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Dear Sirs

**Existing transparency requirements for natural gas – Public Consultation
E10-GWG-68-03**

Information transparency has been a key area of progress in the development of the single internal market in gas. At the outset of market liberalization, asymmetries in access to information about essential facilities allowed vertically integrated undertakings to create unnecessary difficulties for third parties to access regulated transportation networks. Without access to information, it was impossible to demonstrate that these operators were fulfilling their obligations on the provision of services on a non-discriminatory basis. As some individual Member States have required greater levels of transparency, barriers to competition in those jurisdictions have reduced.

Nevertheless, market circumstances have changed fundamentally, and it is appropriate to check that the assumptions behind arguments for further transparency are equally valid and do not have unintended consequences, for example on competitive infrastructure investment. In particular, with the increased levels of private investments in unregulated infrastructure, suitable distinctions between monopolistic and competitive facilities will need to be drawn if EU member states wish to continue to encourage such investment, rather than rely purely on investment by regulated entities and historical players.

BP welcomes the opportunity to provide its views on increased levels of information transparency from its position as trader, asset investor and producer.

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• Do the existing legally binding and soon-to-be legally binding transparency requirements for transmission, LNG and storage satisfy your needs as a market participant? In case your answer is no, please specify what is missing in your view and why.

Existing and imminent requirements on regulated transportation system operators have provided substantial benefits in markets where they have been fully implemented. As a general point, we note that in markets where transportation systems are fully (ownership) unbundled from affiliated supply and trading businesses, then the level of voluntary provision of information – often beyond the level required in the Regulation – has been valuable in assessing capacity availability and the risks associated with interruption. We note that in systems which remain under common ownership with competitive supply and trading businesses, information opacity continues to be seen as a means of discouraging third parties from competing in the affiliates' home markets, and information transparency has been less effectively implemented. Accordingly, we would attach much greater importance to ensuring that the provisions in existing and forthcoming legislation are properly applied, (as some information is still not provided in some markets where it would be of most use), rather than extending the reach to less valuable data items,

With regard to information on potentially competitive infrastructure such as LNG regasification terminals or storage facilities, the situation is more complicated. A requirement to publish information on a similar basis to transportation may only be suitable in markets where all investment has either been by a regulated local monopoly infrastructure business or by its supply affiliate. Nevertheless, a substantial amount of investment in LNG and storage assets has been made privately, often under conditions where the facility is either exempted from third party access or is excepted (e.g. for *de minimis* storage facilities which are not "technically or economically necessary for efficient access to the system for the supply of customers" and therefore are not subject to third party access). Under these circumstances, newly introduced requirements to publish details of the facilities as if they were operating in a monopoly environment would send a very negative signal to private investors.

In many cases, investments will have been made precisely because access was not provided by dominant incumbents, or that the services demanded by third parties were not offered at reasonable rates, or those monopoly providers were not prepared to invest in additional capacity. The effect of discouraging private investment in infrastructure will limit new investment to regulated entities, with less recourse if these entities prefer to delay investment for their own commercial reasons. In an era where substantial investment will be necessary to meet EU energy policy objectives, any legislation that deters further private investment should be avoided.

Accordingly, when considering information transparency on LNG and storage facilities, greater clarity may be necessary on whether a facility is operating in a competitive environment and is contributing to competition. Where a transparency requirement would inappropriately expose the commercial position of the investor or the facility users, an exemption mechanism should be provided.

With regard to gas production information, gas production is a highly competitive area and does not typically relate to essential facilities. Currently around 60% of gas consumed in the EU is produced outside the EU and this proportion is expected to increase. Until a level playing field can be created whereby information transparency requirements could reliably apply to all gas sources (or an overwhelming majority), proper consideration should be given to adverse consequences of introducing the obligation on a minority of gas flows. For example, if information is only given on 40% of flows, then the value of the information is limited in terms of providing an accurate picture of available supply; publication of data that allows parties to determine commercial positions of individual producers could encourage inappropriate speculation against those producers, thus acting as a disincentive to indigenous production.

Accordingly, publication of production information (and competitive storage and LNG information) should be done in an aggregated way to provide reasonable information on fundamentals without exposing individual positions. For production, aggregated gas flow information by major import pipeline or by production subterminal (as in UK) on a near-to-real time basis would be a significant step forward.

• Are you satisfied with the current level of transparency provided for by system operators? In case your answer is no, please specify whether this is the case due to the lack of transparency requirements or the quality of publication.

As stated above, the level of transparency by TSOs varies enormously, but this is largely down to the quality of publication and how it is enforced. BP supports application of existing obligations before the extension of those obligations to new, lower value data items. Until this is done, it is impossible to quantify the additional benefits and costs of progressively more transparency. Given potential adverse consequences, suitable justifications for increased transparency should be given, rather than pursuit of transparency (from a limited subgroup of indigenous producers) for its own sake.

