Comisión de Regulación
de Energía y Gas

NEUTRALIDAD, TRANSPARENCIA E INDEPENDENCIA DEL GESTOR DEL MERCADO DE GAS NATURAL

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NEUTRALIDAD, TRANSPARENCIA E INDEPENDENCIA DEL GESTOR DEL MERCADO DE GAS NATURAL

1. ANTECEDENTES

Mediante el Decreto 2100 de 2011 el gobierno nacional estableció un nuevo marco de política pública con el propósito de asegurar el abastecimiento de gas natural. El artículo 20 del mencionado decreto dispuso que *"[l]a CREG evaluará la necesidad de implementar la prestación del servicio de gestión de la información operativa y comercial del sector de gas natural, con el objeto de propender por un uso más eficiente de la infraestructura de suministro y transporte de gas natural y, por ende, un mejor desempeño y coordinación entre los agentes operacionales"* y que *"[e]n el evento de que la CREG decida que se requiere contar con la prestación del servicio a que se refiere este artículo, establecerá la metodología para seleccionar y remunerar dichos servicios, asegurando la neutralidad, la transparencia, la objetividad y la total independencia del prestador de los mismos, así como la experiencia comprobada en las actividades a desarrollar"*.

Dentro del marco de la nueva política pública la CREG ha identificado la necesidad de que el mercado colombiano de gas natural cuente con los servicios de un gestor del mercado, como se observa en las resoluciones CREG 113 de 2012, 155 de 2012 y 003 de 2013, mediante las cuales se sometieron a consideración de los interesados un conjunto de normas que harán parte del reglamento de operación de gas natural.

El gestor del mercado tendrá a su cargo los servicios establecidos en la resolución que resulte de la consulta de la Resolución CREG 113 de 2012, por la cual se ordena publicar un proyecto de resolución de carácter general, "Por la cual se reglamentan los aspectos comerciales del mercado mayorista de gas natural, que hacen parte del Reglamento de operación de gas natural". La propuesta regulatoria contenida en esta resolución será adoptada próximamente por la CREG, una vez hechos los ajustes considerados convenientes tras el análisis de los comentarios recibidos durante el período de consulta de la mencionada resolución, el cual se extendió hasta mediados de diciembre de 2012.

La selección del gestor del mercado se realizará por parte de la CREG con base en los mecanismos y los criterios establecidos en la resolución definitiva que resulte del análisis de los comentarios recibidos a la Resolución CREG 155 de 2012, por la cual se ordena publicar un proyecto de resolución de carácter general, "Por la cual se establecen las reglas para la selección del gestor del mercado y las condiciones en que prestará sus servicios, como parte del Reglamento de operación de gas natural".

En el Capítulo II del proyecto de resolución contenido en la Resolución CREG 155 de 2012 se propusieron los criterios y el mecanismo de selección del gestor del mercado de gas natural. El mecanismo de selección propuesto contempla una etapa de precalificación, en la cual la CREG sólo tendría en cuenta los requisitos habilitantes señalados en el artículo 5 del proyecto de resolución. De acuerdo con el numeral 1 del mencionado artículo 5, *"[e]l interesado debe ser independiente, neutral y transparente. La*

CREG definirá en resolución aparte las condiciones en que el interesado debe acreditar el cumplimiento de este requisito".

Adicionalmente, en la resolución en consulta se plantean las condiciones de prestación de servicios por parte del gestor del mercado. Así, en el artículo 8 del proyecto de resolución se señalan los requisitos generales que deberá cumplir el gestor del mercado durante el tiempo en que preste sus servicios, siendo uno de ellos *"[s]er independiente, neutral y transparente, lo cual será entendido en los términos del numeral 1 del Artículo 5 de esta Resolución".*

De esta manera, el gestor del mercado de gas natural deberá ser independiente, neutral y transparente al momento de su selección y durante el período de vigencia de la obligación de prestación del servicio.

Para estos efectos, la CREG contrató una consultoría para establecer las condiciones para cumplir los requisitos de neutralidad, transparencia e independencia, que debe acreditar el ente que se seleccione para prestar los servicios del gestor del mercado, cuyos resultados han sido la base para preparar una propuesta regulatoria en este sentido. En este documento se expone un resumen ejecutivo del estudio realizado y, con base en los resultados del mismo, el alcance de la propuesta regulatoria correspondiente.

2. ESTUDIO REALIZADO

El objeto del estudio contratado por la CREG fue el de establecer las condiciones para cumplir los requisitos de neutralidad, transparencia e independencia que debe acreditar el agente que se seleccione para prestar los servicios de gestor del mercado de gas natural.

El estudio realizado desarrolló, en su orden, los siguientes aspectos:

a. Identificación y caracterización de los agentes del mercado que podrían tener interés en participar como gestores del mercado, de acuerdo con la situación real del mercado colombiano de gas natural nacional. El análisis abarcó a los productores, importadores, transportadores, comercializadores, remitentes del sistema de transporte, al operador del mercado eléctrico y a los generadores de electricidad que utilizan gas natural como combustible.

b. Identificación de los intereses económicos o comerciales que pueden tener los diferentes agentes anteriormente mencionados, desde el contexto del desarrollo de su actividad económica principal.

c. Para contextualizar los análisis que buscan identificar los potenciales conflictos de interés a los que se podrían enfrentar los agentes anteriormente identificados, el consultor hizo una definición de los términos neutralidad, transparencia e independencia, así:

    - **Neutralidad:** implica que ninguna firma debería tener una ventaja competitiva sobre otras como resultado de su propiedad o control sobre el gestor del mercado.

- **Independencia:** la estructura de gobierno empresarial y los incentivos que reciba el gestor del mercado deben ser diseñados de tal forma que se asegure que ningún participante del mercado pueda controlar los criterios o los procesos de operación del gestor del mercado.

- **Transparencia:** se considera esencial para la implementación del gestor del mercado y para crear igualdad de condiciones entre los participantes del mercado y evitar "abuso de poder". La publicación de información en una forma no discriminatoria para todos los participantes del mercado y el desarrollo de una plataforma de información centralizada, administrada por el gestor del mercado, debe permitir que todos los participantes tengan una visión coherente y consistente del mercado. La información debe ser publicada en un sitio central y neutral para incrementar la transparencia en el mercado. Esto requiere tanto de requerimientos normativos de publicación como de compromisos voluntarios de la industria.

d. Basados en los intereses identificados, se hizo una exploración de los potenciales conflictos de interés que los agentes objeto de análisis podrían presentar al prestar los servicios como gestor del mercado, dando una calificación de **no aceptable** para ejercer este rol dentro del mercado colombiano si se identifica al menos un conflicto de interés. El consultor presentó este análisis de manera detallada para cada uno de los servicios del gestor.

Finalmente, con base en los análisis mencionados, el estudio concluye que cualquier agente que tenga interés, directo o indirecto, en el mercado de gas natural en cualquier eslabón de la cadena, esto es en importación, producción, transporte, distribución, comercialización o en el uso para la generación de electricidad, tendría un conflicto de interés cuando actúe como gestor del mercado.

El informe final de este estudio se anexa a este documento como soporte de la propuesta regulatoria y para el análisis de todos los interesados en participar en esta consulta.

