CASE AT.40335 – Romanian gas interconnectors

(Only the English text is authentic)

ANTITRUST PROCEDURE Council Regulation (EC) 1/2003

Article 9 Regulation (EC) 1/2003

Date: 06/03/2020

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Brussels, 6.3.2020 C(2020) 1232 final

COMMISSION DECISION

of 6.3.2020

relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union (TFEU)

Case AT.40335 – Romanian gas interconnectors

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty ('Council Regulation (EC) No 1/2003')¹, in particular Article 9(1) thereof,

Having regard to the Commission decision of 30 May 2017 to initiate proceedings in this case,

Having expressed concerns in the Preliminary Assessment of 10 September 2018,

Having given interested third parties the opportunity to submit their observations pursuant to Article 27(4) of Council Regulation (EC) No 1/2003 on the commitments offered to meet those concerns,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Having regard to the final report of the Hearing Officer,

Whereas:

1. SUBJECT MATTER

- (1) The present Decision is addressed to Societatea Națională de Transport Gaze Naturale Transgaz S.A. ('Transgaz') and concerns the hindering of natural gas exports from Romania to other Member States.
- (2) In its Preliminary Assessment of 10 September 2018 ('Preliminary Assessment'), the Commission came to the preliminary conclusion that Transgaz is dominant within the meaning of Article 102 of the Treaty on the Functioning of the European Union ('TFEU') on the market for natural gas transmission in Romania, which includes

OJ L 1, 4.1.2003, p.1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union ('TFEU'). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82, respectively, of the EC Treaty when and where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. Where the meaning remains unchanged, the terminology of the TFEU will be used throughout this Decision.

transmission through the interconnectors with neighbouring countries.² Further, the Commission came to the preliminary conclusion that through its conduct, Transgaz may have sought to create or maintain barriers to the cross-border flow of natural gas from Romania to other Member States, frustrating the achievement of a European internal natural gas market. Such conduct could lead to the partitioning of the market along national borders and to *de facto* discrimination between customers in Romania and customers in other Member States, particularly Hungary and Bulgaria, which would be prevented from reaping the benefits of the internal market.

- (3) The Preliminary Assessment identified the following means by which Transgaz may have implemented an overall strategy of restricting the free flow of natural gas from Romania to neighbouring Member States, in particular (i) underinvesting and/or strategically delaying the building of infrastructure relevant for exports, (ii) interconnection tariffs for natural gas exports to other Member States that made exports commercially not viable, and (iii) invoking vexatious technical arguments as pretexts for restricting or justifying delays in exports of natural gas from Romania to other Member States. This conduct raised concerns as to its compliance with Article 102 TFEU.
- (4) Transgaz set out its position on the Commission's Preliminary Assessment in its reply. Despite its disagreement with the Commission's preliminary findings, Transgaz has offered commitments under Article 9(1) of Council Regulation (EC) No 1/2003 to resolve the concerns expressed by the Commission. This Decision makes the commitments binding on Transgaz.

2. THE UNDERTAKING CONCERNED

- (5) Transgaz is a company active in the natural gas sector in Romania, in particular in the transmission of natural gas, international transit of gas, cross-border transmission of gas, gas dispatching, and research and design in the field of gas transmission.
- (6) Transgaz is the sole manager and operator (transmission system operator 'TSO') of the natural gas transmission network in Romania. There is only one natural gas transmission system ('NTS') in Romania, which includes all interconnectors with neighbouring countries. Transgaz as a TSO operates the interconnectors with neighbouring countries, specifically imports and exports of natural gas into and from Romania.³ Transgaz is certified as an independent system operator by the Romanian

Specifically, the Preliminary Assessment assessed Transgaz's conduct on the interconnection points Csanádpalota (between Romania and Hungary) and Giurgiu/Ruse (between Romania and Bulgaria). See also Footnote 3 below.

Transgaz also operates three transit pipelines (T1, T2, T3). As noted in the Preliminary Assessment, these three transit pipelines were not connected to the Romanian NTS. As a result, these transit pipelines were not part of the Commission's preliminary concerns in the Preliminary Assessment. It is noted that the T2 and T3 pipelines are not connected to the Romanian NTS and remain purely transit pipelines. However, the T1 pipeline was integrated into the Romanian NTS in December 2018. Although imports and exports of natural gas into and from Romania were not possible via the T1 pipeline before it became part of the Romanian NTS, it is now possible to have exports from Romania to Bulgaria and imports from Bulgaria to Romania via the interconnection point Negru Vodă I/Kardam along the now integrated T1 pipeline.

- energy regulator, Autoritatea Națională de Reglementare în domeniul Energiei ('ANRE').⁴
- (7) Transgaz was set up in 2000 on the basis of a decision by the Romanian Government on the reorganisation of the former National Natural Gas Company 'ROMGAZ' SA. It is organised as a public limited liability company under Romanian law.⁵ The Romanian State owns the majority (58.5%) of its shares.⁶

3. PROCEDURAL STEPS UNDER COUNCIL REGULATION (EC) No 1/2003

- (8) On 30 May 2017, the Commission opened proceedings with a view to adopting a decision under Chapter III of Council Regulation (EC) No 1/2003. On 10 September 2018, the Commission adopted a Preliminary Assessment as referred to in Article 9(1) of Council Regulation (EC) No 1/2003, which set out the Commission's competition concerns. This Preliminary Assessment was notified to Transgaz by letter of 10 September 2018.
- (9) On 14 September 2018, Transgaz submitted proposed commitments ('Initial Commitments') to the Commission in response to the Preliminary Assessment.
- (10) On 25 September 2018, a notice was published in the Official Journal of the European Union pursuant to Article 27(4) of Council Regulation (EC) No 1/2003 ('Market Test Notice'), summarising the case and the Initial Commitments and inviting interested third parties to give their observations on the Initial Commitments within one month following publication ('Market Test Notice comment period').
- (11) Eleven interested third parties ('respondents') provided the Commission with their observations on the proposed Initial Commitments.
- (12) On 7 November 2018, the Commission informed Transgaz of the observations received from respondents following the publication of the Market Test Notice.
- (13) On 31 January 2020, Transgaz submitted an amended proposal for commitments ('Final Commitments').
- (14) On 19 February 2020, the Advisory Committee on Restrictive Practices and Dominant Positions was consulted. On 19 February 2020 the Hearing Officer issued his final report.

4. PRELIMINARY ASSESSMENT

4.1. Relevant markets

4.1.1. Product market

(15) In previous Commission decisions, ⁷ activities within the natural gas sector have been split into (i) markets relating to gas infrastructure and (ii) markets relating to the

Order no 72/2014 on the approval of the certification of The National Gas Transmission System Company 'Transgaz' – S.A. Mediaş as transmission system operator of the national gas transmission system.

Government Decision no. 334/28 April 2000.

See Transgaz's Reply to RFI 2017/006534 of 20 January 2017, paragraphs 10 et seq.

See, for example, the Commission Decision of 3 December 2009, COMP/39.316 – Gaz de France, paragraph 11; Commission Decision of 14 November 2006, COMP/M.4180 – Gaz de France/Suez, paragraphs 341-342; Commission Decision of 8 October 2004, COMP/M.3410 – Total/GDF,

- supply of gas.⁸ Within the markets relating to gas infrastructure⁹, a distinction could be made between (i) high-pressure pipeline grids (natural gas transmission) and (ii) low-pressure pipeline grids (natural gas distribution).¹⁰
- (16) A supplier wishing to bring natural gas from Romania to other Member States needs to use the natural gas transmission services of Transgaz, the Romanian TSO. In the past, the Commission has consistently considered each gas transmission network to constitute a separate relevant product market.¹¹ The Commission has also previously defined a market for the transport of natural gas to and into a particular country.¹²
- (17) Therefore, the Commission's Preliminary Assessment concluded that, for the purposes of this case, the relevant product market is the market for natural gas transmission, including transmission through the interconnectors with neighbouring countries.

