



2010 National Report of Energiekamer to the European Commission

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1. Foreword

Our mission: to make energy markets work

The Dutch office of Energy Regulation (hereafter: Energiekamer) is part of the Netherlands Competition Authority and committed to making energy markets work as effectively as possible. To fulfil this mission, Energiekamer aims to create conditions that ensure an effective and efficient market functioning and protect consumer interests if necessary. As a result, access to networks should be safeguarded, transparency should be sufficient and consumers should be protected against any malpractices.

Our approach

Energiekamer operates in a problem-solving and issue orientated manner and aims to tackle issues and problems that hamper the conditions for effective market operations and consumer protection. As such, Energiekamer not only enforces the rules that are laid down in legislation (such as European Directives and the Dutch Electricity and Gas act), but also actively seeks debate with market participants. Also, the development of the energy market is closely monitored in order to identify (potential) market problems. All these efforts are aimed to make the energy market work as effectively as possible.

This national report provides an insight into (the developments of) the Dutch energy market for both electricity and gas in 2009.

Drs. Peter Plug
Director of Energiekamer

2. Main developments in the gas and electricity markets

Regulation and unbundling

As National Regulatory Authority, Energiekamer is responsible for regulating both Transmission System Operators (hereafter: TSO's) and Distribution System Operators (hereafter: DSO's).¹ In 2009, considering the role of TSO's as market facilitators, Energiekamer initiated a project with the aim to investigate how the Dutch TSO for electricity (TenneT) and gas (Gas Transport Services) fulfil regulatory tasks that relate to market facilitation. Through this project, Energiekamer expects to give a strong impulse – where needed – to the development of the energy market. With regard to unbundling, no major developments have taken place in 2009: all Dutch TSO's are already fully unbundled.

With regard to DSO's, Energiekamer has assessed the unbundling plan that each energy company (owning a distribution system) has drafted. This document explains how compliance with the rules regarding unbundling as laid down in the law on the Independence of Network Operators will be fulfilled. At the end of 2009, all (but two) DSO's were separated from the integrated company. Due to a court decision (being appealed by The Ministry of Economic Affairs), part of this law lost force. As a result, the two integrated companies that are not yet unbundled announced to postpone their activities regarding unbundling.

Wholesale market

Gas

Access to infrastructure (capacity) and tradability of gas (commodity) are essential for a properly functioning wholesale market. In 2009, a number of important measures have been set in motion that are to improve the wholesale market for gas. First of all, legislation was introduced for a new market model that should ensure that buyers of gas have the choice to use or resell their gas on the Title Transfer Facility (hereafter: TTF, the Dutch gas hub). Also, the development of a new market based balancing regime was set in motion as to allow shippers to better handle their imbalance positions. Finally, quality conversion was socialized, meaning that market participants no longer have to book capacity for converting high calorific gas to low calorific gas.

Looking to the development of TTF in 2009, volumes increased further and traded volume amounts to 798 TWh and the delivered volume 258 TWh. As a result, TTF's share of the total gas flows in the Netherlands has increased from 18% in 2008 to 26% in 2009. Volumes on the gas exchanges are also on the rise. Amsterdam Power Exchange (hereafter: APX) spot market volumes went up 1,76 TWh and ENDEX futures volumes rose to 40,6 TWh.

¹ The regulation tasks are described in the Dutch Electricity and Gas act. These acts also issue several legal instruments (such as injunction and civil penalty). These instruments have been applied a number of times in 2009.

Electricity

Being able to trade electricity freely, not only with respect to origin and destination of generated electricity but also, as much as possible, between the different timeframes contributes to competitive wholesale prices and maximizing social welfare. In past years, Energiekamer has put substantial effort in the integration of the Dutch wholesale electricity market with the surrounding markets. One achievement is that through the measures that have been taken on the principle of netting and intraday trading on the borders with Germany and Belgium, the available day-ahead capacity for imports and exports has increased in 2009 with the size of the nominations of annual and monthly capacity in the opposite direction. This contributed to the development of market places in 2009 in the Netherlands.

The volume of day-ahead trading on APX exchange has increased by more than 4 TWh to 29 TWh in 2009. In the following years, Energiekamer will continue its efforts with vigour, with the ultimate perspective of creating an integrated European market. In order to do so, it will use its responsibilities to ensure that the availability of interconnector capacities with neighbouring countries are optimised and national regulations harmonised and adapted. The next important step will be the integration of the Dutch market with the surrounding markets within the Central-West and Northern regions, especially in the day ahead and intra day timeframes. For the day ahead time frame a flow based market coupling will be the target system. At the same time, Energiekamer has to ensure that the ambitious investment programme for the Dutch grid will be implemented smoothly and efficiently. These investments are necessary to connect the large amount of extra generation capacity that is expected to come online in future years and to transport the extra electricity that will be generated. In addition, increasing cross-border flows and supplies of renewable energy will have to be accommodated.

Retail market

The share of the large three companies in the electricity and gas market steadily declines every year, but is still above 80%. Nevertheless, the number of customers that switched supplier has increased again: 11% for electricity and 12% for gas. The annual consumer survey of Energiekamer in 2009 has revealed however that consumers are still under the mistaken impression that switching is a hassle, that will cost them more. Energiekamer has therefore started to actively inform consumers about costs and risks of switching and how a switch can benefit.

To further develop the retail market, Energiekamer has also investigated the objectivity of price comparison websites (an important tool for customers) in order to increase consumer confidence in this channel. Also, the Policy Rule on Information Requirements has been improved in such a way that it is now applicable to all communication channels. Annually, Energiekamer investigates the adequacy of complaint handling. A more persistent problem continues to be the usage of wrong or unjustly estimated metering data on energy bills. This problem will partly be eliminated by the introduction of smart meters in the course of 2011.

Infrastructure and security of supply

Gas

In general the domestic demand for gas and the export obligations are largely covered by a guaranteed supply of both domestic production and import from e.g. Norway and Russia. The decline of production in the Netherlands will ask for investments in new infrastructure. (New) investments should ensure that more sources of flexibility are available and that infrastructure can accommodate changing gas flow directions and demand patterns.

An integrated open season held in 2009 by Gas Transport Services determined future capacity needs of market parties. Currently, several projects are underway that aim to enlarge the existing gas transmission system. One of these project is the so called North-South connection, an important connection for transmission of gas. With regard to storage, Gasunie (the owner of Gas Transport Services) and Nuon (an energy company) continued construction activities to built a salt cavern storage in Zuid-Wending (operational in 2010), while TAQA is planning to built one of the largest storages in Europe (Bergermeer). Finally, GATE continued construction for their LNG terminal in Rotterdam. This terminal is expected to become operational in 2011. No requests for article 22 exemptions were received for any gas related infrastructure.

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Electricity

Energiekamer does not have a direct role in investments and the granting of licences for new generation facilities. Also no requests for exemptions were received for any electricity related infrastructure. There are no implicit or explicit mechanisms to promote construction of new production capacity. The TSO reports to the Minister of Economic Affairs with regard to the development of security of supply. If necessary, the Minister may decide to invoke an additional capacity mechanism, the so-called safety net. This safety net means that the TSO will contract additional power for a number of years to create an incentive for investment. In 2009, it proved unnecessary to invoke this safety net.

Since 2002, construction has been in progress to strengthen and expand the 380 kV grid in the west of the Netherlands ("Randstad 380 kV project"). This project is of specific importance for increased consumption in the region as well as the connection of the large amount of planned new generation facilities as discussed above. For the same reasons the TSO is planning an expansion of the 380 kV grid in the north of the Netherlands (North-West 380 kV project). The project is now in the preparation and construction is planned to be completed in 2016.

A submarine cable connection of 700 MW between the Netherlands and Norway (NorNed) by the TSO's of these two countries was put into operation in May 2008. This interconnector functions under normal regulation. In 2007 an exemption under Article 7 of Regulation (EC) No. 1228/2003 was granted for a submarine cable between the Netherlands and Great Britain. This interconnector is expected to come into operation in 2011. The average capacity of the interconnection will be 1000 MW. Furthermore, TenneT is in the preparatory phase for two new interconnectors: one together with RWE Transportnetz Strohlm between the Netherlands and Germany and one together with Energinet.dk between the Netherlands and Denmark. Both cables are intended to be regulated interconnectors.

Changes in national legislation and the and third package

Several changes of the Dutch Electricity and Gas act have been proposed (in 2009) that are now discussed by Dutch parliament. The proposals introduce different measures (such as smart metering, a new market model for gas and congestion management rules for electricity) that are to improve the Dutch energy market. With the coming into force of the third package, changes to existing legislation are being proposed by Dutch government as to comply with the new rules.

3. Regulation and Performance of the Electricity Market

3.1. Regulatory Issues

3.1.1. Management and Allocation of interconnection capacity and mechanisms to deal with congestion

On March 16th 2010, regulators within the Central West European regional initiative published their first regional monitoring report on the use of interconnection capacity and the congestion management methods as applied in 2008. A detailed analysis can be found in this report. An update of this report for the year 2009 will be published in the fourth quarter of 2010. Relevant changes to the rules in 2009 will be separately discussed below.

Assessment of national and cross-border congestion

Degree of congestion on the interconnectors

In general, congestion occurs in the import direction (towards the Netherlands) on the cross-border connections with Belgium, Germany and Norway, although export has increased significantly in comparison to 2008 (especially during the night hours and towards Belgium). Even though export has increased, the price differences between Germany and the Netherlands usually favour import flows. Explicit auctioning on the Dutch borders usually causes an inefficient allocation of the available capacity to the market. For this reason, research on implicit auctioning systems is being performed and an adequate system is being developed that could be applied on the German border and NorNed-cable.

Degree of congestion within the national system

Recent developments in new production capacity in the Netherlands have increased the risk of congestion within the national transmission and distribution system. These developments include (among other things) larger thermal units, wind production and small CHP-plants. In 2009, congestion only occurred on the connection between the transmission network and one distribution network, which was related to the development of CHP-plants. As a result of investments in the transmission grid coming in operation² and a slowdown in the development of new production, congestion has not occurred in practice in 2009. Current expectations are that congestion could occur in Maasvlakte in 2011 and Eemshaven in 2013.

In 2009, a number of developments have taken place that relate to congestion. Energiekamer developed a vision concerning the handling of national congestion, while the Dutch parliament passed ministerial rules on the improvement of current mechanisms. Recently, also a gridcode change has been approved by Energiekamer. The system applied internally to solve congestion constitutes a system redispatch method.

² See the paragraph on investments of this report

In combination with new legislation (which should accommodate priority access for renewable generation within the Netherlands) an improved national system of congestion management is proposed. The improvements of this national system will, next to priority access, be limited to a method where costs of congestion management will be allocated to the generators causing the congestion. This law has not yet been approved by parliament.

Congestion management methods as applied under the Regulation 1228/2003

The interconnector capacity available to the market on the borders of the Netherlands is allocated to market parties by means of different systems. Currently, methods for four different timeframes are in place: the year-ahead timeframe (capacity for an entire year), the month-ahead timeframe (capacity for an entire month), the day-ahead timeframe (capacity for every hour for the next day) and the intraday timeframe (capacity for a particular clock hour for the next/current day). Currently, different auction methods are used for different timeframes on the Dutch borders. The table below outlines these different methods.

Table 1: Applied methods on Dutch borders

Timeframe/ Border	Germany	Belgium	Norway
Year	Explicit	Explicit	Not available
Month	Explicit	Explicit	Not available
Day-ahead	Explicit	Implicit	Explicit
Intraday	FCFS-OU 3	Improved pro-rata	Not available

In the following paragraphs the congestion management methods will be explained per timeframe.

Yearly and monthly allocation

Within the Central West European regional initiative a common set of auction rules has been discussed in the course of 2008 and 2009. These new rules have harmonized all the explicit auctions on the internal borders of the CWE-region starting in 2010. For the Dutch borders, CASC-CWE (a joint subsidiary of all CWE-TSO's) carries out the explicit auctions. The available capacity is allocated to the various auctions in a prescribed manner. Market parties bid for both import and export capacity separately. If there is sufficient capacity to fully meet demand, the price for this capacity (the clearing price) is EUR 0. When capacity is scarce (demand for capacity exceeds supply of capacity) the clearing price is equal to the lowest offer accepted. The capacity allocated and the corresponding price must be published immediately after the auction has been held.

³ The intraday mechanism on the German border is a first-come-first-serve obligatory use system.

The parties to which transmission capacity is allocated or transferred on the year-ahead or month-ahead auctions are obliged to notify TenneT of their intention to make use of this capacity at the latest by 0800 hrs on the day prior to the transmission (this is the “nomination”). The capacity that is not nominated will then be made available on the day-ahead auction. Currently, Use-it-or-sell-it rules apply at the time of nomination. Market parties not using their capacities are paid the market price difference between the relevant day-ahead markets as compensation for the unused capacities.

Day ahead allocation

The day-ahead transmission capacity between the Netherlands and Belgium is auctioned through an implicit auction based on a trilateral market coupling mechanism. This trilateral day-ahead market coupling mechanism has been in operation since November 2006 between the Netherlands, Belgium and France. Since this date, a rise in price convergence between these three markets to up to 69% of the time has taken place. For the implicit auction on the Dutch-Belgian border, the TSO is responsible for publishing the functioning of the implicit auction and the corresponding algorithm. Furthermore, the relevant prices and volumes on the spot market, the aggregated supply and demand curves and the corresponding import/export curves must be published on an hourly basis. Also, a graphic reflection of the results of the implicit auction should be published leading to the market clearing price. Finally, information regarding paradoxical rejected block bids must be published.

