



Brussels, 25.7.2018  
C(2018) 5058 final

**COMMISSION DECISION**

**of 25.7.2018**

**on the exemption of the Interconnector Greece-Bulgaria from the requirements  
regarding third party access, tariff regulation and ownership unbundling**

(ONLY THE ENGLISH TEXT IS AUTHENTIC)

# COMMISSION DECISION

of 25.7.2018

**on the exemption of the Interconnector Greece-Bulgaria from the requirements regarding third party access, tariff regulation and ownership unbundling**

(ONLY THE ENGLISH TEXT IS AUTHENTIC)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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<sup>1</sup>, and in particular Article 36 thereof,

Whereas:

## 1. BACKGROUND

- (1) On 29 May 2018, the Greek Energy Regulator, Ρυθμιστική Αρχή Ενέργειας (PAE) / Regulatory Authority for Energy ('RAE'), adopted decision No 483/2018 exempting ICGB AD, a special purpose project company incorporated under Bulgarian law, from the provisions of Articles 9, 32 and 41(6), (8) and (10) of Directive 2009/73/EC of the European Parliament and of the Council on the (the 'Greek Exemption Decision'). The Greek Exemption Decision was notified to the Commission on 30 May 2018.
- (2) On 29 May 2018, the Bulgarian authority, Energy and Water Regulatory Commission ('EWRC'), adopted decision No R-VO-1 on the exemption of ICGB AD from the provisions of Articles 9, 32, 33, 34 and 41(6), (8) and (10) of Directive 2009/73/EC ('Bulgarian Exemption Decision'). The Bulgarian Exemption Decision was notified to the Commission on 31 May 2018.
- (3) Annexed to both the Greek Exemption Decision and the Bulgarian Exemption Decision is the 'Joint Opinion of the Energy Regulators on the Exemption Application of ICGB AD - Energy and Water Regulatory Commission (Bulgaria) and Regulatory Authority for Energy (Greece)' ( 'Joint Opinion'). This document forms an integral part of both decisions.
- (4) On 7 June 2018, the Commission published<sup>2</sup> a notice on its website informing the public of the notifications of the Greek and Bulgarian Exemption Decisions and inviting the third parties to send their observations by 14th June 2018. The Commission received no observations.
- (5) On 24 January 2017, 25 January 2018 and 27 April 2018, the competent Commission departments met with the competent national regulatory authorities ('NRAs' or 'Regulatory Authorities'), in particular the EWRC and RAE, to discuss the case.

---

<sup>1</sup> OJ L 211, 14.09.2009, p. 94.

<sup>2</sup> [https://ec.europa.eu/energy/sites/ener/files/documents/exemption\\_decisions2018.pdf](https://ec.europa.eu/energy/sites/ener/files/documents/exemption_decisions2018.pdf).

## 2. DESCRIPTION OF THE PROJECT

- (6) One of the Union's energy policy objectives is the diversification of gas supplies and in this context the Southern Gas Corridor is a priority, aiming at providing direct access for the Union to substantial gas reserves in the Caspian, the Eastern Mediterranean Basin and the Middle East region. The Trans-Adriatic Pipeline ('TAP') was chosen by the Shah Deniz II consortium ('SD II') to deliver SD II gas to the Union. Therefore, the TAP project has a potential to connect the Union with the Caspian gas sources.
- (7) The Interconnector Greece-Bulgaria ('IGB') is designed to tie into TAP and the Greek system operated by the Hellenic Gas Transmission System Operator S.A. ('DESFA'). The IGB is recognised as a project of common interest in the third (2017) Union list of projects of common interest ('PCI' list)<sup>3</sup> and is a priority project in the context of the Central-East and South-East Europe energy Connectivity (CESEC) initiative.
- (8) The IGB is being developed by ICGB AD. The shareholders of the company, Bulgarian Energy Holding EAD of Bulgaria ('BEH') and IGI Poseidon SA of Greece ('IGI') each control 50% of ICGB AD. IGI is a consortium established by the Greek DEPA SA (50%) and Edison International NV (50%), which is 100% controlled by Italian Edison S.p.A., part of the EDF Group.
- (9) The IGB pipeline is designed as an interconnector to link the Greek and Bulgarian natural gas systems. The IGB's starting point is located in the Greek municipality of Komotini. It extends for approximately 31.5 km to the north on the Greek territory before crossing the border and spans for 151 km on Bulgarian territory, ending at the Bulgarian municipality of Stara Zagora. The planned minimum firm capacity is 380.517 Ncm/h/y (circa 3 bNcm/y) from Greece towards Bulgaria ('IGB minimum capacity').
- (10) IGB is a major new infrastructure aiming to facilitate the transportation of all the southern corridor sources, including liquefied natural gas (LNG), to the Bulgarian and South Eastern European Markets and will reduce the isolation of the Bulgarian market.
- (11) A Memorandum of understanding was signed between DESFA and ICGB AD in 2012 and between TAP and ICGB AD in 2013 for the coordination of technical matters regarding the interconnection. IGB will connect directly to TAP and DESFA at Komotini. The Bulgarian Gas Transportation system of Bulgartransgaz ('BTG') authorised connection of IGB to it by letters to ICGB AD No. 24-00-21-47/29.05.2013 and 24-00-1661/07.04.2015.
- (12) The Commission notes that the required pressure to provide the IGB minimum capacity is to be negotiated between ICGB AD, TAP and DESFA and that there is still no interconnection agreement that guarantees the required pressure. [BUSINESS SECRET]

---

<sup>3</sup> Commission Delegated Regulation (EU) 2018/540 of 23 November 2017 amending Regulation (EU) No 347/2013 of the European Parliament and of the Council as regards the Union list of projects of common interest, 6.8.1 Interconnection Greece — Bulgaria [currently known as "IGB"] between Komotini (EL) and Stara Zagora (BG) and compressor station at Kipi (EL).

- (13) The total cost of the project is estimated to be approximately [BUSINESS SECRET] million euro (CAPEX, VAT excluded). Operating expenses are estimated at a level of [BUSINESS SECRET] million euro per annum<sup>4</sup>.
- (14) According to the Joint Opinion and ICGB AD's Exemption Application, Physical Reverse Flow Capacity will be ensured only in a potential second phase of the project, namely "Phase Two". The optional Phase Two requires additional investment in an own compressor station on the IGB. The capacity of the pipeline can be expanded to about 5 bcm/y in the direction Greece to Bulgaria at an entry pressure at Komotini of 57.0 barg and exit pressure at Stara Zagora of 52.0 barg.<sup>5</sup> Capacity in the direction Bulgaria to Greece could be enhanced from 0 to 2 bcm/a.<sup>6</sup> The Commission understands that Phase Two would lead to a significant increase of capacity in the sense of Article 36(2). Should Phase Two be realized at a later stage and require an extended scope of the exemption decision covering new capacity, a new exemption procedure would be required regarding that new capacity.
- (15) The pipeline is expected to be operational from July 2020<sup>7</sup> based on binding capacity reservations starting on [BUSINESS SECRET].

### **3. THE NOTIFIED EXEMPTION DECISION**

#### **3.1 The Greek Exemption Decision**

- (16) In its Exemption Decision, RAE decided, in particular,

"1. to approve the document entitled '*Joint Opinion of the Energy Regulators on the Exemption Application of ICGB AD - Energy and Water Regulatory Commission (Bulgaria) and Regulatory Authority for Energy (Greece)*' in the Appendix to this Decision, of which it is an integral part" and "2. to grant an exemption to the company ICGB AD in accordance with the special terms and conditions in Part 4 (Authorities' Joint Opinion) of the Appendix".

#### **3.2 The Bulgarian Exemption Decision**

- (17) In its Exemption Decision EWRC decided, in particular that:

"1. The joint opinion of the EWRC and RAE on the exemption application of ICGB AD, which forms an integral part of this Decision, is hereby adopted." And "2. ICGB AD is hereby granted temporary exemption from obligations relating to: the independence of the operator under Articles 81c ZE, the granting of access and the regulation of prices for the services provided in accordance with the terms and conditions laid down in Part Four of the joint opinion of the EWRC and RAE on the exemption application of ICGB AD."

#### **3.3 The market test**

- (18) Pursuant to Article 36(6) of Directive 2009/73/EC:

*"Before granting an exemption, the regulatory authority shall decide upon the rules and mechanisms for management and allocation of capacity. The rules shall require that all potential users of the infrastructure are invited to indicate their interest in contracting capacity before capacity allocation in the new infrastructure, including*

---

<sup>4</sup> Joint Opinion, pp. 15-16.

<sup>5</sup> Exemption Application, p. 10.

<sup>6</sup> Joint Opinion, p.10.

<sup>7</sup> Joint Opinion, p. 58.

*for own use, takes place. The regulatory authority shall require congestion management rules to include the obligation to offer unused capacity on the market, and shall require users of the infrastructure to be entitled to trade their contracted capacities on the secondary market. In its assessment of the criteria referred to in points (a), (b) and (e) of paragraph 1, the regulatory authority shall take into account the results of that capacity allocation procedure."*

- (19) A "market test" should be carried out pursuant to Article 36(6) of Directive 2009/73/EC. The purpose of that test is to evaluate the demand for capacity in the projected pipeline from third parties with the aim to assess the likelihood that non-exempted capacity finds buyers, to evaluate the appropriate size of the pipeline and the location of entry and exit points. The NRAs decided to have the market test carried-out in two phases. First a non-binding expression of interest should be carried out followed by a binding booking phase.
- (20) The first non-binding market test was performed in two phases by ICGB AD between May 2013 and September 2014 on the basis of the Guidelines for management and allocation of capacity on the IGB Interconnector drawn up in accordance with Article 36(6) of Directive 2009/73/EC. During phase I interested parties were invited to express their interest in reserving capacity (EoI phase). Phase II included the invitation for EoI participants to submit binding offers to reserve capacity in the IGB pipeline (bidding phase). In October 2015, ICGB AD notified the Regulators (Ref. X-01/07.10.2015) of the termination of the market test. According to ICGB AD, the results of the binding bidding phase of the market test and the gas market changes, underway at the time in the region, brought about uncertainty in assessing the quantification of the exemption requests, therefore ICGB AD decided to terminate the market test<sup>8</sup>.
- (21) ICGB AD re-ran the EoI phase of the market test between 15 December 2015 and 8 April 2016 on the basis of the Updated Guidelines for management and allocation of capacity on the IGB Interconnector drawn up in accordance with Article 36(6) of Directive 2009/73/EC, jointly issued by EWRC and RAE<sup>9</sup>. Although during the EoI phase the expression of interest does not bind participants to book capacity, it is a prerequisite for accessing the bidding phase of the market test. EWRC and RAE decided to extend the EoI phase, from 31 March until 8 April.
- (22) During the EoI phase, nine different shippers requested a total peak demand of 4.39 bcm/a in the direction from Greece to Bulgaria and 0.97 bcm/a in reverse flow direction. On the basis of the results of the EoI phase and according to paragraph 3.5(b) of the Updated Guidelines, EWRC and RAE requested ICGB AD to proceed with the binding bidding phase of the market test.
- (23) The bidding phase of the market test based on the Bidding Phase Guidelines approved by EWRC by means of a decision dated 21 July 2016 and RAE with Decision No. 255/2016 of 28 July 2016, started on 5 August 2016 and was prolonged until 30 November 2016<sup>10</sup>.
- (24) During the bidding phase of the market test, five companies in total, including the ICGB AD shareholders, expressed their interest to book capacity on the IGB. The

---

<sup>8</sup> Joint Opinion, p. 13.

<sup>9</sup> <http://www.icgb.eu/downloads/2-updated-guidelines.pdf>.

<sup>10</sup> <http://www.icgb.eu/downloads/0508-icgb-bidding-phase-guidelines.pdf>.

remaining two participants were [BUSINESS SECRET]. and [BUSINESS SECRET]. The overall peak demand for forward flow was 1.57 bcm/y in the direction Greece to Bulgaria and no demand in the reverse flow direction.

- (25) ICGB AD shareholders expressed an interest for approximately [BUSINESS SECRET] bcm/y forward capacity for a period of 10 to 25 years. Most of that capacity was requested by Bulgargaz which requested [BUSINESS SECRET] bcm/a for a period of 25 years, while the rest was requested for a time period of 5 to 20 years.
- (26) As a result of the market test, ICGB AD signed binding advanced reservation contract agreements ('ARCAs') corresponding to the volumes described in recital 25,. ARCAs can be transposed in capacity contracts only after receiving the third party access ('TPA') exemption.

