

RESPONSE TO CEER'S LETTER ON PUBLISHING AVAILABLE FIRM CAPACITIES AND THE ISSUE OF CONFIDENTIALITY

1. CEER has written to Eurogas asking for a position or at least initial views on an issue which arises in connection with publication of available capacity, namely confidentiality requirements which GTE argues prevent publication of aggregate data at some major network interconnection points.
2. Gas network users represented in Eurogas are addressing the questions of capacity availability and related issues, including confidentiality, which are raised in the context of the Madrid Forum and Joint Working Group.
3. Eurogas in responding to this issue refers to the definition of available capacity given in the GTE's Report of 20th June 2001. To recall:

Irrespective of the existing differences between countries, the common understanding is that available capacity means the maximum physical operating capacity less the physical operating capacity which is necessary to fulfil:

- the commitments under any valid and legally binding agreements and including the capacity necessary for non-discriminatory transportation of natural gas owned by the owner and/or operator of the system;
- any domestic laws and regulations relating to security of supply including PSO;
- the efficient operation of the transportation facilities including any operating margin necessary to ensure the security and reliability of the system.

Eurogas agrees this definition and encourages the GTE to promote a consistent approach among its members.

4. As a first reaction to CEER's question, the Network Users Group agrees that it is important to have as much transparency on capacity availability as reasonable and necessary, but to avoid damaging breach of commercial confidence. A request for non-publication is expected to occur only on an exceptional basis and if it does, then the following procedure should be applied under the responsibility of national authorities. The network user has to justify and substantiate his case for non publication to the national authorities on a confidential basis to enable them to check any abuse of dominant position.
5. Meanwhile, the Network Users Group of Eurogas notes that the issue need not be addressed just as one of principle, a stark choice between transparency and confidentiality, which can lead to counter-productive debate, but from a practical point of view. The following measures can be introduced immediately, and abuse will be liable for action under the national legal and regulatory framework.
 - If a request for access is turned down, the customer is able to check with the competent authority that there is no abuse of competition. The competent authority will be aware of the quantitative information, but can respond to the customer in general terms.
 - Furthermore the TSO can take practical steps to alleviate difficulties without breaking confidentiality. Congestion problems could be declared bilaterally to shippers, who can evaluate the possibility of capacity trading.

6. The regulatory and business climate in which the TSOs operate should ensure adequate incentives for investment based on clear signals on future firm demand. This will enhance capacity, and minimise the risk of congestion, at the same time facilitating access for more contracts and removing the issue of confidentiality.
7. Eurogas advises members to discuss this issue further in their companies, including any legal aspects because ultimately it is a sensitive question at company level. Those companies active in Eurogas but members of a national Association must also discuss further at national level. The level of particular concern can be expected to vary from company to company in relation to their present circumstances, and future expectations. Companies can respond to their national authorities on the issue, and if they have concerns provide examples to assist the decision making by their national authority.