



Brussels, 31.10.2018
C(2018) 7141 final

<p>In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...].</p>		<p>PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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Subject: State Aid SA.44678 (2018/N) – Lithuania - Modification of aid for LNG Terminal in Lithuania

Sir,

1. PROCEDURE

- (1) By letter dated 20 November 2013, the Commission considered the support measures for the construction and operation of a liquefied natural gas terminal (the "LNG Terminal") in the Klaipėda Seaport (SA.36740 (2013/NN) Aid to Klaipėdos Nafta – LNG Terminal, Lithuania¹) as compatible with the Treaty on the Functioning of the European Union (TFEU).
- (2) On 26 February 2016 the Lithuanian authorities pre-notified a measure which came into force on 1 January 2016. The Commission sent a request for information on 18 April 2016 to which Lithuania replied on 9 June 2016.

¹ Commission Decision C(2013) 7884 final of 20.11.2013 on case SA.36740 (2013/NN) Aid to Klaipėdos Nafta – LNG Terminal, Lithuania, JOCE C/161/2016.

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- (3) Following a meeting on 30 June 2016, on 7 July 2016 AB Achema ("Achema") filed a complaint alleging that the measure, introduced by Lithuania on 1 January 2016 to the benefit of UAB LITGAS ("LITGAS") constitutes illegal and incompatible State aid (see more details on LITGAS in section 4.5). On 7 September 2016 the Commission forwarded the complaint to the Lithuanian authorities to which they replied on 5 October 2016, 11 November 2016 and 27 January 2017. On 4 October 2016 the Commission informed the complainant of the status of the complaint. The Commission met the complainant on 19 December 2017.
- (4) On 7 February 2017, 21 April 2017 and 6 July 2017 the Commission requested additional information from Lithuania to which they replied on 4 April 2017, 24 July 2017 and 22 September 2017 respectively.
- (5) Following extensive pre-notification contacts, the Lithuanian authorities informed the Commission of its intention to amend the measure as of 1 January 2019. On 9 July 2018 the Lithuanian authorities notified to the Commission modifications to the scheme. The Commission requested additional information on 31 July 2018 and on 20 September 2018. Lithuanian authorities submitted their replies on 3 September 2018 and on 24 September 2018 respectively.
- (6) By letter dated 2 October 2018, Lithuania agreed to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of Regulation 1/1958² and to have the present decision adopted and notified in English.

2. DETAILED DESCRIPTION OF THE APPROVED AID MEASURES IN 2013

- (7) The measures approved by the Commission decision in case SA.36740 (2013/NN) Aid to Klaipėdos Nafta – LNG Terminal, Lithuania (the "2013 Decision") aimed to support the construction and operation of the LNG Terminal in the Klaipėda Seaport, Lithuania for the purpose of ensuring diversification of gas imports and security of supply. The approved State aid measures consisted of:
 - (8) First, the 2013 Decision approved investment aid to the owner and operator of the LNG Terminal - AB Klaipėdos Nafta ("KN"). The investment aid covers the part of KN's installation costs, which the terminal operator cannot finance through other means. The investment aid has been financed through a component of the so called LNG Supplement – a levy imposed as a supplement to the natural gas transmission price. The LNG Supplement has been collected by the Lithuanian transmission system operator for natural gas³ (the "TSO") from gas users on the basis of their actual gas consumption.
 - (9) Second, it approved state guarantees to KN, covering 100% of the value of the loans the terminal operator needs for the construction of the LNG Terminal.
 - (10) Third, the 2013 Decision approved operating aid to KN destined to cover all fixed operating costs of the LNG Terminal. The operating aid has a duration of 55 years and is financed through a component of the LNG Supplement (see recital (8) above).

² Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

³ AB Amber Grid.

- (11) Fourth, the 2013 Decision also approved a purchase obligation, which had the purpose of ensuring the technical minimum LNG volume⁴ necessary for the LNG Terminal to remain operational at all times (the "LNG Mandatory Quantity") and was approved for a period of 10 years subject to periodical reviews (the "Purchase Obligation").
- (12) The Purchase Obligation was imposed on private and public undertakings (the "Obligated Purchasers"⁵) operating in the regulated segment of electricity and heat generation. Together the Obligated Purchasers buy the minimum volume of LNG⁶ from a selected supplier (the "Designated Supplier"). Each Obligated Purchaser had an off-take quota established as a function of the LNG Mandatory Quantity and his supply needs. At the moment of the 2013 Decision the overall quantity to be purchased by Obligated Purchasers amounted to 0.54 bcm of LNG per year, which was considered the technically minimum quantity necessary to keep the LNG terminal operational. The share of the minimum quantity of LNG each Obligated Purchaser has to buy is proportionate to its needs.
- (13) Based on the 2013 Decision the beneficiary of aid under the approved measures was the LNG terminal operator - KN.

2.1. LNG supply contract with Statoil ASA

- (14) The government resolution of 16 October 2012 "On the approval of the Procedures for purchasing LNG imported to the LNG terminal" ("Procurement resolution") established requirements for a tender process for the selection of an LNG supplier. Following the tender process, three LNG supplying companies were shortlisted.
- (15) On 26 May 2014 LITGAS presented the results, as well as key terms and conditions of the future contract to the Government of the Republic of Lithuania, which issued its approval for awarding the contract to Statoil once negotiations regarding technical terms and conditions were finalized.
- (16) On 21 August 2014 LITGAS signed a 5 year contract for the supply of the minimal quantity of LNG (0.54 bcm/year) with Statoil.
- (17) To ensure the constant regasification at the LNG Terminal the contract provides for a fixed delivery schedule, whereby four LNG cargoes (one cargo approximately amounts to 0.1 bcm) per year are delivered once per quarter on an even basis to the LNG Terminal.
- (18) The contract was concluded at the time when the Asian LNG markets were characterised by high prices which exerted upwards pressure on European LNG prices. Nonetheless, the Lithuanian authorities demonstrated that the contract concluded with Statoil was cheaper than other options received in the course of the tender procedure (see Table 1 below). Even though the alternative bidders

⁴ The Lithuanian Government sets the quantity upon declaration of KN of the LNG volume necessary to ensure stable operation of the LNG Terminal.

⁵ Those are electricity or heat producers assigned whose price of produced energy is regulated. This encompasses central heating and electricity (co-generation) plants.

⁶ The share of the minimum quantity of LNG each Obligated Purchaser has to buy is proportionate to its needs.

offered lower prices for the years 2017-2019, Statoil offered significantly lower prices for the first two years of the contract, so that in aggregate over five year delivery period the selected bid was the most attractive.

Table 1: Comparison of bid offers (EUR/MWh)

[...]

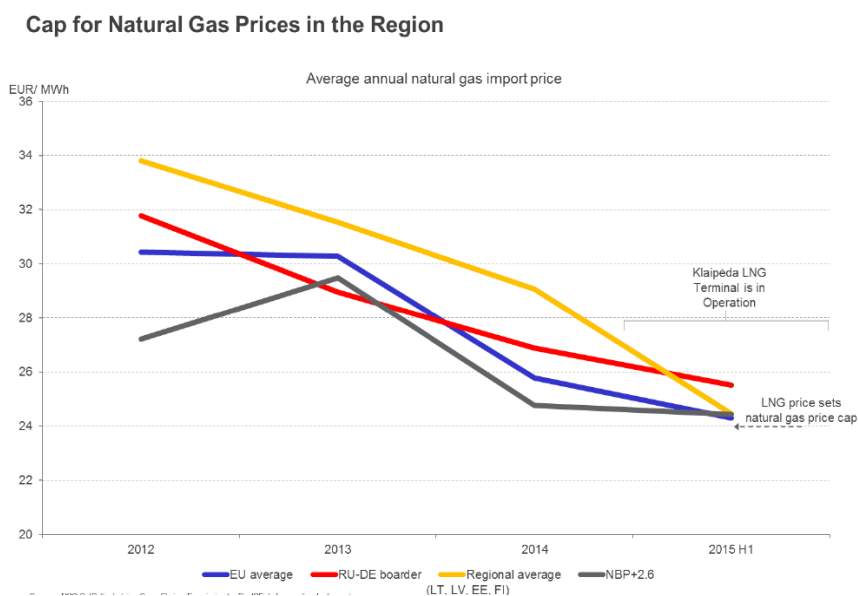
Source: Lithuanian authorities

- (19) In 2016 taking into consideration changes on the LNG market and new mandatory quantities to be delivered to the LNG Terminal, LITGAS renegotiated the LNG supply contract. The amended contract with Statoil was signed on 18 February 2016 and the amendments included the following elements:
- a) reduction of annual LNG Mandatory Quantity by 1/3 (from 0.54 bcm/year to 0.37 bcm/year), which also reduced fixed delivery schedule down to four LNG cargos per year;
 - b) extension of the duration of the contract until 2024;
 - c) reduction of the contractual LNG price for LITGAS - the average weighted import price of LNG in 2016 was approximately EUR [15-25] per MWh, whereas in 2015 the average weighted import price confirmed by NRA was EUR [23-33] per MWh.

3. OVERVIEW OF GAS INFRASTRUCTURE IN LITHUANIA

- (20) The LNG Terminal project was developed by Lithuania with the objective to diversify gas sources, increase security of supply and introduce more competition in the Lithuanian gas market.
- (21) Before the LNG Terminal Lithuania was fully dependent on Russian gas. Russian natural gas undertaking OAO Gazprom ("Gazprom") was the only gas supplier.
- (22) The complete dependence of Lithuania on Russian gas resulted from the isolated nature of the Lithuanian gas market in view of the limited options for cross-border natural gas flows to Lithuania. The natural gas system of Lithuania was connected only to the natural gas systems of the Republic of Belarus ("Belarus"), the Republic of Latvia ("Latvia") and the Kaliningrad region of the Russian Federation ("Kaliningrad"). Before the LNG Terminal has been built, Lithuania was supplied gas only from Russia – for internal consumption and as a transit from Belarus to Kaliningrad. In some cases Lithuania received Russian gas from Latvia.
- (23) It should be noted that Lithuania does not have a gas storage facility. The closest of the facilities is located in Latvia (Inčukalns storage facility).

- (24) After the LNG Terminal began its commercial operation on 1 January 2015, the natural gas market began to change. Lithuania started importing natural gas via the Klaipėda LNG Terminal. LNG brought competitiveness to the Lithuanian natural gas market. Moreover, the natural gas market became exposed to greater competitive challenges from the international suppliers. Prices of natural gas dropped significantly following the launch of the LNG terminal, which is depicted at the illustration below.



