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TARIFF FOR THE USE OF LNG TERMINALS
Summary of public consultation

Between 22 July and 12 September 2008, CRE organised a public consultation on the regulation principles applicable to LNG terminals, in preparation for a new tariff proposal to be applied in 2009.

CRE received 22 contributions, broken down as follows:

- fifteen were from shippers, organisations representing them (UPRIGAZ) or new terminal project developers,
- three were from industrial consumers or organisations representing them (UNIDEN),
- three were from gas infrastructure operators,
- and one was from an association (AFG).

Respondents were asked questions relating to three topics:

- the forthcoming tariff for the use of LNG terminals in France,
- a clear, long-term view of tariffs,
- the procedure considered by CRE for handling exemption requests, as provided for under Article 22 of European Directive 2003/55/EC.

Technical proposals were aimed at assessing existing services, identifying possible improvements, simplifying tariffs and optimising the use of LNG terminals. Proposals of a financial nature were mainly aimed at defining how risks should be shared among shippers and investors when creating regasification capacity. Lastly, the proposals relating to the procedure for handling exemption requests provided the market with an explanation of the procedure contemplated by CRE, in accordance with the provisions of Article 22 of the European Directive.

Most respondents were in favour of maintaining existing services but thought the offer could be made more flexible (choice of service, send-out time).
Regarding mechanisms aimed at optimising terminal use, market players approved the idea of setting up a UIOLI mechanism implying *a posteriori* verification by the regulator to ensure that booked capacities are actually used. They were also in favour of an incentive mechanism encouraging operators to optimise use of their terminals. This mechanism would entail passing on to users the revenue generated by additional booked capacity, up to a certain threshold. Any additional revenue beyond the threshold would be shared by users and the operator.

Concerning the question of a long-term tariff applied to new regasification capacity, most respondents were in favour of a 20-year tariff period. A cost control incentive would be included during the investment phase and tariffs would be revised periodically during the operating phase, based on operating costs and booking levels. Respondents thought these provisions should also apply to extensions of existing regulated terminals.
On the subject of exemption to the third-party access applied to projects for new LNG terminals, market players were mostly in favour of total exemption, provided that the project could not be funded otherwise.

They also underlined the crucial role to be played by the regulator throughout the duration of the exemption. In this respect, they considered it justifiable to amend the exemption decision if at least one of the criteria on which the decision was based was no longer met.
Once an exemption was granted, however, the respondents thought that the investor should be allowed to size the project, without imposing any provisions liable to put the project at risk (open season, capacity reserved for short-term contracts).
The majority of respondents expressed their disapproval of granting exemption to extensions of regulated LNG terminals because of the operational difficulties this would cause and the risks of discrimination and cross-subsidies.

This public consultation has been followed by a meeting with representatives of the respondents.

Each exemption request will be assessed on the basis of CRE's views stated in the third part of this document.

QUESTIONS ON THE FORTHCOMING TARIFFS FOR THE USE OF TERMINALS

Question 1: *What do you think of the proposals made in the technical consultation document regarding capacity subscription hypotheses to be considered when defining tariffs for Montoir and Fos Tonkin?*

Nine shippers gave an opinion on the question of capacity taken into consideration to define the tariff.
Three supported the CRE proposal to consider subscriptions known at the time the tariff was defined, insofar as the incentive mechanism designed to encourage operators to optimise the use of their terminals was effective.
Two shippers thought that the proposal represented no risk for the terminal operator and did not justify granting a 200-point bonus for risks relating specifically to LNG activities. One of these shippers considered that the technical capacity of the terminal should be taken into account to calculate the tariff.

The other shippers made no detailed proposals but contributed to the debate. One shipper pointed out that the principle of taking booked capacity into account when defining tariffs was only relevant when subscriptions accounted for a significant proportion of overall capacity.
As for reducing the technical capacity of the Fos Tonkin terminal in 2009, one shipper raised the question of compensating for the drop in capacity by removing the assets concerned by this obsolescence from the RAB.

In addition, three shippers drew CRE's attention to the incentive mechanism for encouraging operators to optimise the use of their terminals. One found that the adopted threshold of six additional unloading operations in 2009 and 2010 was insufficient. Another considered that if the principle of payment into the expenses and revenues clawback account (CRCP) were to apply to the users of the following tariff period, they (the users) would benefit from a windfall effect funded by the shippers of the previous period. The last shipper thought that the proposed thresholds, beyond which additional revenue would be shared by the shippers and the operator, were acceptable, but considered that the shippers should be given a larger share (70% for shippers and 30% for operators, rather than a fifty-fifty share).

One shipper looked at the question from a broader angle, stressing that in cases of capacity development, an additional bonus of 200 to 300 points was only justified if the tariff were based on capacity subscription hypotheses equal to the technical capacity of the terminal and on condition that this capacity was available for third-party shippers for short-term contracts.

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The three industrial consumers were against the proposal contemplated by CRE. One of them thought that the risks relating to the subscription level were covered by the 200-point bonus for risks relating specifically to LNG activities. Two final consumers recommended a minimum rate of 6% if these subscription assumptions were maintained.

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DGI and STMFC supported this proposal. STMFC stressed that the current market trend did not encourage filling terminals in Europe.

Shippers and consumers are generally against the proposal of basing the tariff on known subscriptions but are in favour of an operator incentive and of the integration of the revenue from additional subscriptions into the expenses and revenues clawback account (CRCP). Overall, they consider that the planned rate of return should be related to the operator's level of risk.

Question 2: *What do you think of the proposed method for the calculation of the current assets?*

Nine stakeholders replied to this question: four shippers, one industrial consumer, DGI, STMFC, Uprigaz and the AFG.

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Three shippers and one industrial consumer approved the new methodology. Some of them, however, had a few reservations, such as the use of the real debt rate or the assurance that amounts returned would reflect the operator's real financial costs. One of them was against any type of additional return implying a tariff increase.

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One shipper, Uprigaz, the AFG and the two existing terminal operators were against the new methodology proposed.

Most of them believed that, for the sake of consistency (Uprigaz), the rate should be identical before and after the commissioning of the terminal, because the risk existed right from the construction phase (AFG) and because a project was not funded by debt alone. In their opinion, this justified paying current assets at the rate applied to the Regulated Assets Base (RAB).

DGI and STMFC also pointed out that the risk was higher during the construction phase and that the rate applied to the RAB was the lowest rate to be considered for current assets. DGI asked for the rate of return to be increased to reflect this risk.
STMFC asked for the return to be capitalised and inflated until the commissioning of the terminal.

Consumers are in favour of taking the cost of debt into account for the current assets but only a slight majority of shippers approve this proposal. Operators are against the proposed methodology.

Question 3: *Do you agree with the proposal to maintain "continuous send-out" and "30-day band" services? What do you think of the proposal made to "band" shippers to postpone the start of their "30 days" send-out by one or two days, as from the end unloading date? What do you think of the proposal to give the choice between "continuous output" and "band service" to the shippers that have subscribed between 10 and 12 unloading operations per year?*

Do you agree with the proposal to maintain "continuous send-out" and "30-day band" services?

