

**IFIEC Europe's position
on the Commission's "Third Package" proposal
for legislative measures to improve the internal gas market**

1. IFIEC Europe supports the Commission's proposals for legislative measures to improve the internal gas market. We believe that the proposals represent a significant move in the right direction. Specifically we support (1) strengthened and harmonized power for the national regulation authorities; (2) enhanced transparency; (3) improved cooperation among national regulators; and (4) improved cooperation among transmission system operators.
2. The timeframe of this new package, with a potential implementation starting in 2010 at earliest, is clearly a major concern. We hope that progress towards liberalisation is not put on hold and that progress continues to be made as from now. In particular we support the current Gas Regional Initiatives. We also see the need for some transitional arrangements to ensure that large industrial consumers can get fair access to competitive energy supplies already during the transition period.
3. IFIEC Europe has a number of areas of particular concern which are not sufficiently addressed in the package. These are issues around (a) market concentration and (b) long term contracts. On market concentration, our concern is that the measures do not go sufficiently far in tackling the problem of market dominance by the incumbents in most EU Member States. On long term contracts we understand there is a need to avoid market foreclosure due to long term contracts between producers and dominant suppliers. However, a properly functioning market must provide the option of long term contracts for industrial consumers in order to underpin new manufacturing investments, or to secure the sustainability of existing plants.

Access to infrastructures, investments and regulation

4. Gas infrastructures must be regarded as a whole. The supply of gas to an industrial site requires access to transportation pipelines, to supply sources which may include LNG terminals, and also to storage facilities. Industrial consumers or their suppliers must have non-discriminatory access at a reasonable cost to all these types of infrastructures. IFIEC strongly supports the Commission's proposal to require legal and functional unbundling of storage systems and recommends that this rule be extended to LNG facilities. It is essential that access to storage and LNG facilities is regulated rather than negotiated.
5. It is also important that access rules are non-discriminatory, fair and stable and tariffs are predictable in the long run in order to guarantee the competitiveness and the security of gas supply to industrial sites.

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6. An important issue in a liberalised market is that new investments are made on a timely basis so that capacity bottlenecks are avoided. IFIEC believes that strong and informed regulation is key to ensure that these investments occur. Whether full unbundling or the ISO model is implemented, regulators will in both cases need to strike a careful balance between providing adequate rewards for new investment and imposing penalties on operators who fail to make adequate investment. Where the ISO model is adopted, it will be essential that regulation ensures that the capital funding decisions can be taken by the operator without any influence by any ultimate holding company.
7. Recently a number of Open Seasons have been launched. In IFIEC's experience these in general are far from satisfactory. They tend to be slow and to require firm commitments on a long term basis by the would-be subscribers. On the other hand there is no commitment from the operator on future allocations and tariffs. There seems to be a lack of balance between operator and user and meanwhile investments are not taking place. Empowered regulation could improve this situation dramatically.
8. We are also concerned that virtually all new investments are awarded exemption from the requirement for Third Party Access. IFIEC has consistently held the view that TPA exemptions should be the exception rather than the norm. Where TPA exemption is granted, tough regulation is required to ensure that UIOLI provisions are consistently imposed. There are many current examples in Europe where this is clearly not happening, including the UK market which is regarded as the most liberal market in the EU.
9. To summarize, IFIEC supports an effective unbundling of all gas infrastructures (pipelines, storage and LNG facilities), effective non-discriminatory access at reasonable cost based on a properly regulated and predictable framework. Regulators should be empowered to encourage investments when necessary for the market to function properly. It is key that national regulators are independent and have full access to all necessary information. They must have the power to regulate for the benefit of consumers in a harmonized manner throughout the EU.

Transparency

10. IFIEC welcomes the proposals for increased transparency. Transparency is one of the keys to properly functioning markets and we wish to emphasise the need for continual progress in this key area. Many of the obstacles to a fully functioning liberalised, efficient, and competitive market will only be overcome when data and information are made available to all interested parties.

The Agency for the Cooperation of Energy Regulators

11. IFIEC supports the creation of the Agency, and in particular expects that the Agency will be able to solve cross-border issues. It is important that this Agency has real powers in order to get binding commitments from the different stakeholders involved and to enforce these.

Efficient cooperation between transmission system operators

12. IFIEC supports this step forward in the process of constructing a single European network and strongly recommends involvement of large consumers in the various working groups.
13. For the proposed measures to be effective, it is of great importance that codes and rules are adopted that facilitate the creation of the internal European gas market.

Role of consumer representative organisations

14. The end customer always bears the costs related to codes and rules that are developed and applied. It is therefore appropriate for them to have a formal role in debating and approving these codes and rules. This will ensure that the experiences of consumers can be taken into account and that consumers' knowledge can be put to good use.
15. Hence, representative organisations such as IFIEC Europe should have a formal role in all the design and approval processes.

Market Concentration

16. The current situation of market concentration inhibits consumer choice.
17. IFIEC Europe is very concerned by the continuing market dominance of suppliers in most parts of Europe. More actions need to be taken to reduce this dominance and its detrimental impact on the creation of a competitive and functional market.
18. Gas release programmes have not been successful. IFIEC would like to see the introduction of new programmes with specific schemes allowing direct involvement of end consumers.
19. Even with full unbundling of transportation, the problem of access to entry capacity for new players will not be solved. Currently there are many instances where the access to crucial assets (pipeline entry points, LNG terminals, storages) is fully booked for years ahead by incumbents, thus foreclosing the market. Direct action is needed to release some of those capacities to the market including to end consumers who may wish to purchase capacity directly, import their own volumes, and supply their sites.
20. It is also apparent that dominance is becoming an ever increasing issue for upstream supplies, as observed with the recent Statoil/Hydro merger. This will need to be addressed by international discussion at senior EU level. In particular the EU should strive to create a framework which makes it obligatory for third party producers to sell part of their production directly to non-EU producers.

High energy users and long term contracts

21. In its Report on Prospects for the Internal Gas and Electricity market published on 10 July 2007, the Parliament asked the Commission to give special consideration to high energy users in the EU that are competing in the global economy. The Parliament also asked the Commission to provide clear guidance on downstream bilateral long-term contracts which allow energy intensive industries to negotiate more competitive and stable energy prices.

22. The Commission considers that long term contracts between importers and consumers might build a problem of market foreclosure and thus be a direct obstacle for competitors entering the market. However, this alone does not justify removing the option of long term contracts for industrial consumers when setting the rules for energy markets. Long term contracts are equally important to secure investments both in upstream production or delivery systems and downstream investments amongst intensive gas users, as well as to ensure the sustainability of current plants in the EU.
23. Therefore, IFIEC Europe asks the Commission for clear criteria for designing the framework for such long term commitments which balance the concerns and provide a long term contract option under defined conditions. Otherwise the Lisbon Agenda, which aims at securing the European industry competitiveness, will not be met.
24. IFIEC is open to discuss this issue and to bring some potential solutions to the knowledge of the Commission.

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