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L.N. 167 of 2011

MALTA RESOURCES AUTHORITY ACT (CAP. 423)

Natural Gas Market Regulations, 2011

IN exercise of the powers conferred by sub-article (1) of article 28 of the Malta Resources Authority Act, the Minister for Resources and Rural Affairs, after consultation with the Malta Resources Authority, has made the following regulations:-

Title and scope.

1. (1) The title of these Regulations is the Natural Gas Market Regulations 2011.

(2) These regulations transpose Directive 73 of 2009 and establish common rules for the distribution, supply and storage of natural gas. These regulations also lay down the rules relating to the organization and functioning of the natural gas sector, access to the market, the criteria and procedures applicable to the granting of authorizations for distribution, supply and storage of natural gas and the operation of systems.

(3) The rules established by these regulations for natural gas, including LNG, shall also apply in a non-discriminatory way to biogas and gas from biomass or other types of gas in so far as such gases can technically and safely be injected into, and transported through, the natural gas system.

Interpretation.

2. In these regulations, unless the context otherwise requires:

"the Act" means the Malta Resources Authority Act; Cap. 423.

"Agency" means the Agency for the Co-operation of Energy Regulators;

"Authority" means the Malta Resources Authority established by article 3 of the Act;

"ancillary services" means all services necessary for access to and the operation of distribution networks, LNG facilities, and, or storage facilities, including load balancing, blending and injection of inert gases;

"the Commission" means the European Commission as established by the Treaty on the European Union as amended by subsequent Treaties;

"the Community" means the European Community as established by the Treaty on the European Union as amended by subsequent Treaties;

"control" means any rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:

(a) ownership or the right to use all or part of the assets of an undertaking;

(b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking;

"customer" means a person or a natural gas undertaking which purchases natural gas in bulk for resale purposes or final customer;;

"direct line" means a natural gas pipeline complementary to the interconnected system;

"distribution" means the transport of natural gas through local or regional pipeline networks with a view to its delivery to customers, but not including supply;

"distribution system operator" means a person who carries out the function of distribution and is responsible for operating, ensuring the maintenance of, and, if necessary, developing the distribution system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long-term ability of the system to meet reasonable demands for the distribution of gas;

"eligible customer" means a customer who is free to purchase gas from the supplier or retailer of his choice;

"emergent market" means a Member State in which the first commercial supply of its first long-term natural gas supply contract was made not more than 10 years earlier;

"final customer" means a person purchasing natural gas for his own use or consumption and not for wholesale or retail purposes;

"gas derivative" means a financial instrument specified in points 5, 6 or 7 of Section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments where that instrument relates to natural gas;

"gas supply contract" means a contract for the supply of natural gas, but does not include a gas derivative;

"horizontally integrated undertaking" means an undertaking performing at least one of the functions of production, distribution, supply or storage of natural gas, and a non-gas activity;

"household customer" means a customer purchasing natural gas for his own household consumption;

"integrated natural gas undertaking" means a vertically or horizontally integrated undertaking;

"interconnected system" means a number of systems which are linked with each other;

"interconnector" means a line which crosses or spans a border between Member States for the sole purpose of connecting the national systems of those Member States;

"line pack" means the storage of gas by compression in gas distribution systems;

"LNG facility" means a terminal which is used for the liquefaction of natural gas or the importation, offloading, and re-gasification of LNG, and includes ancillary services and temporary storage necessary for the re-gasification process but does not include any part of LNG terminals used for storage;

"LNG system operator" means a person who carries out the function of liquefaction of natural gas, or the importation, offloading, and re-gasification of LNG and is responsible for operating a LNG facility;

"long-term planning" means the planning of supply and transport capacity of natural gas undertakings on a long-term basis with a view to meeting the demand for natural gas of the system, diversification of sources and securing supplies to customers;

"Member State" means a member state of the European Union;

"the Minister" means the Minister responsible for resources;

"natural gas undertaking" means any person carrying out at least one of the following functions: production, transmission, distribution, supply, purchase or storage of natural gas, including LNG, which is responsible for the commercial, technical and, or maintenance tasks related to those functions, but shall not include final customers;

"new infrastructure" means an infrastructure which has not been completed by 4th of August, 2003;

"non-household customer" means a customer purchasing natural gas which is not for his own household use or consumption;

"person" means any natural or legal person;

"production operations" means any operation or activity, excluding storage, relating to the production of natural gas including LNG, carried out by a LNG system operator or a natural gas undertaking in a LNG facility or terminal but outside the part of LNG facilities used for storage;

"related undertaking" means affiliated undertakings, within the meaning of Article 41 of the Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 44(2)(g) and or associated undertakings, within the meaning of Article 33(1) of that Directive, and, or undertakings which belong to the same shareholders;

"security" means both security of supply of natural gas and technical safety;

"storage" means the stocking of natural gas including LNG;

"storage facility' means a facility used for the stocking of natural gas and owned and, or operated by a natural gas undertaking, including the part of LNG facilities used for storage but excluding the portion used for production operations;

"storage system operator" means a person who carries out the function of storage and is responsible for operating a storage facility;

"supply" means the sale or retail, including resale, of natural gas including LNG, to customers;

"supply undertaking" means any person who carries out the function of supply;

"system" means any distribution networks, LNG facilities and, or storage facilities owned and, or operated by a natural gas undertaking, including line pack and its facilities supplying ancillary services and those of related undertakings necessary for providing access to distribution and LNG;

"system user" means any person supplying to, or being supplied by, the system;

"upstream pipeline network" means any pipeline or network of pipelines operated and, or constructed as part of an oil or gas production project, or used to convey natural gas from one or more such projects to a processing plant or terminal or final coastal landing terminal;

"vertically integrated undertaking" means a natural gas undertaking or a group of natural gas undertakings where the same person or the same persons are entitled, directly or indirectly, to exercise control, and where the undertaking or group of undertakings perform at least one of the functions of distribution, LNG or storage, and at least one of the functions of production or supply of natural gas;

"wholesale customer" means any person other than a distribution system operator who purchases natural gas in bulk for the purpose of resale inside or outside the system where such person is established, not being for his own use or consumption.

