

Summary of the public consultation on new exempt interconnectors (NEI)

1- Context of the public consultation and contributors:

On 26th July 2011, CRE launched a public consultation on the possibility of granting new electrical interconnectors an exemption from article 9 of Directive 2009/72/EC of 13th July 2009. This consultation precedes the update of the guidelines contained in the CRE deliberation of 30th September 2010 on the application of article 7 of Regulation (EC) No. 1228/2003 dated 26th June and on conditions for access to the French electricity transmission grid for new exempt interconnectors.

The CRE received five answers to this consultation:

- one of the contributors is the operator of an electricity transmission system (RTE) (only its response to question 1 is included in this summary),
- four of the contributors are both electricity producers and suppliers. They are GDFSuez, EDF, Vattenfall and another market player.

2- Key points of the contributions:

Generally, the contributors wanted the allocation rules applied to a new connection and those applied to the regulated interconnections to be harmonised. These rules are seen as a protection against a privileged access in the case where the exempted interconnection operator also uses the interconnection capacity.

Most of the contributors (including EDF and GDFSuez) did not consider massive purchase of long term capacities by a producer or supplier as going against the spirit of unbundling or the guarantee of non discriminatory third party access.

All of the contributors were against the analysis of the reason for investment when the decision is made whether to grant an exemption from unbundling provisions.

All of the contributors agreed that no exemption must affect the principle of non discriminatory third party access or the confidentiality of transactions.

The contributors wanted the exemption from unbundling provisions to be combined with the guarantee both of independence of the new interconnection operator and of the confidentiality of transactions.

All of the contributors were in favour of a producer or supplier being able to propose a new interconnection project that does not enjoy an exemption from the non discriminatory nature of third party access.

Most of the contributors considered that the provisions of the 2nd energy package correctly provide a minimum level of requirements in terms of non discriminatory third party access and confidentiality of commercially sensitive information (CSI). Furthermore, they suggested that the management of auctions by an independent third party under the regulator's control is the best guarantee of non discriminatory third party access and the protection of CSI.

Most of the contributors agreed that the same rules should apply to new interconnectors and to any other grid interconnection infrastructure.

Another contributor considered that operators of new interconnectors are not transmission system operators in the sense of the directive and therefore are not concerned by the unbundling obligation rules.

3- Summary of the replies by themes:

Conditions of third party access to new interconnectors:

Question 1: *In your opinion, should interconnection capacity management and allocation rules described in network codes apply to new interconnectors for which an exemption has been granted according to article 17 of Regulation (EC) No. 714/2009?*

The majority of contributors (EDF, GDF Suez, Vattenfall and RTE) wanted to prioritise the harmonisation of the allocation rules for new interconnectors with those applied to regulated interconnectors. Nevertheless, some contributors (EDF and Vattenfall) specified that exceptions should be tolerated in the case where this is necessary for the realisation of a new interconnector. EDF cited the example of the allocation of very long term capacities by an "open season" mechanism.

Some contributors (EDF and GDF Suez) cited, in particular, the importance of harmonising allocation rules for day and intra-day terms. EDF also mentioned its preference for allocation of financial products for the long term, whereas GDF Suez recommended explicit auctions for the long term, the coupling of day ahead markets and real time allocation by a cross-border balancing mechanism for the short term.

For RTE, the key principles described in the network codes concerning the calculation of capacities and the nomination and management rules should also be prioritised. It also stressed the importance of setting up a firmness mechanism for all of the interconnections (exempted and regulated) and emphasised the target of optimal use of physical capacities.

Finally, GDF Suez added that no reserve price should be applied, that the interconnector owner must not have a privileged access to the interconnection capacity and that the operator of the new interconnection must procure the energy that it uses to cover the energy losses on its line.

Only one market player recommend that the operator of a new interconnection define the capacity allocation rules on its line. According to this player, the result would, in any case, be close to the rules applied to the regulated interconnections.

