

Consultation on Regulation (EC) 1775/2005 infringement action

8 March 2012

1. Purpose of this paper

- 1.1. The European Commission referred the UK and Ireland to the European Court of Justice on 26 January 2012 for a failure to fulfil certain obligations under Regulation (EC) 715/2009 which replaced Regulation (EC) 1775/2005. These requirements were to be fulfilled as part of the CAG project by 1 October 2012 but this deadline will not now be met.¹
- 1.1. The two Departments have jointly requested that the Utility Regulator and the Commission for Energy Regulation (CER) in Ireland urgently focus their resources, and the resources of the system operators, on ensuring immediate compliance with the Gas Regulation in the EU Second Package in their respective jurisdictions.
- 1.2. In recognition of the urgency of the situation and with a focus on compliance with the infringement, the Utility Regulator has initiated a programme of work with the Northern Ireland transmission system operators (TSOs) – BGE(UK), Premier Transmission Ltd., and Belfast Gas Transmission Ltd. - to ensure that the areas of non-compliance with Regulation 715 (EC) 2009 are rectified as early as possible.
- 1.3. This note sets out the work underway between the Utility Regulator and TSOs to satisfy the infringement.

2. Background

- 2.1. The European Commission opened up infringement proceedings against the UK for failure to comply with certain aspects of Regulation (EC) 1775/2005 in June 2009 with a formal notice. This was followed by a reasoned opinion in June 2010 by which time Regulation 1775/2005 had been replaced by Regulation 715/2009.
- 2.2. The areas of non-compliance identified in the reasoned opinion were:

¹ See Common Arrangements for Gas (CAG) Industry Update published on 2/2/12 on the Utility Regulator website.

- The TSOs do not provide firm and interruptible third party access services down to a minimum period of one day
- The TSOs in NI do not make maximum capacity available on the Scotland to Northern Ireland (SNIP) pipeline or on the South-North pipelines (SNP) because they do not offer interruptible reverse flow
- Relevant point on the SNP not approved by the Utility Regulator
- The Utility Regulator has not ensured compliance with the Regulation

2.3. The Utility Regulator published a consultation and a subsequent decision on a relevant point on the SNP in September 2010. For the other aspects of the infringement, the CAG project was identified as the most effective and efficient means of compliance by Northern Ireland. It was considered that putting in place specific Northern Ireland only mechanisms for compliance would incur a significant extra cost to Northern Ireland consumers and would fail to deliver the wider national and European benefits of joint action under CAG.

3. Overview of work required to satisfy the infringement

3.1. Given the imperative to comply with the outstanding areas of the infringement, the approach to product development has been to introduce products which are cost effective and can be implemented and offered to shippers quickly. We are also conscious that further work remains to be done to implement wider aspects of the third package.

Short term products

3.2. The requirement of the Regulation is to provide 'firm and interruptible third party access services down to a period of one day' and to provide daily updates of availability. In terms of the infringement NI lacks a daily firm capacity product and so the TSOs are developing such a product to satisfy the infringement.

3.3. First draft proposals for business rules for short term products were presented to the Northern Ireland EU code group on 14 February.

3.4. Some of the key features of the product are set out below but this is not an exhaustive list. A consultation on the business rules for this product is published alongside this document and readers should refer to it.

- A Firm daily capacity product will be offered to the market
- The quantity available will be published in advance of each application window
- Shippers may apply for daily capacity for each day within the month during a booking window which will be opened ahead of the month

- The application window will be open for a period of two consecutive business days commencing 12 business days prior to the start of the month
- During the application window daily capacity may be requested for each day within the relevant month
- Shippers may make nominations against the aggregate of their daily capacity quantity and their long term firm capacity (shippers will still be able to make interruptible nominations)
- Daily capacity will not be transferable to another shipper
- Financial security arrangements for daily capacity will be in line with existing arrangements in the codes

Virtual reverse flow

- 3.5. One area of the infringement which has been the subject of debate is the obligation to make maximum capacity available on the Scotland to Northern Ireland (SNIP) pipeline or on the South-North pipelines (SNP) and the need to offer interruptible reverse flow.
- 3.6. The Utility Regulator has directed the TSOs to develop a streamlined product for shippers.
- 3.7. Consequently, the product under development would enable shippers to flow gas from entry at the SNP entry point to exit on the PTL network flowing virtually through Carrickfergus. Virtual reverse flow on the SNIP would further enable shippers to flow virtually from the SNIP into GB through Twynholm. Shippers will also be able to flow virtually from the SNP into the Republic of Ireland.
- 3.8. We will consult of the business rules for VRF in due course.

Entry point on the South-North Pipeline

- 3.9. There is no entry point on the BGE(NI) code which would facilitate the physical flow of gas from the Republic of Ireland into Northern Ireland. This will be put in place as part of the work to meet the infringement and together with the VRF products will facilitate the booking of capacity between Ireland and the United Kingdom indirectly through Northern Ireland. The European commission is keen to see such arrangements.
- 3.10. We will consult on proposals for the entry point in due course.

4. Relevant point on the SNP

- 4.1. The Utility Regulator designated a point on the SNP in 2010 ('South North point') but did not specify a physical point. We recognised at the time that the physical location of the point would need to be discussed with the CER as part of the SNP is located in the ROI and CER licence BGE(UK) for the ROI section of the pipeline. In light of the work underway to meet the infringement it is appropriate to consult again on the location of the point to be designated on the SNP.