3. PROPUESTA

Con base en los resultados del estudio realizado, se propone definir la forma como los interesados deben acreditar las calidades de neutralidad, independencia y transparencia.

Considerando que el consultor concluye que pueden generarse conflictos de interés si el candidato a prestar los servicios de gestor del mercado tiene un interés económico o comercial que pudiera ser significativamente afectado por las acciones y decisiones que tome el gestor del mercado, se propone tomar medidas para garantizar que el gestor del mercado sea independiente de los participantes del mercado.

Por lo tanto, el interesado en precalificar como candidato a ser el gestor del mercado debe demostrar que no tiene vínculo económico con participantes del mercado de gas natural, entendidos estos últimos en los términos de la definición contenida en el artículo 3 de la Resolución CREG 113 de 2012.

Para garantizar que no se tiene esta vinculación se exigirá que el interesado no pueda ser un participante del mercado, pero además que ningún participante del mercado pueda tener participación directa en el capital o en la propiedad del interesado. Complementariamente, el interesado no podrá tener participación directa en el capital o en la propiedad de alguno de los participantes del mercado.

Ahora, considerando el control y seguimiento de la participación indirecta que pueden tener los participantes del mercado o el mismo gestor del mercado, en cualquier empresa por acciones, se considera improcedente fijar una restricción absoluta como la anteriormente indicada frente a tal participación accionaria. Por esta razón, y teniendo en cuenta que en ocasiones anteriores la regulación ha implementado esta figura, se exigirá que ningún participante del mercado pueda tener una participación indirecta en el capital o en la propiedad del interesado que exceda del 15%, al igual que el interesado no pueda tener una participación indirecta en el capital o en la propiedad de un participante del mercado que exceda del 15%. Asimismo, se exigirá que los participantes del mercado no puedan tener una participación indirecta agregada en el capital o en la propiedad del interesado que exceda del 20%.

En todo caso, dado que no solo la participación en el capital o en la propiedad es la única figura que da control sobre las acciones y decisiones de una empresa, se exigirá además que ningún participante del mercado pueda tener con el interesado relación de control ya sea en calidad de matriz, filial, subsidiaria o subordinada de acuerdo con lo previsto en la legislación comercial.

Finalmente, entendiendo que la verificación documental del cumplimiento de las anteriores condiciones puede resultar inoperante, la demostración de las calidades exigidas en los términos anteriormente descritos se deberá hacer mediante declaración extraproceso efectuada ante notario público en Colombia, sin perjuicio de que en algún momento se le solicite la certificación de quién o quiénes son los asociados, accionistas o socios y los beneficiarios reales.

CONSULTANCY TO THE CREG TO CHOOSE MARKET OPERATOR FOR THE NATURAL GAS SECTOR

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Prepared by:

AF-MERCADOS EMI

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1 INTRODUCTION

1.1 BACKGROUND

The natural gas sector in Colombia operates in a decentralized way, as do most gas industries. This implies that there are no mechanisms that include dispatch and central planning, which makes each agent (producer, transporter, etc.) serve customers according to their contractual relationships; eventually, the commercial aspects of the industry have evolved in a decentralized manner.

> According to the provisions in Article 74.1.c of Law 142 of 1994, it is CREG's role to establish regulations for planning and coordinating the operation of the national grid and regulate the operation of the wholesale markets for electricity and combustible gas.

In carrying out its functions, the CREG has adopted rules relating to operational and commercial aspects applicable to the gas industry in Colombia. This regulation has taken into account the structure of the industry and the institutional scheme operating in the country for the provision of public services such as natural gas.

The availability of information is a key requirement for the development of a competitive market. Therefore, it is necessary to adopt measures to ensure that all participants are fully aware of the operating conditions of the natural gas market.

Article 20 of Decree 2100 of 2011 provides that, as part of the public politics adopted for the natural gas sector, the CREG will evaluate the need to implement the management and operating services, as well providing the commercial information of the sector.

The Commission of Regulation of Energy and Gas, CREG, ordered to carry out a series of studies on the Colombian natural gas market during 2010 and 2011. These studies led to the conclusion of the need of a market operator (MO). The main duties of the MO are: centralize transactional information of the wholesale and retail market of natural gas, as well as operational information of the gas sector, and manage transactions in the primary, secondary and short-term markets of natural gas. Thus, the MO will serve as a tool for promoting conditions and existence of perfect competition.

According to the above, and based on an internal analysis carried out by CREG, a regulatory proposal in Resolution 113 of 2012 and Resolution 155 of 2012 was elaborated; in it, the services responsibility of the market operator, rules for selection, and conditions under which its services are to be provided are set.

1.2 THE ESTABLISHMENT OF A MARKET

The Colombian Government and the CREG (Comisión de Regulación de Energía y Gas) decided to choose a Market Operator (MO) for the Natural Gas Sector. For a proper functioning of the MO, it is important to secure its independence, neutrality and transparency.

To this end, CREG has commissioned a concise investigation to identify the conditions for meeting such requirements by the company that will provide the services of MO; the objective of this report is to assist, support and advise CREG in establishing such conditions. In order to do so, we will accomplish the following tasks in this report:

- **TASK 1:** To identify potential conflicts of interest and/or disabilities that a candidate company may have, regarding the provision of the services to be provided by the MO.
- **TASK 2:** To establish the conditions to be met by the agent fulfilling the role of MO to ensure independence, neutrality and transparency.

Before focusing on these two tasks we will begin by describing the responsibilities of and conditions for the MO.

1.3 THE TASKS AND RESPONSIBILITIES OF THE MO

The main responsibilities of the Market Operator would be:

a) design and publishing of a Central Electronic Bulletin;
b) consolidation of the operational and commercial-related information of the natural gas sector;
c) management of the auctions in the primary gas market;
d) management of transactions in the secondary and short-term market; the MO will only manage the use-it-or-sell-it auctions. Other bilateral transactions will be facilitated by the MO through the publication of bids to sell and bids to buy
e) wholesale gas market follow-up. This service will consist in a close follow-up of the market, delivering the information requested by the surveillance agencies (Superintendencia de Industria y Comercio y Superintendencia de Servicios Públicos Domiciliarios).

As part of its role as MO, the agent is in charge of following up the wholesale gas market. The MO has access to all the operating information available, supplemented by confidential information obtained directly from market participants. The MO does not have a specific role in mergers and acquisitions other than providing information to the CREG as required.

The MO is scoped to make available to the competent entities transactional and operational information they request for identifying agent behaviors that may negatively affect competition.

The MO will not provide monitoring services, meaning that the information should be analyzed in order to identify practices that restrict competition for notifying the competent authority for sanction.

Studies carried out by Market Analysis and the Brattle Group consultants recommended the assignation of a monitoring service to the MO, but the CREG dismissed such recommendation, suggesting that the MO would only offer a market tracking service.

1.4 CONDITIONS FOR THE MARKET OPERATOR

The general conditions for the MO are laid down in accordance with the provisions established by Decree 2100 of 2011 "Independence, neutrality and transparency", and the Act 142 of 1994.

a) The market operator shall be based in Colombia.

b) The market operator shall be established as a stock corporation of public services, legally constituted in Colombia, as provided in Article 17 of Law 142 of 1994.