Licensing.

3. (1) The following operations and activities shall require a licence issued by the Authority and in accordance with such terms and conditions as may be specified in the licence:-

(a) the carrying out of the functions of a storage system operator;

(b) the carrying out of the functions of an LNG system operator;

(c) carrying out of any of the functions of a distribution system operator;

(d) operation of a direct line.

(2) Without prejudice to any other law, licences may be granted or refused on the basis of the following criteria:

(a) compliance by the applicant with all other relevant permits and authorisations, however so described, including those issued by any other public authority or Government Department;

(b) the capability of the applicant to ensure safety conditions, in the context of the licence being applied for;

(c) private and professional integrity of the applicant;

(d) protection of the health and safety of employees;

(e) protection of the environment;

(f) record of compliance with these regulations and any other relevant laws by the person or entity with regard to whom the decision shall be made;

(g) compliance with safety, health, security, hazardous substances, environment, land use and planning requirements.

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(3) An application for a new licence or for its renewal under these regulations shall be:

(a) in writing and in such form and shall contain such information as the Authority may require;

(b) accompanied by such fees, bank guarantees and insurance policies as the Authority may determine and deem to be appropriate. All fees shall be payable on application and any bank guarantees and, or insurance policies shall be effective as from the date of the issue of the licence and shall subsist throughout its duration. Interests and penalties, as established by the Authority, shall be payable in the event of default in the due payment of fees:

Provided that a licence granted under these regulations shall not relieve the licensee from the requirement of any other licence, permit or other authorisation, or from an obligation arising from any other law.

(4) A licence granted under these regulations may include such conditions as appear to the Authority to be requisite or expedient, having regard to the duties of the Authority.

(5) The Authority shall communicate to the applicant in writing within a reasonable time, which shall not be of more than six months from the date of receipt of a valid application, any decision taken concerning an application for a licence or an application for the renewal of a licence or any valid reason impeding the Authority to reach such a decision.

Suspension, revocation or cancellation of licence.

4. The Authority may, at any time in the course of the period for which a licence is valid, order its suspension, revocation or cancellation where the Authority is satisfied that:

(a) the holder of the licence has failed or is failing to comply with any condition of the licence or with these regulations; or

(b) the licensee does not possess all other relevant licences, permits and authorisations however so described that are required by any other public authority or Government department; or

(c) the holder of the licence is contravening any requirement imposed by law; or

(d) the holder of the licence fails to comply with any directive given by the Authority; or

(e) any information submitted in the application for a licence or the application for renewal of a licence and for which the licence has been issued or renewed, as the case may be, is determined to be false; or

(f) if the holder of the licence does not meet any criteria in respect to one or more of the criteria referred to in sub-regulation (2) of regulation 3 of these regulations:

Provided that in exercising the powers for suspension, revocation or cancellation of licences the Authority may take into account the nature of the failure, or the fact that the holder of the licence is taking the appropriate steps which the Authority considers to be necessary in order to comply with the conditions of the licence, these regulations or any other requirement that the Authority may deem relevant.

Termination of licence.

5. (1) When the holder of a licence issued under these regulations, decides either to suspend or terminate his licence, such holder shall promptly notify the Authority in the form prescribed by the Authority, to notify such a termination or suspension.

(2) Upon acknowledgment by the Authority to the holder of a licence of the notification mentioned in sub-regulation (1) hereof, the licence shall be considered to have ceased to be in force and with immediate effect from the date of such acknowledgment such holder shall be deemed to be unlicensed.

(3) Notwithstanding any notice for the termination or suspension of a licence, the holder of the licence shall remain liable for the payment of any fee due to the Authority.

Transfer of licence.

6. (1) A licence issued by the Authority under these regulations shall not be validly transferred *inter vivos* to any person unless:

(a) the transferor informs in writing the Authority in such form and manner as the Authority shall prescribe;

(b) the Authority is satisfied that at least the same criteria as listed in sub-regulation (2) of regulation 3 of these regulations are complied with;

(c) the transfer is subject to the conditions prescribed in the licence; and

(d) the Authority approves in writing the transfer of the licence.

(2) A licence issued by the Authority under these regulations shall not be validly transmitted *causa mortis* to any person unless:

(a) the transferor informs in writing the Authority in such form and manner as the Authority shall prescribe;

(b) the Authority is satisfied that at least the same criteria as listed in sub-regulation (2) of regulation 3 of these regulations are complied with;

(c) the transfer is subject to the conditions prescribed in the licence; and

(d) the Authority approves in writing the transfer of the licence:

Provided that a licence issued in terms of these regulations shall be an indivisible right:

Provided further that in the event that the Authority approves the transfer of the licence as aforesaid, the transfer shall have retrospective effect from the date of the death of the *decujus*.

(3) Where the licensee is a body corporate or any other body of persons, a change in the control of the ownership or management of that body shall be deemed to be equivalent to the transfer of the licence, and shall be subject to the approval of the Authority. For the purpose of this sub-regulation, a transfer in the control of the ownership of a body corporate or other body of persons shall be deemed to occur in any case where a transfer of the capital, shares, stocks or other rights held in the body corporate or other body of persons leads to a change in the person holding the controlling interest therein.

Customer protection.

7. (1) Customers connected to the gas network shall be entitled to have their gas provided by a supplier, subject to the supplier's agreement, regardless of the Member State in which the supplier is registered, as long as the supplier follows the applicable trading and balancing rules and subject to security of supply requirements.

(2) The Authority shall ensure that:

(a) where a customer, while respecting the contractual conditions, wishes to change supplier, the change is effected by the operator concerned within three weeks; and

(b) customers are entitled to receive all relevant consumption data.

The Authority shall ensure that the rights referred to in paragraphs (a) and (b) of this sub-regulation are granted to customers in a non-discriminatory manner as regards cost, effort or time.

(3) Gas suppliers or distribution system operators shall in cooperation with the Authority, take the necessary steps to provide consumers with a copy of the energy consumer checklist and ensure that it is made publicly available.

