Gas Regulation 2009

A practical insight to cross-border Gas Regulation work

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Chapter 21

Netherlands

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1 Overview of Natural Gas Sector

1.1 A brief outline of the Netherlands natural gas sector, including a general description of: natural gas reserves; natural gas production including the extent to which production is associated or non-associated natural gas; importation and exportation of natural gas, including liquefied natural gas (LNG) liquefaction and export facilities, and/or receiving and re-gasification facilities (“LNG facilities”); natural gas pipeline transportation and distribution/transmission network; natural gas storage; and commodity sales and trading.

Following the discovery of the “Groningen” field in the north of the Netherlands - and in particular the appreciation of its magnitude - in the early 1960s, the Netherlands has grown to be one of the major gas lands in Europe. Broadly 29% of all the European natural gas reserves are located in the Netherlands, accounting at the end of 2006 for 0.7% of the global natural gas reserves in the world.

The system in which the Dutch gas sector is organised is often referred to as the Dutch “Gas Building” (Gasgebouw). The Gas Building was installed following the discovery of the large Groningen field, one of the largest reservoirs in continental Europe. After the Groningen field was discovered, a production license was granted to NAM, a 50/50 joint venture of Shell and ExxonMobil, under the condition that NAM would enter into a general partnership with a state owned holding company Energie Beheer Nederland (EBN), which partnership was called Maatschap Groningen. (In this partnership, the State has a 40% financial share and NAM 60%, however the voting rights are 50/50.) The Maatschap Groningen was to enter into a gas sales agreement with N.V. Nederlandse Gasunie, another joint venture of Shell and ExxonMobil (each 25%) and the Dutch State (10% + 40% via EBN) for the entire gas production from the Groningen field. N.V. Nederlandse Gasunie was made responsible for the marketing and distribution of the gas. This way, production and marketing of the Groningen gas was coordinated to the maximum extent. This system of central marketing has been applied to all gas production in the Netherlands.

The magnitude of the Groningen field drew the worldwide attention of the oil-industry and international oil companies came to the Netherlands to do seismic research and to drill for gas. This development urged the government to create a new policy for the development of the gas reserves on shore and on the continental shelf. New legislation of 1965 introduced the conditions under which exploration and production licences were to be granted. In essence this implied an adoption of the Groningen model. Production was allowed provided that the licensee would enter into an agreement of cooperation with EBN in which EBN would be granted a 40% share in the gas developments.

At the end of the 1970s, the first lines became visible of the Small Field Policy (kleine veldenbeleid or planmatig beheer). (Also referred to as the ‘marginal field policy’. Sometimes, a distinction is made between small fields and marginal fields whereby production from marginal fields is more sensitive to economic (oil prices) and/or legislative (depreciation) circumstances.) The Small Field Policy (SFP) became the framework under the Dutch regulatory regime, to optimise production from the smaller fields (i.e. smaller than the Groningen field) and to maintain for as long as possible the valuable aspects of the Groningen field. (All fields in the territory of the Netherlands and on the Dutch part of the continental shelf, except the large ‘Groningen’ field are considered small fields.) The SFP has proven to be highly successful. It has stimulated gas production in the Netherlands as it guaranteed producers that the gas would be purchased directly. (Unlike the Netherlands, in many North Sea countries there are waiting lists of gas fields awaiting production as there is no purchaser available.)

The SFP exists of three key-elements:

1. Guaranteed market-based price for the field lifetime.
2. Guaranteed taking of the produced gas from all Dutch fields.
3. Using the “Groningen” field to balance seasonal fluctuations in supply so that production from the Small fields can be taken at a high load factor.

In 2005, the activities of N.V. Nederlandse Gasunie have been unbundled and subsequently the trading activities have been split off. Gas transportation is the responsibility of Gasunie subsidiary Gas Transport Services (GTS). Gasunie is now a 100% state-owned company. The trading activities have been transferred to a new company GasTerra. Shareholders in GasTerra are the Dutch State (50%) and Shell and ExxonMobil (each 25%).

The legal framework of the Small Field Policy has been laid down in Section 54 of the Dutch Gas Act describing the statutory obligations of GasTerra. GasTerra must take the gas produced from the Groningen field in such a manner that production from the small fields is taken into account. GasTerra is obligated to purchase gas produced from the small fields at the request of the holders of a Dutch production license, against reasonable conditions and against payment of a market based compensation. These two provisions facilitate the development of new fields by providing an immediate market for all gas production.

The statutory required market based compensation is reflected in the so-called Normative Buying Price (Norm Inkoop Prijs or “NIP”). Conceptually, the NIP gas price mechanism attempts to provide a proxy for GasTerra’s end user market by deriving a price based on competitive fuel in the industrial sector (heavy fuel oil) and residential market (gasoil) in both the domestic (Rotterdam
pricing point) and export markets. In recent years, Zeebrugge, NBP and TTF-prices have also become a factor in the NIP-formula.