   Law 142 of 1994 applies to: (i) Public utility services, in this case fuel gas, (ii) activities by the persons providing public services mentioned in Article 15 of this Law, (iii) complementary activities defined in Chapter II of this Law, and (iv) other services under special rules of this Law.

   Thus, the services provided by the market operator will be framed within those covered by the regulation of natural gas operation, which fall under the "Other services" category, as defined in Article 1 of Law 142 of 1994.

   Consequently, the market operator shall be subject to CREG regulation, inspection, control and supervision of the Public Services Superintendence, and shall apply the provisions of Articles 17, 18 and 19 of Law 142 of 1994, concerning the nature, purpose and legal status of utilities.

c) The market operator shall be subject to CREG regulation, in accordance with the above.

d) Therefore, the MO shall be subject to inspection, supervision and control by the Public Services Superintendence, taking into account that the development of their activities requires specific regulatory compliance and that they will be penalized in case of non-compliance with the regulation, as indicated in paragraph 1.

e) The market operator shall be **independent, neutral and transparent**.

1.5 AGENTS IN THE COLOMBIAN NATURAL GAS SECTOR

A brief description of the different market participants[1]:

- **Producer** (*Productor*): natural gas producer that sells gas on the gas natural wholesale market. It can also act as a buyer of gas in the secondary market. The supply of domestic production is characterized by: geographic concentration (52% Guajira - Cusiana 33%) and business (61% Ecopetrol - 23% Chevron).

- **Local Trader** (*Comercializador*): Colombian market participant who develops marketing activity and can purchase gas in the primary market and buy or sell gas in the secondary market. A trader can also sell gas in the retail market (regulated demand). There are very few pure traders, most of them being distributors.

- **Distributor** (*Distribuidor): c*ompany that plans, manages, operates and expands a gas distribution pipeline network system, from the starting point of a gas transport system to the installation of a user. Traditionally, distributors also carry out business management for users connected to their network. Must of Colombian DSOs also are in charge of trading natural gas with non-liberalized users (those whose consumption falls below 100 million cubic feet).

- **TSO** *(Transportador):* performs the operation and maintenance of a pipeline network transporting gas. In the case of Colombia, there is not a unique operator of the transport system In Colombia, the natural gas TSO may have a share on a distributor not exceeding 25% and otherwise. In the Colombian case, then, vertical integration of the TSO with the DSO is allowed. The activity of the natural gas TSO in Colombia is an activity that implies many risks and cannot be considered regulated as is the case in Europe. The reason is that part of the payment to TSO depends on the degree of infrastructure usage, which means that vertical integration with DSO or natural gas traders has its grounds on making investments profitable in the chain value. 40% of the gas market is transported by a TSO that belongs to an integrated commercial group

- **Shipper** *(Remitente)* Shipper is the one who asks a Producer to introduce gas in a point along the gas network prior to contract and asks the TSO for this gas to come out in the points where users or traders require. The Shipper is the one who assures that the scheduled gas input to the system is balanced with the output for the final consumers that belong to the non-regulated market and to the Distributors/Traders in the regulated one.

- **Trader of imported natural gas** *(Importador)*: it is the trader of imported natural gas. It is important to point out that for the moment Colombia does not import natural gas,

[1] Deffinitions of natural gas market agents by The CREG. These definitions are a synthesis of the definitions described in the regulation.

though it is working on it. For the time being, the only gas exports by gas pipeline are with Venezuela. There are no regasification facilities. It is thought that in a near future, LNG can be imported.

- **System Operator** (*Operador del sistema*): in Colombia there is no centralized system operation, Should be clarified that the SO referred to in this point is of natural gas.

- **Electricity Market Operator** *(Operador del mercado eléctrico*): XM (Compañía de Expertos en Mercados) is the company that operates and manages the Colombian electricity market. XM is a subsidiary of ISA. ISA represents the 90% of the electric transmission in Colombia; the remaining 10% does not belong to ISA. The integration of all the electric transmission systems is carried out by the CND. In Colombia, the "Centro Nacional de Despacho Eléctrico" (National Electric Dispatch Centre) is in charge of the Electric Market Operator ISA. For a better understanding, we can separate the E-MO (electric market operator) from the G-MO (gas market operator).

- Electric Generators (Generadores Eléctricos): Companies that produce electricity from primary energy sources for injecting it into the Colombian Electrical Grid.Some of them are large natural gas consumers.

- **G-MOs of other countries (***Operadores de Mercado Gasista de otros países)*: those G-MOs that are in other countries and want to apply in Colombia.

2 IDENTIFYING POTENTIAL CONFLICTS OF INTEREST

2.1 WHEN IS THERE A (POTENTIAL) CONFLICT OF INTEREST?

In this chapter we will identify potential conflicts of interest. Conflicts of interest could arise if the candidate company has **economic**, **commercial** or **political** interests that could be significantly affected by the actions and decisions of the market operator. Thus, we can derive that the MO must be truly independent from market participants.

Furthermore, we indicated in the previous chapter that the MO needs to gather a lot of data and information in order to fulfill its duties. The MO will use this data to follow up market operations and analyze market parameters such as production capacity, gas production margins (which is the difference between supply capacity and demand), production outages, demand, wholesale gas prices, gas transport constraints and transport utilization.

Furthermore, the MO should also be independent from market participants who could misuse this information for their own commercial interests, and thereby disturb the effective and efficient operation of the market process.

The scheme "agents in the Colombian natural gas sector"(see below) encompasses an overview of the players participating in the Colombian gas market. The question then becomes: which of these agents could create a potential conflict of interest and/or for which of these agents could there be a potential incentive to abuse the (gathered) data and information?

In order to answer this question taking into account each of these organizations, we proceed as follows:

- First, we establish/explain the economic, commercial and/or political interests for each of the involved organization. We deduct these interests from the "business model" of the organization and/or its (legal) tasks.

- Second, based on the assumed interests of the involved organization, we explore if these come into potential conflict with the "interest" of performing the MO's tasks in an independent, neutral, and transparent way.

The factors that give rise to potential synergies – the access to information and additional decision making powers and influence – may also give rise to conflicts of interest that jeopardize effective market operation.

In order to do this, we will first provide a definition of the terms of neutrality, transparency, and independence as we understand them.

- **Neutrality: it** implies that no firm should have competitive advantage over other as a result of its ownership or control.

- **Independence**: the governance structure and incentives for the MO should be designed to ensure that no market participant is allowed to control the criteria or operating procedures.

- **Transparency**: it is essential for the implementation of the market operator. It is also critical for creating a level playing field between market participants and for avoiding "power abuse" in the market. The publication of data on a non-discriminatory basis across all the market agents, and the development of a central information platform, managed by the MO, to allow all market participants to have a coherent and consistent view of the market. Data has to be published at a central and neutral site, in order to further increase transparency on the wholesale market. This implements both statutory publication requirements and voluntary commitments by the industry.

We would like to point out that the (potential) conflicts of interest we will identify in the following paragraphs are not necessarily experience-based. Furthermore, by making this clarification, we also want to emphasize the fact that we are not accusing any organization or company of unethical or harmful behavior.

