

24 July 2009

Synthesis of responses to the public consultation concerning the exemption request planned by the Dunkerque LNG Company for the LNG terminal project at Dunkirk

Between 16 February and 4 March 2009, CRE held a public consultation to obtain the views of market stakeholders regarding the exemption request planned by Dunkerque LNG for their LNG terminal project at Dunkirk and regarding the preliminary positions of the CRE.

CRE received 19 answers (see list in the appendix), broken down as follows:

- 9 answers were received from shippers, including two shippers with LNG terminal projects and Uprigaz;
- 4 answers were received from industrial consumers and from Uniden;
- 4 answers were received from gas infrastructure operators including GRTgaz;
- 2 answers were received from AFG and CREG.

The consultation shows that a majority of contributors is in favour of granting Dunkerque LNG an exemption from regulated third party access for a period of 20 years. Excluding the industrial consumers, the majority of the contributors consider that the criteria determined in Article 22 of the gas directive are generally respected.

Regarding the conditions that CRE is considering recommending in its opinion:

- The contributors are mostly in favour of putting unsubscribed long-term capacities on the market at regular intervals; some of them also propose to extend this mechanism to the commercialisation of short-term capacities. The frequency of commercialisation vary from 6 months to 2 years;
- The contributors are mostly in favour of a commitment by Dunkerque LNG to compensate GRTgaz financially in case all the entry capacities on the transmission network are not subscribed;
- They are generally in favour of the application of common principles for regulated and exempted terminals with regards to the contributions to intra-day flexibility on the transmission networks. Some contributors suggest that the implementation of these principles has to be adapted to the operational and sales constraints specific to each terminal;
- The contributors think that the capacities subscriptions at Dunkerque LNG terminal by GDFSuez should be limited, giving its dominant position on the gas market in France. Some of them even think that GDF Suez should not be authorised to book any primary capacity at the Dunkirk terminal;
- They think that a UIOLI mechanism is essential for a proper functioning of the market. They consider that the mechanism presented in the preliminary file by Dunkerque LNG is not explicit enough on this subject. According to the contributors, it is important that this kind of mechanism is approved and monitored by CRE;
- A majority considers that the exemption request would need to be re-examined if Dunkerque LNG set up an LNG re-export service representing more than 10 % of the regasification capacity of the terminal.

Question 1: Do you consider that the demonstrations made by Dunkerque LNG for the criteria stated by the European directive are satisfactory?

a) Security of supply

A majority of the market stakeholders, mainly shippers, consider that an LNG terminal would necessarily contribute to improve security of supply, as it will constitute a new entry point and provide access to new sources of gas. The industrial consumers and infrastructure operators are generally more sceptical about the contribution of the Dunkirk terminal to security of supply.

Shippers (7):

6 shippers and Uprigaz consider that criterion a) is respected.

Among these, 4 shippers consider that a new LNG terminal will constitute a new entry point and will necessarily improve security of supply. One of them specifies that an LNG terminal will both diversify supply sources and provide more flexibility to face the uncertainty associated to the evolution of demand in 2020. However, another shipper points out to the difficulty of assessing the contribution of this project to security of supply, since EDF indicated that it did not sign LNG supply contracts for the Dunkirk terminal.

Industrial consumers (3):

1 consumer confirms that Dunkerque LNG terminal will strengthen security of supply in France. This consumer is however concerned by the terms and conditions required by the operator for the functioning of the terminal.

According to 2 other consumers, the project will not have a negative impact on the current situation of the gas market in France, but a total exemption will not bring improvement either. One of them added that an exempted terminal will contribute less to security of supply than a regulated terminal.

Gas infrastructure operators (1):

According to 1 gas infrastructure operator, an LNG terminal will not necessarily contribute to security of supply if the gas of the terminal is coming from a single supply source. This operator added that for now, the sources of gas for the Dunkerque LNG terminal were not known.

Other market stakeholders (1):

AFG considers that as a new entry point, the Dunkerque LNG terminal will have a positive effect on security of supply by diversifying sources of supply.

b) Competition and the proper functioning of the domestic market

A majority of shippers approves the analysis of competition undertaken by Dunkerque LNG. However, a majority of industrial consumers and one gas infrastructure operator considers that the Dunkerque LNG terminal will not procure benefit in terms of competition and a proper functioning of the domestic gas market.

Shippers (7):

5 shippers and Uprigaz consider that criterion b) is satisfied.

1 of them thinks that the presence of LNG producers as long-term shippers in the terminal does not necessarily guarantee the actual arrival of gas to the terminal. However, whatever the relevant market is (GRTgaz North zone or North West Europe: whole France, Benelux, Germany), the development of import capacities in these markets by stakeholders other than GDF Suez could only be beneficial to competition.

