and the national authorities (Art 3(3) of the Transit Directive).

Therefore, to carry out their duties, regulators need to examine any contracts that claim long term capacity reservations under Art. 32 of the second Gas Directive. Regulators must assess the capacity rights under any such contract to ensure that the terms and conditions available to other potential users of the same transit lines are fair and non-discriminatory.

#### **4. Removing regulatory uncertainties regarding access to existing transit capacity.**

Without access to transit routes within the EU it is impossible for a competitive gas market to develop.

Currently, traders and shippers often experience difficulties getting access to cross-border capacity. Additionally, TPA terms within member states, and the allocation of capacity rights is sometimes substantially different between transit and transportation.

- Terms and conditions for cross border or transit contracts are usually not published and are often negotiated individually, which leads to non-transparency and discriminatory behaviours by TSOs.
- Information on real available capacity is often not published in a meaningful or usable way.
- When capacity is requested by a third party, TSOs often deny access arguing that there is no capacity available. Most of the time it is impossible for the rejected party to verify this e.g. to examine whether the access is refused due to “old” transit contracts (covered by the repealed Transit Directive) or due to other use of the grid.
- According to some TSOs there is major congestion at cross-border points.
- Some regulators have been reluctant to focus on issues related to transit gas pipelines. Greater co-ordination between Member States’ regulators who are affected by cross-border gas pipelines would be helpful in reaching a consistent approach. In a number of cases, transit lines are in ownership of joint ventures between domestic TSO and a foreign market player. It is unclear whether or not the capacity rights and access rules offered by the foreign and domestic pipeline operator are treated equally by the relevant authority.

During the current transition period in which Member States implement the Gas Market Directive and Regulators’ powers have not yet been fully introduced, some queries regarding access to transit lines have arisen.

- How will National regulators carry out their duties under art. 25 of the Gas Market Directive if gas transit contracts fall under the Gas Transit Directive? For example will regulators ensure that the access conditions (e.g. the tariffs, the use-it-or-lose it rules, for “old” transit contracts apply equally to all users of the transit lines)?
- How can regulators achieve fair and non-discriminatory TPA to transit gas pipelines? For example can foreign holders of assets be required to apply non-discriminatory rules?

Transposition of the Gas Market Directive into national law must aim to remove these current regulatory uncertainties without delay. Where any uncertainties, remain these could be resolved in a similar time scale using the proposed Gas Transmission Regulation. This new regulation should set the same high standard for the TSO whether

they are operating an internal transmission network connected to another local network or a transit line delivering to customers in other Member States.

## 5. New Transit Lines

We recall that transit is the transmission of gas across one or more inter-community boundaries. Is there a meaningful distinction to be made between a) closely linked transmission systems and b) pipelines used wholly or primarily used for the transit of gas? For existing pipelines the Gas Market Directive makes no distinction (other than the reference to existing transit contracts), but for new pipelines the regulatory position depends in part on whether or not building the new pipeline is the TSO's responsibility.

This is because the Gas Market Directive sets out responsibilities for TSOs to invest in the development of their networks, essentially to meet the needs of network users, in a manner that is compatible with the secure and economic operation of the interconnected system (article 8 (1a) and (3)). Access to these networks, including any expansion of the networks, will be regulated. This may well include, for example, an additional transit link between two contiguous regulated networks, as this is likely to be the responsibility of the TSOs (Art 8(3)). For the Transmission Systems Operators in these regulated networks, the new Gas Transmission Regulation should provide a framework for non-discriminatory TPA including a high degree of information transparency.<sup>3</sup>

However, major new investment- if it is not the responsibility of the TSO (Interconnectors, Storage facilities and LNG terminals) - might be treated differently. These developments can be exempt from Regulated TPA for a certain time period if they fulfil specified 'pro-competitive' criteria. The investment is also required to be carried out by a company other than the TSO, i.e. a natural or legal person which is separate at least in terms of its legal form from the TSOs (Art. 22 (1(a), (b) and (c)) of the Gas Market Directive. EFET welcomes this pragmatic approach but warns that it is essential that these rules are applied in a consistent and timely manner and do not cause undue delay or cancellation of investment in Europe's energy infrastructure projects.