In general, seven shippers, Uprigaz and one consumer were in favour of maintaining existing services. An eighth shipper believed that the best way to avoid any type of discrimination was to offer the same type of service to all market players, regardless of their size, but did not specify what form this "universal" service should take. Another shipper added that the "band" service should be proposed at a lower tariff than the "continuous" service.
The following points, however, were raised by a shipper and a consumer:

- storage capacity management is a key aspect in the operation of French terminals: operators only have a limited storage capacity in relation to the size of the cargoes unloaded and the regasification capacity marketed and must therefore make sure that they have enough storage capacity available to handle the next ship,
- the "band" service can only be proposed when a majority of shippers use the "continuous" service.

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Industrial consumers emphasised that they had been unable to carry out any LNG operations to date, because the usual cargo size and the conditions of release of natural gas to the network (30 days) were not compatible with the consumption levels of industrial sites, even though they were large consumers.

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As for the terminal operators, DGI was in favour of maintaining existing services, especially as a clear consensus in favour of maintaining them had emerged from shippers' answers to the July 2007 consultation.

Market players are mostly in favour of maintaining existing services.

What do you think of the proposal made to "band" shippers to postpone the start of their "30 days" send-out by one or two days, as from the end unloading date?

In answer to the question on the proposal made to "band" shippers to postpone the start of their send-out by one or two days, six shippers said that they were in favour of enhancing the flexibility granted to this category of shipper.
One of them approved the option provided if it had no impact on the outputs of other shippers. If this were not the case, this shipper thought that there should be a charge for the service and that beneficiaries should pay a penalty if they failed to comply with schedules. The others asked for greater flexibility in other ways.
Two shippers and Uprigaz considered that it would be better to propose a send-out service starting on a scheduled unloading date rather than an effective unloading date, on condition that necessary guarantees were provided. This would make it easier to market the unloaded volumes over thirty days.
Two other shippers wanted the duration of "band" send-out to be made more flexible too. One wanted to be able to send out for slightly more than 30 days in order to reduce its daily outputs and sell this gas more easily at the South gas exchange point (PEG Sud). The second required an output during 28 to 32 days to align outputs on calendar months, adding that it would be useful to have a daily send-out profile over the selected send-out period, allowing a variation of +/-10% of the average send-out (cargo/number of send-out days).

A new terminal project developer thought that the option ran counter to the optimised use of multi-user terminals.

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One consumer stressed that it was natural for send-out to begin as soon as unloading began. If, however, the shipper were to decide to postpone send-out by a day or two, it would be logical to charge for this service.
This consumer also considered that "band" service shippers should be entitled to postpone the start of send-out by at least 7 days as from the unloading completion date. This would enhance the flexibility offered and, in particular, avoid any overlapping of flows with the previous send-out period. It went on to suggest that operators should be asked to lift technical restrictions at the terminal by offering a combined "LNG/storage" service, allowing send-out over a period exceeding 30 days at a reasonable, non-discriminatory cost.

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On the subject of "band" service flexibility, DGI approved the measure proposed by CRE, which would allow shippers to postpone the start of send-out for a cargo by one or two days.
STMFC stressed that the representativeness of costs in commercial offers and tariffs must be kept in mind. In this respect, it considered that the new service represented a cost for the operator and/or other users of the terminal and that a price should therefore be charged for this option.

Market players approve increased flexibility in LNG terminal offers. Most of them, however, would like even more flexibility than that proposed.

What do you think of the proposal to give the choice between "continuous output" and "band" service to the shippers that have subscribed between 10 and 12 unloading operations per year?

One shipper thought that lowering the minimum threshold for continuous service from 12 to 10 ships would offer alternative suppliers easier access to continuous service. The new threshold should, however, be accompanied by a change in the rules for calculating send-out so that shippers did not suffer from zero send-out for at least two months a year (according to the existing rule in contracts between shippers and the operator of the Fos Cavaou terminal, a shipper's output is zero during months when no cargo is unloaded). The same shipper suggested that send-out should only be cancelled when the interval between two ship unloading operations exceeded (365/N+5) days, where N is the annual number of unloading operations between 12 and 10 operations, and not when there were no unloading operations during a month. Another shipper said that making continuous send-out available to shippers unloading 10 ships a year (not necessarily evenly distributed throughout the year) would induce strict send-out management rules that would be very restrictive for shippers, including at the Montoir and Tonkin terminals.

One shipper thought that this option would not make much difference as most newcomers did not reach the critical size for unloading 10 to 12 LNG cargoes a year.
The same shipper, together with another, thought that the shipper should be free to choose between "continuous" or "band" service, regardless of the number of unloading operations. Another shipper pointed out, however, that shippers opting for "continuous" service should be required to unload the same number of cargoes in winter as in summer as a minimal requirement.

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An industrial consumer considered that "continuous" service should be available to shippers booking between 6 and 12 unloading operations a year.

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The AFG was in favour of any proposal that might offer shippers greater flexibility and make the gas system less rigid. Nevertheless, it pointed out that the operational management of terminals would be made very complicated if shippers booking 10 to 12 unloading operations a year were free to choose between "continuous" and "band" service.

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DGI considered that the proposal would upset the balance on which its offer was based. It said that offering the "continuous" service to a customer that did not have enough unloading operations to schedule an average of *at least* one ship a month over the year would be the same as allowing this customer to enjoy the benefit of an average send-out per cargo over more than 30 days, which was the same as offering a free storage service. This would be unfair to other customers. For this reason, DGI suggested maintaining the current limit between "band" and "continuous" services.
STMFC considered that the "continuous" service called for at least 1 ship a month, i.e. 12 ships a year. It said that granting a shipper "continuous" service below this threshold would be detrimental to the optimum running of the terminal and to the quality of service available to other users. A specific price should therefore be charged for "continuous" service to shippers with only 10 or 11 ships a year. STMFC emphasised that the proposals put forward would definitely improve the commercial offer, provided that they reflected costs and that costs were passed on directly to the users who benefited.

Market players are divided on the issue of extending "continuous" service to users subscribing 10 to 12 unloading operations a year. Those favourable point out the need for "continuous" service rules to be adapted for the Fos Cavaou terminal.

Question 4: *Does the penalty envisaged for non-compliance with scheduling seem justified?*

Four shippers thought a system designed to make "continuous" service users responsible would be preferable to an unsuitable penalty system.
One thought that increasing the penalty would not make it more effective. The shipper explained that more than 5 days notice was required for diverting a cargo and that if such notice were not given, then the problem was due to a case of *force majeure* to which the penalty would not apply. The second shipper pointed out that late cancellation should be governed by the same rules than in the tariff currently in force (i.e. at least 5 days notice, unloading not rescheduled in month m or the first 5 days of month m+1 and slot not used by another shipper). The other two considered that the planned increase in penalties would be counter-productive. It would make French terminals less competitive and hamper the security of supply as a result. Among the "band" or "spot" service shippers, one shipper thought that the "ship or pay" clause was penalty enough.