(4) The Authority shall monitor, report and propose measures to the Minister every two years whether:

(a) there are adequate safeguards to protect vulnerable customers, including measures to help them avoid disconnection and to protect final customers in remote areas; and

(b) there are high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions, general information and dispute settlement mechanisms.

(5) Household customers shall have the right to the measures set out in the Schedule to these regulations.

Authorisation procedure.

8. (1) The construction and, or operation of natural gas facilities shall require an authorisation from the Authority. The Authority shall grant authorisations to build and, or operate such

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facilities, pipelines and associated equipment in accordance with sub-regulations 2 to 4 of this regulation. The supply of natural gas including that for wholesale customers shall also require an authorisation from the Authority in accordance with sub-regulations (2) to (4) of this regulation.

(2) The Authority shall lay down objective and non-discriminatory criteria which shall be met by an undertaking applying for an authorisation to build and, or operate natural gas facilities or applying for an authorisation to supply natural gas. The non-discriminatory criteria and procedures for the granting of authorisations shall be made public. The Authority shall ensure that authorisation procedures for facilities, pipelines and associated equipment take into account the importance of the project for the internal market in natural gas where appropriate.

(3) The Authority shall ensure that the reasons for any refusal to grant an authorisation are objective and non-discriminatory and that they are given to the applicant. Reasons for such refusals shall be notified to the Commission for information.

(4) Without prejudice to regulation 26 of these regulations and for the development of newly supplied areas and efficient operation generally, the Authority may decline to grant a further authorisation to build and operate distribution pipeline systems in any particular area once such pipeline systems have been or are proposed to be built in that area and if existing or proposed capacity is not saturated.

Monitoring of security of supply.

9. (1) At least every year, by the 31st December at the latest or as may be prescribed by the Authority, the distribution system operator shall draw up and submit to the Authority a report covering in particular the following issues:

(a) the balance of supply and demand on the national market;

(b) the level of expected future demand and available supplies, envisaged additional capacity being planned or under construction;

(c) the quality and level of maintenance of the networks, as well as measures to cover peak demand and to deal with shortfalls of one or more suppliers.

(2) The Authority shall publish by the 31st of July of each year, a report including the findings resulting from the monitoring of the issues listed in sub-regulation (1) of this regulation, as well as any measures taken or envisaged to address them. The Authority shall also submit that report to the Minister in a manner suitable for reporting to the Commission.

Technical rules.

10. Within such time and following such consultation as the Authority may establish, the Authority may direct any distribution system operator to prepare and publish a network code, subject to the approval of the Authority, establishing the basic technical design and operational requirements for the connection to the distribution system of LNG facilities, storage facilities, distribution systems, and direct lines, which are developed and made public. The network code shall be objective and nondiscriminatory. The network code shall be notified in accordance with the Procedure for the Provision of Information in the field of Technical Standards and Regulations and of Rules of Information Society Services Regulations, 2001.

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Designation of storage and LNG system operators.

11. The Authority shall designate, or shall require natural gas undertakings which own storage or LNG facilities to designate, for a period of time to be determined by the Authority, having regard to considerations of efficiency and economic balance, one or more storage and LNG system operators.

Tasks of storage and, or LNG system operators.

12. (1) Each storage and, or LNG system operator shall:

(a) operate, maintain and develop under economic conditions secure, reliable and efficient, storage and, or LNG facilities to secure an open market, with due regard to the environment, ensure adequate means to meet service obligations;

(b) refrain from discriminating between system users or classes of system users, particularly in favour of its related undertakings;

(c) provide any other storage system operator, any other LNG system operator and/or any distribution system operator, sufficient information to ensure that the transport and storage of natural gas may take place in a manner compatible with the secure and efficient operation of the interconnected system; and

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(d) provide system users with the information they need for efficient access to the system.

Unbundling of storage system operators.

13. (1) A storage system operator which is part of vertically integrated undertakings shall be independent at least in terms of its legal form, organization and decision making from other activities not relating to distribution and storage. This regulation shall apply only to storage facilities that are technically and, or economically necessary for providing efficient access to the system for the supply of customers pursuant to regulation 23 of these regulations.

(2) In order to ensure the independence of the storage system operator referred to in sub-regulation (1), the following minimum criteria shall apply:

(a) persons responsible for the management of the storage system operator shall not participate in company structures of the integrated natural gas undertaking responsible, directly or indirectly, for the day-to-day operation of the production and supply of natural gas;

(b) appropriate measures shall be taken to ensure that the professional interests of persons responsible for the management of the storage system operator are taken into account in a manner that ensures that they are capable of acting independently;

(c) the storage system operator shall have effective decision-making rights, independent from the integrated natural gas undertaking, with respect to assets necessary to operate, maintain or develop the storage facilities. This shall not preclude the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets regulated indirectly in accordance with sub-regulation (4) of regulation 29 of these regulations in a subsidiary company are protected. In particular, this shall enable the parent company to approve the annual financial plan, or any equivalent instrument, of the storage system operator and to set global limits on the levels of indebtedness of its subsidiary company. It shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of storage facilities, that do not exceed the terms of the approved financial plan, or any equivalent instrument; and

(d) the storage system operator shall establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The compliance programme shall set out the specific obligations of employees to meet those objectives. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme to the Authority and shall be published.

Confidentiality.

14. (1) Without prejudice to regulation 20 of these regulations or any other legal duty to disclose information, each storage and, or LNG system operator, shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its activities, and shall prevent information about its own activities which may be commercially advantageous from being disclosed in a discriminatory manner. In particular, it shall not disclose any commercially sensitive information to the remaining parts of the undertaking, unless this is necessary for carrying out a business transaction.

(2) Storage and, or LNG system operators shall not, in the context of sales or purchases of natural gas by related undertakings, misuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the system. Storage and, or LNG system operators shall make public information necessary for effective competition and the efficient functioning of the market:

Provided that such obligation shall be without prejudice to protecting commercially sensitive information.

Designation of distribution system operators.