• Do the existing voluntary GGP for LNG System Operators and GGP for Third Party Access for Storage System Operators satisfy your needs as a market participant?

In relation to LNG facilities, our experience is that relevant information is available on services and operation, and facility operators are generally open to discuss use of available slots. Where this is not the case, we would hope that parties may call upon the national regulatory authority to intervene. This is preferable to a blanket publication requirement. Greater difficulties are attached to the access regimes of transportation systems behind the terminals, the lack of liquidity in local traded markets and clarity around tariff-setting at regulated terminals, or indeed the appropriateness of certain restrictive terms at some regulated terminals, rather than the transparency around them.

In the case of storage facilities, we would welcome further guidance from regulatory authorities on how they would consider applications for exemptions from third party access, given that most Member States currently allow negotiated third party access and exemption mechanisms are less clear in this regard.

• Do you think that those transparency requirements in the GGP LNG and GGP SSO which are not covered by the 3rd Package should become legally binding?

BP supports the process whereby voluntary guidelines do not automatically become legally binding. The process of negotiating voluntary commitments has previously been on the basis that this provides guidelines for more progressive system operators in a regulated or dominant environment to produce information on services. We would be concerned that the good faith participation of operators would be lost if they were to participate in discussions on the assumption that any concessions will subsequently be made obligatory.

• Do you think that the voluntary GGP for LNG System Operators and GGP for Third Party Access for Storage System Operators shall include further transparency requirements? In case your answer is yes, please specify what is missing in your view.

The current voluntary guidelines are adequate, though in particular we would welcome further information around tariff setting. Suitable distinction could also be drawn between what information is available to (and paid for by) actual users of the terminal as distinct from general market parties whose information requests relate to either supply/demand fundamentals (which can be met through aggregated flows) or commercial behaviour of individual counterparties in the market rather than relate to their own use of the terminal.

• Is there an area along the gas value chain (production, transmission, LNG, storage, distribution, wholesale market) where in your view additional transparency requirements are needed? Please specify what you miss in your answer.

A key area where current levels of information transparency are insufficient is around forward tariffs. Where network users are required to commit to long term capacity contracts at regulated rates, but without clear guidance on how rates will be determined in future, this can make it extremely difficult to justify an open-ended commitment under commercial organisations' internal approval processes. In vertically integrated undertakings, this is less of an issue as costs are internalised within the group. We look forward to ERGEG's work in this area.

• Do you think that further transparency is required for the production (upstream) sector? If your answer is yes, please specify what is missing in your view, and what specific additional transparency requirements you would want to see? If your answer is no, please explain why.

As stated above, we support publication of aggregated production flows by subterminal or major import point, on a near to real time basis, as is already produced in UK. Where individual market parties may have commercial positions exposed as they are the sole users at specific points, aggregation should be allowed to protect their positions, but still provide data at a level that allows analysis of total supply and demand for a given geography.

We are aware of calls by certain parties for disclosure of data including unplanned production outages at a field or terminal level or otherwise to call for provisions in the power market to be applied to gas. For a number of reasons, we consider these unsuitable and ill-advised. A list of the main concerns is as follows:

- **Increased cost and risk of production:** if a producer is unable to hedge a production outage until he has declared a distressed position to the market, this will increase the costs associated with such an outage. In the short term, this represents a transfer of value away from the producer – and may in extremis accelerate economic termination of less reliable fields; in the long run, increased risk of more expensive outages would be built into the cost base, driving up the underlying costs of production. Operating companies are already strongly incentivised to address production outages; it is difficult to see how forcing greater costs through disclosure of distressed positions would have a beneficial effect.
- **Unfair advantage to Non-EU gas producers:** Approximately 40% of gas consumed in the EU is also produced there and this proportion is declining. An inequitable disclosure regime applied only to indigenous producers will disadvantage them compared to non-EU producers, which will have a chilling effect on within-EU investment.
- **Potential impact on Security of Supply:** Many European countries are dependent on imported gas, but still have some national production capability. Disclosure of production information and outages will increase concerns over security of supply as the national suppliers and consumers could be more easily held to ransom.
- **Unnecessary/damaging increase in gas price volatility:** The contractual delivery period in a gas production contract is typically the gas day. Variations in production pressure, quality, offshore linepack, processing can all create variations in flow, and response rates to increases and reductions in flow rates cannot be instantaneous. Where a simple trip has caused a short production outage and can easily be reset, the producer has the opportunity to use the rest of the production day to meet its end of day target with no impact on supply. Substitution arrangements may also on occasion be used to ensure there is no impact on final delivery. These measures are typically not available physically or contractually in electricity. Disclosure of these events would lead to unnecessary levels of volatility that would benefit only speculative traders.