Day-ahead capacity on the German border is auctioned with an explicit mechanism. As of 2010, this auction is also carried out by CASC-CWE. The capacity allocated and the corresponding price must be published immediately after the day-ahead auction has been held. In the case of the day-ahead auction, this information must be announced daily at 0930 hrs (half an hour after the auction at 0900 hrs). The parties to which import capacity has been allocated are obliged to offer the same quantity of electricity on the Dutch side of the border on APX spot market. Any capacity which is not sold on APX is reverted to TenneT. Due to the introduction of implicit auctioning on the Belgian border in 2006, this obligation no longer exists on that border.

In 2008 and 2009 TSO's and Power Exchanges of the CWE-region have started developing flow-based market coupling in order to implement implicit auctioning on the German borders. Because of the highly meshed networks within the CWE-region, such a market coupling mechanism requires a capacity calculation system which takes into account the discrepancies between physical and commercial flows. The current plan is to start the market coupling on the German borders based on the currently used ATC-method in November 2010. This will be done in close cooperation with the coupling between the German and Danish borders. It is scheduled to introduce flow based market coupling on the German borders in the second quarter of 2012.

A new submarine cable between Norway and the Netherlands (NorNed-cable) was, after some delay, put into operation in May 2008. In 2008 and 2009 capacity was only allocated with a daily explicit auction mechanism. Within 2 months after the start of the coupling on the German Borders, market coupling on the NorNed-cable will also be started.

Intraday-allocation

TenneT has introduced (in December 2008) an intraday capacity allocation platform on the German borders. This platform offers the residual unused capacity after the day-ahead stage. The platform explicitly allocates capacity on a First-come-first-serve basis with obligatory use. This means that when capacity is upon his request allocated to a certain market party, this party is obliged to use the capacity. If the party fails to do so, there will be imbalance charges on both sides of the border. On the Dutch-Belgian border an intraday platform was introduced in May 2009. This is the same as the system implemented on the border between Belgium and France. Regulators in the CWE region have published in parallel their common position on the harmonised solution for cross-border intra-day trade in the CWE-region, which was published in October 2009. Ahead of this harmonised solution, work has been going on to introduce an improved allocation mechanism between the Netherlands and Belgium (based on continuous trade via the exchanges in both countries).

Degree of integration of congestion management with the wholesale markets

Congestion management is very important for the operation of the Dutch wholesale markets. Approximately 20% of consumption in the Netherlands is imported, although in recent years exports have increased. Effective congestion management means that as much cross-border capacity as possible can be made available to the market within the limits of grid security. Due to the high percentage of imported electricity, the available import capacity is important for price formation on the wholesale markets. As dayahead market coupling has been established on the Dutch - Belgium border, the efficient use of the available capacity is assured. This has also resulted in a high degree of convergence of the day-ahead prices of the Netherlands, Belgium and France. Although this is a very positive development, most trade is done through (year ahead) OTC products. The implementation of a market coupling regime in the whole CWE region (including the Dutch - Belgium border) is foreseen to be implemented in the fourth quarter of 2010.

An assessment of the computation of transmission capacity by the TSO's

The TSO must publish the secure, available cross-border transmission capacity for the following calendar year on an hourly basis before September 15th. On a daily basis, before 08:30, the TSO must announce the capacity available for spot transmission for the following day, specified per connection (in all cases 30 days in advance). The available cross-border transmission capacity did not increase, despite the fact that a new 380kV-substation in Borssele was taken into operation in October 2008.

3.1.2. The regulation of the tasks of transmission and distribution companies

Regulation of the TSO

TenneT is the only national grid company for the transmission of electricity in the Netherlands and regulated by Energiekamer. To do so, Energiekamer uses a system of turnover regulation (revenue cap) for the transmission tariffs with a yardstick that is partly based on international benchmark (best practice), combined with a frontier shift based on productivity growth of other foreign TSO-companies. The yardstick objective is set for the final year of a 3 to 5 year period.

The current period will finish at the end of 2010. The allowed revenue of the company is adjusted annually by $(1+CPI-X)$, in which CPI is the Consumer Price Index and X is the efficiency incentive. The quality is regulated through quality standards (laid down in codes) and not with financial incentives.

The system of yardstick competition provides incentives to increase cost efficiency. Higher profits can be achieved if the company achieves higher cost savings than expected. The costs are determined according to a standardised method. Annually, Energiekamer collects actual OPEX, investments and depreciation (based on regulatory accounting rules) and volumes charged to customers. To guarantee security of supply in the Netherlands, a separate system is used for assessing expansion investments. Energiekamer will assess to what extent investments have been performed efficiently. Also, the utility and necessity of these investments must be assessed. If the investment is useful and necessary, the revenue cap and tariffs will be corrected, but only for the amount of the investment that has been found to be efficient. Based on the revenue cap, TenneT will draft (on a yearly basis) a tariff proposal for all tariff components (given expected volumes). This proposal is assessed and approved by Energiekamer. Customers can find the tariffs on the website of Energiekamer or on the website of TenneT.

The tariff structure is laid down in a so called 'Tariffcode' and can be adjusted by Energiekamer. The adjustments are usually proposed by (a majority) of Dutch grid companies. For information on balancing, please see description of the wholesale market.

Regulation of DSO's

In the Netherlands, DSO's are also regulated by Energiekamer and a system of national yardstick competition (with a price cap) is used to do so. The allowed revenue of a company is adjusted annually by $(1+cpi-x+q)$. In this formula *cpi* is the consumer price index, *q* represents the quality factor and *x* is the efficiency incentive. The yardstick (objective in final year of a 3 to 5 year period) is equal (except some regional differences) for all DSO's and is determined by the sector average cost per output, including an estimate of the growth in total factor productivity during the regulatory period. The current regulatory period ends in 2010. Energiekamer is currently preparing the new regulatory method for the period starting in 2011, which is scheduled to be published in the summer of 2010.

The system of yardstick competition provides incentives to increase productivity. A DSO can achieve higher profits when productivity exceeds the average productivity. Productivity is measured by dividing the costs of the DSO by its standardised output and the costs are determined according to a standard method. Annually, Energiekamer collects audited data on actual OPEX, investments and depreciation (based on regulatory accounting rules) and volumes charged to customers.

A possible risk of the system of yardstick competition is that DSO's may invest less than is socially optimal in order to reduce their costs and therefore increase their profit. By investing less on the long term, the quality of the grid may be reduced. Quality is measured by the System Average Interruption Duration Index (SAIDI), which is the average interruption per consumer. To avoid a reduction in quality, Energiekamer uses quality regulation to give DSO's the incentive to invest in quality. This quality incentive comes from the q-factor, which is calculated based on interruptions experienced by consumers on the low-voltage grid (<50kV). Energiekamer includes the q-factor into the system of yardstick competition. Therefore, if an individual company performs above or below average quality, higher or lower revenues are permitted. The annual average interruption duration per consumer at the low-voltage level amounted to approximately 22,1 minutes in 2008.⁴

Recently, Energiekamer has published a report on investment decisions and policies of DSO's. In this report, Energiekamer concludes that until now quality of electricity networks in the Netherlands has been very high. The research did not provide indications that the aforementioned risk of underinvestment actually had happened. However, Energiekamer also found that DSO's do not have sufficient insight into the physical state of their network as to be able to assess the need for replacement investments. It will therefore be a priority for Energiekamer to have DSO's increase their insight into the state of their networks.

The allowed revenue is based on expected volumes. Given the allowed revenue, each DSO presents a tariff proposal to Energiekamer for all the tariff components each year. This proposal is assessed and either approved or adjusted by Energiekamer. Customers can consult the tariffs on the website of Energiekamer or on the website of their DSO.

3.1.3. Effective unbundling

Introduction

As already explained, TenneT is the only TSO in the Netherlands. As for DSO's, there are nine operators that supply gas and electricity, three only supply gas. In the Netherlands, operators of small distribution systems (with fewer than 100,000 customers) are not treated any differently than operators of large distribution systems. TenneT is fully owned by the State of the Netherlands, while all DSO's are fully owned by Dutch municipalities and provinces.

TSO

No further developments regarding the unbundling of TenneT have taken place in 2009. Since July 2005, TSO's must be structured in such a way that their commercial and public activities are clearly distinguishable. TenneT has complied with this obligation since that date. TSO's may still be part of a holding company in which commercial activities are carried out.

⁴ Source: Netbeheer Nederland (www.energiened.nl).

However, members of the executive board and the majority of the supervisory board of the TSO's are not entitled to have direct or indirect ties with producers, traders, nor suppliers in electricity or gas, nor their shareholders. In 2008, a law went into force that further enhances and secures unbundling of TSO's, by introducing more detailed obligations with regard to the organisation and financial management of TSO's. In case of TenneT, the commercial holding company is 'TenneT Holding' and TenneT TSO performs the legal tasks that are applicable on the transmission system operator.

DSO's

In 2009, all DSO's have submitted (as required by law) their unbundling plans. Energiekamer has assessed all these plans, issued an advice to the Ministry of Economic Affairs regarding these plans and supervised the process of implementation. At the end of 2009, all but two integrated companies were unbundled. Due to a court decision in 2010 part of the Law on the Independence of Network Operators lost force. The Ministry of Economic Affairs has appealed to the court of cassation. As a result, the two companies that are not yet unbundled announced to postpone the activities related to unbundling.

3.2. Competition Issues

3.2.1. Description of the wholesale market

The Monitor Energy Markets reports on the developments of the wholesale market in the Netherlands. At time of publishing of this national report, the market monitor for the year 2009 has not been finalized yet. It will be published soon on the website of Energiekamer.

Trading venues

The Dutch wholesale market can be subdivided into the following marketplaces where supply and demand meet:

- the trade in bilateral contracts, or the bilateral market;
- the OTC (over-the-counter) market;
- the power exchanges (APX, ENDEX); and
- the balancing market, or the market for control and reserve power.

Day ahead trading on the power exchange: APX provides a representative spot market price

APX is a marketplace for trading in day-ahead contracts. In addition to the day-ahead market, APX also operates an intraday and a strips market. ENDEX is a marketplace for trading standardised forward contracts. At the moment, 17 standard forward contracts are available on ENDEX: 6 monthly, 6 quarterly and 5 yearly contracts for baseload, peakload 12hours and peakload 16hours. In the table below, the number of traders and volumes traded are presented.

Table 2: number of traders and volumes traded on the power exchanges in 2009

	APX	ENDEX Futures Exchange	ENDEX OTC clearing
Number of traders	57	41	41
Volumes traded	29 TWh	33,4 TWh	75,2 TWh

The next two graphs show the development in volumes of APX and ENDEX exchanges.

Figure 1: APX day ahead volumes in TWh 2002-2009

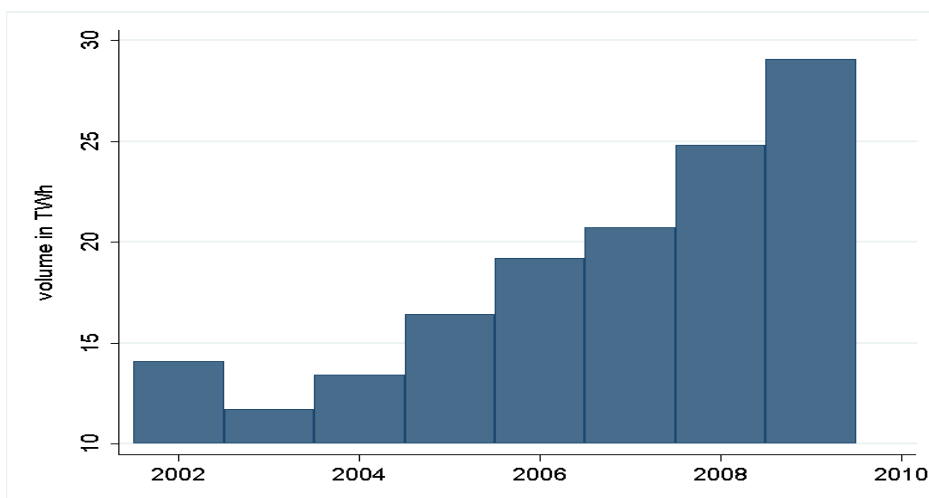
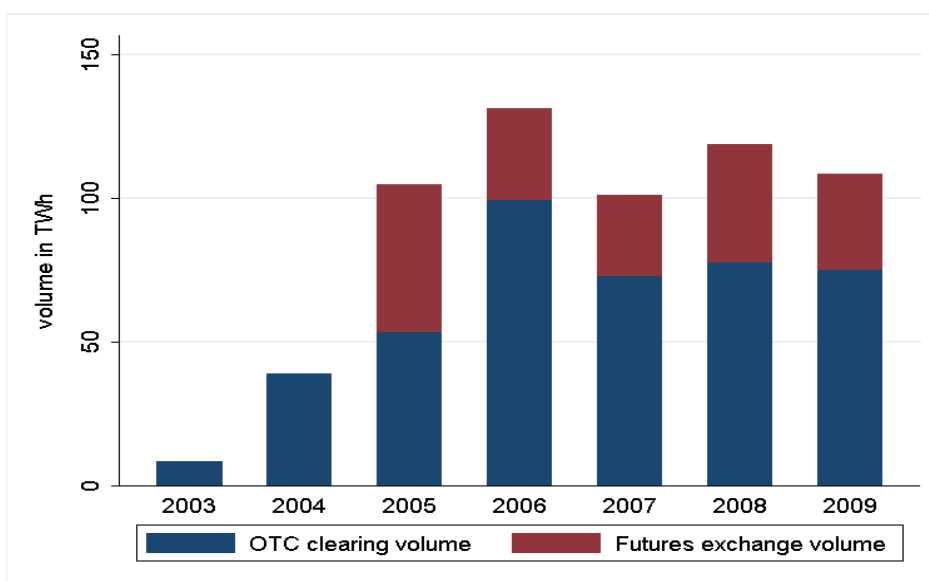


