

# **National Report 2007**

## **AUSTRIA**

***Major developments in the last year***

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## 1 Major developments in the last year

### 1.1 Relative size of the Austrian electricity and gas sectors

Between 2005 and 2006 Austrian gross domestic energy consumption rose by a mere 0.6% to 1,442,249 terajoules (TJ). Natural gas consumption dropped by 8.8%, mainly for weather related reasons. In 2006 natural gas accounted for 21.9% of total energy consumption in Austria – slightly lower than renewables (22.4%) but a higher share than coal (11.8%). Oil remained the largest energy source<sup>1</sup>, with a 42.2% share, while electricity made up 16.67% of final energy consumption.

#### **Electricity industry – key indicators**

Table 1 shows the electricity balance in 2007 and changes from 2006. Foreign trade in electricity increased slightly, while domestic electricity consumption declined marginally.

**Table 1: Electricity balance in 2007**

	2007 (GWh)	Change vs. 2006
Gross electricity generation	63,741	-0.28%
Physical imports	22,130	+ 4.10%
Physical exports	15,511	+ 7.66%
Consumption by pumped storage power plants (PSP)	2,985	-10.56%
Domestic electricity consumption	67,375	-0.08%

#### **Gas industry – key indicators**

Table 2 gives an overview of the gas industry in 2007 and changes compared to 2006. Movements in and out of storage increased markedly as compared to 2006.

**Table 2: The Austrian gas industry in 2007**

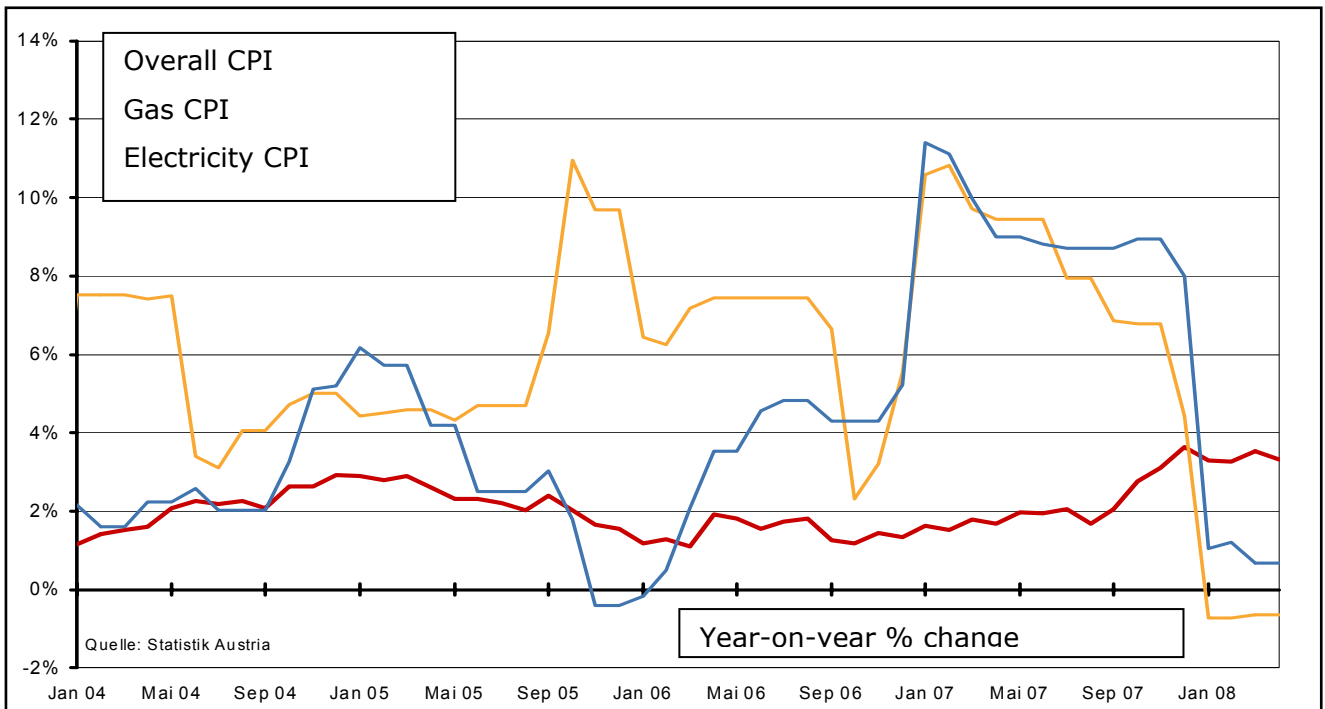
	2007 (m cu m)	2007 (GWh)	Change vs. 2006
Imports	37.13	412.5	+ 0.9%
Production	1.85	20.53	+ 1.6%
Withdrawals from storage	2.38	26.43	+ 34.1%
Exports	30.24	335.9	+ 4.2%
Injection into storage	2.68	29.7	+ 9.5%
Own use, losses, network losses; statistical difference	0.5	6	+ 20.1%
Supply to end-users	7.94	88.21	-6.1%

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<sup>1</sup> Source: Statistics Austria, [www.statistik.at](http://www.statistik.at).

### Price trends in 2007

While the overall inflation rate was 3.6% in December 2007, electricity prices were up by 8% and gas prices by 4.4%. Electricity and gas prices thus continued to contribute significantly to headline inflation. The trends in Figure 1 show that in 2007 the year-on-year rises in electricity and gas prices were well ahead of the rate of increase of the overall consumer price index (CPI), but fell below it in December 2007.