### 3.4 Exemptions granted

- (27) The Greek Exemption Decision and the Bulgarian Exemption Decision grant the following exemptions to ICGB AD, subject to a set of conditions, for a period of 25 years:
  - (a) exemption from provisions of Article 9 of Directive 2009/73/EC regarding the ownership unbundling rules, for the entire project;
  - (b) exemption from the provisions of Article 32 of Directive 2009/73/EC regarding TPA for the ARCAs;
  - (c) exemption from Articles 41(6), 41(8) and 41(10) of Directive 2009/73/EC regarding the Tariff Regulation, for the entire capacity.
- (28) The conditions referred to in recital (27) are set out in section 4 of the Joint Opinion, as follows<sup>11</sup>:

(a) conditions for the exemption from the ownership unbundling requirements of Article 9 of Directive 2009/73/EC:

*"1. ICGB AD must be fully certified prior to the [commercial operation date] COD and not later than [BUSINESS SECRET]. To this end, ICGB AD shall submit a certification request to the Authorities in accordance with Art.10 of Directive 2009/73/EC, not later than 6 months before this deadline, in order to safeguard that ICGB AD management and administrative bodies' degree of independence from its shareholders. EWRC and RAE will issue a joint decision on the certification of ICGB AD. When deciding on certification, the Bulgarian and Greek NRAs will have to assess the ICGB AD compliance with the unbundling rules according to the ITO model. ICGB AD must meet all the requirements set out in Directive 2009/73/EC Chapter IV, with the exception of the provisions of Art. 22 of the Gas Directive, as these have been thoroughly assessed by the Authorities in the present Joint Opinion.*

*In the event that ICGB AD decide to offer products in accordance with the NC CAM Auction Calendar before the COD, the certification should be completed*

---

<sup>11</sup> In the citation, the original numbering from the Joint Opinion is preserved, Italics added.

*before any allocation of capacity takes place. To this end, ICGB AD shall submit a certification request in accordance with Art.10 of the Gas Directive no later than 6 (six) months before the first capacity allocation.*

*2. ICGB AD has to implement functional unbundling. To this end, ICGB AD shall elaborate and submit to the Authorities for their approval, a Compliance Programme, which will set out measures taken to ensure that discriminatory conduct is excluded and that no commercially sensitive information is communicated to its shareholders. The Compliance Programme should be submitted to the Authorities not later than 6 (six) months before the COD or before the initial capacity allocation according to the auction calendar under NC CAM. The Compliance Officer should be appointed not later than 1 month from the approval of the Compliance Programme by the Authorities. This Compliance Programme shall lay down at least the following:*

- (a) Measures to prevent discriminatory conduct in relation to the potential participants, who are not shareholders in ICGB AD;*
- (b) The duties of the employees of ICGB AD in the fulfilment of the purposes of the Compliance Programme;*
- (c) The person responsible for monitoring the Compliance Programme and submitting to the Authorities an Annual Compliance Report, setting out the measures taken";*

(b) conditions for the exemption from the provisions of Article 32 of Directive 2009/73/EC:

*"1. Obligation to offer the IGB Minimum Capacity*

*ICGB AD shall ensure that it will offer, at all times during the 25 years of the exemption, capacity equal to the IGB Minimum Capacity. The offer of non-exempted capacity to all interested users, at the amount shown in Table 7, should start no later than the Commercial Operation Date of the IGB pipeline. [BUSINESS SECRET].*

*2. Obligation to allocate capacity pursuant to Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a Network Code on capacity allocation mechanisms in gas transmission systems*

*ICGB AD shall allocate capacity beyond the capacity exempted by the third-party access rules by implementing Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a Network Code on capacity allocation mechanisms in gas transmission systems, as long as they do not contradict to*

*the provisions of the present decision and in particular the conditions set in paragraph 4.4.*

### *3. Obligation to conduct additional market test*

*ICGB AD shall conduct a market test, no later than three years as of the Commercial Operation Date, in order to investigate the market interest in upgrading the IGB capacity to approximately 5 bcm/y (§1.1.3). ICGB AD shall conduct the market test according to guidelines to be approved by the National Regulatory Authorities. ICGB is obliged to upgrade the pipeline above the Minimum Capacity in order to accommodate the binding capacity requests resulting from the Market Test, taking into account the provisions of points 2 and 3 of §4.4, if its construction is economically viable. If constructed, the additional capacity does not fall under the provisions of the present decision and is not exempted.*

*Further expansion of the capacity is possible if economically justified and technically feasible.*

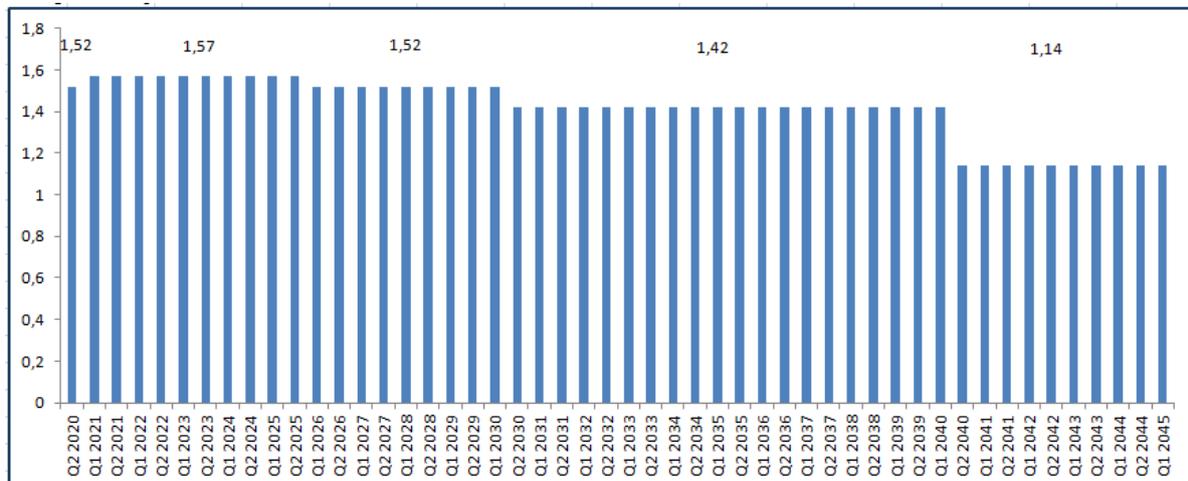
<b><i>Period from</i></b>	<b><i>Period to</i></b>	<b><i>Exempted capacity (Ncm/h/y)</i></b>	<b><i>Non-exempted capacity (Ncm/h/y)</i></b>
<i>1/7/2020</i>	<i>31/12/2020</i>	<i>173 966.55</i>	<i>206 550.45</i>
<i>1/1/2021</i>	<i>30/6/2021</i>	<i>179 673.55</i>	<i>200 843.45</i>
<i>1/7/2021</i>	<i>31/12/2021</i>	<i>179 673.55</i>	<i>200 843.45</i>
<i>1/1/2022</i>	<i>30/6/2022</i>	<i>179 673.55</i>	<i>200 843.45</i>
<i>1/7/2022</i>	<i>31/12/2022</i>	<i>179 673.55</i>	<i>200 843.45</i>
<i>1/1/2023</i>	<i>30/6/2023</i>	<i>179 673.55</i>	<i>200 843.45</i>
<i>1/7/2023</i>	<i>31/12/2023</i>	<i>179 673.55</i>	<i>200 843.45</i>
<i>1/1/2024</i>	<i>30/6/2024</i>	<i>179 673.55</i>	<i>200 843.45</i>
<i>1/7/2024</i>	<i>31/12/2024</i>	<i>179 673.55</i>	<i>200 843.45</i>
<i>1/1/2025</i>	<i>30/6/2025</i>	<i>179 673.55</i>	<i>200 843.45</i>
<i>1/7/2025</i>	<i>31/12/2025</i>	<i>179 673.55</i>	<i>200 843.45</i>
<i>1/1/2026</i>	<i>30/6/2026</i>	<i>173 966.55</i>	<i>206 550.45</i>
<i>1/7/2026</i>	<i>31/12/2026</i>	<i>173 966.55</i>	<i>206 550.45</i>

<i>1/1/2027</i>	<i>30/6/2027</i>	<i>173 966.55</i>	<i>206 550.45</i>
<i>1/7/2027</i>	<i>31/12/2027</i>	<i>173 966.55</i>	<i>206 550.45</i>
<i>1/1/2028</i>	<i>30/6/2028</i>	<i>173 966.55</i>	<i>206 550.45</i>
<i>1/7/2028</i>	<i>31/12/2028</i>	<i>173 966.55</i>	<i>206 550.45</i>
<i>1/1/2029</i>	<i>30/6/2029</i>	<i>173 966.55</i>	<i>206 550.45</i>
<i>1/7/2029</i>	<i>31/12/2029</i>	<i>173 966.55</i>	<i>206 550.45</i>
<i>1/1/2030</i>	<i>30/6/2030</i>	<i>173 966.55</i>	<i>206 550.45</i>
<i>1/7/2030</i>	<i>31/12/2030</i>	<i>162 551.05</i>	<i>217 965.95</i>
<i>1/1/2031</i>	<i>30/6/2031</i>	<i>162 551.05</i>	<i>217 965.95</i>
<i>1/7/2031</i>	<i>31/12/2031</i>	<i>162 551.05</i>	<i>217 965.95</i>
<i>1/1/2032</i>	<i>30/6/2032</i>	<i>162 551.05</i>	<i>217 965.95</i>
<i>1/7/2032</i>	<i>31/12/2032</i>	<i>162 551.05</i>	<i>217 965.95</i>
<i>1/1/2033</i>	<i>30/6/2033</i>	<i>162 551.05</i>	<i>217 965.95</i>
<i>1/7/2033</i>	<i>31/12/2033</i>	<i>162 551.05</i>	<i>217 965.95</i>
<i>1/1/2034</i>	<i>30/6/2034</i>	<i>162 551.05</i>	<i>217 965.95</i>
<i>1/7/2034</i>	<i>31/12/2034</i>	<i>162 551.05</i>	<i>217 965.95</i>
<i>1/1/2035</i>	<i>30/6/2035</i>	<i>162 551.05</i>	<i>217 965.95</i>
<i>1/7/2035</i>	<i>31/12/2035</i>	<i>162 551.05</i>	<i>217 965.95</i>
<i>1/1/2036</i>	<i>30/6/2036</i>	<i>162 551.05</i>	<i>217 965.95</i>
<i>1/7/2036</i>	<i>31/12/2036</i>	<i>162 551.05</i>	<i>217 965.95</i>
<i>1/1/2037</i>	<i>30/6/2037</i>	<i>162 551.05</i>	<i>217 965.95</i>
<i>1/7/2037</i>	<i>31/12/2037</i>	<i>162 551.05</i>	<i>217 965.95</i>
<i>1/1/2038</i>	<i>30/6/2038</i>	<i>162 551.05</i>	<i>217 965.95</i>
<i>1/7/2038</i>	<i>31/12/2038</i>	<i>162 551.05</i>	<i>217 965.95</i>
<i>1/1/2039</i>	<i>30/6/2039</i>	<i>162 551.05</i>	<i>217 965.95</i>
<i>1/7/2039</i>	<i>31/12/2039</i>	<i>162 551.05</i>	<i>217 965.95</i>

1/1/2040	30/6/2040	162 551.05	217 965.95
1/7/2040	31/12/2040	131 044.05	249 472.95
1/1/2041	30/6/2041	131 044.05	249 472.95
1/7/2041	31/12/2041	131 044.05	249 472.95
1/1/2042	30/6/2042	131 044.05	249 472.95
1/7/2042	31/12/2042	131 044.05	249 472.95
1/1/2043	30/6/2043	131 044.05	249 472.95
1/7/2043	31/12/2043	131 044.05	249 472.95
1/1/2044	30/6/2044	131 044.05	249 472.95
1/7/2044	31/12/2044	131 044.05	249 472.95
1/1/2045	30/6/2045	131 044.05	249 472.95

**Table 7.** Exempted and non-exempted from TPA firm forward capacity per semester of operation, for 25 years starting from COD, in Ncm/h/y.

