



Brussels, 17.2.2015
C(2015) 1046 final

COMMISSION OPINION

of 17.2.2015

pursuant to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of Directive 2009/73/EC - Hungary - Certification of Magyar Gáz Tranzit Zrt.

COMMISSION OPINION

of 17.2.2015

pursuant to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of Directive 2009/73/EC - Hungary - Certification of Magyar Gáz Tranzit Zrt.

I. PROCEDURE

On 22 December 2014, the Commission received a draft decision from the Hungarian regulatory authority (hereafter "HEO"), dated 18 December 2014, on the certification of Magyar Gáz Tranzit Zrt. (hereafter "MGT") as transmission system operator (TSO) for gas, in accordance with Article 10(6) of Directive 2009/73/EC¹ (hereafter "Gas Directive"). On 28 January 2015 HEO provided further clarifications in relation to its draft decision.

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 Directive.

II. DESCRIPTION OF THE NOTIFIED DECISION

MGT is the promoter of the Hungarian section of the natural gas pipeline interconnecting the Slovakian and Hungarian gas systems. MGT's system runs from Balassagyarmat (Slovakian-Hungarian border) through Gödöllő to Vecsés where it connects to the wider Hungarian gas transmission system, operated by FGSZ Zrt.

MGT's system consists of a 94 km long and 75 bar bi-directional pipeline with a capacity of 5 bcm per year or 14 million cubic meters per day. The pipeline is newly constructed and is currently in test operation.

MGT has applied for certification in accordance with the ownership unbundling model. In particular MGT intends to make use of the possibility provided for in Article 9(6) Gas Directive to implement the ownership unbundling model by means of separate public bodies within the State. HEO has analysed whether and to what extent MGT complies with the requirements of the ownership unbundling model. In its preliminary decision, HEO found that MGT complies with the requirements of the ownership unbundling model. On this basis, HEO submitted its preliminary decision to the Commission requesting an opinion.

III. COMMENTS

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

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.

1. Separation within the state

Article 9(6) Gas Directive opens up the possibility, within the ownership unbundling model, of the State controlling transmission activities, as well as generation, production and supply activities, provided that the respective activities are exercised by separate public entities. For the purpose of the rules on ownership unbundling, two separate public bodies should therefore be seen as two distinct persons and should be able to control generation and supply activities on the one hand and transmission activities on the other, provided that it can be demonstrated that they are not under the common influence of another public entity in violation of the rules on ownership unbundling. The public bodies concerned must be truly separate.

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 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) Gas Directive includes a cross reference to transmission system operators and undertakings performing any of the functions of production and supply within the meaning of the Electricity Directive 2009/72/EC.

The sole owner of MGT is the Hungarian State which owns 100% of the company. Pursuant to Government Decree No.152/2014 (VI.6.) the Minister of National Development exercises control over the property of Hungarian State. The Hungarian State also owns the Hungarian electricity and gas incumbent, MVM Magyar Villamos Művek Zrt (hereafter, "MVM"), which is ultimately controlled, through the state owned national asset management company (MNV Zrt), by the Ministry of National Development.

With Decision No 1455/2014 the Government has requested the Minister for National Development to confer its ownership rights in MGT to the Ministry of Interior. With Decree No 48/2014 (XI. 27) the Minister of National Development appointed the Ministry of Interior to exercise the Hungarian State's ownership rights over MGT until 31 December 2020³. In the additional information submitted on 28 January 2015, HEO has explained that whilst it is possible for the Ministry of National Development to withdraw this Decree, this would not only contradict to Government Decision No 1455/2014 but also automatically result in a situation of non-compliance with the unbundling rules and thus trigger a review of the certification decision. On this basis, it can be concluded that the independent exercise of the shareholder's rights by the Ministry of Interior is not compromised by the fact that these rights have been attributed to it by the Ministry of National Development.

In its preliminary decision, HEO concludes that the Ministry of Interior does neither directly nor indirectly exercise control or any right over an undertaking performing any of the functions of production or supply of electricity or natural gas. HEO also underlines that MGT is not part of a vertically integrated undertaking and that MGT has neither subsidiaries performing any of the functions of electricity or natural gas production or supply nor do its administrative and supervisory board members exercise the same functions at an undertaking performing any of the functions of production or supply of electricity or natural gas.

In its preliminary decision, HEO has undertaken an in-depth evaluation of the governance structures of the Hungarian State, in particular focusing on the role of the Ministries and the

³ Pursuant to §3 (2a) of Law No. CVI of 2007, the exercise of rights can only be conferred for a limited period

hierarchy between different state entities. According to this assessment, Ministers in Hungary are in charge of their Ministry and responsible for the issues assigned to it. A Minister carries out the tasks falling in his competence autonomously. Within his area of competence a Minister cannot be instructed and no decision can be made in his place also not by the Prime Minister, which excludes the possibility of exercising influence over multiple Ministries by the Prime Minister. Based on this analysis HEO concludes that the conditions of MGT's full ownership unbundling within the Hungarian State are met.

In view of the above elements and in particular in view of the independent power of decision of the Minister of Interior within his area of competence, the Commission considers that the requirements of Article 9(6) Gas Directive are complied with.

The Commission notes however that the Ministry of Interior's right to exercise the Hungarian State's ownership rights over MGT is limited in time until 31 December 2020 and that it is the Minister of National Development that has set this timeline in its decree. The Commission therefore urges HEO to verify and ensure that the conditions of MGT's full ownership unbundling continue to be met beyond 2020 and to review its certification decision if necessary. This also applies in case the exercise of the Hungarian State's ownership rights over MGT are revoked from the Ministry of Interior for any reason before that date.

2. Ownership of the transmission assets

Article 9(1)(a) Gas Directive requires that the TSO owns the transmission system it operates. From the documents HEO submitted to the Commission it appears that presently MGT does not own all assets related to the operation of the transmission system. MGT claims, however, that it will own those assets, including all equipment to manage system operations and measurements, and IT systems by the time it will apply to HEO for its TSO licence.

HEO submits that it will assess whether MGT indeed owns all relevant transmission assets in the course of MGT's licencing procedure. The Commission however considers ownership of the transmission assets a core requirement of the ownership unbundling model under the Gas Directive and therefore takes the view that its fulfilment has to be verified in the context of the certification procedure. The Commission requests HEO to make a positive final certification decision conditional on the fulfilment of this criterion.

IV. CONCLUSION

Pursuant to Article 3(2) of Gas Regulation, HEO shall take utmost account of the above comments of the Commission when taking its final decision regarding the certification of MGT, 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. HEO 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, 17.2.2015

For the Commission
Miguel ARIAS CAÑETE
Member of the Commission