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GLE detailed comments on

Draft Guidelines for Good Third Party Access for LNG System Operators (GGPLNG) – An ERGEG Public Consultation Paper

I. Introduction

1. In the context of the ERGEG Gas Focus Group Work Programme for 2007, CEER/ERGEG, as part of their Work Programme announced that ERGEG's Liquefied Natural Gas Task Force (LNG TF) would deliver *"Guidelines for Good Practice on TPA to LNG facilities (GGPLNG) including an impact assessment of the proposal covering why the proposal is necessary; what are the advantages and disadvantages including the option of not taking any further measures".*

2. During July, ERGEG launched a pre-consultation process with stakeholders which included GLE. On July 25th GLE delivered its initial comments to the preliminary draft GGPLNG to ERGEG ("GLE comments on Guidelines for Good Third Party Access Practice for LNG System Operators (GGPLNG)", ref. 07GLE183). On September 25th GLE submitted complementary comments to the draft GGPLNG ("GLE complementary comments on Guidelines for Good Third Party Access Practice for LNG System Operators (GGPLNG)", Ref: 07GLE221).

3. On 13 December 2007, ERGEG launched a public consultation on its Draft Guidelines of Good TPA Practice for LNG System Operators (GGPLNG) involving all the stakeholders. ERGEG has stated, once again, that the GGPLNG will not go beyond the Directive 2003/55/EC in creating or restricting TPA rights, and that the GGPLNG are intended as possible input from ERGEG for an amendment of Regulation 1775/2005 and its annexes.

4. GLE would like to express its gratitude to ERGEG for acknowledging some of its comments to the preliminary draft GGPLNG, which will facilitate the development of the formal consultation process.

5. This document by GLE is intended to provide input into ERGEG's work on developing the draft GGPLNG. GLE would like to point out that this document may not cover all aspects of the GGPLNG which need to be addressed. For the sake of clarity, neither GLE nor GLE stakeholders are deemed to agree with the views and recommendations of the GGPLNG that are not commented.

II. Comments relating to the General Questions of the Draft GGPLNG

QI. The GGPLNG aim is to boost effective, appropriately homogeneous and non-discriminatory, third party access to European LNG terminals without being detrimental to new investments. How could TPA/harmonisation and investment be conciliated?

6. First of all, GLE would like to highlight that TPA and harmonisation are two different concepts. Moreover, harmonization is not be deemed as the prerequisite for fostering competition and over-harmonization could potentially harm the further development of competition. If harmonisation should be sought, it should refer to the necessary operational processes for users and potential users.

7. GLE would like to stress that the GGPLNG should not affect the investment climate and should exclusively focus on the operational aspects including, for instance, certain transparency provisions. Moreover, GLE considers that investment is fostered by a stable and predictable regulatory framework that:

   - guarantees that LSOs can recover the investments made against an appropriate return,
   - allows for an efficient operation of the facilities,
   - preserves existing contractual rights.

   Harmonisation must not hamper the fulfilment of the conditions above.

QII. The GGPLNG aims at facilitating harmonisation of services, procedures, conditions… in order to foster interoperability and facilitate access to regulated LNG facilities. To what extent is harmonisation of regulated access procedures convenient/possible? Which areas should be harmonised (i.e. transparency, network code procedures, balancing rules etc.)? Is the current degree of detail and prescriptiveness of the GGPLNG considered adequate? Is the need for common EU-wide requirements adequately balanced against the need for flexible rules?

8. Since these GGPLNG are intended as possible input from ERGEG for an amendment of Regulation 1775/2005 and its annexes, GLE would like to remark that:

   - GGPLNG shall take into account the specificity of Regulation applied in each Country and the technical characteristics and specific business models of the existing Terminals in order to avoid any detrimental situation and distortion of the market and technically inapplicable requests.
   - GGPLNG shall aim at avoiding an unstable regulatory framework with particular regard to the rules concerning Terminals that would hinder the LNG market development. This means that LNG business should not be constrained in a binding and detailed European regulatory regime, irrespective of the status of competition and historical development in the downstream market place in which each terminal is involved.

9. GLE would like to stress the importance and necessity of having a proper implementation of the European legislative framework in each member state; in particular the application of GGPLNG within each member state can only be ensured if each LSO receive a proper remuneration from any of the new services or actions which need to be implemented so that the sustainability of its activities is not put at risk.

10. GLE considers that the main specific areas where harmonisation could be more appropriate are, for example, transparency, confidentiality, roles and responsibilities, terminology employed in the procedures, coordination of certain operational aspects such as ship approval procedures.

11. The appropriateness of the degree of prescriptiveness of each section of the GGPLNG is discussed in the comments below. In general, a higher degree of prescriptiveness would go beyond the Directive 2003/55/EC in creating or restricting TPA rights, and therefore beyond ERGEG's declared intention. A high degree of prescriptiveness in the GGPLNG, when included as part of the (annexes to) new Regulation, may risk inflexibility in adapting to changing circumstances and market conditions.

QIII. Considering the voluntary character of the GGPLNG it would be interesting to know what transitional effects you think the GGPLNG implementation could cause, and what could the implementation cost be in your particular case. Are you going to get benefits (commercial, decrease of management cost etc.) with the GGPLNG application?

12. As stated by ERGEG, the GGPLNG are intended as possible input for an amendment of Regulation 1775/2005 and its annexes. The "voluntary character" of the GGPLNG must be considered in this context, in particular as the approval process of the GGPLNG and the future framework of the Regulation as applying to LNG are not clear.

13. The effects of the GGPLNG implementation would differ among GLE members, depending on the business model, regulatory framework and technical characteristics of their facilities. In general, the adoption of guidelines can, in our judgement, be expected to imply more costs for LSOs which will need to be recovered from terminal users.

QIV. The GGPLNG do not apply to terminals exempted under Article 22 of Directive 2003/55/EC. In your view, could there be any value for regulators to use some recommendations in the GGPLNG as an input when adopting individual exemption decisions (for example, as approval requirements when granting a conditional exemption). If yes, please explain why and with regard to which aspects of the GGPLNG (e.g., services definition, transparency obligations etc.)?

