



**Re: UR's Consultation on Regulation (EC) 1775/2005 Infringement Action
&
CER/12/023 – South North Gas Pipeline and Compliance with EU Law**

Endesa Ireland welcomes the opportunity to respond to the UR's Consultation on Regulation (EC) 1775/2005 Infringement Action and CER's consultation on the South North Pipeline and Compliance with EU Law. At the outset Endesa Ireland would comment that the two week consultation timeframe gives market participants very little opportunity to consider the important issues raised in the paper and provide a reasoned response.

Overall, Endesa Ireland would like to see a pragmatic approach adopted to define the relevant point on the SNP and looks forward to the full capacity of the SNP being made available to shippers North and South. We agree with CER that it is wise to consider at this stage that commercial arrangements should facilitate future gas flows from North to South with possibilities of storage in Larne and customer connections to the SNP; the connection of the Corrib field may also impact on flows over the SNP. We consider that a situation where a shipper within Ireland would have to hold two licences and comply with two different codes is not tenable. We consider that this would be a barrier to use of the SNP and cross-border trade, which would be contrary to the spirit of EU policy and would reduce revenues paid for the use of the SNP.

Endesa Ireland does consider that there a number of questions arising out of whichever option is chosen, such as whether the BGE(UK) Code could be enforceable in Ireland and the interaction between both Codes and the shipping licences issued in both jurisdictions. It is unclear whether there would be any implications to customers depending on the option chosen. Similarly, the process for reaching agreement on this issue has not been outlined. Endesa Ireland would like further clarity on these issues and an opportunity to comment further prior to the issuance of a decision.

Location of the Relevant Point at the Border

From the point of view of pragmatism and avoiding regulatory duplication, and considering that CAG will be implemented in the coming years, Endesa Ireland supports the location of the relevant point at the border. This would allow shippers in Ireland to deliver gas to customers within Ireland using only the Gaslink Code which facilitates trade better than having to comply with two Codes of Operations. The installation of metering equipment could be addressed if required in the future.

It appears from Article 3 of Annex I to Regulation 715/2009 that the significance of the relevant point is that it functions as the reference point for which information about the pipeline, such as available capacity (Article 3.3) is published. This information should be more or less the same whether it is defined to be at the border or at Gormanstown and will not have an impact on the physical operation of the pipeline. In these circumstances the Utility Regulator's concern that there are no physical assets at this point should not cause a problem. Endesa Ireland would welcome clarification from the RAs as to whether there are other implications from the choice of location of relevant point. The administrative and practical benefits from locating the point at the border would thus seem to justify the adoption of the border as the relevant point.

The Utility Regulator outlines in its paper that the treatment at Moffat is precedent for the designation of Gormanstown as the relevant point and that Ofgem have agreed to this 'thus avoiding regulatory duplication and avoiding the need for Irish shippers on SNIP and IC to apply for a GB shipper licence'. The Utility Regulator points out that these arrangements allow for connections in Scotland to avail of TSO to TSO arrangements in order that Scottish customers receive a seamless service. Endesa Ireland argues that the pragmatism and flexibility shown in this regard is instructive; if the border is designated as the relevant point for SNP the avoidance of regulatory duplication and avoidance of need for Irish shippers on SNP to obtain Irish and Northern Irish shipping licences could be ensured. We would argue that the potential for third party connections on the Irish side is greater than with SNIP so TSO arrangements are not appropriate to deal with the issue. If the border is designated as the relevant point, there would be no issue with third party connections.

Location of the Relevant Point at Gormanstown

As for the options presented by CER for locating the relevant point at Gormanstown Endesa Ireland does not consider it practical that two Codes of Operations could apply to shippers. As mentioned previously this would discourage use of SNP and can be seen as a barrier to cross-border trade.

Regarding CER's Option 2, Endesa Ireland does not agree with the proposal that Gaslink could reserve capacity on the SNP to serve Irish customers as we consider that this is an inappropriate and unnecessary role for Gaslink and believe that may restrict competition by taking choice away from shippers. We would prefer that shippers organise their own capacity directly.

Conclusion

Endesa Ireland's interpretation of Regulation 715/2009 is that the relevant point is to be a point of administrative convenience. As such, we do not see any disadvantages to setting the point at the border. The consultation papers did not identify any additional issues which may be of concern to BGE (UK) or the Utility Regulator. In the absence of any further information, Endesa Ireland considers that it is most appropriate to define the border to be the relevant point for SNP. It is considered that this point would better promote cross-border trade. Furthermore, the administrative and practical burden that would be imposed by locating the point at Gormanstown strengthens the argument for the adoption of the border as the relevant point.