

Eni Gas & Power's response to ERGEG's Public Consultation Paper "Draft Guidelines on Article 22"

Introduction

A clear regulatory framework in matter of investment incentives for new gas transmission, storage, LNG and distribution infrastructures has to be considered a fundamental point in view of strengthening security and diversification of supply in the European gas market.

In the present context of liberalised sale market the best model to enhance conditions for new infrastructure investments has to be based on the introduction of incentives useful to attract entrepreneurial initiatives at different level of gas chain.

Taking into account the level of risk and the amount of capital resources that this kind of projects imply, in our opinion the exemption procedure constitutes the main way to introduce incentives to invest. Moreover, for the same reason, infrastructure investments has to be conducted through project financing procedures that, added to adequate incentives, allow the participation of a number of project sponsors identified through market tests.

In this context, Open Season (OS) procedures, to be effective in supporting and favouring new infrastructure investments, should be conceived as an instrument to:

- identify market capacity demand (through binding contractual commitments);
- verify the availability of market operators to finance required investments.

An OS procedure, conceived only as an instrument to investigate demand side, is not effective without the existence of operators available to finance investment projects and any administrative action to identify them would produce the risk of shifting on the system under usage costs.

At the same time it is difficult to attract market investors without incentives in terms of exemption procedures; moreover this solution constitutes a good balance between financing operators interests and the aim of encouraging competition, making available new capacity. Therefore, in our opinion, the introduction of strict constraints to the usage of the exemption instrument is not consistent with the aim of creating an adequate market incentives framework.

Responses to the main Consultation points

1) Do you consider the described general principles and guidelines appropriate to achieve a consistent and transparent framework for competent authorities when deciding on exemption procedures ?

The goal to define a consistent and transparent framework to apply exemption procedures is a good initiative to have an EU-wide consistent approach.

The general principles proposed by ERGEG appear appropriate; nevertheless some points in our opinion could be critical and need to be underlined.

Use-it-or-lose-it mechanisms are not suitable anti-hoarding instruments where applied to the exempted part of the infrastructure (point 2.6). Such a provision would discourage investors who should undertake high risks: in case of capacity rights' loss, they wouldn't be able to respect project business plan provisions and wouldn't be able to recover the investment.

For the same reasons, the exemption review (point 2.10) should be bounded to exceptional circumstances on the basis of absolutely clear, stable and preconceived conditions.

These conditions should be, as the all exemption rules, applied homogeneously at European level. In our vision decisions about exemption matters should be committed to a super-partes institutional body, such as the Agency of European Regulators as proposed in the III energy package.

2) *Do you consider the present scope of eligible infrastructure to be too narrow ?*

We support the idea introduced in the document (point 2.2) that exemption regime to interconnectors, LNG and storage facilities should be extended to new technologies serving the same purpose. Nevertheless some clarifications on the concept of “interconnector” would be welcome. There are different possible interpretations of the term “interconnector”; the narrowest one confines it to a very short length of pipeline that crosses a border, the most extensive and appropriate one could include the full length of a pipeline connecting facilities situated in two countries, including back up infrastructures.

3) *Do you consider open season (or comparable) procedures an important tool in assessing market demand for capacity with respect to determining the size of the project applying for exemption, as well as in the subsequent capacity allocation ? Should open season (or comparable) procedures be mandatory ?*

4) *Should open season also be used to allocate equity ?*

OS is a good tool to consult the interested parties to assess the demand for capacity but it can neither be considered as an accurate tool to decide the exact size of the investment, nor OS's result should constitute a constraint for investors. The result of an OS could give a biased view of the market need depending on the conditions of the OS and on the responders targets. In any case, contractual binding commitments are necessary to utilise OS instrument as an effective test for capacity market demand. In term of mandatory, we agree with the ERGEG position expressed in paragraph 2.9; the need of an OS procedure should be evaluated case by case, also balancing costs and potential benefits.

An OS procedure conceived only as an instrument to investigate demand side, is not effective without the existence of operators available to finance investment project. In this case, OS procedures should be conceived as an instrument aimed at testing, not only capacity demand but also availability of market operators to finance the project itself.

