

Autorità di regolazione per energia, reti e ambiente (ARERA, Italy)
Enti Rregullator i Energjise (ERE, Albania)
Ρυθμιστική Αρχή Αποβλήτων, Ενέργειας και Υδάτων (RAE, Greece)

Approval of “Market Test Guidelines for Trans Adriatic Pipeline”

Proposed by TAP AG on the 16th of June 2023

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

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).

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 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.

On June 14th 2019, TAP AG submitted to the Authorities the “*Guidelines for the 2019 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. Following the approval of the Authorities, TAP AG launched, in coordination with adjacent TSOs, the first Market Test for expansion (incremental) capacity on July 5th 2019. During the binding phase, shippers did not submit any binding bids.

On June 11st 2021, TAP AG submitted to the Authorities the “*Guidelines for the 2021 Market Test of Trans Adriatic Pipeline*”. Following the approval of the Authorities, TAP AG launched, in coordination with adjacent TSOs, the second Market Test for expansion (incremental) capacity on July 2021 (hereafter: 2021 Market Test).

At the stage of the Project Proposal approval by the Authorities, the three TSOs (SRG, TAP AG and DESFA) considering the recent gas market developments suggested that the 2021 Market Test could be performed in two rounds of binding phases: a first one in January 2023 and a second one, if needed on the basis of the results of the first binding phase, during 2023.

The first binding phase was concluded on February 2023 with the allocation of capacity and the signature of GTAs. As a result of the first binding phase, the Level 1 of capacity (as defined in the Project Proposal approved by the Authorities in November 2022) was assigned. A second binding phase is expected to take place during 2023, enabling submission of binding bids up to the Full Expansion.

On June 16th 2023, in compliance with Section 4.1.7 of the Final Joint Opinion, TAP AG submitted to the Authorities the “*Guidelines for the 2023 Market Test of Trans Adriatic Pipeline*” (hereafter: *Guidelines 2023*).

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) as described also in CAM NC;
2. the procedure is open to all Interested Parties, namely any legal person who is interested in submitting non-binding capacity demand indications to TAP and to participate in TAP’s Market Test in a transparent and non-discriminatory manner;
3. 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;
4. interested Parties are responsible to ensure that their Binding Bids comply with any applicable Capacity Cap according to the FJO. To this end, applicants shall provide to TAP and the Authorities the information relating to the Binding Bid made to TAP, as well as any other information that the Authorities may request (the details of the communications and interaction for the purposes of this evaluation will be inserted in the Binding Phase Notice and in the Project);
5. Interested Parties who submit the non-binding demand indications to TAP have 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;
6. 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;
7. to ensure a meaningful participation to the non-binding phase of the market test and in accordance with Article 26(11) CAM NC, a *Participation Fee* of 10,000 EUR is payable by each Interested Party wishing to participate in the Market Test. The participation fee is reimbursed to the respective interested parties following a successful economic viability test and execution of at least one Gas Transportation Agreement with any user;
8. TAP retains its right to request fees also for the performance of technical studies necessitated by the non-binding Capacity Requests. Such fees may be foreseen in the Project Proposal and would be reimbursed under the same conditions as the Participation Fee;
9. the Guidelines ensure the coordination with the ongoing 2021 Market Test, which might run a second binding phase, at the discretion of the concerned TSOs, therefore the exact timeline of the new Market Test will be published by TAP right after the formal conclusion of 2021 Market Test.

Whereas:

- the proposed *Guidelines 2023*, as summarized above, are in line with the principles stated in the Final Joint Opinion, in CAM NC, 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;
- the proposed *Guidelines 2023* takes into account the need of ensuring the proper coordination with the still open 2021 Market Test;

the Authorities jointly

- approve the “*Guidelines for the 2023 Market Test of Trans Adriatic Pipeline*” submitted document proposed by TAP AG and attached as ANNEX B.