1 other shipper considers that criterion b) is not satisfied. According to this shipper, a total or partial exemption will only strengthen the already dominant position of EDF in the electricity market by reinforcing its position in the dual electricity / gas supply market. This shipper considers that it is necessary not only to refuse the exemption, but also to organise a third party access to the infrastructure that enables other suppliers to secure a share of their gas supplies under conditions similar to those of EDF.

Industrial consumers (3):

1 consumer considers that there might be a marginal improvement in competition with the arrival of EDF with additional volumes of gas.

Uniden and 1 other consumer consider that there will be no benefit in terms of competition in the gas market in France to the extent that the gas imported by EDF will not be made available to market players. According to this consumer, this gas will be used to supply EDF combined cycle plants or EDF's portfolio of small consumers and domestic customers. In this perspective, this consumer requires more transparency regarding the impact of the Dunkerque LNG terminal on the five markets identified in the preliminary file. The consumer concludes that the impact on competition and on the proper functioning of the domestic market could even be negative if EDF exchanged capacities with GDFSuez at the Dunkerque LNG terminal with capacities in the South zone. This would result in a decrease in the volumes available for large consumers in the South zone.

Gas infrastructure operators (1):

1 infrastructure operator considers that the exemption will generate discrepancies between exempted and regulated terminal. In this context, an exempted terminal will not contribute to the efficient functioning of the domestic market. Moreover, this infrastructure operator considers that Dunkerque LNG's demonstration on the basis of the HHI index is not convincing and the marketing approach is discriminatory.

The others infrastructure operators have no particular remarks on this question.

c) Proper and efficient functioning of the network

The contributors generally share CRE's analysis regarding the respect of the criteria of efficiency and a proper functioning of the network. The shippers and the infrastructure operators especially stress the importance of covering network access costs by the users of the terminal, or, if necessary, by Dunkerque LNG.

Shippers (6):

4 shippers and Uprigaz share the preliminary opinion of CRE as to the satisfaction of criterion c).

1 shipper stresses that it is important that the costs directly associated to the connection of the terminal are covered by the subscribers of Dunkerque LNG terminal regasification capacity. Moreover, the same shipper adds that the current system of entry-exit tariffs has to change so that entry terms are no longer equalized, in particular at the PITTM. According to this shipper, the implementation of tariffs based on real connection costs is the only way of sending the right economic signals to ensure that terminals are located at the most suitable points of the GRTgaz network. An equalization of the entry terms at PITTM would generate a higher risk supported by GRTgaz in case of insufficient capacity bookings by the shippers.

Concerning the impact of the terminal on the efficiency of the network, this shipper considers that Dunkerque LNG's demonstration was incomplete. The same shipper has some doubts regarding the contribution of the Dunkirk terminal project to a global decrease in GRTgaz tariffs, as suggested in the preliminary file. The arguments put forward by this shipper are :

- Dunkerque LNG is seeking to show that there would be flow synergies between Dunkirk PIR and the future Dunkirk PITTM. However, the shippers, and not the operator, set the physical exit flows from the terminal on D-1. These flows are thus, by nature, not predictable by the operator. This shipper consequently finds the argument spurious;
- The new receipts for GRTgaz generated by Dunkerque LNG have to be compared to the costs of connecting the terminal;
- The points regarding the gas quality are unconvincing given the lack of information on the origin of the LNG and its specifications.

1 other shipper considers that in addition to the principle of passing on connection costs to the terminal users (via subscriptions at PITTM), the gains in productivity associated to the terminal interconnection should also be assessed and passed on in the network access tariffs.

Industrial consumers (1):

1 consumer approves the conditions proposed in the preliminary position of CRE concerning the satisfaction of criterion c) and adds that it is vital that EDF group guarantees the payment of all the necessary investments to integrate the Dunkirk terminal into the GRTgaz network, including modifications to the transmission network node.

Gas infrastructure operators (2):

1 infrastructure operator considers that the access costs to the transmission network have to be shared between the terminal users; entry tariffs should thus be de-equalized to reflect the real investment costs.

GRTgaz confirms that the connection of an LNG terminal at Dunkirk will not have a negative effect on the efficiency or on the proper functioning of the network as long as the necessary investments are carried out for both the connection of the LNG terminal and the development of the transmission network node.

d) The level of risk of not realising the investment if the exemption is not granted

Most of the shippers are satisfied by the demonstration of criterion d) provided by Dunkerque LNG in its preliminary file. Other contributors are not convinced by the evidence presented by Dunkerque LNG in the preliminary public file. For some of these contributors, the regulated framework can be adapted to investors needs and currently offers sufficient high rates of return.

Shippers (9):

5 shippers and Uprigaz have no special remarks on the satisfaction of criterion d). One of them specifies that the LNG chain requires long-term contracts to cover the risks associated to investment.

