

**PRELIMINARY ASSESSMENT OF THE COMMITMENTS PROPOSED BY GAZPROM**

**Practice I: Territorial restrictions**

		Assessment & Recommended position
<b>The Commitment proposed by Gazprom (to be accepted by the Commission)</b>		
<p><b>Description of anticompetitive practice as indicated in the Statement of Objections</b></p> <p><b>I.1.</b> Gazprom introduced destination clauses, direct re-export bans or expansion clauses<sup>1</sup> in contracts with customers from 8 MSs.</p> <p>Member States affected: <u>all</u> MSs covered by the antitrust proceeding</p>	<p><b>Removal of the territorial restrictions from supply contracts:</b></p> <ul style="list-style-type: none"> <li>- Gazprom is obliged to remove clauses from all contracts covered by the proceeding.</li> <li>- Obligation covers clauses that would make re-export less efficient (i.a. profit splitting mechanisms).</li> <li>- Gazprom cannot conclude new contracts with such clauses in the future.</li> </ul>	<p><u>Assessment:</u> Measure is proportionate and adequate, although of limited added value (only one contract in the EU contains any such clauses).</p> <p><u>Conclusions:</u></p> <ul style="list-style-type: none"> <li>- Recommended EU position: The EU should welcome the proposed Commitment.</li> <li>- Envisaged Gazprom response: No negative impact on Gazprom - ready to pursue the proposed Commitment.</li> </ul>
<p><b>I.2</b> Gazprom introduced contractual obligation to off-take gas at certain metering stations<sup>2</sup></p> <p>Member States affected: Bulgaria, Hungary</p>	<p><b>Facilitation of market interconnections with Bulgaria:</b> Gazprom is ready to allow Bulgarian TSO (Bulgartransgaz) to conclude interconnection agreements with other EU Member States as well as to adjust its contracts with Bulgargaz to remove relevant clauses.</p>	<p><u>Assessment:</u> Measure is not entirely proportionate and adequate.</p> <ul style="list-style-type: none"> <li>- It is limited in geographical scope (only Bulgarian market covered) and does not concern connections with non-EU markets. Recent WS2 GAC meetings strongly suggest that Gazprom will continue to obstruct the establishment of reverse flows between the EU and non-EU states (i.a. Belarus, Moldova, Ukraine).</li> <li>- The Commitment is not directly enforceable, it depends on negotiations between Gazprom and the Bulgarian TSO. Again, from WS2 GAC: it can be expected that Gazprom will seek to stall the process and pass the blame. <u>gas advisory council</u></li> </ul> <p><u>Conclusions:</u></p> <ul style="list-style-type: none"> <li>- Recommended EU position: The EU should expect Gazprom to extend the proposed Commitment to cover interconnections in all CEE MSs, and on the EU borders with 3<sup>rd</sup> countries (i.a. Belarus and Ukraine). <u>Though, the EU may consider fines in case of non-compliance in future, at this point further dialogue with CEE TSOs to properly define the scope of the Commitment should be the primary option.</u></li> <li>- Envisaged Gazprom response: Current wording is Gazprom's <u>red line, clearly</u></li> </ul>

<sup>1</sup> Such clauses increase take-or-pay obligation of the customer in case of re-export.

<sup>2</sup> In some contracts Gazprom introduced off-take points which made it technically impossible for its customers to re-export or sell gas to other customers on the same national market.