Five shippers and Uprigaz favoured a penalty system. One thought that the system to make users responsible, based on the quantification of losses bearing by the other users, required an extremely transparent estimation of those losses, which would be difficult to achieve. The shipper went on to say that it would be more difficult to determine liability in cases where several shippers had changed their schedules one after the other. The penalty, it stressed, should act as a deterrent but remain within reasonable limits. Four of the shippers wished for the 5 days notice to be maintained, one claiming that five days was a minimum. Another wished for the "suspensive" clauses (unloading rescheduled or slot used by another shipper) to be maintained. Two shippers said that the penalty system should be given priority to shippers affected by the loss. Lastly, one shipper added that it seemed more logical to let the operator determine the amount of the penalty, which should be applied in cases where behaviour could be interpreted as market manipulation. It specified that the penalty should be **at least** around 150% of the regasification cost (100% "ship or pay" plus 50% actual penalty), which represents about 5% of cargo value (including 2% real penalty – hypotheses: the unloaded cargo value of a 150,000 m^3 LNG tanker is around €30 to 40 million). The shipper concluded by stressing that a compensation mechanism was essential in cases where a user's behaviour interfered with the service available for other users. A last shipper agreed, adding that the existing penalty was not an adequate deterrent.

A new terminal project developer thought the existing penalty system was not a strong enough deterrent and that the unloading schedules of some shippers were clearly influenced by decisions relating to gas prices. For this reason, CRE would have an important control function to fulfil. The project developer suggested that the amount of the penalty should depend on the reason for and consequences of the late cancellation and be left to the discretion of the terminal operator, with the amount defined by CRE taken as a minimum.
Another project developer thought that a penalty was not necessarily the best solution, preferring a system based on a long-term record of reprehensible behaviour. Furthermore, it considered that the proposal for a penalty equal to 50% of the regasification cost was arbitrary. It also wished for more details as to who would benefit from the penalty and the reasons for suspending its application.

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A final consumer stressed that the penalty should go to other shippers penalised by the situation rather than the operator.

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The AFG pointed out that the penalty could only be considered if an effective UIOLI mechanism and secondary market existed, allowing primary holders to sell on to third parties.

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Among the terminal operators, DGI considered that late cancellation of an unloading operation by a customer could seriously affect the send-out of other customers because of its impact on LNG stock levels. It also underlined the fact that when insufficient notice was given, cancellations could be an

obstacle to the efficient management of the French gas system. As the existing penalty was too low to act as an effective deterrent, DGI agreed with CRE's proposal to increase it.
Although it had no operational experience in the matter, STMFC found the current penalty too low. It particularly stressed that the penalty should not be applied in addition to the compensation provisions included in long-term contracts signed at Fos-Cavaou.

Shippers and operators are very largely in favour of imposing deterrent measures to discourage unjustified late cancellation of unloading operations. Shippers tend to be more in favour of a penalty system based on the existing requirement for 5 days notice. Others insist on setting up a mechanism to redistribute the penalties to other users.

Question 5: *What do you think of the proposed "Use it or Lose it" mechanism?*

Three shippers were in favour of the proposed mechanism. Stressing the advantages of an effective UIOLI mechanism for the market, one shipper pointed out that while the amount of cargo to be unloaded and the unloading date should be published, the identity of the shipper giving up the capacity should not be revealed. The second shipper approved the proposed mechanism, stressing that monthly unloading schedules should be published and updated with a view to guaranteeing transparency and optimising terminal capacity, especially at congested terminals. It suggested considering a "Use It or Sell It" mechanism. The third shipper added to the above suggestions, specifying that a long-term UIOLI mechanism could be set up if capacity at a terminal were not used for a prolonged period of time. In this event, the user could lose its subscription over the long term (from several months to several years) in favour of other users.

Another shipper thought the proposed mechanism was a real improvement over the existing one but considered that it only partly solved the problem of the procedure to be adopted for granting long-term capacity. Making short-term capacity available did not, according to this shipper, promote the development of competition downstream. It also considered it vital to ensure that registers for capacity use were kept up to date at all times so that the necessary steps could be taken in the event of structural underuse of capacity.

Two other shippers and Uprigaz approved the *a priori* UIOLI mechanism. One shipper considered that the proposed UIOLI solution was still not operational as it was hampered by notice period constraints, but proposed no solution. According to the other one and Uprigaz, the "ship or pay" mechanism was enough to deter shippers from booking capacity unnecessarily. They also emphasised that as no *a priori* system currently in force in Europe seemed to have produced the expected results, they were in favour of an *a posteriori* system. One of them stressed, however, that:

- no "continuous" capacity could be converted into "band" form without affecting the send-out schedule of other shippers,
- the operator, who is in the best position to perform this task, should be completely impartial in assessing this conversion. The case could arise where a terminal with a given capacity under continuous service conditions was unable to propose a "band" type service to replace a cancellation. Consequently, some of the unused capacity might not be made available on the market. The operator would be best able to inform CRE as to the capacity actually made available on the market.

Another shipper thought that a UIOLI mechanism was hard to implement. If triggered too soon, it could make the French system too rigid, prevent shippers from pursuing their purchasing and trading activities and make French terminals less attractive. If triggered too late, it would only apply to the cargoes that were geographically closest. This shipper would be more in favour of setting up a secondary market where the terminal operator could act as a broker.

A last shipper thought that the mechanism should be left for the terminal operators to decide and any reprehensible behaviour reported to CRE.

A new terminal project developer pointed out that as European LNG terminals were in competition with one another, any standardisation of UIOLI rules should be carried out at the European level.
Another project developer felt the need to set up an effective UIOLI mechanism, adding that its effectiveness should be gauged over the long term.

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On the whole, industrial consumers were in favour of setting up a UIOLI mechanism. They underlined that, among other things, the mechanism should seek to curb excessive speculation on capacity and called for greater transparency and more frequent publication of data. They approved the proposal made by CRE in July 2007 (in its first consultation) concerning a mechanism for supervising the secondary market in the event of congestion. Lastly, they asked that CRE should periodically examine the use of subscribed capacity, stating that underused capacity or capacity repeatedly transferred in the short term should be put back on the long-term market.

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The AFG joined some shippers in its analysis by preferring an *a posteriori* mechanism, saying that the *a priori* mechanism seemed complicated to put into practice and that no satisfactory mechanism had been found to date.

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DGI supported the UIOLI mechanism put forward by CRE in its public consultation. STMFC pointed out that this issue was a tough one, as demonstrated by the ambitious but hardly convincing attempts made in the United Kingdom and Belgium. The measures proposed were part of a pragmatic, cautious approach that it found suitable. STMFC added that it was prepared to help improve these measures, not only during the elaboration of the tariff.

Markets players tend to be in favour of an *a posteriori* UIOLI mechanism. They point out that in the case of an *a priori* mechanism, notice period is a critical parameter. As well as being hard to define, it can be considered as a factor in competition between terminals.

Question 6: *What do you think of the evolution planned for the tariff terms?*

Two shippers replied directly to the question on evolutions for the tariff terms and raised no objection to the changes proposed.
A third shipper simply stated that tariff should make sure that occasional users did not have to pay more (through short-term subscriptions) than regular users for an equivalent service.
Four shippers and Uprigaz addressed other aspects of the tariff level. Two regretted that tariff levels varied from one terminal to another, which, in their opinion, led to an increasingly fragmented French market. One stressed that transportation costs to the final consumer would vary according to terminal, which could hamper the development of newcomer activities between different areas. Another shipper added that priority should be given to stability and clarity when revising tariff terms. Uprigaz observed that "tariff evolutions made in recent years and/or proposed in this consultation had followed a consistent downward trend, which was detrimental to efforts to create conditions favourable to the development of new LNG terminals" and to "the stability and clarity" recommended by the working group chaired by Colette Lewiner.