**Figure 1: Year-on-year changes in the overall consumer price index (CPI), the electricity CPI and the gas CPI**

Source: Statistics Austria

## **1.2 Organisational structure of the regulatory agency**

Regulation of the Austrian electricity and gas markets is chiefly the responsibility of two separate authorities which cooperate closely. However, some key regulatory activities, such as monitoring of unbundling in the electricity sector, have been transferred to other bodies, which makes coherent market regulation harder to achieve.

### **1.2.1 The Energy Control Commission**

The Energie-Control Kommission (E-Control Commission) is an independent authority which is not bound by directions. It consists of three members, one of whom must be a judge. The other members must have a relevant technical, legal or economics background.

The principal duties of the Commission are:

- Approving the general terms and conditions of system operators for access to transmission and distribution systems;
- Determining the system charges;
- Adjudicating in cases of system access denial;
- Prohibiting the imposition on final consumers of unethical terms and conditions;
- Ruling on certain disputes between market participants;
- Arbitrating in disputes concerning the settlement of balancing charges;
- Hearing appeals against decisions by E-Control.

### **1.2.2 Energie-Control GmbH**

Energie-Control GmbH (E-Control) is an executive non-departmental public body which uses the resources of the state to perform its statutory duties. E-Control's responsibilities extend to all the duties assigned to it by law as a regulator, unless the E-Control Commission is expressly charged with them.

E-Control's monitoring and oversight function includes, in particular, acting as a competition watchdog, preparing and publishing energy price comparisons, and — in the gas sector — monitoring unbundling. If E-Control detects market abuse in the course of its oversight duties, it must take corrective action without delay.

E-Control is also responsible for drawing up proposals for market rules, and for technical and organisational rules (TOR). Other duties include processing the equalisation payments necessitated by the consolidation of networks with different owners, statistical work, and balancing group oversight. Finally, E-Control is also the secretariat of the E-control Commission.

The reform of Austrian competition law which came into effect on 1 July 2002 significantly strengthened the regulators' legal position. E-Control acquired the right to make applications to the Cartel Court under a number of sections of the *Kartellgesetz* (Cartel Act), but not relating to merger control. We are also entitled to give evidence in legal proceedings relating to the energy sector. Apart from exercising these rights, which derive directly from the Cartel Act, we also advise and assist the competition authorities at their request. To this end, there are legislative arrangements for close cooperation between the competition authorities and the regulator.

### **1.2.3 Enforceability of decisions and available sanctions**

In accordance with section 10(2) E-RBG (Energy Regulatory Authorities Act) and as part of its competition oversight and monitoring function, E-Control is empowered to initiate proceedings with a view to restoring compliance with the law. If a company fails to comply when called upon to do so, an enforcement notice must be issued.

Neither the E-Control Commission nor E-Control can enforce their decisions themselves. In principle, all decisions by the regulatory authorities are contestable. Appeals to the E-Control Commission against E-Control rulings automatically have a suspensive effect unless this is excluded by the first-instance decision. Decisions by the E-Control Commission can be challenged in the Constitutional Court and/or Administrative Court of Appeal. In such cases an appeal only has a suspensive effect after a preliminary decision of the court.

The regulator's decisions are enforced by way of the courts of execution. Companies normally accept rulings that have been upheld by the appeal courts, and abide by them.

E-Control's powers in respect of the monitoring of unbundling in the electricity sector are a cause of considerable problems. Although we are responsible for competition oversight, and in particular enforcing non-discriminatory treatment of all market participants, the EIWOG (Electricity Industry and Organisation Act) charges the provincial authorities — which normally also the owners of electricity system operators — with monitoring unbundling and the companies' compliance programmes. It would be more productive to concentrate all of these powers in the hands of E-Control, which specialises in such activities.

Non-compliance with the provisions of energy legislation is normally an administrative offence. However, the enforceability of these provisions is currently weak. Normally, any administrative penalties must be imposed by the district administrations, which are not equipped to deal with — often highly complex — energy legislation. Moreover, in many cases the fines are low (up to a maximum of €50,000), and bear no relation to the financial benefits to be gained from breaking the law. Consequently such penalties have no deterrent effect.

### **1.2.4 Independence of the regulatory authorities**

Both the E-Control Commission and E-Control enjoy a wide measure of independence. The members of the E-Control Commission are appointed for five years, and are not bound by directions in the exercise of their duties. This means that neither the responsible minister nor other state bodies may intervene in the activities of the regulatory authority, which is only bound by its statutory duties. It goes without saying that the regulator is also independent from the regulated companies. Persons with close legal or *de facto* relationships with parties affected by any of the regulator's activities are barred from membership of the E-Control Commission.

The far-reaching independence enjoyed by E-Control derives from the fact that the responsible minister can only issue written and argued directions to the chief executive. No such direction has been given since E-Control was established. Moreover, directions are subject to a duty of publication. Finally, E-Control is a non-departmental public body, and has a separate budget, giving it a high degree of flexibility. E-Control has a statutory duty to report on its activities on an annual basis. There are special arrangements for renewable electricity, requiring E-Control to report on the attainment of statutory targets for renewables.

