



LIETUVOS RESPUBLIKOS UKIO MINISTERIJA
MINISTRY OF ECONOMY OF THE REPUBLIC OF LITHUANIA

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Mr. Donald L. Evans

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Secretary, the U.S. Department of Commerce

Case Number A-451-801

**COMMENTS CONCERNING THE STATEMENT ON THE LITHUANIA'S STATUS AS A
NON-MARKET ECONOMY MADE BY „AKIN GUMP, STRAUSS HAUER & FELD LLP“**

Dear Mr. Donald L. Evans,

With reference to the comments presented by the US legal firm “Akin Gump Strauss Hauer & Feld LLP” on behalf of Ad Hoc Committee of Domestic Nitrogen Producers concerning the Lithuania's status as a non-market economy I have the honor to inform You on the following.

Until 1992 the only company in Lithuania allowed to sell natural gas after purchasing it from the Russian OAO “Gazprom” was AB “Lietuvos Dujos”.

Since 1992, by the Resolution No 642 of the Government of the Republic of Lithuania both state and private entities have been allowed to import and sell natural gas and other energy resources without any quantitative restrictions. This Resolution is currently in force.

As a result of this liberalization, other gas suppliers were established in Lithuania (the Lithuanian and the US Company UAB “Itera Lietuva”, joint Lithuanian - Russian venture UAB “Stella Vitae”, UAB “Iteralit”, UAB “Dujotekana”). These companies sell gas to “Lietuvos Dujos” or directly to the major final gas consumers. Currently major share of the overall natural gas consumption in Lithuania (about 80%) is being purchased by the free consumers from newly established gas suppliers. In accordance with the provisions of the Law of the Republic of Lithuania on Natural Gas enforced since October 10, 2002 free consumers have the freedom of choice in selecting a supplier of gas. The status of free consumer is also granted to the AB “Achema”, importing natural gas to Lithuania at contractual prices directly from the Russian company “Gazprom” since 1994, and using the imported natural gas for internal needs as the main raw material for production of ammonia, urea and other nitrogen fertilizers.

Due to the fact that AB “Achema” is operating under the laws of private ownership and is entirely independent in its activities, the Government is not and shall not be responsible for the company's liabilities. Therefore, the negotiated price is determined by the market economy principle. In this respect the Government makes no influence on the gas price and has no possibilities to influence it.

I would like to remind you that the U.S. Department of Commerce acknowledged Russia as a market economy country on June 3, 2002. This implies that economic entities functioning in Russia, including OAO “Gazprom”, sell their production under market economy conditions. Furthermore,

on November 4, 2002 a market economy country status was granted to Russia by the EU. The latter acknowledged Lithuania as a market economy country as long ago as 1995.

I would like to draw your attention to the statement of the firm “Akin Gump Strauss Hauer & Feld LLP” that AB “Lietuvos Dujos” is a partially privatized enterprise, and, therefore, clarify on the current share distribution in the company, that is as follows: 58,36 % owned by the State, 35,60 % owned by the consortium of Ruhrgas AG and E.ON Energie AG (Germany), and 6,04 % - by legal and natural persons.

Another 34 % portion of the currently state-owned shares of the AB “Lietuvos Dujos” will be sold during the second privatization stage of the company. This privatization stage is intended to be finalized during the 1st quarter of 2003.

In its letter the aforementioned US legal firm also provides a comment about AB “Lietuvos Dujos” control over the Lithuanian natural gas transmission and distribution infrastructure. This situation has been caused by the fact that this company still owns all the main grids as well as approximately 75 % of the distribution grids. Therefore, the company provides services of the grid exploitation, gas transportation and distribution. In conformity with the Resolution No 642 of the Government of the Republic of Lithuania as well as the National Law on Natural Gas the natural gas suppliers and free consumers are permitted to use the main and local gas pipelines on contractual basis. Free consumers, who purchase natural gas from the other gas suppliers than the company “Lietuvos Dujos”, pay the fees of a fixed rate for transportation, transmission and distribution services.

However, it is noteworthy that the amount of gas purchased directly from the OAO “Gazprom” by the company “Lietuvos Dujos” itself (though it has sold to the final consumer about one-third of the total amount of gas consumed in Lithuania in 2001 and according to the forecast for 2002 – about 20 % of it) does not constitute even one-fifth of the natural gas amount purchased by Lithuania from the Russian companies. For instance, AB “Lietuvos Dujos” purchased from Russia (OAO “Gazprom”) only about 14 % of the total amount of natural gas purchased by all Lithuanian companies from Russia in 2001; according to the forecast for 2002, this percentage should equal to approximately 17 %. AB “Lietuvos Dujos” repurchases the remaining amount, which it lacks to supply to the final consumer, from other Lithuanian companies that buy gas directly from OAO “Gazprom”.

The average price in West Europe referred to in the comments provided by the firm “Akin Gump Strauss Hauer & Feld LLP”, i.e. 132 USD/1000 nm³, should not be compared with the price paid by the company “Achema” for gas from Russia. From our point of view, 132 USD/ nm³ is the gas price charged for the very small gas consumer that purchases gas through several intermediaries. According to the data provided by the “European Gas Markets”, over the current year price for the Russian natural gas for such gas purchasers like “Ruhrgas” (the German – Czech border Waidhaus) fluctuated from ~102 to ~111 USD /1000 nm³ (~2,8 - ~3,14 USD / MMBTU*) and the company “Snam” (the German – Austrian border Baumgarten) – from ~93 to ~107 USD/ 1000 nm³ (2,64 – 3,04 USD /MMBTU).

It is important to take into account the distance of gas transportation to the border of the buyer’s country, which also impacts the price of gas. The gas prices “on the border” for countries with similar transportation distances (e.g. Lithuania, Poland), are comparable. Thus, having assessed the current gas supply structure and the fact that the distance from the Lithuanian – Byelorussian border to the German – Czech and the German – Austrian border makes over 1000 km, one may draw a conclusion that the prices for natural gas sold in Lithuania should differ from those paid by the purchasers of West Europe.

In addition, as a result of analysis of the data provided by “European Gas Markets”, we have noticed that the gas price in the United States of America was ~75 USD/ 1000 nm³ or 2,14 USD/

* 1000 nm³ = 35,3 MMBTU

MMBTU (publications containing Nymex gas futures listings are attached) between February and July of the current year, and the price for natural gas in Russia was ~24 USD/ 1000 nm³ (~0,68 USD/ MMBTU).

To conclude I would like to remind the comment provided in the final decision by the U.S. Department of Commerce regarding acknowledgement of Russia as the market economy country in the chapter “The extent of government ownership or control of the means of production. Assessment of Factor”: “The state (i.e. Russia) retains shareholdings in the energy (electricity and gas) <...> but these are sectors where many market economies retain residual (sometimes complete) state ownership”. Thus far, this has not impeded granting Russia the status of the market economy country.

Besides, experience gained by other developed countries has also showed that effective and stable functioning of the energy sector is not feasible without State supervision under the free market conditions.

I hope that the arguments and comments provided in this letter will lead you to the conclusion that gas purchasing and supply procedures in Lithuania are performed under the market economy conditions.

Enclosure. The “European Gas Markets” publications for period February – November 2002, 20 copies.

Sincerely yours,

Minister

Petras Cesna