Concerning the calculation of interconnection capacities, RTE specified that in a case where the new capacity caused a reduction in the capacities offered by the regulated network, the CRE should take the cost thus generated into account in the cost-benefit analysis of the project when examining the exemption request.

Question 2: *The specific case where the operator of a new interconnector is not totally exempted from non-discriminatory access of third parties, but is directly or indirectly linked to an undertaking that takes part in explicit auctions of capacity, could be seen as problematic. In practice, the undertaking in question, as the beneficiary of at least part of the revenue from congestion, could be able to make offers at higher prices than its competitors and therefore de facto profit from a privileged access. In your opinion, how should privileged access to the interconnection capacity be prevented in this specific case?*

All of the market players that replied to the consultation stressed that the capacity allocation mechanisms play an important role in preventing privileged access to the interconnection

capacity in this case. EDF, GDF Suez and Vattenfall mentioned market coupling, in particular.

Concerning long terms products, EDF considered that the possibility of abuse would be ruled out by a financialisation of products (in combination with market coupling), whereas GDF Suez, which prefers explicit auctions, recommended the delegation of the organisation of these auctions to an auction agency type organisation. It added that, when several interconnectors link the same markets, the auctions should group together the capacities in order to obtain a single price. One market player proposed imposing "use it or lose it"¹ or "use it or sell it"² mechanisms if necessary.

In the case of explicit allocations, contrary to GDF Suez, this same anonymous market player proposed limiting the new interconnector operator's access to its capacity (by means of the exemption decision) and Vattenfall proposed that it should be forbidden.

Nevertheless, the anonymous market player specified that limiting measures should only be imposed if the new interconnection operator has market power (dominant player). If not, it would not be incentivised to submit orders exceeding the market value of the capacity.

Finally, EDF mentioned the appropriateness of "cap and floor" mechanisms. It emphasised that, in order to be pertinent, these mechanisms must be defined in a way that preserves both the logic of a private investment and the acceptable levels of commitment, from the regulated point of view, for the interconnectors concerned.

Purchase of long term capacities:

Question 3: *In your opinion, is the indirect participation of an electricity producer or supplier by means of a mass purchase of long-term capacities a method that in practice contravenes the spirit of unbundling or the guarantee of the non-discriminatory nature of third party access to a new interconnector?*

Question 4: *In your opinion, should the indirect participation of an electricity producer or supplier by means of a mass purchase of long-term capacities be one of the practices that are the subject of a revision clause of a granted exemption? Should it be prohibited (from what level)?*

All of the contributors were against the prohibition of massive purchase of long term capacities by a producer or supplier.

One of them (EDF) thought that the network codes relating to rules for allocation and management of interconnection capacity need to be amended to allow for a part of the capacities to be allocated by means of long term auctions of financial rights, using an "open season" mechanism , as the market is monitored by the regulator.

Some contributors (EDF, GDFSuez and Vattenfall) suggested the idea of guaranteeing non discriminatory access by delegating the auction process to an independent auction agency.

Another contributor (Vattenfall) considered that the market prices alone suffice to ensure optimum attribution of capacities without any restriction related to the purchaser's identity.

Reason for the investment:

¹ Principle of using the rights to use transmission capacities or losing them definitively

² Principle of using or selling transmission capacity rights

Question 5: *In your opinion, should the reason for investment be taken into account when making the decision whether or not to grant an exemption from the unbundling obligation to a producer or supplier supporting a new interconnector project? If yes, how?*

All of the contributors were opposed to the analysis of the reason for investment when making the decision whether or not to grant an exemption from asset unbundling.

For three of them (EDF, GDFSuez and Vattenfall), article 17 of regulation 714/2009 does not set down the reason for investment as one of the cumulative conditions for obtaining an exemption.