### **1.2.5 Overlapping jurisdictions with other governmental agencies/authorities**

In the past, regulated companies have criticised the alleged overlapping responsibilities of the regulatory authorities and other authorities, e.g. in the field of competition law. However appeal court verdicts have since upheld the constitutionality of the current arrangements. Never-

theless, we believe that it would be helpful to give the regulatory authorities a formal role in merger proceedings (e.g. a right to move for in-depth investigations).

## 1.3 Main developments in the electricity and gas markets

### 1.3.1 The electricity market

#### ***Partial integration of the wholesale electricity market, but slow progress in regional integration with neighbouring Central and East European countries***

Market integration is one of our key strategic objectives. The high level of integration with the German pricing area is important in this respect but also restricts liquidity on the Energy Exchange Austria (EXAA). This is currently having a negative impact, as there is little difference between EXAA and European Energy Exchange (EEX) prices. If network congestion arose, increased trading volumes on the EXAA would be likely. However, Austria would then be confronted with a far higher degree of market concentration during congestion periods. Ideas are therefore needed for effective oversight of trading on the EXAA and, if necessary, Austrian price formation on the EEX.

Due to its 15,500 MW of transmission capacity into neighbouring countries, Austria is predestined for strong integration of the wholesale market. In fact, Austrian wholesale prices are in line with those in Germany, and as a result of market integration, Austria "imports" a close linkage between electricity prices, and coal and gas quotations (and consequently also CO<sub>2</sub> emission allowance electricity prices); it also enjoys very low off-peak prices.

Consequently, the fall in CO<sub>2</sub> allowance price also drove down spot prices on the Austrian EXAA exchange to €39.10/MWh in 2007. However forward prices for 2007 on the German EEX were €8.30 higher on average. Differences between the EEX and the EXAA can be traced back to variations in trading times (the Austrian exchange closes two hours earlier than its German counterpart). This ensures that Austrian consumers can purchase energy at comparable prices to their neighbours, and medium-sized enterprises can buy at the same prices as their competitors.

Given Hirschmann-Herfindhal Index (HHI) levels that have consistently held above 2000, some producers would probably exercise strong market power on the purely Austrian wholesale market that would exist in the absence of market integration. An additional knock-on effect of market integration is that more exchanges are currently offering electricity trading for deliveries to eastern Austria. Spot and futures contracts are now being traded on the German EEX, while the Austrian EXAA only auctions spot contracts. Due to the lack of congestion on the German-Austrian border, trading for delivery in Austria is increasingly concentrated on the German exchange, which operates a separate Austrian trading zone. Nevertheless, EXAA trading volumes have risen by some 38%, which indicates the importance of the difference in trading hours.

While the situation on the German border is good, there is significant network congestion at all of Austria's other borders. The use of explicit auctions to manage this congestion causes considerable inefficiencies in the channelling of electricity flows. Thanks to the Electricity Regional Initiative Central-East Region, efficient use of transportation capacity is likely to be achieved in the medium term. Efficient and truly market based capacity allocation continues to be hampered by non-existent or illiquid wholesale markets and the resultant lack of price information in most of Austria's neighbours in Central and Eastern Europe. Further integration with these countries could take place either directly or indirectly via Germany, but this would require the expansion or more efficient use of capacity between the Czech Republic, Poland and Germany.

Despite the high capacity of the interconnectors, the level of integration remains inadequate. This is connected with the following factors:

- Wide price differentials between Europe's northern and southern wholesale markets,

which permit large arbitrage trades requiring correspondingly large amounts of transport capacity;

- Calculation of capacity in the Central-East region is yet to be standardised, so many lines are still not being used optimally.
- Many neighbouring countries do not have liquid wholesale markets, which hinders efficient price formation (and thus price signals for investment) and capacity allocation.

The current Regional Energy Markets are only making slow progress (if any) in rectifying these shortcomings.

### ***Lack of effective limits to suppliers' market power***

Local players continue to exercise strong market power in the mass market. This power would only be diminished if customers became considerably more willing to switch, and action is therefore needed to give competitors a chance of acquiring customers. This should include steps to increase market transparency, e.g. in connection with billing. The progressive dismantling of barriers to market entry is also required, and E-Control plans to focus still more closely on this issue in future.

Austria opened its **electricity market** for all end users in 2001. The fact that but the necessary modicum of harmonisation of the key business processes had been achieved meant that there were no major administrative problems in handling supplier transfers.

Nevertheless, competition for final consumers remains very weak, as shown by a switching rate of just 1.5% among domestic consumers. A total of just under 6% of all households have changed suppliers to date. In contrast 9.5% of industrial customers switched in 2007, bringing the total to 53% since 2001.

Increased consumer price sensitivity resulted in the highest ever churn rate in 2007. However, in our view switching rates are still too low to permit sustainable competition. The industry investigation mounted in 2005/2006 revealed that all of the local incumbents have dominant positions in the small consumer segment, meaning that it is profitable for them to increase their prices.

The emergence of active competition for Austrian domestic customers depends on turning sufficiently large numbers of end users into active consumers who are genuinely willing to making savings by switching. With little effort being made by the incumbents' competitors to reach consumers with information, potential annual savings of €70-100 have failed to motivate consumers to switch.

Inadequate unbundling is a major cause of the slow growth of competition. The unbundling of system operators and local retailers is scarcely noticeable for consumers. This means that the system operators' goodwill is transferred to the suppliers free of charge. System operators' communications (advertising, bills, etc.) therefore have an important part to play in stimulating competition.