Definition of the relevant point - Regulation requirements

4.2. Regulation EC No 715/2009 states that the relevant point should be the physical point at which two networks or balancing zones connect. Annex 1 of the Regulation says specifically at 3.2(1)² that relevant points shall include (emphasis added):

- (a) all entry and exit points to and from a transmission network operated by a transmission system operator, with the exception of exit points connected to a single final customer, and with the exception of entry points linked directly to a production facility of a single producer that is located within the EU;
- (b) all entry and exit points connecting balancing zones of transmission system operators;

Location of the relevant point at Gormanston

4.3. The SNP is part of the BGE(UK) transmission system in NI and BGE(UK) is the TSO for this system. The BGE(UK) transmission system extends to Gormanston where it connects to the transmission system of BGE, and for which Gaslink is the TSO, at Gormanston. On a more detailed level the infrastructure to connect two systems exists at Gormanston – this is where the AGI including the meter is. The NI system is balanced to Gormanston and on the other side of this point the Irish Interconnectors and on-land system are balanced differently. Consequently, either side of Gormanston there are different balancing zones and different pressures.

4.4. Clearly therefore, Gormanston is the point at which the networks of the two TSOs connect and consequently, where two balancing zones connect.

4.5. Designating Gormanston would be consistent with precedent established in Scotland for the designation of relevant points at Moffat and Twynholm. Gaslink pipelines in Scotland connect to the GB transmission system at Moffat. These pipelines are part of the Irish transmission system but located in another member state, the UK. This situation is analogous to that part of the SNP located in the ROI which is part of the NI transmission system.

4.6. The point of interconnection between the Gaslink and National Grid transmission systems is at Moffat and in 2007 the CER designated Moffat as a relevant point.³ Also, both the CER and the Utility Regulator have designated Twynholm in Scotland as a relevant point because it is a physical interconnection point between two asset owners. These arrangements in Scotland also provide a precedent for third party access where Ofgem have agreed that the PTL and Gaslink codes would apply to SNIP and IC respectively in Scotland, thus avoiding regulatory duplication and avoiding the need for Irish shippers on SNIP and IC to apply for a GB shipper licence. Furthermore these arrangements provide for connections in Scotland i.e. Stranraer, via TSO to TSO

² See Commission Decision of 10 December 2010 amending Chapter 3 of Annex 1 of Regulation 715/2009.

³ See CER Decision paper of 21 December 2007 'Transparency Requirements and Access to Gas Transmission Networks'

arrangements, thus allowing suppliers in Scotland to receive a seamless service with a single code (UNC) and without any pan-caking of tariffs.

Location of the relevant point at the border

- 4.7. The CER has put forward the border as an alternative point which could be designated as the relevant point and interested parties should refer to their document for more details.
- 4.8. At present the point at the border is a notional point on the BGE(NI) network. There is no other party interfacing with the system at this point – not even another TSO which would ordinarily be the case at a border. There is no entry or exit point from the network and no infrastructure at this point. Neither is the border the point at which two balancing zones connect as the Northern Ireland system is balanced to Gormanston.
- 4.9. It is possible that a point at the border could facilitate offtakes in RoI as well although this would potentially risk the regulatory duplication we have successfully avoided in Scotland.
- 4.10. If the border point is to be seriously considered we would need to review further the detailed implications for Northern Ireland of having an entry point which is not at the physical point of entry to the NI network and which has no physical infrastructure.

Relevant point summary

- 4.11. We believe that designating Gormanston is consistent with Annex 3.2(1) of the Regulation as it is the point where the two systems physically meet one another. It would also facilitate a timely compliance with EU law and thus resolution of the infringement proceedings.
- 4.12. However if there is an alternative available e.g. border, which would equally meet the terms of the regulation and which could be put in place speedily then we would be happy to consider.
- 4.13. Where an alternative option is available, but on a longer timeframe, then the Utility Regulator will consider this as a 'day two' issue together with the CER.
- 4.14. We welcome responses on the question of whether the relevant point to be designated is Gormanston or at the border.

5. Timetable and industry engagement

- 5.1. There is an imperative to meet the infringement as soon as possible in order to avoid potential fines. Consequently, all concerned are working to implement the outstanding areas of the infringement by 1 July 2012.
- 5.2. An outline consultation timetable is set out below.

5.3. The infringement requires the introduction of new products and tariffs for these. The shape of the new products and the impact they will have on the codes and licences of the TSOs will be consulted on. Give the urgent need to comply the timetable for consultation is accelerated but we have allowed as much time for consultation as possible. We envisage consulting on the business rules for the products first with a later consultation on the code drafting.

5.4. There will be a separate consultation on the tariffs and associated licence modifications.

5.5. We will continue to use the Northern Ireland EU code group as a forum for discussion as proposals are developed.

Timetable for Consultation		
UR industry consultation on work to meet the infringement (this paper)	UR	8 March 2012 (ends 22 March)
Consultation on the business rules for: <ul style="list-style-type: none"> • short term products • VRF and SNP entry point 	UR or TSOs	8 March (ends 29 March) 5 April 2012 (ends 30 April)
Tariff and licence mods for consultation	UR	6 April (ends 8 May)
Consultation on code drafting <ul style="list-style-type: none"> - Short term - VRF and entry point 	TSOs	6 April (ends 23 April) 18 May (ends 1 June)
Decisions published		
Decisions on business rules <ul style="list-style-type: none"> - Short term - VRF and entry point 	UR	2 April 2012 3 May 2012
Decisions on tariff and licence mods	UR	22 May 2012
Decisions code drafting <ul style="list-style-type: none"> - Short term - VRF and entry point 	UR	27 April 2012 7 June 2012
Go-live		1 July 12 (short term capacity booking window to open later that month)

6. Next steps

6.1. We welcome responses on the issues set out in this paper by 22 March. Responses should be sent to:

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