

Paris, 24 April 2008.

**ERGEG's Draft Guidelines on
Art. 22 of Directive 2003/55/EC**

**Answer of the
Commission de Régulation de l'Énergie (CRE)
to ERGEG's public consultation**

CRE shares most of the views expressed in ERGEG's Draft Guidelines on Article 22 and agrees that there is a "need for a harmonized or at least consistent and improved approach of implementing Art. 22".

However, CRE's position differs from the Draft Guidelines on two main issues:

1. this document is too permissive for incumbents asking for art. 22 exemptions;
2. it doesn't sufficiently take into account the specificities of LNG terminals.

The present answer thus mainly addresses these two issues.

Given the present and future importance of LNG terminals, CRE had formed a Working Group with nine experts in the LNG market, who, among others, examined exemption from regulated third party access allowed by the Art. 22. The present answer thus partly refers to the *Report by the Working Group on the Regulation of LNG Terminals in France*¹ issued in April 2008.

Question: 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?

CRE considers that open seasons are an important tool to assess market demand and allocate capacity.

However, for some projects, bilateral negotiations between investors and future infrastructure users might be more appropriate than open seasons, as some projects require the future capacity to be allocated on a long term basis during the project phase for the final investment decision to be taken. This is particularly the case for LNG terminals financed by banks, as mentioned in the *Report by the Working Group on the Regulation of LNG Terminals in France*.

Accordingly, open season procedure should not be made mandatory for LNG terminals, but the opportunity of using open seasons should be analysed by the national regulatory authority (NRA) on a case by case basis.

Question: Should open season also be used to allocate equity?

CRE considers that open seasons are not generally adapted to allocate equity on gas infrastructure projects. By nature, financial issues are not easily associated with the transparency required by proper open season procedures.

¹ The report can be found at : [http://gttm.cre.fr/080414Rapport GTTM UK.pdf](http://gttm.cre.fr/080414Rapport_GTTM_UK.pdf)

Moreover, in the case of risky projects like new LNG terminals, experience shows that large users frequently want to get an equity stake in the project in order to be perfectly informed and to monitor the development of the project.

Accordingly, this argues against any general obligation to use open seasons to allocate capacity and/or equity for new LNG terminals.

Finally, in some cases, the investors may want to keep 100% of equity.

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

CRE's position is that Art. 22 should not be a tool for dominant players but rather for newcomers. At least, in case of an exemption requested by an incumbent, the exemption should lead to a substantial decrease in its market share.

Question: *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?*

CRE believes that LNG terminals are an essential tool for the development of competition and security of gas supplies in Europe.

LNG terminals have a unique role in promoting competition as long as they benefit to newcomers. They introduce more liquidity onto the market, allow a wide range of producers to be put in competition with one another, and make it possible for newcomers to acquire gas directly from producers. As the LNG business is becoming a more competitive activity, it makes possible the development of unregulated LNG projects at the investors' own risk.

Europe is facing a growing demand for gas, a falling domestic production and a major and growing dependency on gas imports from Russia. On the other hand, the liquefied natural gas (LNG) sector should grow significantly over the next few years, with its share in world gas supplies potentially doubling between 2005 and 2030². Thus, as identified by the Working Group on LNG Terminals, resorting to LNG is one way of meeting future gas demand and of ensuring security of supply in Europe by diversifying gas supply sources.

In many countries with extensive coastline, LNG terminals can be considered duplicable facilities, thus allowing for a more flexible treatment when considering the granting of an exemption.

Finally, LNG terminals are entry points into the European internal market. As such, granting exemptions to them is less harmful to third party access than to other facilities that are located at the heart of the interconnected European transmission network.

There are already examples of exemptions which have fostered investment in new LNG terminals. In 2002, the United States decided to consider LNG terminals as upstream gas production facilities (like gas fields) and to exempt them from regulated Third Party Access. In 2004 and 2007, Great Britain and the Netherlands granted exemptions, on a case by case basis, to all new terminals and to their extensions within the framework of the Art. 22.

Therefore, CRE's position is that the Guidelines should recognize that granting art. 22 exemptions (on a case by case basis and under certain conditions) may be, in certain cases, the only way to foster investment in new LNG terminals by non dominant players, with positive consequences for competition and security of supply.

² International Energy Agency – Natural Gas Review 2006