

Nederlandse Mededingingsautoriteit

<i>Auteur</i>	<i>Interne termijn</i>	<i>Externe termijn</i>	<i>Medeparaaf en datum</i>
Cecile Gommans			
<i>Datum</i>		<i>Informatiekopie aan</i>	<i>Prismanummer</i>
25-2-2009		CG	102806
		Archief EK	
		Secr. HTG	

Nummer 102806 / 25

Concerning: Decision on partial exemption of obligation of GTS to publish information for interconnectors Oude Statenzijl D-gas, Zevenaar (Ruhrgas), Tegelen (Ruhrgas), Dinxperlo (RWE), Haanrade (RWE), Vliegghuis (RWE), Hilvarenbeek, Zandvliet (Fluxys G), Zandvliet (Fluxys H), Obbicht (Fluxys) and Zandvliet (WinGas-H).

DECISION

Disclaimer

This text has been compiled with the utmost care, but it has no formal status.

1 Introduction

1. The Board of the Netherlands Competition Authority (hereinafter: the Board) conditionally grants national network manager Gas Transport Services B.V. (hereinafter: GTS) a limited exemption of its obligation to publish certain information on the use of a number of cross-border connections (hereinafter: interconnectors). These obligations result from regulation 1775/2005¹ (hereinafter: Regulation) and from Article 6.3 of the Conditions of Carriage Gas-LNB². Exemption of the obligation to publish this information can be granted under Article 6, paragraph 5, of this Regulation. The Board is authorized to grant such an exemption under Section 38 of the Dutch Gas Act.
2. The obligation to publish this information creates transparency and is a necessary condition for network access. Market parties will not know whether transmission capacity is available or, if there is capacity available, against which terms and conditions, without this information. This information is particularly relevant when all of the transmission capacity has been contracted, but is not fully being utilized, while there are other market parties, apart from current shippers, who would like to use transmission capacity. The capacity that is not utilized can only then be used by other parties when they are informed on time of the fact that capacity is available. The Board aims to have as much transparency as possible, since this is a necessary condition for a free market. More transparency will lead to improved utilization of the scarce interconnection capacity, which in turn contributes to an efficient use of the network. There is also more room for competition, which is essential to consumers and to a free market.
3. Under the Regulation, the Board needs to take two considerations into account when assessing an exemption request. On the one hand, market parties need the data on available transmission capacity in order to be able to buy and sell gas. On the other hand, the data might contain information on the market position of current shippers (which is confidential), and disclosure thereof could harm the competitive position of a current shipper.

¹ Official Journal L series 289 of 28.09.2005

² Decision 102806, Government Gazette, nr. 122 of 27.06.2008

4. GTS filed an exemption request on October 23rd, 2007. GTS specified the number of shippers per interconnector in a fax message on November 21st. The Board asked GTS to complete the request in a letter dated December 6th, 2007. The market parties involved provided additional information in January 2008.
5. Furthermore, the Board has contacted the regulating authorities in the countries on the other sides of the interconnectors to find out what information is published in those countries, and if any exemptions are currently in effect. The Board has contacted the German regulator BnetzA and the Belgian regulator CREG.³
6. Next, the parties involved, the shippers that trade through the interconnectors, and the interconnector managers involved have been given the opportunity to voice their opinion on the Board's intention to grant an exemption in accordance with part 1.4 of the Dutch General Administrative Law Act.
7. The Board partially grants the request with this decision. The partial rejection will result in GTS being required to publish the information, within the meaning of Article 3.3 of the guidelines annex of Regulation, with regard to a number of interconnectors.

2 Legal framework and procedure

8. This section includes a description of the provisions on which the Board has based its decision.
9. Article 6 of Regulation 1775/2005 states:
Transparency requirements
 1. *Transmission system operators shall make public detailed information regarding the services they offer and the relevant conditions applied, together with the technical information necessary for network users to gain effective network access.*
 2. *In order to ensure transparent, objective and non-discriminatory tariffs and facilitate efficient utilization of the gas network, transmission system operators or relevant national authorities shall publish reasonably and sufficiently detailed information on tariff derivation, methodology and structure.*
 3. *For the services provided, each transmission system operator shall make public information on technical, contracted and available capacities on a numerical basis for all relevant points*

³ The Board used the document "Guidance on less than 3: confidentiality in relation to Regulation 1775/2006³" in its consultative rounds. ERGEG explained in that document how to deal with the authority that grants exemptions and how the definitions of the Reg should be applied.

including entry and exit points on a regular and rolling basis and in a user-friendly standardized manner.