Source: Lithuanian authorities⁷

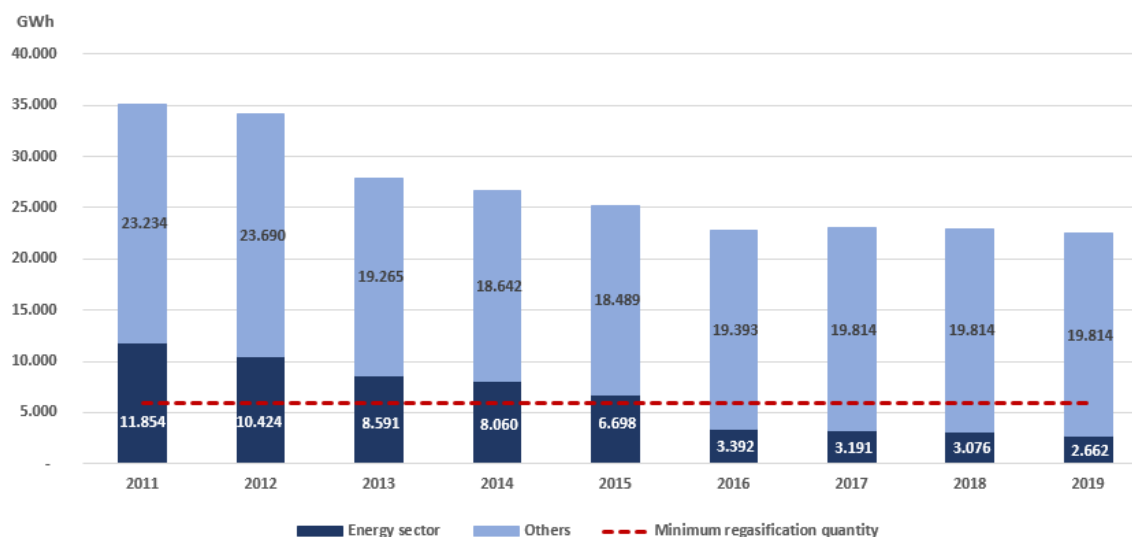
4. NOTIFIED MODIFICATIONS

4.1. Nature of the modifications

- (25) Pursuant to the 2013 Decision, the Obligated Purchasers had to purchase from LITGAS all the LNG Mandatory Quantity, which would ensure technical ability to maintain the LNG Terminal operational at all times. The price paid by the Obligated Purchasers for the LNG has been regulated by the national regulatory authority (“NRA”) and included all costs incurred by LITGAS in the delivery of such LNG Mandatory Quantity. This model intended to place all the additional costs of supplying the LNG Mandatory Quantity on the Obligated Purchasers, which subsequently would be able to pass-on such burden to the ultimate consumers of their products.
- (26) However, this model appeared to be inefficient, when demand for natural gas decreased dramatically and costs of maintenance of the LNG Terminal were distributed among the Obligated Purchasers in proportion to their declining demand for natural gas.

⁷ NBP – refers to the National Balancing Point in the UK. 2.6 Eur/MWh are added to NBP price to represent LNG shipping cost.

- (27) As could be seen from the illustration⁸ from 2011 to 2014 annual natural gas consumption in Lithuania dropped by 24% (from 3.4 bcm in 2011 to 2.6 bcm in 2014) and a further reduction of demand is expected in the coming years. Energy sector reflects the demand by the Obligated Purchasers and the red dotted line corresponds to the LNG Mandatory Quantity of 0.54 bcm of gas, as approved by the 2013 Decision.



Source: Lithuanian authorities

- (28) Demand for natural gas decreased dramatically and (fixed) costs of operation and maintenance of the LNG Terminal had to be distributed among the Obligated Purchasers over a smaller quantity of gas purchased. In effect, due to the reduced demand for natural gas the unit price for the Obligated Purchasers, covering the costs of operation of the LNG Terminal increased significantly. In this context, Lithuania realised that the burden of maintaining the LNG Terminal operational should be distributed on all consumers of the natural gas system which are benefiting from the security of supply guaranteed by the LNG Terminal.
- (29) However, irrespective of the changes on the natural gas market, the Lithuanian authorities discovered that LNG terminal can be run not only on a *steady* regime but also on *standby* regime. The *standby* regime presupposes that LNG Terminal is cooled down to the temperature, which enables the LNG Terminal to resume gas send-out to the transmission system and to accept new cargos at all times. The difference between these two regimes lies merely within technical means to achieve the same purpose (i.e. how to keep the LNG Terminal cooled down), which in turn results in different minimum quantities of gas required for regasification in each of the regimes. Following the regime change the Lithuanian authorities could reduce to 0.37 bcm/year the LNG Mandatory Quantity which was needed to ensure the operation of the LNG Terminal.

⁸ Data is based on NRA information and internal calculation of LITGAS.

- (30) In view of the above considerations, in particular since the cost for the Obligated Purchasers turned out to be unsustainable, the Lithuanian authorities decided to amend the scheme approved by the 2013 Decision by entrusting LITGAS with the SGEI for the provision of the LNG Mandatory Quantity and by introducing a LNG Supplement for the benefit of LITGAS to be financed by all gas customers (see section 4.6.2).
- (31) Lithuania initially also notified some technical changes related to the operation of the LNG Terminal by KN. The amendments concerned in particular changing the technological regime of the LNG Terminal from steady to stand-by regime. Following several information exchanges with the Lithuanian authorities, it became apparent that the modifications related to KN do not substantially amend the initial scheme approved by the 2013 Decision and therefore no notification in this respect is needed. The notification on these points was hence not upheld.
- (32) However, the introduction of measures in favour of LITGAS constitutes a new measure. They were introduced in two steps:
- a. covering the period from 2016-2019 ("2016 Amendments")⁹:
 - Changes to the set-up of the purchase obligation involving a new pricing mechanism for the LNG Mandatory Quantity which the obligated purchasers have to buy.
 - Introduction of SGEI via a LNG Supplement payable to the Designated Supplier for the supply of the LNG Mandatory Quantity.
 - b. covering the period from 2019-2024 ("2019 Amendments")¹⁰:
 - Abolition of the purchase obligation and a new methodology for calculating a compensation for SGEI entrusted to the Designated Supplier LITGAS.
- (33) A detailed description of the modifications is provided below in sections 4.6 and 4.7.

4.2. National legal basis

- (34) Lithuania indicated as national legal basis for the 2016 Amendments the Law on Energy¹¹ and the Law on Liquefied Natural Gas Terminal¹² ("LNG Terminal Law"), as amended.

⁹ The Lithuanian authorities informed the Commission that these changes were implemented without a State aid clearance and hence have been in force 1 January 2016.

¹⁰ The Lithuanian authorities informed the Commission that these changes will come into force 1 January 2019.

¹¹ Law on Energy of the Republic of Lithuania No. IX-884 adopted on 16-05-2002; Official Gazette Valstybės žinios, 2002, 56-2224.

¹² Law on Liquefied Natural Gas Terminal No. XI-2053 adopted on 12-06-2012. Publication: Official Gazette Valstybės žinios, 2012, 68-3466.

- (35) Furthermore, Lithuania indicated a list of implementing provisions:
- a) Government Resolution of 7 November 2012 No 1354 “On the Order of Natural Gas supply diversification approval”, amendment adopted on 2 December 2015 (“DivReg”).
 - b) NRA Resolution No O3-650 approved on 15-12-2015 “Regarding approval of the Methodology for Setting Forecasted Natural Gas Reference Price” ("Methodology for setting gas reference price No O3-650").
 - c) The order of the Minister of Energy of 10 February 2014 No 1-20 “On UAB LITGAS awarding as the Designated Supplier” ("Order awarding LITGAS as the Designated Supplier").
 - d) The National Control Commission for Prices and Energy Resolution No O3-367 of 13 September 2013 “On the approval of methodology of fixing state-regulated prices in the natural gas sector” amendments adopted on 18 December 2015, number of the law O3-654 (further referred to as "NRA Methodology on state-regulated prices No O3-367").
- (36) Lithuania indicated as national legal basis for the 2019 Amendments the LNG Terminal Law, which will be amended accordingly, and the National Control Commission for Prices and Energy Resolution No O3-367 of 13 September 2013 “On the approval of methodology of fixing state-regulated prices in the natural gas sector” amendments adopted on 18 December 2015, which will be amended and approved by the NRA after adoption of the 2019 Amendments so as to reflect the same principles.

4.3. Objective

- (37) The objective of the modifications is to maintain the LNG Terminal operational in order to achieve diversification of gas supply. Supply diversification in itself will contribute to an increased security of supply levels and greater energy independence of Lithuania.

4.4. Budget

- (38) The total budget for the scheme is EUR 276 703 731 covering the period 2016 to 2024.
- (39) The total budget for the measure during the period 2016-2019 scheme is EUR 78 631 120 and was allocated as follows:

	2016	2017	2018	Total
Aid in EUR	23 562 675	30 968 445	24 100 000	78 631 120

Source: Lithuanian authorities

- (40) The total budget for the measure during the period 2019-2024 is EUR 198 072 611 and will be allocated as follows:

	2019	2020	2021	2022	2023	2024	Total
Aid in EUR	34 551 588	34 520 933	33 856 268	31 714 607	31 714 607	31 714 607	198 072 611

Source: Lithuanian authorities

4.5. Beneficiary

- (41) The beneficiary under the notified modifications is the Designated Supplier – LITGAS, the recipient of the new LNG Supplement.
- (42) LITGAS was founded in December 2012 by KN. In October 2016 the state-owned energy company Lietuvos Energija became the sole shareholder of LITGAS with a share ownership of 100%.
- (43) In February 2014, LITGAS¹³ was appointed by an Order of the Ministry of Energy as the Designated Supplier, responsible for the procurement of the LNG Mandatory Quantity. As of 1 January 2015 LITGAS supplies the LNG Mandatory Quantity required to ensure the stable operation of the LNG Terminal in the Klaipėda Seaport.
- (44) The Lithuanian authorities informed the Commission about the planned structural reorganisation of LITGAS by way of merging LITGAS into UAB Lietuvos duju tiekimas ("LDT"), which is also controlled by Lietuvos Energija. That means that as of 1 January 2019 LITGAS will cease to exist and its functions of the Designated Supplier and its role of the beneficiary will be taken over by LDT. This reorganisation shall have no effect on the nature of the measure that is assessed by the present decision.

4.6. 2016 Amendments

- (45) Pursuant to the 2016 Amendments¹⁴ the Purchase Obligation was amended as follows:
- a) LITGAS continues to be obligated to procure the LNG Mandatory Quantity and sell it to the Obligated Purchasers;
 - b) The Designated Supplier sells the LNG Mandatory Quantity at a regulated price (and no longer on a cost plus basis). The regulated price has been set as a proxy to the market price. For that purpose a reference market price has been calculated based on average gas market prices. Data from gas supply contracts traded on the Lithuanian gas exchange and on bilateral basis has been used and the respective weighted average prices have been calculated taking into account any correlation effects as well as any additional gas suppliers' expenses and profits;

¹³ Article 11 (2) of the LNG Terminal Law implies that the Designated Supplier is recognized as an entity of strategic importance for national security.

¹⁴ The above mentioned principles are established in Articles 11(1), 11(5), 11(6), 11(7) and 11(9) of LNG Terminal Law.