The Dutch Ministry of Economic Affairs (MEA), in cooperation with the Dutch Institute for Applicable Geosciences TNO and State Supervision of Mines, publishes a yearly report on gas and oil in the Netherlands. As of 1 January 2008, the total natural gas reserves were assessed at 1,390 bcm; 1,075 bcm is attributable to the Groningen reservoir, 117 bcm to other onshore reservoirs and 198 bcm to the Continental Shelf. Natural gas produced in the Netherlands is to a large extent non-associated gas.

In 2007 the gross natural gas production from the Dutch gas fields amounted to 68.3 bcm; 37.8 bcm of which was from ‘small fields’ (i.e. not Groningen). This reflects a decrease of 3.4% compared to the 2006 figures; the production from the territory decreased by 6.3% and production from the Continental Shelf increased by 1.7%.

The Netherlands has 406 discovered reservoirs, of which 219 are developed, 60 of which production ceased, 55 are yet to be developed and of 72 reservoirs it is uncertain if and when these will be developed.

The total import of natural gas in the Netherlands increased from 10 bcm in 2006 to 10.1 bcm in 2007. The total export of natural gas decreased from 51.8 bcm in 2006 to 50.4 bcm in 2007.

In the Netherlands the development of liquefied natural gas (LNG) facilities is accelerating. Vopak and Gasunie are in the process of building an LNG terminal at the Maasvlakte in Rotterdam (Gate-terminal) which is planned to be operational in 2011. The terminal will have an initial throughput capacity of 12 bcm per annum and will consist of three storage tanks and two jetty’s. Annual throughput capacity can be increased to 16 bcm. 4Gas is developing an LNG terminal at the Maasvlakte in Rotterdam (Liongas-terminal) which is planned to be operational during 2012 with an initial capacity of 9 bcm. Annual throughput capacity can be increased to 16 bcm. TAQA Energy B.V. is planning to build an offshore LNG terminal with a capacity of 12 bcm at the Dutch coast near Rotterdam.

The Dutch pipeline transportation and distribution networks are well developed. The high pressure transportation network is owned and operated by Gas Transport Services (GTS), which is a 100% state-owned network operator following its unbundling and separation from former Nederlandse Gasunie n.v in 2005. The transportation network is interconnected with Germany and Belgium and via the BBL interconnector with the UK (Bacton-Balgzand). At the end of November 2007, the new GWWL gas pipeline was opened. It runs from Grijpskerk via Workum to Wieringermeer. This pipeline and the new compressor station at Grijpskerk are a major new link for the transmission of natural gas from the northeast to the northwest of the Netherlands. Gas pipelines are recognised as public works and as such qualify for the regime to obtain the right of way for public works.

A statutory distinction is made between transportation pipelines and production pipelines, the latter being the pipelines that form a part of the production installations and that are used for the transportation to a processing plant, storage facility or landing facility. A licence of the MEA is required for the laying of production pipelines and the installation of platforms; the application requirements are stipulated in the Mining Act, the Mining Decree and the Mining Regulation, effective as of 1 January 2003.

The Netherlands has three operational underground gas storages. Norg UGS and Grijpskerk UGS are owned by NAM; Alkmaar Peak Gas Installation (PGI) is owned by the Bergen concessionaries TAQA, Dyas and Petro Canada. In 2007 underground gas storage in salt caverns has become operational in Epe, Germany, with capacity solely for the Dutch market. Dutch energy companies Nuon and Essent each control a number of caverns and the two projects are directly connected to the GTS transmission system.

Gas storage is to be further expanded. In 2007, the MEA has awarded one storage licence to TAQA Energy for the Bergermeer area. Four underground gas storages are being built for VOF Zuidwending, a joint venture between Nuon and GTS. Work on the first underground gas storage began in June 2007. The storage facility is expected to be operational in 2010.

1.2 To what extent are the Netherlands energy requirements met using natural gas (including LNG)?

Approximately 44.4% of the Dutch energy requirements are met using natural gas.

1.3 To what extent are the Netherlands natural gas requirements met through domestic natural gas production?

Approximately 78% of the Dutch natural gas requirements are met through domestic natural gas production.

1.4 To what extent is the Netherlands natural gas production exported (pipeline or LNG)?

Approximately 50.4 bcm natural gas is exported. To Germany 37.3%, Belgium 14.09%, France 15.67%, Italy 15.48%, Switzerland 1.19% and to the United Kingdom 16.27% of the total exported 50.4 bcm natural gas.

2 Development of Natural Gas

2.1 Outline broadly the legal/statutory and organisational framework for the exploration and production (“development”) of natural gas reserves including: principal legislation; in whom the State's mineral rights to natural gas are vested; Government authority or authorities responsible for the regulation of natural gas development; and current major initiatives or policies of the Government (if any) in relation to natural gas development.

