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ERSE consultation on extraordinary gas measures

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EFET response – 08 April 2022

The European Federation of Energy Traders (EFET)* welcomes the opportunity to provide comments to *“ERSE Consulta Pública nº 107 sobre medidas extraordinárias no âmbito do Sistema Nacional do Gás (SNG)”*.

Introduction

EFET has welcomed most of the measures taken by Member States so far to alleviate the burden of price rises on end-consumers, such as direct financial support to vulnerable consumers or reduction of taxes and levies.

However, we voiced our concerns with a few measures adopted in certain Member States, in so far as they threatened the affordability of energy supply and funding of investment needed to meet European decarbonisation goals in the short and long term.

With ERSE Consultation n. 107 on extraordinary gas measures, the following set of options are presented to mitigate price volatility in the gas wholesale market:

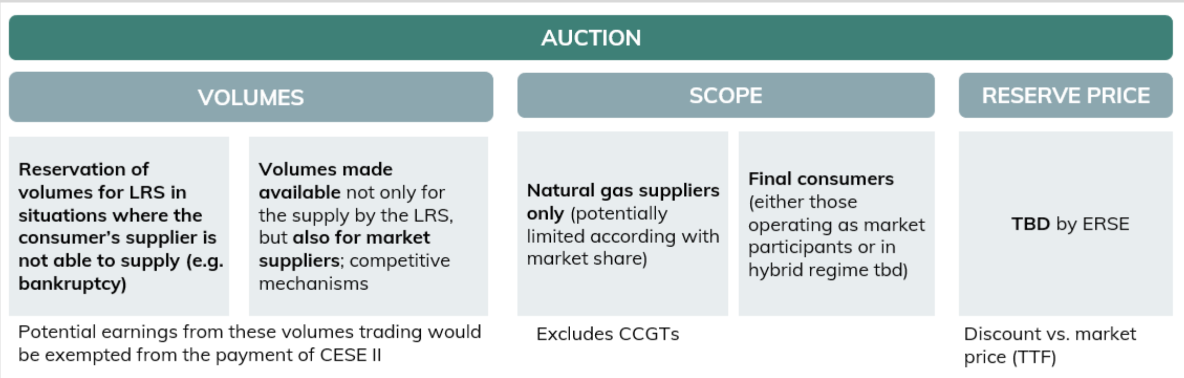
1. Gas procurement mechanisms: a) Regulated mechanism to sell gas; b) Demand “stabilizer” mechanism;
2. Market design: a) Dominant operator and market makers; b) Market operation and imbalances management; c) Spot market rules and interconnection capacity allocation;

Key messages

Bearing in mind that some proposals might result in legislative proposals and others may yet need further discussion on a possible implementation, EFET has the following comments to the set of options presented by ERSE:

1a. Any proposed intervention should be aligned with European guidelines

[ERSE Proposal on regulated mechanism for the sale of gas from Take-or-Pay contracts]



In line with the European guidelines published in the *"European Commission Toolbox"* (13/10/21) and, more recently, in the *"REPowerEU"* (08/03/22) and the *"Temporary Crisis Framework"* (23/03/22), support for vulnerable customers or companies that face high energy costs should be carried out through State Aid, avoiding adopting measures that undermines confidence in the functioning of the market.

The regulated mechanism for the sale of gas from Take-or-Pay (ToP) contracts for price predictability and inter-temporal smoothing goes against European Commission guidelines on fair competition in the market.

Considering that it envisions the procurement of volumes from a limited group of market suppliers to specific consumers, we believe that this mechanism may introduce discriminate between different market participants, thus distorting the functioning of the market and increasing the costs for consumers in the long term.

Regarding final customers, especially industrial ones, the measures announced by the European Commission already provide for more direct support framework compatible with State Aid guidelines.

The long-term contracts under the ToP regime, owned by the Supplier of the National Gas System, must guarantee the supply of gas in the regulated market, so the holder of these contracts is obliged to ensure that the wholesale LRS has enough volumes for the retail LRSs. In our view, these contracts already cover the volumes regarding the supply of consumers whose suppliers are no longer able to ensure their contractual commitments.

Finally, the market agent holding the ToP contracts should also obtain the gains or losses resulting from this positioning as it is responsible for managing the price and volume risk from the contracts while supplying the regulated market.