<p>communicated on several occasions. Limiting cross-border trade through the EU border is the crucial for Gazprom corporate strategy.</p>		
<p><b>Assessment:</b></p>		
<p>Measure is neither proportionate nor adequate. Possible impact will be partial and limited only to the <u>Baltic States</u> and Bulgarian gas markets. The proposed Commitment fails to address Gazprom's general practice identified in the Statement of Objections with respect to CEE MSs.</p> <ul style="list-style-type: none"> <li>- in substance: Gazprom practice restricted diversification of supplies and/or re-sale; in contrast the proposed Commitment aims at bringing additional supplies to the CEE market,</li> <li>- in geographical terms: Gazprom practice limited competition on Polish and Hungarian markets; the proposed Commitment has potential to increase competition only in Bulgaria and Baltic markets.</li> </ul> <p>The proposed Commitment does not prevent the practice from reoccurring: .</p> <ul style="list-style-type: none"> <li>- Gazprom may continue its practice in the future; a refusal to change delivery point in any configuration other than indicated by the Commitment, will not be considered as a breach of the proposed Commitment and as such will not trigger an automatic response of the Cion (a new antitrust procedure would have to be undertaken).</li> </ul>	<p><b>Option to change delivery points:</b> Gazprom offers its customers a possibility to change delivery points for pre-determined service fee:</p> <ul style="list-style-type: none"> <li>- from Poland to the <u>Baltic States</u>,</li> <li>- from Slovakia to the <u>Baltic States</u>,</li> <li>- from Slovakia to Bulgaria,</li> <li>- from Hungary to Bulgaria,</li> </ul> <p>under the following conditions:</p> <ul style="list-style-type: none"> <li>- minimal volume of gas: 100 million cubic meters,</li> <li>- notification at least 6 months in advance,</li> <li>- Gazprom may refuse under certain circumstances.</li> </ul>	<p><b>I.3</b> <b>Refusal to change delivery points between CEE MS</b></p> <p><b>Member States affected:</b> Poland, Hungary</p>
<p><b>Conclusions:</b></p>		
<ul style="list-style-type: none"> <li>- Recommended EU position: The EU should clearly request a more constructive approach from Gazprom. Gazprom's proposal may cause undesirable, negative response of several MSs (PL, SK, BG, LT, LV, EE). The EU should pressure Gazprom to strengthen the proposed Commitment.</li> <li>- Envisaged Gazprom response: No additional measures needed. Gazprom may aim at diminishing the significance of the breach / classify it as "past breaches" (no longer relevant for the current situation on the EU gas market).</li> </ul>		

## Practice II: Unfair Pricing

Description of anticompetitive practice as indicated in the Statement of Objections	The Commitment proposed by Gazprom (to be accepted by the Commission)	Assessment & Recommended position
<p>II.1 Application of prices/price formulae:</p> <ul style="list-style-type: none"> <li>- significantly exceeding Gazprom's marginal costs,</li> <li>- significantly exceeding prices at the WE gas hubs.</li> </ul> <p>Refusal to adjust prices in the CEE to market conditions of the WE.</p> <p>Member States affected: <u>Bulgaria, Estonia, Latvia, Lithuania, Poland.</u></p> <p>(The practice was observed in other EU MSs, i.a. FI, DE, NL, IT though the <u>Cion</u> decided not to address this in the Statement of Objections) <i>when?</i></p>	<p>Amendment of price revision clauses</p> <ul style="list-style-type: none"> <li>- Change/introduction of the price revision clauses<sup>3</sup>, with "generally accepted gas hubs" and average weighted border prices in France, Italy, Germany.</li> <li>- Limitation to the duration of price negotiations (max. 120 days) before the initiation of arbitration proceedings.</li> <li>- More frequent price revisions (revision may be requested every two years and in addition once every five years).</li> <li>- Application solely to contracts with delivery points in <u>MSs covered</u> by the antitrust proceeding.</li> </ul>	<p><u>Assessment:</u></p> <ul style="list-style-type: none"> <li>- Limited impact on gas pricing in CEE. Gazprom will be able to continue its pricing policy, despite the proposed Commitment decision.</li> <li>- Application of the proposed Commitment is subject to third party assessment i.a. the arbitration tribunals, (possible conflict with the EU procedures<sup>4</sup>).</li> <li>- The proposed Commitment does not introduce any obligation to comply with the arbitration/NCAs awards, (see: Lithuania 2014, Ukraine 2018). <i>Model?</i></li> </ul> <p><u>Conclusions:</u></p> <ul style="list-style-type: none"> <li>- Recommended EU position: The EU should dismiss the proposed Commitment as failing to address the unfair pricing issue. The EU should reiterate the need for Gazprom to change its general pricing policy (in cooperation with respective EU and MSs NCAs) on a case by case basis. Additional role of energy NRAs in MSs could be further analyzed.</li> <li>- Envisaged Gazprom response: <u>Gazprom's red line</u> unfair and politically driven pricing (linked to the Russian Federation policy in CEE) is the focal point of Gazprom corporate strategy. Gazprom will most likely argue that higher gas prices in CEE result from higher transmission tariffs in CEE and panicking.</li> <li>- Other law enforcement actions provided in Reg. 1/2003 could be necessary, due to <u>limited options for compromise</u> <i>what kind?</i></li> </ul>

<sup>3</sup> Limited solely to long-term contracts (over 4 years).