2.2 CONFLICTS OF INTEREST FOR PRODUCERS

Producers sell gas on the market and/or can act as buyers on the secondary market. From a financial point of view, they have are interested in selling their gas at the highest possible price, with aims to making the highest possible profit. In short, they are market players with a commercial interest, that could substantially be affected by the decisions of the market operator and, thus, have an incentive to misuse the data and information of the MO. For this reason, the MO should be independent from producers.

For a complete analysis of conflicts of interest for producers see annex 4.1.

2.3 CONFLICTS OF INTEREST FOR TRADERS

Traders participate in the market by buying and selling gas. It is of their commercial interest to buy "low" and sell "high". From this, it follows that they (by definition) have a commercial interest that could substantially be affected by the decisions of the MO; furthermore, they too have an incentive to make a negative use of the data and information of the MO. In the case that the shareholders of the MO are also traders, they could take hold of information others do not have, securing an unfair advantage in the market place; from this, one could infer that the MO should be independent from traders.

For a complete analysis of conflicts of interest for producers see annex 4.2.

2.4 CONFLICTS OF INTEREST FOR TRADERS OF IMPORTED NATURAL GAS

Traders of imported natural gas sell the gas to the final customers. Like all other commercial agents they are interested in buying low and selling high; this interest is, in its turn, affected by the actions of the MO. It should be said that the conflicts of interests of the natural gas importers needn't be the same as those of the Local Traders. This can be exemplified by pointing out that if an importer belongs to an already existent consortium in Colombia (i.e.: a generator of electricity or any other agent who has economic interests related to natural gas), this conflict should be solved by the local agent.

2.5 CONFLICTS OF INTEREST FOR DISTRIBUTORS

Colombian regulation does allow vertical integration of the TSO with the DSO and traders, so the conflict with the DSO is clear. Presently, although the decree is not effective, independent market penetration is negligible. Since there is no direct prohibition concerning distribution and marketing, distributors continue providing this service.

This analysis of potential conflicts of interest is based on the following assumptions:

- Colombia's regulation is different than the one in Europe. Due to the fact that DSOs, under the Colombian regulation, , have the task of supplying natural gas to users whose volumen falls below 100 thousand cubic feet per day, they have interest in the gas market, and therefore, its behavior could come in conflict with the required independency of the G-MO.
- Distributors might have to operate on the market in order to balance their net. In Colombia, these costs are not reimbursed as a part of the network tariff.

Finally, if it were the case that distributors ,have no commercial interest on the gas market, it can be argued that there are no potential conflicts of interest for distributors; however, this does not necessarily say anything about the quality with which they will perform the tasks of the MO.

2.6 CONFLICTS OF INTEREST FOR TRANSMISSION SYSTEM OPERATORS

As in the case of distributors, TSOs are responsible for gas transport through transport pipelines and all other related transport activities. These agents have an active role in the Colombian market (not passive), to the extent that part of their income depends on its commercial management; for this reason, regulation assigns them demand risk.

Distributors and transporters cannot be integrated into a share exceeding 25%. There is a particular situation of vertical integration between a transport agency and various distributors. This is particularly significant for the Colombian market because it corresponds to the second transportation agent in the country, representing about 40% of domestic gas. This transport company has economic interest in almost all dealers connected to its network and even distributors connected to the major transporter.

Additionally, one of the largest distributors in the country has economic interest in the major transporter of natural gas.

This analysis of potential conflicts of interest is based on the following assumptions:

- In Colombia, the TSO and the DSO are vertically integrated, the DSO being assigned with the sales function. This circumstance comes into conflict with the TSO's possibility of becoming a G-MO.
- TSOs might have to operate on the market in order to balance their net. However, it is assumed here that these costs are reimbursed; usually regulators allow these costs to be part of the network tariffs.

Therefore, if it were the case that TSOs have no commercial interest on the gas market; it can be argued that there are no potential conflicts of interest for distributors. However, this does not necessarily say anything about the quality with which they will perform the tasks of the MO.

2.7 CONFLICTS OF INTEREST FOR ELECTRICITY MARKET OPERATOR

There is no natural gas SO in Colombia. The electricity MO, XM, belonging to ISA, can exercise without any conflict of interest as the natural gas MO. The main reasons for this is that the same IT systems and human resources skills should not be that different. Our reasoning supports that the XM could be a good gas MO, and that no relevant conflicts would arise. It should also be taken into account that in the electric case, the TSO is not vertically integrated with DSOs. There may be trade-offs, or perceived trade-offs, between the management of the electricity system and the management of the gas system. For example, longer gas balancing periods could make the electricity system easier to manage, but jeopardise security of supply in the gas system. We consider that all these technical reasons are minor and under no circumstance will affect the E-MO's independency when acting as G-MO.

Therefore, to maximise confidence in the MO as a fully independent operator in the Colombian gas market, an additional requirement is established: that the gas MO is fully independent from the management of the gas system.

2.8 POTENTIAL CONFLICTS OF INTEREST FOR THE GOVERNMENT

If the MO is owned or partially owned by the Colombian government, market participants might be concerned that it will act in their own interest with the aim of achieving political objectives that do not necessarily fall under the interests of the gas market in the long term. Therefore, an additional requirement is established: that the MO is not owned by the Government or any government agency. Candidates should also demonstrate their independence from the Colombian government and declare any direct or indirect ownership interests of the Colombian government in their organization if is the case.

2.9 CONFLICTS OF INTEREST FOR ELECTRICITY GENERATORS

It is important that the gas MO carries out its duties solely in the interest of the gas market; therefore, candidates should not be involved in any role in dispatching generators in the Colombian electricity market (managing, organising and clearing trading in electricity commodity products would not suppose a problem). they are natural gas buyers.

3 SECURING INDEPENDENCE, NEUTRALITY AND TRANSPARENCY

3.1 INTRODUCTION

In the previous chapters, we identified the (potential) conflicts of interest; now we need to answer the matter of how to face them. To this end, we will give an overview of the possible ways to secure independence, neutrality, and transparency; these measures can be divided into the following categories:

- Unbundling of functions
- Governance
- Financing (business model)
- Internal rules and procedures
- Regulation (external rules: laws) and oversight.

3.2 UNBUNDLING OF FUNCTIONS

One can distinguish two basic forms of unbundling. The first one involves a complete separation of ownership: if a corporation is the owner (shareholder) of one of the agents on the gas market with a potential conflict of interest, then this corporation could not "own" any equity of the company acting as the market operator (MO). The second one involves a "simpler" form of separating functions, often called functional unbundling.

3.2.1 Ownership unbundling

Requiring a complete separation at the ownership levels of the company acting as MO and all other gas market agents with a potential conflict of interest, is the most secure way to ensure the MO's independence, neutrality, and transparency; as a matter of fact, this model is adopted in several European countries.

In these countries, practically most of the tasks that are defined for the future Columbian MO, are performed by exchanges. A substantial amount of these exchanges are owned by the TSOs; due to the implementation of the so-called Third Package in the EU, these TSOs are completely separated at the ownership level from generators, producers, and traders.

Therefore, TSO ownership of MO is a common practice in several European countries; it fits with the important objective promoting an efficient, transparent and liquid energy market.