The Mining Act, effective as of 1 January 2003, forms the legal basis for exploration and production activities relating to minerals (such as hydrocarbons) in the Netherlands (including the continental shelf). Furthermore, the act provides for State participation in exploration and production licences. The Mining Act is complemented by the Mining Decree and the Mining Regulation.

Minerals under the surface of The Netherlands (including the continental shelf) are owned by the Dutch state. Pursuant to the Mining Act 2003, it is prohibited to explore for, or produce minerals without a license from the MEA. The ownership of the minerals is transferred to the licence-holder(s) only by the production of the said minerals under a production licence issued by MEA. A production licence will be granted if it is feasible, that the minerals within the area for which the licence will apply, are economically producible. A licence will specify for what period it is valid and for which area it is applicable. For the delineation of this area, the limits on the surface are indicated (Blocks). The delineation of such license area is done in such a manner that the activities can be carried out in the optimum possible manner from a technical and economical point of view.

The MEA is also authorised to approve the transfer, merger or demerger of such licences.
2.2 How are the State’s mineral rights to develop natural gas reserves transferred to investors or companies ("participants") (e.g. licence, concession, service contract, contractual rights under Production Sharing Agreement?) and what is the legal status of those rights or interests under domestic law?

The MEA may grant a licence for exploration, production or storage. Licence requirements for exploration are, amongst others, financial and technical capabilities and a development plan satisfactory to the MEA. If the holder of an exploration licence demonstrates the commerciality of a gas reservoir, he may apply for a production permit, which in most cases will be automatically granted to him as the current holder of the exploration licence for the area concerned.

Upon the granting of a production licence by the MEA, a licence holder is exclusively entitled to production in the licence area. Upon the production of the gas, i.e. at the well head, the ownership of the gas transfers from the State to the licence holder.

2.3 If different authorisations are issued in respect of different stages of development (e.g., exploration or production arrangements), please specify those authorisations and briefly summarise the most important (standard) terms (such as term/duration, scope of rights, expenditure obligations).

Separate licences are granted by the MEA for exploration, production and storage. The procedure to apply for these permits is outlined in the Mining Act, the Mining Decree and the Mining Regulations. The licence will stipulate the activity, the mineral, the term and the area concerned. The exploration licence contains a certain date prior to which the exploration activities are to be conducted. The MEA may stipulate specific conditions in the licence. The application of a license is published in the Dutch State Gazette and in the Official Journal of the European Union. During a period of thirteen weeks other parties are entitled to submit an application for a license in that same area. If more than one person applies for a license, they are considered as joint applicants and when the license is granted, they will jointly hold the license. One of the licensees will be designated the operator. The decision to grant a license is published in the State Gazette.

2.4 To what extent, if any, does the State have an ownership interest, or seek to participate, in the development of natural gas reserves (whether as a matter of law or policy)?

The Dutch State participates in offshore exploration licenses for 40% through its 100% state-owned participation vehicle Energie Beheer Nederland B.V. (EBN) for which the licensee and EBN will enter into an agreement of cooperation that stipulates the allocation of rights and obligations and the attribution of costs in accordance with the respective interests.

Except in the event that State may conclude that participation in a production license may inflict a financial loss, the State will participate EBN in all offshore and onshore production licenses.

2.5 How does the State derive value from natural gas development (e.g. royalty, share of production, taxes)?

The State charges taxes directly to the licence holder, such as surface duties (offshore exploration licence or production licence), royalties relating to the amount of natural gas produced (production licence) and the 50% State Profit Share (production licence).

Furthermore, the State may derive value through its indirect participation (via EBN) in the production licence.

2.6 Are there any restrictions on the export of production?

There is no explicit restriction on the export of production. Currently, a production ceiling of 44.3 milliard m³ per year is applicable to the Groningen reservoir, which production restriction indirectly restricts available volumes for exports.

2.7 Are there any currency exchange restrictions, or restrictions on the transfer of funds derived from production out of the jurisdiction?

There are no currency exchange restrictions, except that the MEA may require security for covering the liability of the holder of an onshore licence for potential damage that is reasonably estimated to result from movement of the earth following production activities.

2.8 What restrictions (if any) apply to the transfer or disposal of natural gas development rights or interests?

As mentioned above, licences may not be transferred to another entity without the prior written approval of the MEA. The Mining Act does not require such consent in the event of an indirect transfer through a change of control of the licence holder. However, the MEA may withdraw a licence under certain circumstances, such as incorrect information provided by the application, the licence holder not acting in conformity with the licence or in the event that the operator does not comply with the applicable rules. Therefore, the transfer of a license via a change of control is often notified to the MEA.