15. The Authority shall designate, or shall require undertakings which own or are responsible for distribution systems to designate, for a period of time to be determined by the Authority, having regard to considerations of efficiency and economic balance, one or more distribution system operators and shall ensure that those operators act in accordance with regulations 16, 17 and 18 of these regulations.

Tasks of distribution system operators.

16. (1) The distribution system operator shall be responsible for ensuring the long-term ability of the system to meet reasonable demands for the distribution of gas, and for operating, maintaining and developing under economic conditions a secure, reliable and efficient system in its area, with due regard for the environment and energy efficiency.

(2) The distribution system operator shall not discriminate between system users or classes of system users, particularly in favour of its related undertakings.

(3) The distribution system operator shall provide any other distribution, LNG, and, or storage system operator with sufficient information to ensure that the transport and storage of natural gas takes place in a manner compatible with the secure and efficient operation of the interconnected system.

(4) The distribution system operator shall provide system users with the information they need for efficient access to, including use of, the system.

(5) Where a distribution system operator is responsible for balancing the distribution system, rules adopted by it for that purpose shall be objective, transparent and non-discriminatory, including rules for the charging of system users for energy imbalance. Terms and conditions, including rules and tariffs, for the provision of such services by distribution system operators shall be established pursuant to a methodology compatible with sub-regulation (4) of regulation 29 of these regulations in a non-discriminatory and cost-reflective way and shall be published.

Unbundling of distribution system operators.

17. (1) Where the distribution system operator is part of a vertically integrated undertaking, it shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to distribution. Those rules shall not create an obligation to separate the ownership of assets of the distribution system from the vertically integrated undertaking.

(2) In addition to the requirements referred to under sub-regulation (1) of this regulation, in order to achieve this, the following minimum criteria shall apply:

(a) those persons responsible for the management of the distribution system operator must not participate in company structures of the integrated natural gas undertaking responsible, directly or indirectly, for the day-to-day operation of the production, and supply of natural gas;

(b) appropriate measures must be taken to ensure that the professional interests of persons responsible for

the management of the distribution system operator are taken into account in a manner that ensures that they are capable of acting independently;

(c) the distribution system operator must have effective decision-making rights, independent from the integrated natural gas undertaking, with respect to assets necessary to operate, maintain or develop the network. In order to fulfil those tasks, the distribution system operator shall have at its disposal the necessary resources including human, technical, financial and physical resources. This should not prevent the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets, regulated indirectly in accordance with sub-regulation (4) of regulation 29 in a subsidiary are protected. In particular, this shall enable the parent company to approve the annual financial plan, or any equivalent instrument, of the distribution system operator and to set global limits on the levels of indebtedness of its subsidiary. It shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of distribution lines, that do not exceed the terms of the approved financial plan, or any equivalent instrument; and

(d) the distribution system operator must establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The compliance programme shall set out the specific obligations of employees to meet that objective. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme to the Authority and shall be published. Such person being the compliance officer of the distribution system operator shall be fully independent and shall have access to all the necessary information of the distribution system operator and any affiliated undertaking to fulfil his task.

(3) Where the distribution system operator is part of a vertically integrated undertaking, the Authority shall monitor the activities of the distribution system operator so that it cannot take advantage of its vertical integration to distort competition.

In particular, vertically integrated distribution system operators shall not, in their communication and branding, create confusion in respect of the separate identity of the supply branch of the vertically integrated undertaking.

(4) Sub-regulations (1), (2) and (3) of this regulation shall not apply to integrated natural gas undertakings serving less than 100,000 connected customers to the system.

Confidentiality obligations of distribution system operators.

18. (1) Without prejudice to regulation 20 or any other legal duty to disclose information, each distribution system operator shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business, and shall prevent information about its own activities which may be commercially advantageous from being disclosed in a discriminatory manner.

(2) Distribution system operators shall not, in the context of sales or purchases of natural gas by related undertakings, abuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the system.

Closed distribution systems.

19. (1) The Authority may classify a system which distributes gas within a geographically confined industrial, commercial or shared site and does not, without prejudice to sub-regulation (4) of this regulation, supply household customers, as a closed distribution system if:

(a) for specific technical or safety reasons, the operations or the production process of the users of that system are integrated; or

(b) that system distributes gas primarily to the owner or operator of the system or to their related undertakings.

(2) The Authority may exempt the operator of a closed distribution system from the requirement under regulation 22 of these regulations that tariffs, or the methodologies underlying their calculation, are approved prior to their entry into force in accordance with regulation 29 of these regulations.

(3) Where an exemption is granted under sub-regulation (2) of this regulation, the applicable tariffs, or the

methodologies underlying their calculation, shall be reviewed and approved in accordance with regulation 29 of these regulations upon request by a user of the closed distribution system.

(4) Incidental use by a small number of households with employment or other similar associations with the owner of the distribution system and located within the area served by a closed distribution system shall not preclude an exemption under sub-regulation (2) being granted.

Right of access to accounts.

20. (1) The Authority shall, insofar as necessary to carry out its functions, have right of access to the accounts of natural gas undertakings as set out in regulation 21 of these regulations.

(2) The Authority shall preserve the confidentiality of commercially sensitive information. The Authority may disclose such information where this is necessary in order for the Authority to carry out its functions.

Unbundling of accounts.

21. (1) Natural gas undertakings shall keep their accounts in accordance with sub-regulations (2) to (5) of this regulation.

(2) Natural gas undertakings, whatever their system of ownership or legal form, shall draw up, submit to audit and publish their annual accounts in accordance with the rules of Companies Act concerning the preparation of the annual accounts of limited liability companies. Undertakings which are not legally obliged to publish their annual accounts shall keep a copy of these at the disposal of the public in their head office.

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(3) Natural gas undertakings shall, in their internal accounting, keep separate accounts for each of their distribution, LNG and storage activities as they would be required to do if the activities in question were carried out by separate undertakings, with a view to avoiding discrimination, cross-subsidisation and distortion of competition. They shall also keep accounts, which may be consolidated, for other gas activities not relating to distribution, LNG and storage. Revenue from ownership of the distribution network shall be specified in the accounts. Where appropriate, they shall keep consolidated accounts for other, non-gas activities. The internal accounts shall include a balance sheet and a profit and loss account for each activity.

