

MONITORUL OFICIAL OF ROMANIA, PART I, no. 416/May 10, 2004

National Regulatory Authority
in Natural Gas Sector

DECISION
**regarding the approval of Norms for avoiding the abuse of a dominant position on
internal natural gas market**

According to provisions of art. 4, respectively 8 para. (4) and (5) in Government Ordinance no. 41/2000 concerning the setting up, organization and function of National Regulatory Authority in Natural Gas Sector (ANRGN), approved and amended by Law no. 791/2001, with subsequent amendments,

The President of National Regulatory Authority in Natural Gas Sector adopts the present decision.

Art. 1 – The Norms for avoiding the abuse of a dominant position on internal natural gas market, stipulated in the annex at the present decision, are approved.

Art. 2 – The specialty departments within National Regulatory Authority in Natural Gas Sector, as well as undertakings in natural gas sector, shall fulfill the provisions in the present decision.

Art. 3 – The present decision shall be published in Monitorul Oficial of Romania, Part I.

President of National Regulatory Authority
in Natural Gas Sector
Dan Pantilie

Bucharest, April 30, 2004
No. 620

NORMS
for avoiding the abuse of a dominant position on internal natural gas market

CHAPTER I
General provisions

SECTION I
Scope and competences

Art. 1. – (1) The scope of the present norms is that the National Regulatory Authority in Natural Gas Sector, hereinafter called *ANRGN*, to avoid the abuse of a dominant position natural gas on internal market, complying with the legislation in force.

(2) *ANRGN* considers avoiding the abuse of a dominant position on internal natural gas market by the regulations it adopts/issues.

Art. 2. – In case that *ANRGN* ascertains a possible abuse of a dominant position, in the way of art. 6 in the competition Law no. 21/1996, with subsequent amendments, it is obliged to notice the case, together with justifications, to the Competition Council, for to take the necessary legal measures.

SECTION II
Reference documents

Art. 3. – The following documents shall be complied with in applying the present norms:

- a) Law no. 11/1991 regarding fight against unfair competition, with subsequent amendments;
- b) Petroleum Law no. 134/1995, with subsequent amendments;
- c) Competition Law no. 21/1996, with subsequent amendments, as well as regulations and indications for its put into practice;
- d) Law no. 213/1998 on public property and its judicial, with subsequent amendments;
- e) Law no. 193/2000 on abusive clauses in the contracts concluded between traders and customers, with subsequent amendments;
- f) Local public services law no. 326/2001, with subsequent amendments;
- g) Law no. 469/2002 regarding some measures for strengthening the contractual discipline, with subsequent amendments;
- h) Government Ordinance no. 41/2000, approved and amended by Law no. 791/2001, with subsequent amendments;
- i) Government Ordinance no. 60/2002 on regulation the activities in natural gas sector, approved and amended by Law no. 463/2001;
- j) Government Ordinance no. 27/2002 on regulation the activities for solving the complaints, approved and amended by Law no. 233/2002;
- k) Government Decision no. 1265/1996 regarding the approval of Methodological norms for applying the Petroleum Law no. 134/1995 and modification and completing the Government Decision no. 1034/1995 regarding some measures in

- the domain of cooperation with foreign partners in order to explore oil and gas in Romania, with subsequent amendments;
- l) Government Decision no. 538/1999 regarding the conditions for issuing the natural gas utilization and consumption agreement;
 - m) Government Decision no. 748/2000 regarding the Regulation for granting authorizations and licenses in natural gas sector, republished;
 - n) Order of minister of industry and resources no. 199/2001 regarding some measures for strengthening the discipline in natural gas sector;
 - o) Order of minister of industry and resources no. 292/2003 regarding commercialization of quantities of natural gas on internal market;
 - p) Regulation for programming, functioning and dispatching the natural gas national transport system, approved by decision of the President of ANRGN;
 - q) Framework contracts on natural gas supply to captive customers, with subsequent amendments, natural gas sale-purchase framework-contract for eligible customers, natural gas transmission framework-contract, with subsequent amendments, natural gas distribution framework-contract, with subsequent amendments, natural gas underground storage framework-contract and natural gas acquisition frame-work contract, approved by decision of the President of ANRGN;
 - r) Performance standard for natural gas supplying service, achieved by distribution operators approved by decision of the President of ANRGN;
 - s) Performance standard for natural gas supplying on wholesale market, approved by decision of the President of ANRGN;
 - t) Commercial norms regarding natural gas market, approved by decision of the President of ANRGN;
 - u) Methodology for settling the pre-contractual disputes in natural gas sector, approved by decision of the President of ANRGN;
 - v) Criteria and methods for approving prices and establishing regulated tariffs in natural gas sector, approved by decision of the President of ANRGN;
 - w) Methodology for monitoring regulated natural gas internal market and eligible consumers, approved by decision of the President of ANRGN;
 - x) Other regulations regarding natural gas sector.

SECTION 3 ***Terminology***

Art. 4. – The terms used in the present norms are defined in the glossary of terms in the annex, as well as in the other regulations in force.