2.9 Are participants obliged to provide any security or guarantees in relation to natural gas development?

The MEA may require security for covering the liability of the holder of an onshore licence for potential damage that is reasonably estimated to result from movement of the earth following production activities. The MEA may also require security for the discharge of payments if there would be any doubt as to whether the payment obligations (rental, excise, State Profit Share) to the State under the terms of the Mining Act will be fulfilled.

Furthermore, the MEA may require security for compliance of any all that shall become due in case he uses administrative enforcement for maintenance of the obligations of the licence holder and/or the manager of a cable or pipeline to remove or leave behind, or, after removal, to break down or reuse the mining installation and/or the cables or pipelines located on the Continental Shelf.

In the case a licence is held by more than one entity, the operator may be required by the MEA to provide such security.

2.10 Can rights to develop natural gas reserves granted to a participant be pledged for security, or booked for accounting purposes under domestic law?

The mining legislation contains no restrictions on the creation of a pledge on such rights. However, if the licence is granted to more than one entity, the co-holders of the licence can be regarded as a community (gemeenschap) and the gas reserves belong upon its...
production to the co-holders jointly. Each of the co-holders may in principle dispose of its share in the gas reserves, including encumbrance of its share, unless the juridical relationship between the co-holders requires otherwise. Therefore, the applicable joint operating agreement needs to be reviewed to determine whether a co-holder may dispose (or encumber) its share in the gas reserves.

2.11 In addition to those rights/authorisations required to explore for and produce natural gas, what other principal Government authorisations are required to develop natural gas reserves (e.g. environmental, occupational health and safety) and from whom are these authorisations to be obtained?

Without the prior written approval of the MEA, a licence holder cannot transfer or divide his licence or join two or more licences. A change in operatorship and a change in the production plan are also subject to the prior consent of the MEA. The installation or maintenance of an offshore mining installation is prohibited without an environmental mining permit. The MEA may only refuse such permit in the interest of the environment. It is also prohibited to lay a production pipeline without a permit from the MEA and the pipeline may only be taken into operation with the approval of the MEA. Furthermore a planning permit is required for the development of works for onshore mining.

As the exploration for and production of gas may result in the emission of CO2 and/or NOx, the licence holder or the operator of the installation used for exploration and/or production may need to apply for an emission permit from the Netherlands Emission Authority.

2.12 Is there any legislation or framework relating to the abandonment or decommissioning of physical structures used in natural gas development? If so, what are the principal features/requirements of the legislation?

The Mining Act stipulates that a mining installation, including any related material in the surrounding area, which is no longer in use, must be removed. The MEA may impose a date prior to which such removal has to be completed.

3 Importation / Exportation

3.1 Outline any regulatory requirements, or specific terms, limitations or rules applying in respect of cross-border sales or deliveries of natural gas (including LNG).

The transmission of gas from entry to exit points is organised by means of contracts between GTS and shippers. Transmission across border points is organised through contracts with the network operators in neighbouring countries. Similar agreements are concluded with the parties that supply gas to the Netherlands from foreign sources. In 2007, simultaneously with the expansion in physical capacity, GTS and Gasunie Deutschland (formerly BEB) developed a service to further increase the utilisation of existing bidirectional capacity at Oude Statenzijl. The service is called EUCABO and enables the direct booking of capacity between the Netherlands and Germany. EUCABO is a response to the need of market players for a straightforward facility for booking cross border gas transmission capacity. The service contributes to the efficient functioning of the European internal gas market.

4 Transportation

4.1 Outline broadly the ownership, organisational and regulatory framework in relation to transportation pipelines and associated infrastructure (such as natural gas processing and storage facilities).

The national high pressure transmission network is owned and operated by Gas Transport Services, a subsidiary of 100% state-owned N.V. Nederlandse Gasunie, following its unbundling and separation from GazTerra in 2005. For regional networks, separate network operators are designated by the various Dutch energy distribution companies that own the networks. Third party access to the networks is regulated in the Gas Act.

Most of the infrastructure in the Netherlands is related to the transport and distribution of low calorific gas, but there is also infrastructure for the production, transport and distribution of high calorific gas.

The Dutch regulator has far reaching regulatory powers, amongst others determining terms and rates of transport as well as the discount factor X for stimulating efficiency and the quality factor Q for quality of network services.

The shares in regional network operator companies are currently held by the energy distribution companies. The shares in energy distribution companies are held by regional authorities (provinces and municipalities). As a result of the Independent Network Operator Act, as of 1 January 2011 network operator companies may not be part of the same energy group as companies active in the field of the production, trade and supply of energy in the Netherlands. Privatisation of the network operator companies is not allowed.

As from 1 January 2006 the Gas Act contains a system of regulated third party access for all customers on downstream gas networks and transportation pipelines. Production pipelines are not regulated and are subject to negotiated third party access.

For GTS, the designated national high pressure network operator, specific public tasks are imposed in the Gas Act to facilitate ‘small fields’ connection and access to the downstream sector.