In 2007 increases in domestic prices were modest compared to movements in exchange quoted prices. Higher wholesale prices for 2006 and 2007 were factored in at the beginning of the year, and since then domestic prices have remained relatively stable. In the second half of 2007 Austria ranked ninth among the EU-15 in terms of household electricity prices.

In the case of industrial consumers prices track futures quotations, so competition is on additional services such as portfolio management. Price savings are more likely to be achieved by purchasing at an opportune time than by changing suppliers. Nevertheless, a comparatively large number of industrial consumers switched in 2007 — probably because they were watching prices more closely than before.



All electricity and gas suppliers amended their general delivery terms in 2007 to meet the new minimum legal requirements, and the duty to report such terms to the E-Control Commission has led to considerable improvements for end users.

As a result of the investigation of the Austrian electricity industry by the Federal Competition Authority and E-Control in 2005, a raft of measures designed to strengthen competition, and independent monitoring of compliance were agreed in June 2006. The package includes a number of voluntary commitments by the electricity companies, intended both to bring direct improvements for consumers, and to lead to closer and less expensive cooperation between suppliers and system operators.

Agreement was reached on stimulating competition by: requiring system operators to accord non-discriminatory treatment to all suppliers with regard to the electronic transmission of system charges billing data; shortening the supplier transfer process from eight to six weeks from start to finish; putting an end to questionable practices with regard to adjustments to all-inclusive prices; drawing up a code of conduct for suppliers; and distributing a factsheet to energy consumers throughout the country. All these actions were to be implemented in the course of 2007. Contrary to the proposals of the Federal Competition Authority and E-Control, the VEÖ (Association of Austrian Electricity Companies) was charged with monitoring the status of implementation and compliance with the competition stimulation package, and submitting a report thereon, compiled with the aid of an auditor. This report and information gained from E-Control's general market oversight activities indicate that some of the measures contained in the package have been effective. However, while there has been progress on transparent billing, further efforts will certainly be required in this area<sup>2</sup>, and we plan to focus still more closely on these issues in future.

The inadequate regulatory framework should also be mentioned in this regard. We are unable to enforce most of the measures required by EU competition policy because the Austrian transposing legislation does not provide for effective sanctions.

### **1.3.2 Gas market**

#### ***Description of the gas wholesale market***

The Austrian gas wholesale market continues to be dependent on a single supplier. Diversification of the supply structure would require access to new procurement channels (Nabucco) or LNG imports.

In its role as an embryonic trading platform, the CEGH has so far failed to create greater price transparency. It remains to be seen whether the involvement of the largest supplier in long-term gas wholesaling at the Central European Gas Hub (CEGH) will accelerate or hold back the evolution of this market. The development of effective market and exchange oversight, capable of giving participants confidence in the CEGH irrespective of its ownership, is thus a key regulatory challenge.

In 2007 Austrian net gas imports were 6.9 billion cubic metres (bn cu m), and 1.8bn cu m of domestically produced gas were also offered on the wholesale market. Imports and domestic gas supplies are procured under **long-term contracts**. New contracts signed with Gazexport

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<sup>2</sup> Since it was predictable that some of the regulator's proposals would be rejected during the discussions on the competition stimulation package some important points were included in the Act (e.g. statement of the energy price in cent/kWh, notification of price increases in writing, and right to object).

and GWH in 2006 have durations until 2027.

The largest supplier on the wholesale market is still Gazexport (partly through its subsidiary GWH), meaning that the import prices under these contracts give a strong indication of overall wholesale price trends. These prices are included in the calculation of the average import price, which is published by Statistics Austria on a monthly basis.

2007 was a year of rising wholesale prices, driven by climbing oil prices due to the linkage under the long-term import contracts. Wholesale prices fell by about 15% between January and May 2007, but then firmed by 33% over the rest of the year, to post a 15% increase for the year as a whole. This upward trend has so far strengthened in 2008.

There is still no price information on **short-term gas trading** on the CEGH. The introduction of a price index is planned for 2008, in order to enable the CEGH to fulfil an important function of a market — that of providing a price benchmark. To date only the EconGas auctions under the gas release programme have permitted a degree of price transparency. When the auction was held in 2007 the starting price is believed to have been €21.75/MWh and the final price well above €23/MWh.<sup>3</sup>

In all, 17.75bn cu m of gas were traded on the CEGH market in 2007, while physical delivery was 5.8bn cu m<sup>4</sup> — equal to about 15% of the total volume imported via Baumgarten in 2007. The churn rate was 2.57 which was on the low side compared with other European gas hubs. Traded volume and physical throughput are higher during the summer months. Turnover declined in 2008, but the numbers of registered and active members continued to grow in 2007 and 2008.

In 2007 and 2008 the operator of the Baumgarten gas hub, Central European Gas Hub took action to promote the development of Baumgarten into a trading hub. The launch of a gas exchange is planned for the start of 2009.

Central European Gas Hub (CEGH) is a subsidiary of OMV Gas & Power GmbH. Gazprom plans to acquire an interest in CEGH in 2008, but has not yet received competition clearance. Since Gazprom is the main supplier of gas to Baumgarten, market participants are unhappy about the investment. In the regulator's opinion it raises questions as to whether Gazprom will gain an information lead by buying into the hub, and what steps need to be taken to maintain transparency and confidence in the market. Because of this the establishment of effective market and exchange oversight will be a key regulatory challenge for us. In Austria the oversight function with regard to physical trading has not been defined in sufficient detail.