A load-factor for the calculation of the yearly capacity may be proposed by ICGB and shall be under the approval of the Authorities.



**Figure 1.** Firm Forward capacity exempted from TPA per semester of operation, for 25 years starting from COD, in bNcm/y";

(c) conditions for the exemption from Articles 41(6), 41(8) and 41(10) of Directive 2009/73/EC:

1. At the latest 3 (three) months after the present decision becomes effective, according to the provisions of the Gas Directive, ICGB shall submit for the approval

*of the Authorities the final methodology (IGB Tariff Code) for the implementation of the IGB Tariff.*

*2. The IGB Tariff shall reflect efficient costs, shall be transparent and non-discriminatory and shall follow the principles described in the present Joint Opinion.*

*3. The IGB Tariff Code shall define the pricing mechanism for all capacity products offered by IGB, namely capacity products of different durations of firm and interruptible nature.*

*4. Initial shareholders' equity nominal IRR will be [BUSINESS SECRET] and its cap value will be [BUSINESS SECRET]. Any revenues from capacity bookings that increase IRR above [BUSINESS SECRET] will be returned to the IGB shippers either through tariff reductions of following periods or by a profit sharing mechanism in a non-discriminatory manner.*

*5. The IGB Tariff Code that shall be submitted for approval to the Authorities shall be accompanied by a reproducible and parameterized tariff model that analyses the tariff methodology as well as the profit sharing mechanism.*

*6. The IGB Tariff Code shall be approved by a joint decision of the Regulatory Authorities.*

*7. IGB shall adopt an entry-exit tariff model.*

*8. Interruptible Reverse Flow Capacity and Interruptible Forward Flow Capacity shall be priced as a percentage of Firm Forward Flow Tariff.*

*9. No multiplier shall be applied for the calculation of the tariff of short-term capacity products.*

*10. The ICGB AD shall submit to the Authorities yearly information on its revenues in order for the Authorities to monitor that the conditions are kept.*

*11. ICGB AD shall ensure that balancing services charges, when applicable, will be objective, transparent, cost-reflective and non-discriminatory and will be published.*

*12. The IGB Tariff Code shall be published on the Company's website before the date of any offer of capacity takes place."*

(d) the exemption from Articles 41(6), 41(8) and 41(10) of Directive 2009/73/EC is also subject to the following additional conditions:

*"1. Obligation to issue a Network Code*

*Not later than twelve months before the commercial operation date, ICGB AD shall submit for approval to the NRAs an IGB Network Code. The network code must comply with all the provisions of Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and the European Network Codes pursuant to Article 8 (6) of Regulation (EC) No 715/2009, that are not in conflict with the present Decision. To this end, when an amendment of a certain European Network*

*Code occurs, ICGB AD will send to NRAs for their approval a revised version of the IGB Network Code, which will include the provisions of the European Network Code that are not in conflict with the present Decision. The IGB Network Code shall be posted on the ICGB AD website, and shall, at least, include the following:*

- Detailed procedures of normal operation, including nomination of capacity at IGB entry and exit points for forward and reverse flow;*
- All necessary procedures for the secondary trading, which will be available to all traders;*
- Congestion management procedures and the use-it-or-lose-it arrangements;*
- Data publication procedures on the functionality and availability of capacity for all pipeline users.*

## *2. Capacity cap for dominant players in Bulgaria*

*In order to prevent the establishment of a dominant position or to strengthen an existing dominant position in the Bulgarian gas market, the following conditions shall apply:*

*(a) Any undertaking with a share of 40% or larger in any relevant product market for the supply of gas in Bulgaria, or on the upstream market of supplying gas into Bulgaria, shall not be allowed to reserve more than 40% of the capacity on an IGB exit point in Bulgaria.*

*(b) In the event that two or more undertakings together hold a combined market share of at least 80% and each of these undertakings has a market share of more than 20% on any relevant product market for the supply of gas in Bulgaria, or on the upstream market of supplying gas to Bulgaria, EWRC has the right to impose a capacity cap on these undertakings on an IGB exit point in Bulgaria;*

*(c) For the purpose of calculation of the market share and the capacity cap percentage, undertakings belonging to one group shall be considered as one undertaking. The market share will be calculated as the average of the last two consecutive years;*

*(d) Any direct or indirect long-term gas supply contracts for Bulgaria entered into with an undertaking with a share of 40% or a group of undertakings with a combined market share of at least 80% shall fall under the capacity cap as established in point 2 (a) and 2 (b).*

*(e) Where, due to lack of interest by other parties, the capacity cap as imposed in 2 (a) and 2 (b) results in the IGB capacity to be underutilised, EWRC at the request*

*of an interested undertaking, may allow to book capacity beyond the capacity cap as defined in 2 (a) and 2 (b) on an interruptible short-term basis. EWRC decision to that effect shall be published on its web site. The IGB capacity is considered to be underutilised if on average 20% of the IGB capacity is not booked for a period of at least 6 months.*

### *3. Capacity cap for dominant players in Greece*

*In order to prevent the establishment of a dominant position or to strengthen an existing dominant position in the Greek gas market, the following conditions shall apply:*

*(a) Any undertaking with a share of 40% or larger in any relevant product market for the supply of gas in Greece, or on the upstream market of supplying gas into Greece, shall not be allowed to reserve more than 40% of the capacity on an IGB exit point in Greece.*

*(b) In the event that two or more undertakings together hold a combined market share of at least 80% and each of these undertakings has a market share of more than 20% on any relevant product market for the supply of gas in Greece, or on the upstream market of supplying gas to Greece, RAE has the right to impose a capacity cap on these undertakings on an IGB exit point in Greece;*

*(c) For the purpose of calculation of the market share and the capacity cap percentage, undertakings belonging to one group shall be considered as one undertaking. The market share will be calculated as the average of the last two consecutive years;*

*(d) Any direct or indirect long-term gas supply contracts for Greece entered into with an undertaking with a share of 40% or a group of undertakings with a combined market share of at least 80% shall fall under the capacity cap as established in point 3 (a) and 3 (b).*

*(e) Where, due to lack of interest by other parties, the capacity cap as imposed in 3 (a) and (b) results in the IGB capacity to be underutilised, RAE at the request of an interested undertaking, may allow to book capacity beyond the capacity cap as defined in 3 (a) and 3 (b) on an interruptible short-term basis. RAE decision to that effect shall be published on its web site. The IGB capacity is considered to be underutilised if on average 20% of the IGB capacity is not booked for a period of at least 6 months.*

#### *4. Changing in ICGB AD shareholding*

*If an enterprise, directly or indirectly, acquires joint or sole control over or merges with ICGB AD, or with one of its shareholders, ICGB AD must notify that change to the relevant NRAs, which change may subsequently be assessed (in cooperation with a national competition authority), in order to verify whether the conditions under which the exemption has been granted continue to be respected.*

*This provision will be applied in accordance with Article 3 of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) and the Commission Consolidated Jurisdictional Notice under the Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (2008/C 95/01).*

#### *4.5 Commercial operation date and effect of the Joint Opinion*

*1. Commercial Operation Date - IGB shall be put into operation no later than July 1<sup>st</sup> 2020.*

*2. Effect of the present exemption - In line with the provisions of Article 36(9) of Directive 2009/73/EC, the present Opinion and the Commission's approval shall lose its effect 2 years from its adoption in the event that construction of IGB has not yet started, and 5 years from its adoption in the event that the infrastructure has not become operational, unless the Commission decides that any further delay is due to major obstacles beyond control of the person to whom the exemption has been granted.*

#### *4.6 Governance*

*1. Regulatory Cooperation - Where the present opinion foresees an action by the Authorities, for the purpose of the implementation of such an action, the Authorities shall endeavor all efforts to act jointly.*

*2. Dispute settlement - Within 6 (six) months prior to the Commercial Operation Date of the IGB pipeline, the Authorities shall issue a joint decision on the rules for examining of complaints against the ICGB AD in relation with its obligations under the Exemption Decision during the operation of IGB.*

#### *4.7 Sanctions in case of infringement of the exemption decision*

*The NRAs foresee that any infringement by ICGB of the conditions set out in the exemption decision may result in a sanction imposed by the NRAs on IGB that must be proportionate to the seriousness of the infringement, in accordance to national rules and legislation.*

#### *4.8 Amendment and revocation of the exemption decision*

*1. In case of material change of circumstances which form the basis on which it has been determined that the conditions listed in paragraph 1 of article 36 of the Directive 2009/73/EC have been met, the NRAs may amend or revoke this Exemption Decision.*

*2. Pursuant to paragraph 9 of 36 of the Directive 2009/73/EC, the NRAs will amend or revoke this Exemption Decision when the European Commission has requested it.*

*3. The NRAs may also revoke this Exemption Decision where:*

*a. ICGB is found to be in serious breach of one or more conditions laid down in this Exemption Decision.*

*b. ICGB is subject to initiated bankruptcy proceeding or has been adjudicated/declared bankrupt."*

#### **4. COMMISSION'S ASSESSMENT OF THE EXEMPTION CRITERIA OF ARTICLE 36 OF DIRECTIVE 2009/73/EC**

##### **4.1 General considerations**

- (29) Based on its assessment of the criteria listed in Article 36(1) of Directive 2009/73/EC and pursuant to Article 36(9) of that Directive , the Commission may decide to require the regulatory authority to amend or withdraw their decision to grant an exemption.
- (30) As regards the general conditions imposed by EWRC and RAE the Commission's decision is addressed to both authorities. As regards the specific conditions imposed on the Bulgarian market, set out in section 4.4 point 2 of the Joint Opinion, the Commission's assessment and revisions are addressed to EWRC. The assessment of the conditions imposed for the Greek market, set out in section 4.4 point 3 of the Joint Opinion are addressed to the RAE.
- (31) This decision concerns IGB only, therefore no conditions can be imposed upon the operators of other infrastructure projects, even if potentially interconnecting with IGB. In accordance with Article 36(9) of Directive 2009/73/EC the Commission's approval of an exemption decision ceases to have effect two or five years after its adoption.
- (32) Pursuant to the Joint Opinion, IGB is envisaged to start operating no later than July 1st 2020<sup>12</sup>. Therefore, construction needs to start before.
- (33) Additionally, the Joint Opinion states that the exemption decision shall lose its effect 2 years from its adoption in the event that construction of IGB has not yet started, and 5 years from its adoption in the event that the infrastructure has not become operational, unless the Commission decides that any further delay is due to major obstacles beyond control of the person to whom the exemption has been granted.
- (34) Consequently, there is no need to decide on a longer period for the approval of the exemption decision to lose effect.

---

<sup>12</sup> Joint Opinion, p.58

## **4.2 "Major new gas infrastructure"**

- (35) Article 36(1) of Directive 2009/73/EC specifies that major new gas infrastructure, that is to say interconnectors, LNG and storage facilities, qualify for an exemption. The concept of ‘interconnector’ is defined in Article 2(17) of that Directive, which states that ‘interconnector’ means a transmission line which crosses or spans a border between Member States for the sole purpose of connecting the national transmission systems of those Member states’
- (36) The Joint Opinion explains that the proposed IGB pipeline is an interconnector connecting two Member States, with an approximate length of 31.5km in Greece and 151 km in Bulgaria. It is planned to have one entry interconnection point with DESFA in Komotini and one exit point with Bulgartransgaz in Stara Zagora, thereby connecting the national transmission systems of those two Member States. A further entry point from TAP in the area of Komotini is planned.
- (37) Therefore, the Commission concludes that IGB constitutes an interconnector within the meaning of Art 2(17) of Directive 2009/73/EC and, hence, it qualifies as a major new gas infrastructure within the meaning of Article 36(1) of that Directive.