- c) LNG Mandatory Quantity to be purchased by the Obligated Purchasers is reduced by 1/3;
- d) the Purchase Obligation per Obligated Purchaser is determined only on the basis of the Obligated Purchaser's individual demand for gas;
- e) In case demand of natural gas is lower than the LNG Mandatory Quantity, LITGAS should offer such quantities on national and/or international market;
- f) The costs incurred in connection with supply of the LNG Mandatory Quantity sold to the Obligated Purchasers at a regulated price, which are not fully covered by sales revenues, including losses incurred due to the necessity to sell surplus LNG on the market is compensated via the LNG Supplement, as compensation for a service of general economic interest (SGEI) (see 4.6.2).

4.6.1. Calculation of price difference by NRA

- (46) Based on the pricing mechanism introduced by the 2016 Amendments the LNG purchased by the Obligated Purchasers from LITGAS is sold at a new regulated price, calculated on the basis of the projected natural gas market prices for the Lithuanian market.
- (47) The NRA sets the regulated natural gas price using an approved "Methodology for Setting Forecasted Natural Gas Reference Price" (the Methodology).
- (48) The Methodology is based on several principles. According to the Methodology the price projections on which the regulated natural gas price is based are calculated by taking into account the prices and the volumes of natural gas quantities imported to Lithuania in the course of the last 12 months. For that purpose data from gas supply contracts traded on the Lithuanian gas exchange and on a bilateral basis (both on wholesale and retail markets) as well as projected prices of each company importing natural gas on the basis of their contractual conditions are taken into account. Furthermore, the respective weighted average prices are calculated taking into account any correlation effects as well as any additional gas suppliers' expenses and profits.
- (49) The regulated natural gas price is updated once a year. In case of a major change in any of the main input parameters for the calculation of the natural gas price the latter can be updated on more frequent basis – once in three or six months. Major change is defined as a sudden increase or decrease in the market price of natural gas of more than 10%. In that case the new regulated natural gas price will be revised up or down by a maximum of 10%. Since the middle of 2017 the regulated natural gas price is updated once per quarter.

- (50) According to the Lithuanian authorities the new price setting mechanism does not pose any serious risks of distorting downstream markets. That is due to the fact that the Obligated Purchasers¹⁵, who buy natural gas at the new regulated price operate on regulated markets and sell electricity and gas at regulated prices. Lithuania has confirmed that under the new set-up of the purchase obligation the Obligated Purchasers will continue to be subject to the requirements of separation of accounts should they engage in any non-regulated activities.
- (51) The provisions of the LNG Terminal Law foresee that quantities of natural gas not sold to the Obligated Purchasers will be auctioned on the market. The auctions shall be organised by the market operator (GET Baltic), as defined in the Law of the Republic of Lithuania on Natural Gas. In case the surplus natural gas quantities are not fully realised through auction, the remaining quantities shall be realised by the Designated Supplier through the gas exchange or by concluding bilateral trade agreements.
- (52) The Lithuanian authorities explained that the new pricing mechanism does not entail any extra profit for the Obligated Purchasers. Any positive financial effects the changes described above are fully passed on to final consumers in the form of lower regulated prices of heat and electricity.

4.6.2. *Changes to LNG Supplement*

- (53) The 2016 Amendments introduced two changes to the LNG Supplement:
- a) expansion of the scope of undertakings, which are bound to pay the LNG Supplement (introduction of capacity model);
 - b) establishment of the LNG Supplement for the benefit of LITGAS, which aims to compensate reasonable costs related to delivery of the LNG Mandatory Quantity.
- (54) Lithuania notified the LNG Supplement for LITGAS as remuneration for a SGEI rendered by LITGAS. The supplement has been paid to LITGAS to cover any losses it may incur when selling the LNG Mandatory Quantity at regulatory market price to the Obligated Purchasers. As a result, LITGAS is compensated for the difference between the regulated market price and the price at which it buys the gas from Statoil (higher than current market price). In addition, LITGAS is compensated for all economically justified costs incurred in connection with the supply of the LNG Mandatory Quantity and approved by the NRA, and is entitled to receive a reasonable profit margin established by the NRA.

¹⁵ Price of natural gas distributed by the Designated Supplier subject to Purchase Obligation is regulated by the State (Art. 24 of the DivReg). Costs incurred by the Obligated Purchasers in purchasing such obligatory volumes of natural gas from the Designated Supplier are included into their regulated energy prices (Art. 20 of DivReg).

- (55) The expansion of the scope of undertakings which pay the LNG Supplement will also change the way the LNG Supplement is financed. Based on the 2016 Amendments the LNG Supplement is to be paid by gas system users through a levy imposed as an addition to the natural gas transmission price. The levy is proportionate to the gas systems user's demand. The overall amount of the levy is to be established by the NRA.
- (56) The collection, administration and disbursement of the levy financing the modified LNG Supplement has been managed by the TSO, which acts as administrator of the funds of the LNG Terminal.

4.6.2.1. Compensation to LITGAS in the context of SGEI

- (57) Article 5(2) of the LNG Terminal Law deals with cost compensation via the LNG Supplement.
- (58) The compensation to LITGAS takes into account LITGAS's revenues resulting from the LNG sold at regulated LNG prices to the Obligated Purchasers and on the market, all LITGAS's costs stemming from its activities as the Designated Supplier and a regulated profit margin. The introduction of the LNG Supplement for LITGAS is a direct consequence of the new pricing mechanism for calculating the price of the LNG Mandatory Quantity purchased by the Obligated Purchasers.
- (59) Based on the 2016 Amendments LITGAS receives a fixed profit margin approved by the NRA of 0.24 Eur/MWh on the sale of the LNG Mandatory Quantity to the Obligated Purchasers.¹⁶
- (60) A different mechanism is applicable for sales of the LNG Mandatory Quantity on the market. LITGAS is entitled to keep ½ of profit from such sales, yet such profit in all cases cannot exceed the average profit margin earned by natural gas companies in Lithuania. In the years 2016-2018, the profit margin earned by the LITGAS was in the range of [0-5%].
- (61) Pursuant to the requirements of the Law on Natural Gas applicable to the Lithuanian gas sector, all undertakings, including LITGAS, are obliged to submit to the NRA annual reports on costs as well as the annual audited reports. The mentioned provision also imposes the requirement of separation of accounts. In line with these requirements LITGAS is obliged to maintain separate accounts for its regulated activities as a Designated Supplier and for its non-regulated activities¹⁷.
- (62) The new LNG Supplement paid to LITGAS is designed to compensate LITGAS for the costs associated with the activities of the Designated Supplier. Under the LNG Terminal Law the costs associated with the activities of the Designated Supplier providing the SGEI and covered by the new component of the LNG Supplement must be "justified costs" – i.e. not only costs associated with the SGEI of the Designated Supplier but also costs incurred in an efficient manner.

¹⁶ According to the information provided by the Lithuanian authorities' weighted average profit margin of suppliers operating in competitive market was equal to 0.86 Eur/MWh or 3.2% of profit margin (based on 2015 data).

¹⁷ Currently LITGAS does not perform any non-regulated activities. The requirement imposed on LITGAS is applicable for any plausible regulated activities.

- (63) The LNG Supplement covers costs such as gas acquisition costs, labour costs, administration costs, amortization costs, costs for repairs, marketing and sales costs as well as financial costs. Furthermore, as explained in recital (17), under the LNG supply contract with Statoil the delivery schedule is fixed and four LNG cargoes per year are delivered once per quarter on an even basis to the LNG Terminal. This type of long-term contract with a fixed delivery schedule gives rise to some costs, namely boil-off gas, balancing and a long-term guarantee. In 2017 these specific costs constituted two thirds of the total Designated Supplier's costs¹⁸.
- (64) For the purposes of determining the justified costs LITGAS submits to the NRA monthly reports with data on the quantities of LNG bought and sold as well as on all expenses and revenues resulting from buying and selling LNG. The NRA evaluates the actual and the forecasted costs of LITGAS's activities as Designated Supplier as well as the way in which they are incurred and establishes the eligible costs which can be covered by the LNG Supplement.

Boil-off cost

- (65) The Designated Supplier must keep its LNG in tanks at the LNG Terminal and regasify LNG at the minimum output rate to keep the LNG Terminal operational (rather than releasing LNG to the natural gas system immediately) even though such slow regasification causes high natural losses of LNG due to evaporation (boil-off gas). Boil-off gas is natural loss of LNG, which is always incurred within the period from injection of LNG into tanks until its release to the natural gas system. As a general rule, the less time LNG is kept in a tank, the less natural loss of LNG is incurred by the specific user of the LNG Terminal. Therefore, when the LNG Terminal is used by several users injecting natural gas into same tanks, boil-off gas costs are allocated to all such users of the LNG Terminal in proportion to the amount of gas virtually stored in the LNG Terminal. Consequently, boil-off gas costs are lower when there are several users of the LNG Terminal and higher when the LNG Terminal is used by a single user.
- (66) Lithuania notes that boil-off gas costs accounts for a significant proportion of the Designated Supplier's costs incurred in connection with the supply of the LNG Mandatory Quantity (in 2017 boil-off gas costs amounted to ca. 56 % of total costs incurred by the Designated Supplier) and they are incurred mainly during the winter period (December to March) when the demand is low and LITGAS is the only user at the LNG Terminal.¹⁹ At the same time, during the summer period when LNG prices are lower the utilization of the LNG Terminal is much higher and more boil-off costs are allocated to other users of the LNG Terminal. The graph below illustrates fluctuations of the boil-off gas costs at the LNG Terminal throughout the year:

[...]

¹⁸ Total designated supplier's costs include boil-off costs, balancing costs, bank guarantee costs, financing costs, OPEX and costs of regasification and capacity booking.

¹⁹ Due to increase demand (ex. increased energy consumption such as heat and electricity) the LNG in winter period is more expensive. As a result all the users of the LNG terminal buy LNG in the summer period when it's cheaper. LITGAS is the only user in winter of the LNG terminal as it is bound by its SGEI obligation to regasify constantly and receive cargos of LNG based on fixed schedule.

Source: Lithuanian authorities

- (67) The Lithuanian authorities evidenced that in 2017 the Designated Supplier lost [5-15%] of its LNG due to boil-off, while other suppliers lost only 1,23% of their LNG. Such differences are explained by the fact that unlike the Designated Supplier other suppliers do not use the LNG Terminal in the winter period and that other suppliers can regasify LNG at a much faster pace than the Designated Supplier. Lithuania underlined that only actual boil-off gas costs which are attributable to the Designated Supplier were included in the calculation of LITGAS' compensation.

Balancing cost

- (68) Lithuania explained that the Designated Supplier incurs significant balancing costs. In 2017 these costs were EUR 900 000 which represent approximately [0-10%] of the total Designated Supplier's costs.
- (69) To ensure stable operation of the LNG Terminal the Designated Supplier must release its LNG to the natural gas system at stable output throughout the year²⁰. Therefore, the Designated Supplier's delivery schedule does not correspond to projected demand of natural gas from its consumers. For example, in the winter period when the demand is higher the Designated Supplier cannot release immediately natural gas from tanks as this would leave the LNG Terminal empty until the next delivery of LNG and a request to deliver a LNG cargo earlier (if agreed by Statoil) would impair the delivery schedule for the entire year.
- (70) Lithuania noted that in view of these considerations the Designated Supplier is in a different situation from other market participants. In particular, the import profile of pipeline gas suppliers mirrors the demand for natural gas throughout the year. Due to flexible gas contracts other users of the LNG Terminal incurred minimal balancing costs.
- (71) Nonetheless, whilst keeping its obligations towards the LNG Terminal, the Designated Supplier must also meet the demand of its customers. To meet the demand of its customers and to ensure the steady operation of the LNG Terminal the Designated Supplier can have recourse to two instruments:

²⁰ Also, due to regular technical maintenance of the LNG Terminal the Designated Supplier is not able to supply LNG for 10 days per year.

