

Gas market reform in Russia and Kazakhstan: major issues and legal aspects

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I. Why to reform?

What are the major issues?

- ❖ Heavily **statised and monopolized** (i.e. lack of market competition) economy, including in gas sector.
- ❖ Ever-increasing inefficiency and **poor energy efficiency**, largely because of practices some form of covert protectionism and cross-subsidization.
- ❖ Lack of transparency and lack of political will to proceed with long-overdue reforms and to introduce market competition, because energy sector (e.g. cheap gas) is used by government as an “**instrument**” for **political purposes** (i.e. long-standing social contract between population and government).

Why Urgent Gas Market Reforms are Needed?

- The “**new reality**” of the COVID-19 pandemic (i.e. disappearing demand for gas in Europe and China and rock-bottom prices) and the looming official launch of the EAEU’ common gas market in 2025 require urgent domestic gas markets reforms.
- *Status quo* in the gas sector is not possible, because in a “new reality” Gazprom/KTG **shall not expect same level of super profits** from its export/transit of gas and, therefore, it means that soon Gazprom/KTG would not be able to play its current role of political “instrument” and to bear its social burden of cross-subsidizing of local population and industries.
- Without reforms - no new foreign direct investments, no exploration and development of new gas fields, no further expansion of the gas networks, decline of gas production and domestic consumption, inefficiency and stagnation of the gas sector.

II. Third Party Access

- ❖ European TPA concept resembles Russian/Kazakh legal concept of “non-discriminatory access to natural monopoly entities’ services”.
- ❖ TPA concept is also stipulated under the Russian Gas Law, but only for Gazprom’s gas pipelines (Government Resolution 858). Major deficiency: Lack of anti-hoarding mechanisms. Lack of TPA Rules for non-Gazprom gas pipelines – FAS’s draft of the unified TPA rules still under consideration.
- ❖ TPA and Russian Competition Law – “Prohibition of abuse of a dominant position”. Good court practice of enforcement by FAS.
- ❖ Court practice: *Rosneft v Sakhalin Energy*
- ❖ TPA and Russian Energy Policy – export monopoly.
- ❖ TPA in the only pillar of the common gas market of the EAEU.
- ❖ Conclusions: TPA legal concept under Russian law is a so-called “**complex legal institute**”. Legal nature of the TPA right as a subjective right is disputable.

III. Gas pricing and tariff regulation

- ❖ In Russia only Gazprom's gas prices are regulated (about 60% of the market), whereas so-called independent gas producers can sell gas at market gas prices.
- ❖ Russia undergoes gradual price liberalization in its gas sector that can be already seen in the shift in 2007 from the so-called "fixed prices" to "indirectly controlled prices" pricing mechanism for the wholesale gas trade.
- ❖ In Kazakhstan gas market is overregulated with "fixed prices" regulation.
- ❖ Pipeline gas transportation services in both Russia and Kazakhstan are subject to natural monopoly tariff regulation.
- ❖ In Russia FAS as a tariff regulator adopted 'pro-competitive' tariff policy, however, tariff regulation to be transferred from the FAS to the Ministry of Energy of Russia as a line ministry?
- ❖ Lack of a level-playing field in the EAEU?
- ❖ SPIMEX as a future gas hub of the whole EAEU?

IV. Unbundling

Russia - Energy Empire

- Russia and Kazakhstan are still not ready for ownership unbundling and, evidently, do not need it.
- Different approaches:
 - in Russia legal unbundling;
 - in Kazakhstan legal unbundling plus trust management agreement.



V. Conclusions

Conclusions

- Development of the proper gas market design is crucial (i.e. for both: EAEU common gas market and domestic gas markets) and yet to be seen: EU's style or "Russian style"?
- Impact of the EU and China as the biggest gas markets and potential investors in gas sectors on the laws and state policies of Russia and Kazakhstan needs to be carefully analyzed and addressed, if needed, having in mind energy security issues.

**ANY
QUESTIONS?**

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