A storage company that has a dominant position is obliged to publish, before 1 October of every year, an indication of the tariffs and conditions that it intends to apply in the following calendar year for its gas storage activities (and ancillary services). Gas storage companies must negotiate with third parties on the basis of this indicative tariffs and conditions, an apply conditions that are reasonable, transparent and non-discriminatory. The regulator may impose binding instructions upon the gas storage company with respect to the indicative tariffs and conditions.

LNG companies must offer LNG activities upon request against reasonable, transparent and non-discriminatory conditions. The Gate terminal was granted an exemption of the third-party-access regime of the Gas Act.

4.2 What Governmental authorisations (including any applicable environmental authorisations) are required to construct and operate natural gas transportation pipelines and associated infrastructure?

Under the mining legislation, the approval of the MEA is required for the construction of offshore natural gas production pipelines and of certain (larger) onshore natural gas production pipelines. Otherwise, only planning and environmental permits are required. Approval of the MEA is also required for the actual putting into
4.6 Outline any third-party access regime/rights in respect of natural gas transportation and associated infrastructure. For example, can the regulator or a new customer wishing to transport natural gas compel or require the operator/owner of a natural gas transportation pipeline or associated infrastructure to grant capacity or expand its facilities in order to accommodate the new customer? If so, how are the costs (including costs of interconnection, capacity reservation or facility expansions) allocated?

Third party access to Dutch transport and distribution networks is regulated and supervised by the regulator NMa (Energy Chamber). The statutory tasks of network operators include providing for adequate capacity and quality of transport services and related services. The network operator may only refuse its services if the required capacity is not available or if it cannot reasonably be required to provide all the capacity requested. The MEA may order the network operator to take the necessary measures in order to fulfil its statutory tasks. If the network operator does not take the required measures the MEA may revoke his consent with the designation of the network operator and may designate another company as the network operator. The provision that in such event the network has to be transferred to the network operator designated by the MEA is not yet in force. Alternatively in the event of serious neglect of the network operator the MEA may decide that the network operator should be placed under the supervision of a designated representative who may give binding orders. The regulatory regime for the maximum rate of the network operators’ transport services is based on the principle that the allowed revenues should suffice for the recovery of the (economic efficient) costs, including costs of capital and depreciation of network assets and a reasonable return on investment.

4.7 Are parties free to agree the terms upon which natural gas is to be transported or are the terms (including costs/tariffs which may be charged) regulated?

Network operators are subject to regulated terms and maximum tariffs (CPI - X) set by the regulator, NMa. Gas storage companies and LNG companies must provide to system users all relevant information required for the safe and efficient transport or storage. Further, the network operators, gas storage companies and LNG companies must provide the necessary information for efficient network access. The network operator further has the statutory task to connect its network with the network of other network operators and to provide information about connections between networks, the use of the networks and the allocation of transport capacity. Network operators, gas storage companies and LNG companies must refrain from any form of discrimination among the system users.

5 Transmission / Distribution

5.1 Outline broadly the ownership, organisational and regulatory framework in relation to the natural gas transmission/distribution network.

GTS owns and operates the national high-pressure transmission network. The subsequent distribution of gas is provided by various distribution companies (network operators). The shares of all distribution companies (with only two exceptions) are currently held by provinces and municipalities. The Gas Act outlines how the gas is to be distributed and requires the legal unbundling of distribution companies in order to ensure non-discriminatory third party access. Under a system of regulated

operation of a pipeline. The state of the pipelines must be checked periodically by the pipeline manager.

A licence from the MEA is required for the storage of natural gas, both onshore and offshore.

4.3 In general, how does an entity obtain the necessary land (or other) rights to construct natural gas transportation pipelines or associated infrastructure? Do Government authorities have any powers of compulsory acquisition to facilitate land access?

Natural gas transportation and distribution pipelines are recognised as public works within the meaning of the Public Works Act (Beleemmeringenwet Privaatrecht). Pursuant to the Public Works Act the Minister of Transport and Water Management can at the request of the network operator impose the obligation on the property owner to facilitate access for the gas pipeline if no agreement with the relevant owners of property can be reached, subject to the right of the property owner to be compensated for damages by the network operator.

4.4 How is access to natural gas transportation pipelines and associated infrastructure organised?

For GTS, the designated national high pressure network operator, specific public tasks are imposed in the Gas Act to facilitate “small fields” connection and access to the downstream system. GTS offers access to independent transmission services on the basis of regulated tariffs.

A gas storage company that has a dominant position is obliged to publish, before 1 October of every year, an indication of the tariffs and conditions that it intends to apply in the following calendar year for its gas storage activities (and ancillary services). Gas storage companies must negotiate with third parties on the basis of these indicative tariffs and conditions, and apply conditions that are reasonable, transparent. The regulator may impose binding instructions upon the gas storage company with respect to the indicative tariffs and conditions.

