



EUROPEAN COMMISSION

Brussels,

Subject: Exemption from third party access provisions granted for a new LNG terminal to Olt Offshore LNG Toscana S.p.A pursuant to Article 22 of Directive 2003/55/EC

Sir,

I am writing to you in relation to your decision to exempt the Olt Offshore LNG terminal from specific provisions of the Directive for the internal market for gas (Directive 2003/55/EC), of which decision the Commission was notified on 11 September 2009.

The Commission has now analysed the decision and the additional information it received. The conclusion of this analysis is that the Commission asks for an amendment of the exemption decision. Further details can be found in the annex to this letter.

Yours faithfully,

For the Commission,

Andris Piebalgs

ANNEX

Mr Claudio Scajola
Minister of Economic Development
Via Molise, 2
00187 Roma
Italy

Procedure

1. The Italian Minister of Economic Development has acknowledged in a letter received by the Commission on 11 September 2009 that it decided to exempt Olt Offshore LNG terminal from the rules for third party access and tariffs as defined in Article 18 and 25(2), (3) and (4) of Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC (hereinafter "the Gas Directive").
2. This decision has been presented to the Commission for approval in accordance with Article 22 of the Gas Directive. The exemption is valid for a period of 20 years for the full capacity (maximum 3,75 bcm/year) of the Olt Offshore LNG terminal.
3. By letter of 26 October 2009 the Commission has asked the Ministry of Economic Development additional questions. The answers were received on 27 November 2009 and have been included in the analysis.

The interested parties and their roles

4. The developer of the project is Olt Offshore LNG Toscana S.p.A. a specially established company. The share capital of OLT Offshore is divided as follows: OLT Energy Toscana S.p.A (3.73%); Iride Mercato S.p.A.(41.71%); ASA – Azienda Servizi Ambientali S.p.A.(5.08%); E.ON Europa S.L. (“E.ON Europa”) (46.79%); - Golar LNG Limited (2.69%).
5. In particular Iride Mercato is part of Iride Group, a holding that is controlled by the municipalities of Genoa and Turin. In 2008 the group supplied inter alia 14.154 GWh of electricity and 2,195 bcm of natural gas.
6. In Italy E.ON Ruhrgas group operated 6.000 MW of generation capacity and sold 2,1 bcm of natural gas in 2008, while consuming approximately the same amount to fuel its power plants. E.ON Ruhrgas group is also the promoter of the planned offshore LNG Terminal "Alpi Adriatico" with a capacity of 8 bcm/year.
7. In principle the whole capacity (i.e. 3,75 bcm/year) of the terminal will be booked by E.ON Ruhrgas AG (E.ON Ruhrgas), although it reserves the option to release 50% of such capacity to a third party or to the other main promoter of the project: Iride Mercato SpA. (Iride Mercato).

Description of the project

8. The project in question consists of an investment to install a liquid natural gas (LNG) terminal moored at a specified location 12 nautical miles offshore Livorno. Olt Offshore LNG Toscana S.p.A. bought the existing 137.500 m³ LNG carrier "Golar Frost" to have it converted into a "Floating Storage Regasification Unit" (FSRU) in Dubai dry-docks. Commercial start up is envisaged in second quarter 2011; it will be able to accommodate 65.000 m³ to 138.000 m³ LNG carriers. Due to the particular structure of the LNG terminal no physical extension of its

capacity is possible; therefore no open season has been held. The project will cost €830 million.