Figure 2: ENDEX volumes (all contracts) 2003-2009



The market for control and reserve power

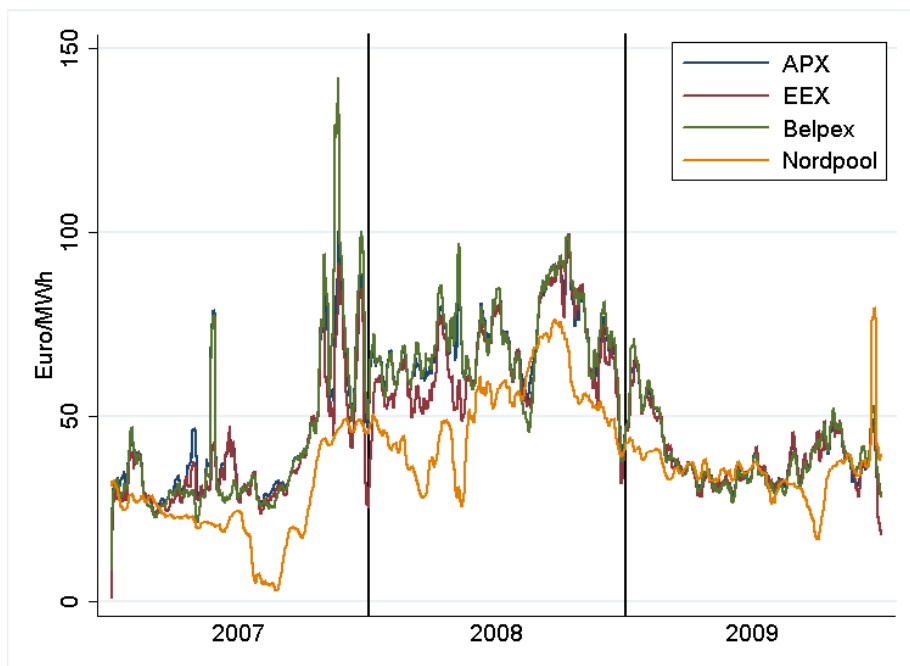
TenneT contracts a certain quantity of control and emergency power on an annual basis. The cost of contracting power is charged to all consumers through TenneT's system services tariff. TenneT calls for bids for control power if an imbalance arises. The cost of the energy required for this are recovered from the party responsible for this imbalance (through the system of programme responsibility). The market for control and reserve power is a special market used by TenneT to restore balance in real-time. Emergency power is used when the Dutch system is disrupted.

Degree of integration with markets in neighbouring countries

The Dutch market is connected to the Belgium, German and Norwegian markets through interconnectors. As of January 1st, 2001, the allocation of the available cross-border capacity has taken place by means of an auction which TenneT organises jointly with the TSO's of neighbouring countries. The capacity is auctioned in the categories year-ahead, month-ahead, week-ahead and day-ahead. On November 21st 2006, the Trilateral Market Coupling with Belgium and France took place. The power exchanges are now connected and take the available capacity at the borders in consideration. The cable between the Netherlands and Norway (700 MW) has been in operation from May 2008.

The following figure shows spot prices (power exchanges) in the Netherlands, Belgium, Germany and Norway.

Figure 3: spot prices (power exchanges) in the Netherlands, Belgium, Germany and Norway



The graph shows that prices in the Netherlands, Belgium and Germany follow one another reasonably close, but also differ quite considerably in certain periods. The price level in Norway is usually lower than those in the other countries. By using a Principal Component Analysis (PCA) it can be ascertained which part of the movements in prices is driven by a common price pattern. An analysis has been performed for the region comprising the Netherlands, France and Germany. It was found that this common price pattern explains 82% of the price movements. If Norway is also included in this analysis, this principal component amounts to 70%.

Table 3: Common price pattern (PCA) for the Netherlands and neighbouring countries

Common price pattern	NL, FR, DE region	NL, NO, DE, FR region
All hours	0.82	0.70
Peak hours	0.79	0.68
Non-peak hours	0.88	0.78

This analysis can also be performed for several successive periods. This makes it possible to examine the impact of measures designed to promote market integration, such as the introduction of trilateral market coupling or the start of the NorNed cable. The following two tables show the results of this analysis.

Table 4: Impact of introduction of trilateral market coupling (NL, FR, DE region) according to PCA

Introduction of market coupling	01/01/2004 to 21/11/2006	21/11/2006 to 11/06/2009
All hours	0.72	0.83
Peak hours	0.78	0.79
Non-peak hours	0.86	0.89

Table 5: Impact of start of NorNed cable (NL, NO, DE, FR region) according to PCA

Commissioning of NorNed	01/01/2006 to 06/05/2008	06/05/2008 to 11/06/2009
All hours	0.62	0.77
Peak hours	0.59	0.76
Non-peak hours	0.68	0.77

The principal component analysis shows that trilateral market coupling and NorNed cable have both promoted further market integration. Also, the PCA shows that both have done so to a considerable extent. TLC has added another 11% to the common price pattern and through NorNed an additional 15% of prices are now driven by a common pattern.

Assessment of impact of mergers on competition

Energiekamer has published a vision document entitled "Vision Document on Mergers in the Energy Markets".⁵ The aim of this document is to inform all parties involved and parties interested in the development of the energy market in the Netherlands and beyond on the investigations and subsequent market consultation which it has carried out into (i) the definition of (possible) relevant markets in the electricity sector and (ii) the way in which Energiekamer views possible mergers and acquisitions on these markets.

The vision document states that Energiekamer has indications that, on the basis of the situation in 2008, the geographical market for production and wholesale trade (from the perspective of competition law) comprises (i) the Netherlands during peak hours and (ii) at least the Netherlands and Germany during non-peak hours. Only if there is a sharp increase in the available transmission capacity on be cross-border connections, would a larger geographical market be possible .

Market concentration

Approximately 25 electricity producers are active in the Netherlands. In terms of the size of generating fleets, the Netherlands has seven large and eighteen small electricity producers. The large coal- and gas-fired plants and the combined heat-power plants which provide the bulk of production in the Netherlands are owned by a few large producers. Three-quarters of the Dutch generating fleet belongs to four electricity producers. The degree of concentration in the Dutch wholesale market is measured using the Herfindahl-Hirschman Index (HHI), both on generation capacity and actual production.

Table 6: HHI

	Capacity	Production
2006	1604	1700
2007	1592	1828
2008	1551	1742
2009	1433	1810

3.2.2. Description of the retail market

Market structure

The structure of the retail market is characterised by three very large suppliers (all incumbents), four relatively small suppliers and a large number of very small suppliers. The three very large suppliers that supply electricity to small consumers (all incumbents) have a market share that exceeds 80%. Of the four relatively smaller supplier, one is an incumbent and three are new entrants who entered the market after full liberalisation in July 2004. There have been no changes since last year's report.

⁵ "Visiedocument Concentraties Energiemarkten", The Hague, November 2006

Table 7: Development of the C3 index for electricity since the liberalisation of the market

C3	Electricity
1 juli 2004	86,0%
1 jan. 2005	84,0%
1 juli 2005	83,0%
1 jan. 2006	79,7%
1 juli 2006	82,0%
1 jan. 2007	81,6%
1 juli 2007	82,6%
1 jan. 2008	81,9%
1 juli 2008	81,0%
1 jan. 2009	80,4%
1 jul. 2009	80,0%
1 jan. 2010	81,1%

The three largest suppliers have a total market share of 81,1% in the small consumer segment. This is an increase compared to last year, but this is due to the takeover of Essent by RWE. In total, there are 24 independent parties (parent companies) active on the market for small consumers of electricity. These companies are active in various levels of the market and four of them are national "incumbents". This is the same as previous year. In 2009, no customer portfolios of "original" incumbent suppliers were taken over. On December 31st 2009, there were a total of 31 energy suppliers in possession of an electricity supply licence.

Entries, exits and international penetration

Since full liberalisation, the following takeovers of Dutch electricity suppliers by foreign energy companies have taken place:

2004: Obragas and Haarlemmermeergas – RWE (Germany)

2004 / 2005: NRE - E.ON (Germany), Intergas - Dong (Denmark), Oxxio - Centrica (UK), Spark Energy - Electrabel (Belgium)

2006: Cogas - Electrabel (Belgium), Rendo - Electrabel (Belgium)

2007: None

2008: None

2009: Nuon – Vattenfall (Sweden), Essent – RWE (Germany)

Some (but not all) of the Dutch company names and brands have been replaced. By means of the takeovers, foreign companies have established a platform from which they wish to increase their share on the Dutch energy market. In 2009, one new license for the supply of electricity was issued and ten licenses were revoked (all of those voluntarily by the suppliers, because they changed name and continued to supply electricity, or because they decided not to supply electricity to small consumers any longer). New applications for licences are being prepared.

Vertical integration, supply/production and distribution grid

Supply: production

In this report, the degree of integration of production and supply companies is expressed in market shares. This relates to the market share of suppliers on the small consumer market which have at their disposal (significant) production capacity of their own in the Netherlands. In March 2004, this figure was at least 62%. If all parties with access to own generation capacity (or an unrivalled claim to a source) are viewed as being vertically integrated, this would result in a percentage of close to 90%. However, for some of these companies the generating capacity and retail market shares are so wide apart that it is highly questionable whether these companies can benefit from having both generation capacity and a retail customer base.

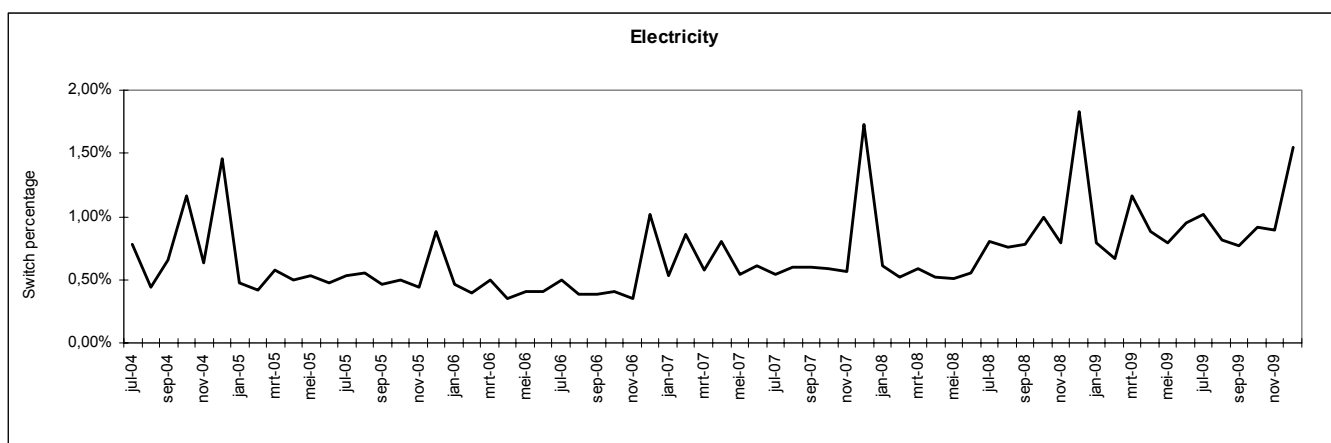
Supply: grid

Of the retail electricity market 24,8% is supplied by companies that are in the same holding as a distribution grid operator. The rest of the market is supplied by either independent entrants or formerly integrated companies that have fully unbundled since the implementation of the ‘Splitsingswet’ (Unbundling act),.

Switches

In 2009, 11% of all consumers switched electricity supplier. This is an increase from the previous 12 month-period (9%) and is the highest switch percentage since full liberalisation in 2004. The figure below provides an overview of monthly switching rates since full liberalisation.

Figure 4: switching rates in 2009



Although switching rates are up from previous years, the perceived switching threshold is still fairly high. Consumers still feel unsure about available information, fear administrative problems (although this has vastly improved since early liberalisation) or are just not interested in the “product” energy. This high perceived switching threshold has been identified as one of the most pressing issues in the Dutch retail market.

Switching procedures

The procedure for switching remains unchanged from the previous year. If electricity consumers wish to switch their electricity supplier, they must inform the new supplier verbally (for instance, by telephone) or in writing and must then authorise this new supplier to request the necessary information and take the necessary action (for instance, requesting information from the connection register of the grid operator and making arrangements in relation to programme management). In addition to this, the new supplier has to ask the consumer for their meter readings. If they fail to do so (or if the meter readings are incorrect), the final settlement by the former supplier will be based on an estimate of consumption.

In this regard, Energiekamer advises consumers to ascertain whether the new supplier respects the duration of the contract with the former supplier. By doing so, a customer is assured that he will not be faced with parallel contracts and possible cancellation fees. After this, the consumer doesn't need to take any further action and can wait for confirmation from the new supplier and the final settlement from the previous supplier.

The switch procedure

The new supplier submits a request for a switch to the grid operator. The meter reading accompanying the switch has to be sent to the grid operator as soon as possible by the new supplier, but at the latest 15 working days after the date of the switch. Immediately after receiving the request for a switch, the grid operator carries out a number of checks (for instance, whether the application was submitted at least five days before the intended date of the switch). If the result of these checks is positive, the grid operator confirms acceptance of the switch at the latest on the working day after receipt of the notification of the switch from the former and the intended new supplier. At that moment, the grid operator also enters the change into the connection register. The grid operator passes on the meter reading(s) as soon as possible, but on the 30th working day after the date of the switch at the latest (to both the former and the new supplier). The grid operator also notifies the former supplier of the consumption so that the former supplier can draw up the final invoice.

