Shannon LNG Request for Exemption from Regulated Third Party Access Rules

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Abstract:
This paper contains a decision by the Commission to grant Shannon LNG Limited (‘Shannon LNG’) an exemption from regulated third party access.

Target Audience:
Gas Customers, Shippers, Suppliers and relevant industry stakeholders.

Related Documents:

For further information on this decision paper, please contact Stuart Coleman (scoleman@cer.ie) at the Commission.
Executive Summary

On 25th September 2008 the Commission received an application from Shannon LNG seeking a full exemption from regulated Third Party Access (“rTPA”) rules in respect of the liquefied natural gas (LNG) import terminal which it is planning to develop on the Shannon Estuary between Tarbert and Ballylongford.

On 2nd July 2009 the Commission published a consultation paper concerning Shannon LNG’s request for exemption. The consultation paper set out the legal framework, the market context, the Commission’s assessment of the exemption application and, if an exemption were granted, the terms which should apply to it. The Commission’s initial views were that the Shannon LNG project met the exemption criteria and were minded to grant an exemption subject to certain conditions (i) the developer not achieving pivotal supplier status and (ii) a maximum duration of 25 years. The Commission sought views from interested parties.

Nine parties responded and all were broadly supportive of the granting of an exemption to Shannon LNG. The Commission remains of the view that Shannon LNG’s application meets the criteria as set out in Article 22 of Directive 2003/55/EC. The Commission has addressed the key points made by stakeholders in the consultation exercise - including the suggested reliance on the pivotal supplier concept to trigger a possible revocation of an exemption should market structure change radically at some stage in the future. The Commission has decided to grant an exemption to Shannon LNG subject to certain conditions.

The next step is to notify the European Commission of the decision to grant an exemption to Shannon LNG. Within two months of receiving the notification the European Commission may request the Commission to withdraw or amend the decision to grant an exemption. The two month period may be extended by an additional month where the European Commission requests further information.
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1 Introduction and Background

1.0 Introduction

This paper sets out the Commission for Energy Regulation’s decision on the application by Shannon LNG for an exemption from regulated third party access (rTPA) for its planned liquefied natural gas terminal in County Kerry. The paper describes the background to the exemption application, the project itself, the public consultation exercise and an evaluation of the extent to which the statutory criteria for exemption are met, and the next steps involving notifying the European Commission of the proposal to grant an exemption.

1.2 Background Information

On 25th September 2008 the Commission received an application from Shannon LNG seeking a full exemption from regulated Third Party Access ("rTPA") rules in respect of the Liquefied Natural Gas (LNG) import terminal which it is planning to develop on the Shannon Estuary between Tarbert and Ballylongford.

On 2nd July 2009 the Commission published a consultation paper (CER/09/098) concerning Shannon LNG’s request for exemption. The consultation paper set out the legal framework, the market context, the Commission’s assessment of the exemption application and some of the terms of the exemption. The Commission’s initial views were that the Shannon LNG project met the exemption criteria and were minded to grant an exemption subject to certain conditions (i) the developer not achieving pivotal supplier status and (ii) a maximum duration of 25 years. At the same time, the Commission published Shannon LNG’s application and supporting material, including a report by the Brattle Group on the economic case for an exemption from rTPA. The Commission sought views from interested parties.

The Commission received nine submissions to the consultation paper. One of these parties requested that their submission remain private and confidential. The remaining 8 submissions were received from the following participants;

- Ballylongford Enterprise Association
- Bord Gáis Energy
- Endesa Ireland
• Kerry County Council
• Shannon Development
• Shannon Foynes Port Authority
• Shannon LNG
• Tarbert Development Association

These responses are available to view on the Commission’s website. The Commission would like to thank those parties for contributing to this consultative process and ensure all parties that their comments were given due consideration in the Commission’s final decision.

1.3 The Relevant Legislation

This was described in detail in the July 2009 Consultation Paper (CER/09/098).

In essence, Article 22 of Directive 2003/55/EC provides that, by way of exception to the general rule of regulated third party access to the gas system (including LNG facilities), national regulatory authorities may exempt “major new gas infrastructures” from such regulation where five conditions are met and where the European Commission has not objected within two months of being notified of the national regulatory authorities decision. The five conditions are described in Section 3 below.

The European Commission has recently published the final version of a non-binding Guidance Note on such “Article 22 Exemptions”.

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2. The Shannon LNG Project

This was described in some detail in the May 2009 Consultation Paper. The essential features can be recapped as follows.