For large new investments an exemption may be granted from the regulatory regime.

4.5 To what degree are natural gas transportation pipelines integrated or interconnected, and how is cooperation between different transportation systems established and regulated?

The existing networks in the Netherlands are integrated and interconnected with up stream production pipelines, as well as foreign transmission networks in Germany, Belgium and the UK.

Network operators, gas storage companies and LNG companies must provide to system users all relevant information required for the safe and efficient transport or storage. Further the network operators, gas storage companies and LNG companies must provide the necessary information for efficient network access. The network operator also has the statutory task to connect its network with the network of other network operators and to provide information about connections between networks, the use of the networks and the allocation of transport capacity. Network operators, gas storage companies and LNG companies must refrain from any form of discrimination among the system users.
third party access, the transmission and distribution companies are obliged to carry out the transmission and distribution of gas on behalf of third parties. The Independent Network Operator Act provides for the ownership unbundling of networks. The owner of a network operator may not engage in any activity in the Netherlands with regard to the trade or supply or production of energy. Furthermore it provides that producers, traders or suppliers of gas active in the Netherlands (or group companies of these producers, traders or suppliers) may not hold shares in a network operator (and vice versa). The ownership of a gas distribution network or the shares of a network operator may not be transferred to a non-public entity.

### 5.2 What Governmental authorisations (including any applicable environmental authorisations) are required to operate a distribution network?

The owner of a distribution network must designate a network operator. The designation of a network operator requires the approval of the MEA. The MEA may withhold his approval (or may grant his approval subject to conditions), for example if the appointed network manager will not be in a position to carry out its statutory obligations.

### 5.3 How is access to the natural gas distribution network organised?

Access to the natural gas distribution network is based on the system of regulated third party access. Tariff structures, conditions and maximum tariffs are set by the regulator.

### 5.4 Can the regulator require a distributor to grant capacity or expand its system in order to accommodate new customers?

The regulator can require from a distributor to grant capacity or expand its system in order to accommodate new customers.

### 5.5 What fees are charged for accessing the distribution network, and are these fees regulated?

For each year maximum transport tariffs are set by the regulator. These maximum tariffs are based on the maximum tariffs for the previous years, adjusted for the rate of inflation, an efficiency factor and a quality factor. Maximum tariffs may vary between network managers.

### 5.6 Are there any restrictions or limitations in relation to acquiring an interest in a gas utility, or the transfer of assets forming part of the distribution network (whether directly or indirectly)?

All changes to the ownership of a gas distribution network or to the shares of a network manager require the approval of the MEA. Under the current Gas Act, the MEA withholds his approval if the ownership of a gas distribution network or the shares of a network operator is to be transferred to a non-public entity. The Gas Act does not provide for any limitations with respect to the sale of companies active in the field of the production, trade and supply of gas.

### 6 Natural Gas Trading

#### 6.1 Outline broadly the ownership, organisational and regulatory framework in relation to natural gas trading. Please include details of current major initiatives or policies of the Government or regulator (if any) relating to natural gas trading.

The Title Transfer Facility (TTF) is a virtual market place at which gas on the Dutch network can be traded. Currently two companies have been appointed by the MEA as gas exchanges for the Dutch gas market: APX Gas NL B.V. for short-term products and ENDEX N.V. for long-term products, with delivery on TTF. Future contracts are traded on ENDEX, also with delivery on TTF. As a consequence of the developments in quality conversion it is expected that the use of quality labels at the TTF can be dispensed with by 1 January 2009.

#### 6.2 What range of natural gas commodities can be traded? For example, can only “bundled” products (i.e., the natural gas commodity and the distribution thereof) be traded?

Four gas quality categories are traded (H, L, G and G+) on the TTF. It concerns gas that has already entered the network of GTS, the operator of the national high pressure transmission network (“entry-paid gas”). Gas trading is completely liberalised. Futures and derivatives and comparable financial instruments may fall within the scope of the regulatory framework of the Financial Instruments Act.

### 7 Liquefied Natural Gas

#### 7.1 Outline broadly the ownership, organisational and regulatory framework in relation to LNG facilities.

Under the Gas Act, the owner of an LNG facility must appoint a facility manager. The appointment of a facility manager does not require the approval of the MEA. The facility manager must carry out certain statutory obligations, but these are mostly of a general nature (such as the obligation to operate, maintain and develop its LNG installation subject to economic criteria, in a manner that ensures the safety, efficiency and reliability of the installation and safeguards the environment). LNG companies must offer LNG activities upon request against reasonable, transparent and non-discriminatory conditions. LNG terminals are subject to Third Party Access (r-TPA). An exemption of r-TPA is possible when the requirements set out in Article 18h of the Gas Act are met.

#### 7.2 What Governmental authorisations are required to construct and operate LNG facilities?

Under the Gas Act, no governmental authorisations are required to construct and operate LNG facilities. Construction Permits and permits under the Zoning Act and the Environmental Management Act may be required.