Another way to ensure complete ownership unbundling is to establish an independent public organization. As can be inferred from the table below, this model can also be found in several countries. However, if the government has commercial (or political) interests as, for instance, could have an owner of a gas company, conflict of interest could arise. In some countries, the government solves this by dividing responsibilities between ministries. For instance, in the Netherlands, the Ministry of Finance is the owner of the two TSOs (gas and electricity), and thus

also the exchange/MO, , while the Ministry of Economic affairs is responsible for the policy- and lawmaking processes, aimed at regulating the TSOs and MOs.

Country	Name	Responsibilities	Property
Sweden	Svenska Kraftnät	Operation and Administration	Public: State-owned
Italy	Snam Rete Gas	Operation and Administration	Private: 100% agents
Germany	TRAC-X	Administration	Private: 100% agents
UK	APX-Endex	Administration	Private: 100% agents
Belgium	Fluxys	Operation and Administration	Public: Government agents
Denmark	Energinet	Operation and Administration	Public: Government agents
Spain	Enagas	Operation and Administration	No more than 5% per shareholder: 5% SEPI and public owned
Netherlands	Endex	Operation and Administration	Public: Owned by TSOs
Ireland	Gaslink	Operation and Administration	Private: 100% agents
Argentina	MEGSA	Administration	Public: Operated by the Board of trade Buenos Aires
Australia	AEMO	Operation and Administration	Mix: 60% government, 40% agents

Exhibit 1 Source: AF-Mercados EMI

3.2.2 Functional unbundling

Functional unbundling allows the MO to be part of a larger gas enterprise that also owns subsidiaries with commercial interests (like producers, traders, and/or suppliers). Detailed conduct rules are used to (try to) ensure that the MO acts as if it were independent. These rules normally require the following:

- Separate accounts for the MO;
- Separate management for the MO;
- Strict restrictions on information flows between the MO and the other subsidiaries of its parent enterprise; and
- Nondiscriminatory provision of services and market information to all market participants.

There are two reasons why functional unbundling may lead to suboptimal outcomes. On the one hand, it comes into conflict with the incentives of any commercial enterprise that try to protect the profits of its parent or affiliated company. On the other, enforcing the rules is by far not an easy task and might need a lot of effort of the regulator.

3.2.3 Trade-off

Although ownership unbundling seems to be the most effective way to secure independence and impartiality, it may not always be attainable. Especially in countries where the development of competitive and liquid markets is still at a very early stage, it might be difficult to find an agent that is both willing to perform the role of MO and competent to do so (meaning it has the required knowledge and experience in gas trading), and, at the same time, does not "own" other companies with (commercial) interests in the gas market.

Take, for instance, the Dutch exchange APX. This company was founded in 1999 by energy companies. It was only later that APX became a subsidiary of the Dutch TSO TenneT, which was completely unbundled from market agents.

3.3 GOVERNANCE

When establishing a MO, close attention must be paid to its governance – what decisions are made, who makes them, how decisions are enforced and how disputes are resolved. One of the keys to governance lies in the composition and voting rules of the MO's governing board. Such board may consist of stakeholders, non stakeholders, or a combination of both, as can be seen in the table below.

Country	Operator	Government structure
Sweden	Svenska Kraftnet	The Board of Directors and Director General are appointed by the Government. It is organised in nine departments and they are linked to six councils, consisting of representatives of Svenska Kraftnät, the electricity industry, the natural gas industry and other interests.
Italy	Snam Rete Gas	The board comprises 6 members that belong to gas sector utilities.
UK	APX-Endex	The board comprises a minimum of 3 and maximum of 7 members. The majority of the members have to be independent.
Belgium	Fluxys	The board comprises a minimum of 3 and a maximum of 24 members. 1/3 have to be independent and 1 has to be a government representative.
Denmark	Energinet	The board comprises 11 members of which 8 have to be designated by the Energy Ministry, and 3 chosen as workers representatives.
Ireland	Gaslink	The board comprises 6 members belonging to gas sector utilities.
Argentina	MEGSA	The board comprises 4 independent members.
Australia	AEMO	The board has to be integrated by 5 up to 10 independent members. The members are chosen by the Ministerial Council on Energy.

Exhibit 2 Source: AF-Mercados EMI

3.3.1 Non stakeholder board

For the non stakeholder, or "classless", board members are chosen to be independent rather than to represent stakeholders. Members are banned from having current and future financial interests in market participants. Board seats may be reserved for those with particular expertise (market operations, finance and accounting, law and regulation). To avoid isolation, the board is usually advised by one or more stakeholder committees.

3.3.2 Stakeholder board

The stakeholder board allows each class of market participants (producers, traders, suppliers, etc) one or more representatives on the decision making board. Board members are allowed to directly and openly represent the economic interests of their organization or constituency within the operator´s regulatory framework and rules. At the same time, the situation of one class, or a small minority of classes, dominating the decision making process must be prevented, for instance by means of some sort of veto. In this way, independence is achieved "through a balance of power".

Although a stakeholder board could be perceived as slightly "chaotic", for countries that are in the early stages of liberalizing their gas markets, it could prove to be the only feasible model for two reasons:

- First, it gives the market participants some assurance that their interests are represented in the decision making process, when policies within the MO are being developed. This contributes to building the trust that is required for making sure that market agents start cooperating with the MO.

- Second, it might be impossible to find knowledgeable and experienced individuals without any ties to the existing market participants.

In order to operate with maximum effectiveness , experience suggests several requirements:

- The board cannot be too large or it will be ineffective as a decision making body. The maximum amount of board members should be limited to 7 or 9.

- The voting rules must ensure that not one or two classes cannot control board decisions. Rules should be designed to ensure that not one class can block a board action (meaning no veto rights), no two classes can mandate board decisions, and no market participant can take part in more than one class.

- The board must have a real decision making authority.

- The regulator must be able to step in and make decision if board members are in a deadlock; his only as a last resort.

The main point is, whether one chooses a stakeholder board or a combination, to make sure that all groups of stakeholders are represented. Only then can one have a real balance of power and can be seen as such by the market agents.

3.4 SECURING THE INDEPENDENCE OF THE EXECUTIVES AND PERSONNEL

Whether or not one chooses a stakeholder or a non stakeholder board, it is important that the people who are responsible for the daily operations of the MO act in a truly independent, impartial, and transparent way. This is often secured by:

- Eligibility criteria for the managers and personnel
- Ethical code of conduct
- Prohibition to work for a market agent directly after leaving the MO – often, a cooling down period is required.

3.5 FINANCING THE MO

Basically there are two ways to finance the MO:

- The first type of power exchanges is "merchant". This is a for profit market institution whose core business is to provide trading services. Merchant power exchanges invest in market infrastructures, and their return on investment depends on various user fees (i.e. user registration fees, and annual membership fees) and the volume of trade executed by the power exchange for its users (i.e. commissions on the traded volumes).
- The second type of power exchanges is "cost of service regulated". This is not for profit or regulated profit institutions, whose income depends on approved costs for approved tasks (like merchant power exchanges, some charging fees to their users), but these fees are approved by the regulator or the ministry (in case of economic regulation).

