

<b>ANNOUNCEMENT OF APPEAL</b>
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**Case:** N/A

**Appellant:** FGSZ Földgázszállító Zártkörűen Működő Részvénytársaság ("FGSZ")  
Tanácsház u. 5 8600 Siófok Hungary

**Appeal received on** 7 June 2019

**Subject matter:** The incremental capacity project proposal for the Mosonmagyaróvár interconnection point

**Keywords:** Incremental capacity procedure, competence, interconnection point, proportionality, good administration


**Contested Decision Number:** Decision No 05/2019

**Language of the case:** English

**Remedy sought by the Appellant**

**The Appellant respectfully requests the Board of Appeal to:**

1. Annuls the Contested Decision on HUAT project for lack of competence of ACER.
  - 1.1. Alternatively,
    - 1.1.1. that the Board of appeal annuls Article 2(4) insofar as it obliges the Appellant in case of a positive outcome of the economic test for the HUAT project to implement the HUAT project, submit a project implementation and report on the HUAT project and
    - 1.1.2. remit the remainder of the case to the competent body of ACER.
  - 1.2. And further in the alternative, that the Board of Appeal remit the case to the competent body of ACER.

<b>Date of Submission:</b> 7 June 2019	<b>Name:</b> Dr. Zoltán Hegymegi-Barakonyi	<b>Signature:</b> 
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## **Pleas in law and main argument**

The Appellant submits that the Contested Decision violates EU law as follows:

1. ACER lacked competence under EU law to adopt the Contested Decision obliging FGSZ to implement (provided a positive outcome of the required related economic test) the incremental capacity project proposal for the Mosonmagyaróvár interconnection point and to address the Contested Decision to FGSZ;

As such, ACER did not and could not have relied on any provision of EU law to take the Contested Decision. ACER's decision-making capacity is limited as a matter of EU law and does not extend to decisions covering an entire incremental capacity project such as the HUAT project. Given the nature of the obligations and the gravity of the related restrictions of fundamental rights contained in the Contested Decision, ACER would have required an express legal basis for the Contested Decision.

Consequently, the Appellant requests the Board of Appeal to annul the Contested Decision in its entirety.

2. Alternatively, assuming ACER was competent to take the Contested Decision, which the Appellant contests, ACER violated applicable provisions of EU law when it adopted the Contested Decision as follows

### **2.1. Violation of Article 8(1)(a) ACER Regulation**

Should the Board of Appeal consider ACER to have had the competence and to have relied on the correct provisions of EU law granting it this competence, ACER's decision remains vitiated by fatal violations of EU law, both substantive and procedural.

These violations are contained in section 6.2 of the Contested Decision, following ACER's summary of the HUAT project proposals as well as of third party observations and an overview of the provisions of the CAM NC and the TAR NC that ACER has applied in its assessment (para. (37-59) Contested Decision).

The Contested Decision violates Article 8(1)(a) of the ACER Regulation, because its Article 2(4) requires FGSZ to implement the HUAT project by 1 October 2024, provided the result of the economic test under Article 22(3) CAM NC and Article 3 of the Contested Decision are positive.

### **2.2. Violation of Article 22(1) and 28(1)(d) CAM NC, lack of sufficient reasoning and violation of Article 22 Gas Directive**

Given that the Contested Decision does not provide appropriate justification for why the downward amendments are required and justified, and how the amended parameters can still ensure that all costs of FGSZ are covered, the Contested Decision violates Article 22 of the Gas Directive which is the very foundation of the power of an NRA to oblige a TSO to construct infrastructure and which provides that *"Where the regulatory authority has made use of its powers under the first subparagraph of paragraph 7 [obligation to invest], the relevant tariff regulations shall cover the costs of the investments in question."*

### 2.3. Violation of Article 22(1)(b) CAM NC

ACER violated its obligations under Article 22(1)(b) CAM NC to properly assess the parameters related to the present value of the estimated decrease in the allowed or target revenue of FGSZ when it reduced the contingency margin proposed by the TSOs.

### 2.4. Violation of Article 28(2) CAM NC


ACER violated Article 28(2) of the CAM NC by failing to properly analyse and take into account the detrimental effects on competition and the effective functioning of the internal gas market related to the HUAT project.

### 2.5. Violation of Article 17,18 and 51 of the Charter

The Contested Decision improperly creates a conditional obligation specifically on FGSZ to construct the project. This results in a *de facto* expropriation of company assets which is a particularly serious restriction of these freedoms.

### 2.6. Violations Article 41 of the Charter: right to good administration

In this case, ACER has failed to discharge this obligation by accepting the case where instead it should have refused to do so failing to establish or consider all relevant facts (CBA not required/done, elective/incomplete modelling/model simulation) gaming the voting procedure (putting the fundamentally unchanged proposal for the Contested Decision to vote on several occasions until the required majority in favour was reached following a non-transparent process involving influencing select undisclosed members of the Board of Regulators) failing to grant timely and complete access to file upon the Applicants request shortly after the adoption of the Contested Decision.

Date of Submission: 7 June 2019	Name: Dr. Zoltán Hegymegi- Barakonyi	Signature: 
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