4.1.2. Geographic market

- (18) According to established precedents, the relevant geographic market comprises an area in which the undertakings concerned are involved in the supply and demand of the relevant products or services. In this geographic area, the conditions of competition are similar or sufficiently homogeneous and can be distinguished from neighbouring areas, in which the prevailing conditions of competition are appreciably different.¹³
- (19) As regards the definition of the geographic markets, the Commission has found in previous decisions that natural gas transmission services are provided on the TSO's entire grid and are thus grid-wide. ¹⁴ The Commission has considered gas

paragraphs 15-22; and Commission Decision of 21 December 2005, COMP/M.3696 – *E.ON/MOL*, paragraphs 88-90 and paragraph 97, Commission Decision in COMP/M.39.402 – *RWE gas foreclosure*, paragraphs 12-16.

Transgaz is only active on the market relating to gas infrastructure, so a further definition of the market for the supply of natural gas is not required.

Commission Decision of 21 October 2009, COMP/M.5649 RREEF FUND/ENDESA/UFG/SAGGAS, paragraph 11; Commission Decision of 9 October 2009, COMP/M.5602 RREEF FUND/BP/EVE/REPSOL/BBG, paragraph 12; Commission Decision of 21 September 2010, COMP/M.5944 OSAKA/UFG/INFRASTRUCTURE ARZAK/SAGGAS, paragraphs 11-12, 15; and Commission Decision of 29 September 2010, COMP/39.315 ENI, paragraph 24.

Commission Decision of 3 December 2009, COMP/39.316 – Gaz de France, paragraph 14; Commission Decision of 3 May 2007, COMP/M.4545 – Statoil/Hydro, paragraph 11. A separate market for capacity related to services for gas imports was also considered; however, this is not relevant for the case at hand.

Commission Decision of 21 December 2005, COMP/M.3696 – *E.ON/MOL*, paragraph 97; COMP/39.402 – *RWE Gas foreclosure*, paragraphs 12-16.

12 COMP/39.315 *ENI*, paragraph 24.

See Commission Notice on the definition of relevant market for the purposes of Community competition law, OJ C 372, 09.12.1997, p. 6 and Commission Decision of 21 May 2003, COMP/C-1/37.451, 37.578, 37.579 *Deutsche Telekom AG*, paragraph 92-93 (not disputed in court proceedings, see judgment of 10 April 2008), *Deutsche Telekom v Commission*, T-271/03, ECLI, EU:T:2008:101, paragraphs 242-243; and judgment in *Deutsche Telekom v Commission*, C-280/08, EU:C:2010:603, paragraph 50; and Commission Decision of 16 July 2003, COMP/38.233 *Wanadoo Interactive*, paragraph 205. See also judgment in *Michelin v Commission*, C-322/81, EU:C:1983:313, paragraph 26; and judgment in *Alsatel v SA Novasam*, C-247/86, EU:C:1988:469, paragraph 15.

14 Commission Decision of 18 March 2009, COMP/39.402 – RWE Gas Foreclosure, paragraph 15.

transmission networks as natural monopolies.¹⁵ Such networks are frequently also operated as legal monopolies. Due to the high investment costs, the lengthy permission and construction process and the associated risks, competitors cannot easily reproduce this infrastructure. The construction of competing parallel gas transport networks is moreover not economically viable. Competitive constraints from TSOs outside the relevant network therefore remain negligible.¹⁶

- (20) As explained above, Transgaz is the sole operator of the only natural gas transmission system in Romania, which includes all interconnectors with Romania's neighbouring countries.¹⁷
- (21) The Commission's Preliminary Assessment found that, for the purposes of this case, the relevant geographic market for natural gas transmission should be considered national in scope and should include the interconnectors with neighbouring countries.

4.2. Dominant position

- (22) According to settled case-law, dominance is 'a position of economic strength enjoyed by an undertaking, which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, its customers and ultimately of consumers'.¹⁸
- Transgaz received an exclusive concession valid until 2032 to manage and operate the Romanian natural gas transmission network, which includes the interconnectors. There are no alternative transmission networks available in Romania. As mentioned above (see Paragraph (19)), the duplication of the gas infrastructure is neither economical nor efficient. On the paragraph (19) to manage and operate the Romania and provide transmission networks available in Romania.
- (24) Transgaz therefore has a monopoly on the market for natural gas transmission in Romania, which includes transmission through the interconnectors with neighbouring countries. Transgaz thus has the ability to control the available export capacity from the Romanian NTS to neighbouring Member States.
- (25) The Commission's view in its Preliminary Assessment was therefore that Transgaz is dominant within the meaning of Article 102 TFEU on the market for natural gas transmission in Romania, which includes transmission through the interconnectors with neighbouring countries. As noted in the Preliminary Assessment, the three transit pipelines operated by Transgaz were not connected to the Romanian NTS at the time and therefore were not part of the Commission's preliminary concerns regarding exports of gas from Romania. The interconnection point Negru

Commission Decision of 4 May 2010, COMP/39.317 – *E.ON Gas*, paragraph 18; and Commission Decision of 21 December 2005, COMP/M.3696 – *E.ON/MOL*, paragraph 97.

¹⁶ Commission Decision of 18 March 2009, COMP/39.402 – RWE Gas Foreclosure, paragraph 15.

See footnotes 2 and 3 above.

Judgment in *United Brands Company and United Brands Continental v Commission*, C-27/76, ECLI:EU:C:1978:22, paragraph 65.

Transgaz's Reply to RFI of 6 March 2017.

For the lack of possibility to duplicate the gas infrastructure, see Commission Decision of 29 September 2010, COMP/39.315 *ENI*, paragraph 42. See also COMP/M.8358 – *MACQUARIE/NATIONAL GRID/GAS DISTRIBUTION BUSINESS OF NATIONAL GRID*, paragraph 15. See also judgment in *Bronner*, C-7/97, ECLI:EU:C:1998:569, paragraphs 44 and 46; see also, in the different context of products covered by intellectual property rights, the ECJ judgment of 29 April 2004 in *IMS Health*, C-418/01, ECLI:EU:C:2004:257, paragraph 29.

Vodă I/Kardam at the time only allowed transit flows of natural gas from Ukraine to Bulgaria via the T1 pipeline, which was not connected to the Romanian NTS.²¹

4.3. Substantial part of the internal market

- (26) For Article 102 TFEU to be applicable, the dominant position must be held in the whole or a substantial part of the internal market. The EU courts have held that if the relevant geographic market corresponds to the territory of a Member State, it constitutes a substantial part of the internal market.²²
- (27) In this case, Transgaz is the only TSO in Romania. The relevant geographic market covers the entire territory of Romania, including interconnections with the neighbouring Member States (*i.e.* Bulgaria and Hungary). Therefore, the area concerned constitutes a substantial part of the internal market within the meaning of Article 102 TFEU.²³

4.4. Practices raising concerns

- (28) The Court of Justice has held that an abuse of a dominant position is prohibited under Article 102 TFEU 'regardless of the means and procedure by which it is achieved', and 'irrespective of any fault'.²⁴ Article 102 is aimed not only at practices that may cause prejudice to consumers directly, but also at those that are detrimental to them through their impact on an effective competition structure.²⁵
- (29) According to consistent case-law, the list of abusive practices contained in Article 102 TFEU is not exhaustive.²⁶
- (30) Market behaviour by a dominant undertaking that partitions markets along national borders²⁷ or makes cross-border trade more difficult²⁸ is regarded as anticompetitive and in breach of Article 102 TFEU.

4.4.1. Transgaz's overall strategy

Market partitioning can be achieved by means other than explicit export bans. The Preliminary Assessment expressed the Commission's concern that Transgaz may have abused its dominant position by engaging in a strategy to restrict the free flow of natural gas from Romania to neighbouring Member States. This strategy may have been implemented through different means, in particular (i) underinvesting and/or strategically delaying the building of infrastructure relevant for exports, (ii) interconnection tariffs for natural gas exports to other Member States that made exports commercially not viable, and (iii) invoking vexatious technical arguments as a pretext for restricting or justifying delays in exports of natural gas from Romania to

See footnotes 2 and 3 above. See also Commission Decision of 17 December 2018, COMP/39849 *BEH* gas.

