PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION POLICY

EUROPEAN COMMISSION


1. Introduction

(1) According to Article 9 of the Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (1), the European Commission (‘the Commission’) may decide – in cases where it intends to adopt a decision requiring that an infringement is brought to an end and the parties concerned offer commitments to meet the concerns expressed to them by the Commission in its preliminary assessment – to make those commitments binding on the undertakings. Such a decision may be adopted for a specified period and shall conclude that there are no longer grounds for action by the Commission. According to Article 27(4) of the same Regulation, the Commission shall publish a concise summary of the case and the main content of the commitments. Interested parties may submit their observations within the time limit fixed by the Commission.

2. Summary of the Case

(2) On 10 September 2018, the Commission adopted a preliminary assessment within the meaning of Article 9(1) of Regulation (EC) No 1/2003 concerning the alleged strategy of Societatea Națională de Transport Gaze Naturale Transgaz S.A. (‘Transgaz’) to hinder natural gas exports from Romania to other Member States.

(3) The preliminary assessment of the Commission is that Transgaz holds a dominant position within the meaning of Article 102 TFEU on the market for natural gas transmission in Romania which includes transmission through the interconnectors with neighbouring countries.

(4) The Commission preliminarily concludes that Transgaz may have engaged in a strategy to restrict the free flow of natural gas from Romania to neighbouring Member States, which may have been implemented through different means, in particular (i) underinvestment or strategic delays in the building of infrastructure relevant for exports, (ii) interconnection tariffs for natural gas exports to other Member States, which made exports commercially not viable and (iii) vexatious technical arguments as pretext for restricting or justifying delays in exports of natural gas from Romania to other Member States.

(5) Through its conduct, Transgaz may have sought to create or maintain barriers to the cross-border flow of natural gas from Romania to other Member States, frustrating the achievement of a European internal natural gas market. Such conduct could lead to the segmentation of markets between Member States and to de facto discrimination between customers in Romania and customers in other Member States, particularly Hungary and Bulgaria, which were prevented from reaping the benefits of the internal market. The Commission preliminarily concludes that Transgaz’ behaviour may amount to an abuse of a dominant position in breach of Article 102 TFEU.

(1) OJ L 1, 4.1.2003, p. 1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and, respectively, 102 of the TFEU. The two sets of provisions are in substance identical. For the purposes of this notice, references to Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) should be understood as references to Articles 81 and 82 of the EC Treaty when applicable.
3. The main content of the offered commitments

(6) Transgaz does not agree with the Commission's preliminary assessment. It has nevertheless offered commitments pursuant to Article 9 of Regulation (EC) No 1/2003 to meet the Commission's competition concerns. The key elements of the proposed commitments are set out below.

(7) Transgaz will make the maximum capacity available to network users to export gas from Romania towards Hungary and from Romania towards Bulgaria taking into account, the system integrity, safety and efficient operation. Transgaz will guarantee the minimum firm capacities defined below:

(a) 0.75 bcm/y firm capacity from 1 May 2019 onwards at the Csanádpalota interconnection point between Romania and Hungary

(b) 1.5 bcm/y firm capacity from 1 July 2019 onwards at the Giurgiu/Ruse interconnection point between Romania and Bulgaria

(c) 1.8 bcm/y firm capacity from 31 December 2019 onwards at the Negru Voda I/Kardam interconnection point between Romania and Bulgaria for on-shore Romanian gas exports towards Bulgaria via the connection of the Romanian National Transmission System and the International Transmission Pipeline T1.

To enable these minimum firm capacities, Transgaz will achieve infrastructure works for the three interconnection points above, as described in the proposed commitments.

(8) Transgaz will apply the following two principles in the tariff proposals submitted to the Romanian National Energy Regulator (ANRE):

(a) The reserve price (as well as any commodity tariff) for capacity bookings at the interconnection points with Hungary and Bulgaria shall be equal to the reference price/tariff (as well as to any commodity tariff) for capacity bookings at domestic points and

(b) The level of multipliers and seasonal factors shall be the same for the interconnection points and for the domestic points and will be within the ranges set out in Commission Regulation (EU) 2017/460 of 16 March 2017 establishing a network code on harmonised transmission tariff structures for gas (1) (the TAR NC).

(9) Transgaz will not prevent, hinder, or otherwise discriminate, directly or indirectly, the export of onshore and/or offshore gas produced in Romania and/or transiting through Romania, whether through tariffs, technical reasons, contractual arrangements or any other means.

(10) The duration of the proposed commitments will start on the date of notification of the commitments decision and will end in December 2025. Transgaz will also appoint a trustee that will monitor its compliance with the proposed commitments.

(11) These proposed commitments should address the Commission's concerns by ensuring the possibility for having substantial actual flows of natural gas from Romania to other Member States. The minimum guaranteed capacities at the interconnection points with Hungary and Bulgaria appear as an improvement compared to the current situation. The proposed commitments also appear to ensure that in their tariff proposal to ANRE, Transgaz will not discriminate against export tariffs compared to domestic tariffs. Lastly, the proposed commitments provide that Transgaz will not use any other means for restricting exports.

(12) The proposed commitments are published in full in English on the website of the Directorate-General for Competition at: http://ec.europa.eu/competition/index_en.html

4. Invitation to make comments

(13) Subject to market testing, the Commission intends to adopt a decision under Article 9(1) of Regulation (EC) No 1/2003 declaring binding the proposed commitments summarised above and published on the internet, on the website of the Directorate-General for Competition.

(14) In accordance with Article 27(4) of Regulation (EC) No 1/2003, the Commission invites interested third parties to submit their observations on the proposed commitments.

(15) Comments should preferably be reasoned and should set out the relevant facts. Third parties are invited to make comments on all aspects of the proposed commitments. If you identify a problem with any part of the proposed commitments, the Commission would also invite you to suggest a possible solution.

(1) OJ L 72, 17.3.2017, p. 29.
These observations must reach the Commission not later than one month following the date of this publication.

Interested third parties are also asked to submit a non-confidential version of their comments, in which any information they claim to be business secrets and other confidential information should be deleted and replaced as required by a non-confidential summary or by the words 'business secrets' or 'confidential'.

Observations can be sent to the Commission under reference number AT.40335 — Romanian gas Interconnectors either by email (COMP-GREFFE-ANTITRUST@ec.europa.eu), by fax (+32 22950128) or by post, to the following address:

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