Connection between the exemption from unbundling obligation and exemption from the non-discriminatory nature of third party access:

Question 6: *What is your opinion of the connection made between the exemption from the non-discriminatory nature of third party access to the new interconnection and the exemption from the unbundling principle?*

Question 7: *In your opinion, should the fact that the exemption from the non-discriminatory nature of third party access is either total or partial have an impact on the decision on exemption from the unbundling principle?*

Question 8: *In your opinion, should exemption from the unbundling principle be based on characteristics of the third party access other than non-discrimination? Which ones?*

Question 9: *Question 9 : In your opinion, should exemption from the unbundling principle be based on criteria other than the level and extent of the exemption from third party access? Which ones?*

Question 10: *Question 10 : Do you think that producers or suppliers of electricity should be able to sponsor new interconnector projects that do not benefit from exemption from the non-discriminatory nature of third party access?*

All of the contributors agreed with the fact that no exemption must affect the principle of non discriminatory third party access or the confidentiality of transactions.

The contributors wanted the exemption from unbundling provisions to be combined with the guarantee of independence of the new interconnector operator and the confidentiality of transactions, which, according to the contributors, could be made possible by various means that do not necessarily contradict each other:

- (EDF, GDFSuez and Vattenfall) delegating the operational management to an auction agency (CASC type) or accredited exchanges,
- (EDF) the case-by-case inspection by the regulator of the new interconnector operator's guarantees of independence and the confidentiality of data, which must be integrated into the exemption conditions,
- (Vattenfall) the implementation of an implicit auctions mechanism, without allocation of physical rights or allocation not at market price, except in a temporary way in the case of lack of liquidity on the wholesale market.

All of the contributors were in favour of a producer or supplier being able to propose a new interconnector project that does not enjoy exemption from non discriminatory third party access.

Implementation of an exemption from the unbundling principle according to the degree of exemption from the non-discriminatory nature of the third party access

Question 11: *In your opinion, do the provisions of the 2nd energy package provide a satisfactory minimum level of requirements in terms of the non-discriminatory nature of third party access and confidentiality of commercially sensitive information??*

Question 12: *Question 12: In your opinion, what measures for protecting the non-discriminatory nature of third party access and confidentiality of commercially sensitive information should be implemented, as a minimum?*

Question 13: *In your opinion, which functions of the operating undertaking should receive particular attention in terms of the non-discriminatory nature of third party access and the confidentiality of commercially sensitive information?*

Question 14: *In your opinion, what provisions in terms of the non-discriminatory nature of third party access and the confidentiality of commercially sensitive information should apply to new interconnectors?*

One market player considered that the network codes' rules should not apply to the operators of new interconnectors. They should enjoy commercial freedom in the sale and allocation of capacities. It asserted that this freedom would not lead to practices very different than those brought about by the regulatory framework. In practice, according to this player, the operators of new interconnectors would have an incentive to be included in market coupling, which provides an optimal allocation of capacity and thus maximises the revenues of interconnection operators.

Three of the contributors considered that the provisions of the 2nd energy package provide a minimum level of requirements in terms of non-discriminatory third party access and confidentiality of CSI.

For one of them (EDF), the transparency and confidentiality rules should be the same for a new interconnector as for a regulated interconnector.

For another (GDFSuez), constraints resulting in an independent legal form of the companies in question, in an operational management that guarantees third party access and the equivalence of treatment should be added to these rules.

For two of them (GDFSuez and EDF), it would be best if there is a guarantee that the operation is independent of the investor.

These contributors once again suggested that the execution of auctions by an independent third party under the control of the regulator would be the best guarantee against discrimination of third party access and of the protection of CSI.

Most of the contributors (EDF, GDFSuez, Vattenfall and another contributor) agreed in saying that the same rules should apply to the new interconnector and to any other grid interconnection infrastructure.

General questions:

Question 15: *Do you have any other comments concerning exemption from the provisions of article 9 of Directive 2009/72/EC?*

Question 16: *In your opinion, following the transposition of the 3rd energy package into French law, what additional developments might be desirable when CRE deliberation of 30 September 2010 will be updated?*

Question 17: *Do you have any other comments or requests to make to CRE on the subject of new interconnectors to which an exemption is granted by application of article 17 of Regulation (EC) No 714/2009?*

No response from the contributors that had accepted the publication of their responses.