Judgment in *Irish Sugar v Commission*, T-228/97, ECLI:EU:T:1999:246, paragraph 99.

Judgment in *Ambulanz Glockner*, C-475/99, ECLI:EU:C:2001:577, paragraph 38.

Judgment in Aéroports de Paris v Commission, T-128/98, ECLI:EU:T:2000:290, paragraph 170.

Judgment in Europemballage and Continental Can v Commission, C-6/72, ECLI:EU:C:1973:22, paragraph 26; judgment in British Airways, C-95/04 P, ECLI:EU:C:2007:166, paragraphs 106-107; judgment in France Télécom Wanadoo, C-202/07 P, ECLI:EU:C:2009:214, paragraph 104.

Judgment in *British Airways*, ECLI:EU:C:2007:166, paragraph 57

Judgment in *United Brands Company and United Brands Continental v Commission*, Case 27/76, ECLI:EU:C:1978:22, paragraph 233-234; judgment in *GlaxoSmithKline Services Unlimited v Commission*, C-501, 513, 515, 519/06, ECLI:EU:C:2009:610, paragraph 61.

Judgment in British Leyland Public Limited Company 224/84, EU:C:1986:421, paragraph 24.

other Member States. The Commission's Preliminary Assessment only considered interconnection points through which gas could be exported from Romania, which at the time were only the interconnection points Csanádpalota (for exports to Hungary) and Giurgiu/Ruse (for exports to Bulgaria).

- 4.4.2. Underinvestment or strategic delays in the building of infrastructure relevant for exports
- (32) In its Preliminary Assessment, the Commission found that Transgaz may have been underinvesting or strategically delaying the building of infrastructure relevant for exports despite (i) being under various obligations to build such infrastructure, (ii) the existence of significant market interest for export capacities and (iii) disposing of adequate financial resources for building such infrastructure, including through EU grants.
- (33) First, the EU²⁹ and Romanian³⁰ regulatory frameworks defined the TSO's responsibility to build infrastructure (including interconnectors) and satisfy demand for natural gas capacity. Transgaz also concluded agreements with the corresponding TSOs of neighbouring Member States under which it was required to complete relevant works for the interconnectors. Furthermore, Transgaz was granted financial assistance by the EU for which, in return, Transgaz was required to complete various infrastructure works. The Commission grant decisions provided for the building of infrastructure relevant for exports, and these decisions were binding on Transgaz and the corresponding TSOs of neighbouring Member States.³¹
- (34) Secondly, two market surveys conducted in 2007 and 2010 confirmed a significant market interest in the availability of capacity to enable the export of a total of around 4 bcm/year of natural gas from Romania in the coming years (1.8 bcm/year to Hungary and around 2.2 bcm/year to Bulgaria).³²
- (35) Finally, Transgaz appeared to have had sufficient funds for investing in exportrelevant infrastructure, either from having sufficient cash and cash equivalents as

See Recital 12 of Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (OJ L 211, 14.8.2009, p. 36); Article 13.2 of Directive (EC) 2009/73 EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/5/EC (OJ L 211, 14.8.2009, p. 94); Article 6.5 of Regulation (EU) No 994/2010 of the European Parliament and of the Council of 20 October 2010 concerning measures to safeguard security of gas supply and repealing Council Directive 2004/67/EC (OJ L 295, 12.11.2010, p. 1) (in force until 31 October 2017); for more recent developments, see Chapter V of Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013 (OJ L 72, 17.3.2017, p. 1), and Article 5 of Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010 (OJ L 280, 28.10.2017, p. 1).

Article 15(1) of Romanian Law No 346/2007 published in the Romanian Official Journal No 838/7 December 2007.

Decision of the Commission C(2010) 7510 of 5 November 2010 and Decision of the Commission C(2010) 5962 of 6 September 2010.

A 2007 survey yielded a demand for the direction Romania-Hungary of 1.8 bcm of yearly capacities for the years 2010-2024; in a 2010 survey, for the interconnection with Bulgaria (at the interconnection point Giurgiu/Ruse), fourteen companies showed interest in booking an aggregate capacity between 2.2 bcm/year and 2.4 bcm/year from Romania to Bulgaria during the 2012 – 2024 period.

- indicated by its annual accounts and/or from the allocation of EU financial assistance in the form of grants.
- All of this led to the Commission's preliminary conclusion that Transgaz should have built the relevant infrastructure to make available such cross-border capacities to enable natural gas flows from Romania to other Member States. The Commission's Preliminary Assessment was that Transgaz may have strategically delayed these important infrastructure works at the border with Hungary (at the interconnection point Csanádpalota) and at the border with Bulgaria (at the interconnection point Giurgiu/Ruse).
- 4.4.3. Interconnection tariffs for natural gas exports to other Member States
- (37) In its Preliminary Assessment, the Commission concluded that, at least for the period from 1 August 2014 to 31 September 2016, the level of the export tariffs proposed by Transgaz at the only interconnection point that was allowing minimal capacities (the interconnection point Csanádpalota with Hungary) increased significantly and made gas exports out of Romania commercially not viable. These tariffs seemed to have had as their main purpose the restriction of gas exports from Romania.
- (38) Transgaz has the right to propose the transmission tariffs based on a methodology that is also proposed by Transgaz and approved by ANRE.³³ The tariffs for exports that were ultimately approved were up to eight times as high as the transmission tariffs for imports on the same interconnector.³⁴
- (39) More specifically, the tariffs for quarterly, monthly or daily transmission (short-term capacity bookings) are determined on the basis of the annual tariff and the so-called multipliers. As described in the Preliminary Assessment, these multipliers are set by Transgaz³⁵ and endorsed by ANRE. The Preliminary Assessment further noted that Transgaz appeared to have been fully aware of the negative impact that multipliers might have on cross-border flows, *i.e.* that lower multipliers would have encouraged short-term cross-border flows.
- (40) The impact of the export tariffs was apparent on the market. While minor flows from Romania to Hungary started at the interconnection point Csanádpalota in 2014 (with some interruptions), these flows stopped in August 2014 once the new export tariffs entered into force.

Romanian Energy Law No 123/2012, published in the Official Journal of Romanian No 485 of 16 July 2012, which entered into force on 19 July 2012. Under Article 179 paragraph (4): 'For activities on the regulated market, the prices and tariffs are established on the basis of the methodologies approved and published by ANRE' and Article 179 paragraph (5): 'The methodology for the regulated prices and tariffs is approved by ANRE, after informing and consulting all interested parties.' The Romanian Energy Law No 123/2012 transposes Article 41(6) of Directive 2009/73, which provides that national regulators 'shall be responsible for fixing or approving sufficiently in advance of their entry into force at least the methodologies used to calculate or establish the terms and conditions for connection and access to national networks, including transmission and distribution tariffs'. (Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94)). See also Article 13 of Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (OJ L 211, 14.8.2009, p. 36).

As the only TSO in Romania, Transgaz's tariff calculations are key in the determination of the tariffs.

Article 50 of the Methodology.

4.4.4. Vexatious technical arguments

(41) The Commission's Preliminary Assessment concluded that Transgaz may also have used vexatious technical arguments towards its customers to restrict or justify delays in exports of natural gas from Romania to Hungary via the interconnection point Csanádpalota or to Bulgaria (via the only interconnection point available at the time for exports to Bulgaria, namely the interconnection point Giurgiu/Ruse). Transgaz may have used technical problems as a pretext for restricting or delaying exports and may have sought to find other "plausible reasons" to justify delaying exports of gas through these two interconnection points.

4.4.5. Conclusion

The Commission's Preliminary Assessment concluded that, through its conduct, Transgaz may have sought to create or maintain barriers to the cross-border flow of natural gas from Romania to other Member States, frustrating the achievement of a European internal natural gas market. Such conduct could lead to the segmentation of markets between Member States and to *de facto* discrimination between customers in Romania and customers in other Member States, particularly Hungary and Bulgaria, which were prevented from reaping the benefits of the internal gas market because of the barriers to cross-border flows of natural gas. The Preliminary Assessment reached the preliminary conclusion that Transgaz's behaviour may amount to an abuse of a dominant position in breach of Article 102 TFEU.