Both types of financing have their pros and cons. From a theoretical perspective, it can be argued that commercial and profit oriented MOs should operate more efficiently, because of their incentive to keep costs low. However, in case the MO obtains a monopolistic position, there is the risk of market power abuse, with negative consequences on others and hindering the transparent operation of the MO; given the fact that market agents have become dependent on the information the MO has gathered, they have no choice but to buy it at the MO, which can charge monopolistic prices.

It can be argued that this risk of abusing market dominance is absent in case there is a regulated and publicly owned MO. At the same, from this theoretical perspective, it is argued that these publicly organized MOs do not operate in an efficient way, due to lack of the proper incentives. However, it can also be argued that this could be solved by effective economic regulation.

Given the fact that we could not find any conclusive empirical evidence on which form works best, our vision is that both can work; what is important is being aware of the potential pros and cons, in order to solve them through effective regulation.

3.6 RULES AND PROCEDURES

In many cases, independence, neutrality, and transparency is also secured by demanding internal rules and procedures, i.e.: by ,means of a detailed code of conduct. Often, these internal rules and procedures are legally required, and often the authorities (the government or the regulator) have to (explicitly) approve them. Experience has shown that the following matters are tackled in the internal rules and procedures in order to secure its independence, neutrality, and transparency;

- that management and personnel are not allowed to have a (potential) conflict of interest;
    - they can only work for the MO and not for other market agents simultaneously
    - when leaving a market agent to work for the MO or the other way around, a cooling down period should exist
    - there should be a prohibition to have commercial interests in the outcome of operations (for instance, one should not have bonds or shares of a company that is involved in gas trading)
- that the gathering and processing of data guarantees confidentiality;
    - in practice, this means that the MO should have its own IT-infrastructure, instead of depending on its parent company
    - furthermore, the IT should be effectively ring fenced
- that the financial solidity is secured;
    - this implies the ring fencing of the financial resources
    - and some solvability and liquidity ratio´s to be monitored by the regulator
- that the auctioning process is impartial and transparent.

3.7 REGULATORY OVERSIGHT

Rules and procedures always need to be combined with a form of oversight. Different forms of oversight could be demanded, as well as a combination of them.

- **Auditing.** One could require that the rules and procedures should be regularly audited. This could be done internally, which has the benefit of increasing awareness within the organization. The question that arises is whether this form of auditing will be perceived as impartial. For this reason, often some form of external auditing is required. Whether this

should be done by the regulator, or by an expert company on behalf of the regulator, is something that could be discussed.

- **Certification.** One could require some form of certification. For instance, in Europe TSOs need to be certified by the regulator, indicating that the rules and procedures to secure independence are not only words on paper, but real practice.

- **Procedure to deal with complaints.** It is also important that in the given case a market participant suspects that he has not been treated in an impartial way, he can turn to an independent organization to file a complaint.; this could be the regulator.

- **Dispute resolution.** Furthermore, one needs to establish a form of dispute resolution. When there is a dispute between the MO and a market agent, they should be able to turn to an independent organization that can settle the dispute. This could be the regulator or another independent commission.

3.8 CONCLUSION

In order to secure a competitive and liquid gas market, there seems to be a growing consensus on what kind of institutional market design should be adopted. The main characteristic of this model is effective unbundling between TSOs on the one hand, and commercial market agents (producers, traders, and suppliers) on the other. More and more, the preferred form of unbundling between these functions is ownership unbundling.

Another main characteristic of this model is that (at least a significant part of) the trading is done at exchanges, creating liquidity and ensuring optimal use of transportation capacity. This is acquired by what is (in the gas sector) called the bundling of gas and transportation capacity as one product offered to the market (in electricity, this is often known as implicit auctioning.) These exchanges perform most of the functions that are assigned to the Colombian MO.

In an ideal situation, the exchange (like the TSOs) is not owned by any of the market agents with commercial interests. This ownership unbundling secures the independence and impartiality of the exchange (or of the MO). In practice, we see a substantial amount of exchanges (performing MO-tasks) being owned by TSOs, which are unbundled at the ownership level.

Though this model might prove to be the best, in practice it cannot always be implemented from the start. As a matter of fact, in several countries we can witness some sort of development, where initially market parties are fulfilling the role of the MO. After a certain period, the MO can develop itself towards a more and more autonomous and independent organization, breaking its ties with market participants.

During this transition process the authorities could take several different and complementary measures in order to secure independence, neutrality, and transparency. To be able to develop the right mix of measures, suited to the particular organizational setting of the MO, it could be

fruitful to first make a risk analysis (following the matrices of the previous chapter) and then make the right combination of the options presented in this chapter.

The following table gives an overview of the agents on the gas market. For each of them we indicate whether it could or could not perform the role of the MO, due to a potential conflict of interest. Where there is a potential conflict of interest, the agent should take the necessary measures to ensure there is no abuse or manipulation.

This point fulfills the assignment number 2 established by CREG contract,

Agents	Potential conflict of interest	Acceptable
Producers	Have a very clear commercial interest that substantially conflicts with the neutrality, independency and transparency of the MO.	Could not be seen as an acceptable candidate for performing the tasks of the MO.
Traders	Have a very clear commercial interest that substantially conflicts with the neutrality, independency and transparency of the MO.	Could not be seen as an acceptable candidate for performing the tasks of the MO.
Distributors	Although, selling and buying gas is not the primary source of business (as with producers and traders), distributors do have a clear commercial interest that conflicts with the neutrality, independency and transparency of the MO.	Could not be seen as an acceptable candidate for performing the tasks of the MO. However, if there is really no other feasible candidate, one could demand a combination of measures as described in this chapter in order to ensure there is no abuse or manipulation.
TSOs	Although, selling and buying gas is not the primary source of business (as with producers	Could not be seen as an acceptable candidate for performing the tasks of the

	and traders), TSOs do have a clear commercial interest that conflicts with the neutrality, independency and transparency of the MO.	MO. However, if there is really no other feasible candidate, one could demand a combination of measures as described in this chapter in order to ensure there is no abuse or manipulation.
E-MO	No potential conflicts of interest	Acceptable candidate
EG's	Have a very clear commercial interest that substantially conflicts the neutrality, independency and transparency of the MO.	Could not be seen as an acceptable candidate for performing the tasks of the MO.
G-MOs of other countries	Conflicts of interest should be reported only in the case they belonged to a business group that introduced gas to Colombia.	Acceptable candidate

To summarize, we can conclude by clarifying that any agent who has either direct or indirect interest in Colombia's natural gas sector in any stage if its value chain, this is, import, transport, distribution, trading or use for electric generation, creates a conflict of interest when wanting to run as the Gas Market Operator. On the contrary, the Colombian Electric Market Operator offers all abilities and no conflict of interest in its candidacy. Other possible candidates with similar abilities are other countries' Gas Market Operators that do not belong to business groups that hold an interest in the natural gas business in Colombia.

4 ANNEX

This point fulfills the assignment number 1 established by CREG contract.

4.1 ANALYSIS OF CONFLICTS OF INTEREST FOR PRODUCERS

Producers sell gas on the market and/or can act as a buyer on the secondary market. For this analysis, we assume that producers behave as "normal" economic agents striving to profit maximisation. Therefore, they have an interest in selling their gas at the highest possible price, and, in case they need to buy gas, to do so at the lowest possible price.