### **Market integration: progress and problems**

Particularly with regard to infrastructure (transportation and storage), there continue to be obstacles to the evolution of a regional market in the South-South East (SSE) Region to which Austria belongs. The situation could be improved by introducing a regional coordination point for transportation and storage capacity. Further progress towards the development of short-term trading markets capable of creating price transparency is another important issue. Market integration is still the main focus of our regional activities, and we have high hopes of the rapid implementation of the third energy package which is currently under negotiation.

The South-South East regional initiative is aimed at identifying the main barriers to competi-

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<sup>3</sup> See Energate, 4 July 2007: Econgas auktioniert Gas in Baumgarten (EconGas auctions gas at Baumgarten), [www.energate.de](http://www.energate.de); EconGas auctioned fixed price annual contracts for lots of 10m cu m.

<sup>4</sup> See CEGH, CEGH Monthly Title Tracking Volume, [www.gashub.at](http://www.gashub.at).

tion at regional level, and removing them by intensifying cooperation between the regulators of neighbouring countries. Regional cooperation is focused on improving access to the main transit routes in the region, so as to facilitate short-term gas trading at hubs. The national regulatory authorities have signed a cooperation agreement designed to ensure that their approaches to all cross-border regulatory issues will in future be compatible. The decisions on the regulatory treatment of the Nabucco gas pipeline have already been coordinated. Agreement has also been reached on harmonising network access conditions for cross-border shipments between member countries. An initial achievement that we can point to is the fact that 80% of all transmission system operators have already launched standardised trading platforms for unused transportation capacity.

The continued intransparency of access to transportation networks (lack of information on rates and access rules), inadequate access to storage (shortage of information on available capacity and capacity utilisation), the absence of marked based balancing systems, lack of liquidity at the two hubs (CEGH in Austria and PSV in Italy), and the non-standardisation of IT systems are regarded as obstacles to the emergence of a regional market in the SSE Region. Traders operating across the entire region are obliged to install the systems of over 15 different transmission system operators, resulting in high costs.

Improvements are to be made by introducing a regional coordination point for transportation and storage capacity, standardised information and communication systems, a regional price index, and a regional balancing market to be organised by the EEX or CEGH. Other important measures will be action to eliminate congestion at border interconnection points, and the conclusion of IPAs and OBAs.

### ***Lack of competition on the gas retail market***

Both efforts by suppliers to attract customers away from competitors and switching by end users were barely noticeable in 2007. There was also little sign of price movements. However there is growing interest on the part of foreign gas wholesalers and retailers in joining balancing groups, opening the way for entry to the Austrian market.

The switching rate for gas consumers was 0.6% in 2007, and remains at a very low level. In 2007 switching by domestic consumers was the lowest at 0.5%, while 4.9% of all industrial consumers (metered consumers) changed suppliers.

No new suppliers entered the market in 2007. Neither were any product innovations witnessed on the domestic consumer market. Market concentration remains high, and there are also many cross-holdings between gas companies.

There was a widening gap between the trends in the rates paid by end users whose contracts are not indexed to oil prices — domestic and small consumers — and those charged to industrial consumers. While industrial consumers faced sharp price rises in the second half of 2007, there was little increase in rates for domestic and small users, and in some cases there were actually reductions. Overall, there were only very small movements in the prices of the products supplied to this consumer group.

To operate on the Austrian market, gas wholesalers and retailers must either join a balancing group or set one up themselves. The number of new formations of balancing groups rose in 2007 and 2008. Some of these concern wholesale balancing groups, but some new commercial balancing groups (i.e. those that supply end users) have also been set up. This shows that some new suppliers have taken the first step towards entering the market.

### 1.3.3 Very high security of supply in Austria

Planned infrastructure developments will improve security of supply in Austria. The approval procedures for infrastructure projects need to be streamlined if security of supply is to be maintained.

**In the electricity sector** investments amounting to about €4bn in 6,441 MW of conventional generating capacity were announced for the period up to 2016. Of these two-thirds concern thermal and one-third hydro power generating stations; no major power station closures are anticipated. A further 1,300 MW of wind and biomass capacity is likely to be built. If all of these projects are implemented Austria will have a total of 26,810 MW of generating capacity in place by 2016, compared to a peak demand of about 12,200 MW. We therefore do not expect Austria to encounter any supply shortages over the next decade.

However, as with the transmission networks, the approval procedures for power stations will need to be streamlined and speeded up if security of supply is to be maintained over the longer term. The promoters of many of the projects that have been announced have not yet submitted applications for the necessary approvals. Particularly in the case of large projects like hydro power stations, implementation and timing are thus uncertain.

**In the gas sector**, after a planning phase lasting several years, during which various options were investigated, expansion of the national grid is now assured following the conclusion of multi-lateral contracts. In all, some 400 km of new pipelines will be laid. The three system operators concerned will be investing some €450 million (m) in these infrastructure projects. The expansion schemes will deal with the main bottlenecks in Lower Austria and Styria, and meet the growth in demand for transportation capacity for some time to come. The projects on the southward route, scheduled for completion in September 2011, mean that the Mellach gas-fired power station, which was recently given the go-ahead, is certain of receiving adequate supplies.