## **4.3 "The investment must enhance security of supply"**

- (38) The Commission notes that in general, an investment which provides a new route to the relevant market and connects new upstream sources of gas from new suppliers to the market should increase the security of supply of that market. However, that has to be assessed on a case-by-case basis.
- (39) The present Decision concerns an exemption from certain provisions of Directive 2009/73/EC only. Consequently, Regulation (EU) 2017/1938 of the European Parliament and of the Council<sup>13</sup> applies to the IGB.
- (40) The Regulatory Authorities present the view that the IGB enhances security of supply by bringing to the Union new sources of gas from new suppliers. That is not changed by the fact that the initial forward capacity will be essentially reserved for Bulgaria, and therefore will not have an immediate effect on Greece. The Commission's view is based on the reasons set out in Recitals 40 to 62.
- (41) The investment will enhance the possibilities for diversification of supply sources based on the firm forward capacity in Bulgaria. Where it is implemented on the basis of the additional market test, it would also enhance the interconnection capacity between the two Member States concerned.
- (42) The Commission notes that the proposed investment should bring about an overall positive impact for the Union's security of supply since it is responding directly to the security of supply objective of diversification of gas sources, routes and counterparties.
- (43) The enhancement of the interconnection capacity between the two Member States concerned is further strengthened by the additional conditions imposed by this Decision.

### **4.3.1 Greece**

---

<sup>13</sup> Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010 (OJ L 280, 28.10.2017, p. 1).

#### 4.3.1.1 Current gas market in Greece

- (44) In 2017, 58% of the Greek gas supply came from Russia through northern Greece at the entry point Sidirokastron on the Greek-Bulgarian border, 12.5% came from the Caspian region/Azerbaijan through the entry point Kipi at the eastern Turkish-Greek border and 30% from the Revithoussa LNG terminal located near Athens. The average contribution from LNG is usually around 20%, but was higher in 2017 due to a shortage of pipeline gas that led to more orders for LNG cargos<sup>14</sup>.
- (45) The total firm entry capacity is 9.1 bcm/y, almost equally split between the LNG terminal and the two pipeline entry points to the Greek gas transmission system. That entry capacity is expected to be enhanced to approximately 12 bcm/y by 2019 by means of the scheduled upgrade of the Greek LNG terminal and the addition of two compressor stations to the Greek gas transmission network. One of the compressor stations is currently under construction while the others are in the planning phase. Greek gas consumption in 2016 reached 43.8 TWh, which is 33.2% more than the previous year's consumption, and it increased further to 53.6 TWh in 2017. Demand growth is expected to continue driven by anticipated growth of the economy in general and the expansion of gas distribution networks<sup>15</sup>.

#### 4.3.1.2 Impact of IGB

- (46) Although the EoI Phase of the first and second market test demonstrated firm capacity requests of ~29% or 3.78 bNcm/y in the first and decreasing to ~22% or 0.97 bcm/a in the second, no capacity was requested in the bidding phase<sup>16</sup>.
- (47) The planned design of the IGB is not expected to increase firm capacity towards Greece. Hence, the effect on competition in the Greek gas market is not expected to be as strong, as no flow of gas is expected into the country, except for Interruptible Reverse Flow ('IRF'). The IRF quantities, however, especially given their competitive price, amounting to 15% of firm forward flow, could provide an alternative for shippers that could otherwise only rely on capacity on the Trans-balkan pipeline via the existing interconnection point Sidirokastron. The Bulgarian exit of the interconnection point is at a high risk of interruption because it is contractually congested with high utilisation rates<sup>17</sup>.
- (48) The IGB will physically connect the Greek market with the Bulgarian gas market. A new entry point to the Greek transmission system is created. The new entry point can cater only virtual reverse flows in its current design. In accordance with Regulation (EU) 2017/1938 of the European Parliament and of the Council<sup>18</sup> all cross border interconnections should be physically bi-directional at all times. The IGB is not exempted from the Regulation (EU) 2017/1938, and therefore it has to ensure sufficient physical reverse flows along the pipeline. According to Regulation (EU) 2017/1938, reverse flows must be commercially and technically feasible. IGB is

---

<sup>14</sup> Joint Opinion p. 28.

<sup>15</sup> Joint Opinion pp. 27-29.

<sup>16</sup> Joint Opinion pp. 12-14

<sup>17</sup> Cf. ACER Annual Report on Contractual Congestion at Interconnection Points, 5<sup>th</sup> edition ([https://acer.europa.eu/Official\\_documents/Acts\\_of\\_the\\_Agency/Publication/Congestion%20Report%205th%20ed.pdf](https://acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/Congestion%20Report%205th%20ed.pdf))

<sup>18</sup> Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010 (OJ L 280, 28.10.2017, p. 1).

committed to test market demand to install physical reverse flow capacities in accordance with the Security of Supply Regulation. Physical reverse flow capabilities are estimated to be up to 2 bcm/a in case an additional compressor station would be installed on the IGB<sup>19</sup>. Consequently, if built, the physical reverse flows possible through the IGB from Bulgaria will further add to the existing import capacity from Bulgaria to Greece.

- (49) The IGB could serve as an additional route for shippers towards Greece to gain access to the storage site of Chiren in Bulgaria, taking into consideration that currently there is no storage facility in Greece. That could contribute both to the improvement of the country's security of supply and to the smoothening of price peaks, depending on the resulting tariff and price differentials.
- (50) The capacity offered on the IGB will reach the pipeline entry point crossing the Greek territory through the physical links with DESFA's or TAP's transportation system. EWRC and RAE expect that 1 bNcm will be transported through TAP, while a minimum of 0.57 bNcm to a maximum of 2 bNcm will move through the DESFA system. Additional capacity bookings in the DESFA system for flows to the IGB could account for an increase, as high as 44% in DESFA's system. The IGB therefore has the potential to decrease the unitary transport costs for the benefit of network users.
- (51) Moreover, as indicated in the market test, one of the shippers, [BUSINESS SECRET], has booked a capacity of [BUSINESS SECRET] bNcm that it plans to have delivered, through the DESFA system, at the planned Floating Storage Regasification Unit ('FSRU') outside the coast of Alexandroupolis in northern Greece. It appears that the IGB and the the FSRU projects could evolve in parallel, creating a new gas route in the area and increasing the utilisation of the Greek national gas system.

#### 4.3.1.3 Conditions

- (52) RAE and EWRC imposed a condition on the IGB to conduct an additional market test which, if successfully concluded, could lead to ~ 2 bNcm/y firm capacity towards Greece. The Commission takes note that that additional capacity, if constructed, would not be subject to the provisions of this Decision<sup>20</sup>.
- (53) The Commission also emphasizes that the IGB is required to follow the capacity allocation rules for the non-exempted capacity. Those rules also include a process to identify the demand for incremental capacity. The IGB needs to cooperate with the adjacent transmission system operators to take account of the IGB as an interconnector between Greece and Bulgaria when analysing demand for incremental capacity. As regards the economic test to be applied in assessing whether or not such an expansion is viable, the Commission understands that any comparison would need to be made between the additional expected revenues from the expansion capacity on one hand, and the additional costs for the expansion to be realized, notably a compressor station the cost of which is estimated by ICGB at [BUSINESS SECRET] million €<sup>21</sup>, on the other hand.

---

<sup>19</sup> Joint Opinion, p. 10

<sup>20</sup> Joint Opinion, p.53.

<sup>21</sup> Exemption Application, p.13

#### 4.3.1.4 Conclusion

- (54) The Commission therefore concludes that in Greece, the investment will initially only indirectly enhance security of supply within the meaning of Article 36(1) of Directive 2009/73/EC.

#### 4.3.2 Bulgaria

##### 4.3.2.1 *Current gas market in Bulgaria*

- (55) In 2016 Bulgaria's gross consumption of natural gas was 3.068 mcm around 3 bcm/y and 6.2% higher compared to the previous year<sup>22</sup>.
- (56) Currently a bit less than 98% of Bulgaria's gross domestic consumption is satisfied by imports while the remaining 2% are met by domestic production.
- (57) The natural gas import is carried out by Bulgargaz EAD as public provider, which is also the dominant company on the market for the downstream wholesale supply of gas in Bulgaria and the retail supply of gas to large end customers connected to the Bulgarian Transmission Network in Bulgaria. The public provider sells natural gas at prices regulated by the Bulgarian Energy and Water Regulatory Commission, and its share in sales in 2017 was 99.47%, to wholesale customers and end customers connected to the gas transmission network. The remaining 0.53% was realised by traders at freely negotiated prices.
- (58) Imports are currently fully controlled upstream by Gazprom Export, with which the Bulgarian public provider Bulgargaz EAD has concluded a long-term contract until 2022. The natural gas import is imported into Bulgaria through gas pipelines from Russia through Ukraine and Romania. Russia is the main import source, while imports from other countries were, until recently, only possible on a virtual reverse flow basis. As of 1 October 2017, gas from Greece to Bulgaria can be supplied on a firm basis. Capacity is limited to 1 mcm/d (10.640.000 kWh/d) which corresponds to approximately 12% of gross consumption in 2016<sup>23</sup>.
- (59) From Russia, gas is imported through the Trans Balkan pipeline entering Bulgaria in the North of the country. Gas is either transited towards Turkey, Greece and The former Yugoslav Republic of Macedonia ('FYROM') or consumed in Bulgaria. The transit system has a capacity of 17.8 bNcm/a, while the national system can cater for 7.4 bNcm/y.<sup>24</sup> Both systems currently form separate balancing areas.

##### 4.3.2.2 *Impact of the IGB*

- (60) The construction of the IGB enhances security of gas supply in Bulgaria. Firstly, it will diversify Bulgaria's sources of supply by allowing gas from Caspian and LNG sources to arrive in Bulgaria. Secondly, the IGB will increase the resilience of the Bulgarian gas system to react to situations where the entry capacity in Negru Vodo reaches its limits or would be disrupted. Thirdly, the IGB will add ~3 bNcm/y entry capacity to the Bulgarian transmission system. The quantitative analysis shows that the the IGB gas pipeline will contribute to the implementation of the N-1 formula by increasing the terms of security of supply in Bulgaria by around 40%. In particular, in the N-1 situation, it will enable the Bulgarian system to cover more than 110% as of 2020 and more that 140% as of 2025 of the peak daily demand in Bulgaria, when

---

<sup>22</sup> Joint Opinion p. 22.

<sup>23</sup> Joint Opinion p. 22.

<sup>24</sup> Joint Opinion pp.17-18.

taking into consideration other alternative supply options as well. Furthermore, the IGB would enhance the ability of the Bulgarian transmission system to increase interconnectivity with the South South-East region using the IGB as an import source for example towards Romania and the planned construction of the interconnector between Bulgaria and Serbia ('IBS').<sup>25</sup>

#### 4.3.2.3 *Conditions to enhance security of supply*

- (61) The RAE and the EWRC imposed a condition on the IGB to conduct an additional market test which, if successfully concluded, would lead to a further increase of capacity towards Bulgaria.
- (62) The Commission emphasizes that the IGB is required to follow the capacity allocation rules for the non-exempted capacity. Those rules also include a process to identify the demand for incremental capacity. The IGB needs to cooperate with the adjacent transmission system operators to take account of the IGB as the interconnector between Greece and Bulgaria when analysing demand for incremental capacity.

#### 4.3.2.4 *Conclusion*

- (63) The Commission therefore concludes that in Bulgaria the IGB will enhance security of supply within the meaning of Article 36(1) of Directive 2009/73/EC. The requirement for an exemption is to be considered as met if security of supply is improved in at least one of the areas concerned.

### **4.4 "The investment must enhance competition in gas supply "**

- (64) The Commission notes that in order to analyse the competitive effect of the exemption, the relevant gas markets and in particular the question whether the investment leads to the creation or strengthening of dominant market position needs to be considered. That has to be assessed on case-by-case basis.
- (65) Article 36 of Directive 2009/73/EC requires that the investment project enhances competition in gas supply and that the exemption is not detrimental to competition. While these two requirements are not identical, they imply that the project must enhance competition to the benefit of the consumers<sup>26</sup>.

#### 4.4.1 Greece

##### 4.4.1.1 *The IGB effect on competition in Greece*

- (66) The effect on competition in the Greek gas market is not expected to be as strong as the effect on Bulgaria, as no flow of gas is expected into the country, except for IRF. The IRF quantities, however, given their competitive price at 15% of the Firm Forward Flow capacity ('FFF'), could prove a valuable alternative for small shippers that cannot import gas through the completely booked Trans-balkan pipeline.
- (67) Therefore, it is necessary to ensure that IRF is indeed offered in sufficient quantity. The Commission considers that IRF can and should be offered in at least the same quantity as the firm forward flow capacity.

---

<sup>25</sup> Joint Opinion pp.25-27.

<sup>26</sup> Commission staff working document on Article 22 of Directive 2003/55/EC concerning common rules for the internal market in natural gas and Article 7 of Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity – New Infrastructure Exemptions, paragraph 30.

