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## GIE Response to Energy Sector Inquiry

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### 1. Executive Summary

Gas Infrastructure Europe (GIE) welcomes the opportunity to contribute to the DG Competition Energy Sector Inquiry. The role of infrastructure operators, as recognized, is facilitating supply competition. Therefore our contribution focuses on areas relevant to this role.

The key issue for users of infrastructure is ensuring transparent and non-discriminatory access, whilst at the same time protecting commercial information. From our perspective, the existing European legislation, including the provisions on company structures and other policy measures are sufficient to deliver this objective. We now need to monitor and encourage full compliance with these rules. In addition to improve market confidence GIE proposes to develop a Code of Conduct regarding the transportation business on the protection of information.

The supply and demand patterns in Europe are undergoing significant change. In order to respond to this and to deliver the levels of security of supply that we have become accustomed to, there is a need for large investment in new and existing infrastructure. However this investment will only be forthcoming under appropriate and stable regimes, with clear guidelines and rules, allowing the industry to respond to financially binding market signals. It is important that there is flexibility in how investments are funded and that forms of remuneration remain open. From an infrastructure perspective the key requirement is to be able to manage the risks involved, therefore the ability to establish long-term deals, for example through Article 22 Exemptions or where suitable through long term binding agreements with customers and regulators will remain critical for some projects.

Transit of natural gas is a fundamental aspect of the European gas market, which is required to underpin Security of Supply and to create a competitive European gas market. The preliminary findings of the DG Competition Energy Sector Inquiry focus on the difficulty of obtaining access to transit capacity both on the primary and secondary markets. Although we recognize this issue, in order not to undermine existing and future investments the sanctity of contracts should not be questioned. To alleviate the current access difficulties, where there are sufficient market signals for new physical capacity and associated binding commitments, we should seek to build new infrastructure and, where applicable, utilize congestion management tools, such as secondary markets and UIOLI, on existing infrastructure.



## **2. Introduction**

GIE is the association of gas infrastructure operators in Europe, representing the interests of transmission, Liquefied Natural Gas (LNG) and storage operators. GIE currently has 51 members in 27 European countries. GIE's main objective is to contribute to the achievement of an efficient Internal Gas Market.

The key issue for users of infrastructure is ensuring transparent and non-discriminatory access, whilst at the same time protecting commercial information. From our perspective, the existing European legislation, including the provisions on company structures and other policy measures are sufficient to deliver this objective. This is borne out by the emergence of competitive markets in a number of countries. However, we recognize that progress has been slower than anticipated and that in some countries the benefits of competition have yet to be felt. We also concur with the conclusions in the preliminary report that markets are still mainly national in scope, and that infrastructure operators could help to improve the conditions by increased cross-border co-operation. The Roadmap initiative by ERGEG could be an important step in this respect.

At the same time we should also recognize that the liberalization process is neither static nor complete. Developments have occurred since the Sector Inquiry data collection. There are many planned initiatives to address perceived shortcomings and accelerate progress. GIE will continue to work with our members, and other stakeholders, to encourage the full implementation of the agreed measures to complete the single European Gas Market.

We particularly welcome the acknowledgement within the inquiry's preliminary findings of the need for investment in the gas industry. The supply and demand patterns in Europe are undergoing significant change. In order to respond to this, large infrastructure investments are required. To deliver the levels of security of supply that we have become accustomed to, there will need to be significant investment in:

- new pipelines to bring gas from production areas farther away and to increase diversity of supply;
- storage to optimize supply and the use of existing and new European pipelines whilst maintaining levels of security of supply and;
- LNG facilities to further diversify import sources.

However this investment will only be forthcoming under appropriate and stable regimes, with clear guidelines and rules, allowing the industry to respond to financially binding market signals.

We are pleased that the Commission has recognized the respective roles of the market players. Gas to gas competition in Europe is principally the role of companies involved in the production, trading and supply of natural gas. In this respect, the role of infrastructure operators is to facilitate the competition by ensuring fair and non-discriminatory access conditions to the infrastructure. This contribution focuses on some of the most important areas of influence and impact of infrastructure operators, which are mainly dealt with under the Market Integration and Transparency areas of the Sector Inquiry. In these areas, we will focus our comments on; investment and regulation, transit and transparency and effective access to infrastructure.