(4) The audit, referred to in sub-regulation (2) of this regulation, shall, in particular, verify that the obligation to avoid

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discrimination and cross-subsidies referred to in sub-regulation (3) is respected.

(5) Undertakings shall specify in their internal accounting the rules for the allocation of assets and liabilities, expenditure and income as well as for depreciation, without prejudice to nationally applicable accounting rules, which they follow in drawing up the separate accounts referred to in sub-regulation (3) of this regulation. Those internal rules may be amended only in exceptional cases. Such amendments shall be mentioned and duly substantiated

(6) The annual accounts shall indicate in notes any transaction of a certain size conducted with related undertakings.

Third-party access.

22. The tariffs for third party access to the distribution system and LNG facilities or the methodologies underlying their calculation shall be approved by the Authority prior to their entry into force in accordance with regulation 29 of these regulations and such tariffs or methodologies shall be applicable to all eligible customers, including supply undertakings, and applied objectively and without discrimination between system users. The tariffs and methodologies, shall be published by the Authority prior to their entry into force.

Access to storage.

23. (1) The Authority may choose either negotiated access or regulated access for the organisation of access to storage facilities and linepack when technically and, or economically necessary for providing efficient access to the system for the supply of customers, as well as for the organisation of access to ancillary services. Those procedures shall operate in accordance with objective, transparent and non-discriminatory criteria.

(2) The Authority shall define and publish criteria according to which the access regime applicable to storage facilities and linepack may be determined. Without prejudice to the right of the Authority to choose either or both of the procedures referred to in sub-regulation (1) of this regulation, the Authority shall make public, or oblige storage operators to make public, which storage facilities, or which parts of those storage facilities, and which linepack is offered under the different procedures referred to in sub-regulation (1) of this regulation.

(3) The provisions of sub-regulation (1) of this regulation shall not apply to ancillary services and temporary

storage that are related to LNG facilities and are necessary for the re-gasification process.

Refusal of access.

24. Natural gas undertakings may refuse access to the system on the basis of lack of capacity having regard to the criteria and procedures setout in regulation 32 of these regulations and the alternative chosen by the Member State in accordance with sub-regulation (1) of that regulation. Duly substantiated reasons shall be given for any such a refusal.

New infrastructure.

25. (1) The Authority may upon request and on a case-by-case basis decide to exempt major new gas infrastructure, such as interconnectors, LNG and storage facilities, for a defined period of time, from the provisions of regulations 22 and 23 of these regulations and sub-regulations (4), (6) and (8) of regulation 29 of these regulations under the following conditions:

(a) the investment must enhance competition in gas supply and enhance security of supply;

(b) the level of risk attached to the investment must be such that the investment would not take place unless an exemption was granted;

(c) the infrastructure must be owned by a person which is separate at least in terms of its legal form from the system operators in whose systems that infrastructure will be built;

(d) charges must be levied on users of that infrastructure; and

(e) the exemption must not be detrimental to competition or the effective functioning of the internal market in natural gas, or the efficient functioning of the regulated system to which the infrastructure is connected.

(2) Sub-regulation (1) of this regulation shall also apply to significant increases of capacity in existing infrastructure and to modifications of such infrastructure which enable the development of new sources of gas supply.

(3) The exemption granted by the Authority in terms of sub-regulation (1) of this regulation may cover all or part of the capacity of the new infrastructure, or of the existing infrastructure with significantly increased capacity. In deciding to grant an

exemption, consideration shall be given by the Authority, on a case-by-case basis, to the need to impose conditions regarding the duration of the exemption and non-discriminatory access to the infrastructure. When deciding on those conditions, account shall, in particular, be taken of the additional capacity to be built or the modification of existing capacity, the time horizon of the project and national circumstances.

(4) Before granting an exemption, the Authority shall decide upon the rules and mechanisms for management and allocation of capacity. The rules shall require that all potential users of the infrastructure are invited to indicate their interest in contracting capacity before capacity allocation in the new infrastructure, including for own use, takes place. The Authority shall require congestion management rules to include the obligation to offer unused capacity on the market, and shall require users of the infrastructure to be entitled to trade their contracted capacities on the secondary market. In its assessment of the criteria referred to in paragraphs (a), (b) and (e) of sub-regulation (1) of this regulation, the Authority shall take into account the results of that capacity allocation procedure.

The exemption decision, including any conditions referred to in this sub-regulation, shall be duly reasoned and published.

(5) Notwithstanding sub-regulation (1) of this regulation, the Authority shall submit to the Minister for the purposes of a formal decision, its opinion on the request for an exemption, which opinion shall be published together with the decision.

(6) The Authority shall transmit to the Commission, without delay, a copy of every request for exemption as of its receipt. The decision shall be notified, without delay, by the Authority to the Commission, together with all the relevant information with respect to the decision. The information may be submitted to the Commission in aggregate form, enabling the Commission to reach a well-founded decision. In particular, the information shall contain:

(a) the detailed reasons on the basis of which the Authority has granted or refused the exemption together with a reference to sub-regulation (1) of this regulation including the relevant point or points of that sub-regulation on which

such decision is based, including the financial information justifying the need for the exemption;

(b) the analysis undertaken of the effect on competition and the effective functioning of the internal market in natural gas resulting from the grant of the exemption;

(c) the reasons for the time period and the share of the total capacity of the gas infrastructure in question for which the exemption is granted;

(d) in case the exemption relates to an interconnector, the result of the consultation with the regulatory authorities concerned; and

(e) the contribution of the infrastructure to the diversification of gas supply.

(7) The Authority shall comply with a decision of the Commission to amend or withdraw the exemption decision within a period of one month and the Minister shall inform the Commission accordingly.

Direct lines.

26. (1) The Authority shall lay down the criteria for the grant of authorisations for the operation of a direct line. Those criteria shall be objective, transparent and non-discriminatory.

(2) The Authority may issue an authorisation to construct a direct line subject either to the refusal of system access on the basis of regulation 24 of these regulations or to the opening of a dispute-settlement procedure under regulation 29 of these regulations.

