

Gaz de France answer to ERGEG consultation on Article 22

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 ?

To aim at the definition of a consistent and transparent framework for exemption procedures is a good initiative in view of a European consistent approach and definition. Whatever the exemption is : on the access to the entire facility or a part of the facility, or on the regulated tariff, the target should always be to facilitate investments and hence to develop the market. Only national competent authorities exist today that can decide the benefits of the project for the market and a good practice guideline will help to define a common frameworks with respect to competition.

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

We support the idea set up in the document¹ (§ 2.2) that exemption regime to interconnectors, LNG and storage facilities should be extended to new technologies serving the same purpose (for example offshore terminals).

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 ?

Open season is certainly a good tool to consult the interested parties but cannot be seen as a genuine tool to decide whether an exemption should be granted or not. It cannot be a mandatory exercise before an exemption. The result of an open season could give a biased view of the market need depending on the conditions of the open season and on the responders tactics.

4. Should open season also be used to allocate equity ?

No. When companies decide to enter into a co-ownership, part of the decision is based on the quality of the other co-owners and their ability to take risks and to contribute (financially, technically..). The decision should remain under the companies responsibility to share participating interest in a facility. It is their responsibility to decide with which partners they want to share risk 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 ?

LNG terminals are indeed in a specific situation as :

¹ Draft Guidelines on Article 22 ; An ERGEG Public Consultation Paper, Ref :E07-GFG-31-07

- 1) LNG terminals are competing with other terminals to attract new shippers or new supply sources. As such, the regulation on LNG terminals in Europe should not weaken their ability to compete nationally or internationally.
 - 2) The LNG chains require a flexibility which prevent a 100% utilisation ratio : an operational margin linked to various delays (sea travels, delays at loading port, etc) has to be taken into account before suspecting hoarding behaviour. The following amendment might be implemented in the Guidelines §3.3.1.3 , end of paragraph entitled “Mechanisms for management and allocation of capacity” : “For LNG facilities, an under-use of the capacity that can qualify as a reasonable operational flexibility will not lead to Use-It-Or-Lose-It requirements.”
 - 3) In an LNG terminal, and even more in new offshore LNG technologies, the storage is limited and leads to an interdependence between terminal users : unloading an LNG carrier often requires to send out the gas brought by another shipper even if not required or supposes that shippers lend LNG to each other ; the complexity and the constraints increase if there are too many users on the same terminal. In addition, booking a small capacity with a small number of slots available for unloading induces major constraints and cost increases on the shipping part of the business. For those reasons, shippers usually prefer not to split too much the regas capacity and a number of shippers limited to 2 or 3 on the same terminal is preferred. This might be taken into account at the end of § 3.2.3 “Risk assessment” of the Guidelines.
6. Are the described criteria for assessing the effects on an investment in infrastructure on enhancement of competition in gas supply appropriate ?

Questions 6, 7 and 9: criteria described in the guideline seem appropriate.

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 following statement might be added :

“For LNG facilities, the commercial risks linked with the splitting of the capacity have to be assessed.”

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 ?
10. To what extent should consultations with neighbouring authorities be done ?

Regulatory authorities should coordinate every time in the case of interconnector and set up common or at least compatible rules for the facility on each side of the borders.

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 ?

Yes (subject to answers to questions 5 and 8)

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 a exemption is a case by case decision, there is no reason to discard incumbents if the criteria to obtain the exemption are met. There is a wide enough range of exemptions for the regulator 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 make their decision. They need to have a guaranty that the regulation will not changeover time.