Shannon LNG proposes to construct a liquefied natural gas (LNG) regasification terminal on a 104 hectare (257 acre) site located on the Shannon Estuary between Tarbert and Ballylongford in Co. Kerry. The site, which is zoned industrial by Kerry County Council, is owned by Shannon Development and Shannon LNG has an option to purchase the site subject to obtaining planning approval. Shannon Development has reserved the site as a national strategic location for large-scale maritime related industry, such as an LNG regasification terminal, primarily because of its access to relatively sheltered deep water in the Shannon Estuary.

Shannon LNG has stated that, due to the scale and nature of the project, the overall period for construction and pre-commissioning of the initial phase of the terminal project is expected to be up to 48 months. Shannon LNG has advised the CER it anticipates the project will begin commercial operations in the 2015/16 time period, subject to the issue of the required permits and approvals. The developer advises that the natural gas pipeline connecting the LNG terminal to the national transmission network is planned for construction no earlier than 2012. This pipeline is not the subject of the exemption request and will be operated as a third party access pipeline.

The proposed Shannon LNG terminal will comprise a number of components:

- LNG Jetty (capable of receiving and providing secure berthing for LNG ships up to 265,000m³ cargo capacity).
- LNG Storage tanks (there will be up to four full containment LNG storage tanks each with a capacity of up to 200,000m³).
- Vaporisation/Regasification Process Equipment, Administration and security building, stores, workshops and various other buildings and process equipment.

The terminal will have an initial peak send out capacity of 17mscmd, with the potential to increase to 28.3 mscmd dependent on market demand.

Shannon LNG proposes that an affiliate/subsidiary of Shannon LNG will be the sole user of the terminal. For the purposes of their application, the developers refer to the affiliate as ‘TradeCo’. The assumption is that Hess Corporation is the
100% shareholder of TradeCo. TradeCo will be responsible for the delivery of LNG to the terminal and the sale of gas from the terminal. The role of TradeCo in the overall Shannon LNG project is illustrated in Figure 1 below, (taken from the developer’s exemption application).

**Figure 1: Shannon LNG Project Structure**

Shannon LNG will own and operate the terminal. They will generate revenue by contracting the long term capacity to TradeCo for a fee. TradeCo, an affiliate/subsidiary of Shannon LNG, will be responsible for the delivery of LNG to the terminal and sale of gas from the terminal. Shannon LNG will be the presumed holder of the LNG operating licence from the Commission. The Shannon LNG business model is therefore a combination of an own-use terminal and a tolling terminal.

Shannon LNG has given consideration to holding an open season\(^2\) on the LNG terminal but decided not to pursue it. This, they argued, was due to the perceived disproportional effort required for both the size of the project and the size of the market that Shannon LNG can effectively serve. According to an analysis

\(^2\) Open season is a non discriminatory method, whereby an auction or individual negotiation may be offered to potential users to allow TPA to the new infrastructure. Open season gives potential users an opportunity to gain access to the new infrastructure at the planning and feasibility stage of the project.
undertaken by the Brattle Group on behalf of Shannon LNG, if Shannon LNG were to hold an open season, it would give a large existing supplier an opportunity to buy capacity, thereby reducing the level of competition from what it would otherwise be. With the capacity holder (Hess) being a new entrant to the market Shannon LNG argued, this could be seen as creating an unfair advantage to larger existing suppliers.

Shannon LNG is proposing, however, to deploy Use It Or Lose It (UIOLI) principles. The setting up of a UIOLI policy is seen by Shannon LNG as an effective method by which TradeCo can offset some of its fixed charges. Shannon LNG will charge TradeCo a fee designed to recover the capital and operating costs of the terminal.
3. The July Consultation Paper

In the Consultation paper published on 2\textsuperscript{nd} July 2009, the Commission analysed in some detail the market context for the exemption application, including the relevant market definition, as well as the extent to which the application could be said to satisfy the five statutory criteria set out in Article 22 of Directive 2003/55/EC. This analysis is recapped briefly below.

3.1 The Relevant Market Definition

The July Consultation Paper described recent developments in international trade in LNG before focussing more particularly on the Irish gas market where it noted, among other things:

- The very small size of the Irish market by international standards and the fact that it is currently supplied from two entry points.

- One of these entry points (Moffat in the UK) accounts for over 90% of gas supplies to Ireland by way of two interconnectors (ICs).

- While the medium term outlook for gas demand in Ireland is uncertain, there is little prospect of serious congestion arising on these ICs.

- An additional entry point is planned in Mayo to allow connection of the Corrib offshore gas field to the transmission system in the near future.

- The Shannon LNG project has the potential – assuming both phases go ahead - to meet 60% of projected peak daily demand in Ireland and to fully satisfy the average daily demand.

