

## *GIE comments on* **Draft Guidelines of Good Practices on Open Season Procedures (GGPOS)**

### **I. General comments**

1. ERGEG posted on the 6th of December 2006 a public consultation paper regarding the Guidelines of Good Practices on Open Season Procedures. GIE welcomes this ERGEG Draft on GGPOS as an interesting contribution to develop a framework to conduct, in a non-discriminatory and transparent manner, efficient open season procedures for gas infrastructures. This GGPOS should be useful as a tool to potential infrastructure investors. It should provide clear guidelines and minimise regulatory uncertainties.
2. However, GIE has noticed that the level of detail in the Draft GGPOS is heterogeneous. Some parts of the document include a lot of details (e.g. article (20)) which does not seem to be necessary whereas some other parts (e.g. articles (33) (34)) could be more precise. GIE would recommend seeking a more homogeneous level of detail, with sufficient flexibility to cater for differences between projects.
3. GIE would also note that the document is overly prescriptive in a number of areas, most noticeably article 20. This is not suitable, and indeed would be detrimental in cases where market based mechanisms and non-discriminatory capacity allocations already provide for sound investment signals.
4. It is not clear to GIE if this Draft Guideline is dealing with all types of projects, i.e. whether they are or are not granted an exemption as per Art. 22 Directive 2003/55 EC. In GIE's view, the Open Seasons Procedures could be applied to both types of projects. Nevertheless, the process and the involvement of Regulators should definitely not be the same for both kinds of investments. GIE would therefore request that the GGPOS make a clear difference between these in both cases.
5. GIE questions whether the GGPOS should embrace all technical categories of "new infrastructures". GIE would suggest that the GGPOS should only apply to transmission.
6. GIE notes that the role of the Regulators is frequently mentioned in the Open Season process. GIE stresses the point that this level of involvement should be adequately adapted to the level of responsibility the Regulators need to take in the decision process. Generally speaking, GIE believes that too many regulatory interventions in the process, beyond these GGPOS, could generate delays and procedures where it is not needed, and could even raise ambiguities about the business rules of the Open Season.
7. In the case of cross-borders and / or inter-TSO investments, GIE considers that co-ordination between adjacent system operators should be pursued in order to provide maximum capacity availability and consistency upstream and downstream. In any case it should be noted that each TSO is solely responsible for conducting Open Season Procedures within the boundaries of its own transmission system, including providing information relating to it. Information regarding upstream and/or downstream transmission systems should be in the responsibility of the respective TSOs.

8. In case of an investment agreed between 2 or more TSOs, a joint regulatory framework may be necessary to allow an appropriate distribution of costs and assets.
9. Term “Project Sponsor” should be clarified. In general the TSO should be the only party allowed to invest into its network for the realisation of new infrastructures, or for the improvement of the existing ones. The intervention of outside investors financing the project should be an extreme measure to be applied only whereby the TSO is unwilling, or finds it impossible to carry out such investment in the infrastructure. The latter case needs a close cooperation between the outside investor and the TSO and has to be in line with the relevant legislations. The outside investor should provide the details of the project to the TSO which forwards them to the relevant regulatory authority (article 19). In some national legislations, TSO is the only entity which is entitled to sell capacity.
10. GIE finds it problematic to ask shippers to “enter into a binding pro-forma agreement with the sponsor” (article 29) on the sole basis of an indicative tariff.

## II. Detailed remarks

Responses to ERGEG specific questions (Article 40):

- a. An Open Season procedure is well suited for managing new capacities (increasing of existing or developing of new infrastructure), and in particular where significant investments are required and uncertainty exists on the level of capacity needed by the market, its location and its timing. Typical cases are increases in capacity at existing entry points (interconnection or LNG plants) or development of new ones.  
The TSO should be in any case allowed to make investments (e.g. for capacity enhancements into the network, where future capacity needs and gas flows can be predicted by the TSO, or for minor enhancements of existing capacity) without entering into a procedure which may cause some regulatory burdens, costs and delays. Furthermore when the requirements for expansion is addressed through a transparent long-term planning process or market mechanism agreed with the Regulator, there seems to be little reason to impose Open Season Procedures.
- b. GIE considers that, in some cases the Open Season Procedures will not enable the financing of some needed investments. In such cases (e.g. investments that ensure security of supply in a region and required investments in areas where the market is not developed enough to give the appropriate signals), the results of an Open Season Procedure will be disappointing and could drive to the conclusion that investment cannot be realised. GIE therefore suggests that the results of an Open Season Procedure should not be binding with respect to the maximum size, as long as the extra capacity is handled / sold in a transparent and non-discriminatory manner and as long as no agreement has been signed.
- c. GIE considers that Open Season Procedures should not necessarily detail the characteristics of infrastructures, but should mainly focus on the service the bidder is



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being offered. In particular, in entry / exit systems, the Open Season should deal with developments of entry and / or exit capacities, and not on the specific routes that would allow these developments. The cost of infrastructures associated to new capacities seems not to be relevant information, the main concern of the bidder being the fare of the capacity.

- d. Open Season procedures could be applied to co-ordinate new LNG projects with induced developments of transmission systems.