

Gas Market in Ukraine

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Asters

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ABOUT ASTERS

Key facts

20+ YEARS OF EXPERIENCE



Since 1995

ONE OF THE LARGEST FIRMS IN UKRAINE



15 partners
70+ lawyers

LAW FIRM OF THE DECADE



Ukraine's
Legal Awards 2016

NO.1 LAW FIRM IN UKRAINE



Top 50 Law Firms
Annual National Ranking
2011-2016

LAW FIRM OF THE YEAR: UKRAINE AND THE CIS



The Lawyer European Awards 2014
and 2015

LAW FIRM OF THE YEAR (UKRAINE)



Who's Who Legal Awards
2014

GENERAL DEVELOPMENTS IN GAS TRADING

2015 Gas Market Law

- Introduced **free gas market** in Ukraine and is compliant with the 3rd Energy Package
- Was developed together with the Secretariat of the Energy Community
- Operations in the gas market are regulated by the GTS Code and Gas Storages Code
- Unbundling of state monopoly – Naftogaz
- Unregulated prices for business
- Use of gas storages (31 bcm capacity) in tax free regime for period up to 3 years. 14 bcm are available for storage in such regime
- **AOT, Engie, MET, Trafigura, Trailstone** opened subsidiaries in Ukraine

Challenges:

- High entry (USD 12,47 per 1000 m3) and exit tariffs (USD 16,74 – 32,80)
- Burdensome financial security obligations
- Naftogaz has some advantages on the market

UKRAINE'S NEW POSITION – “0” GAZPROM IMPORT

- In 2013 Ukraine imported 92% of gas from Russia
- Since November 2015 **Ukraine does not import gas from Russia** and currently buys gas at its Western border
- In 2016 we imported approx. 11 bcm
- Most of the gas is sold by DufEnergy, Axpo Trading, ENGIE, RWE, Uniper Global, Trailstone, MET Gas, Shell, AOT, Eni, CEZ at the UA border, where gas is purchased by Ukrainian traders
- Most of the gas is imported through Slovakia border and the rest via Poland and Hungary
- Current Gazprom-Naftogaz contract is effective until 2019 and it is disputed in SCC arbitration

What is the future of the Ukrainian transit role after 2019?

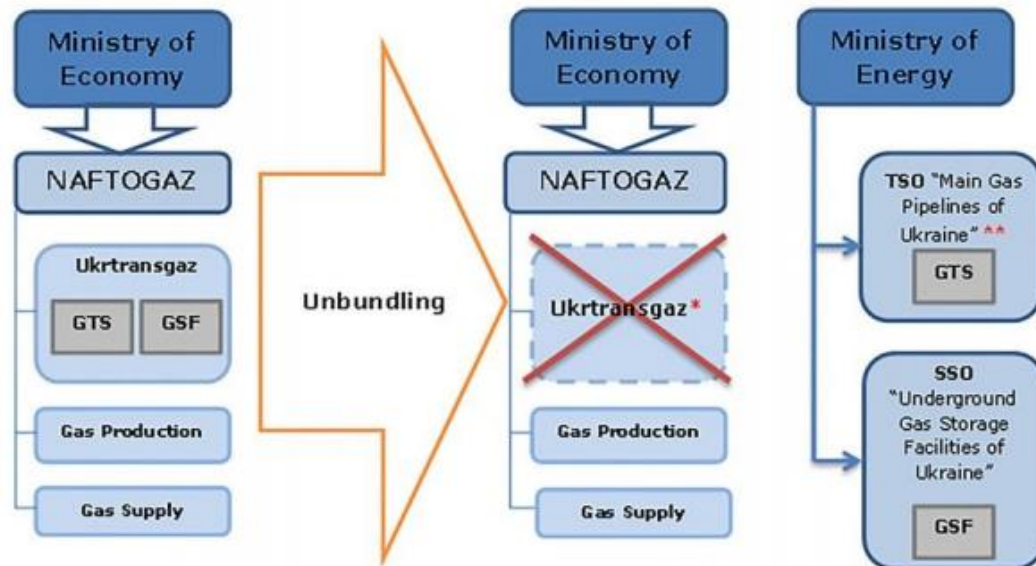
- Ukraine has a **great potential to become a significant energy hub** and the EU is ready to support the preservation of the important role of the country in the transit of the Russian natural gas to Europe.
- On 15 September 2017 at the Yalta European Strategy meeting in Kyiv Maros Sefcovic claimed ***'The preservation of the gas transition through Ukraine after 2020 is the priority of the EU'***.