The Consultation Paper went on to conclude that the relevant product market for the purpose of the exemption application should be the general wholesale gas market and the relevant geographic market should be the UK and Ireland, at least for so long as the ICs between Ireland and the UK remain uncongested. This geographic market definition was taken largely from the customer's perspective. From the developer's perspective, the geographic market may be confined to Ireland, at least until such time as a reverse flow facility on the ICs becomes a reality.
3.2 The Statutory Criteria

The five criteria cited below are taken directly from Article 22 of the 2003 Directive and are each followed by a summary of the Commission initial findings as set out in the Consultation Paper.

(a) “The investment must enhance competition in gas supply and enhance security of supply;

The Commission considered that Shannon LNG will clearly enhance Ireland’s security of gas supply, both in terms of greater geographic diversity of supply sources and a very sizeable increase in the projected capacity margin. The Commission also considered Shannon LNG to have the potential to enhance competition in the gas wholesale market, at least for so long as the two geographic markets remain coupled through uncongested interconnectors. The Commission therefore considered that criterion (a) has been met by the developer.

(b) “The level of risk attached to the investment is such that the investment would not take place unless an exemption was granted;

Given the scale of the investment, the risks involving in competing for LNG and the fact that the facility will not be underwritten by the general customer, the Commission considered that this criterion has been met.

(c) 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;

Shannon LNG is a completely separate entity to the system owner (Bord Gáis Eireann (BGE) and operator (Gaslink), both in legal form and in ownership terms. The Commission therefore considered that this criterion has been met.
(d) Charges are levied on users of that infrastructure;

As stated in its application, ‘Shannon LNG will charge TradeCo a fee designed to recover the capital and operating costs of the terminal. The fee will have a fixed and variable element reflecting the fixed and variable costs incurred by the terminal in unloading, storing and regasifying LNG’. The Commission therefore considered that this criterion has been met.

(e) The exemption is not detrimental to competition or the effective functioning of the internal gas market, or the efficient functioning of the regulated system to which the infrastructure is connected.”

The Consultation Paper focussed on this particular criterion in some detail. This criterion has similarities with condition (a) but, as the European Commission itself has noted, the focus is on the exemption rather than on the investment itself.

Criterion (e) was considered under each of its three sub-headings.

(i) Exemption not detrimental to competition.

The Consultation Paper, drawing in part on the European Commission's own non-binding Guidelines as well as on precedent cases, focused very much on the competitive position of the market at the outset and the extent, if any, to which an exemption for the LNG Project could either jeopardise or indeed enhance that competitive position.

A key factor here is the very contestable Ireland/UK wholesale gas market at present and the fact that the planned holder of capacity at the Shannon LNG terminal – TradeCo - would effectively be a new entrant to that market. TradeCo’s parent, Hess, currently supplies only 2.5% of gas demand in the UK and does not supply gas to Ireland. Another important factor was the express commitment by the developer to introduce a Use It Or Lose It (UIOLI) regime in consultation with the Commission.

Before concluding on this particular criterion, however, the Commission had to consider the possibility of IC congestion and a sustained de-coupling of the Irish and UK wholesale gas markets at some stage in the future, however unlikely this might be viewed. The sheer duration of the exemption period requested by Shannon LNG – 30 years at least – required this contingency to be addressed.
Figure 2 below set out the forecasts of projected gas demand and supply on the island of Ireland up to 2029/30.

These indicate that Shannon LNG could become a “pivotal supplier” to the Irish gas market by as early as 2015/16 when measured by peak day demand.

To deal with such a contingency, the Consultation Paper outlined the concept of a “Pivotal Supplier” as a reasonably familiar tool used in some markets to describe a situation where demand for a particularly important good or service (e.g. electricity, natural gas) can only be met if our particular supplier - “the pivotal supplier” - delivers a portion or all of his capacity to the market. Put simply, in the event that the ICs were to become congested the key question would be if Shannon LNG – assuming it is exempted from rTPA - could or would exploit the situation by withdrawing capacity in sufficient quantity to raise the prices and increase their margin to the detriment of customers.

The Commission concluded Shannon LNG might be pivotal under certain, albeit rather exceptional, circumstances. For instance, if one or other of the ICs become congested at some stage in the future. If this situation were to arise, the Commission considered it would have to reserve the right to withdraw an exemption. Otherwise there would be no market or regulatory constraint on the developer.
The Consultation Paper also looked at using the RSI\(^3\) (Residual Supply Index) which it deemed to be a useful measure of determining the extent to which one supplier could be deemed pivotal to meeting demand. This is particularly the case when the demand is for an essential good (such as electricity or gas) which cannot be readily substituted by other goods or from other geographic sources.

The Consultation Paper concluded, tentatively, that the competition aspect of criterion (e) was probably met subject to the Commission expressly reserving the right to withdraw an exemption in the event of the developer achieving pivotal supplier status in the wholesale gas market at some stage in the future.

