



**Directive 2003/55:
New investment under Article 22
An ERGEG Response**

XIIIth Madrid Forum (16th/17th October 2007)

Analysis of regulators' experience with Art. 22



Proceedings and Projects

- § 10 proceedings on 10 LNG projects,
- § 6 proceedings on 4 interconnectors

Exemptions

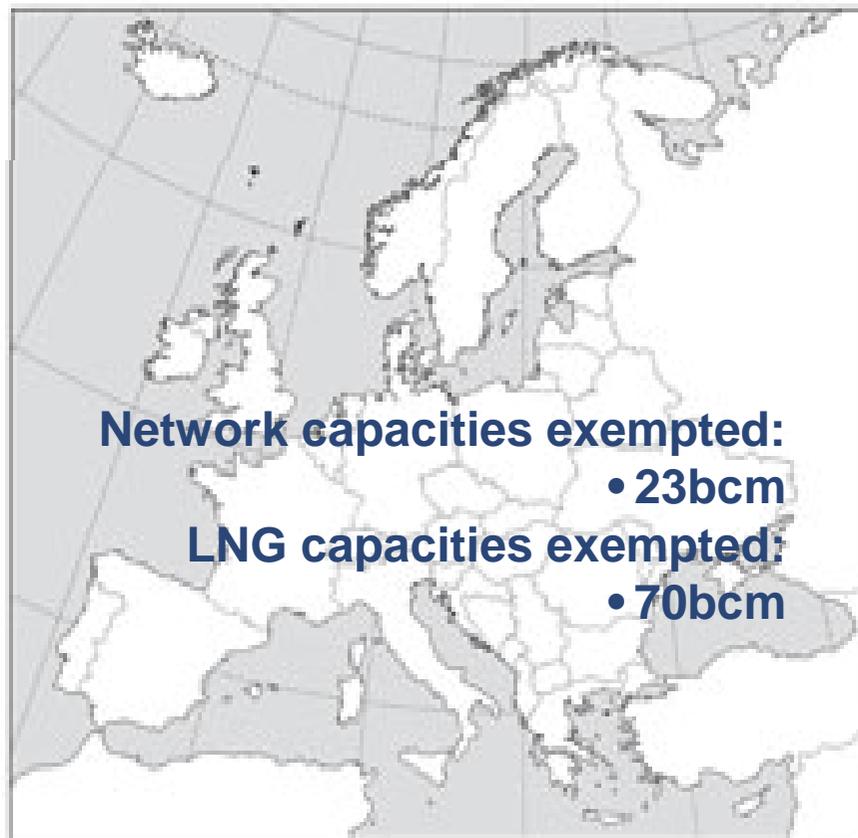
- § 8 granted, 8 pending, (...more are expected)
- § many were granted to the full extent of the infrastructure

Improvements proposed by respondents

- § Closer co-operation between NRAs and Commission
- § More detailed rules
- § Commission's interpretive note

Why do Art. 22 exemptions matter?

Sustainable energy policy
Ensuring security of supply



Promotion of competition (internal market)
Managing exemptions

There is

- § Varying practise in the application and interpretation of Art. 22 (e.g. concerning the definition of market power, definition of affected markets, duration of exemption, application of OS procedures)
- § Widespread application, making exemptions the rule rather than the exception (so far, all requests were granted)...

...which may lead to:

- à varying competitive frameworks (“forum shopping”)
- à establishment of a parallel, non-regulated infrastructure

- à There is a need to find a balance between incentives for new investments and competition!

ERGEG guidelines on Art. 22

/Prerequisites



- Ø Applications by market dominant players (“incumbents”) are to be examined especially critically
- Ø International perspective: Where applicable, applicant has to prove its role in neighbouring and upstream markets as well
- Ø Open seasons are an important tool
- Ø Better coordination and cooperation between deciding authorities
 - Ø timely notification
 - Ø sharing of information, including outline of planned decision

ERGEG guidelines on Art. 22

/Assessment



Ø Eligible infrastructure

Ø Requirements:

Ø Enhancement of competition in gas supply

Ø Market definition

Ø Assessment of market structure

Ø Enhancement of competition in the relevant market

Ø Ownership-/company structure

Ø Enhancement of security of supply

Ø Risk assessment

Ø Unbundling requirements

Ø Charges requirement

Ø Internal market



- Ø Scope of exemption
 - Ø Partial exemption
 - Ø Full exemptions
 - Ø Conditions

- Ø Co-ordination and Co-operation

- Ø Market participation and consultation

- Ø Early notification of Commission



- ∅ Where possible, principle of proportionality requires issuance of only partial exemption, e.g.:
 - ∅ Tariff exemption or
 - ∅ Exemption from obligation to offer short-term capacities
(in both cases capacities should be allocated non-discriminatorily, e.g. via open season)
- ∅ Full exemption should only be granted where necessary, e.g. in the case of a new entrant with no other means to enter market
- ∅ Time limit
- ∅ Clause for revision (under strict conditions, which must be determined ex-ante)
- ∅ The question of adjusting the Art. 22 guidelines according to different infrastructure investment (e.g. LNG) was debated

Further information



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