In this view, OS could be a good instrument, in case of lack of investors, to identify availability of sponsors to “participate” in the equity of the project.

In any case, the judgement to enter or not into a co-ownership of a facility is based on the quality of other co-owners and their ability to take risks all together. The decision should remain upon the companies' responsibility to share participating interest in a facility. It should be their responsibility to decide with which partners they want to share risks over several years.

5) *Some stakeholders think that Art.22 should be applied differently to LNG terminals as they may be generally better suitable for enhancing competition and security of supply than other types of eligible infrastructure. What is your point of view on this ? If you agree, how should this be reflected in the guidelines ?*

In our opinion Art. 22 should be applied indifferently to all new infrastructures. Specific features of each project are evaluated in a case by case assessment.

6) *Are the described criteria for assessing the effects on an investment in infrastructure on enhancement of competition in gas supply appropriate ?*

In principle, we consider the described criteria related to enhancement of competition appropriate. In particular, when deciding about exemption it's important to take into consideration the need of balancing project sponsors' interests and incentives and the aim of enhancing competition. In the

light of that, and considering the level of risk and the amount of capital resources implied, the exemption procedure constitutes the main way to incentive investments.

Moreover in assessing the project effects on enhancement of competition, it's fundamental the correct evaluation of the relevant market that, in the light of the present gas market context and in the perspective of the creation of a single European gas market, should be identified at European level.

- 7) *Are the described criteria for assessing the effects on an investment in infrastructure on enhancement of security of supply appropriate ?*
8) *Are the described criteria for risk assessment appropriate ?*

The criteria for assessing the enhancement of security of supply and risk are appropriate.

- 9) *Are the described criteria for assessing whether the exemption is no detrimental to competition or the effective functioning of the internal gas market or the efficient functioning of the regulated system to which the infrastructure is connected appropriate ?*

Concerning the enhancement of competition, please consider answer n. 6.
Criteria for assessing the efficient functioning of the gas market are sharable.

- 10) *To what extent should consultations with neighbouring authorities be done ?*

Regulatory authorities should always coordinate in the case the new investment is an interconnector and they have to set up common or, at least, compatible rules for the facility on each side of the border. In our vision, decisions about exemption matters should be committed to a super-partes institutional body, such as the Agency of European Regulators proposed in the III energy package. Consultation between neighbouring authorities should, in any case, concern all cross border matters.

- 11) *Parts 3.3.1.1 and 3.3.1.2 of the proposed guidelines deal respectively with partial and full exemptions. Do you consider the described decisions (partial/full exemption) appropriate in safeguarding the goal of Directive 2003/55/EC in making all existing infrastructure available on a non-discriminatory basis to all market participants and safeguarding the principle of proportionality ?*

Both partial and full exemption decisions are appropriate and consistent with the goal of Directive 2003/55/EC, in term to grant non-discriminatory access to infrastructures.

- 12) *Do you believe that Art. 22 exemptions should also benefit incumbents or their affiliates ? If yes in what way and to what extent ?*

As granting an exemption is a case by case decision, there is no reason to discard incumbents if the criteria to obtain the exemption are met. Any project that meets the five tests should obtain the exemption; also in the case where is an incumbent to benefit by the exemption itself; making available new capacity is an advantage for the system.

The way and extent of the exemption should be defined case by case, taking into account the general principle of a good balance between financing operators interests and the aim of favouring competition; there is a wide range of exemption types that the regulator can adopt to define appropriately to what extent the exemption should be given.

- 13) *Do you agree that under certain circumstances, deciding authorities should be entitled to review the exemption ? How can it be assured that this does not undermine the investment?*

Investors need to be confident in a stable regulation framework to take their decision. They need to be sure that the regulation will not change during the pay back period of their investments. As

stated in answer n.1, the exemption review should be bounded to exceptional circumstances on the basis of absolutely clear, stable and preconceived conditions.
These conditions have to be, as the entire exemption rules, applied homogeneously at European level.

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