<sup>4</sup> See: Commission notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU (Recital 128).

## Practice III: Strategy of making gas supplies conditional on infrastructure related issues

Description of anticompetitive practice as indicated in the Statement of Objections	The Commitment proposed by Gazprom (to be accepted by the Commission)	Assessment & Recommended position
<p>III.1 Additional gas supplies to PGNiG<sup>5</sup> in 2009 conditional upon:</p> <ul style="list-style-type: none"> <li>- consent to restrain from the implementation of some provisions of Directive 2003/55, giving control over decision-making process of the Yamal pipeline operator (EUROPOL Gas<sup>6</sup>) to Gazprom, IGA to be concluded between the Governments of Poland and Russia.</li> <li>Gazprom used its control over Cascade<sup>7</sup> to delay the establishment of virtual and physical reverse flows on Yamal Pipeline in Poland.</li> </ul> <p>Member States affected: Poland.</p>	<p>No proposal from Gazprom.</p> <p><i>Commission's findings suggest the situation cannot be addressed through the antitrust procedure due to the provisions of existing intergovernmental agreement between Poland and Russia.</i></p> <p style="text-align: right;"><i>Commission Decision 2017/684</i></p>	<p><u>Assessment:</u></p> <ul style="list-style-type: none"> <li>- An intervention by the EU may result in serious political tension between Poland and Russia over the Yamal pipeline (Poland strongly emphasized on number of occasions, that the control of Gazprom over Yamal pipeline is unacceptable).</li> <li>- Lack of the EU intervention will most probably be perceived as <u>failure to exercise the EU law enforcement powers</u> (i.a. the EU obligations resulting from IGA Decision 2017/684).</li> <li>- The issue may not be resolved at least until the 2022<sup>8</sup> without the EU or PL gov. direct intervention.</li> </ul> <p><u>Conclusions:</u></p> <ul style="list-style-type: none"> <li>- Recommended EU position: The EU should emphasise that the current situation with respect to Yamal pipeline can no longer be accepted, due to the implementation of the new IGA Decision 2017/684. The EU may propose <u>trilateral dialogue between Poland, Russia and the EU to resolve the issue.</u></li> <li>- <u>Envisaged Gazprom response: The EU law does not apply to the IGA arrangements between Poland and Russia. Gazprom suggested on a number of occasions no decisions should be taken on the future of Yamal pipeline prior to the finalization of NS2 project (see: IA: The expected consequences of NS2 project for the EU internal gas market).</u></li> </ul> <p style="text-align: right;"><i>do we have the doc ?</i></p>

<sup>5</sup> In January 2009, RosUkrEnergo (Gazprom's subsidiary) ceased its supplies to PGNiG (25% of PGNiG gas portfolio).

<sup>6</sup> EUROPOL Gas is a joint-venture of Gazprom and PGNiG.

<sup>7</sup> Gazprom exercises joint control over Cascade parent company WIGA.

<sup>8</sup> Deadline for Termination of the Gazprom – PGNiG gas supply contract.

ANNEX 2

III.2

Price discounts for Bulgargaz, conditional upon Bulgarian Energy Holding (Bulgargaz parent company) participation in South Stream project.

Member States affected: Bulgaria.

Gazprom will resign from 70 million USD of damages towards BEH and any other damages resulting from the termination South Stream project by Bulgaria.

Assessment:

The proposed Commitment finalizes the dispute between BEH and Gazprom.

Conclusions:

- Recommended EU position: The EU should welcome Gazprom's proposal.
- Envisaged Gazprom response: Gazprom will most probably underline the crucial character of the proposed Commitment and high internal cost of this compromise proposal.

?