Problems with switching

Satisfaction regarding switching procedures and administrative procedures has generally increased since 2007. The main problem with switching was and still is that the majority of switches are based on meter estimates instead of actual meter readings. This results in consumers not recognising their final settlement bill with the old supplier. This in turn leads to complaints and requests for corrected bills. In the long run this problem should be eliminated by the introduction of the smart meters which is foreseen for the year 2012. However, since the introduction of the smart meters is not obligatory, the problem with incorrect or estimated meter reading will not be completely eliminated.

Prices, tariffs and tax rate per component of the invoice

Transmission costs⁶

The transmission costs (also referred to as grid costs) for 2009 consist of:

1. Standing transmission charges;
2. Capacity based tariff;
3. Standing connection charges;
4. Any one-off connection charges;
5. System services (TSO).

As already explained, the transmission and distribution tariffs are determined annually by Energiekamer. As of January 1st 2008, the tariffs for electricity metering services are regulated (because of legislative reasons the gas metering tariffs are not yet regulated). Energiekamer sets a, national, maximum tariff each year. The distribution tariffs for 2009 may differ from one grid operator to the other. The following overview is based on a weighted average (number of connections) of all regional network operators.

- standing charge for the transmission service (EUR): 18,00;
- capacity based tariff (weighted average, EUR per kWh): 113,22;
- periodic connection fee (weighted average, EUR): 20,78;
- system services tariff (EUR per kWh): 0,001372.

For an average Dutch consumer this leads to an annual total of EUR 156,87. The overview above has change since last year. From January 1st 2009 the grid costs were no longer based on electricity consumption, but on a capacity based tariff.

Metering costs

The electricity metering tariff (meter rental) has been regulated as of January 1st 2008. Considering that the regulated tariff is a maximum, actual tariffs charged could be lower. However, in practice it turns out that in 2009 all Dutch consumers paid the same electricity metering tariff of EUR 25,25.

Supply costs⁷

Supply consists of the costs of the electricity consumed and fixed costs. Supply tariffs are not regulated, but there is a form of tariff "supervision" whereby Energiekamer has to approve all individual (new) tariff proposals by suppliers. On July 1st 2009, a household with an average consumption (3558 kWh per annum) paid a net amount of EUR 325 in supply costs on an annual basis (approximately 20% of the consumer's total energy bill). This is including fixed costs, but excluding VAT.

⁶ Energiekamer does not have figures that can be broken down into all the segments that are requested, neither are there figures for medium-sized industrial and commercial consumers with consumption between 50 MWh and 2000 MWh or large industrial consumers with consumption exceeding 2000 MWh available.

⁷ Tariffs as of July 1st 2009

The result is an average supply tariff (including the fixed supply costs) of around EUR 0,0914 per kWh. Energiekamer surveys the fairness of these tariffs.

Taxes

There are various taxes on the supply of electricity. In the case of electricity, the energy tax amounts to EUR 108,50 per MWh of electricity supplied on 31 December 2009. A Value Added Tax (VAT) of 19% is charged on the amount of electricity delivered (consumption and non-consumption related tariffs) and the energy tax. In addition, a tax rebate of EUR 318,62 (excluding VAT) is applied (to the total energy bill, electricity and gas combined).

3.2.3. Measures to avoid abuses of dominance

Competition measures

As explained, Energiekamer monitors the competition and barriers to competition in the wholesale markets for gas and electricity yearly. The monitoring report is published on the website of Energiekamer. Part of this monitoring project is aimed at establishing the level of concentration for the different parts of the electricity market. However, this exercise is meant to monitor the concentration over the years, not the establishment of market dominance.

Despite the fact that the supply tariffs are not regulated, Energiekamer has the statutory power to impose tariff reductions on supply companies if the tariffs are determined to be unreasonably high. Until now, this has never occurred.

With regard to transparency, Energiekamer has taken facilitative measures to improve the transparency of the market and, by doing so, also to improve competition on the retail market (and prevent the abuse of market dominance). For instance, Energiekamer investigates the correctness and completeness of data published on websites of energy companies and websites that make price comparisons. In 2009, the original 2007 Policy Rule on information requirements has been revised. The Policy has been changed in such a way that it is now applicable to all communication channels. Energiekamer actively uses this new Policy Rule to enforce these information requirements. Energiekamer also investigates the way in which energy suppliers handle complaints. In 2008, Energiekamer also started a comparison site for energy suppliers where all other service aspects besides prices are compared. This comparison site is called "Energiewijzer" (this can be translated to "Energy Guide").

The contractual conditions which suppliers use in supply contracts with consumers must be transparent, fair and known beforehand. According to section 95m of the Electricity Act and section 52b of the Gas Act, misleading advertising is not permitted. This has been explained in more detail in the following documents:

- ❑ the Policy Rule on Invoicing Deadlines for Energy [Beleidsregel factureringstermijnen energie]. This requires the sending of a correct and complete (final) invoice to small consumers (suppliers) within two months after a change of address, switch or termination of the invoicing month, and to send to consumers a statement containing a clear and comprehensible specification of the connection charges (grid management);
- ❑ the Policy Rule on Fair Cancellation Fees for Licence Holders [Beleidsregel Redelijke Opzegvergoedingen Vergunninghouders] of March 2005. This limits the cancellation fee which a supplier may charge if a small consumer cancels a contract prematurely;
- ❑ the Decision in Relation to Licences for the Supply of Electricity to Small Consumers [Besluit vergunning levering elektriciteit aan kleinverbruikers] of May 2003 and the Decision in Relation to Licences for the Supply of Gas to Small Consumers [Besluit vergunning levering gas aan kleinverbruikers] of June 2nd, 2003.
These documents state the conditions which an electricity and/or gas supplier must meet to supply small consumers. Conditions include (amongst others) the use of clear offers and agreements in which the level of the tariffs and the composition of these is stated, a transparent and fair payment scheme, a transparent and fair scheme for cancelling or dissolving agreements and the ability to process complaints adequately;
- ❑ the Ministerial Scheme for Consumers and Monitoring. The Electricity Act of 1998 and the Gas Act stipulate requirements regarding supply agreements with small consumers, such as personal details and the address of the supplier, a description of the goods and services to be supplied and the agreed quality levels in relation to these, as well as the way in which information can be attained with regard to tariffs, the contractual term (if nothing is specified in this regard, the agreement is concluded for an unspecified period), the right to cancel the agreement and the conditions applicable to renewal or cancellation of the agreement, a description of the applicable fees and reimbursement scheme, and the way in which the dispute procedures can be invoked.

Since the beginning of 2006, Energiekamer monitors on a monthly basis the administrative processes (and accompanying communication) in relation to switches and changes of address, to ensure that consumers and other market parties (grid operators and suppliers) are not obstructed by any administrative processes of energy companies. The results are published on the energy comparison website and are also used for enforcement purposes.

With regards to unbundling, the law stipulates that energy transmission and distribution services must be legally separated from other commercial services. Recently, the Minister of Economic Affairs intervened directly in the structure of the market to prevent distortion of competition between suppliers that own distribution grids and those that do not. Finally, the proposed mergers and acquisitions (for instance, in the energy sector) must be approved by the Netherlands Competition Authority (NMa).

4. Regulation and Performance of the Natural Gas market

4.1. Regulatory Issues

4.1.1. Management and allocation of interconnection capacity and mechanisms to deal with congestion

The interconnection capacity (especially import capacity to the Netherlands) is subject to a substantial degree of contractual congestion. In some hours of the year the congestion on the import side is physical. The general opinion is that the physical congestion will increase if no new investments are made. The three graphs below show the degree and the ways in which the interconnection points have been used in the years 2007, 2008 and 2009. It also shows that the physical interconnection capacity (especially import capacity) has been expanded. More and large investments are underway and foreseen for 2012. The fact that all firm import capacity is fully booked for years ahead is an indication of contractual congestion.

The graphs also show that on the export side the firm capacity is increasingly contracted beforehand. This is accompanied with a larger volume of actual allocations.

Figure 5: Available, booked and used import capacity (H-gas)

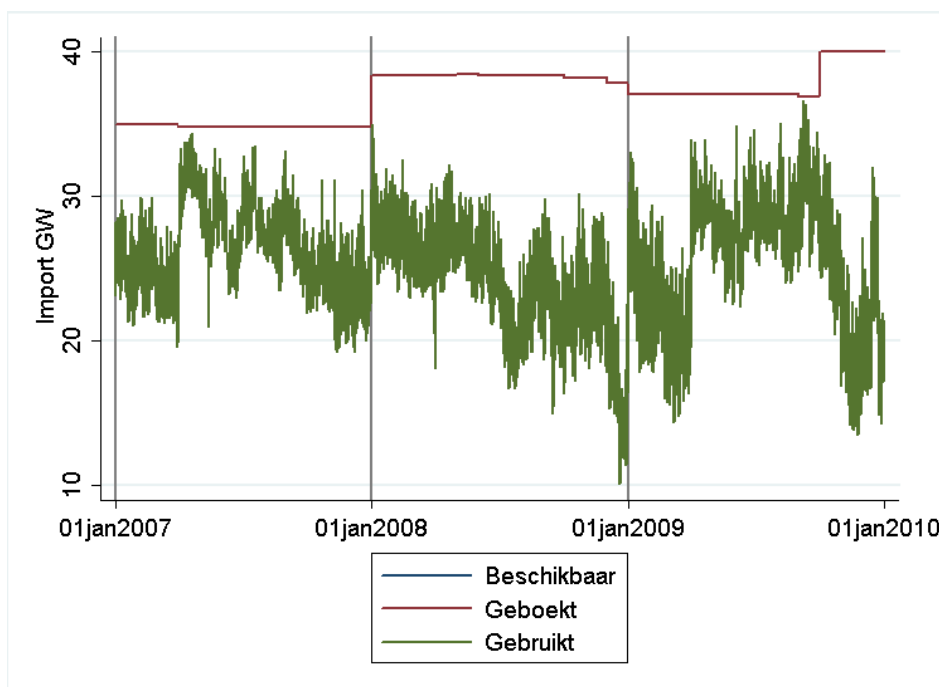


Figure 6: Available, booked and used export capacity (H-gas)

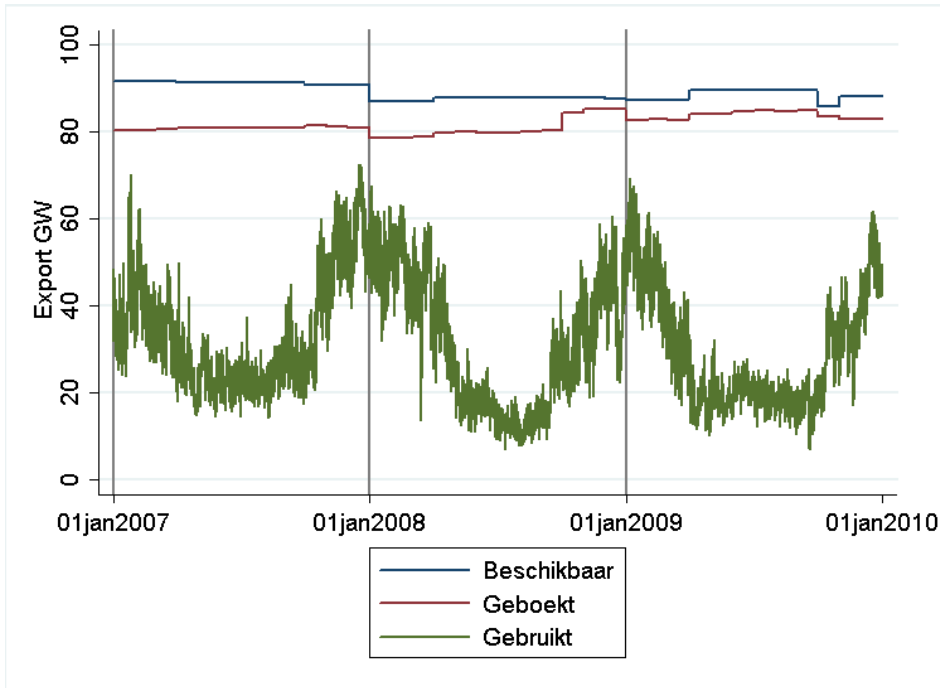
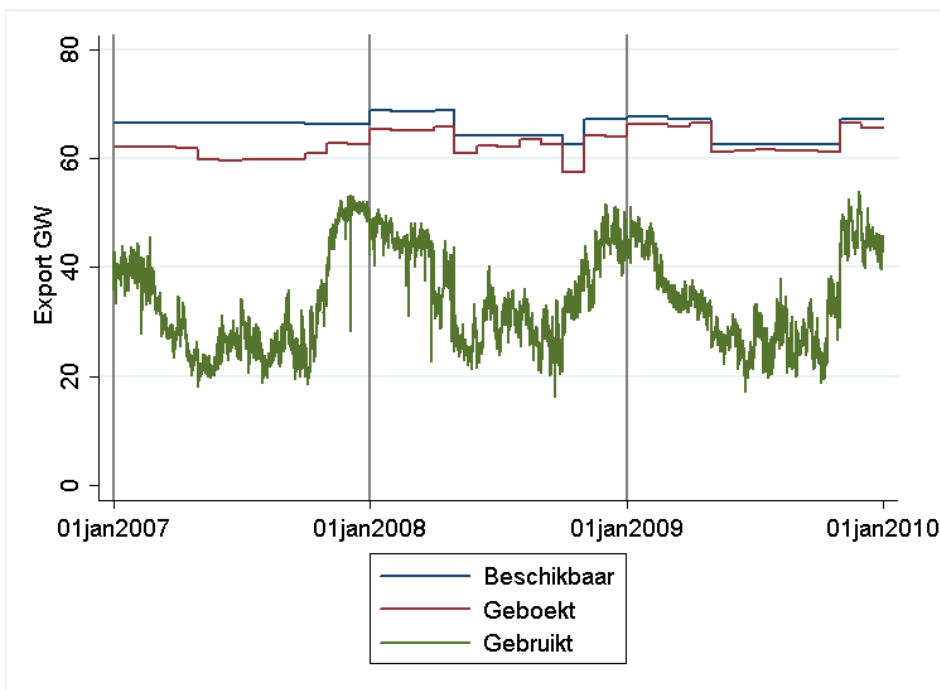


Figure 7: Available, booked and used export capacity (L-gas)



Technical capacity

The technical capacity on border points is calculated via a computed model representing the entire high pressure system of Gas Transport Services. Prerequisite is the maintaining of adequate pressure on national exit points, in each of a series of pre-set scenario's in which temperature and flow-direction of the gas are an important part. The assessment of the technical available capacity on interconnection points is thus the outcome of this scenario-study. The scenario's can be quite extreme, which is why the 'technical capacity' must be seen as the capacity which can be offered at all times. This makes the methodology of Gas Transport Services fairly robust. However, this also means that it is a cautious assessment of firm capacity on IP's, which is the reason why the sold interruptible capacity is hardly ever interrupted.