A new terminal project developer welcomed any initiative that would simplify the tariff. This would make it more transparent and thus attract new users to terminals. It would also make it easier to compare offers from one terminal to another.

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The industrial consumers also wished for the same tariff level to be applied at all three terminals. They thought that the announced levels were too high, claiming that this was because the rate of return granted to the terminal operators was too high.

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DGI and STMFC approved the CRE proposal to simplify the tariff structure. DGI thought that the measure should bring about a gradual decrease in the access charge for customers wishing to unload a few ships and thereby make French terminals more attractive. Both operators stressed, however, that every effort should be made to ensure that the tariff was a fair reflection of charges related to the actual usage of various terminal facilities.

Market players emphasise the fact that they would welcome any efforts to simplify the tariff terms and draw CRE's attention to the need for stable tariffs.

QUESTIONS ON THE LONG-TERM PRICING VISIBILITY

Question 7: *Do you think that the rules for calculating capital costs and the the methods for periodic tariff reviews every 4 years should be fixed for long period of time? Do you think that a 20-year period is suited to the LNG market?*

Most stakeholders recommended a 20-year period, which was a minimum in the terminal operators' opinion. All agreed that a period of this length would provide protection for both shippers and investors. Two shippers pointed out that investors based their decisions on the tariff rules in force at the time they made their choice. It was vital for these rules to be guaranteed in the long term, failing which investors would lose confidence in the system and stop investing. One shipper, however, considered that a period of five to six years would be a good trade-off between the clear long-term view required and the need to take future changes in the gas market into consideration, adding that supply contracts were rarely signed for more than ten years.

While approving the principles of a periodic tariff review, many stakeholders asked for review criteria to be clearly defined in the long term. One shipper thought that the validity period of short-term contracts (3 years) and the frequency of tariff reviews should be consistent.

Another shipper insisted that the periodic tariff review should be accompanied by an incentive and penalty mechanism designed to protect shippers against unjustified budget increases.
Yet another pointed out that the tariff could be justifiably reviewed as a result of significant changes in gas market conditions, even outside the scheduled review period.

A new project developer thought that the market would be made more transparent by giving a long-term pricing visibility for existing terminal.

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Industrial consumers wanted a long-term pricing visibility over a period of at least ten years.
One specified the following points:

- annual changes in operating costs should be incorporated, taking into consideration the inflation rate and a productivity target,
- the guaranteed rate of return should be equal to the long-term rate on the financial markets plus 1%, which makes about 6% maximum at present,
- the existence of an incentive mechanism should allow operators to optimise the use of their terminals,
- every year, the balance of the expenses and revenues clawback account (CRCP) should be automatically incorporated into the following year's tariffs.

Markets players are very largely in favour of obtaining a long-term pricing visibility over a period of up to 20 years, combined with a periodic review mechanism.

Question 8: *With regards to long-term pricing visibility, do you think it is legitimate to cover the risk of higher investment costs foreseen by the operator, and to analyse on a case-by-case basis the situation when the final amount is greater than the estimated amount increased by 30%?*

Users were not completely in favour of unlimited coverage of investment costs. Only one considered it natural for extra costs to be incorporated into tariff calculations, as the tariff was designed to cover costs within a system of regulated terminals.
Those users that did not completely rule out the idea, did express some reservations. They pointed out that investors were responsible for overseeing project progress and guaranteeing cost control; users had no control at all over these matters. One shipper added that any drift in costs should be payable by the operator only, since the rate of return on assets was more than 9%.

All emphasised the need for an incentive to meet costs and, at the same time, a guarantee of profitability consistent with the risk taken. They also thought that CRE should be able to control and monitor investments. The idea of incorporating extra costs, subject to a prior audit by CRE, was shared by two final consumers.

One shipper considered that a 10 to 15% drift in costs should be automatically covered. Two final consumers thought a 10% threshold more reasonable. One thought that beyond this threshold, the operator should pay a penalty based on the absolute value of the difference.

Uprigaz stated that investors were often the principal users of capacity and the first to suffer from drifting costs. Consequently, they had every motive to limit extra costs as much as possible.

One project developer considered the 30% limit too high for a regulated terminal and stressed CRE's crucial role as a control organisation. It went on to say that in a regulated system, the principle of cost coverage meant that the risk of drifting costs was inevitably passed on to users, even if only partially.

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DGI and STMFC insisted that cost coverage was one of the fundamental principles laid down in the legal texts governing regulation. They therefore considered that the tariff should be based on the final cost of the investment made, whether it was above or below the initial reference value and whatever the difference.

Most stakeholders are not against final cost coverage, provided CRE carries out a prior audit. However, they consider a 30% threshold excessive. Some have asked for an incentive mechanism to be set up to enhance cost control.

Question 9: *Do you think that the principles behind such tariff visibility defined for the extensions and for the new terminals, should be extended to existing terminals*?

Shippers and Uprigaz were mostly in favour of applying the principles of a long-term pricing visibility to existing terminals.
Two new project developers considered that a long-term pricing visibility should be applied to future and existing terminals in the same way, as well as to new extensions of existing terminals.

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Two industrial consumers approved the proposal, subject to implementation of the suggestions made under question 7.

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The AFG stressed that in the case of existing terminals, new extensions could be built or significant amounts periodically reinvested which were recouped over long periods of time. Existing terminals should therefore be treated in the same way as new ones.

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DGI and STMFC approved this proposal. DGI emphasised that the lack of long-term pricing visibility was extremely detrimental to capacity marketing activities. This made it harder to sell available capacity which in turn led to a mechanical rise in tariffs.

Market players are very largely in favour of applying the principles of a long-term pricing visibility to existing terminals.

QUESTIONS ON EXEMPTION FROM THIRD-PARTY ACCESS

Question 10: *What do you think about third party access exemption for the new terminal projects?*

Eight shippers and Uprigaz thought it justified to grant a third-party access exemption to new terminals, as doing so simplified investments and thus promoted the diversification of gas sources and security of supply. In their opinion, exemption minimised the commercial risk and made it easier to plan the use of capacity in the long term.
However, four of them and Uprigaz emphasised how important it was to ensure that exemption did not lead to any unfair competition with respect to regulated terminals. Exemption should be granted in accordance with the criteria set out in Article 22 and with good practices, as defined by ERGEG and applied into the national context.
A shipper added that there was no justification for granting exemption to incumbent operators on the domestic market.
Two other shippers considered that partial exemption was the best approach to drive market growth. Exemption could be granted on condition that enough capacity remained available for third parties.

Two project developers stressed that exemption was an effective means of stimulating the development of new LNG terminals. One stated that exempting new terminals should be the rule rather than the exception. They pointed out that the authorities had to examine requests for exemption on a case-by-case basis against Article 22 criteria, with a view to promoting competition and security of supply and drawing on good practices in Europe.