- a) Swap contracts - including agreement on lending (in the summer period) or borrowing (in the winter period, when the Designated Supplier is short of gas or when the use of the LNG terminal is impossible, eg. due to maintenance) of natural gas.
 - b) Inčukalns storage in Latvia - provides physical underground storage solution when the Designated Supplier has surplus of natural gas (mostly in summer period) and can be retrieved when Designated Supplier has shortage of natural gas. The storage has not been used yet by the Designated Supplier.
- (72) The cost of such swap contract and the storage contracts is also compensated as part of the balancing cost.

Long-term guarantee

- (73) Lastly, Lithuania also considers that the Designated Supplier should be compensated for costs of the long-term guarantee. To secure the long-term contract with Statoil, the Designated Supplier had to issue a performance guarantee for Statoil to cover a commitment until 2024. The cost related to the guarantee is EUR 300 000 per year. Lithuania explained that the cost is specific to the long-term nature of the contract with Statoil and that other market participants do not have such a cost.

4.7. 2019 Amendments

- (74) Lithuania closely monitored the LNG Terminal's operation and development of the natural gas market in the country. Due to positive changes in 2018 the Lithuanian authorities decided to introduce as of 1 January 2019 a number of changes to the scheme under the 2016 Amendments.
- (75) As a result Lithuania intends to change the model for calculation of the SGEI compensation paid to LITGAS and introduce more competition in the natural gas market from 1 January 2019. Under a new compensation model the Purchase Obligation will be abolished and LITGAS will sell the LNG Mandatory Quantity freely on the market.

4.7.1. Abolition of the Purchase Obligation

- (76) Lithuanian authorities continue to regard it as necessary to secure regular supplies of LNG to the LNG Terminal via long-term supply contract with Statoil. Lithuania explained that plausibly cheaper gas purchasing options as annual or spot capacity bookings cannot guarantee achieving this objective. First, annual capacity bookings allow for redirecting cargoes to another destination (subject to penalties). Second, spot bookings are not sufficiently reliable since the LNG Terminal's operations must be planned in advance.
- (77) Therefore, the Lithuanian authorities proposed that, as of 1 January 2019, the Purchase Obligation will be transformed into a delivery obligation placed on LITGAS. LITGAS will remain bound to deliver the LNG Mandatory Quantity, which are needed to keep the LNG Terminal operational irrespective of market conditions ("Delivery Obligation"). The Delivery Obligation should apply for the same period and on the same conditions, which applied to the Purchase Obligation.

- (78) Simultaneously, as of 1 January 2019 the obligation to purchase such quantities of natural gas from LITGAS originally placed on the Obligated Purchasers will be abolished.
- (79) As a result, LITGAS will be exposed to full market risks in selling the LNG Mandatory Quantity in the market. The Obligated Purchasers will buy gas on the market at a market price determined by market conditions without any intervention of the NRA and based entirely on their needs.

4.7.2. Compensation to LITGAS in the context of SGEI

- (80) Pursuant to the 2019 Amendments LITGAS will continue receiving compensation from the LNG Supplement.
- (81) According to the Article 11 of the LNG Terminal Law the following costs will be compensated to LITGAS:
- a) Difference between import price of the LNG Mandatory Quantity supplied by the Designated Supplier under the contract with Statoil and a monthly factual average weighted import price of natural gas imported into Lithuania calculated by the NRA;
 - b) Boil-off gas costs: (a) all factual boil-off costs experienced by the Designated Supplier during the periods when the LITGAS is the only user of the LNG terminal; and (b) difference between the actual boil-off costs experienced by LITGAS and average of boil-off costs experienced by other LNG Terminal users during the periods when the LITGAS is not the only user of the LNG terminal;
 - c) Long-term guarantee financing costs.
- (82) Under the new compensation methodology, LITGAS will no longer be compensated for balancing costs.
- (83) Furthermore, LITGAS will be selling LNG directly on the market and its marginal profit will no longer be regulated by the NRA. Therefore, the Designated Supplier's profit margin earned by selling the LNG Mandatory Quantity on the market will solely depend on its efficiency and market conditions.²¹
- (84) To calculate the price difference the NRA will (i) collect information on import prices available in Lithuania (or wider region following integration of the Baltic natural gas markets), (ii) introduce adjustments to eliminate unusual items preventing the establishment of genuine market price,²² (iii) approve a compensation of the price differences based on projected price differences and include such compensation into the LNG Supplement for the current year; and (iv) calculate a difference between actual and projected prices at the end of the

²¹ LITGAS will remain compensated for the loss incurred in relation to difference between import price of the LNG Mandatory Quantity supplied, boil-off and state guarantee.

²² Adjustments refer to any unusual factors, which could be considered by the NRA as preventing establishment of genuine price, in particular unfair agreements between natural gas suppliers and customers, provision of various retroactive rebates, exchange of goods to cheaper natural gas, etc.

regulatory period and include a correction coefficient in the LNG Supplement for the next years.

- (85) Calculation of the LNG Supplement will be based on future costs and revenue projections. Thus the formula used for calculation of the compensation contains an element, which reconciles differences between projected costs and actual costs. Such difference in costs and revenues will be reviewed at the end of the year (or other regulatory period), while the difference (positive / negative) will reduce or increase the amount of the LNG Supplement for the next year (or other regulatory period). The NRA will ensure that the compensation will cover only economically justified costs linked to the supply of the LNG Mandatory Quantity.
- (86) Lithuania stated that the NRA's monitoring should ensure that the LNG Supplement would include only actually incurred and effective costs. Furthermore, any difference between projected and actual costs will be extracted in the process of approval of the compensation to LITGAS for the next year. Finally, the NRA will each year review the Designated Supplier's financials
- (87) The Lithuanian authorities confirmed that LITGAS is obligated to impose separate accounting related to performance of the Designated Supplier's functions.

4.8. Transparency

- (88) The Lithuanian authorities informed the Commission that the outcome of public discussion on the necessity of the Designated Supplier, scope and duration of the SGEI entrusted on the Designated Supplier are available in various legislative acts and documents of parliamentary discussions, which are published in the central register of laws available at <https://www.e-tar.lt/>.
- (89) Furthermore, the information regarding the amounts of compensation granted to LITGAS each year is available on the website of the NRA: www.regula.lt.
- (90) Finally, the Lithuanian competition authority is responsible for publishing such information on the state aid transparency portal: <https://webgate.ec.europa.eu/competition/transparency/public/>.

5. COMPLAINT REGARDING 2016 AMENDMENTS

- (91) On 8 July 2016 the Commission received a formal complaint from Achema, a major gas consumer in Lithuania. The complainant puts forward several allegations regarding the 2016 Amendments.
- (92) The complainant alleges in particular that the LNG Supplement paid to LITGAS since 1 January 2016 constitutes a direct grant, suggesting the presence of State aid as it provides economic advantage to LITGAS.
- (93) Furthermore, the complainant states that the parameters of the compensation to LITGAS were not objectively set and lead to overcompensation of LITGAS. The overcompensation results from the fact that the compensation of LITGAS covers the difference between the price at which the Designated Supplier buys LNG and the price at which it sells LNG. Achema also claims that LITGAS is guaranteed to be compensated even beyond the quota relating to the Purchase Obligation, since the compensation includes additional cost elements.

- (94) The complainant also considers that the gas supply contract LITGAS concluded with Statoil is based on a very high gas price and that the volume to be purchased by LITGAS is excessive. In this context LITGAS' costs are not comparable with those of a typical well-run undertaking.
- (95) Finally, the complainant alleges that LITGAS has not been appointed the Designated Supplier in conformity with public procurement rules.

6. COMMENTS FROM THE LITHUANIAN AUTHORITIES

- (96) On 7 September 2016 the Commission forwarded the complaint quoted in Section 5, to the Lithuanian authorities requesting their comments on the issues raised. The Lithuanian authorities replied on 5 October 2016, 11 November 2016 and 27 January 2017.

Allegation on the presence of economic advantage

- (97) To the allegation regarding the existence of economic advantage bestowed by the LNG Supplement onto LITGAS, the Lithuanian authorities responded that under the measure approved by the 2013 Decision, LITGAS could not sell the LNG Mandatory Quantity on a commercial basis in retail markets. Initially, LITGAS, as the Designated Supplier, operated only in the regulated market, i.e. LITGAS had an obligation to sell LNG only to certain electricity and heat producers, which all operate on regulated markets of heat and electricity.
- (98) Furthermore, the Lithuanian authorities argue that the new set-up of the purchase obligation under the 2016 Amendments does not provide an economic advantage to LITGAS as any sales which the Designated Supplier performs on the open gas market are monitored and regulated by the NRA, which prevents LITGAS from retaining any profit which will make it better remunerated than the average gas supplier on the market.

Allegation on overcompensation

- (99) The Lithuanian authorities rebut the allegations of the complainant related to overcompensation on the basis of the fact that the LNG sale price of the Designated Supplier is regulated by the NRA. Established rules take into account the actual costs of the Designated Supplier, which it has incurred by implementing the entrusted SGEI mission. These calculations are performed by the NRA. The NRA's assessment procedure is performed taking into account the return from the resale activity of the part of LNG Mandatory Quantity, which exceeds the volume purchased by the Obligated Purchasers. Such return is limited by law to the average return of gas suppliers operating on the Lithuanian gas market.

Allegations on Statoil contract

- (100) The Lithuanian authorities stress that the contract concluded with Statoil was best priced compared to other options received in the course of tender procedure.

Allegations on appointment of LITGAS

- (101) According to the Lithuanian authorities the selection of LITGAS did not violate public procurement rules. The tender conditions were clearly laid out in the LNG Terminal Law.

7. ASSESSMENT OF THE 2016 AMENDMENTS

7.1. Existence of Aid

- (102) Article 107(1) of the Treaty on the Functioning of the European Union ("TFEU") provides that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.
- (103) In order to conclude whether state aid is present, the Commission must assess whether the cumulative criteria of Article 107(1) TFEU (i.e. transfer of State resources and imputability to the State, selective advantage, potential distortion of competition and affectation of intra-EU trade) are met for the measure under assessment.
- (104) In its 2013 Decision the Commission concluded that the disbursement of the LNG Supplement constitutes State aid to KN.
- (105) Since by the 2016 Amendments Lithuania introduced the LNG Supplement to LITGAS the Commission must assess now whether the cumulative criteria of Article 107(1) TFEU are met for the LNG Supplement to LITGAS to constitute aid.

