



GEODE POSITION ON DG-COMPETITION SECTOR INQUIRY UNDER ART 17 REGULATION 1/2003 ON THE GAS AND ELECTRICITY MARKETS

According to the content of the Preliminary Report Executive Summary **GEODE** presents its suggestions on the issues on which comments are solicited.

1.- Price setting practices on electricity wholesale markets including power exchanges

From **GEODE**'s point of view it is a fact that in the current situation electricity wholesale markets in the EU countries face many obstacles, maybe with the exception of the United Kingdom and the Scandinavian countries.

a) Causes of the Obstacles

- *Problems in the wholesale markets*
 - Small number of electricity producers remaining dominant in a regional or national level.
 - The fact that national markets are not sufficiently opened prevent new entrants from other countries from getting access to break national blocks.
 - The so-called rigid demand. The customer cannot choose to consume or not electricity. There is no choice for customers but to accept the price given making it raise.
 - Difficulties to create new independent companies -IPP's- (Great investments, long procedures, opposition from the media and from ecological groups).
 - Some countries having their home markets protected give competitive advantages to their companies when they go abroad to a more opened markets.
- *Regulatory obstacles*
 - Difficulties for Member States and the UE to create a regulatory framework allowing the existence of a real European Single Market.

GEODE considers that the current regulation is not sufficient to break the monopolies at a regional/national level. Therefore, it is necessary to create the regulatory conditions that could force dominant players to compete within them in an European level.



- Problems due to the maintenance of regulated supplying tariffs in some Member States.

The co-existence of regulated and free-market prices on several Member States causes unfair competition with regard to independent suppliers and new entrants, as dominant producers use their ability to raise free-market prices. This causes regulated prices to be cheaper than free-market prices giving no chance to independent suppliers and new entrants.

b) Way Forward

GEODE believes that the referred situation can be given a long-term solution by the creation of an unique European Transmission System Operator (TSO). In a shorter perspective improvements can also be made by the use of the existing national TSO's whenever they are sufficiently independent from dominant producers and suppliers and perfectly coordinated in an European level. This solution can be improved by enhanced regional cooperation between TSO's including harmonising of rules and conditions. That should allow TSO's to guarantee any kind of transactions between parties (producers, traders, suppliers, customers) from any country by using re-dispatching mechanisms and transferring its costs to transmission tariffs.

That will go along with an improvement of the regulation that should facilitate the investments in new capacities on the interconnections.

2.- A possible more generalised use of gas and electricity release programmes under regulation in order to reduce the effect of concentration in the upstream supply level and inject liquidity into the market, as well as other measures reducing the effects of concentration

GEODE totally agrees with the use of release programmes and other type of measures to reduce the effects of concentration, and calls for more to be launched both in gas and electricity markets.

3.- Implementation of unbundling provisions

a) Unbundling in transmission from other activities

GEODE considers that unbundling provisions are, in general terms, necessary for the proper operation of the gas and electricity markets. Once said that, we must emphasize the crucial importance of the unbundling of the transmission system from the rest of activities as we consider it an essential requirement to create an European Single Market.



As we have already stated on point 1, only an independent operation of the Transmission System at an European level would ensure competition and transparency in electricity and gas transactions, making possible an European Single market in the mid-term.

Therefore, **GEODE** believes that the unbundling of the transmission system is an essential requirement in order to create an European TSO, or at least to set up a coordinated body including all European TSO's operating in the UE Member States as a Single Market.

b) Unbundling in distribution from other activities

In any case, **GEODE** supports the exception for distribution companies with less than 100.000 customers, as these companies have been considered not to have the capacity to block competition. On the other hand, the costs involved in the unbundling make it impossible for these small distributors to fulfil this obligation.

4.- Merger regulation

From **GEODE**'s point of view it is of vital importance that merger regulations should be very strict. We ask for a real energy policy at a European level. Taking into consideration that it does not exist an European Single Market, national markets must be taken as relevant markets when authorizing mergers. Otherwise, consumers in national markets would be subjected to dominant positions.

GEODE considers that both the situation on the European and the national market must always be considered when judging the impact of a merger. In some cases, there may be little impact of a merger on concerned national markets, while the player is building up a European position that may be unacceptable in a later stage when the market is more integrated. In other cases, the merger may have insignificant importance seen from a European perspective while the players reinforce their dominant positions in their national markets. In the meantime, the European Single Market does not exist and the consumer cannot choose because there is not real competition within the big companies.

5.- Long –term contracts

GEODE considers that it must be strictly applied the principle of “use it or lose it”, in a way that a long-term contract cannot be used to block capacities and interconnections. If the capacity has not been used, the companies must simply transfer their rights to third parties.

The performance of the contract should be monitored by TSO's. In case of abuse, TSO's should inform the regulator who must take the necessary measures in order to open the capacities not been used to third parties.



In case the long-term contracts were performed and the capacities really used, TSO's should apply re-dispatching mechanisms to provide gas or electricity in order to fulfil the demands not covered by the existing bottleneck.

6.- Access to electricity and gas infrastructures (pipelines, networks, storage, interconnectors)

In order to allow the access of new entrants, **GEODE** stands for a real unbundling in gas and electricity infrastructures (pipelines, networks, storage, interconnectors) from supplying activities. As we have already mentioned, these infrastructures must be operated by an independent European TSO or, at least, through the existing TSO's well-coordinated in a European level.

Furthermore, **GEODE** agrees that transparency is an indispensable component for non-discriminatory access. Hence, **GEODE** believes that it is crucial to improve existing transparency-provisions. Since national legislation is generally being influenced by lobby groups **GEODE** suggests to enact appropriate binding provisions at EU-level.

7.- Exemption from TPA provisions of the gas directive in certain cases

Since storage and LNG capacity might be excluded from TPA at a large scale it is very important that the exemption procedure is monitored by national regulators.

In addition, **GEODE** is of the opinion that different measures should be taken in order to create incentives for TSOs to invest in new infrastructures.

8.- Competitive assessment of the oil-price linkage

GEODE agrees with DG Competition that the oil-price linkage in long-term contracts is one major reason for the lack of market based pricing mechanisms in this area. Although oil and gas are raw materials used for the same purpose it is not justified to link both markets that closely. Thereby, the gas-market shows no reaction to changes in supply or demand or rather even may react falsely. A situation might occur where there exists a supply-shortage on the oil-market and even though there is no parallel shortage on the gas-market gas-prices rise up simultaneously.

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