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On the whole, industrial consumers were reticent about granting exemption. One considered that LNG terminals were among the vital infrastructures that suppliers required, if they were to guarantee delivery to their final customers. As such, terminals should be regulated to ensure reasonable tariff conditions with a long-term tariff visibility. This industrial consumer consequently proposed a centralised, planned approach to promote the development of regasification capacity.
The industrial consumers considered that exemption from third-party access could only apply if it is necessary to the investment or in certain specific cases (development of new players on the French gas market, industrial final customers, combined-cycle gas turbine operations, etc.).

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The AFG thought that exemption should only be granted if the investment could not go ahead otherwise. It also stressed the importance of the part played by the regulator in guaranteeing fair trade between exempted and regulated terminals.

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One infrastructure operator did not share the general opinion as to the advantages of exemption, claiming that it would be better to adapt national regulations to meet the requirements of project developers for new LNG terminals, rather than grant exemption from third-party access.
DGI and STMFC said that they favoured exemption from third-party access in the case of new terminal projects but went on to say that in view of the vast number of projects for LNG terminals in France, the regulator had to ensure that exempted terminals did not gain an unfair advantage over their regulated counterparts.

All shippers are in favour of third-party access exemption applied to LNG terminals under the conditions set out in Article 22 of European Directive 2003/55/EC. Industrial consumers are in favour of the exemption, only if this one is partial and is a prerequisite for the effective completion of the project.

CRE's standpoint
CRE notes the fact that all shippers are in favour of exemption, in accordance with Article 22 criteria. Given prevailing conditions on the gas market, it considers that granting exemption, based on a case-by-case analysis, would encourage investments in LNG terminals.

Question 11: *Do you think that total exemption (i.e. third-party access exemption and tariff exemption) is justified?*
Question 12: *Are you in favour of partial exemption for LNG terminals? Are you in favour of exemption for extensions to regulated terminals? Do you think that a regulated system and an exempted system could coexist on the same terminal?*

Five shippers and Uprigaz thought that all exemptions should be total, subject to the criteria defined in Article 22.
One thought that total exemption was needed to provide a clear view of the operational running of the terminal. This would help to secure a long-term commitment from users, a factor that weighs heavily in the investor's decision. The shipper thought that regulated and exempted conditions could not coexist at the same terminal as it was so difficult to make a precise, transparent and unquestionable distinction between the share of assets relating to "regulated service" and the share attributable to "exempted service".
Moreover, it was not in favour of granting exemption to terminal extensions because there was a risk that users of regulated services and users of exempted services might not be treated on an equal footing.
Another shipper considered total exemption to be justified for new terminals insofar as there was no shortage of regasification capacity in France.
Uprigaz specified that exemption should be accompanied by a UIOLI mechanism, with an obligation for operators to make unused capacity available on the secondary market, according to a transparent, non-discriminatory procedure and on competitive terms.

Two other shippers considered that exemptions – whether total or partial – should be examined on a case-by-case basis, taking into consideration the characteristics of each project (profile and number of users, geographical location, etc.).

Another shipper expressed no opinion on the exemption applied to new terminals but raised the issue of making a prior assessment of market demand for regasification capacity before reaching a decision on projects. It went on to say that partial exemption could be contemplated when there was no shortage of regasification capacity for third parties, but added that in that event the tariff should be regulated for all capacity, because applying a regulated tariff and exempted tariff at the same terminal could give rise to cross-subsidies among users. It also pointed out the operational complexities of running a "mixed" terminal comprising both regulated and exempted capacity.

While favourable to total exemption, two shippers suggested maintaining third-party access to a limited share of capacity for short-term contracts. One added that in cases where regulated and exempted conditions coexisted at the same terminal, operational conditions should be reviewed at the same time. It also recommended that some equipment and certain operating charges should be pooled and that this should be taken into account when defining the regulated tariff. Uprigaz stressed that the regulator should make sure that there is no disparity between regulated and exempted services, otherwise the exempted part would have an unfair advantage.
One shipper thought that having regulated and exempted conditions at the same terminal would cause a constant clash of interests among the parties concerned.

The three new project developers were in favour of total exemption. Two of them pointed out that the lack of certainty as to the amount of revenue relating to capacity not allocated at the time of the investment decision would jeopardise the funding of their project. One of them added that partial exemption could only be considered if the investor were an incumbent operator, as otherwise it would

not be possible to develop fair trade conditions.

For the third project developer, the following essential criteria should be given due consideration before granting total exemption:

- number and type of shippers involved in the project,
- distribution of regasification capacity,
- market requirements in terms of access to regasification infrastructures.

Only one new project developer replied to the question of exempting extensions to regulated LNG terminals. It was against exemption as it considered that existing terminals had already recouped some of their costs and that the bonus of 200 to 300 points awarded for ensuring a clear, long-term view of tariffs would therefore be enough to justify the investment.

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In spite of being against the principle of exemption, an industrial consumer admitted that partial exemption could be granted in certain, very specific cases, but remained opposed to tariff exemption. It considered that partial exemption equivalent to 50% of terminal capacity would be suitable for the market.

On the subject of granting exemptions for the extensions of regulated terminals, two industrial consumers considered that existing terminals had an economic advantage over newcomers (because they had recouped their investment costs) and should not, therefore, benefit from any exemption on the grounds that they were extending their capacity.

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The AFG said that the extensions of regulated terminals should be considered as new terminals, as investment decisions were guided by the same financial logic in both cases.

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One infrastructure operator would only contemplate partial exemption and, even then, only if the investment would not go ahead without it. At the same time, it admitted that partial exemption would lead to complexities in the operational management of terminals, referring to the example of the Adriatic LNG terminal near Rovigo, where partial exemption was applied (80% exempted/20% regulated) and where the tariff was 3 to 4 times higher than the European average.

DGI considered that if the development of regasification terminals were to be promoted, it was vital to give project promoters a chance to benefit from total exemption so that they had complete risk control. DGI and STMFC stressed that partial exemptions were possible under French and European regulations. These regulations stipulated that exemption could be granted either totally or partially. According to DGI, regulated and exempted conditions could coexist at the same terminal from both the operational and regulatory viewpoints.

Shippers tend to approve the principle of total exemption to avoid jeopardising the funding of LNG terminal projects. Most stakeholders highlight the operational difficulties and risks of discrimination and cross-subsidies that could be associated with the coexistence of a regulated system and an exempted system at the same terminal. Industrial consumers, on the other hand, do not see how total exemption would benefit the market.

CRE's standpoint

CRE considers that the coexistence of regulated and exempted conditions at the same terminal would induce operational difficulties and risks of cross-subsidies, as pointed out by most shippers in their remarks.

Question 13: *Are you in favour of publishing the tariff negotiated by the operator and users in the case of an exempted terminal?*

Four shippers were not in favour of the above proposal. Apart from the point raised by two shippers that the negotiated tariff was commercially sensitive information, two other shippers considered that there was nothing really to be gained from publishing the tariff in the case of total exemption (access and tariff). Another of these shippers added that the proposal, if adopted, would be extremely detrimental to the fluidity and dynamism of the secondary capacity market.

Five shippers saw no reason for not publishing the negotiated tariff. Meanwhile, Uprigaz thought that publishing negotiated tariffs would only be useful in cases where capacity was not allocated to users with shares in the company developing the project.