7.1.1. Transfer of State Resources and imputability

- (106) As held by the Court, State resources encompass both advantages which are granted directly by the State and those granted by a public or private body designed or established by the State.²³ The Commission considers that the LNG Supplement constitute State resources imputable to the State for the following reasons:
- (107) First, the system for attribution and collection of the LNG Supplement is established by Lithuania. Based on the 2016 Amendments introduced to the LNG Terminal Law Article 5(2) stipulates that the LNG Supplement will be collected, administered and paid out to LITGAS by the TSO in accordance with procedures established by and under supervision of the NRA. The LNG Supplement is not a component of the transmission fee and does not finance the transmission services but it constitutes a separate surcharge.
- (108) Second, the State appointed the TSO as administrator of the LNG Supplement. The TSO will be instructed by the State by means of the legal acts and the supervision of the NRA. The NRA will control entire process with regard to the administration and transfer to LITGAS the funds collected.

²³ Case 76/78 Steinike & Weinling v Germany 1977 ECR, paragraph 21; Case C-379/98 Preussen Elektra 2001 ECR I-2099, paragraph 58.

- (109) The Commission also notes that the TSO - AB “Amber Grid” - is controlled by UAB “EPSO-G”, which is 100% owned by the Lithuanian Ministry of Energy.
- (110) On the basis of those elements, the Commission concludes that the LNG Supplement has been provided to LITGAS by the State through State resources and is imputable to the State.

7.1.2. Economic Advantage

- (111) The LNG Supplement provides an economic advantage to LITGAS as it ensures certain cost coverage and positive net revenues which would not be achieved under the normal competitive conditions on the market.

7.1.3. Selectivity

- (112) The LNG Supplement is a selective advantage as it is granted solely to LITGAS pursuant to a specific legal act – the LNG Terminal Law. Pursuant to the law other gas suppliers are not eligible to perform this function (See section 7.3.6).

7.1.4. Effect on Trade and Distortion of Competition

- (113) The objective of the LNG Supplement as amended in 2016 is to ensure the continuous operation of the LNG Terminal. Gas is a product traded between Member States. Favouring a particular LNG supplier – LITGAS through the LNG Supplement – is liable to affect the patterns of trade between Member States. In addition gas is used for electricity production. Electricity is another product traded across Member States. Therefore, the LNG Supplement distorts or threatens to distort competition and is likely to affect trade between Member States.

7.1.5. Conclusion on the Existence of State aid

- (114) On the basis of the above-mentioned elements, the Commission concludes that the LNG Supplement as amended in 2016 involves State aid within the meaning of Article 107(1) TFEU.

7.2. Legality of the aid

- (115) With regard to the amendment covering the period from 1 January 2016 until 1 January 2019 the Commission notes that the LNG Supplement has been granted to the beneficiary LITGAS.
- (116) Therefore, the Commission regrets that in relation to the 2016 Amendments Lithuania has violated the standstill clause obligation under Article 108(3) TFEU.

7.3. Compatibility of the aid

7.3.1. *Legal basis for assessment*

- (117) On the basis of point 11 of the 2012 SGEI Framework,²⁴ the Commission considers that, “At the current stage of development of the internal market, State aid falling outside the scope of Decision 2012/21/EU may be declared compatible with Article 106(2) TFEU if it is necessary for the operation of the SGEI concerned and does not affect the development of trade to such an extent as to be contrary to the interests of the Union.”²⁵
- (118) The 2012 SGEI Framework describes the conditions to be met to achieve such balance.

7.3.2. *Genuine service of general economic interest as referred to in Article 106 TFEU*

- (119) As indicated in point 13 of the 2012 SGEI Framework, Member States have a wide margin of discretion regarding the nature of services that could be classified as being SGEI. The Commission's task is to ensure that the margin of discretion is applied without manifest error as regards the definition of SGEI. The Commission's competence in this respect is limited to checking whether the Member State has made a manifest error when defining the service as an SGEI and to assessing any State aid involved in the compensation.
- (120) However, as foreseen in point 46 of the 2012 SGEI Communication,²⁶ where specific Union rules exist, the Member States' discretion is bound by those rules, without prejudice to the Commission's duty to carry out an assessment of whether the SGEI has been correctly defined for the purpose of State aid control. Therefore, the measure would be incompatible with Article 106(2) TFEU if it infringes specific EU law provisions. In the case at hand, the relevant provisions are laid down in the Gas Directive²⁷.
- (121) The entrustment of a particular public service task implies the supply of services which, if it were to consider its own commercial interest, an undertaking would not assume or would not assume to the same extent or under the same conditions. Applying a general interest criterion, Member States or the Union may attach specific obligations to such services.
- (122) The Commission notes that according to the Article 3(2) of the Gas Directive security of supply is an objective that might justify public service obligation.

²⁴ Communication from the Commission – European Union framework for State aid in the form of public service compensation (2011) 2012/C 8/03 OJ C 8, 11.1.2012, p.15, referred to herein as the 2012 SGEI Framework.

²⁵ The present aid measure does not fall under the scope of Decision 2012/21/EU since the foreseen public service compensation does not fall within the categories of its Article 2(1).

²⁶ Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest (OJ C 8, 11.1.2012, p. 4–14).

²⁷ Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, OJ L 211, 14.8.2009, p. 94–136.

- (123) As explained in recital 208 of the 2013 Decision, the mere construction of the LNG Terminal would not ensure security of supply in Lithuania. In order to meet this objective it would require maintaining the LNG Terminal operational.
- (124) The LNG Terminal Law obliged LITGAS to provide the LNG Mandatory Quantity that will ensure the stable operation of the LNG Terminal. In order to keep the LNG Terminal operational (keep terminal “cold”), certain quantities of LNG must be kept in tanks of the LNG Terminal and constantly released to the natural gas system operating.
- (125) Furthermore, the Commission notes that annual capacity bookings or spot bookings are not sufficient to ensure stable operation of the LNG Terminal. This is because first, deliveries under annual bookings can always be redirected to another delivery point if LNG prices justify it and second, LNG operations must be planned two weeks in advance so the terminal cannot rely on spot deliveries. Therefore, the Commission asserts that some LNG quantities must be delivered on an even basis throughout the year in accordance with a fixed schedule, including the periods when the demand for natural gas is low.
- (126) Therefore, the LNG Terminal Law imposes an obligation on LITGAS to deliver the LNG Mandatory Quantity which is needed to maintain the LNG Terminal operational.
- (127) Pursuant to the 2016 Amendments such LNG Mandatory Quantity was reduced by 1/3 due to the change of the operating regime into the *standby* regime (see recital (29)). In order to implement such legislative changes LITGAS renegotiated its contract with Statoil in 2016²⁸. Therefore, LITGAS SGEI's obligation is directly linked with this Statoil agreement as it ensures fulfilment of its SGEI obligation.
- (128) The Commission therefore concludes that LITGAS obligation to keep the LNG Terminal operational by delivering the LNG Mandatory Quantity to the LNG Terminal constitutes a genuine SGEI as referred to in Article 106 TFEU.

7.3.3. Need for an entrustment act specifying the SGEI and the methods of calculating compensation

- (129) As indicated in section 2.3 of the 2012 SGEI Framework, the concept of SGEI within the meaning of Article 106 TFEU means that the undertaking or undertakings in question have been entrusted with the operation of the service of general economic interest by way of one or more official acts.
- (130) These acts must specify, in particular i) the precise nature of the SGEI and its duration; ii) the undertakings concerned and territory concerned; (iii) the nature of any exclusive rights assigned to the undertakings concerned; (iv) the parameters for calculating, controlling and reviewing the compensation; and (v) the arrangements for avoiding and repaying any overcompensation.

²⁸ <http://www.litgas.lt/en/litgas-and-statoil-have-signed-the-amended-baseload-supply-agreement>.

- (131) The Commission notes that the precise nature of the SGEI is determined in Article 11 of the LNG Terminal Law. Namely, the provision states that the Designated Supplier is entrusted with the obligation to deliver the LNG Mandatory Quantity to the LNG Terminal.
- (132) Furthermore, the Commission takes note that by Order of the Minister of Energy No 1-20 of 10 February 2014 LITGAS was appointed as Designated Supplier on the Lithuanian territory.
- (133) As regards the parameters for calculating the compensation, the Commission notes that Article 11 of the LNG Terminal Law established the principles for calculating compensation to the Designated Supplier. The detailed parameters are clearly defined in the relevant implementing regulation - NRA Methodology No O3-367 complementing the LNG Terminal Law (see below Annex I).
- (134) Therefore, it can be concluded that the entrustment act contains the parameters for calculating the compensation.
- (135) The Commission also notes that Article 11 of the LNG Terminal Law stipulates that the period of entrustment should not be longer than 10 years from the commencement of the LNG Terminal's operation.
- (136) The Commission considers that the allegations of the complainant that the parameters of the compensation to LITGAS for the period from 1 January 2016 until 1 January 2019 were not objectively set and that LITGAS is guaranteed to be compensated even beyond the quota relating to the Purchase Obligation are unfounded.
- (137) As it is already stated above, the Commission takes note of the fact that the legal acts such as the LNG Terminal Law and the NRA methodology No O3-367 established a clear model for calculating the compensation. The parameters of this compensation paid to LITGAS were set by the NRA.
- (138) Based on the information provided by the Lithuanian authorities, the Commission considers that only costs related to the discharge of the SGEI incurred in an efficient way are covered by the LNG Supplement. LITGAS has received compensation for the specific costs which are inherently related with the function of the Designated Supplier, namely: 1) operational costs; 2) boil-off gas costs; 3) balancing costs and 4) state guarantee costs (see recitals (65) to (73) and Annex I). Annex I provides the formula by which the NRA calculates the compensation to be paid to LITGAS. The Commission notes that the formula includes all the cost (as described above) that will be compensated to LITGAS. The list of costs is clearly defined and no other costs are included into the compensation model.
- (139) Moreover, the Commission notes that LITGAS' profit was strictly limited to a fixed profit margin approved by the NRA of 0.24 Eur/MWh, while other suppliers operating in competitive market received 0.86 Eur/MWh or 3.2% profit margin. Lithuania also demonstrated that its profit from sales in all cases cannot exceed the average profit margin earned by natural gas companies in Lithuania. In the years 2016-2018, the profit margin earned by the LITGAS was in the range of [0-5%], which is lower than the profit margin normally earned by companies on the market (see more detail below in section 7.3.7).

- (140) Finally, based on the LNG Terminal Law the compensation is limited only to the LNG Mandatory Quantity.
- (141) By covering only costs associated with the performance of the SGEI, subjecting the Designated Supplier to regular reporting requirements and limiting its profits to the average profit observed on the market (see recitals (59) and (60)) the entrustment act and its implementing regulations provide the necessary arrangements to avoid overcompensation.
- (142) In light of the above, the Commission concludes that the entrustment act complies with the requirements of section 2.3 of the 2012 SGEI Framework.