Independence of the Authority.

27. The Authority when carrying out the regulatory tasks conferred upon it by these regulations shall:

(a) be functionally independent from any other public or private entity;

(b) ensure that its staff and the persons responsible for its management:

(i) act independently from any market interest; and

(ii) do not seek or take direct instructions

from any government or other public or private entity when carrying out the regulatory tasks:

Provided that this requirement is without prejudice to close cooperation, as appropriate, with other relevant national authorities or to general policy guidelines issued by the Government not related to the regulatory powers and duties under regulation 21 of these regulations.

General objectives of the Authority.

28. In carrying out the regulatory tasks specified in these regulations, the Authority shall take all reasonable measures in pursuit of the following objectives within the framework of its duties and powers as laid down in regulation 29 of these regulations, in close consultation with other relevant national authorities including competition authorities, as appropriate, and without prejudice to their competencies:

(a) promoting, in close cooperation with the Agency, regulatory authorities of other Member States and the Commission, a competitive, secure and environmentally sustainable internal market in natural gas within the Community, and effective market opening for all customers and suppliers in the Community, and ensuring appropriate conditions for the effective and reliable operation of gas networks, taking into account long-term objectives;

(b) developing competitive and properly functioning regional markets within the Community in view of the achievement of the objectives referred to in paragraph (a);

(c) eliminating restrictions on trade in natural gas between Member States, including developing appropriate cross-border capacities to meet demand and enhancing the integration of national markets which may facilitate natural gas flow across the Community;

(d) helping to achieve, in the most cost-effective way, the development of secure, reliable and efficient non-discriminatory systems that are consumer oriented, and promoting system adequacy and, in line with general energy policy objectives, energy efficiency as well as the integration of large and small scale production of gas from renewable energy sources and distributed production in distribution networks;

(e) facilitating access to the network for new production capacity, in particular removing barriers that could prevent access for new market entrants and of gas from renewable energy sources;

(f) ensuring that system operators and system users are granted appropriate incentives, in both the short and the long term, to increase efficiencies in system performance and foster market integration;

(g) ensuring that customers benefit through the efficient functioning of their national market, promoting effective competition and helping to ensure consumer protection;

(h) helping to achieve high standards of public service for natural gas, contributing to the protection of vulnerable customers and contributing to the compatibility of necessary data exchange processes for customer switching.

Duties and powers of the Authority.

29. (1) The Authority shall have the following duties:

(a) fixing or approving, in accordance with transparent criteria, distribution tariffs or their methodologies;

(b) ensuring compliance of distribution system operators, and where relevant, system owners, as well as of any natural gas undertakings, with their obligations under these Regulations and other relevant Community legislation, including as regards cross-border issues;

(c) cooperating in regard to cross-border issues with the regulatory authority or authorities of the Member States concerned and with the Agency;

(d) complying with, and implementing, any relevant legally binding decisions of the Agency and of the Commission;

(e) reporting annually on its activity and the fulfilment of its duties to the relevant authorities of the Member States, the Agency and the Commission. Such reports shall cover the steps taken and the results obtained as regards each of the tasks listed in this regulation;

(f) ensuring that there are no cross-subsidies between distribution, storage, LNG and supply activities;

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(g) monitoring compliance with and reviewing the past performance of network security and reliability rules and setting or approving standards and requirements for quality of service and supply or contributing thereto together with other competent authorities;

(h) monitoring the level of transparency, including of wholesale prices, and ensuring compliance of natural gas undertakings with transparency obligations;

(i) monitoring the level and effectiveness of market opening and competition at wholesale and retail levels, including on natural gas exchanges, prices for household customers including prepayment systems, switching rates, disconnection rates, charges for and the execution of maintenance services and complaints by household customers, as well as any distortion or restriction of competition, including providing any relevant information, and bringing any relevant cases to the relevant competition authorities;

(j) monitoring the occurrence of restrictive contractual practices, including exclusivity clauses which may prevent large non-household customers from contracting simultaneously with more than one supplier or restrict their choice to do so, and, where appropriate, informing the national competition authorities of such practices;

(k) respecting contractual freedom with regard to interruptible supply contracts as well as with regard to long-term contracts provided that they are compatible with Community law and consistent with Community policies;

(l) monitoring the time taken by distribution system operators to make connections and repairs;

(m) monitoring and reviewing the access conditions to storage, linepack and other ancillary services as provided for in regulation 23 of these regulations. In the event that the access regime to storage is by means of negotiated access, that task shall exclude there viewing of tariffs;

(n) helping to ensure, together with other relevant authorities, that the consumer protection measures, including those set out in the Schedule to these regulations, are effective and enforced;

(o) publishing recommendations, at least annually, in relation to compliance of supply prices with regulation 7 of these regulations, and providing those to the competition authorities, where appropriate;

(p) ensuring access to customer consumption data, the provision for optional use, of an easily understandable harmonised format at national level for consumption data and prompt access for all customers to such data under point (h) of the Schedule to these regulations;

(q) monitoring the implementation of rules relating to the roles and responsibilities of distribution system operators, suppliers and customers and other market parties pursuant to Regulation (EC) No 715/2009;

(r) monitoring the correct application of the criteria that determine whether a storage facility falls under negotiated or regulated access; and

(s) monitoring the implementation of safeguards measures as referred to in regulation 31 of these regulations;

(t) contributing to the compatibility of data exchange processes for the most important market processes at regional level.

(2) While preserving its independence, without prejudice to its own specific competencies and consistent with the principles of better regulation, the Authority shall, as appropriate, closely cooperate with other relevant national authorities when carrying out the duties set out in sub-regulation (1) of this regulation.

(3) Any approvals given by the Authority under these regulations are without prejudice to any duly justified future use of its powers by the Authority under this regulation or to any penalties imposed by other relevant authorities or the Commission.