NAFTOGAZ VS GAZPROM ARBITRATION

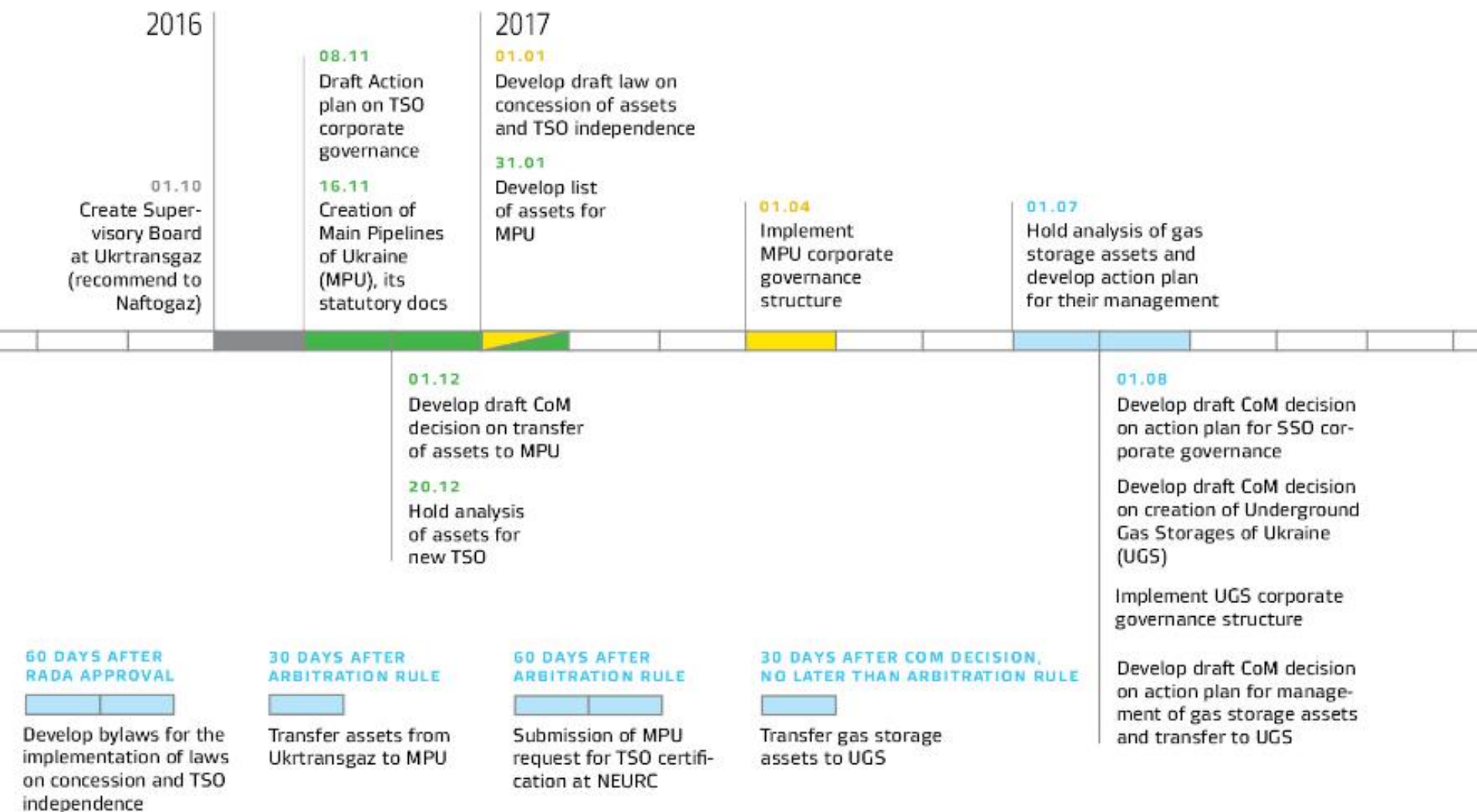
- On January 2009 Gazprom and Naftogaz signed a confidential long-term gas sales agreement for 2009-2019
- In 2015 Gazprom commenced SCC arbitration under the sales contract and Naftogaz commenced arbitration under the transit agreement
- Gazprom and Naftogaz argued over **three issues**:
 - First, Gazprom claimed unpaid debts for the delivered natural gas. Naftogaz declared it had overpaid at the unfair oil-linked price during 2010-2014
 - Second, based on the contractual “take-or-pay” clause (Ukraine’s obligation to buy 41.6 Bcm per year), Gazprom claimed Naftogaz did not pay for the gas it did not lift
 - Finally, Naftogaz alleged Gazprom had underpaid USD 3.2 billion for the transit of natural gas and failed to transit the agreed-upon volumes of gas
- Gazprom claimed USD 38.7 billion unpaid debts whereas Naftogaz insisted on a USD 10.2 billion transit claim and USD 18.2 billion “unfair price” claim. Total amount of claims around USD 80 billion. The cases were heard during November and December 2016
- **On 31 May 2017, the tribunal rendered the first award according to which (1) the gas re-export prohibition, particularly to supply Russian gas purchased by EU members, has to be lifted; (2) starting from April 2014 the gas price shall be linked to the EU markets (and not to the oil index as the Contract stated initially); (3) the “take-or-pay” obligation shall not apply retroactively for 2012-2014, 2015 and 2016**
- In November 2017 the full arbitration award is expected