4. The relevant points of a transmission system on which the information must be made public shall be approved by the competent authorities after consultation with network users.

5. Where a transmission system operator considers that it is not entitled for confidentiality reasons to make public all the data required, it shall seek the authorization of the competent authorities to limit publication with respect to the point or points in question.

The competent authorities shall grant or refuse the authorization on a case-by-case basis, taking into account in particular the need to respect legitimate commercial confidentiality and the objective of creating a competitive internal gas market. If the authorization is granted, available capacity shall be published without indicating the numerical data that would contravene confidentiality.

No such authorization as referred to in this paragraph shall be granted where three or more network users have contracted capacity at the same point.

6. Transmission system operators shall always disclose the information required by this Regulation in a meaningful, quantifiably clear and easily accessible way and on a non-discriminatory basis.

10. Section 38 of the Dutch Gas Act states:

1. The Board of the Competition Authority is the competent authority, as referred to in Article 6, paragraph 4 of the regulation. It approves the relevant points of the national gas transmission network, in accordance with Article 6, paragraph 4 of the regulation.

2. The Board of the Competition Authority is the competent authority that, in accordance with Article 6, paragraph 5 of the regulation, decides on restricting the publication of the information as referred to in that Article at the request of the network manager of the national gas transmission network.

3. In case the network manager of the national gas transmission network is unable to publish the information in accordance with the regulation, the network manager will draw up a plan of action for implementation after consultation with the Board of the Competition Authority.

3 Decision

General

11. This section includes the rationale of the decision that the Board has taken.
12. Article 6, paragraph 5 of the Regulation states, in short, that the competent authority, in this matter being the Board, will specifically take into account the need to observe legitimate, commercial confidentiality, as well as taking into account the objective to establish a competitive internal gas market when granting an exemption of publishing information. The basic idea of the Regulation is to publish as much information as possible so that parties that want to gain access to the network know how much capacity is available, and against what kind of terms and conditions. This means that the same information is published at all interconnectors. For all interconnectors, the Board applies the same principles for assessing which information does not need to be published.

No exemption

13. The Board has decided **not to grant an exemption** from the obligation to publish the following information for the interconnecting points of Oude Statenzijl D-gas, Zevenaar (Ruhrgas), Tegelen (Ruhrgas), Dinxperlo (RWE), Haanrade (RWE), Vliegghuis (RWE), Hilvarenbeek, Zandvliet (Fluxys G), Zandvliet (Fluxys H), Obbicht and Zandvliet (WinGas-H): **available firm and interruptible capacity, including backhaul, probability of load-interruption per hour, and, if interruptible capacity is available, also the historical probability of load-interruption per hour, the absolute level of the interrupted volume per hour, and the absolute level of the total booked interruptible capacity per hour.**
14. The rationale behind the requirement to publish this information is as follows. The Board believes that information on available firm and interruptible capacity (including backhaul) is of vital importance to parties in order to gain access to the network. It is important that parties are able to accurately gauge their risks and are able to minimize these risks when booking interruptible capacity. Parties cannot assess the probability that the interruptible capacity will be interrupted by GTS without this information, affecting their ability to actually transmit the gas, possibly bringing them out of balance. It is essential that parties are able to assess a possible imbalance as accurately as possible. That is why it is important for parties, when booking interruptible capacity, to have information such as the historical probability of load-interruption per hour, the absolute level of the interrupted volume per hour, and the absolute level of the total booked interruptible capacity at the same point in time. Business sensitive information cannot be retrieved using the published information, because an exemption from the obligation of publishing contracted and technical capacity is granted (see 8).

Exemption granted

15. The Board has decided to **grant an exemption** from the obligation to publish the following information (Regulation annex 3.3, paragraph 1, sub a and partly b): **contracted and technical capacity** for the interconnecting points of Oude Statenzijl D-gas, Zevenaar (Ruhrgas), Tegelen (Ruhrgas), Dinxperlo (RWE), Haanrade (RWE), Vliegghuis (RWE), Hilvarenbeek, Zandvliet (Fluxys G), Zandvliet (Fluxys H), Obbicht and Zandvliet (WinGas-H).
16. The Board lets the commercial interests of the active shippers prevail over the obligation of publication with regard to these interconnecting points. Publication of the contracted capacity will reveal the quantities/volumes the shippers involved have booked per shipper for the longer term, disclosing information that could harm their competitive position. If technical capacity is disclosed, parties can calculate the booked capacity based on the known available capacity. That is why GTS is exempted from the obligation to publish technical capacities.