1b. The "mecanismo de estabilização da procura" is not compatible with State Aid guidelines

[ERSE Proposal on mecanismo de estabilização da procura]

AUCTION FOR ELIGIBLE CONSUMERS**:**

- **Reference price is the VTP**
- **Descending clock regarding discount**

Wholesale LRS purchases in the market, after the auction took place:

A. **Single purchase,** a few days after the auction, **Num único momento**, poucos dias **depois do leilão**, by requesting bids in a sealed envelope to market agents;
B. **Daily in MIBGAS** through short-term products, though all the delivery period;
C. A combination of both

Regarding the *"mecanismo de estabilização da procura"* (demand stabilisation mechanism), it should be noted that the proposed model includes a significant risk for the gas market participants, as the auctions assessing the demand are carried out a priori and the related volumes need to be purchased afterwards.

In the current context of high price volatility, the mechanism would leave the market participants exposed to potential windfalls, the extent of which that cannot be anticipated. We further note that the associated costs would be socialized via the transmission tariff – such solution would be disproportionate and burdensome to the Portuguese economy, as it would not only be the gas consumers that would benefit from the discounts but would have to carry the entire cost.

Furthermore, as the use of natural gas is expected to fall e.g. along with electrification, the reduced consumer basis would be facing an increasing share of the costs.

We therefore believe that the overall cost of interventions aiming at protecting the consumers are shared more widely and include all those who actually benefit from the envisaged discounts.

It is also worthwhile to recall that, in line with published European guidelines, support for vulnerable customers and companies facing high energy costs should be provided through tools compatible with State Aid guidelines.

2a. Reconsider the proposal of mandatory market makers and initiate a discussion with CNMC on the harmonisation of the definition of "dominant operators";

[ERSE proposal] Introducing the concept of dominant operator in the gas sector Regulation and imposing obligations to promote competition and reduce market concentration through:

- *Obligation to become a market creator/enabler (in the organised market) presenting offers for purchase and sell in the gas organised market, for a defined volume and with a pre-defined price differential OR*
- *Promote the availability of gas volumes already purchased in market conditions*

As a general remark, market makers have diverse risk appetite and should be identified on a voluntary basis through market-based mechanisms. Market-making incentives are a good instrument which regulators can use to ensure that large market participants offer volumes for trade and boost the liquidity of the most illiquid markets. However, the figure of mandatory market enabler may have a negative impact on the perception of regulatory risk, which may undermine investor's trust.

The regional Iberian market for natural gas was agreed by the Portuguese and Spanish NRAs, which signed the *"Plan for Compatibility of the Regulation of the Energy Sector"*, on March 8, 2007. MIBGAS started on December 16, 2015 in Spain and on March 16, 2021 in Portugal and both its volume and number of participants have been steadily growing.

For the purpose of identifying mandatory market makers, we believe that the criteria for classifying dominant operators should, at least, be based on a similar methodology taking into account competition criteria and initially applied at country level.

We therefore recommend that ERSE opens a discussion with CNMC with the aim of establishing such harmonised approach.

"Dominant operator" in the field of competition is defined as the agent capable of operating, to a large extent, independently of other market participants (customers, competitors, suppliers). However, the relationship between the 10% target established in Spain and the aforementioned definition of dominant operator is not clear. Any classification of dominant operators should rely on a set of criteria aligned with competition legislation.

The current conditions for the mandatory market enabler in Spain, namely the spread of €0.35/MWh between buy and sell offers, and the offer of 5.68% of the supply volume, are historical values that do not reflect the current market context.

2b. We support the revision of the weighted average price in Portugal

[ERSE Proposal] In the absence of transactions that allow to compute the PT weighted average price for day D, ERSE proposes to no longer use the price from the previous 7 days and rather use the ESP weighted average price adjusted with the interconnection tariffs

EFET agrees with the proposed measure to review the methodology to compute the weighted average price for Portugal for imbalance purposes.

In situations where no transactions occur in Portugal, determining the weighted average price considering the previous days may likely result in high differentials between the Portuguese weighted average price and the value of gas in Spain.

As a consequence, the previous methodology could incentivize arbitrage situations that may harm the balance of the network. Furthermore, the use of arbitrage through situations of imbalance is not consistent with the objective established in the Balancing Network Code regarding the formation of imbalance prices. At the same time, a backup reference price is necessary for the market to continue functioning and we agree that a reference to the Spanish market would be most appropriate.

2c. The joint mechanism of explicit and implicit allowance of capacity is an improvement;

Regarding spot market rules and interconnection capacity allocation, though there is no detailed information about this joint mechanism (CEIA) in Prisma, it seems an improvement in comparison to the current implicit mechanism that solely relies on Ministerial approvals in Spain.