14. GLE agrees that GGPLNG do not apply to LNG terminals exempted under Art. 22 of Directive 2003/55/EC. Regulatory authorities, at a European level, may only take the five criteria detailed under Article 22 of the Directive into account when granting an exemption.

15. If further clarification on the five criteria are to be developed, GLE will comment on their adequacy regardless their relationship with the GGPLNG, if any.

Comments on the Scope and Objectives of the GGPLNG

16. ERGEG had repeatedly stated that the GGPLNG would not go beyond the Directive 2003/55/EC in creating or restricting TPA rights, and that the GGPLNG were intended as possible input from ERGEG for an amendment of Regulation 1775/2005 and its annexes.

17. According to the consultation document section 1 "These Guidelines apply to LNG facilities insofar as they are subject to the requirements of the Regulation 1775/2005". However, GLE would like to point out that the current Regulation 1775 does not apply (at all) to LSOs.

18. The 3rd Package of measures adopted by the European Commission to "ensure that all European citizens can take advantage of the numerous benefits provided by a truly competitive energy market" was published on 19th September 2007. The 3rd Package includes a proposal for a "Regulation of the European Parliament and of the Council amending Regulation (EC) No 1775/2005". ERGEG's public consultation on GGPLNG was launched on 13th December 2007, almost 3 months after the release of the 3rd Package.

19. Given the differences between LNG and transmission, it would be preferable to include a whole set of definitions in the GGPLNG instead of referring to the definitions contained in Regulation 1775/2005 or in the proposal for a Regulation amending Regulation 1775/2005.

20. GLE believes that the terms listed in section 2 "Definitions", might be appropriate for the discussion of the consultation document, however GLE does not deem it necessary that the guidelines should include any definition of products that should be properly determined by the market. However, for the purpose of discussion of the consultation document the term "bundled ser that a standard bundled service must be defined as "a bundled service offered by a LSO consisting ***at least*** of a right …".

21. The consultation document defines "terminal user" as "a customer or potential customer of the LSO". GLE considers that a "potential customer" must not be considered in the definition of terminal user (it would be, if anything, a "potential terminal user"). GLE proposes to redefine the concept of terminal user within the scope of the consultation document as: "an entity that has a contract in force with the LSO regarding the services strictly necessary to perform the regasification activity offered by the LNG terminal".

III. Comments relating to the specific issues of the Draft GGPLNG

Tariffs for access to the system

22. GLE believes that harmonisation of tariff process should not lie within the scope of GGPLNG. Furthermore, the proposed draft GGPLNG goes beyond the proposed modified Regulation 1775/2005, which does not include detailed provisions regarding tariffs for access to LNG terminals. The following comments should be therefore considered in this context.

23. GLE would like to remark that it is in any event extremely difficult to find structurally comparable LSOs, and that LSOs' costs might diverge for many reasons, like technology choices due to particular sites, available technology at the time of making the investment, or

taxes framework. The comparison between LSOs might point out these singularities rather than give an overview of efficient costs.

24. GLE considers that the meaning of paragraph 3d under section 3 of the consultation paper is unclear.

25. Whilst GLE agrees with paragraph 4 under section 3 of the consultation paper, GLE believes that the GGPLNG should deal with general and not specific provisions regarding services.

QV. The GGPLNG establish that tariff structure should be reviewed on a regular basis. Would the GGPLNG fix a minimum and/or maximum frequency for such a review? Which frequency(ies) should be the appropriate?

26. GLE notes that a stable and predictable regulatory environment is required to foster investments. Any long-term commitments already approved by the NRAs should be respected.

27. Tariff structures, once approved by the NRAs, should in principle not be reviewed during the national regulatory tariff period and any major review should be substantiated.

TPA services

28. GLE notes that the development of TPA services is one of the key tasks of the LSO, as it is the expert which has the best knowledge of its terminal. Also, GGPLNG should not grant (nor impede) any additional role to NRAs in the definition of the service and its conditions. This is without prejudice to the NRA's right to approve those conditions and the related tariffs. Notwithstanding this position, GLE would like to make the following comments:

Roles and responsibilities

29. GLE believes that the roles and responsibilities as described in paragraphs 5 to 8 could be substituted by the provisions set out in Art 4a of the proposed amendment to Regulation 1775/2005. Notwithstanding the above, GLE would like to propose the following comments:

30. The GGPLNG make different references on the need to offer bundled and not bundled services that might be contradictory or not completely coherent (i.e. paragraphs 5.c and 9.b). GLE favours the position adopted in paragraph 9.b.

31. As regards paragraph 5.g, GLE recommends to adapt the terminology of GGPLNG by replacing "maximise the use of the available capacity" by "optimise the use of the available capacity".

32. As pointed out above, GLE is of the opinion that GGPLNG should not be over-prescriptive in describing roles and responsibilities. However, should the degree of prescription of roles and responsibilities of LSOs have to be included, the following points should be noted in order to strike the balance between the roles and responsibilities of LSOs and terminal users (TUs). In that case, the roles and responsibilities of TUs should include:

- complying with all rules and procedures described in the contract and/or the regasification/system code.
- performing the importation of the LNG, including all custom formalities and respecting quality specifications of LNG as accepted by the terminal;
- providing the LSO with their proposed unloading dates in due time,
- delivering the natural gas consumption connected to the re-gasification service (fuel gas) unless the NRA provides that the LSO shall be responsible for it. In the latter case, the LSO should not be exposed to any type of price risk;
- respecting the ships assigned unloading dates and, when required by the access conditions, the quantities to be unloaded;
- respecting the procedures in use at the plant (e.g. safety, environment), using ships authorised to unload LNG;
- performing all the requested activities for booking capacity, including the financial guarantees requested, if any, for the service provision obligations;
- providing all useful data including, amongst others, those data required by the general access conditions contracted with the LSO;
- assuring all exchange of information between the ship and the LSO as requested by the procedures in use at the LNG terminal;
- putting relevant IT in place in order to be able to communicate with the LSO;
- obtaining all customary port approvals, marine permits and other technical and operational authorizations necessary for the use of each LNG carrier (including at the port of loading and at the unloading port) as well as all necessary clearances for the import of LNG.