### 1.3.4 Progress in gas and electricity infrastructure projects

Planned infrastructure developments will improve security of supply in Austria.

2007 was a particularly important year for upgrading of the Austrian **electricity transmission network**, as a final decision on the Styrian line opened the way for the long overdue strengthening of the inland north-south link. The long drawn-out public hearings showed that it is essential to simplify the administrative procedures leading up to the approval of priority infrastructure. Among other things, a link between the approval procedures and the ten-year investment plans envisaged by the third energy package could bring a significant improvement. However streamlining the internal Austrian approval procedures is also of great importance.

In the **gas sector**, refinement of the network access model and new rules for capacity expansion projects have given system operators greater planning and investment certainty.

The transposition of Directive 2003/55/EC and Regulation (EC) No 1775/2005 into national law by the Natural Gas (Amendment) Act 20065 has improved access to gas transit pipelines by introducing tariff regulation and transparency requirements. The transit companies' general terms and conditions must now be submitted to E-Control.

The exemption notice for the planned Nabucco pipeline has created the regulatory conditions for the investment certainty that this project needs. E-Control regards network development based on the Nabucco pipeline as the key to the diversification of the supply sources of the Austrian and European gas markets.

<sup>5</sup> Energy Security of Supply Act 2006, BGBl (Federal Law Gazette) I 106/2006.

**Electricity market: long overdue infrastructure development approved**

The incentive regulation system for distribution system operators in place since 2006 has stabilised the system charges. Reductions in system operation costs have largely been offset by increases in network losses. The quality of the distribution grid is excellent by comparison with most other European countries (unscheduled supply interruptions [ASIDI] in 2007: 44 minutes/year).

The total length of the transmission network (110-380 kV) is 17,335 km. At present 116 development projects are planned, of which the most important is the north-south link. The first additional north-south power line in Styria is likely to be commissioned in 2009. This should eliminate the need for congestion management measures, which cost €17m in 2007.

Congestion on the interconnectors with the Czech Republic, Hungary, Italy, Slovenia and Switzerland continued to be managed by means of explicit auctions. In Austria the proceeds were used partly for appropriated reserves and partly for tariff reductions. From 2009 onwards the common load flow based calculation of capacity at Austria's borders with the Czech Republic, Hungary and Slovenia should optimise the utilisation of existing infrastructure. Capacity is to be allocated by an auction office in Freising, Germany.

**Improvements in the regulatory regime for inland gas transmission and gas transit****• Refinement of the system access model and new incentives to expand capacity**

During the period under review refinements were made to the system access model for inland gas transmission in order to promote network development by giving system operators and users greater planning certainty.

The changes in the management of capacity at entry points introduced by the Natural Gas (Amendment) Act entered into effect on 1 April 2007. Since then suppliers have been able to apply for capacity for cross-border "other shipments" of natural gas and shipments from an entry point in the Eastern control area to an exit point from it (subsumed under "other shipments"). The related order came into force in October 2007, and at the same time the *Grenzüberschreitende Transport-Verordnung* (Cross-border Transportation Order) was repealed. Previously case-by-case tariff calculation (governed by the Natural Gas Act) was necessary, resulting in uncertainty about costs.

Section 19a(2a) Natural Gas (Amendment) Act creates incentives for investment in transportation infrastructure. The capacity expansion applications introduced by the Act enable system users and operators to enter into reciprocal obligations. This is aimed at greater planning certainty for transmission pipelines and other investments. The possibility of concluding network development agreements between system operators and the control area manager AGGM, and capacity expansion agreements between end users and system operators, and suppliers and AGGM will ensure that long-term plans can be implemented within predictable time frames.

Approval of the projects concerned by the E-Control Commission as part of the long-term plan assures system operators of regulated tariffs adequate to finance their investments, while system operators and end users can rely on the implementation of planned projects. System users that have reported a need for additional capacity must conclude capacity expansion agreements with the system operators in order to back network development projects with contractual commitments.

The decision to develop the "Südschiene" ("southern trunk line") marked a major advance. EVN Netz GmbH is extending its pipeline systems southwards and westwards, and Gasnetz Steiermark GmbH is doing so southwards from the Semmering mountain. A total of about 400 km of new pipelines will be laid. The three system operators concerned will be investing some



€450m in these infrastructure projects. The schemes will eliminate the main bottlenecks in Lower Austria and Styria, and meet the long-term growth in demand for transportation capacity. With the scheduled completion of the development measures on the southward route in September 2011 supplies for the Mellach gas-fired power station will be assured. The decision to go ahead with construction of the plant was taken in June 2008.

The fact that network development is now under way shows that all concerned are aware of their responsibilities, and are working to put sufficient transportation capacity in place for future needs.

- **Conditions for third party access to transit pipelines**

The Natural Gas (Amendment) Act 2006<sup>6</sup> introduced arrangements for the determination of tariffs for cross-border shipments which entered into effect on 1 January 2007. The Act transposes Directive 2003/55/EC and Regulation (EC) No 1775/2005 by requiring transmission companies and holders of transportation rights to provide access to their networks on the basis of charges that conform to the principles of cost reflectiveness and non-discrimination. The methods for calculating the rates require the *ex ante* approval of the regulatory authority, the E-Control Commission. In October 2007 the Commission for the first time approved the calculation methods of OMV Gas GmbH, Baumgarten-Oberkappl GmbH (BOG GmbH) and Trans-Austria Gasleitungs-GmbH (TAG GmbH). The methods should accommodate steady reductions in the rates over coming tariff periods, and capacity expansion.