Three new projects developers were unanimously against publishing the tariff negotiated by the operator and users in the case of an exempted terminal. Two of them said that there was no point knowing the negotiated tariff alone without all the related details, which were often confidential. They would rather publish an approximate tariff for the purpose of booking available capacity at the terminal. The third project developer added that the question of publishing the negotiated tariff was irrelevant given that the authorities concerned would have access to all the information required to avoid unfair trading practices.

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One consumer was in favour of publishing the tariff negotiated by the operator and users in the case of an exempted terminal. Another consumer insisted that available capacity should on no account be the subject of speculation but should be marketed in strict accordance with regulated tariff conditions.

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The AFG was against publishing the tariff negotiated by the operator and users in the case of an exempted terminal, claiming that the tariff was only one factor in the negotiation and could be wrongly interpreted on its own.

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The infrastructure operator was against publishing the tariff of exempted terminals.
DGI considered that in the case of exempted terminals, the decision whether or not to publish prices should be left to investors, subject to any confidentiality undertakings made to the subscribers.
STMFC considered that it could be useful to publish a tariff so that unbooked capacity or capacity not used by primary holders could be made available on the market.

Shippers are against publishing the tariff negotiated in the case of an exempted terminal. Some consider the tariff to be commercially sensitive information and that publishing it is of no benefit to the market. Project developers are against publication.

CRE's standpoint

CRE notes that the market players are mostly against publishing the negotiated tariff. It points out that the tariff details will be sent to CRE along with other financial data when requests for exemption are examined. CRE will publish a positive view on the exemption request only if the financial conditions for making unused capacity available on the market are clearly defined and published by the project developer.

Question 14: *Do you think that an open season procedure should be made mandatory for allocating capacity at terminals exempted third-party access?*

Seven shippers and Uprigaz were opposed to a mandatory open season procedure for allocating capacity at terminals exempted from third-party access, considering that project developers should deal with each project on an individual basis.
One added that such a procedure would inevitably lead to a fragmentation of terminal capacity, which would run counter to any operational logic.

Another shipper thought that any such procedure should vary with the type of exemption. An open season procedure under CRE supervision would be adopted for terminals with partial exemption from third-party access, but the procedure should not be mandatory in the event of total exemption.

Two shippers were in favour of an open season procedure, one because it would help to size the project, the other because it was unquestionably a non-discriminatory procedure.

Two shippers questioned the 66% limit on capacity that could be allocated per shipper, as suggested by CRE in the consultation document. One believed that the measure potentially deterred investors if, in spite of unsuccessful market consultation, a single company could only have access to 66% of terminal capacity. The other considered that the capacity allocated should vary with the type of shipper (i.e. according to whether or not the shipper was a newcomer).

According to two new project developers, the open season procedure should not be mandatory as it was not the only means of allocating terminal capacity effectively. One admitted, however, that access to capacity at exempted LNG terminals should be transparent and open to all interested parties.
The second considered that an open season procedure could be made mandatory on a case-by-case basis, for example, when interested parties were not newcomers or when the shippers in question were thought to have too much capacity.

A third project developer thought that project promoters should be free to choose how LNG terminal capacity was allocated.

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Though favourable to a mandatory open season procedure, industrial consumers emphasised the need for supervision by the regulator. One stressed the importance of introducing criteria that would help new shippers as much as possible by allowing them access to the "continuous send-out" service.

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The AFG considered that in the case of terminals exempted from third-party access, an open season procedure was not an exclusive mechanism and could not produce all the expected results. For this reason, it thought that exemption should not be granted subject to this procedure being implemented.

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One infrastructure manager thought that an open season procedure should be made mandatory, particularly in cases where a project was developed by an operator belonging to a vertically integrated company. It also expressed the opinion that the open season would serve no purpose at all in the case of centralised planning of regasification capacity development.
According to DGI and STMFC, a mandatory open season procedure would hold back the development of new LNG terminals. They added that the diversity of projects and their market conditions made it impossible to define a procedure applicable to all.

Most market players are against a mandatory open season procedure for allocating capacity at terminals exempted from third-party access. They consider that it is not the only means of allocating capacity effectively and that it could jeopardise project funding. A minority approved the idea of this procedure, subject to proper supervision by the regulator.

CRE's standpoint

CRE notes the fact that most market players are against a mandatory open season procedure for terminals exempted from third-party access. For each project, it will pay close attention to:

- **capacity allocation methods,**
- **the results of allocations and their impact on market performance.**

CRE will analyse the relevance to request an open season on a case by case basis. Particularly, CRE considers that a single company's subscription share, including related companies, shouldn't be above 66% of the terminal's technical capacity. If it happened, the project developer would have to make the proof, at the time of the exemption is requested, that it made its best efforts to foster third parties engagement.

Question 15: *Do you consider it useful for the French and European LNG market to reserve a share of regasification capacity for short-term contracts (a period of about 3 years)? If so, what proportion would be suitable?*

Eight shippers were against any obligation to reserve capacity for short-term contracts. They considered that such a measure would artificially push tariffs up for both long- and short-term capacity and lead to uncertainty concerning operator incomes. One shipper pointed out that the measure would discourage investments in new terminals in France, as no such restrictions were imposed in other countries in northwest Europe.
One shipper and Uprigaz found the approach unjustified at a time when there was a surplus of regasification capacity in relation to liquefaction capacity. The shipper mentioned the case of the Fos Cavaou terminal, which had demonstrated the difficulty to allocate short-term capacities.

Three shippers were in favour of dedicating regasification capacity for short-term contracts as a stimulus to competition in the French and European LNG primary market.

A number of shippers made the following additional points:

- one shipper, while being against the idea of reserving capacity for short-term contracts, thought that if such a measure were taken, it should not exceed 10% of the total capacity for operational reasons and to avoid adding to long-term shippers' uncertainties about the final tariff,
- two other shippers proposed a variable percentage of 10% to 20%,
- a third shipper thought that the share reserved for short-term contracts should be defined in relation to the aggregate capacity of all terminals and not as a uniform percentage.

For Uprigaz and one shipper, the short term should be considered as less than a year.

The three new project developers were against making regasification capacity available for short-term contracts. They considered that doing so would cause long-term capacity prices to rise and would generally have a detrimental effect on project funding. Short-term contracts should not, therefore, be reserved upstream but negotiated on a secondary market. Furthermore, the share of capacity allocated for short-term contracts would be hard to define and should vary from one terminal to another.

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One consumer suggested handling requests for long-term contracts (at least ten years) first, but was not against allocating capacity for short-term contracts. Another consumer also approved this approach but did not express an opinion as to how much capacity should be reserved.

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The AFG considered that allocating some capacity for short-term contracts might induce a risk of capacity being underused, which would lead to higher tariffs. It thought, however, that the existence of a UIOLI mechanism and a secondary market helped to optimise the use of capacity.

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One infrastructure operator pointed to the positive effects this approach would have for newcomers to the LNG market, as they would no longer be limited to the secondary market.
DGI and STMFC did not think it useful to reserve a share of regasification capacity for short-term contracts. They emphasised the shippers' preference for long-term contracts and the downward trend in the rate of use of LNG terminals, which was favourable to the development of a secondary market.