### **3. Investments and Regulation**

It is of the utmost importance that a conducive investment climate is created which fits into the liberalized environment. We believe that there needs to be flexibility in how investments are funded and that forms of remuneration should remain open. As the investments to be made are long-term assets this factor in particular must be recognized within the overall framework. In our opinion the guiding principles to be followed in creating the right investment climate are:

- the respective roles and responsibilities of market players should be clearly and appropriately defined and allocated;
- where possible the need for new non-mandated infrastructure should be determined through market signals, supported through long term binding agreements with customers and regulators. Appropriate funding arrangements should be in place to underpin infrastructure investments, ensuring that the investment environment is:
  - o predictable;
  - o stable;
  - o commensurate (allowing an appropriate remuneration taking into account the risks involved) and complete.

In considering how investments are funded and considering the long-term nature of the assets in question, we think that long-term contracts and Article 22 Exemptions warrant further comment:

- o Long-term contracts

Long-term contracts have been a key tool in ensuring that significant European infrastructure projects have been built. They have provided the guarantees required and established an appropriate risk sharing structure. In GIE's opinion long-term contracts will remain critical for many new infrastructure projects. We believe that this approach is compatible with liberalization and the tools exist to ensure that congestion is managed and infrastructure efficiently utilized.

- o Exemptions

Article 22 of the Gas Directive provides a means to conclude long-term contracts and mitigate regulatory risk on infrastructure that requires such guarantees. The provision was included in the IGM framework, as it was recognized that critical infrastructure may not be built without the stability and predictability that long-term contracts / Exemptions would provide. GIE fully supports the opportunity to obtain an Exemption under the appropriate circumstances. We believe that Exemptions do provide the long-term stability that investors seek and in their approval process there are adequate checks and balances in place to prevent inappropriate use. Of particular note as stated in Article 22 (1e) the exemption should only be granted if it is "not detrimental to competition or the effective functioning of the internal gas market, or the efficient functioning of the regulated system to which the infrastructure is connected". Under the circumstances set by the Directive, we consider Exemptions to be fully compatible with liberalized markets..

In terms of regulation, we agree that the powers of the regulator and co-operation between regulators are important issues that need to be carefully addressed. However, we should not lose sight of the aim of market liberalization, which is to introduce competition where it is possible and economically viable to do so. For



example storage is usually a competitive activity with competition between facilities and/or with other forms of flexibility; new LNG facilities compete with other supply sources brought to market by pipelines; many pipelines in Europe provide alternative ways to bring gas from the same source or from different sources to the same off-take region. Therefore regulation should be kept to a minimum and restricted to areas where competition cannot develop; these should be the overriding principles when considering the powers of the regulator. The roles and responsibilities of regulators need to be clearly defined and it is essential that the regulator is accountable for its decisions with an effective right of appeal procedure.

With regard to co-operation between regulators, this is an area where we believe significant improvements are possible and necessary, particularly for non-domestic investments<sup>1</sup>. The main requirement is that regulators operate in a consistent and predictable manner, whilst where appropriate respecting the subsidiarity principle. As infrastructure operators we have implemented Guidelines for Good Practices (separately for storage and transmission access), that define minimum requirements of service throughout the European Union and govern our relationships with our customers. As many new and existing infrastructure projects are pan-European or are domestic projects that form part of important pan-European transmission routes, we would welcome similar developments in the field of regulation. We believe the following improvements to the current regulatory framework would help facilitate non-domestic infrastructure projects, which are essential for security of supply and a competitive gas market:

- an agreement between the relevant national and European authorities on the regulatory requirements to be met by the project
- long-term, stable conditions;
- timely approval process;
- effective and swift right of appeal procedure.

#### **4. Transit**

Transit of natural gas is a fundamental aspect of the European gas market, which is required to underpin Security of Supply and to create a competitive European gas market. The preliminary findings of the DG Competition Energy Sector Inquiry focus on the difficulty of obtaining access to transit capacity both on the primary and secondary markets. As infrastructure operators we develop and operate transit pipelines on the basis of the contracts signed with our users. From our perspective the sanctity of these contracts should not be questioned. In particular, transit contracts are often linked to storage bookings and downstream supply commitments. Therefore it is complicated to try to adjust one aspect of an overall economic deal.