7.3.4. Duration of the period of entrustment

- (143) As indicated in section 2.4 of the 2012 SGEI Framework, "the duration of the period of entrustment should be justified by reference to objective criteria such as the need to amortise non-transferable fixed assets. In principle, the duration of the period of entrustment should not exceed the period required for the depreciation of the most significant assets required to provide the SGEI."
- (144) Article 11 of the LNG Terminal Law stipulates that duration of SGEI is limited to 10 years and is revised yearly by the NRA. The Commission notes that the duration of entrustment is linked to the duration of the contract with Statoil for the supply of the LNG Mandatory Quantity which will expire in 2024.

7.3.5. Compliance with Directive 2006/111/EC

- (145) According to point 18 of the 2012 SGEI Framework: "Aid will be considered compatible with the Internal Market on the basis of Article 106(2) TFEU only where the undertaking complies, where applicable, with Directive 2006/111/EC on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings".
- (146) Under Article 2(d) of Directive 2006/111/EC, any undertaking that is entrusted with the operation of an SGEI pursuant to Article 106(2) TFEU, that receives public service compensation in any form whatsoever in relation to such service and that carries out other activities, is an undertaking required to maintain separate accounts.
- (147) The account separation and transparency requirements for public undertakings established in the Directive 2006/111/EC are fulfilled by implementing acts – Resolution of the Government of the Republic of Lithuania No 768 dated 14 July 2005 and Amending Resolution No 1333 dated 12 December 2007.
- (148) LITGAS is engaged in the SGEI activity and does not perform any other activities than SGEI being assessed under this Decision. For any other future non SGEI activities LITGAS will be bound by the above mentioned regulations.
- (149) Based on the above, the Commission considers that the requirements of Directive 2006/111/EC are complied with.

7.3.6. Public procurement requirements

- (150) Point 19 of the 2012 SGEI Framework requires that the responsible authority entrusts the provision of the service in question in compliance with the applicable Union rules in the area of public procurement.
- (151) The entrustment of LITGAS with the SGEI as the Designated Supplier had taken place in 2014 before the adoption of the 2016 Amendments constituting the state aid under the Commission's assessment. Nevertheless, the Commission will assess below the claims made by the complainant with regard to the alleged non-compliance of the aid with point 19 of the SGEI Framework.
- (152) The complainant claims that LITGAS' appointment process violated public procurement requirements.
- (153) The Commission considers that the contract would in principle falls within the material scope of Directive of 2004/18/EC.
- (154) However, as was stated in the 2013 Decision (points 229-236), the LNG Terminal project is a project of major importance for Lithuania and appointment of AB Klaipėdos Nafta as the operator of the LNG Terminal by the Lithuanian government is excluded from the public procurement rules on grounds of protection of the essential interests of a Member State as provided by Article 14 of the Directive 2004/18/EC.
- (155) The Commission considers that the appointment of LITGAS as the Designated Supplier is subject to the same principles as the appointment of AB Klaipėdos Nafta in this respect. As in the case of AB Klaipėdos Nafta, the contract by which LITGAS was appointed as Designated Supplier is also therefore also covered by the exemption provided in Article 14 of the Directive 2004/18/EC applies.
- (156) This is due to the fact that the task of keeping the LNG Terminal operational through deliveries of the LNG Mandatory Quantity must be also considered as essential for the Lithuania's security of gas supply. Any disruption in the delivery of the LNG Mandatory Quantity would jeopardise the operation of the LNG Terminal and thus supply of LNG into the Lithuanian gas market and thus ultimately the Lithuania's security of supply. In the particular, given the structure of the Lithuanian gas supply market an entrustment of the Designated Supplier's tasks via a public procurement procedure pursuant to Directive 2004/18/EC would risk to confer the genuine SGEI to an undertaking linked to the former single gas supplier. In addition, an undertaking selected through the procedure under Directive 2004/18/EC without being controlled by the State could have (at the time of the tender) or later develop ties to the former single supplier that would allow the latter to influence its market behaviour in a way that could negatively affect the fulfilment of its SGEI mission.
- (157) In the Commission's view thus adopting a different approach towards the Designated Supplier than the operator of the LNG Terminal (AB Klaipėda Nafta) would jeopardise the essential interests invoked in the 2013 Decision. Therefore, the appointment of LITGAS as the Designated Supplier by the Ministry of Energy should be excluded from the public procurement rules on grounds of protection of the essential interests of a Member State as provided by Article 14 of the Directive 2004/18/EC.

(158) In this context the Commission also notes, that irrespective of the applicability of the Article 14 exemption, in 2014 Lithuania conducted a selection process for the appointment of the Designated Supplier. The selection criteria have been approved by the Ministry of Energy on 3 January 2014 and made public²⁹. The tender evaluation criteria were established in the secondary legislation, i.e. Section 49 DivReg. In line with the above security concerns, participation in this tendering procedure was only open to undertakings meeting the following selection criteria:

a) 2/3 votes of the shareholders general meeting should be held directly or indirectly by the State; and

b) the Designated Supplier should not be involved in activities related to the transmission and (or) distribution of gas.

(159) LITGAS took part in the call for tender and was selected the winner. Consequently, by the order of the Minister of Energy of 10 February 2014 No 1-20 “On UAB LITGAS awarding as the Designated Supplier” LITGAS was appointed the Designated Supplier.

(160) Based on the above, the Commission considers that point 19 of 2012 SGEI was complied with.

7.3.7. Amount of compensation

(161) Point 21 of the 2012 SGEI Framework states that "(...) the amount of the compensation must not exceed what is necessary to cover the cost of discharging the PSOs, including a reasonable profit". The amount of compensation can be established on the basis of either the expected costs and revenues or the costs and revenues actually incurred or a combination of the two (point 22 of the 2012 SGEI Framework). Where the compensation is based, in whole or in part, on expected costs and revenues, they must be specified in the entrustment act. They must be based on plausible and observable parameters concerning the economic environment in which the SGEI is being provided and rely, where appropriate, on the expertise of sector regulators or of other entities independent from the undertaking. Member States must indicate the sources on which these expectations are based (point 23 of the 2012 SGEI Framework).

(162) The net costs necessary, or expected to be necessary, should be calculated using the net avoided cost methodology where required or possible, or use alternative methods such as the cost allocation methodology (points 24, 27 of the 2012 SGEI Framework).

(163) Considering the fact that the LNG Terminal was the first LNG terminal in Lithuania and there was no developed market expertise in LNG procurement and trading the application of the net avoided cost methodology does not seem appropriate for the assessment of the 2016 Amendments. Where duly justified, the Commission can accept alternative methods for calculating the net cost necessary to discharge the SGEI, such as the methodology based on cost allocation.

²⁹ https://enmin.lrv.lt/uploads/enmin/documents/files/Konkursai/Kiti_konkursai/Archyvas/Konkursosalygos.pdf

- (164) Under the cost allocation methodology, the maximum amount of compensation should be calculated as the difference between revenues from fulfilling the SGEI obligation and costs, including a reasonable profit.
- (165) Compensation for the period from 2016 to 2019 is equivalent to the total costs stemming from its obligation as the Designated Supplier minus any extra revenues it could earn by selling extra LNG on the market, allowing for the NRA approved profit margin.³⁰ Please also see Annex 1 below.
- (166) Therefore, the Commission decision assesses whether all the requirements concerning the amount of compensation prescribed in 2012 SGEI Framework has been complied with.

7.3.7.1. *Costs*

- (167) Under the LNG Terminal Law LITGAS can be compensated only for the costs that are necessary to operate the SGEI. In addition to operating costs as described in recital (63), LITGAS incurs costs that are specific to the Mandatory Quantity of LNG delivered to the LNG Terminal. These costs are the following 1) boil-off gas costs; 2) balancing costs; 3) state guarantee costs.

Boil-off costs

- (168) As regards boil-off gas costs the Commission notes that LITGAS incurs higher boil-off costs than other users of the LNG Terminal because due to the fixed delivery schedule it must keep LNG in the tanks of terminal and regasify LNG at the minimum output rate to keep LNG terminal operational. Therefore, while other users can minimise their boil-off gas costs by releasing LNG to the natural gas system immediately LITGAS has to continue slow regasification which causes high natural losses of LNG due to evaporation.
- (169) Furthermore, the Commission takes note that in boil-off gas costs are higher during the winter period³¹ when LITGAS is the only user at the LNG Terminal and they are lower in the summer period when several other users use the LNG Terminal. The Commission therefore considers that because of the nature of the contract with Statoil the Designated Supplier's boil-off gas costs are higher than costs incurred by other users.

Balancing costs

- (170) Concerning balancing costs the Commission notes that LITGAS must release its LNG to the natural gas system at stable output throughout a year and ensure the balance in the transmission system. It should be also noted that the Obligated Purchasers have gas demand that is never equal to supply of the LNG Mandatory Quantity. In the Commission's view, the inflexible delivery schedule under the contract with Statoil results in additional costs to LITGAS. In the summer period, the deliveries under the contract with Statoil remain the same irrespective of actual demand for natural gas in Lithuania, which is considerably lower. In the

³⁰ NRA Methodology No O3-367 complementing the LNG Terminal Law.

³¹ The gas demand increases significantly in winter as more energy and heat is consumed during that period as a result the prices of LNG increase as well. LNG terminal users buy all their gas in summer when the prices of gas are low.

winter period when the demand for natural gas in Lithuania is high LITGAS has to maintain a slow regasification pace in order to keep the LNG Terminal operational. As result, to meet their customers' demand LITGAS needs to conclude SWAP agreements.

Long-term guarantee costs

- (171) As regards costs related to a long-term guarantee the Commission notes that in order to secure long-term supply of LNG from Statoil, LITGAS had to issue long-term contract performance guarantees for Statoil and incur additional costs, which are not inherent in the activity of any other natural gas supplier.

Allegations by the complainant

- (172) The complainant alleges that LITGAS cost compensation is going beyond the cost relating to the Purchase Obligation.
- (173) Based on the explanations provided by Lithuania, the Commission considers that the Lithuanian authorities have demonstrated that only costs and parameters directly related to the fulfilment of LITGAS's obligations under the SGEI are covered by the aid to LITGAS (see recitals (63) to (73) above).

7.3.7.2. Revenue

- (174) The revenue to be taken into account must include at least the entire revenue earned from the SGEI.
- (175) Based on the 2016 Amendments first the revenues which LITGAS will receive as a result of selling the LNG to the Obligated Purchasers at the established regulated price is taken into account. In addition, the revenues that LITGAS will obtain from selling on the market the part of the LNG Mandatory Quantity not purchased by the Obligated Purchasers will also be considered. Thus, all possible revenues that LITGAS could earn under the SGEI it has been entrusted with are covered (see recital (58)).
- (176) Based on the 2016 Amendments of the pricing methodology, if gas market prices are below the LNG price at which LITGAS procures the LNG from its supplier Statoil the revenues LITGAS will receive under the SGEI could be negative. This shortfall will be covered by the LNG Supplement.