Approval of the system operators' tariff calculation methods by the regulatory authority resulted in a reduction of 9.2% in the charges of OMV Gas GmbH for cross-border transportation, one of 8.3% in those of BOG GmbH, and one of 4.5% in those of TAG GmbH. Tariff setting methods were also approved for the planned Tauerngasleitung (TGL) pipeline. The system operators undertook to invite system users to disclose their capacity requirements, and to expand their transmission networks sufficiently to meet the latter. The methods also include adequate investment incentives for system operators. For instance, part of the revenue may be retained for network development measures; in the absence of these, the reserve must be reversed after four years and the amount used to reduce rates. An order of the E-Control Commission determining a postalised tariff for cross-border shipments of domestically produced gas and gas from storage, as well as cross-border shipments via the inland transmission system, came into force on 1 October 2007.

Proceedings against OMV Gas GmbH, TAG GmbH and BOG GmbH resulted in increased transparency and full disclosure of all information in accordance with Regulation (EC) No 1775/2005.<sup>7</sup> Since the conclusion of the proceedings the companies have been posting comprehensive information on their websites as required by the Regulation.

As most of the capacity on the transit systems is allocated under long-term transportation contracts, transparent and non-discriminatory capacity trading is extremely important. Following the 2006 amendments to the Natural Gas Act, provisions requiring the trading of unused transportation capacity entered into effect on 1 January 2007<sup>8</sup>. Under these all transportation customers must offer unused capacity committed to them to third parties on a central trading platform operated by OMV Gas GmbH on its website. E-Control has initiated proceedings against some shippers due to non-compliance with these provisions.

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<sup>6</sup> Energy Security of Supply Act 2006, BGBl I 106/2006.

<sup>7</sup> See [www.omv.com](http://www.omv.com), [www.taggmbh.at](http://www.taggmbh.at), [www.bog-gmbh.at](http://www.bog-gmbh.at).

<sup>8</sup> See section 31e(7) Natural Gas (Amendment) Act.

- **Exemptions for new infrastructure**

Since the entry into force of the Natural Gas (Amendment) Act in 2006 the E-Control Commission has been responsible for ruling on applications for section 20a exemptions from certain areas of the regulatory regime (e.g. regulation of third party access to infrastructure and of use of system charges) for major new infrastructure projects. New infrastructure in the meaning of section 6(39) Natural Gas Act comprises cross-border transmission systems and storage facilities. In 2007 applications were submitted to the E-Control Commission for exemption of the Nabucco pipeline and the Haidach gas storage facility.

The E-Control Commission granted **Nabucco Gas Pipeline International GmbH** an exemption for the Austrian section of the pipeline, subject to certain safeguards, under a notice issued on 24 October 2007. This decision, which locks in the regulatory framework for the pipeline for a 25-year period, sets the following conditions:

- A "one-stop shop" for system access from eastern Turkey through to Baumgarten, enabling shippers to carry gas across the five Nabucco countries under single contracts;
- An open-season tender for the capacity in order to ascertain actual capacity needs, and an undertaking to develop sufficient capacity to meet the notified requirements;
- An undertaking to offer at least 10% of the capacity of the pipeline under short-term transportation contracts;
- Arrangements for the reallocation of unused capacity, and the creation of a trading platform for the secondary market;
- Approval of the general terms and conditions of transportation by the regulator;
- Revision of the tariff setting methods approved under the E-Control Commission notice 20 years after commissioning if rates are 10% higher than those of comparable systems; and
- An undertaking from the management of Nabucco Gas Pipeline International GmbH not to be influenced by its owners' interests in its decision making.

Diversification of the gas supply sources open to the European market is crucial to long-term security of supply, as gas production and the remaining reserves will increasingly be concentrated in regions outside the EU over the next few decades. Opening up new gas supply sources in the Caspian, the Middle East and North Africa by developing transportation infrastructure based on the Nabucco pipeline would thus make a major contribution to Europe's long-term security of supply.

In order to harmonise exemptions for the entire Nabucco pipeline, the E-Control decision was made in close consultation with the regulatory authorities concerned in Bulgaria, Hungary, Romania and Turkey. The E-Control Commission forwarded the notice to the European Commission near the end of October 2007. The latter requested changes which were made in April 2008. An application for extension of the exemption has since been received.

The **Haidach gas storage project** involves the use of the depleted Haidach gas field, close to the border between the provinces of Upper Austria and Salzburg, as a pore storage facility. The project is being executed in two stages, each with a working gas volume of 1.2bn cu m, and maximum injection and withdrawal capacities of 500,000 cu m/hour. The first phase entered service in July 2007, and the second phase is due for completion in mid-2011. RAG is the builder-operator of the storage facility. OOO Gazprom Export holds two-thirds of the rights to use the capacity, and Wingas GmbH one-third; both are active as storage companies.

While Wingas is marketing its storage capacity in accordance with the current legal requirements for storage undertakings (sections 39–39d Natural Gas Act), in October 2007 OOO Gazprom Export applied to the E-Control Commission for a section 20a exemption for its share of

the capacity from the provisions of the Act governing storage access (section 39) and storage charges (section 39a). The decision is still pending.