CHAPTER II **Application field**

Art. 5. – (1) Abuse of a dominant position on internal natural gas market could arise:

1. within the regulated part of the market, which content:
 - a) natural monopoly activities: natural gas transmission and underground storage, being zone monopoly;

- b) natural gas supply for natural gas captive customers.
 - 2. within the competition part of the market, for natural gas sale-purchase/acquisition activities, developed by natural gas producers/suppliers having a dominant position on internal natural gas market and for some activities within the regulated part of the market open to competition.
- (2) In the meaning of para. (1), the following deeds pass under the present norms:
- a) unjustified refusal of third party access to upstream pipelines, to Natural Gas National Transmission System – *SNT*, to distribution systems or, if the case, to natural gas underground storage facilities;
 - b) using practices meant to influence the free negotiated prices on natural gas market or, if the case, non compliance with the regulated prices and tariffs in natural gas sector;
 - c) the distribution operator, supply licensee, unjustified refuses to supply natural gas to final customers, by not concluding, based on public service obligation, the supply contracts for captive customers;
 - d) concluding/running natural gas supply contracts for captive customers, not complying with the compulsory clauses in the framework-contracts, approved by decision of the President of ANRGN, as well as the other regulations in force;
 - e) the conditioning of signing and running the natural gas supply, transmission, distribution and underground storage contracts by the unilateral imposition by the system operator, of the negotiated clauses, as they are stipulated in the framework contracts approved by decision of the President of ANRGN;
 - f) unjustified refusal to issue the natural gas utilization agreements, as well as the related endorsements;
 - g) not reserving, for the natural gas transmission operator, the minimal capacities into underground storage facilities, in order to store natural gas necessary to maintain the security of *SNT* operation, according to legislation in force;
 - h) not compliance with the quantity percentage rates related to the blend of natural gas from internal production and from import, monthly established by the Market Operator within Natural Gas National Dispatching Center, according to legislation in force;
 - i) providing to the Market Operator within Natural Gas National Dispatching Center sub-dimensioned/supra-dimensioned selling offers, respectively purchasing demands, having an impact on the internal/import blend of natural gas;
 - j) not compliance with the conditionings, limitations, restrictions, interdictions, tasks, as well as other obligations stipulated by the validity conditions of natural gas transmission, distribution, underground storage licenses, as well as supply for captive customers, issued by ANRGN, including the performance standards;
 - k) the refusal to conclude natural gas sale-purchase/acquisition contracts within competition part of natural gas internal market, upon discriminatory criteria, related to the character and/or source of the capital or by the destination of natural gas;
 - l) the system operators practice tariffs representing ancillary services, whose costs were considered at the substantiation of system tariffs;
 - m) guilt not- fulfilling by the concessionaire of the contract obligations specified in the concession contracts concluded in natural gas sector;

- n) concluding on discriminatory criteria the contracts for services between operators licensed by ANRGN and the undertakings authorized by ANRGN;
- o) the licensed operators practice discriminatory tariffs for performing services regarding the activities related to the access to the system;
- p) others that could lead, under the law, to possible situations of abuse of a dominant position.

CHAPTER III

Notification procedure. Analyzing the petitions

Art. 6. – (1) Natural and legal persons could send petitions to ANRGN related to the deeds stipulated at art. 5 para. (2).

(2) The petitions stipulated at para. (1) are filed, afterward the President of ANRGN sends them to specialty departments.

(3) The answers for the petitions is sent to the interested people, according to Government Ordinance no. 27/2002, approved and amended by Law no. 233/2002.

CHAPTER IV

Final provisions

Art. 7. – (1) Whether the analysis of the petitions reveals the necessity to modify and/or to complete the documents adopted/issued by ANRGN, the President of ANRGN could dispose to amend the Annual Regulation Program.

(2) Modification and/or completion of the Annual Regulation Program of ANRGN could be disposed at the proposal of Ministry of Economy and Trade too, respectively of the members of the Advisory Council.

Art. 8. – Achieving by undertakings of one of the deeds stipulated at art. 5 para. (2), which do not represent an abuse of a dominant position in the meaning of the Competition Law no. 21/1996, with subsequent amendments, shall be punished, under conditions stipulated by the regulations in force in natural gas sector.

Art. 9. – The annex is a part of the present norms.

GLOSSARY OF TERMS

In the meaning of the present norms, the following terms mean:

- a) *abuse of a dominant position* – deed achieved by a legal person which is in a dominant position, in order to maintain or to improve its position on the market and which affects the economic activity or prejudice the customers;
- b) *competition* – way to be of the market economy, characterized by economic fight of more companies on the same market, aiming some specific economic targets: profit, selling and/or market share.
- c) *natural monopoly* – situation existing on a definite market, with only one company, offering goods or services that could not be achieved/performed on efficiency terms by competition units or that could become competition on short or

medium term, due to utilization of some specific technologies or some high-costed investments;

- d) *zone monopoly* – natural monopoly situation, existing on a regulated part of the market, geographically determined;
- e) *natural gas internal market* – economic space for developing all the commercial operations in natural gas sector, being formed by the following elements:
 - regulated part of the natural gas internal market
 - competition part of the natural gas internal market
- f) *dominant position* – situation of an undertaking on a definite market, which has the possibility to act independently on the market versus suppliers, customers or competitors.