As infrastructure operators, where appropriate, we are responding to the physical and contractual congestion through building new facilities and where applicable using congestion management tools. In building new facilities we are utilising best practice, for example in the case of major pipelines through typically holding open seasons to ensure that all players have an opportunity to participate. In addition these new contracts typically have congestion management clauses, with the investors understanding that if they do not use their capacity they will have the opportunity to trade it. A potential benefit of building new capacity is likely to be the increasing development of secondary trading on existing facilities, which we as infrastructure operators will facilitate. We are aware that there is frustration in the market that more

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<sup>1</sup> Non Domestic Investments refer to investments in one country which ultimately benefit customers in another country.



new transit capacity is not available today. However we must recognise that for most infrastructure projects there are significant lead times involved, particularly with regard to the planning and consent process. It is worth noting that since the data collection for the Sector Inquiry some decisions for development of further infrastructure have been taken.

In terms of the handling of transit in general it needs to be recognised that transit is typically different from transportation, in terms of operation, financing and competition. The differences need to be understood and carefully considered before determining remedies to deal with any perceived shortcomings. In many cases transit of natural gas is a competitive activity, competing with alternative pipeline routes and LNG supply sources in other countries. In GLE's view it is not possible to have a "one size fits all approach". The specifics of each transit should be recognised and an appropriate regime applied to ensure that existing investments are protected and new investments are stimulated. Due to the size of the investments involved the use of long-term contracts to secure the investments will also remain an essential element of existing and future pipeline projects.

## **5. Transparency and Effective Access to Infrastructure**

Consistent with the second Gas Directive, the Gas Regulation on transmission access and the GGPSSO, it is essential that users have non-discriminatory and transparent access to infrastructure. These are the measures against which infrastructure operators should be assessed. The way in which each country, national regulatory authority and infrastructure operator delivers this objective will vary depending upon the market structure and type of infrastructure, as allowed for under the legislative framework. However, it is important that national regimes are sufficiently compatible with each other in order to foster cross-border trade.

With regard to transparent and non-discriminatory access, the Guidelines for Good Practice on transmission and storage access and the adopted Gas Regulation on transmission access provide a comprehensive set of requirements for the products to be provided and the conditions under which these products must be offered. Many infrastructure operators have already fully implemented these requirements, including publication of necessary information, the instruments to alleviate contractual congestion i.e. the development of secondary capacity markets, the application of UIOLI, the offering of interruptible products and ensuring that the maximum technical capacity is offered to the market.

As also stated in the preliminary report, it is important that infrastructure operators publish the data that the market needs and protect data that is of a commercially sensitive nature. For storage, the existing voluntary guidelines cover these issues. GSE, as agreed during the November 2005 workshop on GGPSSO, approved last 13<sup>th</sup> April an example of a Code of Conduct for storage which constitutes an example of good practice for SSOs and could be adapted by the single SSOs to their specific cases. For transmission, the transparency requirements are contained within the Gas Regulation. In our discussions with stakeholders and also based on the preliminary findings there are nevertheless a number of concerns with regard to data protection and ensuring that information is equally shared. GTE proposes to produce a Code of Conduct for transmission, in consultation with our stakeholders, which will provide a guide to good practice in this field. We will encourage all of our transmission members to adopt this Code of Conduct in order to provide the confidence that market players seek. We believe that, with these additions, the necessary measures



will have been put in place to ensure that data is published and protected in an appropriate manner.

## **6. Summary**

The Executive Summary at the start of the document summarizes the main GIE views in relation to the DG Competition Energy Sector Inquiry. In brief these concern:

- ensuring a conducive investment and regulatory climate, recognizing in particular the importance of long-term contracts, Article 22 Exemptions and where suitable through long term binding agreements with customers and regulators;
- the sanctity of existing transit contracts, combined with the development of new capacities with effective congestion management tools;
- the adequacy of existing European legislation to ensure effective and non-discriminatory access to infrastructure.