- (68) The competition in the Greek market will be further enhanced where ICGB AD proceeds to Phase Two of the project, that is to say the expansion of the pipeline, that includes physical reverse flow into Greece<sup>27</sup>.

#### 4.4.1.2 *The IGB's exemption is not detrimental to competition*

##### *The exemption from TPA*

- (69) TPA seeks to ensure that all competitors in a given market have non-discriminatory access to the infrastructure, including pipelines, and can compete on equal terms. Since an exemption from the TPA requirement for the marketed capacity in the binding market test is being considered, it is appropriate to assess whether and to what extent the IGB's shareholders have the ability and the incentive to foreclose competitors on product markets adjacent to the IGB infrastructure where the exemption from TPA is granted.

##### *Incentive and ability to foreclose*<sup>28</sup>

- (70) The incentives to foreclose mainly emanate from the protection of the IGB's shareholders profits from their activities on adjacent markets, such as the Bulgarian and Greek downstream wholesale and retail gas markets.
- (71) As explained in Recital (25), there were no bookings made towards Greece and the IGB Minimum Capacity is not expected to provide firm capacity in that direction. Consequently, any interruptible reverse flow capacity and potential firm capacity is not subject to the TPA exemption. The Commission therefore underlines that interruptible reverse flow capacity must be offered on a regulated basis.
- (72) Moreover, the exemption requires that any undertaking with a share of 40% or more in any relevant product market for the supply of gas in Greece, or on the upstream market of supplying gas into Greece, is not allowed to reserve more than 40% of the capacity on an IGB exit point in Greece.
- (73) In the context of the IGB exemption, the ability to foreclose relates to the potential ability of the IGB shareholders to prevent the building of expansion capacity because third party access to the IGB on firm basis towards Greece is ensured though by requiring the IGB to build the necessary capacity where there is sufficient market demand.
- (74) Therefore the exemption provides for remedies to avoid that undertakings acquire a market position in which they are no longer exposed to effective competitive pressure. The ability to raise prices and, hence, to reap the benefits of a foreclosure strategy is properly ring-fenced. Since the capacity, which is interruptible, should be offered in accordance with the applicable rules for third party access pursuant to Commission Regulation (EU) 2017/459<sup>29</sup> and is subject to booking limits for dominant undertakings, the RAE exemption decision is not expected to have a negative impact on competition in Greece.

---

<sup>27</sup> Joint Opinion, p.40

<sup>28</sup> The present analyses of incentive and ability to foreclose is broadly based on the Commission's Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2008/C 265/07) C265/6 of 18.10.2008.

<sup>29</sup> Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013 (OJ L 72, 17.3.2017, p. 1).

- (75) The Commission considers that ICGB AD's ability to avoid enhancing capacity is reduced by the obligations to conduct an additional market test and to allocate capacity in accordance with Regulation (EU) 2017/459. That Regulation also requires regular testing of incremental capacity demand and can be effectively monitored and enforced.

#### The Exemption from tariff regulation

- (76) Since the tariffs charged by ICGB AD are the same regardless of whether the IGB shipper concerned is an ICGB AD shareholder or not, the envisaged exemption from tariff regulation for the full amount of capacity is not detrimental to competition.
- (77) Although the tariff exemption applies to all capacity, the level set for the interruptible reverse flow capacity towards Greece, namely 15% of the firm forward flow tariff which is capped at a level of [BUSINESS SECRET] €/kNcm<sup>30</sup>, means that it will be capped at a level of [BUSINESS SECRET] €/kNcm which is approximately [BUSINESS SECRET] €/MWh<sup>31</sup>.

#### Conclusion

- (78) Therefore, the Commission concludes that granting the exemption from TPA and regulated tariffs should not be detrimental to competition in Greece.

#### 4.4.1.3 Conditions imposed

- (79) The beneficial effects of the IGB for competitive conditions in Greece will be reaped when the capacity of the IGB exit points to and into the Greek national system is booked either by entrants to the Greek gas market or by suppliers in Greece with limited market shares. Where, on the other hand, most or all capacity is booked by a dominant company, such as DEPA, DEPA would have a wider choice of potential suppliers or routes, or both, but it will not enhance competition in the Greek downstream markets.
- (80) The Commission therefore considers that the conditions imposed on ICGB AD by the RAE and the EWRC are justified in order to ensure that the IGB enhances competition by capping the reservation rights on the exit points for large market participants. Such measures are also in line with the Commission's approach in similar cases (e.g. TAP, OPAL, Nabucco<sup>32</sup>).
- (81) The Commission understands that capacity capping also applies to interruptible capacity in view that the RAE could allow capacity booking beyond the capacity cap on an interruptible short-term basis<sup>33</sup>. Considering that only interruptible capacity is expected to be available in the direction of Greece, the Commission recommends that the RAE, when deciding to allow capacity bookings in excess of the cap, ensures that in case of a required interruption, the sequence of interruption does not give undue advantage to the undertaking originally subject to the capping. That could require the avoidance of an interruption sequence based on the principle "last booked, first interrupted" given that new entrants can also enter the market on the basis of quarterly,

---

<sup>30</sup> Joint Opinion, p.40 and 47

<sup>31</sup> Based on a conversion factor of 1 kNcm = 12,03 MWh as used by ICGB in the integration report of the exemption application, October 2017, p.13

<sup>32</sup> [http://ec.europa.eu/energy/infrastructure/exemptions/doc/exemption\\_decisions.pdf](http://ec.europa.eu/energy/infrastructure/exemptions/doc/exemption_decisions.pdf)

<sup>33</sup> Joint Opinion pp. 57-58

monthly, daily or within-day products especially when no multiplier is applied for short term products<sup>34</sup>.

- (82) Additionally, the conditions imposed by the IGB exemption, which aim to ensure that the IGB enhances competition, do not prevent the application of Union and national competition laws and other relevant legislation.

#### 4.4.1.4 Conclusion

- (83) The Commission concludes that the IGB is capable of enhancing competition in the Greek gas market within the meaning of Article 36(1) of Directive 2009/73/EC, provided that the conditions imposed on the IGB are implemented as set out in section 4.4.1.3.

#### 4.4.2 Bulgaria

##### 4.4.2.1 Current competitive situation in Bulgaria

- (84) Currently, the gas market in Bulgaria is characterised by very limited competition and is nearly monopolized by of a single market player. On the upstream wholesale gas supply market Gazprom is the dominant player and the downstream level the market is dominated by the incumbent Bulgargaz. Bulgargaz is dominant on at least the following Bulgarian gas markets:

- (a) the downstream wholesale supply of gas in Bulgaria;
- (b) the retail supply of gas to large end customers connected to the Bulgarian transmission network, of which Bulgargaz has a 99.47% share.

- (85) Bulgargaz import contracts are based on a long-term supply agreement with Gazprom ending in 2022. Competitors have currently only limited access to alternative upstream sources of gas, other than very limited domestically produced gas. Import capacity is provided at a level of ~0.3 bcm/a from Greece and, according to ICGB AD, at a level of ~1 bcm/a from Romania at the interconnection point in Ruse<sup>35</sup>. The Commission notes that capacity at Ruse is however only available unbundled at a very limited level of 1.622.000 kWh/d and only from November to March<sup>36</sup>. Imports at Ruse are thus limited to only ~0.03 bcm/a. The announced technical, available and booked capacity at Giurgiu in Romania is zero in the period April to October and all auctions in this period have been cancelled<sup>37</sup>. Limited access to alternative sources leaves Bulgargaz' competitors with only a marginal possibility to challenge its position.

- (86) The virtual trading point in Bulgaria, namely the Commercial Dispatching Platform ('CDP'), was only recently established by Bulgartransgaz and is still illiquid, rendering entry and expansion by entrants more difficult. Price regulation and unbundled distribution system operators which does not support access to downstream customers for new entrants, are a further barrier to competition.

##### 4.4.2.2 The IGB enhances competition

---

<sup>34</sup> Joint Opinion, p.55

<sup>35</sup> Exemption Application, p. 22

<sup>36</sup> Based on information from ENTSOG transparency platform (<https://transparency.entsog.eu>) and the Regional Booking Platform (<https://rbp.eu>)

<sup>37</sup> See web site of Transgaz, Romania <http://transgaz.ro/en/technical-booked-and-available-capacity-daily-and-historic>. See also the auctions reports published on Regional Booking Platform (<https://rbp.eu/auction-reports>).

- (87) The IGB will have a substantial beneficial effect on the competitive conditions in the Bulgarian gas markets for the following reasons:
- (a) The IGB will have a positive impact on competition on the upstream wholesale gas market as it will enable new entrants to compete with the currently dominant player, Gazprom. The IGB will create a new route for importing gas into Bulgaria and will therefore enhance gas-to-gas competition. In the completed Market Test Bulgargaz EAD booked capacity in order to import natural gas from a new source, as part of Stage 2 of the Shah Deniz Deposit in Azerbaijan, exerting competitive pressure on Gazprom. The capacity cap imposed on the market players with a share of 40% or more in any relevant product market for the supply of gas in Bulgaria should facilitate imports of gas into Bulgaria by other market players as well.
  - (b) The IGB is also expected to enhance competition on the downstream wholesale market in Bulgaria. Based on the results of the IGB market test, new entrants are expected to enter the Bulgarian downstream gas markets and thus exert a competitive pressure on the currently dominant Bulgargaz. Four non-dominant companies have reserved capacity on the IGB that will allow them to enter the Bulgarian wholesale gas supply market or the market for the retail supply of gas to large end customers connected to the Bulgarian transmission network. New entrants who have already booked capacity will be in a good position to expand their sales in Bulgaria.
  - (c) DEPA has no share in the Bulgarian market. IGI Poseidon's subsidiary, - EDISON INTERNATIONAL NV, is 100% controlled by the Italian EDISON S.p.A, but the participant EDISON, which has booked capacity in the IGB in the Market Test, has no market share in Bulgaria through Elpedison BV of which Edison SpA is a 50% shareholder. Although Bulgargaz as part of the ICGB AD shareholder BEH has a dominant position on the gas markets in Bulgaria, the exemption decision envisages that any undertaking with a share of 40% or more in any relevant product market in Bulgaria will not be allowed to reserve more than 40% of the IGB exit point. On that basis new entrants should be able to reserve at least 60% of the IGB capacity at an exit point therefore enhancing competition in Bulgaria.
- (88) Consequently, even in the scenario where, initially, only the IGB's minimum capacity of ~3 bNcm/a will be constructed, the IGB will enhance competition in Bulgaria as it will allow entry and expansion of suppliers having currently no market presence in Bulgaria. Those suppliers will exert competitive pressure on Gazprom and Bulgargaz.
- (89) Therefore, the Commission concludes that the IGB enhances competition in Bulgaria within the meaning of Article 36 of Directive 2009/73/EC.

#### *4.4.2.3 The IGB's exemption is not detrimental to competition*

##### TPA exemption

- (90) As explained in Recitals (60) and (87), Bulgargaz as part of the ICGB AD shareholder BEH, enjoys a dominant position in Bulgaria. Moreover, it should be noted that currently DEPA has no share in the Bulgarian market.

- (91) In any event, the exemption envisages conditions that prevent any undertaking with a share of 40% or more in any relevant product market for the supply of gas in Bulgaria, or on the upstream market of supplying gas into Bulgaria, from reserving more than 40% of the capacity on an IGB exit point in Bulgaria. Based on the IGB minimum capacity of 380.517 Ncm/h of natural gas, or approximately 3 bNcm/year, and the [BUSINESS SECRET] Ncm/h, approximately~ [BUSINESS SECRET] bNcm/year, capacity booked by Bulgargaz in the market test, that would leave [BUSINESS SECRET] Ncm/h, that is to say~ [BUSINESS SECRET] bNcm/year which could possibly be booked by Bulgargaz. The Commission notes that, for the purpose of the capacity cap, any direct or indirect long-term gas supply contracts for Bulgaria entered into with any undertaking with a share of 40% or more in any relevant product market for the supply of gas in Bulgaria, or on the upstream market of supplying gas into Bulgaria, are considered part of the reserved share by that undertaking. The Commission thus understands that, by applying the conditions imposed by the exemption decision, gas transported by means of the IGB but delivered to Bulgargaz would also be counted as if it were booked by Bulgargaz directly. Furthermore, to avoid any doubt, the capacity cap is counted against any bookings, that is to say from exempted or non-exempted capacity as well as from capacity booked on the secondary market or any agreement of similar effect, such as the transfer of usage rights relating to capacity.
- (92) It follows that the exemption envisages conditions which aim at avoiding that the current dominant player could strengthen its market position even further.

