E.ON Ruhrgas Transport AG & Co. KG obliged to offer firm transport capacity for gas release quantities

Federal Network Agency reaches decision in abusive practice proceedings

The Federal Network Agency has today imposed an obligation upon E.ON Ruhrgas Transport AG & Co. KG (ERT) to make firm transport capacities available to EnWB Trading GmbH (EnBW Trading).

The abusive practice proceedings had been initiated by EnBW Trading in order to ensure the unhampered transport of gas quantities, which EnBW Trading had acquired at auction under the last gas release programme. The implementation of such a gas release programme had been imposed upon E.ON Ruhrgas under the terms of the ministerial approval granted by the Federal Ministry of Economics and Technology in 2002. One of the requirements stipulated had been the obligation to transport the gas auctioned off.

At the end of last year’s auction EnBW Trading had unsuccessfully applied to ERT for firm transport capacities. Instead ERT had only consented to interruptible capacities. They claim that at the time in question available firm capacities had already been booked by third parties. When allocating capacity they had also given priority to considerable capacities from companies of the E.ON group. Last winter ERT had then repeatedly interrupted the gas transports of EnBW, because firm capacity rights had almost without exception been used by other transport customers.

Today’s decision by the Federal Network Agency confirms the opinion of EnBW Trading that ERT had discriminated against them when allocating capacity and had therefore abused its power. A particularly critical factor in this decision had been the interpretation of the obligations under the ministerial approval. ERT had not been able to justify their behaviour either formally or on the merits of the case. Their objection that the Federal Network Agency was not allowed to take into account the ministerial approval did not bear up under a judicial review. ERT failed to appreciate that the revival of competition intended with the ministerial approval can only be achieved if firm transport capacities are available for gas quantities auctioned off. Insofar as bookings for capacity by the E.ON Ruhrgas-Gruppe preclude this, they must be treated as secondary under the terms of the ministerial approval and be allocated a lower priority.
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It seems likely that this decision will have far-reaching consequences not just in this particular instance but also for the gas release programme 2006. This year’s auction is the fourth one to take place under the gas release programme by E.ON Ruhrgas and is scheduled to take place on May 17th. Based on the interpretation of the law demonstrated by today's decision, which nevertheless could still be reviewed by a court, ERT must offer all buyers of release quantities firm transport capacities, if the buyers request this. This is likely to considerably increase incentives for buying natural gas at auction, which in turn is likely to have pro-competitive effects. Without today’s decision the ministerial approval would have been deprived of its intrinsic value in a critical area.