Under the current wording of paragraph 6, only a few of these obligations are included, and nevertheless it is not clearly stated that TUs are responsible for these tasks, but that LSOs “can ask terminal users” to comply with certain basic obligations.

33. Certain burdens imposed on the LSOs seem to exceed their logical responsibilities. For example:

- According to paragraphs 5g and 6c it might be understood that a responsibility on the monitoring of effective competition on the LNG and gas markets is placed on LSOs. LSOs might not even be able to prevent capacity hoarding in their facilities if NRAs have not developed (where competent to do so) and/or approved appropriate anti-hoarding mechanisms.

- According to paragraph 5d it might be understood that LSOs are responsible for ensuring that storage of natural gas takes place in a compatible manner with the secure and efficient operation of the interconnected system.

Necessary TPA services

34. GLE notes that the standard bundled service will vary depending on the characteristics of the LNG terminal, the downstream network, the particular business model of the terminal and the characteristics of the market to which the terminal is connected.

35. GLE would welcome a clarification on the concepts introduced in paragraph 9.a. Otherwise, GLE suggests that "For standard bundled LNG services, they ***shall***" should be reworded as "For standard bundled LNG services, they ***might***".

36. The definition of the temporary LNG storage and regasification capacity required is a highly complex task, which depends on the final use of the natural gas. To ensure that the standard bundled service contained a temporary storage and regasification capacity required to withdraw the shipment, it would have to be designed to fulfil the needs of the most irregular users. This would mean that the standard bundled serviced would include a large flexibility that would not be used by most of TUs. GLE considers that the standard bundled service should be fit to the requirements of most users, which implies that the most irregular users might have to book non-bundled services, if available, or meet their flexibility needs in upstream or downstream facilities.

37. GLE agrees that the standard bundled LNG services should "be defined on the basis of the expected vessel size", as long as it does not imply that different bundled services have to be designed for vessels of a size that rarely make use of the LNG services provided by a particular terminal.

QVI. The GGPLNG assume that there may be benefits for the liquidity of the capacity market and for the system efficiency in offering not bundled and interruptible services in addition to bundled and firm services. Do market players agree with this statement? What could be your interest in offering/contracting not bundled services and/or interruptible capacity? What type of services should be offered as no-bundled? What type of services should be offered as interruptible? Should the GGPLNG be more/less prescriptive on these issues?

38. GLE agrees in principle that there is a benefit for the liquidity of the capacity market and for the system efficiency to offer services that meet the needs of the market, including not bundled services, if compatible with a given business model. However, as stated by the draft GGPLNG in Art. 9.b, "the offer of not bundled services should not act as a barrier to entry or as an obstacle to the efficient use of the terminal's capacity by reducing the amount of standard bundled services offered at the terminal".

39. The consultation document clearly specifies that the LSO can offer non-bundled services such as regasification, LNG storage, or reception capacity, comprising berthing and unloading. But it

is not clear whether or not the latter service might be offered separately from LNG storage and regasification (i.e. separated from the standard bundled LNG service). GLE would welcome a more precise definition of necessary non-bundled TPA services in the Section 2 of the consultation document.

40. Paragraph 9.c relates to ancillary services that are not necessary for the re-gasification process and subsequent delivery to the transmission system. Consequently, services referred to in this paragraph are out of the scope of the GGPLNG, and GLE proposes to remove paragraph 9.c from the GGPLNG.

41. GLE Members have provided ERGEG with a position paper on "Services provided by the Terminal Operators". This position paper might be useful to determine what type of necessary TPA services could be offered as bundled and/or non-bundled.

42. GLE suggests to state that interruptible capacity could be offered at the terminal insofar such capacity relates to regasification capacity. When interruptible capacity can be offered by the LSO in line with its business model, GLE considers that it should be offered taking into account system integrity and the technical spare policy of the LSO. Each LSO defines its own technical spare policy to guarantee, amongst other, the fulfilment of the firm contractual commitments.

43. Footnote 17 is unclear and confusing.

    - The N-1 principle is not substantiated by ERGEG. Capacity of vaporizer N can be offered on an interruptible basis insofar such offer is compatible with the spare policy of a reasonable and prudent LSO.

    - If part of the regasification capacity under a bundled service could be interrupted, as suggested by footnote 17, it should be clearly stated in the contract or relevant procedures (TPA tariff conditions, regasification code, etc) approved by the NRAs.

    - ERGEG mentions that interruptible underground storage for natural gas "is possible but seem to be rarely applied", and that, in that sense, interruptible LNG storage is comparable. GLE believes that interruptibility of underground storage services refers to injection and withdrawal capacity, and as such would be comparable to regasification, not to LNG storage.

44. GLE also considers that the right to subscribe to interruptible regasification capacity should only be offered to active users at the terminal.

45. Furthermore, any provision on interruptible services must not jeopardize the integrity of the revenues allowed to the terminal.

46. GLE would welcome a more precise definition of the necessary TPA services mentioned in the consultation document, preferably in Section 2 (Definitions).

47. GLE has insisted that the GGPLNG should not grant (nor impede) any additional role to NRAs in the definition of the service and its conditions. In order to avoid any ambiguity, GLE proposes the following wording for paragraph 10.a:

"10.The services offered by LSOs and the terminal code shall:

*a. be developed with proper consultation to terminal users and other market participants~~,~~ **~~supervised by NRAs,~~** in order to accommodate as much as feasible the market demands; such consultations shall be published with all relevant documents on the website, and not be limited to negotiations with existing capacity holders or terminal users that have applied for capacity; this consultation is made without prejudice to the NRAs powers**, if any,** to approve or to set the service conditions and the terminal code; and […]"*

QVII. The GGPLNG recommend that standard bundled services are defined after market consultation, especially concerning the flexibility included. In line with that, they emphasise the importance of taking into account the LNG facility's technical constraints. Do you agree with this approach? Would a more prescriptive approach regarding the parameters for the definition of standard bundled services and their flexibility be feasible and/or more appropriate?