Primary allocation

Gas Transport Services allocates all capacity on the basis of the First Come First Served allocation mechanism, with no reservations or separate conditions for transit contracts. In case the firm capacity on an entry or exit point is fully booked, Gas Transport Services offers the requesting shipper interruptible capacity. At the moment the offering of interruptible capacity is the only real congestion management mechanism. Gas Transport Services offers three tranches of interruptible capacity, where the possibility of interruption is reflected in the price.

In addition, Gas Transport Services started in 2008 the so-called Eucabo booking service with the German TSO, Gasunie Deutschland. This service implies the booking of combined interruptible exit and entry capacity on a day-ahead and week-ahead basis. This is only applicable for the (contractual congested) German-Dutch IP Bunde/Oude Statenzijl. Gas Transport Services also offers booking of capacity against the physical flow direction (backhaul reservations). This capacity is always offered on interruptible basis. The swaps of capacity make up for an ever larger percentage of capacity.

Secondary market

Firm and interruptible capacity can be traded on the secondary market. However, at the moment this secondary capacity market is not functioning as well as it could. The amounts traded are low, while indications are that market parties will be active when a proper and anonymous platform for secondary capacity exists. It must be noted that some improvements have been made. A fairly successful Gas Regional Initiative project has resulted in a Secondary Trading Platform. From May 2008, unused capacity can be offered at this Trading Platform by capacity holders and bought via an auction or a buy-it-now procedure. Though only applicable at the IP Bunde-Oude Statenzijl at the present time, the project is set to be expanded to other border points, also outside the Netherlands. The NMa doesn't regulate or monitor the tariffs for the secondary market.

4.1.2. The regulation of the tasks of transmission and distribution companies

Regulation of TSO's

In 2008, the Board of the Netherlands Competition Authority (hereafter: the Board) has established methods of regulation for the period from 2009 until 2012 in order to calculate the efficiency factors for the legal tasks of the TSO concerning transport and transport related services, the delivery of flexibility services, the performing of balancing services and the quality conversion service.

These methods led to efficiency factors and to tariffs for 2009 and 2010. In The Netherlands tariffs are set for each entry- and exit point on the basis of cost reflection. It is the regulator who approves the tariffs. Apart from the methodology, which takes into account all the legal obligations that tariffs have to adhere to, Gas Transport Services has a legal obligation to submit a tariff proposal for all the tariffs.

Income can be generated by tariffs, which are approved by Energiekamer. Since the TSO has the incentive to keep its costs below its income, there is an incentive for the TSO to work in an efficient manner. The regulation is done per legal task that is assigned to the TSO. In determining the efficiency factor, costs are estimated for operational costs (including labour and energy costs) and capital costs (RAB, WACC and depreciation).

When setting individual tariffs, assumptions are made concerning volume. It is the TSO that carries the burden of the so-called 'volume risk'. This means that when it sells more than expected, it is allowed to keep the extra income. This gives an incentive to use the network as efficiently as possible whilst offering a good quality of services.

In June 2010 the Trade and Industry Appeals Tribunal has annulled the methods of regulation for the period from 2009 until 2012. The Tribunal decided that the Minister of Economic Affairs was not the competent authority to issue a policy ruling on which the Dutch energy regulator's (Energiekamer) methods of regulation were based. The policy rule set the capital costs by prescribing the RAB, WACC and depreciation periods. In addition, the Tribunal has decided that the Board should still determine methods of regulation for the period from 2006 until 2008. In order to give clarity on the past, present and future tariff level as soon as possible, the Board is now focussed on determining methods of regulation for Gas Transport Services from 2006 onwards.

Energiekamer is currently assessing a new balancing regime proposed by the joint network operators (including the TSO). This balancing regime is estimated to start in April 2011. However, there is a risk of delay if the Senate does not approve a new gas act in time, which is needed for this balancing regime.

In this balancing regime the TSO uses a balancing platform for residual balancing⁸. Market parties can offer to buy or sell physical gas on this platform. The TSO only buys or sells physical gas on the balancing platform when the system balance goes beyond operational limits. The TSO charges the costs of this gas to shippers that have caused the system imbalance. This is possible since the new balancing regime is based on real time allocations, so the TSO knows precisely which shippers cause system imbalance.

The price for the physical gas is a market based price. The TSO determines the amount of gas that is needed to bring the system back within operational limits. It then chooses the lowest priced bids to deliver that amount of gas at the marginal price of the bids. In using this balancing platform the financial position of the TSO is zero. The marginal price of the balancing gas will be directly charged to the shippers causing the imbalance.

In the current balancing system shippers are charged when their imbalances exceed certain tolerances. The surcharges are not based on market prices for balancing gas at the moment, but are based on long term balancing contracts the TSO has with flexibility providers. In addition, there is no relation between exceeding the tolerance and the system balance. Shippers could be charged for exceeding tolerances when there was no critical system imbalance. These two aspects will be solved with this new balancing regime.

Regulation of DSO's

Like the TSO, the DSO's are regulated by Energiekamer. To do so, Energiekamer uses a system of national yardstick competition (with a price cap). The allowed revenue of a company is adjusted annually by $(1+cpi-x)$. In this formula cpi is the consumer price index and x is the efficiency incentive. The yardstick (objective in final year of a 3 to 5 year period) is equal (except some regional differences) for all DSO's and is determined by the sector average cost per output, including an estimate of the growth in total factor productivity during the regulatory period. The current regulatory period ends in 2010. Energiekamer is currently preparing a new regulatory method for the period starting in 2011, which is scheduled to be published in the summer of 2010.

This system of yardstick competition provides incentives to increase productivity. A DSO can achieve higher profits when productivity exceeds the average productivity. Productivity is measured by dividing the costs of the DSO by its standardised output. The costs are determined according to a standard method. Annually, Energiekamer collects audited data on actual OPEX, investments and depreciation (based on regulatory accounting rules) and volumes charged to customers.

⁸ 'Residual balancing' means that the actions undertaken by the transmission system operator (TSO) to ensure that any deviations between the (aggregate) inputs and off-takes of network users do not cause the system to go beyond its accepted operational limits, potentially including actions taken for this reason at specific locations within the system

A possible risk of the system of yardstick competition is that DSO's may invest less than is socially optimal in order to reduce their costs and therefore increase their profit. By investing less on the long term, the quality of the grid may be reduced. Currently, Energiekamer does not use incentive regulation for gas, because it doesn't want DSO's to make a trade-off between quality and profit. Because reducing quality might lead to dangerous situations (such as explosions), Energiekamer thinks quality should be as high as possible. Quality of gas networks is not monitored by Energiekamer, but by Staatstoezicht op de Mijnen (SodM).

Recently, Energiekamer has published a report on their research of investment decisions and policies of the DSO's. This report concludes that so far quality of gas networks in the Netherlands has been very high. The research gave no indication that the aforementioned risk of underinvestment actually had happened. However, Energiekamer also found that DSO's don't have sufficient insight into the physical state of their network as to be able to assess the need for replacement investments. It will be a priority for Energiekamer to have DSO's increase their insight into the state of their networks.

The allowed revenue is based on expected volumes. Given the allowed revenue, each DSO presents a tariff proposal to Energiekamer for all the tariff components each year. This proposal is assessed and either approved or adjusted by Energiekamer. Customers can consult the tariffs on the website of Energiekamer or on the website of their DSO.

4.1.3. Effective Unbundling

Just as is the case for electricity, there is only one TSO for gas in the Netherlands (Gas Transport Services). As already explained, nine DSO's supply gas and electricity, three only supply gas. Just as for electricity, small operators (with fewer than 100,000 customers) are not treated any differently than large operators. Gas Transport Services is fully owned by the State of the Netherlands, while DSO's are fully owned by Dutch municipalities and provinces.

TSO

Since July 2005, TSO's must be structured in such a way that their commercial and public activities are clearly distinguishable. Gas Transport Services has complied with this obligation since that date. TSO's may still be part of a holding company in which commercial activities are carried out, though no activities with supply or production interests may be undertaken. In case of Gas Transport Services, the commercial holding company is 'Gasunie' and Gas Transport Services performs the legal tasks that are applicable on the transmission system operator, owning the grid. Finally, TSO's are obliged to keep separate accounts (also per legal task). In 2011, once the Third Package has been transposed and entered into force, Gas Transport Services will most likely be certified on the basis of the ownership unbundling requirements of the Third Package.

DSO's

In 2009, all DSO's have submitted (as required by law) their unbundling plans. Energiekamer has assessed all these plans, issued an advice to the Ministry of Economic Affairs regarding these plans and supervised the process of implementation. At the end of 2009, all but two integrated companies were unbundled. Due to a court decision in 2010 part of the Law on the Independence of Network Operators lost force. The Ministry of Economic Affairs has appealed to the court of cassation. As a result, the two companies that are not yet unbundled announced to postpone the activities related to unbundling.

4.2. Competition Issues [Article 25(1)(h)]

4.2.1. Description of the wholesale market⁹

The Dutch monitor Energy Markets provides a good description of the wholesale gas market in the Netherlands. The monitor can be found on the website of Energiekamer.

Market structure

A regulated TPA regime applies to both the national and regional transmission of gas and a licensing system is applied.

The Nederlandse Aardolie Maatschappij (hereafter "NAM") is the largest producer of natural gas in the Netherlands and is a subsidiary of Exxon (50%) and Shell (50%). NAM operates the Groningen production field and the majority of small fields. The Dutch gas trading company Gasterra has exclusive access to Groningen gas and also has the obligation under the small fields policy to take gas from these fields at a representative market price. NAM also owns two installations for underground gas storage (in the Norg and Grijpskerk gas fields). TAQA owns a gas storage facility in Alkmaar. However, only a small part of the storage capacity of the three facilities (Alkmaar, Norg and Grijpskerk) is available to the market by TPA. Gasterra is the largest supplier of natural gas in the Netherlands.

Due to domestic and foreign demand, various storage facilities are expected to be added in the Netherlands. For the Dutch market, Essent and Nuon make use of German salt caverns near Epe. Essent is also developing plans to convert the Waalwijk gas field into a gas storage facility. Nuon, Gas Transport Services and Akzo Nobel have started a project to create a new gas storage facility in a salt cavern near Zuidwending. Taqa is planning to develop the Bergermeer storage in a depleted gas field.

⁹ Defined as covering any transaction of gas between market participants other than final end-use customers.

Table 8: Technical characteristics of gas storage in the Netherlands

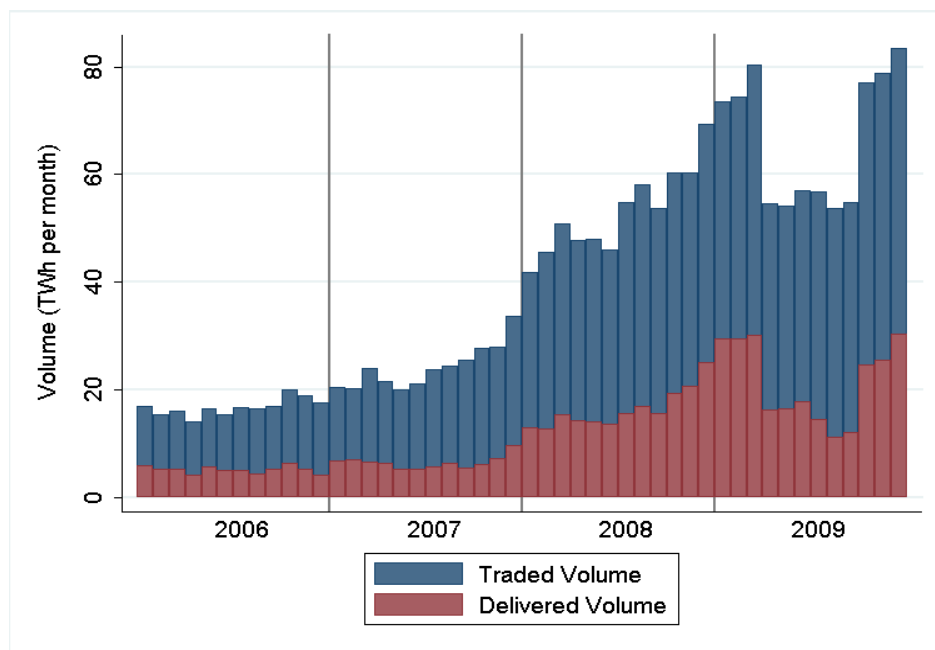
Operator	Facility	Type	Gas quality	Working volume (GWh)	Withdrawal Capacity (GW)
NAM	Grijpskerk	Gasfield	H-gas	14,654	22.4
NAM	Norg	Gasfield	L-gas	29,308	22.4
TAQA	Alkmaar	Gasfield	L-gas	4,884.5	14.7
Essent	Essent Epe (GER)	Salt Cavern	L-gas	2,423	4
Nuon	Nuon Epe (GER)	Salt Cavern	L-gas	1,551.5	4.9
RWE	Kalle (GER)	Aquifer	H-gas	2,480	4.6

As of July 2009, quality conversion (the conversion from high calorific gas to low calorific gas) has become a regular system service, for which the costs are fully socialized through the entry and exit tariffs. In the past shippers were obliged to book quality conversion capacity on top of entry and exit capacity, and the costs were socialized for 50%.