#### 7.3 Is there any regulation of the price or terms of service in the LNG sector?

An LNG company is obliged to determine (on an annual basis) the calculation method for the tariffs and the conditions that it will
apply for access to its LNG facility in the following year. The calculation method and conditions require the approval of the regulator. Furthermore, conditions must be reasonable, transparent and non-discriminatory.

8 Competition

8.1 Which Governmental authority or authorities are responsible for the regulation of competition aspects, or anti-competitive practices, in the natural gas sector?

On the basis of the (Dutch) Competition Act (Mededingingswet), the Dutch Competition Authority (Nederlandse Mededingingsautoriteit) is responsible for the supervision of competition aspects, or anti-competitive practices, in all economic sectors, including the natural gas distribution sector as well as the exploration and production sector.

8.2 To what criteria does the regulator have regard in determining whether conduct is anti-competitive?

The Competition Act prohibits agreements which restrict competition in the Netherlands (or part thereof) and abuses of a dominant position. The relevant provisions are almost identical to Articles 81 and 82 of the EC Treaty, and the decision practice of the European Commission and the case law of the Court of Justice and the Court of First Instance of the European Communities serve as an important guideline for the Dutch Competition Authority.

8.3 What power or authority does the regulator have to preclude or take action in relation to anti-competitive practices?

The Dutch Competition Authority can prohibit practices which are contrary to the Competition Act, and impose an order sanctioned with periodic penalty payments. It can also issue interim measures. In addition, the Dutch Competition Authority can impose fines with a maximum of 10% of the annual consolidated turnover of the undertakings concerned.

8.4 Does the regulator (or any other Government authority) have the power to approve/disapprove mergers or other changes in control over businesses in the natural gas sector, or proposed acquisitions of development assets, transportation or associated infrastructure or distribution assets? If so, what criteria and procedures are applied? How long does it typically take to obtain a decision approving or disapproving the transaction?

The Competition Act provides for a mandatory merger control regime which is largely modelled after the EC merger control regime. Mergers, i.e. changes in the control of an undertaking, require prior notification to and clearance from the Dutch Competition Authority if (1) the combined worldwide (group) turnover of the undertakings involved exceeds EUR 113.45 million; (2) the individual (group) turnover in the Netherlands of at least two undertakings involved exceeds EUR 30 million; and (3) the EC merger control regime does not apply.

During a first phase investigation, the Dutch Competition Authority will investigate if the merger may lead to a significant impediment of competition in the Netherlands, in particular as a result of the creation or the strengthening of a dominant position. A decision must in principle be taken within four weeks from the date of notification. In case of doubt, the Dutch Competition Authority will decide that a licence is required. If so, the Dutch Competition Authority will investigate during a second phase investigation if the merger will indeed lead to a significant impediment of competition. A decision must be taken within thirteen weeks from the date of the request for a licence.

Under the Gas Act, the acquisition of ownership of a gas distribution network or of shares of a network operator by non-public entities is not allowed.

9 Foreign Investment and International Obligations

9.1 Are there any special requirements or limitations on acquisitions of interests in the natural gas sector (whether development, transportation or associated infrastructure, distribution or other) by foreign companies?

Apart from the limitations regarding the acquisition of ownership of a gas distribution network or of shares of a network operator, there are no statutory requirements or limitations on acquisitions of interests in the natural gas sector by foreign companies.

On November 24 2008, the Lower House of Parliament adopted a motion that requests the MEA to use all measures to block the acquisition of unbundled Dutch energy companies by energy companies that are not unbundled or by non-EU energy companies that are owned by foreign governments. The motion refers to the proposals for the third EU Directives for Electricity and Gas. At the time this contribution was submitted, it was still unclear how the Minister of Economic Affairs will interpret this motion as there is substantial uncertainty on important issues. A first issue is the nature of the measures the MEA can take as neither the Gas Act nor the proposed Directives seem to provide for such measures. A second issue is the definition of “unbundled energy company” as unbundling in the Netherlands concerns the distribution networks whereas in the EU Directives unbundling concerns only transportation networks.

9.2 To what extent is regulatory policy in respect of the natural gas sector influenced or affected by international treaties or other multinational arrangements?

Regulatory policy in respect of the natural gas sector is largely influenced by the policy defined and the legislation adopted at the level of the European Union.

10 Dispute Resolution

10.1 Provide a brief overview of compulsory dispute resolution procedures (statutory or otherwise) applying to the natural gas sector (if any), including procedures applying in the context of disputes between the applicable Government authority/ regulator and: participants in relation to natural gas development; transportation pipeline and associated infrastructure owners or users in relation to the transportation, processing or storage of natural gas; and distribution network owners or users in relation to the distribution/transmission of natural gas.