1 other shipper considers that Dunkerque LNG did not provide a complete analysis on this issue in the preliminary file. This shipper points out, however, that the development of the Fos Cavaou terminal was undertaken and financed without an exemption from third party access.

2 other shippers consider that criterion b) is not satisfied. According to one of them, while the preliminary file shows that investors need long term subscriptions for all the commercialised capacities before taking the investment decision,, it does not show how obtaining the exemption would simplify the task of the investors in their search. The second shipper considers that the regulated framework gives a fair return on investment and is not incompatible with the simulations presented by the Dunkerque LNG Company. These simulations were based on a 100% fill rate and a tariff that would enable costs to be recovered.

Industrial consumers (3):

One consumer thinks that there are insufficient elements in the preliminary Dunkerque LNG file to be able to form an opinion on the question.

Uniden and one other consumer consider that the demonstration of criterion d) is not convincing. According to them, the argument used by Dunkerque LNG, which is that the exemption of the terminal is the sine qua non condition for proceeding with investment, is not justified in light of the generous rates of return provided for regulated terminals. Uniden adds that the economic balance of the project, based on the subscription of all the terminal capacities over a period of 20 years, can also be achieved in a regulated framework. Uniden also questioned the reality of the Dunkerque LNG statement: *"the market feedback has clearly shown (...) that no operator potentially interested in booking capacity would take a commitment unless (...) the exemption from regulated third party access was granted"*. On the contrary, Uniden recalls that EDF booked capacities at the new regulated terminal at Fos Cavaou, which contradicts the statement by Dunkerque LNG.

Gas infrastructure operators (1):

According to 1 infrastructure operator, the argument of Dunkerque LNG stating that the regulated framework would not provide long-term visibility is unsound. All the regulated terminals in Europe provide, and did provide at the time of capacities allocation, a long-term access in a stable framework. Furthermore, regarding the financial risk, this infrastructure operator adds that the French regulatory framework is the most advantageous in Western Europe and is rather favourable to the development of new investments.

e) *Levying of charges from the users of the infrastructure*

All the contributors consider that criterion e) is satisfied.
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Shippers (9):

8 shippers and Uprigaz do not have special remarks about this criterion.

Industrial consumers (1):

According to 1 consumer, criterion e) is covered. The other consumers do not have further comments.

Gas infrastructure operators (1):

1 gas infrastructure operator shares the position of CRE which is to ensure that the terminal does not benefit from a competitive advantage comparing to other regulated terminals. The other infrastructure operators do not have comments.

f) *Independence of the infrastructure operator in relation to the operators of the systems in which the terminal will be built*

All the contributors consider that criterion f) is generally satisfied.
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Shippers (9):

8 shippers and Uprigaz have no special remarks about the satisfaction of this criterion.

Industrial consumers (1):

According to 1 consumer, this criterion is satisfied. The other consumers do not have comments.

Gas infrastructure operators (1):

1 infrastructure operator considers that Dunkerque LNG respected criterion f), but thinks that the criterion itself is not binding enough.

Question 2: Do you think that the exemption should be re-examined if an LNG export service, representing more than 10% of terminal's regasification capacities, is implemented?

The contributors generally approve this proposal, as a gas export service would substantially modify the characteristics of the project.

Shippers (6):

2 shippers and Uprigaz consider that a re-examination of the exemption will not be necessary if an LNG export service is implemented. Uprigaz considers that, to avoid creating a regulatory risk, a re-examination of the exemption would be justified only if major modifications were made to the operating conditions of the terminal. 1 of the 2 shippers adds that, even if such a condition were included in the exemption, a re-examination should not necessarily result in a withdrawal of the exemption. According to the second shipper, the exemption should not be conditional on any threshold concerning an LNG export service. According to this shipper, an LNG export service will normally be a limited activity in volume and will correspond to the operator's desire to offer more services to its users. Moreover, this shipper adds that this type of service is not structurally different from the principle of redirecting (re-routing) LNG cargos before their arrival, which is an accepted and normal mechanism.

3 shippers consider necessary to re-examine the exemption if the LNG re-export service concerned more than 10 % of the regasification capacity of the terminal. 2 of them point out that such a service would be in partial contradiction with the criterion of reinforcing security of supply.

Industrial consumers (3):

2 consumers and Uniden estimate that a re-examination of the exemption is necessary if a service exporting gas in LNG or gaseous form were adopted after the obtaining of the exemption. Uniden considers the 10% limit acceptable.

Gas infrastructure operators (1):

One infrastructure operator thinks that the link between the Belgian gas market, especially in the Zeebrugge region, and the French market should be encouraged and simplified. According to this operator, the Dunkerque LNG terminal can play a positive role in this respect. A potentially bidirectional link between the Dunkerque LNG terminal and the Zeebrugge zone, including the Zeebrugge LNG terminal, can be of greatest importance in strengthening the interconnection between the two countries concerned, taking into account the differences in the odorization practices. This operator does not want that a restriction of LNG exports to 10% of the terminal capacity would be an obstacle to the interconnection between France and Belgium.