Review of Criteria

9. The project falls under the category of “major new gas infrastructures” in the sense of Article 22, paragraph 1, of the Gas Directive.
10. In relation to the specific criteria set out in the Directive Article 22(1) a-e, and on the basis of the documents supplied by the Italian authorities, the Commission reviewed the analysis included in the decision:

a) the investment must enhance competition in gas supply and enhance security of supply

The circumstance that the incumbent (ENI) directly or indirectly controls most gas import infrastructures is considered a major obstacle to the development of competition in Italy; therefore the new project, which will be controlled and operated by a new entrant will substantially enhance competition. The project will also enhance security of supply by bringing in new sources of gas, that will be available either for the Italian domestic market or for the EU as a whole. The Italian legislation currently in force includes use-it-or-lose-it provisions.

b) the level of risk attached to the investment is such that the investment would not take place unless an exemption is granted

The specific nature of the terminal makes it very expensive. Conversely its limited storage capacity and its location offshore, exposed to differing weather conditions, results in more complex logistics than other conventional LNG terminals. Therefore to be financially viable the project needs to be operated on a tight logistical schedule which is not compatible with regulated Third Party Access. For these reasons the project owners will not go ahead with the project at the envisaged location offshore Livorno without the requested exemption.

c) the infrastructure must be owned by a natural or legal person which is separate, at least in terms of its legal form, from the system operators in whose systems that infrastructure will be built

None of the infrastructure promoters has any relation in terms of ownership to the Italian TSO (Snam Rete Gas).

d) charges are levied on the users of the infrastructure

The terminal operator will charge E.ON Ruhrgas for the regasification services. Tariffs will be set in advance.

e) the exemption is not detrimental to the effective functioning of the internal gas market or the efficient functioning of the regulated system to which the infrastructure is connected

The exemption will not be detrimental to the effective functioning of the internal gas market or the efficient functioning of the regulated system to which the infrastructure is connected, since it brings new sources of gas and new actors to the Italian gas market. As the exempted parties have relatively small market shares in the Italian natural gas market there is no risk that the exemption will allow the creation of dominant positions.

11. In view of the above, the Commission considers that all the conditions for the exemption on the basis of Article 22 of the Gas Directive are fulfilled; however, the Commission considers that a limitation of the validity of the exemption decision by making it conditional on the project starting operation within a certain time period is necessary, in order to avoid the risk of "exemption hoarding" which may lead to blocking of locations or routes for competing projects. The Commission notes that the decision to grant the Olt Offshore LNG terminal an exemption does not contain any such limitation of the validity of the decision. As in the present case it can not be ruled out that the project will eventually not become operational, the inclusion of this additional condition is justified.
12. In that respect the Commission refers to its staff working document on Article 22 of Directive 2003/55/EC concerning common rules for the internal market in natural gas and Article 7 of Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity (point 39.3) as issued on 6 May 2009 [SEC(2009)642 final], according to which the inclusion of a condition as referred to above is considered an appropriate remedy to avoid exemption hoarding.
13. Furthermore, the Commission notes that in Article 36(9) of Directive 2009/73/EC of the European Parliament and the Council of 13 July 2009 concerning common rules for the internal market in gas and repealing Directive 2003/55/EC, the successor of the current Gas Directive, which is to be transposed by Member States by 3 March 2011, the same principle is clearly enshrined. In exemption decisions which the Commission received since the publication of its proposal for this new Directive, on 19 September 2007, it has always guaranteed that the exemption decision includes such a maximum duration of validity.¹

Conclusion

14. For reasons stated above the Commission is of the opinion that the decision to grant the Olt Offshore LNG terminal an exemption from Articles 18 and 25(2), (3) and (4), needs to be amended with a view to imposing a condition with respect to the maximum duration of the validity of the exemption.
15. The Minister of Economic Development is therefore requested to include the following explicit and irrevocable condition in his exemption decision:

¹ See the following webpage for more information on these decisions:
http://ec.europa.eu/energy/infrastructure/infrastructure/gas/gas_exemptions_en.htm

The exemption will be annulled if the Olt Offshore LNG terminal is not operational within five years from its approval by the Commission. In case the Olt Offshore LNG terminal is not operational within this period, the exemption can be prolonged by the Commission, if it decides that any delay is due to major obstacles beyond control of Olt Offshore LNG Toscana S.p.A.

16. Based on Article 22, paragraph 4, subparagraph 3, of Directive 2003/55/EC, the Commission hereby requests the Minister of Economic Development to amend its exemption decision according to this paragraph and inform the Commission thereof, within four weeks of receipt of this letter.