7.3.7.3. Reasonable profit

- (177) The 2012 SGEI Framework allows for the entity fulfilling the SGEI to achieve a reasonable profit. This is the rate of return on capital that would be required for a typical company considering whether or not to provide the SGEI for the whole duration of the entrustment act, taking into account the level of risk (point 33). Where duly justified, other profit level indicators can be used (point 34).
- (178) In relation to the profit margin, the Commission notes that already according to the 2013 Decision LITGAS was entitled to a reasonable profit margin. Under the 2016 Amendments, the NRA established a fixed profit margin for LITGAS taking into account natural gas market conditions in Lithuanian. Based on the NRA calculations LITGAS is entitled to 1) a fixed profit margin of 0.24 EUR/MWh on the sale of Mandatory Quantity of the LNG to the Obligated Purchasers and 2) ½ of

profit to the sales of LNG on the market provided that the profit does not exceed the profit margin of a natural gas company operating on the market.

- (179) The Lithuanian authorities explained that the profit margin for sales of LNG on the market established by the 2016 Amendments was well below the average profit margin earned by supplier active on the Lithuanian gas supply market which historically amounts to 3.2 %. For the period from 2016 to 2018 LITGAS profit margin was in the range from [0-5%].
- (180) In addition, based on the NRA Methodology No O3-367 any extra profit beyond the observed average market profit is recouped from the beneficiary.
- (181) In view of the fact that the profit margin of LITGAS is market conform, the Commission considers that the aid contained in the LNG Supplement is kept at minimum and is proportionate.

7.3.7.4. *Efficiency incentives*

- (182) As regards the efficiency incentives, point 39 of the 2012 SGEI Framework, provides that "In devising the method of compensation, Member States must introduce incentives for the efficient provision of SGEI at high standard, unless they can duly justify that it is not feasible or appropriate to do so".
- (183) The efficiency mechanisms applicable to LITGAS are established by Resolution No O3-367.
- (184) Article 12 of the Resolution No O3-367 contains a mechanism for the SGEI provider to perform assigned obligations efficiently. For a certain number of operating expenses (repairs, maintenance, personnel, insurances, marketing and administrative cost etc.) The NRA established ceiling for the price of the regulated service. Cost going beyond that limit is not compensated. In addition, since 2017 the regulated companies have an additional incentive to further reduce OPEX. A company, which reduces its costs more than required by the NRA in a given period of time, may keep part of such savings.
- (185) Moreover, incentives for efficient operation also relate to the adjustment to inflation. The costs that are taken into account for setting the LNG Supplement and the compensation will be increased only by half of the inflation coefficient and not more than 3 %.
- (186) To conclude, the 2016 Amendments introduce new mechanisms positively incentivising LITGAS to have the possibility not only to maintain its efficiency but also to increase it. Based on the 2016 Amendments LITGAS will have 1) possibility to increase profitability by reducing OPEX exceeding the NRA established benchmark and 2) possibility to keep part of the profit from the sale of surplus LNG Mandatory Quantity.

7.3.7.5. *Control of overcompensation*

- (187) Point 16(e) of the 2012 SGEI Framework requires that the act of entrustment includes arrangements for avoiding and recovering overcompensation. The latter should be understood as compensation that the undertaking receives in excess of the amount of aid as defined in point 21 of the 2012 SGEI Framework for the whole duration of the contract (point 47 of the 2012 SGEI Framework).

- (188) Point 49 of the 2012 SGEI Framework states that “Member States must ensure that the compensation granted for operating the SGEI meets the requirements set out in this Communication and in particular that undertakings are not receiving compensation in excess of the amount determined in accordance with the requirements set out in this section. They must provide evidence upon request from the Commission. They must carry out regular checks, or ensure that such checks are carried out, at the end of the period of entrustment and, in any event, at intervals of not more than three years. For aid granted by means other than a public procurement procedure with publication, checks should normally be made at least every two years”.
- (189) LITGAS is obliged to submit to the NRA regular reports on costs and revenues in order to ensure that any overcompensation is detected in a timely manner and is subsequently eliminated.
- (190) Moreover, the 2016 Amendments also foresee the subtraction of any difference between projected and actual costs in the process of approval of the SGEI compensation to LITGAS for the next year.
- (191) In light of the foregoing the Commission concludes that the aid to LITGAS does not lead to overcompensation.

Allegations by the complainant

- (192) The complainant puts forward claims that LITGAS failed to operate efficiently as a typical well-run undertaking. In particular, the complainant argues that under the contract with Statoil, LITGAS had to purchase too large volumes at a very high gas price.
- (193) In view of the evidence submitted by the Lithuanian authorities in terms of global LNG prices and received bids (see recital (18)), the Commission considers the allegations of the complainant regarding the high price of the gas supply contract concluded by LITGAS as unfounded. In particular, the Commission notes that even though in the course of the tender procedure other bidders offered lower prices for the years 2017 - 2019, Statoil offered significantly lower prices for the first two years of the contract (2015 - 2016), so that in aggregate over the five year delivery period the selected bid was the most attractive. Furthermore, the Commission takes note of the fact that the gas supply contract renegotiated in 2016 provides for a lowering of the initially contracted gas acquisition price and quantities of LNG.
- (194) The Commission also considers unfounded the allegations of the complainant regarding the too big volumes contracted under the supply agreement between LITGAS and Statoil. The initially contracted volume equalled the LNG Mandatory Quantity was necessary to keep the LNG Terminal operational in steady mode in its incipient stage when there were no other LNG Terminal's users. In view of that the Commission regards the initially contracted gas volume as necessary for LITGAS to perform its obligations under the SGEI. The Commission also notes that following the renegotiation of the contract with Statoil the LNG Mandatory Quantity (see recital (19)) and the purchase price of natural gas were lowered. Therefore, the Commission notes that the difference in the LNG Mandatory Quantity stems from different technological requirements for

the operation of the LNG Terminal, which were based on the technical expertise provided to the Lithuanian authorities.

- (195) The Commission also considers that SWAP contracts and gas storage options were another way of minimising costs resulting from changes in seasonal demand (see recitals (71) to (72)). The promotion of such measures was enshrined in the applicable legal framework.
- (196) In view of the above the Commission considers that the complainant's allegations regarding efficiency of LITGAS are unfounded and concludes that the requirements of the 2012 SGEI Framework regarding efficiency incentives are complied with.

7.3.8. Provisions applicable to undertakings carrying out activities outside the scope of the SGEI

- (197) Although its activities as Designated Supplier represent the core of LITGAS's business the company also performs a limited number of activities unrelated to the scope of the SGEI.
- (198) According to point 44 of the 2012 SGEI Framework where an undertaking carries out activities falling both inside and outside the scope of the SGEI, the internal accounts must show separately the costs and revenues associated with the SGEI and those of the other services.
- (199) The Commission notes that the Lithuanian authorities have demonstrated that LITGAS is subject to full separation of accounts.
- (200) The legal obligation to separate accounts of SGEI and non-SGEI activities is established in Article 44 of Law on Natural Gas. The detailed methodology for the separation of accounts, allocation of costs and revenues is regulated by the NRA Decision No O3-316 "Regarding the separation of accounts, costs of the natural gas undertakings".³²
- (201) In this context the Commission considers that the requirements of point 44 of the 2012 SGEI Framework can be deemed satisfied.

7.3.9. Additional requirements which may be necessary to ensure that the development of trade is not affected to an extent contrary to the interests of the Union

- (202) The requirements set out in Section 2.9 are usually sufficient to ensure that the aid does not distort competition in a way that is contrary to the interests of the Union.
- (203) In this case, the Commission considers that no serious competition distortions in the internal market have remained unaddressed and that the aid cannot affect trade to such an extent as would be contrary to the interests of the Union.

³² Valstybinės kainų ir energetikos kontrolės komisijos 2013 m. liepos 18 d. nutarimas Nr. O3-316 „Dėl Gamtinių dujų įmonių apskaitos atskyrimo, sąnaudų paskirstymo ir su apskaitos atskyrimu susijusių reikalavimų aprašo patvirtinimo“ (Žin., 2013, Nr. 81-4080).

- (204) The Commission concludes that the potential negative effects on competition and trade will be minimal. LITGAS is entrusted to deliver the LNG Mandatory Quantity that amounts to 0.37 bcm. As the total capacity of the LNG Terminal is 3.75 bcm, the LNG Terminal has capacity to provide access to potential other potential gas suppliers. For the year 2018 there were at least two other users of the LNG Terminal.³³
- (205) Furthermore, the notified 2016 Amendments are limited in time 1) for the first measure from 1 January 2016 until 1 January 2019; 2) for the second measure from 1 January 2019 until 31 December 2024) which ensures avoidance of long-term distortions of competition.

7.3.10. Transparency

- (206) Point 60 of the 2012 SGEI Framework provides that Member States must publish, for each SGEI compensation they grant: (i) the results of the public consultation, (ii) the content and duration of the SGEI, (iii) the undertakings and the territory concerned and (iv) the amounts of aid granted to the undertakings on a yearly basis.
- (207) In this case, the Lithuanian authorities will publish the above-mentioned information on a publicly accessible website (see recitals (88) - (90)).

7.3.11. Conclusion regarding the assessment of the 2016 Amendments

- (208) The Commission considers that based on the above the 2016 Amendments comply with the requirements of the 2012 SGEI Framework.

8. ASSESSMENT OF THE 2019 AMENDMENTS

8.1. Existence of the aid

- (209) As regards the existence of the aid, the Commission notes that the 2019 Amendments do not change the Commission's assessment in this respect (conducted in recitals (102) to (114)). In fact, LITGAS will continue to receive LNG Supplement as a compensation for SGEI entrusted by the LNG Terminal Law.
- (210) Therefore, the Commission concludes that the LNG Supplement involves State aid within the meaning of Article 107(1) TFEU.

8.2. Legality of the aid

- (211) With regard to the amendments covering the period as of 1 January 2019 the Commission notes that the measure has not yet entered into force therefore no LNG Supplement has been granted to the beneficiary LITGAS. Therefore, stand-still obligations laid down in Article 108(3) TFEU have been complied with.

³³ Please see more details at <https://enmin.lrv.lt/lt/naujienos/sgd-terminalu-vartotojai-aktyviai-naudosis-ir-kitais-metais>.

8.3. Compatibility of the aid

8.3.1. Legal basis for assessment

- (212) The Commission notes that the legal basis for assessment of the 2019 Amendments remains unchanged (the 2012 SGEI Framework).

8.3.2. Genuine service of general economic interest as referred to in Article 106 TFEU

- (213) The Commission notes that pursuant to the 2019 Amendments the Purchase Obligation will be abolished and LITGAS³⁴ will be exposed to competition on the downstream market. The Commission considers that these modifications do not change in any respect the nature of the obligation with which LITGAS as the Designated Supplier was entrusted. LITGAS will continue to be obliged to provide the LNG Mandatory Quantity that will maintain the LNG Terminal operational and ready to accept cargos at any time.
- (214) The Commission therefore concludes that the Designated Supplier's obligation to supply the LNG Mandatory Quantity to the LNG Terminal in order to keep it operational constitutes a recognised genuine SGEI as referred to in Article 106 TFEU.

