



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY AND TRANSPORT

Director-General

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Mr Frequin
Director General
Ministry of Economic Affairs
PO Box 20101
Bezuidenhoutseweg, 30
NL – 2500 EC Den Haag

Subject: Exemption decision No. G/2006/01

Dear Mr Frequin,

I am writing with reference to the above exemption decision from certain parts of the Gas Directive 2003/55 for the Gate Terminal project, notified to the Commission on 23 November 2006. We have asked for additional information and received this information on 21 February 2007.

The relevant Commission services have analysed the decision and supporting material. I hereby inform you that the Commission has not decided to request the Dutch government to amend or withdraw its decision. We have however a few comments concerning your analysis that are enclosed with this letter.

Matthias Ruete

Cc: His Excellency Mr Tom de Bruijn
Permanent Representative of the Netherlands to the EU
Avenue Hermann Debroux 48
1160 Brussels

Enclosure: Comments to the Decision

COMMENTS TO THE DECISION

1. INTRODUCTION

The Commission services agree with the general argumentation provided by the Ministry of Economic Affairs to exempt Gate Terminal B.V. of some of the provisions of the Directive, but there are a few specific arguments that either the Commission services do not agree with or want to state clearly that they are specific to the current exemption. Below these arguments are discussed.

2. CRITERIA

2.1. The investment must enhance competition in gas supply and enhance security of supply (Article 22.1(a)).

We are happy to see that your decision has taken into account the fact that primary allocation of capacity has been performed in an open and non-discriminatory manner, and the fact that strict Use-It-Or-Lose-It provisions apply to the terminal that will give the incentives to both the terminal operator and capacity holders to optimise the use of the capacity.

Under paragraph A of your letter you support the conclusion of the consultant that the construction of the terminal enhances competition, unless 50 % or more of the capacity is contracted by a party that already has the largest share in the Dutch market. The Commission services want to make clear that such a statement is made for a specific case. In certain cases (e.g. in Member States that did not undergo ownership unbundling of network and supply business) it would appear necessary to apply a stricter test.

The fact that the Commission does not request GATE terminal to reserve a certain percentage of the terminal capacity for short term trading in the context of this exemption request cannot be construed to mean that the Commission will also refrain from doing so in other exemption requests considering new pipelines, terminals or extension of existing terminals.

2.2. The level of risk attached to the investment is such that the investment would not take place unless an exemption was granted (Article 22.1(b)).

The Commission services consider the following argument the most relevant to meet this requirement: GATE is a merchant terminal whose revenues are dependent on its throughput agreements. Given the high level of investment and the risk attached to it, not granting an exemption will make financing the investment difficult or more restrictive, which could lead to the investment being unprofitable. Besides that, being a merchant terminal means that the offer has to be competitive with other (future) terminals offering capacity. In this light the market ensures that the rate of return on the investment is not excessive. The financial data provided support this statement.

3. CONCLUSION

The conclusion not to oppose your decision is based on the information provided with your letter. The information on the contracted capacity has been especially relevant. Should the circumstances in this respect change, the Commission expects you to activate conditions on Art 66a of the Gas Act and general competition rules.