



Genoa, May 5th, 2008

*Draft Guidelines on Article 22
An ERGEG Public Consultation Paper*

◆ 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?

◆ Do you consider the present scope of eligible infrastructure to be too narrow?

The general principles and guidelines seem appropriate for the analysis of exemption procedures.

LNG terminals and storage facilities have to be included (as they already are) in the analysis of Article 22 exemption regulation.

◆ 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?

Open season procedures are an important instrument for capacity allocation design and for maximizing capacity utilization.

The application of open season procedures for the allocation on a long term basis of non TPA exempted capacity could have a positive effect on infrastructure project financing.

In our opinion it is preferable an anticipated open season procedure on non TPA exempted capacity in order to facilitate investment decisions.

◆ Should open seasons also be used to allocate equity?

No.

◆ 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?

As a general rule all the infrastructures should be considered according to the following criteria: where the only effective mean to enter the market for a "new comer" and to increase, if necessary, national gas system reliability and flexibility is to build new infrastructures (due to lack of available capacity on existing infrastructures or to discriminatory access to the infrastructure among newcomers and incumbents).



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

The key point refers to the promotion, to the maximum extent, of long term capacity reservation by new operators in the gas market.

◆ Are the described criteria for assessing the effects of an investment in infrastructure on enhancement of security of supply appropriate?

Exemptions may lead to supply diversification, particularly in the case of promoters with gas supply from new geographical areas. In particular LNG terminals and storage facilities promoted by newcomers (in the reference -i.e. national- market) can provide respectively access to (new) alternative sources of upstream gas supplies and new sources of flexibility.

◆ Are the described criteria for the risk assessment appropriate?

◆ Are the described criteria for assessing whether the exemption is not 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?

A higher level of detail regarding the information to be provided (ex. Which sensitive data should be provided? Which level of detail?) by the applicant and the evaluation criteria could be useful to optimise the process both for Promoters and for National Regulatory Authorities. This could also lead to a more harmonized approach across EU.

◆ To what extent should consultations with neighbouring authorities be done?

It should be done on a case by case basis: for national markets which are not fully opened to competition and where incumbents still have a leading role, this does not seem to be a priority. On the contrary, for macro-regional markets a consultation with neighbouring countries authorities could be suggested. Anyhow evaluation criteria (referring to each Member State gas market situation) should be harmonized through the EU Member States.

◆ 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?



The described decisions seem appropriate to the scope, even if a special care should be put on preventing negative effects on competition and on security/diversification of supply arising from the application of allocation procedures

A case by case approach should be preferred.

In particular in case of infrastructures promoted by investors with low market share or new entrants (in the relevant market) it could be better to grant an exclusive use of the infrastructure in order to facilitate their market entry and the full utilisation of the infrastructure.

The exclusive use of the capacity should be linked to its real utilization, trying to balance reliability requirements and competition enhancement/security of supply issues.

The rules for the application of use-it-or-lose-it measures should be clearly defined during the TPA exemption process through the application of sever rules fixing adequate advance notice time (i.e. at least two months as for Zeebrugge terminal) for the unused capacity release process.

Furthermore, in order to assure an efficient and transparent use of the infrastructures, it should be defined a minimum level of capacity utilization as a reference level – at regime conditions – for the ex post capacity utilization check.

♦ Do you believe that Art 22 exemptions should also benefit incumbents or their affiliates? If yes in what way and to what extent?

In the definition of a specific treatment for market dominant players and “newcomers”, it is important to define, for each Country, the level of concentration in all the segments of the value chain.

Consistently with the criteria of Article 22, TPA exemption should not be applied to Operators which are incumbents (or affiliated companies) in the National market, in order not to detriment competition.

♦ 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?

Since stability and predictability of the regulatory framework are essential elements for investors we think that, as a general rule, deciding authorities should not be entitled to review the exemption once it has been granted.

Nevertheless it is worth to note that in case of late capacity release or underutilization of the capacity the deciding authorities could verify if rules are respected and possibly review the initial exemption.