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Essen, 21. June 2024

Consultation on Adjustment Proposals of the Operational Order

Dear sirs,

We thank you for the opportunity to provide comments on the proposed adjustments for the draft Operational Order of eustream a.s. ("OO") in the published procedure.

The most relevant issue that we want to highlight is related to the pricing mechanism introduced by the draft OO. According to the new provisions introduced in articles 7.1. and in 11.6.7. of the draft OO, a primary retroactive effect for any adjustments of the already agreed price, tariff and operational order shall apply.

We clearly point out that such primary retroactive effect is fully incompatible with the Slovak and European law and therefore we propose:

1. Adjust the OO in a way to remove the primary retroactive effect for such changes and to allow the network users ("Shippers") to rely on the once agreed commercial and legal terms and conditions.

The legal reasoning for such implementation is wrongly using the option for floating prices introduced by the EU-Regulation (EU) 2017/460, as this provides only for an option to use a floating price which applies at the time of using already booked capacities. But it does not provide for the option to apply a floating price as a base price at the time of booking of such capacities.

Every shipper who has booked transport capacities with eustream before such an adjustment of the OO would come into force, is relying on the already concluded commercial and legal conditions.

If now a primary retroactivity effect would be implemented, those shippers will be harmed and suffer damages as a result of the implementation of illegal primary retroactivity effect, which it would be forced to recover.

2. As we do not see a legal reasoning for a distinction, the decision on the applicable price tariffs will need to be valid as well for contracts concluded before September 30, 2015. There does not exist objective and non-discriminatory reasoning for excluding applicable price tariffs also for the foregoing contracts. It would lead to a conclusion that some network users are favoured over the other network users. It should be valid especially for those shippers, which entered into the framework agreement with eustream even shortly after this deadline.
3. In case a price adjustment in the underlying price tariff leads to a price increase, a Shipper needs to be able to do a recalculation of its business case and in case the increase is not reasonable and appropriate, the Shipper should have an extraordinary termination right for such capacities. This is already possible in all other jurisdictions and has been implemented in the underlying regulation there.
4. In addition, we want to make the point that based on the existing and applicable forms of framework agreements, concluded between eustream and any shipper, any modification or amendment to such framework agreement requires usually a written amendment to be agreed and signed by both parties. As the OO in place at a time of conclusion of such framework agreement was an essential part of this underlying agreement, as well changes in the OO would require an agreed and signed amendment to this framework agreement.

If a network user does not agree with the new terms and conditions of the adjusted OO the network user should at least have a right to withdraw from any framework agreement and existing individual agreements should expire at the end of originally agreed time under the originally agreed terms and conditions, including original OO. Only in this way can the principle of equality between the parties be ensured.

Page 3

We remain available for any clarification of the raised issues if necessary.

Yours sincerely,

RWE Supply & Trading GmbH



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