Trading venues

The following graph shows the development of the TTF, the trading hub for natural gas in the Netherlands.

Figure 8: Development of traded and delivered volumes on TTF



The Dutch wholesale market can be subdivided into the following marketplaces where supply and demand meet:

- the trade in bilateral contracts, or the bilateral market;
- the OTC (over-the-counter) market;
- the gas exchanges (APX, ENDEX).

TTF day ahead provides a representative spot market price.

APX is a marketplace for trading in day-ahead contracts. In addition to the day-ahead market, APX also operates a within-day market. ENDEX is a marketplace for trading standardised forward contracts. 14 standard forward contracts are now available on ENDEX: 3 month, 4 quarter, 4 season and 3 yearly contracts for baseload gas.

Table 9: number of traders and volumes traded on the gas exchanges in 2009

	APX	ENDEX Futures Exchange	ENDEX OTC clearing
Number of traders	21	40	40
Volumes traded	1,76 TWh	40,6 TWh	48 TWh

The next graphs show the development in volumes of APX and ENDEX exchanges.

Figure 9: APX day ahead volumes in TWh 2006-2009

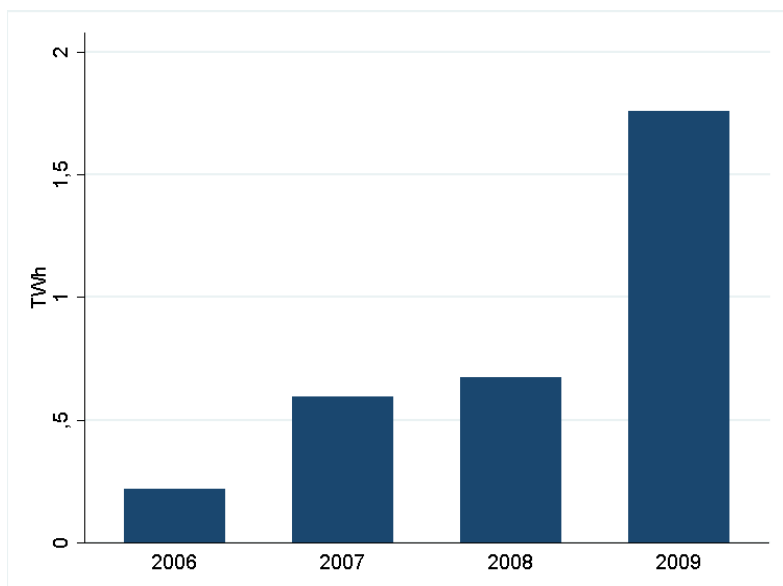
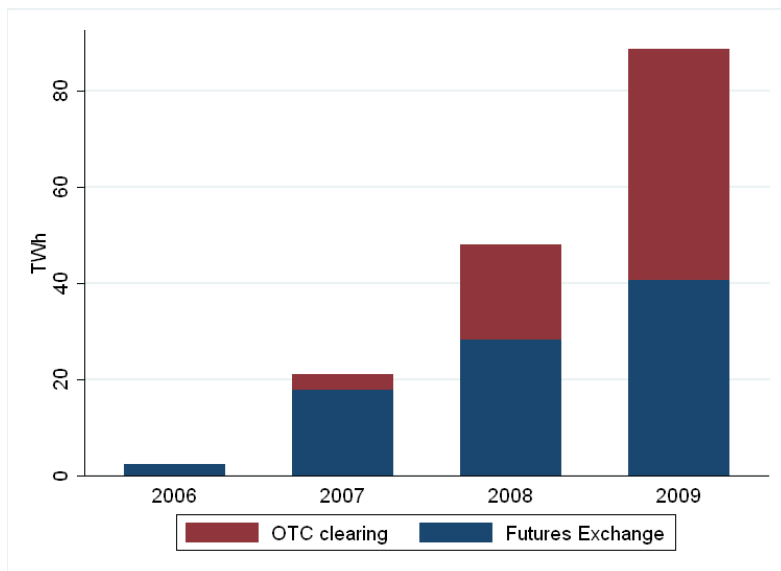


Figure 10: ENDEX volumes (all contracts) 2006-2009



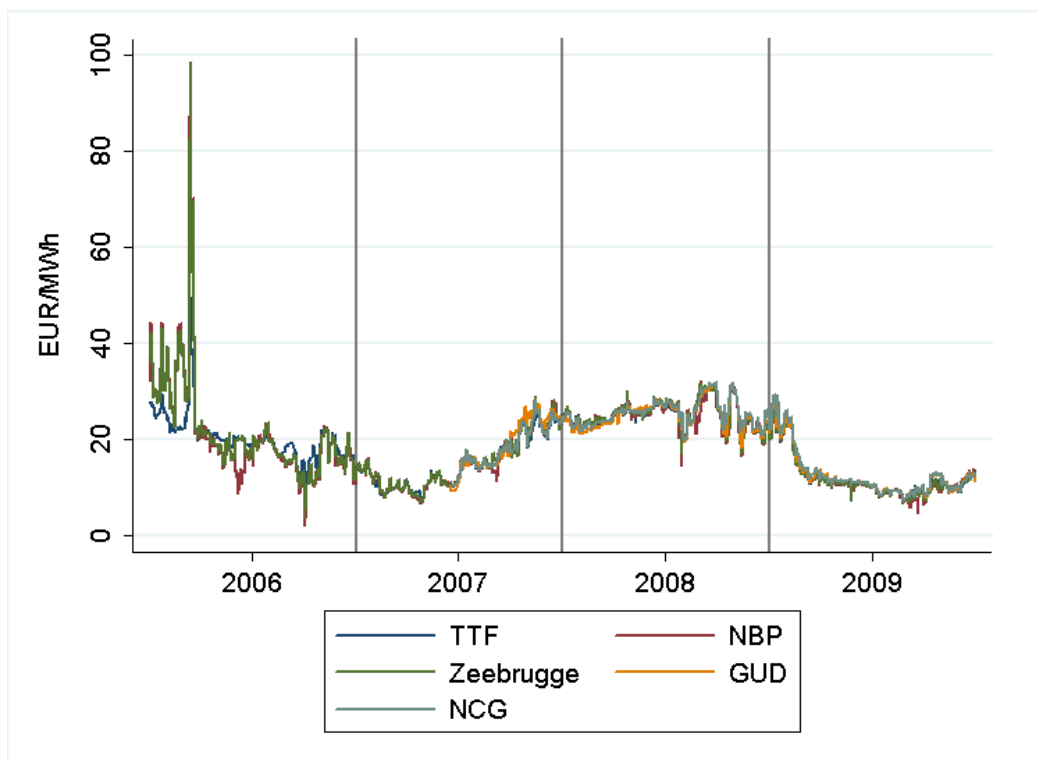
Integration with neighbouring markets

The Netherlands imports high calorific gas at border points with Germany and Belgium, for which Gas Transport Services makes firm transmission capacity of more than 38 GW available to the market. The Netherlands exports high calorific gas at border points with Germany, Belgium and the United Kingdom. For this purpose, Gas Transport Services makes firm capacity of more than 66 GW available to the market. For exports of low calorific gas at border points with Germany and Belgium, more than 87 GW is available.

Gas Transport Services allocates the capacity on a first come, first served basis. Bookings are made on a firm basis as long as the capacity permits. Thereafter, bookings are registered on an interruptible basis. Firm capacity is fully booked, some interruptible capacity still available. In 2008 two initiatives were launched to make short-term capacity available to the market. In February the TSO's Gas Transport Services and BEB started a platform (EUCABO) on which shippers can book day-ahead interruptible capacity. In May the APX and Trac-X gas exchanges started secondary trading in firm day-ahead capacity. The EUCABO platform is being used to a limited extent; in the secondary market there is evidence of some activity on the German side in particular.

The next graph gives day ahead gas prices traded on the Dutch TTF and surrounding hubs:

Figure 11: Day ahead prices traded on Dutch TTF and surrounding hubs



4.2.2. Description of the retail market

Market structure

The structure of the retail market is characterised by three very large suppliers (all incumbents), four relatively small suppliers and a large number of very small suppliers. The three very large suppliers that supply gas to small consumers have a market share that exceeds 80%. All of these are incumbents. Of the four relatively smaller suppliers, one is an incumbent and three are new entrants who entered the market after full liberalisation in July 2004. There have been no changes since last year's report.

Table 10: Development of the C3 index for gas since liberalisation of the market

C3	Gas
1 juli 2004	86,0%
1 jan. 2005	84,0%
1 juli 2005	83,0%
1 jan. 2006	79,1%
1 juli 2006	79,4%
1 jan. 2007	79,2%
1 juli 2007	79,9%
1 jan. 2008	78,1%
1 juli 2008	78,0%
1 jan. 2009	77,0%
1 jul. 2009	76,3%
1 jan. 2010	79,4%

The three largest suppliers have a total market share of 79,4% in the small consumer segment. This is an increase compared to last year, but this is due to the takeover of Essent by RWE. In total, there are 19 independent parties (parent companies) active on the market for small consumers of gas. These are active in various levels of the market and four of them are national "incumbents". This is the same as previous year. In 2009, no customer portfolios of "original" incumbent suppliers were taken over. On December 31st 2009, there were a total of 27 energy suppliers in the possession of an gas supply licence (not all of these are independent).

Entry, exit and international penetration

Since full liberalisation, the following takeovers of Dutch electricity suppliers by foreign companies have taken place:

2004: Obragas and Haarlemmermeergas – RWE (Germany)

2004 / 2005: NRE - E.ON (Germany), Intergas - Dong (Denmark), Oxxio - Centrica (UK), Spark Energy - Electrabel (Belgium)

2006: Cogas - Electrabel (Belgium), Rendo - Electrabel (Belgium)

2007: None

2008: None

2009: Nuon – Vattenfall (Sweden), Essent – RWE (Germany)

Some (but not all) of the Dutch company names or brands have been replaced. By means of these takeovers, the foreign companies have established a platform from which they wish to increase their share of the Dutch market.

In 2009, three new licenses for the supply of gas were issued and seven licenses were revoked (all voluntarily by suppliers who changed name and continued to supply gas). New applications for licences are being prepared at the moment.

Vertical integration of supply/production

There is no vertical integration of supply (to small-consumers) and gas production. The gas producer in the Netherlands does not sell directly to the small-consumer market.

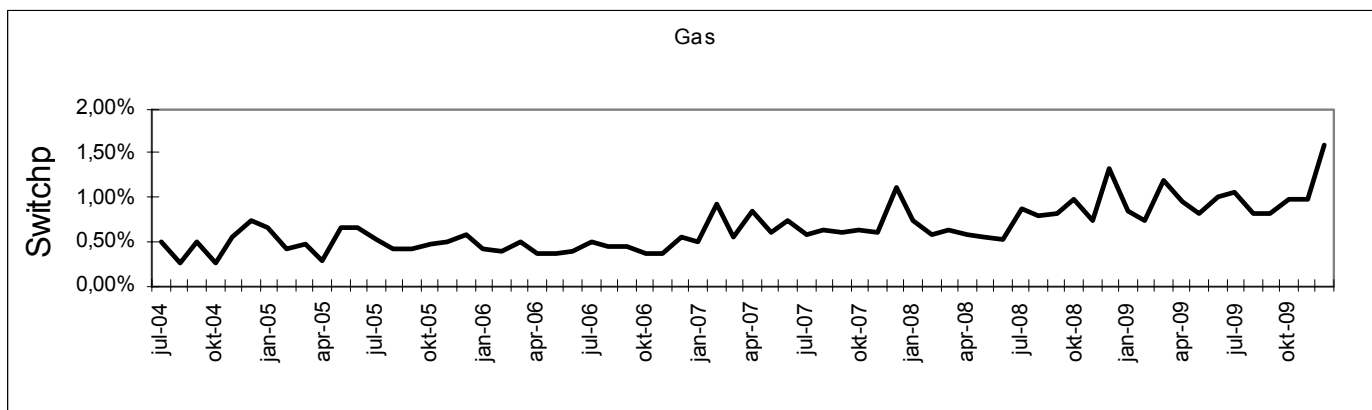
Vertical integration of supply/network

Vertical integration of the grid companies and supply companies amounts to 25,3%, expressed as market shares of the small-consumer market for gas. The rest of the market is supplied by either independent entrants or formerly integrated companies that are fully unbundled.

Switches

In 2009, 11,8% of all consumers switched gas supplier. This percentage is up from the previous 12 month-period and is the highest percentage since full liberalisation. The graph below provides an overview of monthly switching rates since full liberalisation.

Figure 12: Development of monthly switch rates for gas since market liberalisation



Although switching rates are up from previous years, the perceived switching threshold is still fairly high. Consumers still feel unsure about available information, are afraid of administrative problems (although this has vastly improved since early liberalisation) or are just not interested in the “product” energy. This high perceived switching threshold has been identified as one of the most pressing issues in the Dutch retail market.