If a company is prepared to invest its own capital in an 'Interconnector' transit line that is not the responsibility of the regulated network operator, then the developer should be given commercial freedom to operate the new infrastructure - provided this is done in a way that helps the competitive market (Art 22 (3(b, ii) of the Gas Market Directive). Regulators would still have a role to ensure that there is fair and non-discriminatory access (unless there is a complete exemption from TPA). For a fully exempt transit line

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<sup>3</sup> The 6<sup>th</sup> Madrid Forum favoured entry/exit systems for Transmission system access and tariff structures. EFET agrees that properly designed entry-exit systems enhance market liquidity and capacity utilisation. EFET also urges the TSOs to comply fully with the Guidelines for Good Practice accepted by the September 2003 Madrid Forum. These Guidelines form the basis for the proposed Gas Transmission Regulation.

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the infrastructure developer must have freedom to determine their own prices and pricing structures, provided these are applied in a fair and non-discriminatory manner.

TSOs, whilst not responsible for the exempted interconnection itself, must however provide the grid connections needed for the infrastructure.

## **6. Conditions to be included when granting an exemption from Regulated TPA**

In granting an exemption, the Commission must (inter alia) be satisfied that the exemption is not detrimental to competition or the functioning of the internal market. In particular, there must be no additional conditions on 3<sup>rd</sup> parties who do not have equity or capacity in the exempt infrastructure but who might buy or sell gas upstream or downstream of it. The proper functioning of National Markets remains the responsibilities of the National Authorities - regular reviews of the market conditions should be carried out.

The use of the exempted interconnector may have its impact on the existing grid either upstream or downstream and there might arise new congestion areas creating supplementary risks for other market participants. The exemption should take care of this by, for example, requiring the developer to provide sufficient information to TSOs in the connected Member States so that the TSOs can fulfil their obligations to their customers, whilst keeping market participants fully informed.

A regulatory obligation to oversize a transit line by requiring, say, 20% capacity to be reserved for new entrants is unlikely to be a good economic solution. Whilst this might give short-term benefits it is unlikely to result in efficient decisions on sizing infrastructure and might cause some projects to be cancelled. Others may naturally oversize compared with initial commitments but based on the technical and commercial realities and company aspirations rather than an arbitrary percentage. The markets must be allowed to work.

In general, obligations on the investors or operators of new transit lines (or other infrastructure) must ensure that there is transparency and non-discrimination in the information and processes relating to the use of the infrastructure.

- Developers of new transit lines must hold a non-discriminatory ‘open season’ of several months to allow potential users to indicate or book their required capacity reservations.
- Potential users of the new transit line must be allowed to make bookings of any duration to meet their perceived market needs
- The transit line developer must aim to accommodate on a non-discriminatory basis all the short-term and long-term requirements of companies that wish to make a capacity booking.
- There must be no regulatory obligation to ‘over-size’ the transit line.

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- To gain an exemption from regulated access, the transit line developer must, however, accept obligations to:
  - Make available all unused primary capacity to the market
  - Facilitate secondary capacity trading (including title transfer)
  - Provide full transparency of aggregate information (e.g. daily usage)
- The conditions accompanying an exemption must be applied only to those companies with a direct interest in or control of the project (e.g. the owner, the operator the primary capacity holders or shippers) as far as this is justified by the requirement to enhance the development of competition

Regulators will still need to monitor the implementation of obligations on the Transit Line Operator and/or primary capacity holder(s) and take appropriate action if the conditions in the exemption are not fulfilled.

It is also necessary for any exemption to regulated TPA for a transit line to lapse, say after 2 years, if the developer fails to go ahead with the project. This is to avoid a plethora of unnecessary applications. Renewal of the exemption, if permitted, would be at a cost.

### **Appendix: Problems affecting cross-border gas trades.**

#### **Part I: Some examples for existing infrastructure.**

##### **1. Availability and usage of capacities is not transparent or not offered on the same basis to all**

Transit routes for instance from Baumgarten (Austria) to the Italian / German border or within Belgium are lacking publicly (real) available capacities for these routes and often capacity products are priced on a case by case basis.

##### **2. Cross border capacity needed by the market is not being built**

Several EU x-border points need a capacity extension, this for instance applies to Bunde and Oude area where there are major congestion points. Also transit parts from Austria to Italy are affected by this.

##### **3. Physical capacity is artificially reduced**

Some transporters are reluctant to take on the risks associated with introducing a new entry/exit system and these TSOs “artificially” reduce cross-border capacity. For instance in The Netherlands GtS fears internal bottlenecks due to uncertainties about the flows and therefore limits the offered Entry capacity.

##### **4. ‘Transit’ is not unbundled in the same way as ‘transmission’**

In Austria for instance a distinction is made between transit and national transmission i.e. different rules and conditions apply to the same network.