### **1.3.5 Inadequate unbundling in the electricity and gas sectors**

Most Austrian companies have merely gone through the motions of unbundling, to the extent demanded by the vague and undemanding legal requirements. Independent system operators, which alone offer an assurance of impartiality towards all suppliers, thus remained the exception rather than the rule in 2007.

The treatment of commercially sensitive data is still an unresolved issue as regards unbundling compliance. E-Control is in charge of monitoring compliance by gas system operators with the unbundling rules. To date only one gas company has submitted a written data access concept that verifiably documents action to protect sensitive data.

Oversight of unbundling by electricity system operators is the task of the provincial governments — and hence of the owners of the largest distribution system operators. According to the provincial governments there is no evidence of violations of the law by the electricity system operators. However this is a somewhat optimistic assessment, and no detailed investigations of individual companies' practices have been carried out.

Monitoring unbundling compliance in the electricity market is the responsibility of the provincial authorities, while in the gas market it is that of the regulator. According to the provincial governments — which are also the owners of the main regulated companies — there is no evidence of infringements of the law by the **electricity system operators**. However in our opinion neither the legal requirements nor the monitoring arrangements are sufficient to achieve proactive unbundling. This is also shown by the inadequate physical and financial resources of virtually all system operators. For instance, only one of the 13 major electricity distribution system operators has assets of its own and largely relies on internal personnel. This indicates that the integrated companies have not really established fully functioning independent system operators capable of carrying on their business autonomously.

The synopsis report by E-Control on **gas system operators'** 2006 compliance reports points to some progress as compared to its predecessor, published in August 2006. Nevertheless, compliance still falls far short of the goals of the Gas Directive.

The inadequate unbundling of integrated companies in personnel and organisational terms, and the general lack of differentiation between system operators and suppliers in their marketing contribute to consumers' continued inability to distinguish between the two functions (because of identical branding and company names, and joint corporate communications, among other factors) and the artificial barriers to switching that this creates.

The protection of commercially sensitive data is another major unresolved issue. Including definitions of such data in the compliance programmes would be a first step towards developing data access concepts. Not all of the companies have arrived at such definitions, and only one has submitted a written data access concept.

During the next reporting period, i.e. the 2007 gas year, compliance by holders of transportation rights will be monitored for the first time. The report will probably again focus on the definition of "commercially sensitive data" and the restriction of access to network data by retail and wholesale operations.



### **1.3.6 Further action required to achieve sustainable competition**

While the measures taken to date have resulted in some improvements, further action will be needed to achieve sustainable competition. In particular, changes in the regulatory framework will be needed.

#### **Competition monitoring powers**

At present we only receive statistical data on a systematic basis, and for data protection reasons this cannot be used for market analyses or the initiation of abuse proceedings. The regulator should therefore be empowered to establish a market monitoring system in a transparent manner (e.g. by means of an order), and report periodically to the umbrella competition authority (Federal Competition Authority).

#### **More effective sanctions against abusive behaviour**

The regulatory authority does not have effective sanctions against abusive behaviour at its disposal. In the event of infringements of the law the only possibility open to it is normally a report to the district administration, which can impose a maximum administrative penalty of €50,000.

In future the penalties should be related to the size of the companies concerned, i.e. their revenue.

#### **Power to simplify and accelerate supplier transfers**

Despite arduous negotiations with market participants which resulted in some improvements, switching is still too slow and time consuming. Because of this some marketing channels (e.g. online contracts and decentralised customer acquisition) are largely or entirely closed off.

An approach with a good international track record is the mandatory construction of a metering point database containing records of all electricity and gas consumers, and their suppliers. This makes supplier transfers quick and simple, and keeps all market participants up to date with current circumstances. As with mobile phones, a database like this would permit switching in matter of days, at low cost.

#### **Additional measures at European level**

As the regional initiatives show, market integration is still far from perfect. This reflects reluctance to invest in infrastructure, partly because of inadequate unbundling which gives system operators a continued incentive to foreclose their own sales markets by holding back with network development. In Austria, for instance, this has meant that additional gas deliveries can no longer be made to the south of the country. The major gas suppliers in the EU all hold interests in the transmission and transit systems in upstream countries. When these companies prevent or delay network expansion this is not only to the detriment of their own customers, but also affects consumers in the transit countries.

In the case of electricity the consequences are not as directly apparent, as power often makes detours on its way to destination countries. However here, too, failure to upgrade networks, and the long-standing inadequacies of coordination between transmission system operators (e.g. in the calculation of network capacity, which suffers from incomplete information exchanges due to mutual mistrust) have actually led to cases of falling cross-border transmission capacity. These have in turn had direct repercussions on electricity prices, as well as causing large unplanned power flows that pose a growing threat to security of supply.

In its third legislative package the European Commission proposes road maps to market integration and non-discrimination that would strengthen competition and security of supply. In

practice, current European legislation still fails to guarantee new entrants non-discriminatory treatment. The central elements of the third legislative package are: effective unbundling of transmission systems, preferably through ownership separation or otherwise through the appointment of independent system operators (ISOs); obligatory cooperation between transmission system operators; improved regional cooperation; protection for European interests; and stronger consumer rights. The third package is silent on the question as to how the oversight of regional markets is to be organised in future.

Due to its location in the heart of Europe Austria is particularly exposed to the shortcomings of existing arrangements. E-Control therefore welcomes the Commission's proposals in principle.