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News: Changes on and Discussion about the Framework Conditions of Gas Supplies

DR. LIANE THAU
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This newsletter informs about the background of the latest decision of the German anti-trust authority Bundeskartellamt (BKartA) on the restrictions on long-term sales contracts. Furthermore we shortly illustrate the major areas of discussion on the BNetzA procedure on capacity management pointed out by companies and associations.

I. TERMINATION OF RESTRICTIONS ON LONG-TERM SALES CONTRACTS.

After long speculation the BKartA finally lifted in mid-June all restrictions on long-term contracts between regional and inter-regional gas companies on one side and local and regional distribution companies on the other starting from October 2010. In a decision of the BKartA from 2006 the contract duration was restricted to four years if more than 50 % of the gas need of the customer was supplied and to two years if more than 80 % were supplied.

1. POSITIVE MARKET CHANGES. Already during the sector inquiry “capacity situation in German transmission systems” in December 2009 the BKartA signalled that it may come to a change. In a report published on its website the BKartA now comes to the conclusion that network access improved significantly and a traded market developed. Due to significantly reduced contract duration and

the fact that the variety of products and services and the number of suppliers went up competition increased. The procurement portfolios are much more diversified now. Because of this positive development the prolongement of the policies from 2006 is not necessary anymore. Should the development be reversible – which is not expected by the authority – new procedures can be started.

2. WHAT THE MARKET PLAYERS SAY. Even before the decision was made most market players shared the assessment of the BKartA. In particular E.ON Ruhrgas and Wingas welcomed the decision and with it a further strengthening of competition in the gas market. Critical voices were raised mostly among the suppliers which had newly entered the market. Especially the association of traders EFET and the Bundesverband Neuer Energieanbieter

(bne) complained about the decision. Also the Monopoly Commission demanded an extension of two years of the decision from 2006 in its last annual report.

II. BNETZA PROCEDURE ON CAPACITY MANAGEMENT.

In February the procedure on capacity management was started by the BNetzA. At the end of April the network operators delivered their – predominantly critical - statements. The Beschlusskammer 7 of the BNetzA has now published the written statements of companies and associations. There are four major areas of discussion:

- Harmonisation with the ordinance provision on network access and the European initiatives: a number of players see no necessity for a separate German initiative and point to the European approach.
- Bundling of capacity: Controversially discussed is the question whether in future only bundles of entry and exit capacity between market areas and at the border points shall be offered. BDEW for example demands to offer bundles only as an option.
- The proposal to advance the initial daily nomination from 2 p.m. to 10 a.m. does not have a lot of support. On the one hand this

deviates from nomination times in other countries. On the other hand decisions about the portfolio are not yet made at that time and no data about the standard load profiles is available. In some statements it is argued that the early nomination should be combined with generous re-nomination rights.

- Furthermore the restrictions on re-nomination rights are discussed critically. It is demanded to allow at least re-nominations on an interruptible basis.

In all statements it is emphasised the zoning of entry and exit capacities should not lead to lower available firm capacity. Uniformly welcomed is the auctioning of capacity.

III. CONCLUSION.

With its new decision the BKartA acknowledged a changed assessment of the development of competition in the gas market for the first time. Whether the positive market changes are stable and the BKartA has made the right decision has yet to be proved.

Taking into account the wide range of different opinions on the procedure of capacity management the further development is not yet clearly foreseeable.

DR. LIANE THAU
RECHTSANWÄLTIN, PARTNERIN, BERLIN



GÖRG
Klingelhöferstraße 5
10785 Berlin
Tel: + 49 (0) 30 884 503 - 187
E-Mail: lthau@goerg.de

Expertise

- Energy and infrastructure law (incentive regulation, network compensation arrangements for gas and electricity grids)
- Public and regulatory law, environmental law
- Litigation (primary focus on healthcare and administrative law matters)
- Sector experience: energy industry, public institutions
- Key clients consist of public and ecclesiastical institutions
- Currently acting for a Federal State regulation authority in a complaints proceeding relating to incentive regulations

Professional Experience

- As of 2002: Partner, GÖRG Partnerschaft von Rechtsanwälten
- As of 1999: Partner, Gaedertz Rechtsanwälte (Berlin Office, Potsdam)
- Admitted to practice law in 1990

Further Activities

- 2006/2007 Head of the Public Commercial Law practice group

Foreign Languages

- english, russian

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OUR OFFICES:

BERLIN ■ Klingelhöferstraße 5 ■ 10785 Berlin ■ Tel. +49-30-884 503-0 ■ Fax +49-30-882 715-0

COLOGNE ■ Sachsenring 81 ■ 50677 Cologne ■ Tel. +49-221-33 66 0-0 ■ Fax +49-221-33 66 0-80

ESSEN ■ Alfredstraße 220 ■ 45131 Essen ■ Tel. +49-201-38 44 4-0 ■ Fax +49-201-38 44 4-20

FRANKFURT/M. ■ Neue Mainzer Straße 69-75 ■ 60311 Frankfurt/M. ■ Tel. +49-69-17 00 00-17 ■ Fax +49-69-17 00 00-27

MUNICH ■ Prinzregentenstraße 22 ■ 80538 Munich ■ Tel. +49-89-30 90 667-0 ■ Fax + 49-89-30 90 667-90