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Via Email to: [article22@ergeg.org](mailto:article22@ergeg.org)

European Regulators Group for  
Electricity and Gas (ERGEG)  
Rue le Titien, 28

B 1000 Bruxelles

Prague, May 2, 2008

**Draft Guidelines on Article 22  
An ERGEG Public Consultation Paper  
Ref.: E07-GFG-31- 07**

**Comments by RWE Transgas, a.s.**

Dear Sir/ Madame:

RWE Transgas, a.s. welcomes the opportunity to comment on ERGEG's draft guidelines on Article 22. In principal RWE Transgas, a.s. agrees with ERGEG's guideline proposals providing harmonized and transparent framework for competent authorities on exemption decisions. ERGEG correctly points out that it is crucial to have an appropriate framework in order to create incentives to promote the necessary infrastructure investments. Investments shall be open to interested parties on a non-discriminative basis as they contribute to a common European gas market and to security of supply.

Following are the detailed answers to the stakeholder questions:

**Questions for stakeholders**

- ◆ **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?**

Answer: We do agree that guidelines on Article 22 should enhance competition in gas supply and contribute to security of supply. We also agree with a need for clarification on the scope of Article 22, that new significantly increased capacities or the modification of

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the existing infrastructure shall be covered, that the national regulating authorities shall decide on the exemption on a case-by-case basis.

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

Answer: No, but ERGEG's proposal on this matter better reflects today's situation also in respect of the increasing share of LNG. However, LNG exemptions require a different approach, elaborated on later in this document.

◆ **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?**

Answer: Open season procedures are the best tool to determine actual market demand as market participants have a fair chance to raise their opinion. However, open season procedures shall not be the only criteria for exemptions. Assessing market demand is crucial for a project but not the only criteria as estimated future demand and contractual supply situations in addition to project cost, and time frame also play important roles in exemption applications. Whether open season procedures shall be mandatory requires further analysis as it goes beyond current legislation.

◆ **Should open seasons also be used to allocate equity?**

Answer: No. The determination of owners' equity should be left alone to the parties involved and not be part of an open season procedure. Ownership structures are not the responsibility of sector regulators unless the ownership structure needs to be addressed towards the relevant competition authority as part of the competition law.

◆ **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?**

Answer: We agree that LNG terminals as well as LNG technology should be treated differently. LNG terminals are open to worldwide supplies and capacity utilization varies widely and price fluctuations may result in re-routing of LNG shipments. In that respect conditions of article 22, para. 3 such as "use-it-or-lose-it" shall not apply or should be adjusted accordingly. In general, decisions on exemptions on LNG terminals must also be based on a case-by-case basis.

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

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Answer: Yes, the described criteria for assessing infrastructure investments enhancing competition seem to be appropriate.

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

Answer: Yes, the described criteria for assessing infrastructure investments enhancing security of supply seem to be appropriate.

◆ **Are the described criteria for the risk assessment appropriate?**

Answer: The described risk criteria seem to be appropriate. However, multiple factors play a role in the final decision for an exemption application and need case-by-case analysis.

◆ **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?**

Answer: Yes. In any event an application for an exemption requires a thorough analysis reflecting all aspects.

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

Answer: It should be clarified who is meant by “authorities” and to what extent the consultations affect the decision making process of an application for an exemption. With regard to national regulation, regulators should communicate with each other in cases of cross-border projects in particular interconnectors. In general, however, a better understanding of the neighboring regulatory situation by the national regulating authorities is preferable.

◆ **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?**

Answer: ERGEG’s proposed guidelines for partial and full exemptions are appropriate and will not hinder the goals of Directive 2003/55/EC, nevertheless we do prefer full exemption as partial exemption based on tariff- and or capacity allocation may negatively affect the investment decision. In case of a partial exemption on tariff requires full transparency to all market participants.

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Exemptions are based on a case-by-case basis enhancing the overall supply- and security of supply situation. Furthermore the exemptions are limited for a certain period of time based on the project details. Because of the exemption the necessary infrastructure investment takes place and contributes to a common European gas market.

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

Answer: Considering a common European gas market and stable security of supply, continuous investments in infrastructure are prerequisite. As exemptions are individually assessed (case-by-case) and on a non-discriminative basis incumbents shall also be treated in a non-discriminative way with same benefits as well as risks involved.

◆ **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?**

Answer: It needs to be determined what the review includes. Once the exemption has been granted a review shall not impact tariff components of the actual investment. For all parties involved in the investment decision, a stable regulatory framework is of utmost importance.

We hope that we could contribute with the above answers to the development of Guidelines on Article 22. Please do not hesitate to contact me with further questions.

With kind regards,

Hartwig Ziegler

Regulatory Affairs  
RWE Transgas, a.s.