Other market stakeholders (1):

AFG considers, on the one hand, that it is not economically viable to re-export LNG from an LNG terminal, and on the other, that the constant re-evaluation of the exemption will discourage investors and is a source of legal uncertainty. Moreover, according to AFG, the re-evaluation of the exemption for the reasons mentioned would create a paradoxical situation, because if the gas was exported via the transmission networks, the terminal will continue to benefit from the exempted regime, whereas if the same quantity of gas was re-exported in the form of LNG, the terminal will lose this benefit. Yet the two modes of exportation have the same impact on the gas volume available on the domestic market. In addition, export via the network could cause congestion that would damage the gas transmission system.

Question 3: Do you think that Dunkerque LNG has to propose regularly the non subscribed capacities to the market after the final investment decision? If yes, what should be the appropriate frequency?

The contributors are mostly in favour of a regular commercialisation of unsubscribed capacities, according to a frequency between 6 months and 2 years. A minority considers that capacities commercialisation has to remain the responsibility of the terminal operator.

Shippers (9):

5 shippers are in favour of organising regular market consultation when capacities become available. 3 of them propose a commercialisation frequency between one and two years. One of them also propose that this process takes place at multi-annual intervals giving priority to longer-term subscriptions. 1 other shipper suggests that short-term capacities should be proposed to the market, defining short term as a period of 1 to 3 years.

2 shippers and Uprigaz consider that the commercialisation of capacities should be the responsibility of Dunkerque LNG, who is in a better position to determine the most effective mechanism to achieve the creation and sale of optimum capacities while preserving its own economic interests. One of the shippers points out that it is not necessary to require Dunkerque LNG to set up a regular market consultation mechanism, such as an open season, for the initial design of the terminal.

One other shipper thinks that it would be more appropriate and beneficial for Dunkerque LNG to await the approach of the date of the FID (Final Investment Decision) before organising a consultation, so that the level of subscription selected is based on the most updated market needs. This shipper proposes that, while awaiting long-term subscription, unsubscribed capacities should be made available to the market via a UIOLI mechanism.

Industrial consumers (3):

According to 2 consumers, Dunkerque LNG has to organise a market consultation if long-term capacities were not subscribed or if the long-term capacities subscribed were not used. One of them proposes that sales should be conducted twice a year, with subscription periods of up to 20 years.

Uniden proposes a provision of at least 3 Gm³ for the smaller shippers, including industrial consumers, with a band service that would renew the availability of gas over a periods up to 12 months, from the first vessel.

Gas infrastructure operators (1):

1 infrastructure operator thinks that capacities that were not subscribed in the long term should be subject to supervised consultation. According to this infrastructure operator, the exemption would give to Dunkerque LNG an undue competitive advantage if the latter kept short-term capacities for sale. Dunkerque LNG would only have to set its supply above the public Elengy level for band and spot services to secure most of the market during periods of low or moderate demand; while maintaining the possibility of increasing its margins when demand increased.

Other market stakeholders (2):

CREG did not answer directly to the question, but queried the sales approach of Dunkerque LNG on a more general level, judging it to be incompatible with the interpretative note of the gas directive: *"Promoters wishing to obtain exemptions should in principle, and if possible, offer to other parties the possibility of obtaining access to a new investment during the planning phase or during the feasibility study, for example by enabling market players to book capacity at a given price during this preliminary period"*. According to CREG, Dunkerque LNG should organise an open season for the sale of capacities in order to determine market interest and avoid giving priority to certain energy players chosen by EDF.

According to AFG, the sale of capacities has to remain in the hands of the operator. AFG considers that the interest of the project promoters is to ensure that the terminal is optimally used. Nonetheless it is necessary to avoid setting up mechanisms that could encourage potential customers of the terminal to adopt a “wait and see” attitude, which would be prejudicial to investment. AFG stresses however that capacity prices have to be transparent and applied in a non-discriminatory manner even if prices are set up freely for exempted terminals.

Question 4: Do you think that Dunkerque LNG should commit itself to financially compensate GRTgaz if all the entry capacities on the transmission network have not been subscribed by shippers holding regasification capacities at Dunkirk LNG terminal?