4.5. Effect on trade between Member States

- (43) In accordance with well-established case-law, 'any practice which is capable of constituting a threat to freedom of trade between Member States in a manner which might harm the attainment of the objectives of a single market between the Member States, in particular by sealing off domestic markets or by affecting the structure of competition within the common market' affects trade between Member States.³⁶
- (44) In this case, Transgaz may have sought, through its conduct, to create or maintain barriers to the cross-border flow of natural gas from Romania to other Member States.
- (45) The Preliminary Assessment therefore concluded that Transgaz's conduct may be capable of affecting trade between Member States.

5. THE COMMITMENTS

5.1. Proposed Initial Commitments

- (46) To address the Commission's competition concerns, Transgaz submitted its Initial Commitments on 14 September 2018.
- (47) The key elements of the Initial Commitments offered by Transgaz are described below.
- (48) Transgaz committed to make the maximum capacity available to network users to export gas from Romania towards Hungary and from Romania towards Bulgaria, taking into account system integrity, safety and efficient operation with the following minimum firm capacities:

Judgment in Dalmine v Commission, C-407/04 P, EU:C:2007:53, paragraphs 89, and case-law cited.

- (a) 0.75 bcm/year firm capacity from 1 May 2019 onwards at the interconnection point Csanádpalota between Romania and Hungary;
- (b) 1.5 bcm/year firm capacity from 1 July 2019 onwards at the interconnection point Giurgiu/Ruse between Romania and Bulgaria;
- (c) 1.8 bcm/year firm capacity from 31 December 2019 onwards at the interconnection point Negru Vodă I/Kardam between Romania and Bulgaria for on-shore Romanian gas exports towards Bulgaria via the connection of the Romanian NTS and the T1 transit pipeline.
- Transgaz committed to make available minimum firm capacities in a transparent and non-discriminatory manner and to allocate them as a standard bundled capacity product (annual, quarterly, monthly, daily and within day) through an auction on the Regional Booking Platform or any other compliant platform, in accordance with the ENTSO-G³⁷ calendar in accordance with Commission Regulation (EU) 2017/459³⁸ ('CAM Regulation'). Products covering yearly capacities would be offered first, followed by the products with the next shortest duration for use during the same period. An amount at least equal to 10% of the capacity would be set aside and offered as capacity with a shorter duration to allow for sufficient hedging opportunities.
- (50) To enable the minimum firm export capacities, Transgaz proposed committing to certain milestones with deadlines for completing infrastructure works at the three interconnection points with Hungary and Bulgaria.
- (51) Transgaz further offered a tariff commitment. It proposed applying the following two principles in its tariff proposals submitted to ANRE:
 - (a) the reserve price (as well as any commodity tariff) for capacity bookings at the interconnection points with Hungary and Bulgaria would be equal to the reference price/tariff (as well as to any commodity tariff) for capacity bookings at domestic points, and
 - (b) the level of multipliers and seasonal factors would be the same for the interconnection points and for the domestic points and would be within the ranges set out in Commission Regulation (EU) 2017/460 ('TAR NC Regulation').³⁹
- (52) Finally, Transgaz made a commitment not to prevent, hinder, or discriminate against, directly or indirectly, the export of onshore or offshore gas produced in Romania or transiting through Romania, whether through tariffs, technical reasons, contractual arrangements or any other means ('catch-all commitment').
- (53) Transgaz committed to appoint an independent trustee who would monitor its compliance with the commitments.

ENTSO-G is the European Network of Transmission System Operators for Gas. Its tasks are defined mainly in Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009.

Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013 (OJ L 72, 17.3.2017, p. 1).

Commission Regulation (EU) 2017/460 of 16 March 2017 establishing a network code on harmonised transmission tariff structures for gas (OJ L 72, 17.3.2017, p. 29).

(54) The proposed duration of the Initial Commitments offered by Transgaz was from the date of notification of the commitments decision until 31 December 2025.

5.2. The Commission's Market Test Notice

- (55) In response to the Market Test Notice published on 25 September 2018,⁴⁰ the Commission received eleven responses from interested third parties.
- (56) Overall, the respondents welcomed the Initial Commitments as an effective means to prevent Transgaz from hindering exports in the future and, in addition, to achieve an integrated energy market in the region, increasing the security of supply and market liquidity. The respondents were generally positive about the content of the Initial Commitments.
- (57) The main issues raised by these respondents are summarised below.
- 5.2.1. Interconnection point Csanádpalota (Romania-Hungary)
- (58) Several respondents commented that Transgaz was already expected to make available 1.75 bcm/year of minimum firm capacities from Romania to Hungary at the interconnection point Csanádpalota as part of Phase I of the Bulgaria-Romania-Hungary-Austria ('BRUA') gas pipeline project.
- (59) The respondents therefore recommended increasing the minimum firm capacities of 0.75 bcm/year proposed in the Initial Commitments to 1.75 bcm/year and including the completion of the BRUA Phase I project in the Final Commitments.⁴¹
- 5.2.2. Interconnection point Giurgiu/Ruse (Romania-Bulgaria)
- (60) A few respondents stated that the exit pressure level of 30 barg proposed in the Initial Commitments at the interconnection point Giurgiu/Ruse would be too low for the proposed minimum firm capacities of 1.5 bcm/year towards Bulgaria. The respondents recommended a pressure of at least 40 barg instead.
- (61) Some respondents expressed concern that Transgaz would not make available more capacities at Giurgiu/Ruse, as Transgaz was already expected to make available 1.5 bcm/year capacities as part of the BRUA Phase I project.
- 5.2.3. Interconnection point Negru Vodă I/Kardam (Romania-Bulgaria)
- (62) Several respondents expressed concern that the provisions relating to the interconnection point Negru Vodă I/Kardam of the Initial Commitments could be contrary to the existing interconnection agreement between Transgaz and Bulgartransgaz for this interconnection point.
- (63) One respondent mentioned that the Initial Commitments would lead to a decrease in capacities at the interconnection point Negru Vodă I/Kardam. The comment referred in particular to a decrease in capacities that Transgaz would make available at this interconnection point after connecting the T1 pipeline to the Romanian NTS compared to the situation at this interconnection point before, when the T1 pipeline was not linked to the Romanian NTS.

Communication from the Commission published pursuant to Article 27(4) of Council Regulation (EC) No 1/2003 in Case AT.40335 — Romanian gas interconnectors (OJ C 342, 25.9.2018, p. 2).

For Transgaz, the infrastructure works required for BRUA Phase I consist of commissioning 479 km of gas transmission pipeline DN 800 between Podişor and Recaş and equipping gas compressor stations at Podişor, Bibeşti and Jupa with two compressor units.

5.2.4. Tariffs

- (64) Respondents generally welcomed the tariff-related commitment as a means to ensure that transmission fees for exports of natural gas from Romania are not set at a discriminatory level compared to fees for domestic transmission.
- (65) Respondents made a variety of comments regarding tariffs, such as the existing regulatory obligation that tariffs should not be discriminatory, fixing the level of the multipliers and seasonal factors or applying a different tariff for interruptible capacity products.

5.2.5. Catch-all commitment

- (66) The commitment prohibiting any other means of preventing, hindering or otherwise discriminating against exports of Romanian gas or gas transiting through Romania received mixed reactions. While one respondent welcomed this commitment as a means to avoiding barriers for new market entrants, others criticised this provision as being too vague or too similar to existing obligations.
- 5.2.6. Extending the scope of commitments to other countries
- (67) Several market respondents commented that the Initial Commitments should be extended to cover the interconnection points between Romania and its other neighbours, particularly Ukraine and Moldova. Market respondents considered that such an extension would be warranted based on the provisions of the Energy Community Treaty. Furthermore, some respondents requested capacities towards Ukraine on the T1 pipeline at the interconnection point Isaccea I/Orlovka in light of the Transbalkan Corridor project, which seeks to enable reverse flows on the T1 pipeline. Some of these respondents noted that the Ukrainian gas transmission system could offer another route for gas exports from Romania to Slovakia, Hungary and Poland.
- 5.2.7. Language revisions, clarification requests and other comments
- (68) Respondents submitted a variety of comments suggesting some clarifications and further explanations of the text of the Initial Commitments. These comments included topics such as the capacity auctions and allocations, the capacities offered at Negru Vodă I/Kardam, the Monitoring Trustee clauses and the review clause.
- (69) A few respondents expressed concern that some parts of the commitments duplicated requirements under existing legal or contractual obligations and applicable regulatory framework.
- (70) Market respondents made some additional suggestions such as expanding the scope of the Initial Commitments to address an alleged abuse of dominance involving the T1 pipeline, resolving a legal dispute [...] before accepting commitments or including various improvements relating to the Romanian gas market.

