



Brussels, 20.8.2015
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COMMISSION OPINION

of 20.8.2015

**pursuant to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of
Directive 2009/73/EC - Belgium and Great Britain - Certification of Interconnector (UK)
Limited**

COMMISSION OPINION

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pursuant to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of Directive 2009/73/EC - Belgium and Great Britain - Certification of Interconnector (UK) Limited

I. PROCEDURE

On 25 June 2015 the Commission received a notification from the Belgian national regulatory Commission de Régulation de l'Électricité et du Gaz (hereafter "CREG"), in accordance with Article 10(6) of Directive 2009/73/EC¹ (hereafter, "Gas Directive"), of a draft decision on the certification of Interconnector (UK) Limited (hereafter "IUK"). On 23 July 2015, also the national regulatory authority in the United Kingdom responsible for Great Britain, the Authority for Gas and Electricity Markets, (hereafter, "Ofgem") submitted a notification concerning the same issue.

Pursuant to Article 3(1) Regulation (EC) No 715/2009² (hereafter, "Gas Regulation") the Commission is required to examine the notified draft decisions and deliver an opinion to the relevant national regulatory authorities as to their compatibility with Article 10(2) and Article 9 of Directive 2009/73/EC. In view of the fact that the notifications by CREG and Ofgem concern the same TSO and concern the same issue, the Commission has decided to adopt a single Opinion directed at both regulators.

II. DESCRIPTION OF THE NOTIFIED DECISIONS

Interconnector (UK) Limited (hereafter "IUK") owns and operates a sub-sea gas pipeline and terminal facilities which provide a bi-directional link between the United Kingdom and Belgium.

In May 2013 and July 2013 respectively, Ofgem and CREG adopted final certification decisions regarding IUK. In both cases, the certification was granted to IUK provided that it would fulfil a number of conditions by 3 March 2015. During this transitional period IUK would implement a number of structural changes to ensure full compliance with the ownership unbundling (hereafter, "OU") model. Such changes concerned for instance the removal of rights of conflicted shareholders and the removal of conflicted Directors in IUK.³ In its opinions⁴ on the preliminary decisions preceding the final certification decisions, the

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 211/136 of 14.8.2009.

³ The term 'conflicted' in this Opinion refers to an undertaking or a natural person having interests in both IUK as a transmission system operator and at the same time in gas and/or electricity supply and/or production interests.

⁴ https://ec.europa.eu/energy/sites/ener/files/documents/2013_063_be_en.pdf and https://ec.europa.eu/energy/sites/ener/files/documents/2013_057_uk_en.pdf

Commission raised a number of detailed comments, but agreed with the overall principle of a conditional certification until 3 March 2015.

As part of the ongoing monitoring and reporting on the progress of implementing the conditions, IUK informed CREG and Ofgem by letter of 28 January 2015 that not all the conditions set in the certification decisions would be met by 3 March 2015. IUK requested extra time, until 1 June 2015, to meet the requirements. On that basis, CREG and Ofgem re-opened their certification procedures *ex officio* in February and March 2015 respectively. During the four months period available for the certification assessment of the NRAs, various information requests were sent to IUK, asking inter alia how IUK expected to meet the conditions by June 2015. After the four month period was over both NRAs adopted a draft decision that was notified to the Commission.

III. COMMENTS

On the basis of the present notifications the Commission has the following comments on CREG's and Ofgem's draft decision.

Removal of rights of OAO Gazprom

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(1)(c) Gas Directive prohibits the same person to appoint members of the supervisory board, the administrative board, or bodies legally representing the undertaking, of a transmission system operator or a transmission system, and directly or indirectly to exercise control or exercise any right over an undertaking performing any of the functions of production or supply.

The current ownership structure of IUK⁵ shows that the sole remaining conflicted shareholder is OAO Gazprom.⁶

[BUSINESS SECRET]

It also appears from the notified draft decisions by CREG and Ofgem that the necessary amendments to the shareholders' agreement, aimed at amending the existing rights of Gazprom as a shareholder and thus complying with some of the certification conditions, had not been agreed to and signed by Gazprom.

In view of these facts, CREG and Ofgem have sought to use their four month review period following the re-opening of the certification procedure, to agree with IUK on a suitable way of achieving compliance with the ownership unbundling method.

[BUSINESS SECRET]

CREG and Ofgem have assessed to what extent the situation [BUSINESS SECRET] is in line with the OU model. Both regulators come to the conclusion that IUK has taken sufficient measures to ensure that Gazprom, being a person that is active in the production and supply of

⁵ The shareholders are: Gasbridge 1 (15,75%), Gasbridge 2 (15,75%), Gazprom (10%), Caisse de Dépôt et Placement du Québec (23,50%), CDP Groupe Infrastructures Inc. (10%) en Fluxys Europe BV (25%). The shareholders in Gasbridge 1 and 2 are: Fluxys Europe (50%) en Snam S.p.A (50%).

⁶ The other conflicted shareholder, Conoco Phillips, disposed of its entire interest to Fluxys Europe.

gas, can no longer exercise rights, in the sense of Article 9(2) of Directive 2009/73/EC, vis-à-vis the TSO IUK. In addition, both regulators agree that IUK also complies with other conditions that had been imposed by the initial certification decisions not related to the position of conflicted shareholders.

The Commission agrees with CREG and Ofgem that the measures taken by IUK, if maintained, result in a situation that is compliant with Article 9 Gas Directive through the effective removal of any rights of Gazprom with regard to IUK. However, the Commission takes the view that CREG and Ofgem should assess in their final decision the potential risk that Gazprom seeks legal remedies [BUSINESS SECRET] and the potential consequences which could entail from such a challenge from the perspective of the unbundling requirements.

IV. CONCLUSION

Pursuant to Article 3(2) Gas Regulation, CREG and Ofgem shall take utmost account of the above comments of the Commission when taking their final decisions regarding the certification of IUK, and when they do 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. CREG and Ofgem are invited to inform the Commission within five working days following receipt whether they consider that, in accordance with EU and national rules on business confidentiality, this document contains confidential information which they wish to have deleted prior to such publication. Reasons should be given for any such request.

Done at Brussels, 20.8.2015

For the Commission
Miguel ARIAS CAÑETE
Member of the Commission