For a majority of the contributors, the project sponsor should financially compensate GRTgaz if all the capacities developed were not subscribed.
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Shippers (9):

According to 5 shippers, the development of capacity at Dunkirk PITTM by GRTgaz is entirely dependent on the connection of the Dunkirk terminal and it is essential that the shippers of the terminal bear all the costs. These shippers consider that GRTgaz's economic balance should not be compromised by any lack of subscription by shippers holding regasification capacities. According to one shipper, this is especially true as the allocation of capacities at the terminal is not be open to third parties; this shipper adds that the proposition could even provide incentives for the terminal operator to sell available capacities in order to reduce access prices at the terminal. The same shipper specifies that the financial compensation should be taken into account so as to ensure stable tariffs for access to the transmission network over 3 to 4 years.

For 2 other shippers, it is essential that interface conditions with GRTgaz should apply in the same way at both regulated and exempted terminals.

1 other shipper considers that any commitment by Dunkerque LNG to compensate financially GRTgaz if all the entry capacities on the transmission network were not booked constitutes an additional risk for Dunkerque LNG. This shipper points out that this type of project also constitutes a source of additional revenue for GRTgaz, who should bear a limited part of the associated risk. Finally, this shipper thinks that the requirement for holders of regasification capacities at the Dunkirk terminal to hold corresponding capacities on the GRTgaz network would discourage the reservation of speculative capacities in the terminal.

Uprigaz thinks that, as a point of principle, it is not surprising that a new entry point on the network, which would contribute both to security of supply and to stronger competition, would lead to higher transmission tariffs. Uprigaz would welcome that CRE initiates discussions on this theme as it goes beyond the strict case of the Dunkirk terminal and its exemption.

Industrial consumers (3):

According to 2 consumers and Uniden, Dunkerque LNG should undertake to compensate financially GRTgaz if all the entry capacities on the transmission network were not subscribed fully to the technical limit of capacity. 1 of the consumers and Uniden consider that it is not reasonable to expect the community of users of the network to bear any cost while they had no access to the Dunkerque terminal.

Gas infrastructure operators (2):

According to GRTgaz, it is vital that mechanisms be put in place to ensure that all the entry capacities on the transmission network originating from an exempted LNG terminal should be subscribed. In this sense, GRTgaz considers that the mechanism proposed by CRE, i.e. making Dunkerque LNG ultimately responsible for the subscription of transmission capacities, would deal with this issue. For GRTgaz, if this mechanism were to be used, financial guarantees would need to be provided by Dunkerque LNG concerning their ability to fulfil their financial commitment.

1 other infrastructure operator considers that the economic test determining the implementation of a compensation mechanism for a terminal (all or part of its subscribers) should be more highly specified, with a more general approach that would not be based only on the case of Dunkerque LNG project.

Other market stakeholders (1):

AFG considers that GRTgaz's economic balance should not be compromised by a lack of subscriptions by shippers holding regasification capacities. AFG therefore proposes that any lack of subscription of entry capacity on the transmission network should be borne directly by subscribers of capacity at the terminal.

Question 5: Do you consider that Dunkerque LNG should comply with any decisions made by CRE concerning regulated LNG terminals with regard to intra-day flexibility?

The majority of the contributors thinks that there should be equality of treatment between regulated and exempted terminals for contributions to intra-day flexibility. Some respondents drew to CRE attention the specificities of each terminal and proposed a case-by-case treatment.

Shippers (8):

For 5 shippers, it is essential that Dunkerque LNG contributes to the intra-day flexibility of GRTgaz transmission networks in the same way as regulated terminals. 2 of them think that intra-day flexibility should be managed between the transmission network operator and the operators of adjacent infrastructures. 1 shipper underlines that this type of operating agreement should be managed in the framework of 'Operating Balancing Agreements', which especially define the operating conditions of the network. The same shipper also proposes that any investment necessary to meet the needs of intra-day flexibility should be subject of a specific agreement between the transmission system operator and the adjacent infrastructure operator and submitted to the approval of the regulator.

1 shipper considers that, unless the operational efficiency of the terminal was taken into consideration, such a contribution would have a negative effect and could make the terminal less attractive.

1 other shipper thinks it inappropriate to make the holder of capacities at the Dunkirk terminal bear the consequences of restrictions in the transmission system for which they are not responsible. Thus for this shipper, it would be useful for GRTgaz to subscribe to a part of the services proposed by Dunkerque LNG in order to increase the efficiency of their network.

Uprigaz thinks that each terminal has his own characteristics and constraints and that services in favour of flexibility should thus be designed on a case-by-case basis. Furthermore, Uprigaz proposes the implementation of financial incentives to encourage the promoters of the terminal to develop such services.

Industrial consumers (1):

One consumer considers that Dunkerque LNG should be subject to the same conditions as the regulated LNG terminals concerning the contributions to intra-day flexibility on the gas transmission networks.

Gas infrastructure operators (2):

GRTgaz points out that at this time no specific conditions have been defined as regards the contribution of regulated LNG terminals to intra-day flexibility on the transmission networks. However, if such a contribution were to be implemented, it would be natural and vital to ensure the optimum efficiency of the system that all the terminals connected to the transmission network are subject to the same conditions, whether they are regulated or exempted.