Council Decision 2006/500/EC of 29 May 2006 on the conclusion by the European Community of the Energy Community Treaty (OJ L 198, 20.7.2006, p. 15).

Project whereby the relevant TSOs of the Transbalkan pipeline corridor (Greece, Bulgaria, Romania, Ukraine and Moldova) define the technical and commercial options for enabling a physical reverse flow on the Transbalkan pipeline corridor in order to create technical and commercial capabilities for physical bi-directional gas flows via the Transbalkan corridor pipelines.

This means flows of natural gas from Greece, Bulgaria and Romania towards Ukraine and Moldova (via the interconnection point Isaccea I/Orlovka).

5.3. The Final Commitments

- (71) Based on the comments received in response to the Market Test Notice, Transgaz modified its Initial Commitments and submitted a revised proposal in the form of the Final Commitments on 31 January 2020.
- (72) The main changes made by Transgaz, as compared to the Initial Commitments, are summarised below.
- 5.3.1. Capacities towards Hungary at the interconnection point Csanádpalota
- (73) The Final Commitments include increased firm capacities of 1.75 bcm/year (18,779,250 MWh/y) from Romania to Hungary at the interconnection point Csanádpalota from 1 October 2020. They also include the completion of the Romanian section of the BRUA Phase I project.
- (74) In anticipation of a possible commitments decision, Transgaz began offering firm capacities of 0.75 bcm/year (8,048,250 MWh/y) at this interconnection point for 1 October 2019. In the Final Commitments, Transgaz commits to continue offering these capacities towards Hungary for bookings as quarterly, monthly, daily and within day products in accordance with the ENTSO-G calendar.
- (75) Transgaz explained that it could commit to making available firm capacities of 0.75 bcm/year only from 1 October 2019 because it encountered delays in the infrastructure works relevant to the provision of such capacities, particularly due to adverse weather conditions and delays in the supplies of materials by third parties. Transgaz stated that it thus could not make sufficient progress between the end of the bMarket Test Notice comment period in October 2018 and the end of the winter season 2018-2019.⁴⁵
- Transgaz explained that it would need to perform additional infrastructure works to increase capacities as requested by the respondents to the Market Test Notice from 0.75 bcm/year to 1.75 bcm/year and to include the entire BRUA Phase I project within the scope of the Final Commitments. These additional works include commissioning pipeline sections between Podişor and Văleni, between Văleni and Pui, and between Pui and Jupa, and commissioning the compressor stations in Bibeşti and Podişor. The relevant infrastructure works that were completed in anticipation of a possible commitments decision are noted under Section I of the Final Commitments. The remaining works for the building and commissioning of the BRUA Phase I project are part of the 'Milestones' in Section IV of the Final Commitments and are binding obligations for Transgaz.
- (77) In addition, Transgaz and FGSZ amended their interconnection agreement for the interconnection point Csanádpalota in 2019⁴⁷ to account for the changes resulting from the increased capacities and new infrastructure.
- (78) It follows that Transgaz commits to make available minimum firm capacities of 1.75 bcm/year towards Hungary at the interconnection point Csanádpalota as of 1 October 2020.

Transgaz, paper of 7 June 2019.

Transgaz, reply of 26 July 2019 to RFI of 8 July 2019.

Transgaz, email of 21 January 2020 [...].

- 5.3.2. Capacities towards Bulgaria at the interconnection point Giurgiu/Ruse
- (79) The Final Commitments include the increased pressure of 40 barg for minimum firm capacities of 1.5 bcm/year (16,096,500 MWh/y) from Romania to Bulgaria at the interconnection point Giurgiu/Ruse as of 31 August 2020.
- (80) In anticipation of a possible commitments decision, Transgaz started to offer firm capacities of 0.75 bcm/year (8,048,250 MWh/y) at this interconnection point from 1 November 2019. In the Final Commitments, Transgaz commits to continue to offer these capacities towards Bulgaria at 40 barg for bookings as quarterly, monthly, daily and within day products in accordance with the ENTSO-G calendar.
- (81) Transgaz explained that, to offer firm capacities of 0.75 bcm/year at an increased pressure of 40 barg at this interconnection point, it needed to reclassify the nominal pressure conditions on the 67 km long pipeline between the Podişor compressor station and the interconnection point Giurgiu/Ruse. Transgaz completed these infrastructure works on 30 August 2019.
- (82) Transgaz further explained that the delivery of 1.5 bcm/year at 40 barg at the interconnection point Giurgiu/Ruse was dependent on the completion of the infrastructure works for the interconnection point Csanádpalota. The relevant infrastructure works that were completed in anticipation of a possible commitments decision are noted under Section I of the Final Commitments. The remaining works relating to commissioning the relevant infrastructure of the BRUA Phase I project to offer 1.5 bcm/year at the interconnection point Giurgiu/Ruse are part of the 'Milestones' in Section IV of the Final Commitments and are binding obligations for Transgaz.
- (83) In addition, Transgaz and Bulgartransgaz updated their interconnection agreement for the interconnection point Giurgiu/Ruse on 4 October 2019⁴⁹ to account for the changes resulting from the increased capacities and new infrastructure.
- (84) It follows that Transgaz commits to making available minimum firm capacities of 1.5 bcm/year towards Bulgaria at the interconnection point Giurgiu/Ruse at a pressure of 40 barg as of 31 August 2020.
- 5.3.3. Capacities towards Bulgaria at the interconnection point Negru Vodă I/Kardam
- (85) The Final Commitments increase the minimum firm capacities that Transgaz will offer at the interconnection point Negru Vodă I/Kardam from Romania to Bulgaria via the connection between the Romanian NTS and the T1 pipeline to 2.2 bcm/year (20,515,833 MWh/y)⁵⁰ as of 31 December 2020.
- (86) Under the Final Commitments, Transgaz will offer firm capacities of 2.2 bcm/year⁵¹ with access to the Romanian Virtual Trading Point at this interconnection point towards Bulgaria. These capacities will be offered unconditionally, meaning that they can be booked separately from the booking of capacities at the interconnection point Isaccea I/Orlovka.

Transgaz, email of 21 January 2020 [...].

^{48 [...]}

The minimum firm capacity of 6 mcm/d [...] must be fulfilled. See Transgaz, email of 21 January 2020 [...].

As a part of the maximum technical capacity at this interconnection point (currently at 5.3 bcm/year).

