

Autorità di regolazione per energia, reti e ambiente (ARERA, Italy)

Enti Rregullator i Energjise (ERE, Albania)

Ρυθμιστική Αρχή Ενέργειας (RAE, Greece)

Approval of “*Guidelines for the 2019 Market
Test of Trans Adriatic Pipeline*”

Proposed by TAP AG on the 14th of June 2019

Whereas¹:

On August 29th 2011 TAP AG submitted to the Italian Ministry of Economic Development and on August 31st 2011 to the Regulatory Authority for Energy of Greece (RAE) an “Exemption Application for Trans Adriatic Pipeline”, as foreseen by Article 36 of the Gas Directive 2009/73/EC. On September 1st 2011 TAP AG submitted to the Energy Regulatory Entity (ERE) of Albania an “Exemption Application for Trans Adriatic Pipeline”, in accordance with Article 22 of the Gas Directive 2003/55/EC.

In June 2013 the Italian Ministry, RAE and ERE took the decision on the exemption, adopting the *Final Joint Opinion* (hereafter: “the FJO”), a document jointly written by ARERA, ERE and RAE (hereafter: “the Authorities”) and amended to comply with the Commission Decision [C(2013)2949 final] dated 16th of May 2013 and to take note of the Opinion 1/2013 of the Energy Community Secretariat dated 14th of May 2013.

In the aforementioned document an exemption from the provisions of Articles 9 (Unbundling), 32 (TPA) for the Initial Capacity of 10bcm/y, and 41.6, 41.8, 41.10 (Regulated Tariffs) of the Gas Directive has been granted to TAP AG for a period of 25 years starting from the beginning of the Commercial Operation Date, under several conditions. Among others, according to Article 4.1.7 of the FJO, TAP AG is obliged to perform Market Tests on a regular basis starting no later than the Commercial Operation Date and, subsequently, at least every two years. TAP AG has to perform the Market Tests under guidelines to be approved by the Authorities, with the view to offer to all Interested Parties additional available capacity up to the Total Capacity of 20bcm/y².

Following Article 4.1.7, TAP AG is obliged to fulfil the binding capacity requests resulting from each market test taking into account the provisions of points 2, 6 and 9 of §4.7 of the FJO. The expansion takes place if it is economically viable, namely if the incremental revenues from capacity resulting from each market test are equal or larger than the efficient incremental costs, quantified according to the TAP methodology as laid down in the TAP Tariff Code.

Additional terms to safeguard full compliance to the criteria of Article 36.1 of the Gas Directive were also imposed, among others:

1. obligation to submit for approval the Network Code, no later than 12 months prior to its Commercial Operation Date. The Network Code shall be compatible with all provisions of Regulation 715/2009 and of the European Network Codes of Article 8.6 of Regulation 715/2009 that are not in conflict with the terms of the FJO;
2. obligation to build additional entry and exit points in Greece and Albania upon request of a third party, as a result of any market test, as long as such

¹ Hereafter the definitions of the *Final Joint Opinion* and of EU Regulation 2017/459 apply.

² Following Article 4.1.9, the possibility to further expand capacity beyond the Total Capacity, (i.e. beyond 20 bcm/year), shall be investigated by TAP AG and if economically and technically feasible, it will be undertaken, with a view to fulfil all requests for long-term capacity (long-term means here a duration of more than 15 years).

construction is technically feasible. The burden of proof to demonstrate that the construction of such additional entry and exit point is not technically feasible rests with TAP AG. If so requested by the Authorities, TAP AG is to provide an opinion from an independent third party. All costs related to the construction and operation of such entry and exit points will be borne by the third party who made the request, according to the national legislation in place at the time of the request. Costs related to such entry and exit points will not include the investments required for additional capacity of TAP, resulting from §4.1 of the FJO, which will be remunerated through TAP Tariffs;

On March 16th 2017 the new EU Regulation 459/2017 “establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013” was adopted. The EU Regulation 2017/459 (hereafter: CAM NC) establishes a Network Code setting up capacity allocation mechanisms in gas transmission systems for both existing and incremental capacity.

TAP AG must launch the first Market Test for expansion (incremental) capacity no later than the Commercial Operations Date which is foreseen during year 2020.

TAP AG has submitted to the Authorities the Guidelines for the Market Test, seeking to align the related provisions of the Final Joint Opinion with EU Regulation 2017/459, in particular by coordinating the expected timeline/deadlines and by strengthening the cooperation with adjacent TSOs.

The main points of the proposed Guidelines are:

1. the process is split into two phases, a *non-binding phase* (that includes the demand assessment and the design of expansion) and a *binding phase* (that includes an information period and a binding bidding phase);
2. the above-mentioned phases shall follow the ENTSOG calendar as described in CAM NC;
3. the process is replicated at least in each odd-numbered year immediately after the start of the Annual Yearly Capacity Auction, (in case of year 2019 the *non-binding phase* starts on the 1st of July);
4. the procedure is open to all Interested Parties, namely any legal person who is interested in submitting non-binding and binding capacity demand indications to TAP and to participate in TAP’s Market Test in a transparent and non-discriminatory manner;
5. during the Market Test, all Interested Parties can request expansion of the entry and/or of the exit capacity on the TAP Transportation System, as well the construction of new entry and/or exit points along TAP’s transportation system;
6. Interested Parties must submit to the Authorities a declaration to ensure that their non-binding demand indication complies with any applicable Capacity Caps; they have also to confirm to TAP AG, at least two weeks prior to the end of Assessment Phase that the Authorities have deemed the request compliant with capacity caps.

7. Interested Parties who submit the non-binding demand indications to TAP has the responsibility to submit any corresponding non-binding demand indications to relevant adjacent TSOs according to CAM NC rules, or to procure the interconnection capacity according to relevant procedures in non-EU countries;
8. the Demand Assessment Report (DAR) is developed and published jointly with Adjacent EU TSOs and it will include the prospective demand for expansion at the interconnection points. The reports will be built on the template developed by ENTSOG and will reflect Articles 26(12) and 26(13) of the CAM NC;
9. the binding phase is sketched in the proposed Guidelines because its detailed rules will depend on the demands received during the non-binding phase and will be subject to further approval by Authorities;
10. to ensure a meaningful participation to the non-binding phase of the market test, a fee is foreseen to be paid upfront to cover administrative costs of the procedure; another fee is foreseen to finance the technical studies for Connection Requests during the expansion design phase; the amount will be paid before the beginning of the design phase. Administrative fee is reimbursed to the respective Interested Parties following a successful Economic Viability Test and execution of at least one Gas Transportation Agreement for Forward Firm Long-Term capacity with any user, also in case it is different from the Interested Party who made the request.

Whereas:

- the proposed Guidelines as summarised above are in line with the principles stated in the Final Joint Opinion, in CAM NC and in all national legislations and do not introduce undue barriers to the foreseen process for building incremental capacity;
- the process is designed in a way that facilitates the cooperation with adjacent TSOs, with the aim of ensuring a coordinated development of the network, avoiding possible mismatch in the building of cross border capacity;
- it is necessary to define the procedure to confirm the compliance with capacity caps;

the Authorities jointly

- approve the “*Guidelines for the 2019 Market Test of Trans Adriatic Pipeline*” submitted document proposed by TAP AG and attached as ANNEX B;
- state that in case of non-compliance of the capacity request with capacity caps, the Authorities will provide a written notice to the Interested Party. In default of such notice, the request is deemed compliant.