Switching procedures

The procedure is identical to the procedure for electricity and remains unchanged from the previous year. If gas consumers wish to switch their gas supplier, they must inform the new supplier verbally (for instance, by telephone) or in writing and must then authorise this new supplier to request the necessary information and take the necessary action (for instance, requesting information from the connection register of the grid operator and making

arrangements in relation to programme management). In addition to this, the new supplier has to ask the consumer for their meter readings. If they fail to do so, or if the meter readings are incorrect, the final settlement by the former supplier will be based on an estimate of consumption.

In this regard, Energiekamer advises consumers to ascertain whether the new supplier respects the duration of the contract with the former supplier. By doing so, a customer is assured that he will not be faced with parallel contracts and possible cancellation fees. After this, the consumer doesn't need to take any further action and can wait for confirmation from the new supplier and the final settlement from the previous supplier.

The switch procedure

The new supplier submits a request for a switch to the grid operator. The meter reading accompanying the switch has to be sent to the grid operator as soon as possible by the new supplier, but at the latest 15 working days after the date of the switch. Immediately after receiving the request for a switch, the grid operator carries out a number of checks (for instance, whether the application was submitted at least five days before the intended date of the switch). If the result of the checks is positive, the grid operator confirms acceptance of the switch at the latest on the working day after receipt of the notification of the switch from the former and the intended new supplier. At that moment, the grid operator also enters the change into the connection register. The grid operator passes on the meter reading(s) as soon as possible, but at the latest on the 30th working day after the date of the switch, to both the former and the new supplier. The grid operator also notifies the former supplier of the consumption so that the former supplier can draw up the final invoice.

Problems with switching

Satisfaction regarding switching procedures and administrative procedures has generally increased since 2007. The main problem with switching was and still is that many switches are based on meter estimates instead of actual meter readings. This results in consumers not recognising their final settlement bill with the old supplier. This in turn leads to complaints and requests for corrected bills. In the long run this problem should be eliminated by the introduction of the smart meters which is foreseen for the year 2012. However, since the introduction of the smart meters is not obligatory, the problem with incorrect or estimated meter reading will not be completely eliminated.

Prices, tariffs and tax rate per component of the invoice

The transmission costs¹⁰

The transmission tariffs are regulated. The tariffs may differ from one DSO to the next. The overview below is based on a weighted average (number of connections) of all regional network operators:

¹⁰ Energiekamer does not have figures that can be broken down into all the segments that are requested, neither are there figures for medium-sized industrial and commercial consumers.

- Standing charges per annum (EUR): 18,00
- Tariffs per unit of the volume parameter per annum (capacity-related tariff category) (EUR): 22,68. Household consumers mostly have G4 meters, so annual costs will be $4 * 22,68 =$ EUR 68,03
- Periodic connection fee¹¹ (weighted average, EUR): 22,25

For an average Dutch consumer this amounts to an annual total of EUR 108,28. The overview above has changed slightly since January 1st 2009. From that moment onwards the grid costs were no longer based on gas consumption. The consumption based Nm³ tariff has been replaced with a capacity based tariff.

Metering costs

The metering tariffs (meter rental) are not regulated at the moment. On average the Dutch consumer pays around EUR 19 a year for gas meter rental.

Energy supply costs¹²

Supply tariffs are not regulated. There is a form of tariff “supervision” whereby Energiekamer has to approve all individual (new) tariff proposals by suppliers. On July 1st 2009, a household with an average consumption (1625 m³ per annum) paid a net amount of EUR 449 on an annual basis (approximately 27% of the consumer's total gas bill). This results in an average supply tariff (excluding VAT and including fixed costs for gas supply) of EUR 0,2765 per m³. Energiekamer assesses the fairness of these tariffs.

Taxes

Various taxes are levied on the supply of energy. On December 31st 2009, the energy tax amounted to EUR 0,1580 per m³ of gas supplied. A Value added tax (VAT) of 19% is charged on the entire net amount, including energy tax. In addition, a tax rebate of EUR 318,62, excluding VAT, is applied to the entire energy bill (see also the Electricity retail market section).

4.2.3. Measures to avoid abuses of dominance

The measures for gas are mostly identical to those in the Electricity retail market. For a description of these measures, please see chapter three.

Energiekamer yearly monitors the competition and barriers to competition in the wholesale markets for gas and electricity. Part of the monitoring project is establishing the level of concentration for the different parts of the gas market (see also 4.2.1). This exercise is however meant to monitor the concentration over the years, not to establish market dominance.

¹¹ The periodic connection fee for Gas is not regulated. NMa has no direct influence on this tariff.

¹² Tariffs as of July 1st 2009

5. Security of Supply

5.1. Electricity

Demand and Generation

In 2008, the total consumption of electricity (excluding losses) was approximately 112,9 TWh, which means a large decrease of 7,0 TWh compared to 2007. Domestic generation increased with 2,5 TWh to 103,6 TWh and the gross import decreased with 11,1 TWh to 4.8 TWh. At this moment, the total installed generation capacity in the Netherlands is approximately 24 GW. Renewable production capacity (mainly wind) accounts for 2,3 GW of this number.

There is a large increase of planned new generation capacity between 2010 and 2017. In total, 18,3 GW new large scale thermal generation capacity has been reported for the period until 2017. The question remains which amount of new generation capacity will actually come into operation. This has become even more uncertain due to the economic crisis.

Framework for the construction of infrastructure

Generation

Energiekamer does not have a direct role in investments and the granting of licences for new generation facilities. There are no implicit or explicit mechanisms to promote the construction of new production capacity. The TSO does contract control power (300 MW for 2007 and 300 MW for 2008) and emergency power (300 MW) for balancing. This is therefore a source of revenues in addition to the normal electricity market for a small part of the production capacity. The TSO reports to the Minister of Economic Affairs with regard to the development of security of supply¹³. If necessary, the Minister may decide to invoke an additional capacity mechanism, the so-called safety net. This safety net means that the TSO will contract additional power for a number of years to create an incentive for investment. In 2009, it proved unnecessary to invoke this safety net.

Network

The framework for the construction of transmission infrastructure is as follows: Energiekamer regulates the tariffs of network operators, both TSO and DSO's. In so far as this relates to DSO's, Energiekamer monitors the output of network quality, the duration of interruptions per year per connection. If network quality is good, tariffs may increase. If the quality of the network is low, the tariffs will be reduced. The network operators are required to maintain the networks and finance normal expansion of the transmission networks from these tariff revenues. Energiekamer does not play a role in this. The network operators are free to decide on the construction of infrastructure. If a special expansion of the transmission networks is planned, a special tariff increase can be requested. This application must be submitted to and assessed by Energiekamer.

¹³ Monitoringsrapportage Leveringszekerheid Elektriciteit en Gas.

On the other hand, the TSO must finance replacement investments from turnover generated from tariffs (turnover regulation). A tariff increase or use of the proceeds of the cross border capacity auctions may be requested for investments within the constraints of European and national legislation.

The planning criteria for the design of the TSO's 380 kV and 220 kV grids, including the connections with the downstream grids, are set out in the Grid Codes that have to be approved by Energiekamer. The TSO assesses how these criteria can be met in various growth scenarios. The TSO publishes the results in a Quality and Capacity Plan. This plan has to meet the Ministerial Regulations in Relation to Quality Aspects of Electricity Grid and Gas Network Management and must be assessed by Energiekamer. The above-mentioned planning process also applies to the planning of the grids of the DSO's.

Infrastructure projects (network)

The most important infrastructure projects are the following, two of these are international submarine cable connections:

Since 2002, construction has been in progress to strengthen and expand the 380 kV grid in the west of the Netherlands (the so-called "Randstad 380 kV project") through the Maasvlakte - Bleiswijk and Diemen–Zaandam–Beverwijk sections of the grid. This project is of specific importance for increased consumption in the region as well as the connection of the large amount of planned new generation facilities as discussed above. Next to the expansion in the west, for the same reasons the TSO is planning an expansion of the 380 kV grid in the north of the Netherlands (the North-West 380 kV project). The project is now in the preparation phase and the construction is planned to be completed in 2016. The new grid with a length of 220 kilometres will connect the Eemshaven in the north with Diemen in the west.

A regulated submarine cable connection of 700 MW between the Netherlands and Norway (NorNed) by the TSO's of these two countries was put into operation in May 2008.

On June 27th 2007, BritNed Development Ltd received an exemption by the Dutch Minister of Economic Affairs for a merchant submarine cable connection between the Netherlands and the United Kingdom. BritNed is a joint venture of NLink International B.V. (hereinafter "NLink"), a fully-owned subsidiary of TenneT Holding B.V. and National Grid International Ltd, a fully-owned subsidiary of the British National Grid plc. BritNed expects the interconnection to come into operation in 2011. The average capacity of the interconnection will be 1000 MW. BritNed intends to make the capacity of the cable available to users through day-ahead implicit auctioning and yearly and monthly explicit auctions of capacity rights. In 2009, BritNed started the consultation and subsequent approval procedure of their access rules by Energiekamer.

Furthermore, TenneT is in the preparatory phase for two new interconnectors: one together with RWE Transportnetz Stroh between the Netherlands and Germany and one together with Energinet.dk between the Netherlands and Denmark. Both cables are intended to be regulated interconnectors. For more information on infrastructure projects, we refer to TenneT's Quality and Capacity Plan 2009-2015.

5.2. Gas

In this paragraph, a qualitative overview is provided of the present situation regarding the security of supply of gas in the Netherlands. For a more detailed and quantitative explanation, we refer to the Security of Supply report, to the Quality and Capacity Document and to the yearly Transport Insight report all published by Gas Transport Services.¹⁴

Demand

The current level of consumption is 42,5 bcm. According to macro economic projections domestic gas demand is likely to modestly rise in the coming decade. This is mainly caused by industry demand and not by households, whose demand will decline as a result of better isolation and increasing energy efficiency. Overall, total demand is expected to increase with 15% by 2030.

Supply, sources and diversification

The current level of supply is 77 bcm. A central characteristic of the whole of the North-West European gas market is the strong decline of domestic production. The Netherlands is not an exception in that respect and is experiencing a decline in domestic production. Projections show that the yearly increase in imports in the Netherlands in 2020 will be between 20 and 30 million cubic meters.

It is the policy of the Dutch government to ensure the security of the gas supply in the future by diversifying supply (LNG, countries of origin). Moreover, the Dutch small fields policy ensures an efficient depletion of domestic resources by allowing production from small fields to take precedence over production from the Groningen field.

¹⁴ www.gastransportservices.nl

Figure 13: Gas Balance Gas Transport Services-network in 2009 (Source: Security of Supply Report, Gas Transport Services, 2010)

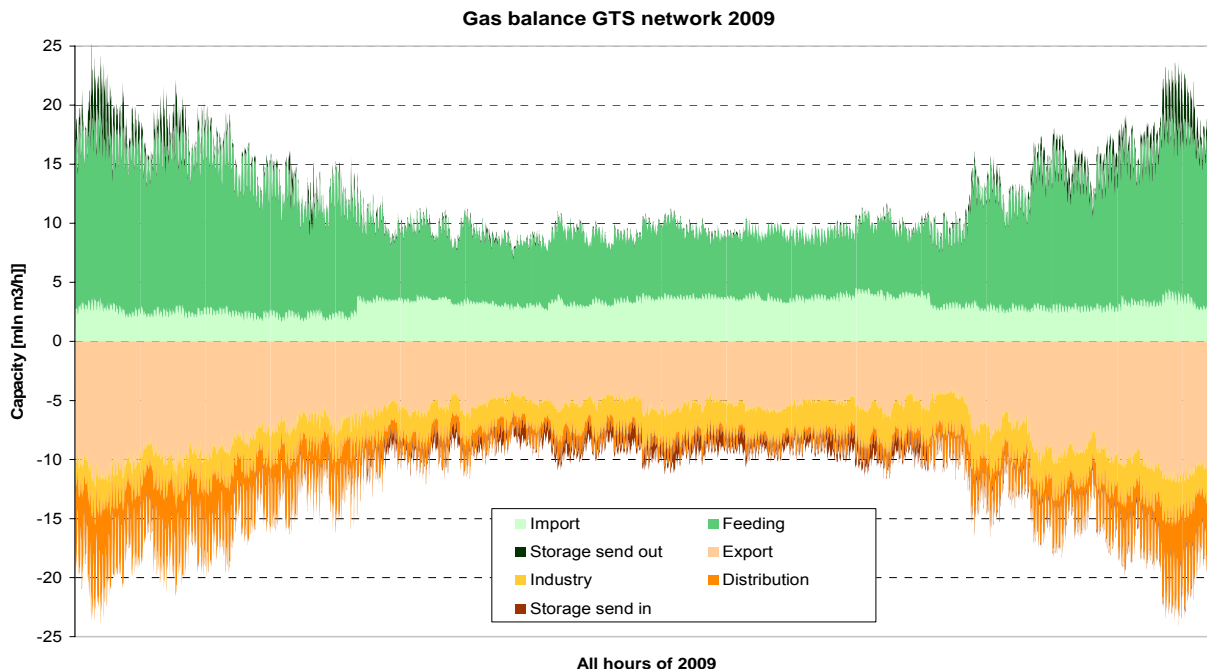
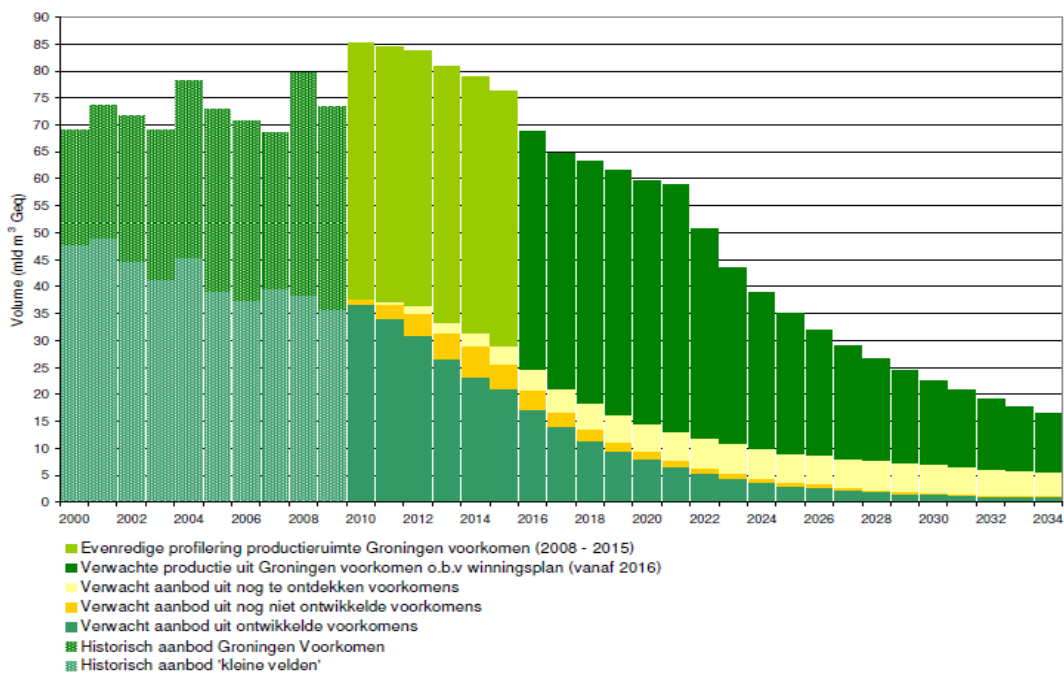