- (87) To make this commitment possible, Transgaz finalised the physical connection between the Romanian NTS and the T1 pipeline at Isaccea on 31 December 2018 and the rehabilitation of certain pipelines in anticipation of a possible commitments decision. Transgaz explained that it faced unexpected delays in the public procurement process for the two new compressor stations at Siliştea and Onesti. Transgaz still needs to complete certain works, in particular installing and commissioning two compressor stations at Siliştea and Onesti and modernising the technological nodes at Onesti and Sendreni for injecting the natural gas from the Romanian natural gas transmission network into the T1 pipeline. The relevant infrastructure works that were completed in anticipation of a possible commitments decision are noted under Section I of the Final Commitments. The remaining works for the interconnection point Negru Vodă I/Kardam are part of the 'Milestones' in Section IV of the Final Commitments and are binding obligations for Transgaz.
- (88) In addition, Transgaz and Bulgartransgaz updated their interconnection agreement for the interconnection point Negru Vodă I/Kardam in December 2019⁵³ to account for the pressure conditions resulting from the connection of the T1 pipeline to the Romanian NTS.
- (89) It follows that Transgaz commits to making available minimum firm capacities of 2.2 bcm/year towards Bulgaria at the interconnection point Negru Vodă I/Kardam on 31 December 2020.
- 5.3.4. Other changes
- (90) In general, editorial revisions were made in the Final Commitments to clarify the meaning of the various provisions.
- (91) The tariff commitment, the catch-all commitment and the role of the Monitoring Trustee have not been substantially changed.
- (92) The review clause in the Final Commitments has been updated to reflect the procedure pursuant to Article 9(2)(a) of Council Regulation (EC) No 1/2003 to reopen the proceedings in case of a material change in any of the facts on which this Decision is based. The review clause also provides that, without prejudice to Article 9(2), the Commission may extend the time periods provided in the Final Commitments in response to a reasoned request from Transgaz. In addition, without prejudice to Article 9(2), the Commission may waive, modify or substitute the Final Commitments in exceptional circumstances in response to a reasoned request from Transgaz showing good cause or to authorise Transgaz to offer up to 2.2 bcm/year firm capacity towards Bulgaria at the interconnection point Negru Vodă I/Kardam as competing capacities⁵⁴ for transportation towards Ukraine in the context of the implementation of the Transbalkan Corridor project once the necessary agreements and approvals that are required have been obtained by Transgaz. Such requests would be accompanied by a report from the Monitoring Trustee.
- (93) The duration of the Final Commitments was extended by one year to 31 December 2026.

Transgaz, paper of 7 June 2019 and reply of 26 July 2019 to RFI of 8 July 2019.

Transgaz, email of 21 January 2020 [...].

The competing capacities would be between the interconnection point Negru Vodă I/Kardam and the interconnection point Isaccea 1/Orlovka.

6. ASSESSMENT OF THE FINAL COMMITMENTS

6.1. Principles

(94) In the context of Article 9 of Council Regulation (EC) No 1/2003, the Commission must ensure that the proposed commitments address its competition concerns and that the undertakings concerned have not offered less onerous commitments that would also address those concerns adequately.⁵⁵ When carrying out that assessment, the Commission must take into consideration the interests of third parties.⁵⁶

6.2. Effectiveness and proportionality of the Final Commitments

- (95) The Commission has been concerned that Transgaz may have engaged in a strategy to hinder natural gas exports from Romania to other Member States, frustrating the achievement of a European internal natural gas market. This strategy may have been implemented by different means, including (i) underinvestment or strategic delays in the building of infrastructure, (ii) interconnection tariffs that made exports commercially not viable, and (iii) vexatious technical arguments as pretexts for restricting or justifying delays in gas exports to other Member States.
- (96) The objective of the Final Commitments is to prevent Transgaz from engaging in behaviour such as that described in the Preliminary Assessment and at the same time to impose concrete measures on Transgaz so that market participants obtain fair access to the interconnections between Romania and Hungary and Bulgaria. This objective is achieved, in particular, by the commitment to make available minimum firm capacities from Romania to Hungary and to Bulgaria, the tariff commitment and the catch-all commitment. The Final Commitments will improve competition, increase liquidity of the gas markets, support Romania's further integration into the European internal gas market, have a positive impact on security of supply in the region and allow customers in the region to reap the benefits of the internal market.
- (97) The Commission notes that, in anticipation of a commitments decision, Transgaz has taken concrete actions to make firm capacities available, as described in Clause 7 of the Final Commitments. These actions allow for more certainty that the timeframes in the Final Commitments are realistic. However, Transgaz will need to take other actions, including infrastructure investments, to enable additional firm interconnection capacities from Romania towards neighbouring Member States. The Final Commitments are necessary to ensure that these additional actions are clear and binding obligations upon Transgaz.
- (98) Thus, the Commission considers that the Final Commitments address the concerns described in the Preliminary Assessment by ensuring that Transgaz makes available to the market minimum firm interconnection capacities from Romania towards neighbouring Member States within a realistic and appropriate timeframe and that tariff proposals remain non-discriminatory against exports.

6.2.1. Capacity commitments

- 6.2.1.1. General assessment of capacity commitments
- (99) In the Final Commitments, Transgaz commits to make available the maximum capacity to network users to export gas from Romania towards Hungary and from

⁵⁵ Case C-441/07 P Commission v Alrosa, paragraph 41.

Case C-441/07 P Commission v Alrosa, paragraph 41.

- Romania towards Bulgaria, taking into account system integrity, safety and efficient network operation and to offer specific minimum firm capacities at each of the following three interconnection points (i) Csanádpalota, (ii) Giurgiu/Ruse and (iii) Negru Vodă I/Kardam.
- (100) Transgaz is under a general obligation under Article 6 of the CAM Regulation to make available the maximum technical capacity at these interconnection points. However, the maximum technical capacities at interconnection points can change. The Final Commitments thus provide that Transgaz would make available specific minimum firm capacities at each of these three interconnection points.
- (101) The specific minimum firm capacity commitments such as those in the Final Commitments ensure that market participants can have access to capacity at exit points towards Hungary and Bulgaria enabling gas exports from Romania. It also allows gas to move freely in the region in response to market demand. This will play an important role in ensuring well-functioning gas markets and security of supply in the region. Transgaz will be under an obligation to make available the minimum firm capacities throughout the duration of the Final Commitments, until 31 December 2026, thus giving the market sufficient time to take up these capacities.
- (102) Transgaz will offer standard bundled capacity products and allocate the capacities in accordance with its obligations under the CAM Regulation. This will give market participants a degree of security that the capacities at the interconnection points will not be interrupted as well as the benefit of making only one single booking for exporting gas from the Romanian NTS (via a given interconnection point). In addition, using the Regional Booking Platform and the ENTSO-G calendar gives market participants the required predictability and transparency as to which capacities are made available and how these can be booked. The Final Commitments further provide that 10% of the minimum firm capacities at each interconnection point will be set aside for short-term bookings, thus allowing market participants to take advantage of market opportunities at short notice, even if other market participants have already booked long-term products.
- (103) To make available the minimum firm capacities, Transgaz commits to building the relevant infrastructure as set out in the Final Commitments. The Commission notes that some of these infrastructure works are also covered by Transgaz's obligations under the BRUA Phase I project, in particular with regard to the interconnection points Csanádpalota and Giurgiu/Ruse. As requested by respondents to the Market Test Notice, the Final Commitments now include the completion of all elements of the BRUA Phase I project, in particular the infrastructure for the transportation of 1.5 bcm/year of gas at the interconnection point Giurgiu/Ruse towards Bulgaria and for the transportation of 1.75 bcm/year at the interconnection point Csanádpalota towards Hungary. This means that Transgaz will be under binding deadlines for completing this project. The Final Commitments also include additional obligations over and above the BRUA Phase I project. The Commission notes that the infrastructure works are an enabler for making the minimum firm capacities available at each of the three interconnection points as set out in the Final Commitments.
- (104) The Commission considers the deadlines in the Final Commitments for making available minimum firm capacities at the three interconnection points to be realistic.

Most of the preparatory work is completed⁵⁷, and Transgaz has already made significant progress with the infrastructure works in anticipation of a possible commitments decision. This allowed Transgaz to offer a capacity of 0.75 bcm/year at the interconnection point Csanádpalota and a capacity of 0.75 bcm/year at the interconnection point Giurgiu/Ruse, in anticipation of a possible commitments decision and until the necessary infrastructure works for further increasing these capacities (to 1.75 bcm/year at Csanádpalota and to 1.5 bcm/year at Giurgiu/Ruse) could be completed. In addition, as Transgaz was already carrying out these infrastructure works when it submitted the Final Commitments, it was in a better position to set out a realistic timeline for finalising the proposed infrastructure works for all three interconnection points. Their progress and completion will be subject to the Monitoring Trustee's scrutiny.