1 other infrastructure operator shares the position of GRTgaz.

Other market stakeholders (1):

According to AFG, it would be premature at the present stage to decide on a not yet defined measure. However AFG points out that each terminal has its specificities and that this type of service should therefore be adapted on a case-by-case basis depending on the needs of the market and the technical and economic possibilities of the terminal.

Question 6: Do you think that the group GDF Suez should be allowed to subscribe long term capacities up to 1 Bcm/year on Dunkirk terminal?

The contributors are divided on this question. Half of the shippers think that this limit of subscription imposed on GDF Suez is justified. The industrial consumers and one shipper consider that GDF Suez should not be permitted to subscribe capacity at the Dunkirk terminal, given their dominant position in the market. A minority of stakeholders consider that an a priori exclusion of a stakeholder from the market is difficult to justify.

Shippers (8):

3 shippers and Uprigaz do not see any problem with GDF Suez subscribing long term capacities up to 1 Bcm/year. 2 of them specify that this subscription should occur in the framework of a transparent and non-discriminatory process of calling for tenders.

1 other shipper considers that, given the dominant position of GDF Suez in France, the latter should not be authorized to reserve capacity.

1 shipper thinks that if GDF Suez were to reserve capacity, reciprocal arrangements would have to be envisaged (capacity release or equivalent) in order to prevent any reinforcement of the dominant position of GDF Suez in France.

2 shippers consider that excluding a stakeholder from the market a priori is difficult to justify, as it would be contrary to market mechanisms. One of them thinks that it is preferable to ensure the presence of a robust UIOLI mechanism. The other shipper proposes that the subscription of primary capacities by GDF Suez should be offset by releasing equivalent capacities at the Fos Cavaou terminal.

Industrial consumers (2):

2 consumers think that, given its dominant position at the other French terminals, GDF Suez should not be permitted to subscribe capacities at the Dunkerque LNG terminal. For one of them, it seems difficult to imagine that GDF Suez subscribes capacities at Dunkirk when the projected extension at Montoir had been abandoned. That said, this consumer thinks that any measure concerning primary capacities would be fruitless as GDF Suez can always acquire capacity on the secondary market.

Other market stakeholders (1):

According to AFG, it would be counter-productive to draw up rules aiming to prohibit ex ante access to infrastructures for individual stakeholders. This would not be compatible with the aim of ensuring

security of supply. According to AFG, such a rule could lead to rejection of the project, or to the acceptance of sub-optimum use of the installation, or to a downsizing of the project.

Question 7: Do you consider that the 'Use it or Lose it' mechanism described by Dunkerque LNG is satisfactory?

Generally, the contributors think that this mechanism is essential, but not explicit enough in its present state. A majority of them approve the principle of prior CRE approval for the mechanism finally selected and are in favour of ongoing supervision of its application.

Shippers (8):

6 shippers find the description of the Use It or Lose It (UIOLI) mechanism proposed by Dunkerque LNG in its preliminary file too broad at this stage and support the position of CRE regarding prior approval of the mechanism proposed. 2 shippers point out that the mechanism currently being proposed does not provide applicants enough flexibility, insofar as it only deals with the allocation of capacities on a short-term basis. Moreover, no system of penalties is set up, despite ERGEG (European Regulators' Group for Electricity and Gas) recommendations.

2 of them underline the importance of having a UIOLI mechanism that is sufficiently transparent and compatible with the UIOLI rules that are and will be in effect at the other French terminals.

One of these 2 shippers adds that the "*a priori*" UIOLI mechanism is not the most effective. According to this shipper:

- the "*a priori*" UIOLI systems currently in effect at certain European terminals (Zeebrugge, Isle of Grain) do not seem to have achieved the desired effect;
- the 'ship or pay' system is sufficiently dissuasive to prevent shippers from retaining unused capacities;
- a capacity used for a continuous transmission service can not always be transferred into a capacity for a 30-day band-type spot service and so limit the release into the market of available capacities.

This shipper concludes that the UIOLI mechanism chosen should be compatible with the commercial model and that the terminal operator is in the best position to manage the operational implementation of this mechanism.

Another of these 6 shippers underlines the importance, from a regulatory point of view, of implementing a stable UIOLI mechanism that would not undermine the rights of the primary capacity holders.

1 shipper and Uprigaz consider that the proposed mechanism meets the general conditions set up by the European Commission as well as ERGEG recommendations. The shipper adds that such a mechanism should encourage users of the terminal to release their unused capacities as early as possible.

Industrial consumers (3):

According to 1 consumer, the UIOLI mechanism proposed by Dunkerque LNG seems totally dependent on the good intentions of the initial subscribers and cannot alone ensure security of supply by widening competition.