48. GLE agrees that the LNG facility's technical constraints should be taken into account to define the services of each LNG terminal.

49. However, GLE would welcome clarity on the meaning of "economically efficient use if the LNG infrastructure" (paragraph 10 b of the consultation paper).

50. GLE agrees that the market consultation could be a useful tool for the validation of LSOs' proposals on the standard bundled services.

51. GLE believes that other issues which may be terminal-specific can be relevant while defining the standard LNG bundled service, for example: (i) the characteristics of the downstream network and the market to which the LNG terminal is connected, (ii) the location of the terminal, (iii) gas quality requirements, (iv) national laws and regulations (v) the contracts that have already been signed in relation to the services offered, etc.

QVIII. According to the proposed GGPLNG, the LSO shall offer on the primary market long-term and short-term services at LNG facilities. Do you consider, from a TPA perspective, that any further guidance can/should be given with regard to a balance between long and short term services?

52. The amount of capacity to be offered on the primary market under short-term services depends on a number of terminal-specific factors, most of them already mentioned among the factors to be taken into account when defining the standard LNG bundled service.

53. GLE considers also that in case the total capacity is subscribed for long-term contracts, a well functioning secondary market is an equivalent alternative to short-term contracts.

54. However, any requirement to offer short-term services must not hamper the fulfilment of contracts subscribed before the publication of the GGPLNG, in order to preserve regulatory stability.

QIX. Requests have been made during the July pre-consultation with stakeholders for specific standardised regasification contracts (e.g. front month contract) that aim to facilitate the trading of the regasified LNG on natural gas markets. What type of standardised services could be offered by the LSOs? To what extent would these services be compatible with technical constraints (e.g. available storage capacity), the efficient operation of each terminal and innovation in the offering of terminal services? How prescriptive should the GGPLNG be about standardised contracts?

55. GLE considers that GGPLNG should not aim at standardising contracts, but at harmonising the terminology and certain minimum contents. It should be taken into account that the rules and conditions might be established in different documents (LNG terminal contracts, regasification/system codes, procedures, laws, decrees, orders, etc), and it might not be possible to fully harmonise contracts, at least in the short and medium term. On the other hand, the harmonisation of contracts also depends on the possibility to harmonise services which, as already observed, is a highly complex task when considering terminals of very different technical characteristics and business models.

QX. Considering that harmonised network codes should take into account specificities of each terminal, which issues could be common and under which conditions?

56. Contracts, regasification/system codes, and other rules and procedures might have been developed in each Member State with different approaches. It should be taken into account that the rules and conditions might be established in different documents (LNG terminal contracts, regasification/system codes, procedures, laws, decrees, orders, etc), and it might not be possible to achieve a high degree of harmonisation of regasification/system codes.

57. GLE considers that the main specific areas where harmonisation could be more appropriate are, for example, transparency, confidentiality, roles and responsibilities, terminology employed in the procedures, coordination of certain operational aspects such as ship approval procedures.

QXI. Electronic communication tools seem to be the most suitable means for the LSOs to exchange information with the terminal users. What type of platform could be needed? What services should be available on it (e.g. secondary market, nominations, etc.)? Should a simplified system based, for example, on fax transmission be envisaged in certain cases and, if so, when?

58. GLE agrees that electronic communication tools are in many cases the most suitable means for the LSOs to exchange information with TUs. GLE also agrees that the platform would in many cases simplify transactions by allowing on-line screen-based (re-)nominations and access to information on the LNG facility, including available capacities. However, the fact that the exchange of information is done online does not mean that the validation procedures are

done automatically without human intervention. In many other cases bulletin boards are as well suited as on-line screen-based platforms to perform information tasks, and might be a more efficient way of providing the service.

59. The concept of secondary market covers two aspects, namely (i) the location where the offers can meet the demands, and (ii) the transactions made pursuant to match an offer with a demand (contractual link between the buyer/assignee and the LSO).

    - Regarding the location, as far as non-discriminatory access to such location is facilitated by the LSO through the management of a bulletin board (simplified online publication of offers), the development of a complicated electronic tool would be clearly superfluous.

    - Regarding the transactions, electronic consultation and signing of the standard terminalling contract are certainly an easy way to complete a transaction and consequently a suitable means to support the secondary market. However, as far as the standard terminalling contract is readily available, the users might prefer to communicate to the LSO a signed version of such contract, per fax or per mail. Where this process already supports appropriately the secondary market and fully complies with the market needs, the development costs of a complicated electronic tool would again be clearly superfluous.

QXII. Even though several platforms already exist and software could be copied to a certain extent, the development of electronic communication tools represents a certain cost. Do you think the cost/benefit ratio would be acceptable?

60. GLE believes that the development cost of any electronic communication tool must be carefully compared to the benefits that it would bring, in order to avoid unnecessary investments. These costs might differ between LSOs, and therefore it is difficult to make a general statement on the acceptability of the cost/benefit ratio. Moreover, the experience of GLE members indicates that the extent to which the existing software could be copied is likely to be low.

61. Anyway, if LSOs were obliged to invest in the development of electronic communication tools, GLE considers that both the Regulation and the GGPLNG should ensure that the regulatory framework reflects the costs incurred by LSOs in the allowed revenues.

Other requirements to assure proper TPA services

Cooperation with interconnected system operators

62. As regards the LSOs' obligation in paragraph 14.c. to ensure well-matched timing of the procedures, GLE would like to point out that responses from a transmission operator require a prior simulation process (made by the TSO or by a system manager) which might take some time. It might not be the sole responsibility of the LSO to ensure that the user receives a response to its access request within a defined timeframe. Moreover, capacities held by a shipper at the LNG terminal and at the downstream network might not be contractually linked, in the sense that although the shipper might release its capacity at the terminal, it might decide

to use its capacity at the downstream network. Also the opposite can be possible: a Shipper, active in the LNG terminal, without having any downstream capacity.