### **5. Inadequate access to short term transportation**

Apart from the UK and the Dutch networks most of the other Member States' pipeline systems do not allow access to short term transportation.

### **6. Improved title transfer of gas rights**

Those countries that have established entry/exit regimes tend to allow a proper and quick title transfer of gas rights, which is important for wholesale trading and the creation of more liquidity and security of supply across Europe. Serious restrictions on capacity transfer, or fees for allowing transfer are imposed by some TSOs. Even if TSOs make different assumptions when calculating x-border capacity, they must at least publish these calculations so that the differences can be understood.

### **7. Co-operation between TSOs is inadequate**

Often TSOs have different operational terms and conditions to their neighbouring TSOs. This is the case for instance on the Austrian/Italian border. Both the Italian and Austrian pipeline operators have non-standardised nomination and scheduling procedures that raises security of supply issues and make nomination procedures for traders difficult.

### **8. Tax processes are not harmonised**

Non-harmonised tax procedures across Europe are a major barrier to entry for new market players. For instance, the current proposed German Mineral Oil Tax regime will leave gas traders/new market players in part with many uncertainties where other markets, such as the Netherlands and the UK, have harmonised their energy taxation regimes. Under the proposed regime, the transporters will be required to act as a clearer for MOT purposes. Currently, it is unknown how and most importantly when this clearing role will be introduced. Certain transmission companies currently operate (for a monthly fee) a MOT clearing-house system on behalf of counter-parties using their networks. However, there is at least one German border delivery point where the transmission provider, a non-German company, will not consider the provision of clearing services.

### **9. TSOs facilitate secondary capacity trading and/or UIOLI**

Apart from the UK gas market none of the other markets provides proper secondary capacity trading with effective UIOLI tools. These are essential for creating more liquidity in gas markets and enhance competition.

## **Part II: Future major interconnections**

With the Gas Market Directive coming into force in July 2004, it is too early to give many examples of access to new major international pipeline links. The following extracts (*shown in italics*) from the website for the Balgzand-Bacont pipeline project , ([www.bblcompany.com](http://www.bblcompany.com)) suggest that this major project might be following many of the principle EFET has set out in this paper:



### ***Regulatory aspects and commercial structure***

*The BBL Company will develop and operate the BBL pipeline in compliance with all applicable laws and regulations. The BBL is expected to commence operations in 2006. To this end, we are already discussing the planning and regulatory processes with the relevant authorities. A treaty or an Inter-Governmental Agreement between the UK and Dutch Governments will be concluded before the start of operations in 2006. This agreement will set out how the governments will work together on certain matters regarding the BBL pipeline. This will include health, safety, environmental matters and tax aspects.*

### ***Access***

*The access regime was characterised earlier this year by an 'open season' for capacity rights in the BBL project. Any shipper wishing to contract capacity in the BBL project was invited to express interest during this open season. Interested parties came from Norway, Denmark, Belgium, UK, France and The Netherlands. This concerned integrated gas companies as well as producers and energy traders. Market demand determined the capacity of the pipeline through an 'open season', which will be around 16 bcm.*

### ***Capacity Management***

*The shareholders will in principle not own capacity rights. Capacity rights will be agreed in separate contracts. The owners of capacity rights, being Gasunie Trade & Supply, Ruhrgas and Wingas, will be allowed to trade their capacity rights freely. An use-it-or-lose-it system for actually unused capacity is developed and the allocation of this unused capacity will be on a regulated basis.*

### ***Operation***

*N.V. Nederlandse Gasunie will be responsible for the operation and maintenance of the BBL on behalf of the BBL owners through a Service Level Agreement.*

Although this seems in line with requirements, the impact of the BBL connector on the upstream Dutch Grid with all associated risks for capacity allocation on the entry- points has not yet been determined. On the BBL website, one can read : *“In addition Gasunie is committed to make investments for its own account in the Dutch domestic network, which*

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*are necessary to ensure adequate access of gas supplies to the entry point of the BBL on the Dutch shoreline.”, but it is not very clear what this means for other grid users due to potential new congestion areas (be it domestic, cross border with Germany or Belgium or congestions abroad (in German grids, ..).*

## **Transparency**

EFET’s main concern is the lack of clarity as to what information would be published on a regular basis by the BBL operator. In particular, the aggregated flows and other information affecting the markets in the Netherlands and the UK will need to be available on a regular basis. Further guidance is provided in EFET’s transparency paper.<sup>4</sup>

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<sup>4</sup> See EFET Gas Market Information Requirements May 2004, [www.efet.org](http://www.efet.org).