Any party having a dispute with a network operator or an LNG company with respect to the fulfilment of its statutory duties may file a complaint with the regulator. In principle, the regulator takes a decision within two months following receipt of the complaint. This is without prejudice to any other possible legal means,
including a civil court procedure, the complainant may have.

Under the Gas Act and the General Administrative Act, a decision of the MEA and of the regulator on the basis of the Gas Act (or secondary legislation) can be objected to by the parties to whom the decision is directed and by any other parties that are directly and individually affected. These objections must be filed with the administrative body issuing the decision (i.e. the MEA or the regulator).

Subsequent decisions of the MEA and regulator can be challenged before the Trade and Industry Appeal Court (College van Beroep voor het Bedrijfsleven), particularly on the basis of violation of the Gas Act (and secondary legislation) or the so-called general principles of law, such as the principles of proportionality and legal certainty. In case of urgency, it is possible to file a request for provisional measures with the President of the Trade and Industry Appeal Court.

Decisions of the regulator on the basis of Competition Act can be challenged before the Rotterdam Tribunal Court and in appeal before the Trade and Industry Appeal Court.

10.2 Is the Netherlands a signatory to, and has it duly ratified into domestic legislation: the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards; and/or the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“ICSID”)?

The Netherlands is a signatory to, and has duly ratified into domestic legislation, both the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

10.3 Is there any special difficulty (whether as a matter of law or practice) in litigating, or seeking to enforce judgments or awards, against Government authorities or State organs (including any immunity)?

There is no special difficulty in litigating, or seeking to enforce judgments or awards, against Government authorities or State organs.

It is not possible to seize goods that are destined for the public service. Furthermore, seizure of claims and goods that are under the State or a public body requires a specific description of these claims or goods. In summary proceedings, the State or public body can ask for the immediate lifting of the seizure for reasons of public interest.

10.4 Have there been instances in the natural gas sector when foreign corporations have successfully obtained judgments or awards against Government authorities or State organs pursuant to litigation before domestic courts?

To the best of our knowledge, there have been no instances in the natural gas sector where foreign corporations have successfully obtained judgments or awards against Government authorities or State organs pursuant to litigation before domestic courts.

11 Updates

11.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Gas Regulation Law in the Netherlands.

In order to realise its ambition of becoming a gas roundabout in Europe, the Netherlands is investing in the energy infrastructure and taking measures to improve the investment climate for mining companies. The aim is to remove obstacles in legislation and regulations and provide more efficient procedures for granting permits. In order to provide a more efficient procedure for realising an energy infrastructure the State Coordination Decree on Energy Infrastructure projects (Rijkscoördineringsregeling op energie-infrastructuurprojecten), which is scheduled to enter into force 1 January 2009, will be implemented in the Electricity Act, Mining Act and Gas Act.

A bill to amend the Mining Act is currently in under debate in the Higher House. Pursuant to the bill the MEA will, on a yearly basis, make an inventory of the partitions of all license areas in which no significant activities (significant activities’ are considered to exist when exploration, production or storage activities have taken place or shall take place within a term deemed reasonable by the MEA, or when a production plan or a storage plan has been submitted to the MEA) with respect to exploration and production of minerals or the storage of substances have taken place for a period of two years, or in which all production activities have ceased. In accordance with this inventory the MEA may change the delineation of the such license areas. Other parties may be issued a new license on the previously unused partitions. The Bill envisages to encourage optimisation of the natural gas production from the (off shore) small fields.

In Dutch Parliament, a growing concern is that in the unbundling process, the network companies may be left with large debts and loan obligations towards the commercial business and that the commercial business will be sold shortly thereafter, including the valuable assets of the former company and free of debts. After reports in the news on the financial difficulties of local network company NRE (Eindhoven region) following its early voluntary unbundling in 2006, members of Parliament fear that network companies may not be able to properly fulfil their statutory tasks. Apparently, the NRE network company incurred a considerable debt in anticipation of future (minority) privatisation of the grid that was ultimately made impossible in the Unbundling Act. Tariff regulation and in particular the efficiency discount applicable to the network activities of NRE now appear a heavy burden on this network company, which explains the concerns in Parliament. On 24 November 2008, a motion was adopted that requests the government to assure that, following the ownership unbundling of the network company and the commercial activities of an energy group, the network company must have an equity/debt ratio (or gearing) of at least 50/50 - instead of the 30/70 that has been required to date. The equity percentage may be adjusted downwards only if this follows directly from investments in the network that have been approved by the regulator. Although the Minister of Economic Affairs had pleaded against the motion, for the reason of its potential impact on the balance sheet and creditworthiness of the commercial business after the unbundling, it was accepted by a large majority of the votes cast, including the coalition parties. The Minister indicated that a 60/40 ratio could be considered. In a letter to the MEA Nuon announced that it would consider to claim damages from the State if the 50% ratio would be imposed.
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