Scope

17. Because the Regulation will only allow an exemption when there are less than three shippers, the exemption will become invalid as soon as there are more than two shippers at an interconnector. The Board has made a provision though for the exemption to automatically become valid again once there are less than three shippers. This may result in a situation where information can be temporarily available or unavailable.
18. The opinions of various parties on the draft decision have made the Board realize that market circumstances can change quickly, since there are currently initiatives, among others on an international level, to work towards agreements on the publication of information and on the harmonization of the information that is to be published. This may lead to a risk that the exemption does not dovetail with developments. In order to reduce that risk, the Board has decided to shorten the duration of the exemption to one year. GTS needs to submit an application for an extension of the exemption on time. Unless there are any changes, it can be expected that the Board will extend the exemption with one year.

Conditions

19. The Board attaches the following conditions to granting the exemption from publishing information:
 - a. The exemption from publishing information is in effect as long as one or two shippers are active at an interconnector, as stipulated in the Regulation;
 - b. The holder of the exemption publishes the following information: available firm and interruptible capacity, including backhaul, probability of load-interruption per hour, and, if interruptible capacity is available, also the historical probability of load-interruption per hour, the absolute level of the interrupted volume per hour, and the absolute level of the total booked interruptible capacity per hour.
 - c. As soon as more than two shippers book capacity (primary, secondary and interruptible) at an interconnector, the exemption from publishing information will no longer be valid. GTS will then publish, without delay, all information at the interconnector in question, as stipulated in the Regulation and in the Conditions of Carriage Gas-LNB. In case there are less than three shippers at the same interconnector for the period of one day, the exemption will come into effect once more. GTS will annually notify the Board of these changes;
 - d. In case changes occur with regard to publication of information at interconnectors that border Germany or Belgium, the Board can decide to revoke or to alter the exemption from publishing information;
 - e. Every year on February 1st, the holder of the exemption will send the regulator a list of all interconnectors at which less than three shippers are active, and of the names of the shippers at each of these points;
 - f. The Board can decide to revoke or to alter the exemption, in case GTS cannot meet the requirements stipulated in the Dutch Gas Act and the Regulation during or at the start of the exemption period, or in case GTS violates the regulations and restrictions laid down in this exemption decision. The Board can also exercise this power if the exemption was granted based on incorrect or incomplete information, which otherwise would have led to the exemption not having been granted or having been phrased differently;
20. This decision comes into effect on March 1st, 2009 and expires February 28th, 2010.
21. This decision will be published in the Dutch Government Gazette and will be published on the website of the Office of Energy Regulation of the NMa (www.energiekamer.nl).

The Hague, the Netherlands,
Date:

The Board of the Netherlands Competition Authority,

P. Kalbfleisch
Chairman of the Board

R.J.P. Jansen
Member of the Board

G.J.L. Zijl
Member of the Board

Appeal can be lodged against this decision within six weeks to the College van Beroep voor het bedrijfsleven, Postbus 20021, 2500 EA, 's-Gravenhage.

Annex 1. Summary of decision

No exemption of publishing information at the following interconnection points:

- Hilvarenbeek
- Zandvliet (Fluxys G)
- Zandvliet (Fluxys H)
- Obbicht

Exemption for the following interconnection points, partially granted and partially rejected

	Oude Statenzijl (D-gas)	Zevenaar ⁴ (Ruhrgas)	Tegelen ⁵ (Ruhrgas)	Dinxperlo ⁵ (RWE)	Haanrade (RWE)	Vlieghuis ⁵
Does the following information need to be published:						
Contracted capacity	No	No	No	No	No	No
Technical capacity	No	No	No	No	No	No
Available firm and interruptible capacity (including backhaul)	Yes	Yes	Yes	Yes	Yes	Yes
Probability of load-interruption	Yes	Yes	Yes	Yes	Yes	Yes
Historical probability of load-interruption per hour	Yes	Yes	Yes	Yes	Yes	Yes
Absolute value/level of the interrupted volume per hour	Yes	Yes	Yes	Yes	Yes	Yes
Absolute value/level of the total booked interruptible capacity per hour	Yes	Yes	Yes	Yes	Yes	Yes

⁴ The German regulator BnetzA is currently handling the exemption request at these interconnectors.