(4) The Authority shall be responsible for fixing or approving sufficiently in advance of their entry into force at least the methodologies used to calculate or establish the terms and conditions for:

(a) connection and access to national networks, including transmission and distribution tariffs, and terms, conditions and tariffs for access to LNG facilities. Those tariffs or methodologies shall allow the necessary investments in the networks and LNG facilities to be carried out in a manner allowing those investments to ensure the viability of the networks and LNG facilities;

(b) the provision of balancing services which shall be performed in the most economic manner and provide appropriate incentives for network users to balance their input and off-takes. The balancing services shall be provided in a fair and non-discriminatory manner and be based on objective criteria; and

(c) access to cross-border infrastructures, including the procedures for the allocation of capacity and congestion management.

(5) The methodologies or the terms and conditions referred to in sub-regulation (4) shall be published.

(6) In fixing or approving the tariffs or methodologies and the balancing services, the Authority shall ensure that the distribution system operator is granted appropriate incentive, over both the short and long term, to increase efficiencies, foster market integration and security of supply and support the related research activities.

(7) The Authority shall monitor congestion management of national gas interconnectors, and the implementation of congestion management rules. To that end, market operators shall submit its congestion management rules, including capacity allocation, to the Authority. The Authority may request amendments to those rules.

(8) The Authority may require storage, LNG and distribution system operators, if necessary, to modify the terms and conditions, including tariffs and methodologies referred to in this regulation, to ensure that they are proportionate and applied in a non-discriminatory manner. In the event that the access regime to storage is to be achieved by means of negotiated access, that task shall exclude the modification of tariffs. In the event of delay in the fixing of distribution tariffs, the Authority shall have the power to fix or approve provisional distribution tariffs or methodologies and

to decide on the appropriate compensatory measures if the final tariffs or methodologies deviate from those provisional tariffs or methodologies.

(9) Any party having a complaint against a storage, LNG or distribution system operator in relation to that operator's obligations under these regulations may refer the complaint to the Authority which, acting as dispute settlement authority, shall issue a decision within a period of two months after receipt of the complaint. That period may be extended by two months where additional information is sought by the Authority. That extended period may be further extended with the agreement of the complainant.

(10) Any party who is affected and who has a right to complain concerning a decision on methodologies taken pursuant to this regulation or, where the Authority has a duty to consult, concerning the proposed tariffs or methodologies, may, at the latest within two months, following publication of the decision or proposal for a decision, submit a complaint for review. Such a complaint shall not have suspensive effect.

(11) Complaints referred to in sub-regulations (9) and (10) of this regulation shall be without prejudice to the exercise of rights of appeal under Community or national law.

(12) Decisions taken by the Authority shall be fully reasoned and justified to allow for judicial review. The decisions shall be available to the public while preserving the confidentiality of commercially sensitive information.

Record keeping.

30. (1) Supply undertakings shall keep at the disposal of the national authorities, including the Authority, the national competition authorities and the Commission, for the fulfilment of their tasks, for at least five years, the relevant data relating to all transactions in gas supply contracts and gas derivatives with wholesale customers and transmission system operators as well as storage and LNG operators.

(2) The data mentioned in sub-regulation (1) of this regulation shall include details on the characteristics of the relevant transactions such as duration, delivery and settlement rules, the quantity, the dates and times of execution and the transaction prices and means of identifying the wholesale customer concerned, as well as specified details of all unsettled gas supply contracts and gas derivatives.

(3) The Authority may decide to make available to market participants elements of that information:

Provided that commercially sensitive information on individual market players or individual transactions shall not be released:

Provided further that, this regulation shall not apply to information about financial instruments which fall within the scope of Directive 2004/39/EC.

(4) With respect to transactions in gas derivatives of supply undertakings with wholesale customers and transmission system operators as well as storage and LNG operators, this regulation shall apply only once the Commission has adopted the Guidelines which define the methods and arrangements for record keeping as well as the form and content of the data that shall be kept.

(5) The provisions of this regulation shall not create additional obligations towards the authorities referred to in sub-regulation (1) for entities falling within the scope of Directive 2004/39/EC.

(6) In the event that the authorities referred to in sub-regulation (1) need require access to data kept by entities falling within the scope of Directive 2004/39/EC, the authorities responsible under that Directive shall provide them with the required data.

Safeguard measures.

31. In the event of a sudden crisis in the energy market and where the physical safety or security of persons, apparatus or installations or system integrity is threatened, the Authority may temporarily take the necessary safeguard measures. Such measures shall cause the least possible disturbance in the functioning of the internal market and shall not be wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen. The Minister shall, without delay, notify those measures to the other Member States, and to the Commission:

Provided that the Minister shall amend or abolish such measures, upon a decision by the Commission to amend or abolish such measures, insofar as they distort competition and adversely affect trade in a manner which is at variance with the common interest.

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Take-or-pay commitments.

32. (1) If a natural gas undertaking encounters, or considers it would encounter, serious economic and financial difficulties because of its take-or-pay commitments accepted in one or more gas-purchase contracts, it may send an application for a temporary exemption from regulation 22 of these regulations to the Authority. Applications shall, in accordance with the choice of the Authority, be presented on a case-by-case basis either before or after refusal of access to the system. The Authority may also give the natural gas undertaking the choice of presenting an application either before or after refusal of access to the system. Where a natural gas undertaking has refused access, the application shall be presented without delay. The applications shall be accompanied by all relevant information on the nature and extent of the problem and on the efforts undertaken by the natural gas undertaking to solve the problem. If alternative solutions are not reasonably available, and taking into account sub-regulation (3) of this regulation, the Authority may decide to grant an exemption.

(2) The Authority shall notify the Minster without delay of its decision to grant an exemption, together with all the relevant information with respect to the exemption. The information may be submitted to the Minister in an aggregated form, in a manner suitable to be sent by the Minister to the Commission.