63. As stated in the initial comments in July, GLE considers appropriate the wording given to paragraph 14.e. It must be noted, however, that the reasonable endeavours made by the LSOs "to ensure that the nominations related to send-out of the LNG facility would not need to be repeated in the downstream transmission network" are likely to be unsuccessful if there is no contractual link between the capacity booked at the LNG terminal and at the downstream transmission network.

Maintenance and disruptions

64. GLE would like to remark that LSOs should be only responsible for their own maintenance work and they should not be responsible for any reduction of send-out capacity caused by maintenance works made by connected TSOs at short-term notice.

Confidentiality and impartiality

65. GLE agrees that no information available to the LSO concerning its business shall be passed to other parts of any affiliate of the company in advance of being provided to all market participants, unless the company operates as an integrated transmission and LNG operator and the nature of the information transferred is not commercially sensitive such that it could lead to a competitive advantage.

66. GLE notes that the concepts of "Code of Conduct" and "Compliance Officer" are neither present in Directive 2003/55/EC nor in Regulation 1775/2005.

67. The introduction of a "Code of Conduct" in the organisation or of a "Compliance Officer" in the organisational chart should be left to the decision of each LSO, or at least decided on a national level, not imposed by the GGPLNG.

68. The draft GGPLNG mention a "Compliance Officer", and the obligation to ensure its organisational independence, but does not mention, let alone develop, the role of the "Compliance Officer". GLE understands that its role would be the supervision of terminal activities and of the compliance of the "Code of Conduct". If so, this raises several concerns. First and foremost is whether such (apparently) proposed new role is necessary in a regulatory framework that already provides for principles aimed at protecting users from discriminatory access and tariffs.

69. GLE believes that in some countries there could be a duplication of the duties possibly entrusted to the ''Compliance Officer" with those carried out by other auditing bodies. Moreover the NRA is usually empowered to audit the LSO activity at any time, to check that the LSO complies with its confidentiality obligations.

70. In summary, GLE believes that compliance with the access rules, which normally are subject to NRA approval, should be sufficient to protect third party users and that introduction of a Compliance Officer would introduce unnecessary complexity, representing an additional administrative burden resulting in greater cost for the system.

71. GLE would like to remark that reporting to the NRA any breach to the code of conduct goes beyond Directive 2003/55/EC and Regulation 1775/2005 and is not an obligation under the GGPSSO. LSOs would be the only stakeholders subject to such an obligation.

Other operational requirements

72. GLE notes that vetting process as defined in Section 2 is different from a Ship Approval Procedure as defined by GLE[1] (the "vetting process" seems to be confused with the SAP in paragraph 24.d). The aim of vetting is to define if a vessel is suitable for gas transportation and unloading LNG (risk evaluation generally executed by the vessel owner), while the SAP relates to a dedicated facility and involves ensuring ship compatibility with the LNG facility and may include some elements of vetting. Therefore, it is clearly not the role of an LSO neither to offer vetting services nor to exempt a vessel from vetting. Cooperation regarding this topic is not excluded; however the final decision remains to the sole discretion of the LSO. The concepts of vetting and Ship Approval Procedure need to be clarified.

73. Agreements with other LSOs about SAP shall be limited to fully common procedures; given that Terminals have different specificities, in order to provide the safety level foreseen in each infrastructure LSO's shall be entitled to ask for any SAP than is only partially applicable to another LSO. Each LSO has its own safety criteria and may not accept ships even though they are acceptable for another LSO.

QXIII. The GGPLNG consider the cooperation between LSOs when putting in place compatible scheduling procedures in order to facilitate capacity trading and interoperability between European terminals. Do you think that such a harmonisation of scheduling procedures is desirable? Would it be necessary and proportionate to introduce some minimum harmonisation of these procedures within the GGPLNG to facilitate capacity trading and interoperability between European terminals? What requirements can be envisaged?

74. The wording of the second paragraph of paragraph 22 is confusing. GLE understands: "LSOs will reasonably endeavour to cooperate with each other when putting in place their scheduling procedures to facilitate capacity trading ***between terminal users***, and interoperability between European terminals, in order to make them appropriately compatible. They will take into account specificities of each terminal and market."

[1] The GTE position document "LNG Ship Approval Procedure", 29th June 2004, states that "the major objective of the ship approval procedure is to check the compatibility of the ship requesting access in terms of mechanical design, communication and safety; it aims at ensuring the safety of the unloading operations pro-actively and sustaining the excellent safety record of the LNG industry".

75. GLE agrees that certain compatibility between scheduling procedures is desirable, but limited by a number of restrictions: (i) the characteristics of the downstream network and the market to which the LNG terminal is connected, (ii) the location of the terminal, (iii) gas quality requirements, (iv) national laws and regulations, (v) the respect of contracts that have already been signed in relation to the services offered, etc. Therefore, it will be complex to go further than harmonising the terminology and certain minimum contents.

Capacity allocation and congestion management

Capacity calculation

76. GLE suggest to rephrase paragraph 27 as follows:

> *"In calculating the available capacities, the maximum LNG facility capacity shall be made available to the market participants,* ***taking into account, amongst others, upstream flexibility constraints, berthing and unloading constraints, maximum storage volume, maximum regasification capacity, gas quality constraints,*** *system integrity and operation, security of supply standards and the constraints imposed by the downstream network. The calculation of regasification capacity shall take into account the need for back-up units ~~during the planned maintenance or a breakdown~~."*

All parts of the LNG chain, from the production facilities to the downstream network, should be taken into account to determine the available capacity.

Principles underlying capacity allocation mechanisms and congestion management procedures / Congestion management

77. GLE suggest to rephrase paragraph 31 as follows:

> *"Non discriminatory and transparent, ~~market-based~~ solutions shall be applied, to allocate any primary or secondary capacity. ~~Alternative solutions such as pro-rata mechanisms or 'first-committed-first-served' may be considered if they ensure equivalence in terms of non-discriminatory and competitive access.~~"*

See answer to Question XIV.1.