#### The exemption from tariff regulation

- (93) Since the tariffs charged by ICGB AD are the same regardless as to whether the IGB shipper concerned is an ICGB AD shareholder or not, and an adequate limitation on the return on investment is provided, the prospective exemption from tariff regulation is not detrimental to competition. In particular, no multiplier is to be used for the calculation of the tariff for short-term capacity products in accordance with point 4.3 number 9 of the Joint Opinion, thus enabling a positive framework for new entrants to compete against shippers with long-term bookings.

#### Conclusion

- (94) Therefore, the Commission concludes that granting the exemption from TPA and regulated tariffs is not detrimental to competition in Bulgaria.

#### 4.4.2.4 Conditions

- (95) It is not yet clear how much gas will be transported through the IGB pipeline to Bulgaria or which additional market players, other than the five undertakings which participated in the binding market test, will hold capacity. That will become clear only after the conclusion of the regular capacity allocation procedures.
- (96) Potential competitive problems could arise in case the IGB's shareholders were to sell all or part of their import capacity on a long term basis to the Bulgarian incumbent Bulgargaz, or to any other market participants, including the IGB's shareholders, that might acquire a joint or individual dominant market positions on the Bulgarian gas market during the period of validity of the IGB exemption.
- (97) The Commission therefore agrees with the NRAs that, in order to ensure that the IGB enhances competition within the meaning of Article 36(1) of Directive 2009/73/EC, it is necessary to impose certain conditions. Such conditions are in line with the Commission' approach in similar cases.

- (98) The Joint Opinion, forming an integral part of the EWRC decision, lays down conditions to prevent the establishment of a dominant position or the strengthening of an existing dominant position in the Bulgarian gas market.<sup>38</sup>
- (99) The Commission understands that, as set out above in paragraph (84), capacity capping applies also to interruptible capacity since EWRC could allow the booking of capacity beyond the capacity cap on an interruptible short-term basis<sup>39</sup>. In the current scenario, more than 50% of the IGB minimum capacity is available and has to be offered as non exempted capacity in accordance with Regulation (EU) 2017/459. The capacity of the IGB would be considered to be underutilised if in the annual auction for yearly capacity products no capacity is booked in a way that would lift the total capacity booking to over 80%. The Commission recommends that EWRC, when deciding to allow capacity bookings in excess of the cap, ensures that in case of a required interruption, the sequence of interruption does not give undue advantage to the undertaking originally subject to the capping. That could require the avoidance of an interruption sequence based on the principle "last booked, first interrupted" given that new entrants can enter the market also on the basis of quarterly, monthly, daily or within-day products especially when no multiplier is applied for short term products<sup>40</sup>.
- Consequently, the Commission considers that the IGB enhances competition within the meaning of Article 36(1) of Directive 2009/73/EC in Bulgaria, provided that the conditions imposed on IGB are implemented as set out in this section.
- (100) Moreover, the conditions ensuring that the IGB enhances competition imposed by the IGB's exemption do not prevent the application of Union and national competition laws and other relevant laws to apply.

#### 4.4.2.5 Conclusion

- (101) The Commission therefore concludes that the IGB will enhance competition in Bulgaria, within the meaning of Article 36(1) of Directive 2009/73/EC.

#### 4.4.3 Additional considerations concerning both the Greek and Bulgarian markets

- (102) The NRAs require ICGB AD to submit an IGB Network Code, for approval to the NRAs, not later than 12 months before the commercial operation date, that is to say by July 1st 2019. The IGB network code must comply with all the provisions of Regulation (EC) No 715/2009 of the European Parliament and of the Council<sup>41</sup> and of the European Network Codes pursuant to Article 8 (6) of that Regulation, unless otherwise provided in the present decision.
- (103) Regulation (EC) No 715/2009 provides the legal basis for the gas network codes, including the CAM NC. However, pursuant to Article 30(b) of Regulation (EC) No 715/2009, that Regulation does not apply to major new infrastructure, such as gas interconnectors, which are exempted pursuant to paragraphs (1) and (2) of Article 36 of Directive 2009/73/EC.

---

<sup>38</sup> Joint Opinion, p. 57

<sup>39</sup> Joint Opinion pp. 57-58

<sup>40</sup> Joint Opinion, p.55

<sup>41</sup> Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (OJ L 211, 14.8.2009, p. 36).

- (104) However, in accordance with Article 2(3) of Commission Regulation (EU) 2017/459 and in view of the reasoning in previous Commission's Certification Opinions<sup>42</sup>, Commission Regulation (EU) 2017/459 applies to non-exempted capacities in major new infrastructures to the extent that the application of that Regulation does not undermine such an exemption and taking into account the specific nature of interconnectors when bundling capacity.
- (105) In the context of this decision, only the IGB's capacity marketed in the binding market test should be exempted from TPA. Consequently, the Commission takes the view that Commission Regulation (EU) 2017/459 applies to the non-exempted capacity.
- (106) Chapter V of Regulation (EU) 2017/459 also requires transmission system operators to run incremental capacity processes. The Commission understands that this obligation is in addition to the IGB's obligation to conduct an additional market test<sup>43</sup>.
- (107) Article 8(6) of Regulation (EU) 2017/459 requires ICGB AD to set aside at least 20% of the existing technical capacity at each interconnection point. Ensuring the availability of short term capacity products on the IGB for TPA should further contribute to the enhancement of competition due to the investment.
- (108) In assessing the additional condition imposed, it is important to ensure that its application does not undermine the exemption, that is to say the financial model of the ICGB AD and consequently be in conflict with it. In that regard, it needs to be emphasised that setting aside capacity for short-term products prevents the selling of that capacity on a long term basis and, therefore, the generation of the long terms revenues that are taken into account by potential credit providers of ICGB AD. However, the ICGB AD's financial model is based on the capacity already sold and for which an exemption is being requested and for which the partial exemption as notified is expected to cover the shareholder's investment return expectations<sup>44</sup>. In that regard, the application of Regulation (EU) 2017/459, including the set aside capacity, cannot be detrimental and is hence not in conflict with the exemption decision.

#### 4.4.5 Conclusion

- (109) In light of what was stated, the Commission concludes that, on the basis of the conditions included in the notified decision, the IGB enhances competition in gas supply within the meaning of Article 36(1) of Directive 2009/73/EC.

---

<sup>42</sup> In particular the Commission Opinion concerning certification of BBL of 11 March 2013 and the Commission Opinion concerning certification of Nabucco of 11 December 2012

<sup>43</sup> Joint Opinion, p.53

<sup>44</sup> Joint Opinion, p. 16.

#### **4.5 "The level of risk attached to the investment must be such that the investment would not take place unless an exemption was granted"**

##### 4.5.1 The investment would not be realised under the Bulgarian and Greek regulatory regimes

- (110) The IGB entails investment in infrastructure that is associated with sizeable risks of a financial, regulatory, political and legal nature<sup>45</sup>.
- (111) Under a typical regulated access regime, the owner of the infrastructure, that is to say the transmission system operator ('TSO'), enjoys a large degree of revenue certainty and protection from volume risks or construction risks, provided that its investments are approved, and the revenues are guaranteed through regulated tariffs approved by a regulatory authority to be paid by the users of the infrastructure. That mechanism ensures the compatibility between the size of the project and the level of the resulting tariffs.
- (112) The IGB is however a commercial initiative of its shareholders, not incorporated or imposed by any national development plan of any of the two countries involved<sup>46</sup>. Shareholders and lenders invest in a project of such a scale only after they have been assured that the potential risks have been covered to a maximum degree and that future revenues have a high degree of predictability. The bankability of the project strongly depends on efficient management of volume and revenue risk, on access to cheap financing and on a stable tax regime. In the absence of an exemption, capacity could be allocated for up to 15 years<sup>47</sup>. That would be a 40% shorter contractual guarantee than with the contracts concluded based on the market test with a 25 years duration. Unless the investors receive an exemption for the capacity already booked, the risk would be too high to proceed with the investment. Even though the project is recognised as a project of common interest, this does not entail a guarantee that the return on investment expected by the shareholders could be fully achieved under the regulated regime.

##### 4.5.2 The investment under exempted regime

###### *4.5.2.1 Introduction*

- (113) The IGB project in essence seeks to secure part of the transportation route for gas from the SD II' gas fields to the Union, specifically to Bulgaria. Indeed, the IGB pipeline can be considered as part of a chain of investments required to make the production and transportation of SD II gas to the Union possible.
- (114) [BUSINESS SECRET]<sup>48</sup>.
- (115) ICGB AD requested that the various exemptions pursuant to Article 36 of Directive 2009/73/EC be of a 25 year duration, from the start date of operations<sup>49</sup>. ICGB AD argues that the exemptions requested are meant for a period of 25 years from the Commercial Operation Date, equivalent to the duration of the longest of the long-term

---

<sup>45</sup> Joint Opinion section 1.3.3 as well as the reply of RAE of 5 April 2013 annexe 2.

<sup>46</sup> Joint Opinion p.44.

<sup>47</sup> Article 11(3) of Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013 (OJ L 72, 17.3.2017, p. 1). Exceptionally, capacity could be allocated for up to 20 years according to Article 30 (1) of the same Regulation if the conditions in Article 30 (2) are met.

<sup>48</sup> Joint Opinion, p.40

<sup>49</sup> Exemption Application, p. 3 and 6

contracts in accordance with the results of the IGB Market Test. The request is based on the need for gas supply and gas transportation contracts to match in duration<sup>50</sup>.

- (116) As regards the duration of an exemption, the relevant Guidelines<sup>51</sup> specify that, the following should be taken into consideration:
- (a) throughput contracts for terminals, duration of underlying transportation contracts for pipelines and cables, or upstream and downstream supply contracts, or both;
  - (b) the level of risk, notably, the duration of the exemption does not have to correspond to the full length of the amortisation period. The exemption duration should be equal to or less than the expected period for cost recovery of the new infrastructure.

#### 4.5.2.2 *Scope and duration of the exemption from TPA*

- (117) ICGB AD requested an exemption from TPA for the signed ARCAs, specifically 1.57 bNcm/y peak in firm forward mode, concluded on a 25-year basis in accordance with the results of the second Market Test carried out in 2016 and 2017.
- (118) The Authorities granted the exemption from TPA as regards the signed ARCAs. The Authorities exempted the capacity, subject to the fulfilment of three conditions described in detail in the Joint Opinion relating to the obligation to offer the the IGB minimum capacity, the commitment to allocate non-exempted capacity according to Regulation (EU) 2017/459 and the obligation to conduct an additional market test within 3 years<sup>52</sup>.
- (119) The Commission notes that the exemption from TPA on the firm forward capacity is mainly and directly based on the need to secure transportation capacity of the gas produced in SD II, which is sold under 25-year gas supply contracts as explained in Recital (114). In view of the fact that the IGB constitutes one of the investments required to develop the SD II project and to transport gas to the Union, it warrants that corresponding transport capacity on the IGB can be secured for the corresponding period. Therefore, the duration of the TPA exemption should correspond to the duration of the gas supply contracts and, thus, should be of a 25 year duration, starting from the date on which the IGB becomes operational.
- (120) The Commission furthermore notes that the TPA exemption does not correspond to the peak capacity of 1.57 bNcm/h, but reflects the ARCAs concluded. That means the TPA exemption is reduced to what is really necessary and on average for the 25 years period reflects an exemption of 42.5% of the IGB's capacity based on the IGB's minimum capacity. The Commission notes, however, that a load-factor for the calculation of the yearly capacity could be proposed by ICGB under the approval of the Regulatory Authorities. In case the applied load factor reduces the commercially available capacity, the Commission considers that a load factor lower than one can only be applied for duly justified reasons, for example maintenance schedules, but not for reasons of insufficient guaranteed pressure as it is the responsibility of ICGB to

---

<sup>50</sup> Joint Opinion, p.15

<sup>51</sup> Commission staff working document on Article 22 of Directive 2003/55/EC concerning common rules for the internal market in natural gas and Article 7 of Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity SEC (2009) 62 final.