Tasks and responsibilities	Neutrality/Impartiality	Transparency	Independence
Electronic Bulletin	The information in the bulletin is valuable for determining ones market position. Producers have an incentive to keep this information for themselves. They have the incentive to only share it with others when it is profitable for them.	Due to the incentive to keep the information for themselves, there is the risk that the transparency of the market will suffer.	Given the fact that producers can benefit from having the information first, before sharing it with the rest of the market, they cannot be regarded as independent. They have a commercial interest that can be affected by having the information, and by not sharing it with the market.
Consolidation of information	When consolidating information producers have an incentive to use this information for their own economic benefits. Because of that, other market players would not conceive producers as a neutral party, whom they will trust with information about their trades.	After consolidating the information, producers have an interest in keeping the information first for themselves. They have the incentive to publish the information later, so that they have an advantage above the other market players.	As indicated, producers have a commercial interest that is affected by having and/or (not) sharing the information.
Management of the auctions	Producers have an interest in selling their gas at the highest possible price. They could never be a neutral MO towards other market players, because they have an economic/commercial interest in manipulating	Producers do not have an interest in sharing all the relevant information with other market players, especially the parties that have to buy the gas from them. For instance, they might want to give the impression that the market	Given the fact that producers have a stake in the outcome of the auctioning process, they cannot be regarded as independent.

	the auctioning process.	is short, so that they are able to ask for a higher price.	
Management of transaction secondary market	In order to sell their gas at the highest possible price, producers may not have an interest in a good functioning of the secondary market.; maybe if they are short and need to supply their customers, they do.	In order to sell at the highest price possible, producers have an incentive to only share information that lifts the price on the primary market upwards.	Given the fact that producers have a clear stake in the outcome of the process, they cannot be regarded as independent.
Following-up	Producers could not monitor the market in an impartial way. What if the producer itself has a dominant position and is abusing it? Will it then report this objectively?	If the producer itself has a dominant position, or at least the position of a pivotal supplier, he has an interest in not sharing all the information that came out of the following-up process.	Given the fact that a producer might have an interest in hiding or not sharing the outcomes of the following-up process, they cannot be regarded as independent.

4.2 ANALYSIS OF CONFLICTS OF INTEREST FOR LOCAL TRADERS

Traders buy and sell gas in order to make a profit. They therefore have an interest in buying "low" and selling "high". This analysis applies to both regular traders as well as traders of imported gas.

Tasks and responsibilities	Neutrality/Impartiality	Transparency	Independence
Electronic Bulletin	The information in the bulletin is valuable for determining ones market position. Traders have an incentive to keep this information for themselves. They have the incentive to only share it with others when it is profitable for them.	Due to the incentive to keep the information for themselves, there is the risk that the transparency of the market will suffer.	Given the fact that traders can benefit from having the information first, before sharing it with the rest of the market, they cannot be regarded as independent. They have a commercial interest that can be affected by having the information, and by not sharing it with the market.
Consolidation of information	When consolidating information traders have an incentive to use this information for their own	After consolidating the information, traders have an interest in keeping the information first for	As indicated, traders have a commercial interest that is affected by having and/or (not) sharing the

	economic benefits. Because of that, other market players would not conceive traders as a neutral party, whom they will trust with information about their own trades.	themselves. They have the incentive to publish the information later, so that they have an advantage above the other market players.	information.
Management of the auctions	Traders have an interest in selling their gas at the highest possible price. They could never be a neutral MO towards other market players, because they have an economic/commercial interest in manipulating the auctioning process.	Traders do not have an interest in sharing all the relevant information with other market players, especially the parties that have to buy the gas from them. For instance, they might want to give the impression that the market is short, so that they are able to ask for a higher price.	Given the fact that traders have a stake in the outcome of the auctioning process, they cannot be regarded as independent.
Management of transaction secondary market	By definition, traders take part in transactions on the secondary market. Having a clear commercial interest in trades, they can never be perceived as a neutral party in managing transactions on the secondary market.	Traders have an incentive to manipulate the information about the functioning of the primary and the secondary market if that gives them the possibility to increase their profits.	Given the fact that traders have a clear stake in the outcome of the process, they cannot be regarded as independent.
Following-up	Traders could not monitor the market in an impartial way. They have a clear commercial stake in the outcome of the process and they therefore have an incentive to manipulate with or abuse information.	Traders have a clear incentive to keep relevant market information for themselves if that could increase their profits.	Given the fact that a trader might have an interest in hiding or not sharing the outcomes of the following-up process, they cannot be regarded as independent.

4.3 ANALYSIS OF CONFLICTS OF INTEREST FOR DISTRIBUTORS

DSOs are in charge of selling natural gas to the non-liberalized users (those whose consumption falls below 100 million cubic feet). This means that DSOs have a (commercial) stake in gas trading. Assuming that they strive to profit maximization, we make the following analysis of their (potential) conflicts of interest.

Tasks and responsibilities	Neutrality/Impartiality	Transparency	Independence
Electronic Bulletin	The information in the bulletin is valuable for determining ones market position. Because DSOs trade in gas, they have an incentive to keep this information for themselves. They have the incentive to only share it with others when it is profitable for them.	Due to the incentive to keep the information for themselves, there is the risk that the transparency of the market will suffer.	Given the fact that DSOs can benefit from having the information first, before sharing it with the rest of the market, they cannot be regarded as independent. They have a commercial interest that can be affected by having the information, and by not sharing it with the market.
Consolidation of information	When consolidating information DSOs have an incentive to use this information for their own economic benefits. Because of that, other market players would not conceive DSOs as a neutral party, whom they will trust with information about their own trades.	After consolidating the information, DSOs have an interest in keeping the information first for themselves. They have the incentive to publish the information later, so that they have an advantage above the other market players.	As indicated, DSOs have a commercial interest that is affected by having and/or (not) sharing the information.
Management of the auctions	Due to their trading activities (DSOs have to buy the gas, they are selling to the end users) they should be seen as potential bidders in the auctioning process. Therefore, they could never be a neutral MO towards other market players, because they have an economic/commercial interest in manipulating the auctioning process.	DSOs do not have an interest in sharing all the relevant information with other market players, especially the parties from whom they buy the gas they will sell to the end users.	Given the fact that DSOs have a stake in the outcome of the auctioning process, they cannot be regarded as independent.
Management of transaction secondary market	DSOs can take part in transactions on the secondary market. Having a clear commercial interest in trades, they can never	DSOs have an incentive to manipulate the information about the functioning of the primary and the secondary market	Given the fact that DSOs have a clear stake in the outcome of the process, they cannot be regarded as independent.

	be perceived as a neutral party in managing transactions on the secondary market.	if that gives them the possibility to increase their profits.	
Following-up	DSOs could not monitor the market in an impartial way. They have a clear commercial stake in the outcome of the process and they therefore have an incentive to manipulate with or abuse information.	DSOs have a clear incentive to keep relevant market information for themselves if that could increase their profits.	Given the fact that a DSO might have an interest in hiding or not sharing the outcomes of the following-up process, they cannot be regarded as independent.

4.4 ANALYSIS OF CONFLICTS OF INTEREST FOR TSOs

TSOs are responsible for the operation and maintenance of transmission pipelines. A substantial amount of the TSOs in Colombia are vertically integrated. Therefore, they (ore their shareholders) have a commercial interest with regards to gas trading. The following analysis is based on this assumption.

