

Gas Natural Comments to ERGEG Public Consultation on Implementing the 3rd Energy Package

Gas Natural would like to make some comments regarding this public consultation:

- **The work of the Agency**

We share the view that the ad hoc panels could have a role in assisting the Agency, as it would be more executive. However, we have some concerns on how the expert stakeholders would be appointed.

We consider that all stakeholders should be on a level playing field. The mechanism to appoint the members of the ad hoc panels is crucial and should be transparent and not discriminatory. Also, the decisions on who participates in them should not be left to the European Associations (there is a risk that the companies with more resources and better positioned in the European Associations are the ones that have more chances to participate in the ad hoc panels). We consider that a call for parties interested in participating should be launched and Regulators should communicate the results of the process justifying which companies are selected and which are not on a transparent basis.

- **Framework Guidelines, Codes and Other Cross-Border regulatory Issues**

The third energy package, Explanatory Memorandum, details the problems caused by the vertically integrated TSOs.

As problems are perfectly identified and they are damaging the European market, not only competition but security of supply too, we think that special attention should be paid to the consequences of vertically integrated TSOs: discriminatory access to the network and lack of investments.

In particular, chapter 1.1 of the Explanatory Memorandum establishes that:

“the transmission system operator may treat its affiliated companies better than competing third parties. In fact, integrated companies may use network assets to make entry more difficult for competitors. The underlying reason is that legal and functional unbundling do not solve the fundamental conflict of interest within integrated companies, whereby the supply and production interests aim to maximise their sales and market share while the network operator is obliged to offer non-discriminatory access to competitors. This inherent conflict of interest is almost impossible to control by regulatory means as the independence of the transmission system operator within an integrated company is impossible to monitor without an excessively burdensome and intrusive regulation.

Investment incentives within an integrated company are distorted. Vertically integrated network operators have no incentive for developing the network in the overall interests of the market and hence for facilitating new entry at generation or supply levels; on the contrary, they have an inherent interest to limit new investment when this will benefit its competitors and bring new competition onto the incumbent's "home market". Instead, the investment decisions made by vertically integrated companies tend to be biased to the needs of supply affiliates. Such companies seem particularly disinclined to increase interconnection or gas import capacity and thereby boosting competition in the incumbent's home market to the detriment of the internal market.

Investment figures from recent years show this: vertically integrated companies have, for example, reinvested significantly less of their receipts from cross-border congestion rents in new interconnectors than fully unbundled ones. Effective unbundling removes the kind of distorted investment incentives typical of vertically integrated transmission system operators.

It thus promotes security of supply. The Commission has observed that effective unbundling of transmission system operators promotes TSO investment activity.”

Even though the third energy package reinforces the unbundling regime of TSOs, ownership unbundling, the only definitive solution to the situation described in the Explanatory Memorandum, will not be compulsory.

In this regard, we consider that ACER should include among its tasks not only the development of framework guidelines, but also to check whether the TSO unbundling regime proposed in the third package has the expected effect in the internal energy market, mainly regarding:

- Fair access to the network
- Investments in interconnections

- **Regional considerations in moving to a single European market**

The Regional Initiatives have allowed stakeholders to express their views, their needs and to identify the main problems of the regions. Even though the outcomes of the Regional Initiatives have not been enough so far, they have been a mayor step forward and we are confident that in the short term progress will be achieved as there are already some action points under development which can have significant impact in the market, such as the open seasons to increase the interconnection capacity between France and Spain that will be launched in 2009.

Consequently, we support the Regional Initiatives and would like to stress the need to achieve results the soonest. We consider the RI should be the main tool to facilitate the achievement of the third package goal. We just would like to highlight that any co-ordination between regional and EU-level initiatives/consultations should not lead to any delay in the adoption of decisions of the RI.

In this regard, we would like to take this opportunity to ask ERGEG and NRAs

- to analyse objectively the achievements made
- to encourage the adoption of final decisions regarding the problems already identified
- to avoid further delays regarding investment decisions which constrain European gas trade and if prolonged could also prevent the achievement of the GRI's priority goal and to some extent the achievement of the single European market.