- **Transfer of value to buyers:** Many production contracts contain penalties for failure to meet nominations. If a seller must declare a distress situation to a buyer, the buyer is then able to increase field nominations to maximum, forcing greater penalties and reducing the amount of gas that needs to be taken in order to meet a take or pay requirement. Disclosure would therefore transfer tangible value to the buyer; such commercial motivation could be considered a significant reason behind requests by buyers for increased transparency.
- **Regulatory Requirement to have adequate systems and controls:** One rationale given for requirements to publish greater information concerns a supposed ability of producers to speculate on the back of information to which they have preferential access. Improper behaviour is identifiable and may be investigated by relevant authorities. Trading companies follow extensive obligations to be able to have in place suitable systems and controls to prevent improper activity. Access by authorities to relevant records and trading details also strongly discourages any asset owning firms from engaging in prohibited behaviour, as is currently the case with market manipulation,
- **Legislation of Upstream:** Throughout the EU, gas production is governed by separate legislation from network access and supply competition. The European Gas Directive does not apply to the upstream other than to exclude network and storage access for production issues. An extension of the Gas Directive or Regulation 715/2009 to include upstream would be a substantial departure from the historical boundaries of the legislation.
- **Involvement of Governmental Ministries:** Regulation of the upstream is typically under ministerial direction rather than an independent downstream energy regulator. ERGEG has no mandate over upstream issues and the CESR / ERGEG recommendations did not address issues in this area. If proposals are to be extended to cover this new area, then appropriate consultation and representation would need to involve ministries, a review of the relevant legislation and the inclusion of affected parties who are not necessarily traders. The substantial amount of additional work to bring about suitable legislation is considerably more than for electricity and would distract an enormous amount of time from areas of greater impact. This effort would not only affect trading companies, but also regulators, ministries, and parties charged with ensuring investment and security of supply.
- **Impact on Sovereign states on potential reduction in asset value:** Natural resources are typically owned by the sovereign state and leased to the production company. As this proposal is likely to reduce the value of these assets, Member States would need to be convinced that the net effect was of benefit to their consumers. No cost benefit analysis has been presented to suggest that this is the case.
- **Regulator has not identified any problem to fix:** There has been no evidence of a problem in this area, as has been found by the European Commission in its 2006 DG COMP Sector Inquiry. In its findings on power, it specifically mentioned issues raised by users on the availability of information on generation, on balancing and reserve power, and on load. No such findings were made on gas, and calls for increased transparency were limited to networks, transit capacity and storage (which at the time was overwhelmingly in the hands of historical players). We are not aware of any additional evidence in the intervening period that has changed EC's views in this area.
- **Not always a direct link between asset owner and outage:** In the case of unplanned outages in power generation, the outage can most usually be attributed to an event at the production site itself. This is not so in gas. The two most significant outages in the UK gas market in recent years related to (a) offshore infrastructure when an anchor was dragged across the CATS pipeline, cracking the concrete casing and (b) a strike at the Grangemouth refinery that caused oil production – and hence the ability to produce associated gas – to be curtailed. In each case it is unclear where any obligation to disclose an outage should fall. In neither event was production capacity affected.
- **Some production is economically driven by non-gas factors:** A substantial amount of UK production is of associated gas or fields with high proportions of condensate. For these fields, production capability is determined by economic factors on related products. Although some parallel could possibly be drawn with wind or solar-powered electricity, we note that renewable generation typically falls beneath the thresholds proposed and is therefore not captured.

- **The definition of “unplanned” is unclear:** The nature of offshore production is that running repairs would normally be made prior to the failure of an item of equipment, by scheduling maintenance at short notice. Very few events would therefore be captured where there is a completely unplanned trip. Conversely the introduction of a notice threshold could easily be seen to promote reduced safety at a production site by encouraging delays in maintenance in order to meet a notice threshold. Extension to planned maintenance opens up greater concerns about how parties can avoid accusations of signalling and concerted behaviour.
- **Breach of Confidentiality:** Historical contracts generally have confidentiality provisions that allow disclosure only to competent authorities, but preclude public disclosure. A requirement to publish would raise concerns over sanctity of contracts, which again would distract effort from more useful interventions.
- **Impact on developing markets:** Gas and power markets are at very different stages of market maturity across Europe. Increased disclosure levels for gas producers in immature markets may discourage producer participation and slow down the development of the markets.

Accordingly, we consider that the extension of transparency requirements upstream would have limited benefit (and indeed would be likely most to impact GB and Dutch markets, which are already the most effective wholesale gas markets), but would be a major distraction from those markets and topics which are more desperately in need of regulatory attention.

We hope that you find the above useful. Please do not hesitate to contact me if you have any questions regarding this response.

Yours sincerely

A handwritten signature in black ink, appearing to read 'PP DRS'.

Doug Wood