8.3.3. Need for an entrustment act specifying the SGEI and the methods of calculating compensation

- (215) The Commission notes that the 2019 Amendments did not change the provisions of the main entrustment act.
- (216) The precise nature of the SGEI is still determined in Article 11 of the LNG Terminal Law. Namely, Article 11 states that LITGAS is entrusted with the obligation to deliver LNG.
- (217) LITGAS continues to be appointed as the Designated Supplier in the Lithuanian territory.
- (218) As regards the parameters for calculating the compensation, these are clearly defined in the relevant implementing regulation - NRA Methodology No O3-367 complementing the LNG Terminal Law, as explained in recital (133) above. Therefore, it can be concluded that the entrustment act contains the parameters for calculating the compensation.
- (219) In light of the above, the Commission concludes that following the 2019 Amendments the entrustment act continues to comply with the requirements of section 2.3 of the 2012 SGEI Framework.

³⁴ As explained in Section 4.4. above as of 1 January 2019 LITGAS will cease to exist and its functions of the Designated Supplier and its role of the beneficiary will be taken over by LDT.

8.3.4. Amount of compensation

- (220) Pursuant to the 2019 Amendments, the Lithuanian authorities decided to reduce the amount of compensated costs. Based on Article 11 of the LNG Terminal Law the following costs will be compensated: 1) price difference between price of LNG imported by LITGAS and average import price of gas; 2) boil-off cost; and 3) long-term guarantee cost, described in recital (81) above). Annex II below provides the formula by which NRA calculates the compensation to be paid to LITGAS. The Commission notes that the formula includes all the cost (as described above) that will be compensated to LITGAS. The list of costs is clearly defined and no other costs are included into the compensation model.
- (221) The Commission notes that no other costs will be compensated to LITGAS.
- (222) Moreover, LITGAS will no longer receive compensation for reasonable profit. Instead of a guaranteed profit LITGAS will have to generate profit on the market. It will be exposed to full market risks for sales of its gas quantities. As a result profit margin earned by LITGAS would solely depend on the efficiency of the company and the market conditions. LITGAS exposure to the market will naturally incentivise LITGAS to adopt its own efficiency measures.
- (223) Finally, LITGAS will have to provide regular reports on costs and revenues to the NRA ensure that any overcompensation is detected in a timely manner and is subsequently eliminated.
- (224) In light of the foregoing the Commission concludes that the aid to LITGAS does not lead to overcompensation.

8.3.4.1. Efficiency incentives

- (225) The Commission notes that the 2019 Amendments introduce incentives for LITGAS to perform SGEI services efficiently. In particular, LITGAS will no longer be entitled to receive a profit margin. Its profitability will solely depend on its efficiency on the market.
- (226) The Commission therefore considers that Lithuania has complied with point 39 of the 2012 SGEI Framework.

9. CONCLUSION

The Commission has decided, on the basis of the foregoing assessment, not to raise objections to the aid (measure applicable since 2016 to 2019 and measure applicable since 2019 until 2024) on the grounds that it is compatible with the internal market pursuant to Article 106(2) of the Treaty on the Functioning of the European Union.

The Commission regrets that Lithuania put into effect the aid measure covering the period from 2016 until 2019, in breach of Article 108(3) of the Treaty on the Functioning of the European Union.

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission

Annex 1

Calculation of LNG Supplement under the 2016 Amendments

LNG supplement ($D_{saug, t+1}$) for the coming year is calculated on the basis of the following formula established in Item 46 of NRA Methodology³⁵:

$$D_{saug,t+1} = D_{p,rib,t+1} + T_{pask,t+1} - P_{\Delta,t+1} + \frac{\Delta S_{vp,t}}{Q_{vp,t+1}} + \frac{S_{adm,t+1}}{Q_{vp,t+1}}; \quad (\text{Eur/MWh/day/year})$$

where:

$D_{saug, t+1}$	LNG Supplement tariff for following year, Eur/MWh/day/year;
$D_{p,rib,t+1}$	gas liquefaction/regasification price ceiling fixed part, calculated for the following year according to Article 32 of the Methodology, Eur/MWh/day/year;
$T_{pask,t+1}$	designated gas supply prices for the following year, calculated according to Article 77 of the Methodology, Eur/MWh/day/year;
$P_{\Delta,t+1}$	revenue deviation due to the price difference between LNG acquisition price and sales price to the market for the volume that was not off-taken by Obligated Purchasers, calculated according to Article 79 of Methodology, Eur/MWh/day/year;
$Q_{vp,t+1}$	annual consumption capacities of transmission activity that is used for calculating LNG supplement tariff, MWh/day/year;
$\Delta S_{vp,t}$	revenue deviation because of difference of actual and forecasted consumption capacities for the last 12 months, Eur.
$S_{adm,t+1}$	forecasted costs of LNGT supplement administration, where TSO costs of LNGT supplement administration for year t+1 are included.

³⁵ NRA Methodology No O3-367 approved by the NRA on 13-09-2013 (edition valid since 19-12-2015 to 19-03-2016).

**2016
AMENDMENTS:**

Since 19-03-2016³⁶ formula provided in Item 46 of NRA Methodology has been amended to include additional element P_{skys} , which always reduces LNG supplement.

P_{skys} reflects regasification fee income of LNG Terminal operator – KN. By collecting such fee from the market (users of terminal) KN reduces its LNG supplement. Yet such element does not have any impact on LNG supplement collected in favour of LITGAS. Following such amendments formula established in Item 46 was provided as follows:

$$D_{saugt,t+1} = D_{p,rib,t+1} + T_{paskt,t+1} - P_{\Delta,t+1} - P_{skys,t} + \frac{\Delta S_{vp,t}}{Q_{vp,t+1}} + \frac{S_{adm,t+1}}{Q_{vp,t+1}}$$

Since such amendment does not affect income of DS, the following sections discuss 2015 Model referring to the legal framework existing prior amendment introduced since 19-03-2016.

**2017
AMENDMENTS**

Since 17-05-2017³⁷ formula used to calculate LNG supplement was additionally amended. NRA introduced in the formula new element $\left(\frac{K_{t-1}}{2Q_{vp,t+1}}\right)$, which provides incentive for DS to sell surplus LNG Mandatory Quantity at higher profit margin (discussed below in the section describing DS profit margin) and element X_t reflecting change in costs of energy producers (since this element does not affect DS, it shall not be discussed). Following such amendments formula established in Item 46 was provided as follows:

$$D_{saug,t+1} = D_{p,t+1} + T_{paskt,t+1} - P_{\Delta,t+1} - \frac{K_{t-1}}{2Q_{vp,t+1}} + \frac{\Delta S_{vp,t}}{Q_{vp,t+1}} + \frac{X_t}{Q_{vp,t+1}} + \frac{S_{adm,t+1}}{Q_{vp,t+1}}$$

Source: Lithuanian authorities

³⁶ Amended by NRA regulation O3-70 adopted on 18-03-2016.

³⁷ Amendments introduced by NRA decision Nr. O3E-144 on 15-05-2017.

Annex II

Calculation of LNG Supplement under the 2019 Amendments

$Compensation = \frac{(DIP) + \sum SCDS + \Delta SIP + \Delta SSC}{Consumption\ capacity}$					
<p>where:</p>					
<p>D_{IP}</p>	<p>difference between the import price of DS and average weighted import price of imported gas to Lithuania, calculated monthly, taking in to account import prices for the period covering 12 months before the calculation of LNG supplement based on factual data. Following formula shall be used:</p> $DIP = \sum ((IPDS - IPMP) * QLNG)$ <p>where:</p> <table border="1" style="width: 100%;"> <tr> <td style="width: 15%; text-align: center;">IP_{DS}</td> <td>price of natural gas imported by DS for DS's activity for a certain month (Eur/MWh);</td> </tr> <tr> <td style="text-align: center;">IP_{MP}</td> <td>average weighted price of natural gas imports into Lithuania (excluding volumes, which DS imports for DS's activity (Eur/MWh). NRA shall evaluate all the circumstances that may have an impact for natural gas import price (e.g. retrospective compensations etc.)</td> </tr> </table> <p>Several notes on the calculation of import price:</p> <ul style="list-style-type: none"> (i) Lithuanian NRA may receive information on import prices only from market participants holding licenses/permits issued by Lithuanian NRA. Market participants registered in Latvia and Estonia are not obliged to provide the information of import prices to Lithuanian NRA. In this regard, it is currently projected that for the beginning only Lithuanian imports and costs shall be taken into account. Yet, full integration of Baltic natural gas market shall and/or receipt of access prices to all import information, the NRA may introduce calculation of import price covering the entire region (e.g. Baltic States); (ii) Average import price shall be established in every calendar month. (iii) The NRA may revise the average import gas price in case of 	IP _{DS}	price of natural gas imported by DS for DS's activity for a certain month (Eur/MWh);	IP _{MP}	average weighted price of natural gas imports into Lithuania (excluding volumes, which DS imports for DS's activity (Eur/MWh). NRA shall evaluate all the circumstances that may have an impact for natural gas import price (e.g. retrospective compensations etc.)
IP _{DS}	price of natural gas imported by DS for DS's activity for a certain month (Eur/MWh);				
IP _{MP}	average weighted price of natural gas imports into Lithuania (excluding volumes, which DS imports for DS's activity (Eur/MWh). NRA shall evaluate all the circumstances that may have an impact for natural gas import price (e.g. retrospective compensations etc.)				

	<p>any unfair or non-market based transactions that may impede the calculation of actual import gas price, e. g. retrospective gas import price discounts and similar compensations. In such situations the NRA shall be entitled to make any adjustments, which are needed to enable the NRA in making calculations of most accurate import price (e.g. include in the calculation of the average gas import price the retrospective gas import price discounts and (or) other compensations that impede the calculation of the actual average gas import price costs).</p>
	<p>Q_{LNG} contractual quantity. Forecasted designated supply quantity to be utilized in a certain market/markets each month (MWh).</p>
SC_{DS}	<p>specific designated supply costs (Eur):</p> <p>(i) <u>Boil-off gas (BOG) costs:</u></p> <p>(a) all factual boil-off costs experienced by the DS during the periods when the DS is the only user of the LNG terminal, as calculated in accordance with the Klaipėda LNG Terminal Rules; and</p> <p>(b) difference between the actual boil-off costs experienced by the DS per MWh and average of boil-off costs per MWh experienced by other LNG Terminal users, regasifying LNG at Klaipėda LNG Terminal at the same period.</p> <p>(ii) <u>Long term guarantee financing costs:</u> all factual costs incurred by the DS due to financing of outstanding guarantee necessary to guarantee obligations under LNG supply agreement.</p>
ΔS_{IP}	<p>difference between forecasted price difference and actual price difference (Eur);</p>
ΔS_{SC}	<p>difference between forecasted and actual costs (Eur).</p>
<p>Note, that calculation of PSO compensation shall be conducted on the same principles, which govern price regulation of other companies operating in natural gas sector, e.g. review justification of costs, apply incentives to increase cost effectiveness, require separation of accounts of regulated and non-regulated activities, allocation of costs, etc.</p>	