1 other consumer thinks it difficult to form an opinion at this very preliminary stage. However this consumer and Uniden consider that the notice periods are much too short. In this respect, the consumer proposes that capacities should be put back on the market at the end of month M-2 for slots in month M at the latest. Uniden proposes that capacities should be put back on the market before the 10th day of month M-1 at the latest. Both of them underline that there should also be a recurrent mechanism to put unused capacities back on the market over the long term. In this respect, Uniden proposes the following long term UIOLI mechanism: if a user of the terminal has not used a part of its

capacity during a period to be determined (e.g. for three consecutive months), then this capacity should be put back on the long-term market.

Gas infrastructure operators (2):

GRTgaz considers that, for a UIOLI mechanism to be effective at an LNG terminal, it should be accompanied by a system allowing the corresponding transfer of entry capacities to the transmission network. In this sense the mechanism described by Dunkerque LNG should ensure consistency between capacities sold at the terminal and on the transmission network.

According to 1 infrastructure operator, the information provided in the public version of the preliminary Dunkerque LNG file does not allow the proposed UIOLI mechanism to be considered as satisfactory: no penalties are foreseen for subscribers who provide artificially high monthly programmes. According to this infrastructure operator, Dunkerque LNG would benefit from an undue competitive advantage if its UIOLI mechanism proved to be less restrictive than that applicable at regulated terminals.

Other market stakeholders (1):

For AFG, it is difficult to come to a relevant conclusion at the present stage on the basis of the information provided in CRE consultation document.

Question 8: Do you think that the Dunkerque LNG project should be granted a total exemption for 20 years?

Most of the shippers are in favour of a total exemption over 20 years (one of them recommends a partial exemption at 90 %). The industrial consumers do not support this proposal. The other market stakeholders are divided.

Shippers (7):

3 shippers and Uprigaz are in favour of a total exemption over 20 years, upon condition that the criteria of Article 22 are met, that the terminal is operated in compliance with the good practice defined for exempted terminals and that any major changes in the project and in the environment around Dunkerque LNG should be monitored throughout the duration of the exemption. This opinion is also shared by a fourth shipper who, however, places no restrictions on the duration of the exemption.

A fifth shipper is in favour of granting a 20-year exemption on only 90 % of capacity.

A sixth shipper thinks that, in the current state of the preliminary file presented, it is impossible to answer to this question, given the incomplete character of the information provided to justify criterion d) of Article 22 of the gas directive. The preliminary file does not explain how granting the exemption would help investors in searching for subscribers.

A seventh shipper is opposed to the granting of a partial or total exemption of any duration to Dunkerque LNG so as not to strengthen the dominant position of EDF in the dual electricity / gas supply market.

Industrial consumers (4):

2 consumers and Uniden are opposed to granting a total exemption over 20 years. One of these consumers specifies that the principle of granting exemptions, even when justified by the criteria of the directive, would result in less investment in the regulated sector, which is the best way of improving the gas market in France. The other consumer considers that a total exemption over 20 years would limit access and the development of newcomers in the market. This consumer points out that, to have a competitive market, it is essential to give access to newcomers other than EDF. Therefore, the two consumers think that, before deciding on granting an exemption, close attention should be paid to the

principles of allocating capacities at the terminal, e.g. allowing access to smaller suppliers, limiting access to EDF, putting an effective UIOLI in place and being attentive to the negative effects that any capacity swaps between EDF and the holders of capacities at the Fos Cavaou terminal might have on industrial customers.

1 other consumer considers that a partial exemption would be more appropriate and would allow other shippers access to entry points on the French market. This consumer has no objection to the duration.

Other market stakeholders (2):

CREG is not in favour of the principle of granting an exemption from third party access. CREG considers that the regulated framework provides sufficient room to work upon tariffs in order to encourage investment .

AFG shares the preliminary opinion of CRE and supports the granting of a full exemption over 20 years to Dunkerque LNG, if the risks brought to the knowledge of CRE prove that the project cannot be achieved without an exemption.

Question 9: What do you think of the conditions that CRE is planning to recommend to the minister in its opinion regarding the granting of an exemption?

A majority of the contributors in favour of the exemption approves the preliminary positions of CRE. The industrial consumers, although opposed to the principle of granting an exemption, would like to see a reinforcement of these positions.

Shippers (6):

4 shippers and Uprigaz consider that the conditions CRE is planning to recommend are reasonable. One of them proposes that 10% of the capacities of the terminal are made available to third parties through, for example, an open season process. Another of these shippers thinks that the conditions envisaged by CRE should include the prior justification of criterion d) of Article 22 of the gas directive, concerning evidence that the level of risk is such that the investment would not go forward if an exemption is not granted.