<sup>52</sup> Joint Opinion, pp. 52-54

secure a flow at least equal to the IGB Minimum Capacity<sup>53</sup>. Any load factor that would lead to a relative increase of the exempted capacity to an average level above 50% should result in a proportional reduction of exempted and non-exempted capacity to ensure that not more than 50% of the IGB capacity is exempted.

- (121) The Commission calls upon the NRAs to publish decisions authorizing reductions of the load factor and to include those decisions in their reporting to the Commission.
- (122) It is therefore justified and proportional that the capacity secured by the ARCA is exempted from TPA subject to additional conditions imposed by the NRAs and the requested modifications by the Commission.
- (123) As ICGB AD's financial model is based on the exempted capacity, it is not proportional to grant an exemption from TPA for any other capacity in both the forward and reverse flow, including potential expansion capacity. Furthermore, such exemption was neither requested by ICGB AG nor granted by the Regulatory Authorities.

#### 4.5.2.3 Scope of exemption from regulated tariffs

##### Introduction

- (124) The ICGB requests an exemption from regulated tariffs for both exempted and non-exempted capacities, in both forward and reverse flow, under Article 41(6), (8) and (10) of Directive 2009/73/EC.
- (125) The capacity is charged at a uniform initial tariff of [BUSINESS SECRET] €/kNcm/y for both exempted and non-exempted firm capacity towards Bulgaria. According to the tariff methodology outlined in the Market Test documents, the interruptible reverse tariff is set at approximately 15% of the forward tariff<sup>54</sup>.
- (126) The uniform IGB Tariff results in a Shareholders' equity nominal internal rate of return ('IRR') at a level of [BUSINESS SECRET]%. In case additional capacity is booked, extra revenues are kept by ICGB AD's shareholders up to the point where the IRR reaches [BUSINESS SECRET]. All revenues above that IRR cap value are allocated to all shippers, by applying a revenue-sharing mechanism or a reduction in future tariffs. Where no new shippers book the remaining capacity, the IGB tariff would remain at [BUSINESS SECRET]€/kNcm/y.
- (127) In order to guarantee stable financing of the pipeline, the NRAs grant the exemption from regulated tariffs as requested, subject to the following additional provisions:
  - “1. At the latest 3 (three) months after the present decision becomes effective, according to the provisions of the Gas Directive, ICGB shall submit for the approval of the Authorities the final methodology (IGB Tariff Code) for the implementation of the IGB Tariff.*
  - 2. The IGB Tariff shall reflect efficient costs, shall be transparent and non-discriminatory and shall follow the principles described in the present Joint Opinion.*
  - 3. The IGB Tariff Code shall define the pricing mechanism for all capacity products offered by IGB, namely capacity products of different durations of firm and interruptible nature.*

---

<sup>53</sup> Joint Opinion, p. 9 and §4.2, point 1

<sup>54</sup> Joint Opinion, p.32

4. *Initial shareholders' equity nominal IRR will be [BUSINESS SECRET] and its cap value will be [BUSINESS SECRET]. Any revenues from capacity bookings that increase IRR above [BUSINESS SECRET] will be returned to the IGB shippers either through tariff reductions of following periods or by a profit sharing mechanism in a non-discriminatory manner.*

5. *The IGB Tariff Code that shall be submitted for approval to the Authorities shall be accompanied by a reproducible and parameterized tariff model that analyses the tariff methodology as well as the profit sharing mechanism.*

6. *The IGB Tariff Code shall be approved by a joint decision of the Regulatory Authorities.*

7. *IGB shall adopt an entry-exit tariff model.*

8. *Interruptible Reverse Flow Capacity and Interruptible Forward Flow Capacity shall be priced as a percentage of Firm Forward Flow Tariff.*

9. *No multiplier shall be applied for the calculation of the tariff of short-term capacity products.*

10. *The ICGB AD shall submit to the Authorities yearly information on its revenues in order for the Authorities to monitor that the conditions are kept.*

11. *ICGB AD shall ensure that balancing services charges, when applicable, will be objective, transparent, cost-reflective and non-discriminatory and will be published.*

12. *The IGB Tariff Code shall be published on the Company's website before the date of any offer of capacity takes place.*"<sup>55</sup>.

- (128) Whereas ICGB AD has requested an exemption from tariff regulation, it should be emphasized that IGB's tariff code is subject to approval by the Regulatory Authorities.
- (129) The Commission notes, that in order to render the project an attractive lending investment opportunity, it is required to have a degree of predictability as regards the returns over the life time of the project. That predictability is required in order for prospective lenders to assess the credit risks attached to the project on the basis of the secured and stable revenues generated, as well as for shareholders, which will partially finance the project through equity.
- (130) Whereas, in general, shareholders should be expected to take on the risks associated with investments, it should nonetheless be assessed whether their returns are sufficiently secure in order to render the investment attractive. Indeed, if sufficient grounds exist to assume that without an exemption securing reasonable return to investors, the project would not be possible, it is reasonable that the exemption also considers securing shareholder returns. Therefore proper attention should be given in assessing the risks attached to the various parts and stages of the investment project.
- (131) The financial model of ICGB AD is based on a full recoupment of amortisation on the IGB assets and shareholders return through the sale of the ARCAs under long term contracts.
- (132) Consequently, the Commission considers that an exemption from tariff regulation for the IGB minimum capacity is justified.

---

<sup>55</sup> Joint Opinion, p. 55

- (133) The Commission notes that the requirement of adopting an entry-exit tariff model for IGB does not factor into concluding whether the IGB pipeline should be considered as a separate balancing area or entry-exit system, or whether it should form part of an existing system, for example the Bulgarian national system. The Commission notes that that could form part of the analysis to be provided in the approval process for the IGB tariff code. In deciding on the scope of the balancing area, the NRAs should take into account the impact on competition as well as on the connected regulated systems.

#### IRR on IGB minimum capacity

- (134) In order to internalise the risk of the holders of the exempted capacity when, through the IGB, other parties have the opportunity to buy shorter term capacity offered in accordance with Regulation (EU) 2017/459, the ICGB proposes a uniform tariff structure which does not discriminate between exempted and non-exempted capacity. In the proposed model, the targeted IRR is ensured by the exempted capacity and is capped at [BUSINESS SECRET] which can increase up to [BUSINESS SECRET]. That means that any additional income from selling additional capacity increasing the IRR above [BUSINESS SECRET] will be returned to the IGB shippers either through tariff reductions of following periods or by a profit sharing mechanism in a non-discriminatory manner to respect the upper cap of the IRR<sup>56</sup>.

#### Conclusion on tariffs structure

- (135) In light of what has been explained, the Commission accepts the NRAs decision to exempt both the exempted and the non-exempted TPA capacity from tariff regulation under the condition that the IGB tariff methodology is subject to the approval of those authorities.
- (136) The Commission recognizes the role of the regulatory authorities in deciding on the final tariff structure. However the Commission encourages the regulatory authorities to take into account the impact on competition when approving the revenue sharing mechanism and the Tariff code for the IGB pipeline. Additionally, the Commission takes the view that a combination of both, a tariff reduction and a profit sharing mechanism to enable full recuperation of additional IRR and a fair distribution among past and future shippers is possible. If the IRR were only capped by using lower tariffs for the future, it would not be sensible to use that mechanism at the end of the exemption period.

#### Interruptible reverse flow capacity

- (137) Both the costs as well as related risks involved in offering interruptible reverse flow capacity are substantially lower than in the case of the forward capacity. Furthermore, no revenues were included in the ICGB's financial model.
- (138) The Commission understands and agrees with the Regulatory Authorities' view that the interruptible reverse tariff is set at approximately 15% of the forward tariff<sup>57</sup>.
- (139) In addition, the Commission is of the opinion that, from the starting date of the operation of the pipeline, the interruptible reverse flow capacity should be offered at least at the same level of the forward flow capacity.

#### 4.5.2.4 Duration of exemption from regulated tariffs

---

<sup>56</sup> Joint Opinion, p.55

<sup>57</sup> Joint Opinion, p. 32 and 40

- (140) The Commission notes that the financial model for the IGB is based on the concluded ARCA, a full recoupment of the investment costs and shareholders return at an initial nominal level of [BUSINESS SECRET], which can increase to a maximum capped level of [BUSINESS SECRET] to be depreciated over a 25 year period.
- (141) The total funding required to be provided by the ICGB to meet the capital cost of the project could be reduced by using the approved European Energy Programme for Recovery ('EEPR') grant amounting to EUR 45 million and a potential grant financing for the project under the European Structural and Investment Funds ('ESIF'). In any case the financial model foresees a short term loan to bridge the period between cost incurrence and reimbursement from eventual loans which is included in the model resulting in the IRR.
- (142) The Commission takes the view that, regardless as to whether the arguments of ICGB AD as to the financing of the IGB project can be accepted or not, a 25 years exemption from tariff regulation cannot be justified solely on the basis of the need to secure stable revenues in order to render the IGB bankable. At the same time, basing the duration of the exemption from tariff regulation on the currently known financing seems acceptable for the following factors:
- (a) the funding requirement of the IGB is not yet fully clear and depends, inter alia on the EEPR grant and ESIF. The resulting uncertainty as to IGB's financing structure is a risk to the shareholders as it could require the prolongation of the bridge loan or even a restructuring;
  - (b) the shareholders' loan with a low [BUSINESS SECRET] interest rate is covered by a sovereign guarantee. This large part of the project financing has been pre-notified to DG COMP to constitute state aid. Approval is pending, therefore a risk remains that the interest rate for the loan would increase if it would not be possible to use the sovereign guarantee as expected in the financial model;
  - (c) certain terms for exemption, in particular those that ensure the required pressure to offer the IGB minimum capacity, result in financial risks for the ICGB shareholders.
- (143) It needs to be recalled that the IGB is merely one element in a chain of investments that need to be made in order to ensure the production of SD II gas and its transportation to the Union. Even where all elements of that chain are required and interlinked, certain mismatches are unavoidable, such as the impact on the revenue stream of the IGB of the ramping up of the SD II project and whether the resulting flows are as expected. That risk is in large part borne by the ICGB shareholders. It implies that, unlike other infrastructure investments, the IGB not only assumes risks which are directly related to the IGB project itself but also risks related to the accomplishment of other projects beyond the scope of control of the IGB.
- (144) Therefore the Commission considers that when evaluating the duration of the exemption from regulated tariffs, not only the mere bankability of the project needs to be considered, but also the fact that shareholder rewards have a high risk profile although the IRR in relation to other investments in Bulgaria or Greece is relatively moderate. Whereas, in general, shareholders should be expected to assume risks associated with investments, in this particular case they also bear shareholders 'residual' risks, that is to say those risks from which they are shielded by granting the exemption, which are such that, in order for the investment to take place, it is necessary to provide proportionate security to shareholder's returns by granting an

exemption. Consequently, granting an exemption from tariff regulation for 25 years is reasonable.

- (145) Finally, it must be taken into account that not granting a tariff exemption or not granting it for the entire 25 years duration, does not only increase price risks to the IGB but also to other parts of the SD II value chain. Indeed, prospective IGB shippers will not be able to foresee shipping tariffs with sufficient certainty and, ultimately, contractors with SD II for gas supply will be more uncertain as to whether supplying gas into the Union can be undertaken at a competitive price level in comparison with gas originating from other sources. Those spill-over effects across the SD II value chain justify the granting of an exemption from tariff regulation and are a ground for the 25-year duration of that exemption.

#### 4.5.3 Conclusion

- (146) In light of what has been said, the Commission takes the view that the IGB's exemption from tariff regulation should be for a duration of 25 years from the start of the IGB's commercial operations set at July 1st 2020<sup>58</sup>. That duration should apply to all capacities in this exemption decision.

#### 4.6 **"The infrastructure must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that infrastructure will be built"**

- (147) Legal unbundling from existing TSOs is fulfilled as ICGB AG is a separate and independent legal entity from the relevant and existing system operators DESFA SA (Greece) and Bulgartransgaz EAD (Bulgaria). As far as the TAP pipeline is concerned, it should be noted that it has not yet entered into operation and that TAP AG shareholders do not have a stake in ICGB AD.

- (148) It follows that ICGB AD is separate in its legal form from existing TSOs within the meaning of Article 36(1) of Directive 2009/73/EC.