78. GLE suggest to rephrase paragraph 36 as follows:

> *"The procedures established by the LSO to make available unused capacity will never prevent, but instead encourage the holder of capacity to offer his unused capacity on the secondary market ~~at a reasonable price~~. These procedures shall be described in the terminal code~~, after approval by the NRA~~."*

It is unclear what would be the definition of "a reasonable price" and which entity would be in charge of qualifying a price as reasonable or unreasonable. Regulation does not aim at preventing shippers from benefiting from a business opportunity which is legitimate. Since the

terminal code must be approved by the NRA, the procedures set in such code are also approved.

79. GLE suggest to rephrase paragraph 37 as follows:

> *"Whenever the initial holder of a capacity is considered no more able to use it**, this capacity shall be offered by, or on behalf of, the initial holder of the capacity** to the market as firm capacity."*

See answer to Question XXV.2.

80. GLE suggest to rephrase paragraph 38 as follows:

> *"At least in the event that no short term capacity is available on the primary market and that contracted capacity goes unused, this capacity will be made available on the primary **or secondary** market ~~on a short term basis~~:*
>
> a. *For a particular unloading window to be considered unused because the holder of the capacity has not confirmed its effective use according to paragraph 2.4 of the Regulation, the notice period (as referred to in § 22 herein) must be long enough to allow for another terminal user to organise a shipment and short enough to allow capacity holder to determine which capacity it is not using. Together with the scheduling procedures, it must be submitted to consultation according to § 10a herein. The notice period shall be defined **by the LSO** based on the opinion of existing capacity holders and other market participants in the public consultation **and approved by the NRA. In those systems where the responsibility has been placed on the NRA, the LSO must have a preferential consultative role in the definition of the notice period.***
>
> b. *When a particular standard bundled LNG service is considered unused, it will be offered as firm to the market. ~~Once it is no longer possible to buy and nominate an unused standard bundled LNG service,~~ **As from a certain deadline, to be determined by the LSO and approved by the NRA,** its components can be offered separately **taking into account its business model**. **In those systems where the responsibility has been placed on the NRA, the LSO must have a preferential consultative role in the definition of the deadline.**"*

See answers to Questions XX.2, XX.3 and XXV.2. Some business models are based on the unbundling of a service before that "*it is no longer possible to buy and nominate the bundled service*". Therefore, the LSO is the most appropriate party to be in charge of fixing the unbundling deadline, under the NRA approval.

81. GLE suggest to rephrase paragraph 39 as follows:

> *"In the event of systematic underutilisation of capacity, if the NRA considers it appropriate ~~and taking into account global market conditions~~, the following mechanism applies:"*

The concept of "global market conditions" must be defined.

QXIV. The GGPLNG propose some concrete solutions in order to implement the very general principles laid down in Regulation 1775/2005 (Articles 5.3. and 5.4). Comments on these issues would be most welcome:

− Non discriminatory allocation rules for primary and secondary capacity are necessary to promote competition. The GGPLNG propose market-based solutions and other alternative mechanism as pro-rata or first-come-first-serve procedures. Should a reference to specific subscription procedures be included? Is there any other procedure that the GGPLNG should take into account?

82. The GGPLNG should stick to the stipulation of general principles and criteria, without prejudice to the freedom of each LSO (or the relevant NRA where competent) to define which procedure is the most appropriate for the type of capacity to be allocated (nature, duration…), taking into account its specific business model. The principle should be that the capacity allocation procedures applied by the LSO must be transparent and non-discriminatory so that they do not constitute a barrier for new entrants.

83. From this perspective, the GGPLNG should not establish a ranking between "first class" and "alternative" procedures, and consequently market based solutions must not be preferred to pro-rata and first committed first served allocation mechanisms, *a fortiori* if they have been approved by the NRA. Moreover, it is not clear whether "market based solutions" refers to auctions, and/or to open seasons and/or to any other mechanism.

− Regarding congestion management, is the development of a secondary capacity market sufficient to optimise the utilisation of the terminal capacity?; and

84. A well-functioning secondary market could indeed be an effective tool to optimise the utilization of capacity. GLE notes that this will not necessarily mean that the utilisation of the terminal will be increased. However, it should be left to the NRA's appraisal to determine whether there is a need for a secondary market following a market consultation where appropriate. Moreover, the GGPLNG should clearly state that the LSO solely acts as a facilitator of such secondary market, and that it is the NRA role and responsibility to monitor the functioning of contractual congestion management mechanisms and to impose sanctions (such as release of capacity).

− Should the GGPLNG be more or less prescriptive regarding procedures to manage congestion in the terminals?

85. The GGPLNG should stick to the stipulation of general principles and criteria, without prejudice the freedom of each LSO to define which procedure is the most appropriate for the type of congestion to be managed, taking into account its specific business model.

QXV. Reference is made to capacity that the holder is no longer able to use. An obvious example is the case of (unbundled) regasification capacity owned by a shipper who has

no more gas in storage. What are the other cases where capacity could be categorised as no longer usable? Who must decide when a capacity holder is considered as no longer able to use the capacity?

86. The proposed example - of an existing send out capacity while there is no more gas in storage - is not an appropriate illustration of the concept of "no more usable capacity", because:

    - A terminal user which has scheduled two slots in a row might indeed decide to use the send out capacity of the second slot – once the term for the unbundling of such slot has passed – to reduce the send out rate of the gas in storage linked to its first slot.

    - A terminal user without any gas in storage might also be entitled to buy gas in storage from another user, as long as it has subscribed the related storage and send out capacities.

    - A terminal user might also be authorised to make counter nomination (negative send out nomination) from the flange to the storage.

87. The same can apply to an unbundled berthing and unloading capacity as such capacity can also be used as a ship loading capacity in some terminals.

88. The regulation system is based on a sharing of the roles and responsibilities between the different players. It is indubitably the NRA role and responsibility to decide whether a capacity holder must be considered as "no longer able to use its capacity". It must be stressed that any lack of clear separation between the respective roles of the TO and of the regulator has to be avoided. Any opposite conception would predictably generate a risk of discriminatory treatment by a LSO which must both judge and be judged. Any tentative to mix the players roles and responsibilities, especially between the LSO and the NRA, would be strongly detrimental to the transparency of the regulatory framework and consequently would jeopardize the well-functioning of the gas market.