1 other shipper thinks that it is not desirable to prevent third party shippers from selling their gas to EDF or to one of its subsidiaries. This prohibition would not only be contrary to the principle of the free circulation of goods and services, but would also be a hindrance to commercial liquidity both at the terminal and on the downstream market. The same shipper does not think that Dunkerque LNG should be required to publish the same information as the operators of regulated terminals.

Industrial consumers (3):

1 consumer and Uniden consider that certain conditions should be reinforced. These conditions could be putting unused long-term capacities back to the market, improving the flexibility of the UIOLI principles (especially the notice period) and providing smaller shippers with access to the terminal. Uniden is concerned about the monitoring method to be put in place by CRE to ensure that capacities are not be resold to EDF.

1 other consumer thinks that the conditions CRE is considering for its recommendations are essential but insufficient.

Other market stakeholders (1):

AFG considers that withdrawal of the exemption should be limited to specified situations involving serious breaches of obligations by the beneficiary, and should not represent a source of legal uncertainty likely to discourage investments.

Question 10: Do you think that granting this exemption must depend on the implementation of other measures?

The industrial consumers suggest the implementation of measures aiming to improve security of supply and competition in the gas market. One shipper underlines that granting the exemption should be conditional on keeping to the timetable of the project.

Shippers (1):

1 shipper thinks that the schedule of the project should be a structural element of the request for an exemption and that any significant delay in the execution of the project should lead to a re-examination of the exemption.

Industrial consumers (3):

1 consumer suggests taking measures that would really aim at improving security of supply and competition, rather than only avoiding a worsening of the situation.

According to 1 other consumer, it would be appropriate to require EDF to reserve a portion of their capacity for smaller shippers. This consumer also suggests a levelling mechanism for putting gas back on the network on the basis of real costs.

Uniden considers that it should be possible to withdraw the exemption if EDF becomes a dominant stakeholder in the gas market in France. Furthermore, Uniden proposes that all exchanges of capacities with terminals in the South zone be prohibited until the North and South zones are merged and an impact study of competition at terminals in the gas combined cycle market in France has been carried out.

Question 11: Do you have any other comments?

Shippers (4):

2 shippers think that the relevant market for Dunkerque LNG could be the northwest European market. In this case, the export of gas to other countries could be hindered by the gas odorization requirement on the transmission network, which is not in effect in some neighbouring countries. This constraint could have a negative impact on the development of regasification capacities in France.

Uprigaz regrets the instability of the regulatory framework, which keeps on downgrading the bases for calculating the remuneration of regulated infrastructures, thus encouraging investors either to seek unregulated structures, or to stop investing. Uprigaz asks the granting of an exemption becomes a standard for all terminals.

1 shipper thinks that the choice between the two variants of the project (i.e. the choice concerning the regasification capacity of the terminal) should be made at the end of a transparent and non-discriminatory open season procedure. The procedure proposed by this shipper is as follows:

1. Requests for regasification capacities by each market players involved, specifying the quantity and duration of the capacities requested and any requests for exemption with regard to the capacities concerned;
2. Publication by Dunkerque LNG of the economic and financial charges related to the capacities requested;
3. Each participant should then present an binding bid for the economic and financial support of the investment proposed by Dunkerque LNG;
4. If the economic and financial charges calculated by Dunkerque LNG were covered at the end of this procedure the proposed investment would become a firm commitment.

In the event of a positive outcome, the allocation procedure should be based on the least discriminatory mechanism possible, by auction, e.g. by applying the following process:

- The monthly allocation of capacities for each participant during the reference period (e.g. 20 years) would be the result of the combination of commitments from participants in the procedure that was most beneficial for Dunkerque LNG;
- The monthly tariff level would be the System Marginal Price (SMP), i.e. the lowest of the prices offered by those shippers who had obtained capacity.

Gas infrastructure operators (2):

1 infrastructure operator notices that the fact that the EDF group can reserve substantially more than 2/3 of the capacities of the terminal might generate a higher flexibility, compared to the rate proposed by the 2008 Regulation of the LNG Terminals working group, led by Ms. Lewiner.

Another infrastructure operator underlines that co-operation between the Dunkerque and Zeebrugge terminals would be beneficial for both parties in terms of not limiting the possibilities for interconnecting France and Belgium.

List of contributors

Shippers / suppliers and representative bodies (9):

- Direct Énergie
- Distrigaz
- Eni
- GasNatural
- GDF Suez B3G
- Poweo
- Shell
- Total Gas & Power
- Union professionnelle des industries privées du gaz (Uprigaz)

Industrial consumers and representative bodies (4):

- Arcelor Mittal
- Rhodia
- Saint Gobain
- Uniden

Gas network and infrastructure operators (4):

- Elengy
- Enagas
- Fluxys
- GRTgaz

Other market stakeholders (2):

- AFG
- CREG