- (105) The Commission also considers the deadlines appropriate. Capacities are maintained for the gas year 2019-2020 and these will be significantly increased in the gas year 2020-2021, allowing for annual bookings at the interconnection points Csanádpalota and Giurgiu/Ruse already as of that gas year. The Final Commitments also provide that firm capacities for the interconnection point Giurgiu/Ruse will become available in August 2020, thereby ensuring that the booking procedures in Bulgaria can be taken into account.
- (106) To offer the minimum firm bundled capacities set out in the Final Commitments, working interconnection agreements with the neighbouring TSOs need to be in place. TSOs are under a regulatory obligation to conclude interconnection agreements at all interconnection points between Member States. Additionally, TSOs have an obligation to ensure bi-directional flows of gas. Transgaz has amended the interconnection agreements with the Hungarian TSO (FGSZ) for the interconnection point Csanádpalota and with the Bulgarian TSO (Bulgartransgaz) for the interconnection point Giurgiu/Ruse and for the interconnection point Negru Vodă I/Kardam.

6.2.1.2. Capacities towards Hungary

- (107) The Final Commitments fully address the comments from the market. Transgaz will make available minimum firm capacities of 1.75 bcm/year towards Hungary at this interconnection point, and the Final Commitments include the entire scope of the BRUA Phase I project.
- (108) Transgaz has shown its commitment to making firm capacities available at the interconnection point Csanádpalota by already offering firm capacities of 0.75 bcm/year (8,048,250 MWh/y) towards Hungary on 1 October 2019 in

The administrative authorisations have been obtained, most of the materials have been delivered, the necessary funding has been secured, the public procurement is completed and the supply contracts have been signed with binding deadlines. Transgaz, paper of 7 June 2019 and reply of 26 July 2019 to RFI of 8 July 2019.

Commission Regulation (EU) 2015/703 of 30 April 2015 establishing a network code on interoperability and data exchange rules (OJ L 113, 1.5.2015, p. 13).

Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010 (OJ L 280, 28.10.2017, p.1).

Transgaz, emails of 21 January 2020 with interconnection agreements and related amendments for the interconnection points Csanádpalota, Giurgiu/Ruse and Negru Vodă I/Kardam.

anticipation of a possible commitments decision. These 0.75 bcm/year capacities were not provided for under the BRUA Phase I project and are available for the market until Transgaz can make available the full capacities of 1.75 bcm/year. In the Final Commitments, Transgaz commits to continue to offer capacities of 0.75 bcm/year (8,048,250 MWh/y) until it increases the minimum firm capacity to 1.75 bcm/year (18,779,250 MWh/y) on 1 October 2020, in line with the new timeframe for the BRUA Phase I project.

- (109) The Commission considers that the minimum firm capacities of 1.75 bcm/year at the interconnection point Csanádpalota will bring about a significant improvement for the market. It will add another reliable source of supply for Hungary covering around 20% of the total consumption in Hungary, which is also connected to other markets, such as Slovakia. As the interconnection agreement with FGSZ was amended for capacities of 1.75 bcm/year⁶¹, Transgaz will also be able to offer these capacities as a standard bundled firm capacity product.
- (110) In light of the above, the Commission considers that the Final Commitments relating to the interconnection point Csanádpalota are an appropriate means to address the Commission's preliminary concerns about potential export restrictions relating to gas exports from Romania to Hungary.

6.2.1.3. Capacities towards Bulgaria

(111) The Commission's preliminary concerns regarding the limited capacities for gas exports from Romania towards Bulgaria are addressed in the Final Commitments by an obligation to make available minimum firm capacities at the interconnection points Giurgiu/Ruse and Negru Vodă I/Kardam, as described below.

Capacities at the interconnection point Giurgiu/Ruse

- (112) The Final Commitments fully address the comments received from the market as regards increased pressure conditions. Transgaz will make available firm capacities of 1.5 bcm/year (16,096,500 MWh/y) towards Bulgaria at this interconnection point, guaranteeing a minimum pressure of 40 barg.
- (113) Transgaz has shown its commitment to making exports possible by already offering, in anticipation of a commitments decision, firm capacities of 0.75 bcm/year (8,048,250 MWh/y) at the increased pressure (40 barg) demanded by the respondents to the Market Test Notice at the interconnection point Giurgiu/Ruse on 1 November 2019. Transgaz will continue to make these capacities available until it has completed all the infrastructure works necessary for ensuring firm capacities of 1.5 bcm/year as of 31 August 2020 at a minimum pressure of 40 barg pressure as requested by respondents to the Market Test Notice.
- (114) The Final Commitments will also ensure that the objectives of the BRUA Phase I project are achieved at the interconnection point Giurgiu/Ruse. Indeed, as signalled during the Market Test Notice comment period, despite the infrastructure works foreseen under the BRUA Phase I project, Transgaz would not necessarily have provided the right pressure conditions for enabling minimum firm capacities of 1.5 bcm/year towards Bulgaria. The Final Commitments now include this obligation.

Transgaz, email of 21 January 2020 [...].

(115) In addition, as the interconnection agreement with Bulgartransgaz has already been amended on 4 October 2019 for providing capacities of 1.5 bcm/year guaranteeing a minimum pressure of 40 barg towards Bulgaria⁶², Transgaz will be able to offer standard firm bundled capacities towards Bulgaria at this interconnection point.

Capacities at the interconnection point Negru Vodă I/Kardam

- (116) Under the Final Commitments, Transgaz will make available minimum firm capacities of 2.2 bcm/year towards Bulgaria on 31 December 2020 at the interconnection point Negru Vodă I/Kardam.
- (117) The Final Commitments create the possibility for natural gas exports from Romania to Bulgaria via an additional interconnection point (Negru Vodă I/Kardam).
- (118) The Final Commitments clarify that the minimum firm capacities of 2.2 bcm/year will be offered from the Romanian Virtual Trading Point, thereby ensuring exports of natural gas from Romania. These capacities are a part of the maximum technical capacity of currently 5.3 bcm/year at this interconnection point. Transgaz will remain under a regulatory obligation⁶³ to also make available the remaining capacity at this interconnection point.⁶⁴
- (119) In addition, as the interconnection agreement with Bulgartransgaz has already been amended in December 2019 for providing capacities of 2.2 bcm/year guaranteeing a minimum pressure of 41 barg towards Bulgaria⁶⁵, Transgaz will be able to offer standard firm bundled capacities towards Bulgaria at this interconnection point.

Conclusion on the capacities towards Bulgaria

- (120) The Commission considers that the capacity commitment at the two interconnection points Giurgiu/Ruse and Negru Vodă I/Kardam will bring about a significant improvement for the market. These capacities will cover the entire Bulgarian demand and will significantly improve the security of supply of Bulgaria, which was reliant on a single source of supply until recently (when the interconnector with Greece became operational).
- (121) In light of the above, the Commission considers that the Final Commitments relating to capacities towards Bulgaria are an appropriate means to address the Commission's preliminary concerns about potential export restrictions relating to gas exports from Romania to Bulgaria.
- 6.2.2. Commitment dealing with tariffs
- (122) The Commission's preliminary concern was that Transgaz's interconnection tariffs for gas exports from Romania to Hungary may have made exports from Romania commercially not viable as part of an overall strategy to hinder such exports.
- (123) The tariff commitment in the Final Commitments applies to Transgaz's tariff proposals for booking firm capacities. It ensures that in the tariff proposals submitted to ANRE, the reserve price for capacity bookings at the interconnection points with Hungary and Bulgaria will be equal to the reference price/tariff for capacity bookings

Transgaz, email of 21 January 2020 [...].

Article 6 of the CAM Regulation.

For use for transiting gas on T1.

Transgaz, email of 21 January 2020 [...].