QXVI. Regarding the allocation of capacity, the GGPLNG stipulate that the LSO might allocate the standard bundled LNG services with a priority upon not bundled services in order to maximise the use of the LNG facility. In your view, under what circumstances would it be appropriate to give such a priority to bundled services?

89. As the LNG chain is characterised by long term needs and commitments, and by a higher risk profile (i.e. upstream constraints between the production facility and the terminal), the offer of bundled services should remain the priority, but without prejudice to the offer of unbundled services as from a certain deadline according to their business models.

Reallocation of unused capacity / Release of systematically underutilised capacity

QXVII. The GGPLNG tries to assure the optimum utilisation of the terminal and to avoid capacity hoarding by promoting capacity reallocations when appropriate. How can the balance be struck between the promotion of the secondary market of capacity and the protection of primary capacity holder's interests?

90. When

- on the one hand: a primary terminal user is obliged (by law and/or contractually, thus under its responsibility) to offer on the secondary market the capacity it will not use, before a certain deadline that does not materially prevent a potential assignee to buy such capacity,

and that

- on the other hand: such primary terminal user determines freely the price of the offered capacity and is allowed to withdraw at all times its offer as long as the capacity has not been assigned (both under its sole responsibility),

the balance between the promotion of the secondary market and the primary terminal user's interest is struck.

Note: the determination of the price by the terminal user cannot constitute a risk of capacity hoarding as long as the secondary market is facilitated by the LSO (for example, through a parallel commercialization of the capacity by the LSO on behalf of the primary terminal user, at the regulated price).

QXVIII. The GGPLNG distinguish between punctually unused capacity and systematically underutilised capacity:

− The definition of unused capacity refers to a deadline by which the capacity holder must nominate its use. This concept is defined in Regulation 1775/2005, art. 2.4. Do market players agree with the definition of unused capacity? Is a more or less detailed definition needed? What conditions/circumstances should be taken into account when assessing whether capacity is effectively used or not?

91. Article 2.4 of Regulation 1775/2005 is satisfactory as it clearly refers to the contractual terms and conditions. Any assessment of whether a capacity is effectively used or not must be done cautiously. For example, when the nomination system allows terminal users to nominate regasification capacity up to H-2 (two hours in advance), it is not possible from a practical point of view to qualify a capacity as unused until that time limit.

- **Is there a need to distinguish between punctually unused capacity and systematically underutilised capacity as states the current draft of the GGPLNG? Is the proposed split between reallocation of unused capacity and release of underutilised capacity a good approach?**

92. Both concepts strongly differ and consequently there is a need to distinguish between them (see Question XVIII.3 below).

- **Is it satisfactory to empower the NRA to evaluate if there has been systematic underutilisation of capacity or should the concept of 'systematic underutilisation' be described more accurately in the GGPLNG, by specifying the criteria to be used?**

93. The concept of systematic underutilization of capacity must be clearly defined (concept but also criteria) in order to allow the competent authority to take the appropriate enforcement measures – and to allow the LSO to verify the proper justification of such decision. The definition should clearly state that a terminal user which has had unused capacity but which has however complied with its obligation to offer such capacity on the secondary market in due time cannot fall under systematic underutilization measures.

94. The enforcement of systematic underutilization measures by the competent authority must always be considered very carefully. Otherwise, the regulatory risk of release of underutilised capacity would be assessed as too high by the market, which could finally put at risk the rate of usage of non-exempted terminals. This situation would lead to a considerable and unjustified discrimination between exempted and non-exempted terminals.

95. GLE points out that the GGPLNG should not confuse the role of the NRA with that of the Competition Authority. "Systematic Underutilisation" of terminal capacity may infer deliberate "hoarding" - but this may not mean a User or LSO is acting anti-competitively. The roles of the NRA and the Competition Authority should be clearly defined at a national level, in particular who is responsible for charging of anti competitive behaviour and who is responsible for taken action if a behaviour or action was proven to be anti competitive. As GLE has repeatedly noted, GGPLNG should not grant (nor impede) any additional role to NRAs in the definition of the service and its conditions. Neither should the GGPLNG deal with the roles of the Competition Authorities.

QXIX. Is it necessary to impose detailed congestion management mechanisms as proposed in these GGPLNG, or should the GGPLNG content themselves a set of general principles? Are the solutions proposed in the GGPLNG adaptable to the varying, present and future, situations?

96. See Question XIV.1.

QXX. Setting the right deadline or notice period is considered as a key factor for the congestion management procedures. Comments on this issue would be welcome.

− Should the GGPLNG include more or less detailed/prescriptive provisions on deadline/notice periods regarding unused capacity?

97. As each terminal has a specific business model and a specific competition environment, it would not be appropriate to impose detailed/prescriptive provisions on notice periods. The GGPLNG should stick to the stipulation of general principles and criteria, without prejudice to the freedom of each LSO (or the relevant NRA where competent) to define which notice periods are the most appropriate for its specific business model. The principle should be that the notice periods applied by the LSO must be transparent and non-discriminatory and must not constitute a barrier for new entrants.

− What circumstances should be taken into account by the LSO/NRA when determining/approving notice periods. Is there a single specific deadline/notice period appropriate for all solutions? If so, what could it be?

98. As each terminal has a specific business model, it would not be appropriate to adopt a “one size fits all” approach. The notice periods should be long enough to allow potential third party users of unused capacity (not nominated by the contractual deadline) to take necessary arrangements to be materially able to use such capacity, but without prejudice to the right of the primary terminal user to take advantage of its scheduled capacity.

− Is the NRA the most appropriate party to define the deadline or notice period? Otherwise, who should be responsible for setting the deadline/notice periods?

99. As each terminal has a specific business model, the LSO is the most appropriate party for setting the appropriate notice periods, under the NRA approval. Even in those system where this responsibility has been granted to the NRA, the LSO must have a preferential consultative role in the definition of the deadline or notice period.