Figure 14: Realised production in the Netherlands from 2000 -2009 and production prognosis from 2010 – 2034 (Source: Ministry of Economic Affairs, Yearly Report on Oil and Gas)



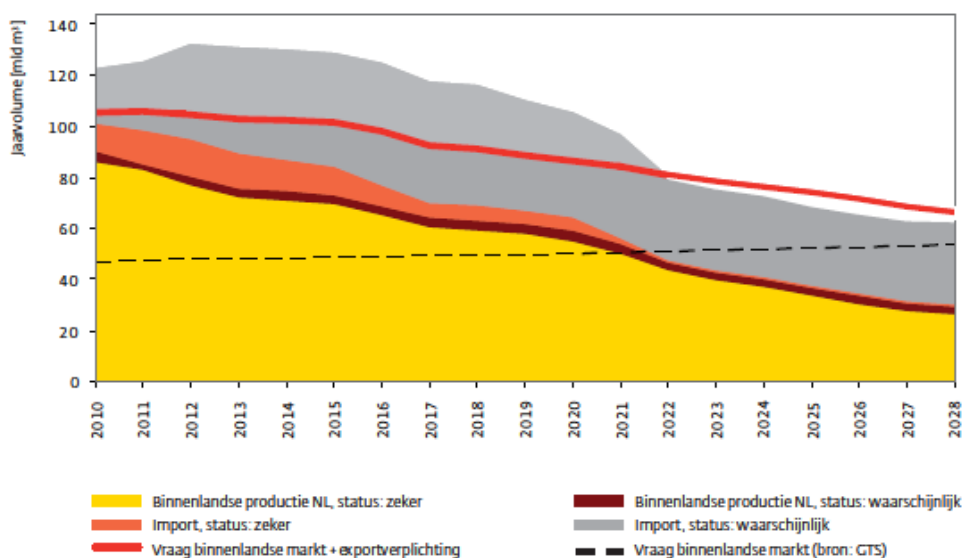
Translation:
 - proportionally profile of production room Groningen (2008 – 2015)

- Expected production from Groningen based on extraction plan
- Expected production from sources to be discovered
- Expected production from sources to be developed
- Expected production from developed sources
- Historic production Groningen
- Historic production 'small fields'

Supply/Demand Balance

Analysis show that gas demand and the export obligations for The Netherlands in 2010 are for 92% covered by a guaranteed offer (contracted domestic supply and contracted import), for 2015 this figure is 79% and for 2020 70%. It is expected that until 2022 the guaranteed and expected offer will match the projected demand.

Figure 15: Expected balance between Dutch production and import, and between Dutch market and export



Translocation

- Yellow: Domestic production; guaranteed
- Orange: Guaranteed imports
- Red: Domestic demand + export obligations
- Purple: Domestic production; expected
- Grey: Import; expected
- Black: Domestic demand

Storage

Flexibility in the Netherlands is largely supplied by the Groningen field. In the future more investments in other sources of flexibility will be needed and storage capacity is one of those. In the near future several new activities in storage for peak supply (salt caverns) are planned, also just across the Dutch-German border. Only one project for seasonal storage is far advanced.

Infrastructure and investments

It is necessary to have the right infrastructure to accommodate future gas flows and the demand increases where they occur. The change in the demand and supply situation as explained above causes the need for an increase in import capacity on the borders. As a result of an Open Season held by Gas Transport Services (in 2007) a large investment in infrastructure has been executed by Gas Transport Services, which is likely to become available for network users by October 2010. A new Open Season 2012, which was coordinated with German and Belgian TSO's, have led to a new and substantial investment programme. Finally, investments are planned to accommodate the increase in transit, in LNG supply and in new storage facilities (both on the border and at Zuidwending and Bergermeer).

Currently, investments are not ex ante approved by the regulator. In the near future a new regime will be introduced in which the Ministry of Economic Affairs decides on the necessity of an investment and the regulator ex post decides on its efficiency.

Measures taken for peak load or the default of one or more suppliers

Directive 2004/67/EC obliges Member States to protect the supply of gas to domestic consumers, for instance in the event of extremely cold weather conditions. In the Netherlands, the Decision in Relation to Security of Supply Pursuant to the Gas Act was drawn up for this purpose.

To prevent situations that leave small consumers without heating during an extremely cold day, due to a shortage of production and transmission capacity, this decision stipulates that the TSO is responsible for reserving volume and capacity for the additional demand from small consumers if the effective temperature during the day falls below -9°C . The volume and capacity is limited to the hours in which the hourly consumption by small consumers exceeds the maximum hourly consumption of a " -9°C day". The licence holder obtains this volume and capacity on an obligatory basis through the TSO. Together with the freely contactable basic supply for -9°C and warmer, the licence holder can therefore fully supply small consumers up to and including -17°C . The TSO is required to charge tariffs which are in line with the European market for the supply of gas during peak demand. This ensures that the TSO as the sole supplier of gas to meet peak demand will not be abused. Also, the TSO is obliged to obtain the necessary supplies as cost efficiently as possible.

6. Public Service Issues

6.1 Liberalisation of the energy market for ‘small consumers’

Since July 1st 2004, the energy market for residential customers and small businesses (‘small consumers’) has been fully liberalised. In addition to the phased liberalisation of large consumers at an earlier stage, as of July 1st 2004 small consumers have also been able to choose their own supplier of gas and or electricity. From this date the supply tariffs are no longer regulated, although Energiekamer assesses the fairness of supply tariffs. The liberalisation of the small consumer market requires extra awareness of the interests of the small consumer. Legislation and regulations have been amended for this. For instance, Addendum A of Directive 2003/54/EC on regulations in relation to the protection of consumers has been implemented in Dutch energy regulation. The role of Energiekamer is to monitor (and ultimately enforce) compliance with the rules for the protection of small consumers and to ensure that the operation of market forces reaches an adequate level. The protection of small consumers is therefore one of Energiekamer’s core tasks.

This protection has been implemented in various ways. An important theme is promoting a transparent market. Energiekamer therefore informs small consumers of the current and actual development of the small consumer market by publishing indicators regarding price trends and the exercise of freedom of choice. For instance, price comparison websites are monitored with regard to their independence, correctness and reliability. In addition to this, small consumers are given insight into the number of complaints, which Energiekamer receives about the various energy companies. Once every year, Energiekamer also investigates the way in which energy suppliers handle complaints. In addition to this, the administrative processes (including the invoicing problems) of various energy companies have also been the subject of investigation. Energiekamer publishes an overview of the (administrative) performance of suppliers on a dedicated website, called Consuwijzer.

6.2. Supply licence

A supplier for small consumers is obliged to have a supply licence. These licenses are issued by Energiekamer. When a supplier applies for a license, Energiekamer assesses whether the supplier has the necessary organisational, financial and technical qualities to carry out its task properly. Also it has to prove that, within reason, it is able to comply with the obligations applicable to suppliers under the Gas Act and the Electricity Act. In addition to this, Energiekamer assesses whether a supplier uses clear offers and terms of agreements. Furthermore, Energiekamer assesses whether the supplier has a transparent and fair payment scheme and a transparent and fair scheme for cancelling and dissolving agreements. A supplier also has to show that it is able to process complaints and disputes adequately. In this regard, most energy companies make use of an independent arbitration board which adjudicates disputes between small consumers and energy companies.

Further conditions may be included in specific supply licences, which ensure further protection of small consumers, such as rules relating to telephone canvassing and the supplier's obligation to notify small consumers of changes in supply tariffs.

In addition to this and in cooperation with the industry, Energiekamer has drawn up general rules with which suppliers have to comply. For instance, legislation offers the possibility of limiting the cancellation fee, which a supplier may charge if a small consumer cancels his contract prematurely. By promulgating a policy rule, Energiekamer has made use of this possibility. Energiekamer has also drawn up a policy rule that guarantees the timely dispatch of (final) settlements and a policy rule that specifies some basic requirements for information given to consumers by energy suppliers. In addition, Energiekamer and the sector have drawn up guidelines which should result in clear energy bills.

6.3. Tariff surveillance

Although the supply tariffs for small consumers are not regulated by Energiekamer, the various supply tariffs charged to small consumers are assessed by Energiekamer with regard to their fairness. If Energiekamer deems certain supply tariffs unfair, a maximum tariff can be set by means of a public decision. This protects small consumers from excessive tariffs. Each year Energiekamer requires several suppliers to give an explanation about the level of their supply tariffs. The suppliers in question will have to explain the level of the tariffs set. A possible explanation may be that the superior quality of the product offered justifies a higher price. If the explanation is not adequate, the supplier must adjust the tariffs. Every year, some supplier(s) need(s) to adjust their tariffs in order to be considered fair. To this day Energiekamer hasn't needed to determine a maximum tariff for a supplier by means of a public decision.

6.4. Policy Rule on information requirements for energy suppliers

In 2009, the original 2007 Policy Rule on information requirements has been revised. The Policy has been changed in such a way that it is applicable to all communication channels. The 2007 Policy Rule only applied to the websites of the energy suppliers. The aim of this Policy Rule is to provide the consumers with correct, transparent and complete information about the tariffs and conditions that are connected to a contract. The Policy Rule specifies what is meant by correct, complete and transparent information on tariffs and conditions. The Policy Rule differentiates between information that is actively requested for by a consumer (through a supplier's website for example) and information that is given to the consumer without request (for example: acquisition call by telephone). This is because information provided on a website can be more extensive than information that is given during a phone call (the risk of information overload is significant during a phone conversation). Therefore, the most essential information necessary to make an evaluation of the offer must be provided during the call and all the rest should be provided in a confirmation letter. Energiekamer actively uses this new Policy Rule to enforce these information requirements.

6.5. Electricity Disclosure

Electricity disclosure also relates to creating a greater measure of transparency. From 2005, energy suppliers are obliged to annually provide consumers with information on the source used to generate the electricity. The consumer can use this information when making a decision about a switch from one energy supplier to another.

6.6. Customer acquisition and retention - Code of Conduct

Energiekamer still receives questions and complaints about the way (potential) customers are approached and acquired, although the number of complaints has decreased compared to last year. This relates mainly to complaints about telephone canvassing and supply contracts entered into by door-to-door sales. In consultation with Energiekamer, the energy sector has drawn up a code of conduct. This code of conduct has been signed by almost all energy suppliers that are active on the market. The parties which have not signed the code will be monitored (more) closely. The code of conduct functions also as a 'quality stamp' of proper acquisition practices. If Energiekamer receives reports that a company has infringed the code of conduct, it will intensify its supervision and conduct an investigation.

6.7. Disconnection policy

Following an increase in questions and complaints from small consumers about disconnections in 2006, Energiekamer has analysed the disconnection and debt collection policies of network operators and suppliers. A Ministerial Decree is now in place for the winter period (October through April). The decree prevents network operators and suppliers from disconnecting a consumer if the consumer is in the process of debt restructuring with a recognised body. Only if a consumer refuses to enter debt restructuring or if the consumer is turned down by the restructuring authority, then the network company/supplier can disconnect the consumer.

6.8. Empowering the consumer - Consuwijzer

Together with other enforcement authorities, such as the Consumer Authority and the Authority for Post and Telecommunications, Energiekamer has initiated Consuwijzer. Consuwijzer is the government information desk that provides practical advice to consumers regarding their rights as a consumer. In 2009, consumers consulted the website of ConsuWijzer, over two million times; almost double the number of hits in 2008. What is more, 100,000 consumers received individual advice with regard to their rights. Of these contacts, about 25% deals with energy related issues.

The type and amount of complaints and inquiries reported through Consuwijzer are an important indicator for Energiekamer. On the basis of these complaints and inquiries Energiekamer can decide to start an investigation into the (mal)functioning of a certain energy company or the (mal)functioning of the energy market with regards to a certain topic. In 2009, most complaints and inquiries were related to sales activities (such as telephone sales and canvassing. Also billing related issues) such as wrong metering data and unclear billing, were important sources for complaints and inquiries. As a result Energiekamer has, amongst others, drawn up a Code of conduct on customer acquisition and produced a Guideline on billing.