- at domestic points. This principle will also apply to any commodity tariff that might be applied.
- (124) In addition, the level of multipliers and seasonal factors will be the same for the interconnection points and for domestic points and will be set within the ranges of the TAR NC Regulation.
- (125) The tariff commitment addresses Transgaz's obligation to make a proposal for tariffs to ANRE and in addition sets out two clear and concrete principles for Transgaz to apply specifically when submitting these tariff proposals. The Commission considers that the tariff commitment ensures that Transgaz will not have the incentive to propose tariffs that are prohibitive for exports as that would also increase the domestic tariffs. This commitment will apply both to the annual tariff as well as to the multipliers for short-term tariffs and to the seasonal factors. Under the Final Commitments, the multipliers and seasonal factors will be the same for the interconnection points and domestic points. Keeping the multipliers within the ranges set out in TAR NC Regulation also ensures that there will be a cap on the multipliers applied.
- (126) The Final Commitments are therefore suitable for addressing the Commission's preliminary concerns regarding the commercial viability of gas exports from Romania and possible discrimination against such exports by Transgaz, particularly with regard to tariffs.
- 6.2.3. Catch-all commitment
- (127) As noted above, Transgaz will also be under an obligation not to prevent, hinder or discriminate against, directly or indirectly, gas exports from Romania through any other means.
- (128) This commitment is aimed at preventing Transgaz from blocking exports through other means that are not specifically spelled out in the Preliminary Assessment or addressed via the capacity or tariff commitments. The catch-all commitment would apply to the use of vexatious technical arguments as a possible pretext for hindering gas exports from Romania. This commitment is an important means of addressing any future behaviour by Transgaz that could potentially prevent, hinder or discriminate against exports.
- (129) This provision is not intended to require the Monitoring Trustee to check all possible behaviour by Transgaz to determine whether any single act by Transgaz is anticompetitive or not. Rather, it is supposed to be a safety net to assure the market that Transgaz will also be under an obligation not to find other means to prevent, hinder or discriminate against exports.
- (130) The Commission therefore considers that the Final Commitments are an appropriate means to address its preliminary concerns about Transgaz potentially using various means to hinder natural gas exports from Romania to neighbouring Member States.
- 6.2.4. Duration of the Final Commitments, Monitoring Trustee and Review clause
- (131) The duration of the Final Commitments until 31 December 2026 is sufficiently long to allow market participants to take up the new and increased capacities as they become available. The Commission considers the duration to be proportionate and at the same time sufficiently long to address the Commission's preliminary concerns, while also providing certainty to market participants for a sufficiently long period.

- (132) Under the Final Commitments, Transgaz's implementation of the Final Commitments will be subject to ongoing independent expert review by a Monitoring Trustee, acting under the Commission's supervision, for the entire duration period. The use of a Monitoring Trustee, the appointment process and the powers of the Monitoring Trustee are standard practice in such cases.
- (133) The review clause in the Final Commitments provides for the possibility of modifications regarding capacities at the interconnection point Negru Vodă I/Kardam towards Bulgaria. These modifications could occur as part of the implementation of the Transbalkan corridor project, which will have a positive impact on the security of supply in the region by enabling the reverse flows of natural gas between Greece, Bulgaria, Romania, Ukraine and Moldova. Developments on the Transbalkan corridor project are dependent on the approval of the project by all relevant TSOs and national regulatory authorities.
- Once the relevant EU energy internal market rules are implemented, 66 the TSO of Ukraine and Transgaz will be required to establish permanent bidirectional physical flow capability and make available the maximum technical capacity to network users at the interconnection point Isaccea I/Orlovka. Because of the technical characteristics of the connection between the Romanian NTS and the T1 pipeline, capacities at the interconnection point Isaccea I/Orlovka from Romania towards Ukraine could only be offered in competition with capacities at the interconnection point Negru Vodă I/Kardam towards Bulgaria. Competing capacities are capacities for which the available capacity at one point of the network cannot be allocated without fully or partly reducing the available capacity at another point of the network.67
- (135) The Final Commitments provide that Transgaz may submit a reasoned request to modify the Final Commitments to make available as competing capacities up to 2.2 bcm/year capacities towards Bulgaria at the interconnection point Negru Vodă I/Kardam for transportation towards Ukraine via the interconnection point Isaccea I/Orlovka once the necessary agreements and approvals have been obtained by Transgaz. This refers in particular to the agreement of the relevant TSOs Ukrtransgaz and Bulgartransgaz and on the approval of the relevant national regulatory authorities. The Monitoring Trustee will report on such agreements and approvals.
- (136) If the Final Commitments are modified accordingly, network users will then decide where all or part of the 2.2 bcm/year capacities will be booked, either at Negru Vodă I/Kardam towards Bulgaria or at Isaccea I/Orlovka towards Ukraine.

Some EU internal energy market rules and principles extend to Ukraine under the Energy Community Treaty and the Association Agreement with Ukraine (Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (OJ L 161, 29.5.2014, p. 3)). The provisions of the CAM Regulation and Regulation (EU) 2017/1938 would become applicable also at the interconnection point Isaccea I/Orlovka once these are implemented in the national legal system of Ukraine.

See Article 3 of the CAM Regulation.

- 6.2.5. Other comments from the Market Test Notice comment period
- (137) The Final Commitments do not reflect comments received from the respondents to the Market Test Notice that fall outside the scope of the preliminary competition concerns in this case.
- (138) In particular, the comment to extend the commitments to other neighbouring countries such as Ukraine or Moldova, which are neither Member States of the EU nor EEA Contracting Parties, is outside the scope of the concerns in this case. The Commission's preliminary competition concerns related to a potential abuse of dominance consisting of hindering exports to other Members States via the interconnection point Csanádpalota between Romania and Hungary and the interconnection point Giurgiu/Ruse between Romania and Bulgaria. The Commission has not reached any preliminary view on Transgaz's behaviour regarding the other interconnection points, particularly not those with Ukraine or Moldova.
- (139) In general, editorial revisions were made to clarify the meaning of the provisions. Suggested changes that were not crucial for the implementation or the suitability of the commitments, however, were not taken into account.

6.3. Conclusion on the effectiveness and proportionality of the Final Commitments

- (140) The Commission considers that the Final Commitments effectively remove its competition concerns and comply with the principle of proportionality.
- (141) Transgaz has not offered less onerous commitments in response to the Preliminary Assessment that also address the Commission's concerns adequately.
- The Commission has taken into consideration the interests of third parties, including those of the interested third parties that have responded to the Market Test Notice. The Commission has carefully analysed all comments received in reply to the Market Test Notice. To the extent that they related to the concerns in the Preliminary Assessment and were proportionate, those comments were discussed with Transgaz and are reflected in the Final Commitments.
- (143) This Decision accordingly complies with the principle of proportionality.

7. CONCLUSION

- By adopting a decision pursuant to Article 9(1) of Council Regulation (EC) No 1/2003, the Commission makes commitments offered by the undertaking concerned to meet the Commission's concerns expressed in the Preliminary Assessment binding upon the undertaking. Recital 13 of the Preamble to Council Regulation (EC) No 1/2003 states that such a decision should not conclude whether or not there has been or still is an infringement. The Commission's assessment of whether the commitments offered are sufficient to meet its concerns is based on its Preliminary Assessment, representing the preliminary view of the Commission based on the underlying investigation and analysis, and the observations received from third parties following the publication of the Market Test Notice pursuant to Article 27(4) of Council Regulation (EC) No 1/2003. The Final Commitments set out in the Annex to this Decision constitute an integral part of this Decision.
- (145) In the light of the Final Commitments offered, the Commission considers that there are no longer grounds for action on its part and, without prejudice to Article 9(2) of

Council Regulation (EC) No 1/2003, the proceedings in this case should therefore be brought to an end.

(146) The Commission retains full discretion to investigate and open proceedings under Article 102 TFEU as regards practices that are not the subject matter of this Decision.

HAS ADOPTED THIS DECISION:

Article 1

The Final Commitments as listed in the Annex shall be binding on SNTGN 'TRANSGAZ' S.A..

Article 2

This Decision shall apply from the date of its notification to SNTGN 'TRANSGAZ' S.A. until 31 December 2026.

Article 3

It is hereby concluded that there are no longer grounds for action in this Case.

Article 4

This Decision is addressed to:

SNTGN 'TRANSGAZ' S.A., Piața C. I. Motaș, Nr. 1, 551130 - Mediaș, Sibiu, Romania Done at Brussels, 6.3.2020

For the Commission (Signed) Margrethe VESTAGER Executive Vice-President