UNBUNDLING OF NAFTOGAZ

- Gas Market Law envisages 2 options: **OU** (full ownership unbundling) or **ISO** (Independent System Operator)
- According to the Gas Market Law unbundling was due by 1 June 2016
- Challenges for unbundling:
 - **Transit Contract w Gazprom**, which does not allow transfer of functions of GTS TSO to a company not controlled by Naftogaz
 - **Arbitration w Gazprom**
 - **1,2 bln Gazprombank loan**, changes in Naftogaz structure may result in default under loan agreement
 - 1 July 2016 Government adopted Naftogaz unbundling plan



Naftogaz unbundling plan (implementation update)



NAFTOGAZ IS LOOKING FOR PARTNER TO OPERATE GTS AND STORAGES

Strategic advantages:

- ⊕ Most powerful transit infrastructure in the world with capacity of exit - 158 bcm/Y, entry – 288 bcm/Y
- ⊕ Supplies to 18 European countries
- ⊕ Crucial role in the European transit system, accounting for up to 15 % of total gas import to EU
- ⊕ Direct interconnections with EU (PL,SK,HU,RO) and with RU, MD, BY
- ⊕ Revenues ensured by regulated RAB-based tariffs
- ⊕ Substantial potential of transit volumes increase without significant investment
- ⊕ Sole transmission system operator

Strategic advantages:

- ⊕ Largest storage capacity in Europe - 31 bcm (1/3 of EU28)
- ⊕ Storage capacity of over 25 bcm on border with the EU
- ⊕ Essential infrastructure for EU gas stock (both security and commercial) and creation of a gas hub
- ⊕ Strategic geographical location of storages allows gas supply from one point on the Ukraine-EU border to 6 countries
- ⊕ A valuable complex of assets with potential privatization of some storages

YAROSLAV PETROV



Counsel

Energy (oil & gas, renewable energy) • Dispute Resolution (cross-border litigation & arbitration)

Yaroslav focuses on energy law projects (oil & gas, electricity, renewable energy and energy efficiency) and dispute resolution (international arbitration, commercial litigation).

Yaroslav is a member of the roster of experts of Energy Community and included to the Panel of mediators of the Energy Community, co-chair of the Fuel & Energy Committee of European Business Association; member of Ukrainian Bioenergy Association, Ukrainian Wind Energy Association, Energy Committee of American Chamber of Commerce, Kiev Energy Research Institute.

Recognition:

- Recommended lawyer (Band 3) for Energy and Natural Resources in Ukraine, *Chambers Europe 2017*
- Recommended lawyer in Energy, *The Legal 500: EMEA 2017*
- Recommended lawyer in Arbitration and Mediation, *Best Lawyers 2017*
- Notable practitioner for International Arbitration and Energy and Natural Resources, *Ukrainian Law Firms 2017*
- Recognized lawyer in Energy, *Who's Who Legal: Energy 2017*
- Rising star in Energy and Infrastructure, *IFLR1000 2017*
- Recognized expert in Arbitration, *Who's Who Legal 2016*
- Rising star in arbitration, *Expert Guides 2016*

Education:

Stockholm University, LL.M in International Arbitration; 2007
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