Most market players consider that making it mandatory to dedicate a share of regasification capacity for short-term contracts would make the operator's income uncertain and thus would make complex, or even impossible, the financing of the new projects and would lead to increased tariffs. A minority considers that the measure would stimulate competition.

CRE's standpoint

CRE notes that the market players are not favourable to make mandatory for exempted terminals to dedicate a share of regasification capacity for short term contracts. Even though this mechanism is necessary on the transmission network to serve the fluidity of the market, CRE considers that the specificity of the LNG activity makes this mechanism not suitable for LNG terminals.

Question 16: *In your opinion, what is the most relevant criterion for assessing the level of risk associated with investment that could justify exemption?*

Five shippers and Uprigaz thought that the five criteria set out in Article 22 spoke for themselves.
Another shipper considered the most relevant criterion to be considered was the term of the ship-or-pay contracts underlying the investment, but added that insofar as shippers were able to provide adequate guarantees of solvency and were prepared to make a long-term commitment, the risk was very slight.
Another thought that each project should be examined individually in light of its strategy and general investment criteria.

One shipper thought it impossible to define risk assessment criteria, stating that exemption was required insofar as an investment entailed a risk. Another felt there was a need to secure a return on investment independent of regulatory risks.

A new project developer thought that the level of risk was in direct proportion to the financing cost and could not be determined by the regulator. It pointed out that the risk also depended on contracts in progress and the stability of the regulatory system.

The other two project developers considered that the most relevant criterion was expressed quite clearly in Article 22 of the Directive: *"the level of risk attached to the investment is such that the investment would not take place unless an exemption was granted"*.

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Two industrial consumers considered that the level of risk taken by the operator was used to determine the rate of return on capital and, for this reason, should be used for defining the tariff, not for justifying an exemption.

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According to the AFG, the investor's biggest risks were structural underuse of the terminal and an unstable regulatory framework.

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DGI thought that risk analysis was specific to each investment and depended on project objectives and constraints.

The stakeholders consider that the criteria to be considered to assess the level of risk relating to investment should be the five ones of Article 22.

CRE's standpoint

Each project developer has to demonstrate that the investment would not be carried out without the exemption, particularly by proving that the level of risks and the expected profitability are in a such way that the exemption is necessary.

Question 17: *In your opinion, what relevant market should be considered to assess the impact that the projects announced in France will have on competition?*

Five shippers and Uprigaz thought that the French market represented the most appropriate scale of analysis. For some projects, however, it was thought that cross-border markets should not be ignored completely. The analysis should therefore be completed by including countries along the borders to take into account the development of interconnections.

Two shippers considered that at present the relevant market did not go beyond the balancing zone.

One of them added two criteria for defining the relevant market:
- a market where the limits could be reached without any real congestion,
- a market in which the unloaded LNG would remain competitive with respect to other sources of supply.

Another believed that the European market would be the most relevant market by 2012.

A ninth shipper said that two markets could be distinguished: a European market and a world market, which was tending to grow as a result of rising gas prices in some areas and lower shipping costs.

Two project developers thought that the balancing zone was the most relevant market, justifying their choice by the problems of limited interconnections and persistent congestion. The third agreed with the relevant market being defined on a national scale.

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Two industrial consumers thought that the relevant market was to be found within French borders owing to congestion and low levels of competition at entry points.

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According to the AFG, the European market should be regarded as the relevant market, given that there would be enough interconnections to absorb the congestion currently observed once the terminals in question came into service. DGI and STMG shared this point of view.

An infrastructure operator considered that the analysis of the relevant market should take into account the market development forecasts. It went on to say that the respective share of the market held by shareholders in the project developer company should also be taken into consideration.

Most stakeholders believe that the relevant market to be considered at present is the domestic market. However, the analysis should take into consideration the cross-border markets, in particular for the North West Europe area. Some stress that the European market is destined to become the relevant market in view of the future development of interconnections.

CRE's standpoint
CRE considers that the relevant market is the French gas market. It will also analyse in its proposal the effects of the projects on the neighbouring gas markets and on the French electricity market.

Question 18: *In your opinion, which criteria could lead to revising the allocation of an exemption?*

Five shippers and Uprigaz considered that the revision of an exemption was justified when the conditions imposed by the exemption were no longer met. Two of them stressed that the impact of any amendment on the viability of the project should be taken into account in the analysis.

Another thought that it would be fair to revise the exemption if the project were to fall behind scheduled planning. In such cases, it considered that the exemption conditions should be revalidated following a market consultation. Revision could also be justified in the event of structural underuse of some of the capacity. This capacity could then be made available to the market under "open-season" conditions.

One shipper considered that amending an exemption was justifiable when one of the shippers had more than a 30% share of the national gas market.

Another shipper and the three project developers thought that an exemption could be revised when capacity was transferred to a dominant player in the LNG market or in the event of a merger affecting the distribution of capacity.
One added that an amendment could also be justified by the competition level on the market in question.

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Two industrial consumers thought that amending an exemption was particularly justified when a shipper's status changed from newcomer to dominant supplier, based on usual fair trade criteria.

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An infrastructure operator thought that the regulator could revise the exemption if at least one of the criteria laid down in the Directive was no longer met.
STMFC stated that exemption amendment represented a significant threat to the success of the project.

Most market players consider that the revision of an exemption is justifiable when the conditions behind the decision to grant the exemption are no longer met. Most of them particularly stress the case of a holder of exempted capacity becoming a dominant market player.

CRE's standpoint
For each project where exemption is requested, CRE will define the conditions that may justify the revision of that exemption.

Question 19: *In your opinion, which data must be published to allow the "Use it or lose it" mechanism and the secondary capacities market to function effectively?*

Five shippers thought it would be useful to publish updated details of booked capacity.
Some of them added that it was important to include the following details here:

- the dates of available berthing slots, specifying the associated service and the price,
- available tank capacity,
- available send-out conditions,
- the number of available slots.

One shipper considered that data subject to mandatory publication should be analysed on a Europe-wide basis to avoid putting French terminals at a disadvantage compared with competing European terminals.

The project developers thought it necessary to publish an updated list of available berthing slots. Two of them added that it would also be a good idea to publish the reserve price.

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Two industrial consumers said that minimum publication requirements should include booked capacity, available capacity and the unloading schedule. They also insisted on the need for CRE to supervise the secondary market to avoid any excessive speculation.

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The AFG thought it would be useful for the market to publish the price of released capacity.

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DGI suggested making the following distinction between the short-term UIOLI and the long-term UIOLI:

- the short-term mechanism provides for the terminal operator to make available to the market any unused capacity (i.e. capacity subscribed by shippers but not confirmed in monthly schedule), with shippers losing the rights associated with their booked but unused capacity for that particular month,
- the long-term mechanism provides the relevant authorities with any information they request that is likely to reveal behaviour and practices aimed at hoarding capacity.

With regard to the secondary market, DGI expressed its satisfaction with the data from the bulletin board and the trading platform set up in Montoir and Fos Tonkin.

Market players would like the following information to be published:
- the date of available berthing slots, together with the associated services and prices,
- available tank capacity,
- available send-out conditions.