QXXI. The GGPLNG establish the principles to release underutilised capacity, setting some detailed circumstances where this may happen and assigning responsibilities to NRAs. Should the GGPLNG be more or less prescriptive on this issue? Do the circumstances set out in the GGPLNG cover all present and future circumstances where underutilised capacity should be released? Would a less constraint mechanism be preferable?

100. See Question XVIII.3. As the identification of underutilised capacity and the decision to reallocate such capacity must be taken by the NRA, under its sole responsibility, it does not seem necessary that the GGPLNG impose detailed/prescriptive provisions.

Transparency requirements

101. GLE suggest to rephrase paragraph 42 as follows:

"The following commercial terms should be published by the LSO on the Internet:

a. *Tariffs ~~and tariff methodologies~~ for each service offered shall be published ex ante; ~~the tariff methodology specifies the overall regulatory involvement in tariff setting and includes, subject to the NRA's decision, inter alia, the definition of the regulatory asset base, the asset valuation, the depreciation principles applied, the methodology followed to calculate the rate of return and current value, the incentive schemes, and the indexation of tariffs or principles for tariff variations;~~"*

It is generally the role of the NRA to determine the tariff methodology, the RAB, … Some LSOs even are not aware of the methodology employed by the NRA. Consequently, the responsibility of the LSO must be restricted to the calculation of the tariffs by applying the tariff methodology, and to subsequently publish the tariffs.

102. GLE suggest to delete paragraph 45:

"~~The terminal users shall not be charged for information requests and transactions associated with their contracts according to standard rules and procedures.~~"

Transactions could involve costs and therefore in some business models, some transactions on the secondary market facilitated by the LSO are charged, which constitutes an incentive for the LSO to further support and develop the facilitation of such market.

QXXII. The GGPLNG try to summarise the most important operational and commercial information to be published by the LSOs. What other types of information should the LSOs provide to the market to improve the transparency and the efficiency of the market?

103. In order to strike a balance between the publication of commercial/ operational information, and the non-disclosure obligation of confidential information, the sole information that the LSO can be obliged to publish should be defined restrictively, being the information that are strictly necessary for the market to have access to the terminal and to use it pursuant to the standard and/or contractual terms and conditions. From this perspective, the GGPLNG should clearly state that information should be published on an aggregate basis.

QXXIII. In your view, are there other points regarding transparency that should be addressed in the GGPLNG?

104. Regarding the "3-minus" rule, the GGPLNG should state that the NRA does not automatically refuse an authorization to publish limited information when at least 3 terminal users have contracted capacity at the same time.

105. GLE believes that the publication of information in English enhances transparency as it might facilitate the access to and the understanding of each national regulatory framework. However, such publication in English might raise some concerns given that national legislations generally impose that binding regulations are only published in national languages. Therefore,

the decision on whether to publish an English version should be discretionary, and in any case the publication must be made by NRAs where the information has been originally published by them. This must include the publication of tariffs or tariff methodologies.

Trading of capacity rights

106. GLE suggest to rephrase paragraph 47 as follows:

> *"Once there is a market demand, LSOs shall ~~provide cost-reflective services (such as an electronic platform or bulletin board) to~~ facilitate:*
>
> a. *secondary capacity trading and associated transfer of capacity rights between the terminal users **(e.g. an electronic platform or bulletin board)**; and*
>
> b. *selling or swapping of LNG in storage among terminal users."*

Several bulletin boards already in place are not charged, which means that they cannot be cost reflective. Some transactions like selling or swapping LNG are completed via the "Over the counter" mode and executed by means of nominations (similar to the exchange of gas at a border between different users).

QXXIV. Opinions have been expressed that in some markets, organised trading of capacity rights might not be necessary, or that the benefits this trading provide to LNG terminal users could be reached by other means. Is an organised secondary capacity market in the terminal useless, useful or necessary? Should the GGPLNG recommend the creation of a secondary market for capacity or should this be left to each LSO or NRA's appraisal?

107. The concept of an organised secondary market could indeed be an effective tool to optimise the utilization of capacity. However, it should be left to the NRA's appraisal to determine whether there is a need or market demand for a secondary market, following a market consultation where appropriate.

QXXV. Considering a need for a secondary capacity market in the terminal, what features would be needed for an efficient functioning of this market? Comments on this issue would be welcome, i.e.:

108. See Question XI, § 59.

– How crucial is contracts' standardisation for the development of secondary market?

109. See Question XI, § 59.

- **Should contracted capacity that has not been nominated be offered on the secondary market by the LSO if the capacity owner does not do it?;**

110. The ownership of a capacity subscribed on the primary market can only change when:

- the capacity is released on the secondary market,
- the capacity is unused pursuant to the definition provided by the Regulation 1775/2005, being a capacity which is not nominated/scheduled according to the contractual terms and conditions. In this case, the terminal user could be obliged to offer the unused capacity on the secondary market. As long as the capacity is unsold, it remains the property of the terminal user,
- the capacity is released by a decision of the NRA because of a systematic underutilization by the terminal user. This capacity will then be offered and reallocated on the primary market.

111. It must be stressed that any lack of clear separation between the respective roles of the LSO and of the NRA has to be avoided. Any opposite conception would predictably generate a risk of discriminatory treatment by a LSO which must both judge and be judged. Consequently, any release of capacity must be decided by the NRA, under its sole liability. Such decision can then be executed by the LSO, but in a way that never jeopardizes the integrity of its revenues. Therefore, the sale of released capacity on the primary market should be organised in a way that even if it is no more its property, the primary terminal user remains liable for the payment of such capacity – although this payment may be cleared subsequently, when the new terminal user has paid the released capacity to the LSO.

- **What is your interest in the offer/demand of not bundled capacities on the secondary market (e.g., berthing capacity, storage capacity etc.)? Have you encountered obstacles regarding this that would justify developing more specific rules about the trading of not bundled LNG services in the GGPLNG?**

112. See Question XVI. The offer of bundled services should remain the priority, but without prejudice to the offer of unbundled services. A secondary market could be an effective tool to optimise the utilization of capacity, for bundled services but also for unbundled services. However, it should be left to the NRA's appraisal to determine whether there is a need for a secondary market for unbundled services, following a market consultation process where appropriate.