#### 4.7 **"Charges must be levied on users of that infrastructure"**

- (149) Access to transmission capacity will be subject to the IGB Tariff, which is subject to the Regulatory Authorities' approval (in line with additional commitments imposed in the Joint Opinion). No charges relating to the project will be imposed on final consumers in any of the host countries of IGB.

- (150) It follows that IGB charges levies on users within the meaning of Article 36(1) of Directive 2009/73/EC.

#### 4.8 **"The exemption must not be detrimental to competition or the effective functioning of the internal market in natural gas, or the efficient functioning of the regulated system to which the infrastructure is connected"**

- (151) IGB will improve the functioning of the internal gas market by increasing its liquidity through the additional gas imports and by significantly enhancing the interconnection between Greece and Bulgaria. Furthermore, the pipeline is complementary to other infrastructure projects. It will thus contribute to a more comprehensive gas network and wider and more developed gas market in Southern Europe. As to the functioning of the internal market, there are no concrete indications that the capacity of the IGB

---

<sup>58</sup> Joint Opinion, p. 58

would be less than the demand. The Joint Opinion foresees certain requirements ensuring that market demand is also tested in the future.

- (152) The IGB will not compromise the functioning of the regulated system because the exemption has precisely the effect of shielding the regulatory regimes of the Member States concerned from the costs of the IGB project. Additionally, shippers of the regulated transmission systems to which it is connected should be safeguarded from bearing any extra costs due to the operation of the IGB, for example by bearing the cost for a compressor station.
- (153) Finally, in light of what is stated in this section and in section 4.8.1, the exemption from TPA rules for the ARCAs and the exemption from tariff regulation for all capacity should not be detrimental to competition.

#### 4.8.1 Additional capacity: market testing

- (154) In order to assess the demand for the Expansion Capacity in Phase Two, the NRAs require the IGB to organise an additional market test. The first market test should be organised no later than three years after the start of the IGB's commercial operation. The market tests should be conducted according to guidelines approved jointly by the NRAs<sup>59</sup>.
- (155) ICGB AD will be under an obligation to build the additional capacity provided that it is economically viable. The Commission notes that building the additional capacity should be deemed economically viable if the incremental demand of capacity resulting from the market test is enough to cover efficient incremental costs, which are expected to be about EUR [BUSINESS SECRET] million, as referred to in recital (56), and approved by the NRAs<sup>60</sup>.
- (156) The inability of ICGB AD to foreclose third parties from the infrastructure is therefore ensured by the obligation imposed on IGB to construct the additional capacity. Therefore, it should be ensured that the obligation to construct the additional capacity can be effectively and timely enforced. In that context, the Commission notes that:
- (a) the economic viability test essentially requires matching incremental revenues for ICGB AD with the incremental cost of constructing the additional capacity. Incremental revenues will be known from the results of the binding market test. The incremental costs of the additional capacity entail, in essence the construction of a compressor station on the IGB pipeline;
  - (b) the Regulatory Authorities, via the IGB Network Code and the Guidelines for the performance of the markets test that is subject to their approval, retain the ability to control the modalities of assessment of the economic feasibility of constructing the additional capacity;
  - (c) where ICGB AD, despite the obligations imposed, does not build the additional capacity or is not compliant with any other obligation attached to the Exemption Decision, the NRAs are entitled to impose penalties proportional to the non-compliance and, as the case may be, even revoke any license granted to the ICGB, including their exemption pursuant to Article 36 of Directive 2009/73/EC.

---

<sup>59</sup> Joint Opinion p. 53.

<sup>60</sup> Joint Opinion p. 53.

#### 4.8.3 Conclusion

- (157) The Commission therefore concludes that granting the ICGB an exemption from the rules on third party access for the concluded ARCAs and tariff regulation for the entire capacity is not detrimental to competition, and neither to the effective functioning of the internal gas market or the functioning of the regulated system to which the IGB is be connected. That assessment is subject to the detailed conditions imposed by the authorities in the Joint Opinion and by the Commission in the present decision.
- (158) The Commission furthermore understands that the additional market test has to be conducted irrespective of conducting the regular incremental capacity process according to Chapter V of Regulation (EU) 2017/459. When approving the guidelines for the additional market test, the NRAs should therefore take into consideration the requirements under Regulation (EU) 2017/459 and eventual overlaps between the regular incremental capacity process and the additional market test obligation.

#### 4.9 **Exemption from Article 9 - Unbundling**

- (159) The Regulatory Authorities granted an exemption from the provisions of Article 9 of Directive 2009/73/EC for a period of 25 years starting from the commercial operation, subject to detailed conditions, mainly the requirement on ICGB AD to implement functional unbundling together with the submission of a compliance programme, approved jointly by the EWRC and the RAE, setting out measures taken to ensure the exclusion of discriminatory conduct and that no commercially sensitive information is communicated to its shareholders. ICGB AD is obliged to meet all the requirements set out in Chapter IV of Directive 2009/73/EC , with the exception of the provisions of Article 22 of Directive 2009/73/EC.
- (160) Furthermore, the Commission considers that, where existing infrastructure has not received a full exemption under Article 36 of Directive 2009/73/EC, the unbundling rules of that Directive should be complied with as regards the non-exempted part of the capacity, unless that would not be possible without undermining the exemption obtained. Such impossibility should be analysed on a case-by-case basis, focusing in particular on whether it is ensured that the non-exempted capacity is marketed independently from any production or supply interests of the shareholders of the pipeline.
- (161) The Commission agrees that such approach is largely in line with previous exemption decisions, for example TAP, Gazelle, Nabucco<sup>61</sup>. Where an exemption from ownership unbundling is granted, whether and to what extent other unbundling models provided for under Directive 2009/73/EC can be applied should be assessed. In such circumstances, the Independent Transmission Operator ('ITO') model can be applied to new infrastructures such as the IGB pipeline.
- (162) The Commission agrees with the Regulatory Authorities that, in view of the other conditions imposed on ICGB AD and the requirement to conduct the incremental process in accordance with Regulation (EU) 2017/459, compliance with Article 22 of Directive 2009/73/EC is not necessary .
- (163) Therefore, ICGB AD will need to be certified in both Member States concerned, based on the ITO model, with the exception of Article 22 of Directive 2009/73/EC, in accordance with Article 10 or Article 11 of that Directive. In their certification

---

<sup>61</sup> [http://ec.europa.eu/energy/infrastructure/exemptions/doc/exemption\\_decisions.pdf](http://ec.europa.eu/energy/infrastructure/exemptions/doc/exemption_decisions.pdf).

decisions the Regulatory Authorities should assess the compliance of ICGB AD with the relevant unbundling rules.

- (164) The Regulatory Authorities have foreseen in the Joint Opinion that such certification procedures will have to start no later than six months before the Commercial Operation Date or the first marketing of non-exempted capacities whichever is the earliest.<sup>62</sup>
- (165) The Commission therefore concludes that, provided ICGB AD complies with all the conditions set out in the Joint Opinion and that it will be subject to a certification procedure allowing to verify whether all unbundling provisions are complied with in full, the exemption from the unbundling provisions can be granted.

#### **4.10 Other matters**

##### **4.10.1 Obligation to issue a Network Code**

- (166) Pursuant to section 4.4 point 1 of the Joint Opinion, ICGB AD is required to submit a network code for the NRA's approval by July 1st 2019 at the latest.
- (167) The Commission notes the requirement of issuing a network code for the IGB, which includes the right of NRAs to request amendments to such code. The issuing of an IGB network code should not prejudice whether the IGB pipeline should be considered as a separate balancing area or entry-exit system, or whether it should form part of an existing system, for example the Bulgarian national system. When approving the network code, the NRAs should take note of the overall functioning of the system and the impact on competition.

##### **4.10.2 Changes in shareholder structure**

- (168) Pursuant to section 4.4 point 4 of the Joint Opinion, the Regulatory Authorities require ICGB AD to notify the relevant NRAs any change whereby an enterprise, directly or indirectly, acquires joint or sole control over or merges with ICGB AD, or with one of its shareholders. Such a change can subsequently be assessed in cooperation with a national competition authority, in order to verify whether ICGB AD continues to comply with the conditions under which the exemption has been granted.
- (169) Furthermore, the EWRC and the RAE should apply the requirements of section 4.4 point 4 of the Joint Opinion in accordance with Article 3 of Council Regulation (EC) No 139/2004 and the Commission Consolidated Jurisdictional Notice under that Regulation<sup>63</sup>.
- (170) The Commission agrees that precautionary measures are required to ensure that the conditions under which the exemption was granted are still complied with where there are changes to the shareholder structure of ICGB AD or its shareholders.

##### **4.10.3 Non-compliance with the provisions of this Decision**

- (171) The Joint Opinion foresees that any infringement by ICGB AD of the conditions set in the Joint Opinion can result in a sanction imposed on ICGB AD by the NRAs. If ICGB AD does not comply with its obligations, those Authorities are entitled to impose sanctions proportionate to the seriousness of the infringement, in accordance to national rules and legislation and, can even revoke the exemption pursuant to Article

---

<sup>62</sup> Joint Opinion, p. 51

<sup>63</sup> Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24, 29.1.2004, p. 1)

36 of Directive 2009/73/EC, accordingly, if ICGB is found to be in serious breach of one or more conditions laid down in this Decision.

- (172) The NRAs can amend or revoke this Decision where a material change of circumstances leads to a change in the basis on which it has been determined that the conditions listed in Article 36(1) of Directive 2009/73/EC have been met .
- (173) The exemption can also be revoked where ICGB AD is subject to initiated bankruptcy proceedings or has been adjudicated or declared bankrupt.
- (174) The Commission agrees to the measures referred to in recitals (171) and (172) and recalls that an amendment or revocation of the Exemption Decisions should be notified without delay to the Commission.

#### 4.10.3 State aid

- (175) Any plans to grant State aid through public funds, including the Union Structural funds, to the IGB project is subject to the notification requirements to the Commission pursuant to Article 108 of the Treaty on the Functioning of the European Union.
- (176) The Commission takes note that state aid for the IGB was prenotified under reference number SA.51023 on 30 April 2018.

### **5. CONCLUSION**

- (177) In light of what has been stated and provided that the Bulgarian and Greek Exemption Decisions are amended in accordance with this Decision and that the NRAs take duly into account the Commissions Decision when taking decisions adressed to ICGB on the basis of this exemption decision, the Commission takes the view that an exemption should be granted to the IGB in accordance with Article 36(9) of Directive 2009/73/EC. The final decision shall be notified to the Commission pursuant to Article 36(9) Directive 2009/73/EC.

HAS ADOPTED THIS DECISION:

*Article 1*

1. The Regulatory Authority for Energy of the Hellenic Republic ('RAE') shall amend, in accordance with Article 36(9) of Directive 2009/73/EC, its Decision No 483/2018 of 29 May 2018 (the Greek Exemption Decision) notified to the Commission on 30 May 2018, in accordance with Articles 3 and 4.
2. The Bulgarian authority, Energy and Water Regulatory Commission ('EWRC') shall amend, in accordance with Article 36(9) of Directive 2009/73/EC, its Decision No R-VO-1 of 29 May 2018 (the Bulgarian Exemption Decision), notified to the Commission on 31 May 2018, in accordance with Articles 3 and 4.

*Article 2*

RAE and EWRC shall monitor and, at the request of the Commission, report on the implementation of the conditions set out in this Decision.

*Article 3*

RAE and EWRC shall ensure that the interruptible reverse flow capacity for commercial operations is offered at least in a volume equal to the level of the firm forward flow capacity.

*Article 4*

RAE and EWRC shall ensure that a load factor lower than one, leading to less commercial capacity on offer, can only be applied for duly justified reasons. Any load factor that would lead to a relative increase of the exempted capacity shall result in a proportional reduction of exempted capacity, at least where it is required to ensure that an average level below 50% of the IGB minimum capacity is exempted from third party access.

*Article 5*

This Decision is addressed to the Bulgarian authority, Energy and Water Regulatory Commission, 8-10 Dondukov Blvd., 1000 Sofia and to the Regulatory Authority for Energy of the Hellenic Republic (RAE), Piraeus Street 132, 118 54 Athens.

Done at Brussels, 25.7.2018

*For the Commission*  
*Miguel ARIAS CAÑETE*  
*Member of the Commission*