CRE's standpoint

Any data that helps to guarantee optimum capacity and effective mechanisms for releasing unused capacity on the market should be published. In its proposal, CRE will request that the operators of exempted terminals should publish at least the data published by the operators of regulated terminals.

Question 20: *What do you think about letting the terminal operator offer its own 'Use it or lose it' mechanism without, therefore, there being the same mechanisms in place at all French terminals?*

Five of the nine shippers that replied to the question were in favour of a specific UIOLI mechanism for each terminal. One pointed out that a specific UIOLI mechanism was justified because optimum terminal operation depended on the services proposed. Another thought that the operator should be responsible for defining the mechanism.

A shipper gave a more measured opinion. It approved the idea of a specific UIOLI mechanism for each terminal, but only until enough feedback had been obtained to select best practices with a view to standardising the procedure.

Three shippers and Uprigaz, however, were convinced that the UIOLI mechanism should be the same for each terminal, one of them stressing the fact that this would prevent any speculation. Uprigaz approved the idea of eventually standardising UIOLI mechanisms across Europe.

One shipper thought that the UIOLI mechanism could be replaced by an incentive mechanism to encourage the operator to set up an effective brokerage service.

One project developer argued in favour of a specific UIOLI mechanism for each terminal.
The other two thought it possible to base the UIOLI mechanism on the same principles for all terminals, but stressed that each infrastructure operator should be left to determine the degree of flexibility at the operational implementation level. One of them raised the possibility of introducing a specific UIOLI mechanism for new terminals over a limited period of time. Once feedback had been obtained, best practices could be standardised to create a single mechanism for all terminals.

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Two industrial consumers were absolutely against the operator setting up its own UIOLI mechanism which, in their opinion, was a matter for the regulator to deal with.

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The AFG thought that as these mechanisms had not been tried and tested, it might be a good idea to let terminal operators propose their own mechanisms. These could then be subsequently standardised in light of the feedback obtained.

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While aiming for a single UIOLI mechanism, one infrastructure operator admitted that some minor differences might remain from one terminal to another. These were to do with technical differences or specific geographical factors. It pointed out that while the definition of the mechanism was the regulator's responsibility, defining prices was not. It added that it was essential for the operator to make unused capacity available on the primary market, so that newcomers did not have to rely exclusively on the secondary market.
DGI and STMFC were sceptical about defining a single UIOLI mechanism which, by definition, had to be adapted to subscription and scheduling procedures that were specific to each terminal. They thought it preferable to leave operators free so that best practices could gradually be identified.

Market players mostly tend to favour a specific UIOLI mechanism for each terminal, at least until enough feedback is available to standardise best practices.

CRE's standpoint
CRE will define the objectives to be met by mechanisms for making unused capacity available on the market and will ensure that those set up by each operator are in compliance. For exempted terminals, failure of the mechanisms can be an element to justify the revision of the exemption.

Question 21: *What do you think about the consultation procedure specific to each project envisaged by CRE?*

Five shippers were in favour of carrying out a specific public consultation for each project. One shipper stressed the importance of regular contact between market players and CRE on the subject of exemption rules. Another shipper considered that specific consultations were necessary given the distinctive features of the French market, especially in geographical terms.

Two shippers and Uprigaz disapproved of a specific public consultation procedure. One of them justified its position by drawing attention to commercially sensitive information, adding that the removal of this confidential data from the consultation would inevitably limit the debate and make the exercise more or less pointless. It also claimed that the consultation would lead to an imbalance in the way projects were handled, as the last applicant would have the benefit of information from earlier consultations, giving it an unfair advantage.

One project developer thought that the existing general consultation was adequate. The other two project developers were not against the principle of a specific consultation if data was treated in confidence and if, one of them emphasised, the final decision was made by the regulation authorities and was not a reflection of public opinion.

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The industrial consumers proposed conducting a comprehensive survey of French regasification infrastructure requirements. The survey should be centralised and carried out by the regulator in association with the Ministry. The survey would lead to invitations to tender and the selection of the best developers.

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An infrastructure operator approved the idea of a specific consultation for each project.
DGI and STMFC were against a specific consultation procedure, stating that no provision had been made for it in regulations and that it could put the confidentiality of financial information at risk. STMFC added that the additional time required for such a procedure put the operator under considerable pressure.

Most shippers are in favour of a specific public consultation for each project. The users see the initiative as a way of involving the market in the examination of exemption criteria. The operators and some project developers would like financial data to be treated in confidence.

CRE's standpoint
CRE will carry out a specific consultation for each terminal and exemption will be granted on a case-by-case basis.

GENERAL QUESTION

Question 22: *Do you have any other remarks or comments on the tariff in force or the proposed changes for the new tariffs?*

I - Tariff principles for regulated LNG terminals in France

Tariff period

One shipper thought that the next tariff period should not exceed two years. It thought that at a time when access to the South zone was restricted, especially for newcomers, it did not seem wise to fix beyond 2010 the conditions of access to LNG terminals, the only importation points in this area.

Obligation to pay for subscribed capacities

DGI pointed out that the contracts signed by shippers on Fos-Tonkin and Montoir terminals included a "ship or pay" defined at 90% and that these shippers would not accept easily modifications leading to any changes in the balance of their contracts. Furthermore, it considered that the 90% level was adapted to the flexibility requirements of LNG supply chains.

One shipper agreed with DGI, claiming that the various restrictions on terminal operation (tides, maintenance work on the transmission network and on the actual terminal) reduced terminal availability, bringing it close to a "ship or pay" level of 90%.

Capacity allocation

One shipper suggested compensating for the lack of fluidity in the South zone by setting up a temporary returnable capacity mechanism at the Fos Cavaou terminal.
According to the proposal, the mechanism would be:

- activated in the event of access being denied in response to a subscription request for a period of at least one year,
- applicable to each shipper holding more than 20% of technical capacity, within a 25 to 30% limit of the capacity held by the shipper in question.

According to this shipper, returnable capacity should be:

- allocated for requests exceeding a year,
- subject to proof of LNG quantities and a commitment to receive them within the subscription period,
- allocated first to suppliers that can prove they have the greatest need for gas in the South zone to supply their final customers, including CCGTs.

This principle was supported by another shipper that suggested that the mechanism should be set up pending the merger of the North and South balancing zones, which would really boost competition in the south of France. It suggested that capacity should be taken from shippers holding more than 20% of technical capacity at the Fos Cavaou terminal.

II - Exemption from third-party access

Measures for promoting competition

Uprigaz stressed that LNG terminals, unlike gas transmission networks, were no longer in a natural monopoly position in Europe. Their growing numbers were leading to very considerable overcapacity with regard to confirmed, long-term LNG import contracts. The issue of third-party access was now one of competition between terminals to offer third parties available capacity at the most attractive conditions. This new situation had to be properly addressed in the regulation of LNG terminals. This

meant adapting not only the rules of access to capacity made available on the market but also the tariffs applied for third-party use of this capacity.

One final consumer insisted that the choices made regarding LNG terminals were very important for building up competition in France. LNG terminals accounted for some 30% of gas entry capacity in France and this proportion should increase over time. As a result, this consumer thought it vital that investments identified by the authorities should be approved and paid for at regulated tariffs.