

Energy & Natural Resources - Hungary

Gas trading licence suspension provides market shake-up

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The Hungarian gas market, which has been gradually liberalised over the past decade, is undergoing a significant transformation. The Hungarian Energy Office has recently suspended the gas trading licence held by Emfesz, which supplies approximately 20% of the Hungarian market. The suspension was based on a government decree, adopted by the previous administration in early 2010, that seeks to remedy situations in which, as a result of a supply shortage, a gas trader is unable to supply sufficient gas to its customers or cannot fulfil certain regulatory obligations.⁽¹⁾

Origins

The decree is commonly referred to as the *Lex Emfesz*, as it was drafted in response to the financial problems that Emfesz faced in 2009, when the security of its gas supply from the east was endangered by a dispute between Russia and Ukraine. Emfesz is one of the largest Hungarian companies and was the first leading player to emerge in the Hungarian retail gas market following the start of the liberalisation process.

Ironically, on January 13 2011 the Hungarian Energy Office suspended Emfesz's gas trading licence under the decree. It did so because Emfesz was found to have practically no gas resources of its own and to be heavily in debt to the Hungarian gas system operator. As a result, Emfesz is prohibited from conducting activities related to gas trading for the period of suspension. Although the decision affects around 300,000 customers, it creates new opportunities for other gas traders.

Scope

The decree encompasses the process of ensuring immediate and continuous supply of the affected customers, if a gas trader is suspended. Gas trading licensees are subject to continuous record-keeping and data provision obligations. The Hungarian Energy Office analyses the data that licensees provide and must suspend a licence if:

- a licensee has obtained balancing gas from the Hungarian system operator in excess of the amount permitted in the decree; or
- the supply to customers is endangered by the licensee's poor financial position.

The suspension applies for 90 days and the suspended trader has 60 days in which to restore its resources and its ability to supply its customers; if it fails to do so, it loses the licence at the end of the suspension period.

Suspension immediately terminates all customer agreements with the licensee. However, the decree aims to secure gas supplies for the suspended licensee's customers as soon as possible. It provides for two key measures in this respect.

When a licence is suspended, the Hungarian Energy Office gives all other gas trading licensees two days in which to present a proposal regarding their ability to supply the suspended licensee's customers. The proposal must state the terms and conditions of the offer and the tariffs for such supply. The Hungarian Energy Office then evaluates the proposals received. If no suppliers apply voluntarily, the Hungarian Energy Office appoints one or more gas trading licensees to supply the customers during the suspension period. In respect of retail customers, the Hungarian Energy Office is required to favour offers from universal service providers.

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The suspended trader also has certain immediate obligations to fulfil. The decree requires it to:

- notify its customers of the suspension and its consequences as soon as possible;
- prepare detailed, up-to-date records of customer data, including supply agreements, quantities to be supplied and information on reading individual gas meters; and
- present the records to the gas traders appointed by the Hungarian Energy Office with a view to immediate supply.

Supply contracts

While appointed traders are required to supply gas to the suspended licensee's customers, the contractual relationship between customers and appointed suppliers remains to be settled. The short timeframe makes it unrealistic to expect the appointed suppliers to contract with each customer directly. Therefore, such contracts are established by virtue of the decree: with effect from the day of appointment, a service agreement is deemed to exist between the appointed licensee and the customer for a fixed 90-day period. Thereafter, industrial customers must make a new choice of service provider (although they may terminate the contract and choose another supplier during the suspension period). In the case of retail customers who are supplied by universal service providers during the suspension, the contract automatically becomes open-ended if the customer does not terminate it during the 90-day period or does not conclude a new supply contract with the universal service provider.

Effects

Although the suspension period is still in force, the decree appears to have worked well. There have been no disruptions in supply since the switch of suppliers. The Hungarian Energy Office appointed four gas traders to supply Emfesz's customers - all four are universal service providers.

Unsurprisingly, the appointed suppliers have been competing fiercely to acquire former Emfesz customers for the long term, which will continue to affect price and market share long after the 90-day term ends. The future conduct of Emfesz, which may yet fulfil the conditions for retaining its trade licence, will also shape the market. Although the reactivation of the licence would not mean the resumption of its contracts with former customers, the company could still have significant impact on the structure of the market and the conduct of its competitors.

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Endnotes

(1) Decree 48/2010 (II 26).

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