

## Comments on the draft Second Directive

### GTE remarks

1. The proposed draft Second Directive on the energy markets amends both the Gas Directive and the Electricity Directive simultaneously. The commentary is given together. This insufficiently reflects the differences between gas and electricity. There is a convergence in the distribution area (multi utilities) and in the customer's approach. However, strong differences exist at the production, transmission and storage level. The Commission should take these differences more clearly into account.
2. From Articles 4a and 7a GTE gets the impression that strong central planning is envisaged based upon regulation through input measures. GTE considers that both the provision of capacity and gas supply by the transmission companies and suppliers respectively to meet output criteria is preferable to having a regulatory regime which monitors in detail inputs such as investment and supply/demand measures. This provides the incentives for companies to operate efficiently and in the public interest.

The European gas network has successfully been expanded mainly by private companies investing in infrastructure and in security of supply. In a more regulated environment, care must be taken to maintain an investment climate for the necessary further expansion of the network.

3. The responsibilities of the market participants (e.g. the tasks of transmission companies) are not clearly defined: in Article 15 transmission companies are given a task in ancillary services for economic reasons. GTE calls for a clear definition of the tasks of the various players in the market.
4. Article 4a should be more clear in distinguishing between **supply security**, which is dependent upon suppliers obtaining sufficient gas in order to meet the demand of their customers and **system security**, which is dependent upon the transmission companies providing sufficient pipeline capacity in order to transport this gas.
5. Article 7 provides for the establishment of a 'bundled' system operator, which is in charge of operating, developing and maintaining the transmission system. This does not take into account the evolution towards further unbundling of the system operation into asset manager and asset operator, which is already under way in a number of Member States and is well established in a couple of electricity markets. Member States should have the freedom to design the function of the asset owner/manager/operator in line with their specific national requirements and evolution of the market.

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6. Concerning Article 14, GTE agrees that as far as services and conditions are identical, principles and similar tariff structure should apply to transit and transportation for delivery within the domestic market.

However, transit can imply specific types of services and risk sharing, which can justify the application of specific conditions at the level of Member States while the principle of non-discrimination is ensured. Differentiation elements that can be taken into account are:

- Due to large flow and the important investment needed, transit lines are often financed by initial shippers who guarantee fixed revenues through long-term agreement (compared to TPA asset base financed through tariffs). These agreements are under the negotiated regime (versus RTPA).
  - Transit agreements are based on commercial conditions agreed between the parties within a framework without PSO.
  - Competition already exists today in transit lines all around Western Europe.
  - Transit lines are subject for the time being to specific quality constraints.
  - In a transit agreement, a flexibility service is normally not offered (flow linked to production profile). Introducing the flexibility for transit lines would presently constraint the majority of them or cause for some countries problem of storage availability.
7. The German GTE members reject the abolition of negotiated access since it is successfully practised in Germany. The German GTE members also reject the mandatory establishment of a regulatory authority.