Tasks and responsibilities	Neutrality/Impartiality	Transparency	Independence
Electronic Bulletin	The information in the bulletin is valuable for determining ones market position. Because TSOs trade in gas, they have an incentive to keep this information for themselves. They have the incentive to only share it with others when it is profitable for them.	Due to the incentive to keep the information for themselves, there is the risk that the transparency of the market will suffer.	Given the fact that TSOs can benefit from having the information first, before sharing it with the rest of the market, they cannot be regarded as independent. They have a commercial interest that can be affected by having the information, and by not sharing it with the market.
Consolidation of information	When consolidating information TSOs have an incentive to use this information for their own economic benefits. Because of that, other market players would not conceive TSOs as a neutral party, whom they will trust with information about	After consolidating the information, TSOs have an interest in keeping the information first for themselves. They have the incentive to publish the information later, so that they have an advantage above the other market players.	As indicated, TSOs have a commercial interest that is affected by having and/or (not) sharing the information.

	their own trades.		
Management of the auctions	Due to their trading activities (TSOs have to buy the gas, they are selling to the end users) they should be seen as potential bidders in the auctioning process. Therefore, they could never be a neutral MO towards other market players, because they have an economic/commercial interest in manipulating the auctioning process.	TSOs do not have an interest in sharing all the relevant information with other market players, especially the parties from whom they buy the gas they will sell to the end users.	Given the fact that TSOs have a stake in the outcome of the auctioning process, they cannot be regarded as independent.
Management of transaction secondary market	TSOs can take part in transactions on the secondary market. Having a clear commercial interest in trades, they can never be perceived as a neutral party in managing transactions on the secondary market.	TSOs have an incentive to manipulate the information about the functioning of the primary and the secondary market if that gives them the possibility to increase their profits.	Given the fact that TSOs have a clear stake in the outcome of the process, they cannot be regarded as independent.
Following-up	TSOs could not monitor the market in an impartial way. They have a clear commercial stake in the outcome of the process and they therefore have an incentive to manipulate with or abuse information.	TSOs have a clear incentive to keep relevant market information for themselves if that could increase their profits.	Given the fact that a TSO might have an interest in hiding or not sharing the outcomes of the following-up process, they cannot be regarded as independent.

4.5 ANALYSIS OF CONFLICTS OF INTEREST FOR E-MO

As we have understood, there is not yet a SO for the gas market. There is one for the electricity market though. We have also learned that the E-TSO, of which the E-SO is part, is not part of a vertically integrated company with a commercial interest in gas. Furthermore, this E-MO performs the role of the MO for the electricity market.

Tasks and responsibilities	Neutrality/Impartiality	Transparency	Independence
Electronic Bulletin	Because the E-MO does not trade in gas, it has no incentive to keep this information for itselve.	Due to the fact that the E-MO has no incentive to keep the information for themselves, there is no risk that the transparency of the market will suffer, due to the commercial interests of the E-MO.	Given the fact that the E-MO won't benefit from having the information first, before sharing it with the rest of the market, they be regarded as independent.
Consolidation of information	When consolidating information the E-MO has no incentive to use this information for its own economic benefits. It could therefore be regarded as a neutral or impartial party.	After consolidating the information, the E-MO has no interest in keeping the information for itself.	As indicated, the E-MO does not have a commercial interest that is affected by having and/or (not) sharing the information.
Management of the auctions	The E-MO has no (commercial) interest in the outcome of the auctioning process. Therefore, they could be regarded as a neutral party. (They don't have an interest in manipulating the auctioning process.	The E-MO does not have an interest withholding any relevant information from market players.	Given the fact that the E-MO does not have a stake in the outcome of the auctioning process, it can be regarded as independent.
Management of transaction secondary market	The E-MO won't take part in transactions on the secondary market. Having no commercial interest in trades, they can be regarded as a neutral party in managing transactions on the secondary market.	The E-MO has no incentive to manipulate the information about the functioning of the primary and the secondary market (it won't increase its profit).	Given the fact that the E$-MO does not have a clear stake in the outcome of the process, it can be regarded as independent.
Following-up	The E-MO could monitor the market in an impartial way. It has no commercial stake in the outcome of the process. Therefore the SO does not have an incentive to manipulate with or abuse information.	The E-MO has no incentive to keep relevant market information for itself (that would not increase its profits).	Given the fact that the E-MO does not have an interest in hiding or not sharing the outcomes of the following-up process, it can be regarded as independent.

4.6 ANALYSIS OF CONFLICTS OF INTEREST FOR ELECTRICITY GENERATORS

Electricity Generators (EGs) are buyers on the natural gas market. They therefore have a clear commercial interest – buying the gas at the lowest possible price.

Tasks and responsibilities	Neutrality/Impartiality	Transparency	Independence
Electronic Bulletin	The information in the bulletin is valuable for determining ones market position. Because EGs are buyers of gas, they have an incentive to keep this information for themselves. They have the incentive to only share it with others when it is profitable for them.	Due to the incentive to keep the information for themselves, there is the risk that the transparency of the market will suffer.	Given the fact that EGs can benefit from having the information first, before sharing it with the rest of the market, they cannot be regarded as independent. They have a commercial interest that can be affected by having the information, and by not sharing it with the market.
Consolidation of information	When consolidating information EGs have an incentive to use this information for their own economic benefits. Because of that, other market players would not conceive EGs as a neutral party, whom they will trust with information about their own trades.	After consolidating the information, EGs have an interest in keeping the information first for themselves. They have the incentive to publish the information later, so that they have an advantage above the other market players.	As indicated, EGs have a commercial interest that is affected by having and/or (not) sharing the information.
Management of the auctions	Due to their trading activities (EGs have to buy the gas, they need for generating electricity) they should be seen as potential bidders in the auctioning process. Therefore, they could never be a neutral MO towards other market players, because they have an economic/commercial interest in manipulating the auctioning process.	EGs do not have an interest in sharing all the relevant information with other market players, especially the parties from whom they buy the gas they will sell to the end users.	Given the fact that EGs have a stake in the outcome of the auctioning process, they cannot be regarded as independent.
Management of transaction	EGs can take part in transactions on the	EGs have an incentive to manipulate the	Given the fact that EGs have a clear stake in the

secondary market	secondary market. Having a clear commercial interest in trades, they can never be perceived as a neutral party in managing transactions on the secondary market.	information about the functioning of the primary and the secondary market if that gives them the possibility to increase their profits.	outcome of the process, they cannot be regarded as independent.
Following-up	EGs could not monitor the market in an impartial way. They have a clear commercial stake in the outcome of the process and they therefore have an incentive to manipulate with or abuse information.	EGs have a clear incentive to keep relevant market information for themselves if that could increase their profits.	Given the fact that a EG might have an interest in hiding or not sharing the outcomes of the following-up process, they cannot be regarded as independent.

4.7 G-MOs OF OTHER COUNTRIES

Finally, it is expected that the G-MO selection process can broaden and give a chance to operators of other countries and to whom this detailed analysis would not be applied, provided that they did not belong to business groups who could have an interest in the Colombian gas sector.