(3) When deciding on the exemptions referred to in sub-regulation (1) to this regulation, the Authority, shall take into account, in particular, the following criteria:

(a) the objective of achieving a competitive gas market;

(b) the need to fulfill public-service obligations and to ensure security of supply;

(c) the position of the natural gas undertaking in the gas market and the actual state of competition in that market;

(d) the seriousness of the economic and financial difficulties encountered by natural gas undertakings or eligible customers;

(e) the dates of signature and terms of the contract or contracts in question, including the extent to which they allow for market changes;

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(f) the efforts made to find a solution to the problem;

(g) the extent to which, when accepting the take-or-pay commitments in question, the undertaking could reasonably have foreseen, having regard to the provisions of Directive 2009/73/EC, that serious difficulties were likely to arise;

(h) the level of connection of the system with other systems and the degree of interoperability of those systems; and

(i) the effects the granting of an exemption would have on the correct application of Directive 2009/73/EC as regards the smooth functioning of the internal market in natural gas.

(4) Natural gas undertakings which have not been granted an exemption as referred to in sub-regulation (1) of this regulation shall not refuse, or shall no longer refuse, access to the system because of take-or-pay commitments accepted in a gas purchase contract.

Compliance orders.

33. (1) The Authority may issue a compliance order against any person who in its opinion has contravened any of the provisions of these regulations or a condition of a licence or authorisation issued thereunder.

(2) Any person who fails to abide by the provisions of a compliance order issued by the Authority shall, without prejudice to any other liability under these regulations, the Act or any other law, be guilty of an offence and be liable, on conviction, to a fine (*multa*) of not less than one thousand euro (€1,000) and of not more than sixty thousand euro (€60,000) for each day during which the failure to comply subsists.

Offences.

34. (1) Any person who contravenes any of the provisions of these regulations or of a licence condition or of an authorisation or approval issued thereunder, shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of not more than sixty-nine thousand euro (€69,000) or for one thousand and three hundred euro(€1,300) for each day during which the offence persists.

(2) Any person who, when information with respect to these regulations is requested or required by the Authority, knowingly or recklessly -

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(a) gives any false, inaccurate or misleading information;

or

(b) supplies incomplete information; or

(c) fails, without reasonable cause, to supply information requested within the time given; or

(d) prevents or hinders any investigation; or

(e) produces or furnishes, or causes or knowingly allows to be produced or furnished, any document or information which he knows to be false in any material respect, shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of not less than one thousand euro (€1,000) and of not more than sixty thousand euro (€60,000) for each day during which the failure to comply subsists.

(3) Notwithstanding any other provision of these regulations, where any person fails to comply with the provisions of these regulations or of a licence or authorisation condition for a period not exceeding three months, the Authority may revoke such licence or authorisation.

Administrative fines.

35. The Authority may impose an administrative fine upon any person who infringes any provision of these regulations or who fails to comply with any directive or decision given by the Authority in ensuring compliance with these regulations.

L.N. 432 of 2004.
L.N. 317 of 2006.

36. The Natural Gas (Marketing) Regulations, 2004 and the Natural Gas Supply (Safeguard of Security) Regulations, 2006 are hereby being revoked.

SCHEDULE

Regulation 7 and 29

MEASURES ON CLIENT PROTECTION

1. Without prejudice to Community rules on consumer protection, in particular Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts and Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts , the measures referred to in regulation 7 are to ensure that customers:

(a) have a right to a contract with their gas service provider that specifies:

the identity and address of the supplier,

the services provided, the service quality levels offered, as well as the time for the initial connection,

the types of maintenance service offered,

the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained,

the duration of the contract, the conditions for renewal and termination of services and of the contract, and whether withdrawal from the contract without charge is permitted,

any compensation and the refund arrangements which apply if contracted service quality levels are not met including inaccurate and delayed billing,

the method of initiating procedures for settlement of disputes in accordance with point (f); and,

information relating to consumer rights, including on the complaint handling and all of the information referred to in this point, clearly communicated through billing or the natural gas undertaking's web site,

Conditions shall be fair and well-known in advance. In any event, that information should be provided prior to the conclusion or confirmation of the contract. Where contracts are concluded through intermediaries, the information relating to the matters set out in this point shall also be provided prior to the conclusion of the contract;

(b) are given adequate notice of any intention to modify contractual conditions and are informed about their right of withdrawal when the notice is given. Service providers shall notify their subscribers directly of any increase in charges, at an appropriate time no later than one normal billing period after the increase comes into effect in a transparent and comprehensible manner.

Customers shall be free to withdraw from contracts if they do not accept the new conditions notified to them by their gas service provider;

(c) receive transparent information on applicable prices and tariffs and on standard terms and conditions, in respect of access to and use of gas services;

(d) are offered a wide choice of payment methods, which do not unduly discriminate between customers. Prepayment systems shall be fair and adequately reflect likely consumption. Any difference in terms and conditions shall reflect the costs to the supplier of the different payment systems. General terms and conditions shall be fair and transparent. They shall be given in clear and comprehensible language and shall not include non-contractual barriers to the exercise of customers' rights, for example excessive contractual documentation. Customers shall be protected against unfair or misleading selling methods;

(e) are not charged for changing supplier;

(f) benefit from transparent, simple and inexpensive procedures for dealing with their complaints. In particular, all consumers shall have the right to a good standard of service and complaint handling by their gas service provider. Such out-of-court dispute settlements procedures shall enable disputes to be settled fairly and promptly, preferably within three months, with provision, where warranted, for a system of reimbursement and, or compensation. They should, wherever possible, be in line with the principles set out in Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes.

(g) connected to the gas system are informed about their rights to be supplied, under the national legislation applicable, with natural gas of a specified quality at reasonable prices;

(h) have at their disposal their consumption data, and shall be able to, by explicit agreement and free of charge, give any registered supply undertaking access to its metering data. The party responsible for data management shall be obliged to give those data to the undertaking. The Authority shall define a format for the data and a procedure for suppliers and consumers to have access to the data. No additional costs shall be charged to the consumer for that service;(i) are properly informed of actual gas consumption and costs frequently enough to enable them to regulate their own gas consumption. That information shall be given by using a sufficient time frame, which takes account of the capability of customer's metering equipment. Due account shall be taken of the cost-efficiency of such measures. No additional costs shall be charged to the consumer for that service;

(j) receive a final closure account following any change of natural gas supplier no later than six weeks after the change of supplier has taken place.

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