



EUROPEAN COMMISSION

Brussels, **XXX**
[...] (2012) **XXX** draft

COMMISSION OPINION

of **XXX**

**pursuant to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of
Directive 2009/73/EC - Sweden - Certification of Swedegas AB**

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I. PROCEDURE

On 8 March 2012, the Commission received a notification from the Swedish regulator for energy Energimarknadsinspektionen (hereafter, "EI"), in accordance with Article 10(6) of Directive 2009/73/EC¹ (hereafter, "Gas Directive"), of a draft decision on the certification of "Swedegas AB" (hereafter, "Swedegas") as a Transmission System Operator (TSO) for gas.

Pursuant to Article 3(1) Regulation (EC) No 715/2009² (hereafter, "Gas Regulation") the Commission is required to examine the notified draft decision and deliver an opinion to the relevant national regulatory authority as to its compatibility with Article 10(2) and Article 9 of the Gas Directive³.

II. DESCRIPTION OF THE NOTIFIED DECISION

Swedegas is a transmission system operator for gas in Sweden which owns and operates the transmission pipeline which connects Dragor in Denmark to Stenungssund in Sweden, as well as the associated branch pipelines, including measurement and control stations. Swedegas transports gas to distribution companies and directly connected consumers. The main pipeline is approximately 620 kilometres long.

Swedegas is a privately owned company registered in Gothenburg. Swedegas has applied for certification in accordance with the ownership unbundling model.

EI has come to the preliminary conclusion that Swedegas complies with the requirements of the ownership unbundling model as laid down in the Swedish legislation transposing the Gas Directive. EI has submitted its draft decision to the Commission requesting for an opinion.

III. COMMENTS

On the basis of the present notification the Commission has the following comments on the draft decision.

Exercise of control and rights in Swedegas

Article 9(1)(b)(i) Gas Directive prohibits the same person or persons from directly or indirectly exercising control over an undertaking performing any of the functions of production or supply, and directly or indirectly exercising control or exercising any right over a transmission system operator or over a transmission system. Article 9(1)(b)(ii) Gas

¹ Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, OJ L 211/94 of 14.8.2009

² Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005, OJ L 211/36 of 14.8.2009

³ The case is registered as 018-2012-SE

Directive prohibits the same person or persons from directly or indirectly exercising control over a transmission system operator or over a transmission system, and directly or indirectly exercising control or exercising any right over an undertaking performing any of the functions of production or supply Article 9(3) Electricity Directive⁴ includes a cross reference to transmission system operators and undertakings performing any of the functions of production and supply within the meaning of Gas Directive. Vice versa article 9(3) of the Gas Directive contains a similar provision regarding undertakings performing generation or supply in relation to electricity.

Swedegas is owned by the EQT Infrastructure Fund, an infrastructure investment fund. The ultimate ownership of the EQT Infrastructure Fund lies, via a number of intermediary legal persons, with [BUSINESS SECRET], registered in The Netherlands. In its draft decision, EI has assessed whether other companies owned and controlled by the EQT Infrastructure Fund perform any of the activities of generation, production or supply. EI has found that three companies perform such activities.

The first of these undertakings is Kommunekemi A/S, a waste treatment company operating in the neighbouring Member State Denmark, which uses heat from the processing of waste primarily for district heating purposes. During the summer months the heat is also used for the generation of limited quantities of electricity, which Kommunekemi A/S sells for a guaranteed and pre-established prices. The Commission agrees with EI that, given that only limited quantities of electricity are being generated, as a mere byproduct, and given that the electricity generated is subsequently sold for pre-established prices, these generation activities cannot form an obstacle to certification of Swedegas as an ownership unbundled TSO. Since in the present case it appears impossible to use the transmission activities of Swedegas in a manner so as to favour the electricity generating interests of Kommunekemi A/S, there is no risk of discrimination of network users.

The second and third company in which the EQT Infrastructure Fund has participations are both located in the United States: Midland Cogeneration Venture which operates a cogeneration plant, and Peregrine Midstream Partners which operates a storage facility. In its draft decision EI considers that the activities of Midland Cogeneration Venture and Peregrine Midstream Partners cannot be expected to have any influence on the operations of Swedegas and vice versa, considering their respective geographic locations. The Commission agrees with EI that in these cases, where there is no apparent connection or interdependence between the transmission activities and the generation and supply interests, there is no risk of discrimination of network users. These interests cannot form an obstacle to certification of Swedegas either.

The Commission notes that EI has not assessed in its draft decision whether the individual shareholders of [BUSINESS SECRET] – who are also advisers to the EQT Infrastructure Fund – are involved in activities of generation, production and/or supply of gas or electricity. It is submitted that these shareholders might indirectly control or exercise rights in Swedegas. The Commission invites EI to establish that these shareholders do not control or exercise rights in generation, production and/or supply activities in a way which would violate the provisions of Article 9(1)(b) Gas Directive.

⁴ Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, OJ L 211/55 of 14.8.2009.

IV. CONCLUSION

Pursuant to Article 3(2) Gas Regulation, EI shall take utmost account of the above comments of the Commission when taking its final decision regarding the certification of Swedegas, and when it does so, shall communicate this decision to the Commission.

The Commission's position on this particular notification is without prejudice to any position it may take *vis-à-vis* national regulatory authorities on any other notified draft measures concerning certification, or *vis-à-vis* national authorities responsible for the transposition of EU legislation as regards the compatibility of any national implementing measure with EU law.

The Commission will publish this document on its website. The Commission does not consider the information contained herein to be confidential. EI is invited to inform the Commission within five working days following receipt whether it considers that, in accordance with EU and national rules on business confidentiality, this document contains confidential information which it wishes to have deleted prior to such publication. Reasons should be given for any such request.

Done at Brussels,

For the Commission

Member of the Commission