The Commission acknowledged that this might introduce a degree of developer uncertainty, and it was particularly anxious to get stakeholder feedback on the Pivotal Supplier concept and how it might work in practice.

(ii) Effective functioning of the internal market.

Overall given the fact that the Shannon LNG project has the potential to likely increase gas supplies and diversify trade flows within the EU, the Consultation Paper concluded that Shannon LNG would satisfy this aspect of Criterion (e).

(iii) Effective functioning of the Irish regulated gas network system.

In relation to the impact of the exemption on the efficient functioning of the connected pipeline system, Shannon LNG stated that it will provide an additional point of pressure support to the Irish transmission network. Shannon LNG also anticipates entering into a Connected Systems Agreement (CSA) with Gaslink. The CSA will govern the interface between the Shannon LNG project and the BGE owned pipeline. The CSA will cover: pressure, quality of gas to flow and ramp up rates, gas specification and safety. The developers would in any event be operating under an LNG Operating Licence which would require them to comply with all relevant gas industry technical codes and standards.

The Consultation Paper concluded that this aspect of Criterion (e) was also met.

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\(^3\) In the Californian electricity generation market, the Independent System Operator (CAISO) first developed the RSI to measure the ability of a generating unit to set the prices and possibly abuse market power.
4. Comments Received on the Consultation Paper and Commission Response

The Commission received nine submissions to the consultation paper CER/09/098.

Three of the responses were from existing participants in the Irish gas and electricity markets. Five of the nine respondents were from local associations, all of whom supported the Shannon LNG application for an exemption on the grounds that the building of a regasification facility in the area would be good for the local economy. One respondent even asked that “as a minimum, the terms of the exemption granted to Shannon LNG should be more favourable than the terms of the exemptions most recently granted to companies in the UK”. The final response was from Shannon LNG itself.

An overview of the mains points presented by respondents is laid out below:

- Shannon LNG should be given more favourable terms than those recently offered to LNG import facilities in the UK which was for 25 years as a longer term would ensure adequate risk/reward balance for this major investment at no cost to the state.
- The Shannon LNG proposal is ideal for the Ballylongford land bank.
- The project has the potential to greatly enhance Ireland’s security and diversity of energy supply.
- The exemption should be granted initially for a period of 15 years, after which the merits of the exemption should again be reviewed by the CER, -exemption can be given for a period of 15 – 25 years depending on the prevailing market and regulatory conditions.
- Has the CER considered whether there would be implications for the exemption if Shannon LNG Limited or any of its affiliated companies, e.g. TradeCo, were to become a supplier in the Irish retail market?
- A portion of the capacity should be made available to third parties and the exemption should have an end date. It would be “proportionate” to issue a partial exemption to Shannon LNG valid for 20 years, such that 70% of the capacity of the terminal was exempted from third party access for 20 years.
- Competition would be enhanced to a greater extent if a portion of the capacity is available for third party access.
• Agree with the Commission for an exemption period of no longer than 25 years. The exemption period should also include any expansion capacity from the same effective date (i.e. not staggered).

• It would be important to ensure that the majority of the wholesale LNG supply is available via commercial tender or auction for independent suppliers.

• The Commission should require a significant proportion (25-30%) or even the majority of LNG supply to be made available to the market on a commercially tendered or auction basis, with contractual arrangements that are sufficiently flexible to offer a variety of terms e.g. 1 year, 5 years, etc.

• TradeCo should not participate in the retail market while the exemption is in place.

• If the CER decide to grant an exemption, they should not put Shannon LNG at a competitive disadvantage to the British LNG terminals by including a clause in any exemption order relating to the theoretical pivotal supplier concept. – None of the UK exemption orders include any condition around the pivotal supplier test.

Although all respondents were in general agreement with granting the exemption, several substantive points were raised. These are addressed below.

**TradeCo Becoming a Retail Gas Supplier**

One point raised by two respondents was in relation to TradeCo trading in the retail market. It was suggested that any exemption should be made conditional on TradeCo not entering the retail market.

It would appear from Shannon LNG’s own application document and from discussions with them, that they have no plans at this stage for their off take affiliate, TradeCo, to enter in the retail market in Ireland. It is on this basis that the application for exemption has been examined. If TradeCo were to consider entering the retail market, they would have to be licensed and therefore the Commission would have to examine the merits in granting any such license at that time. Given this, the Commission does not consider that it would be either practical or fair to try to impose conditions on any exemption granted which would relate to possible downstream developments in the retail market as they were not part of the original application for exemption. The Commission would add, however, that should such developments come about at some stage in the future,
it would require considerable persuasion and new evidence as to why TradeCo should be restricted from entering the retail gas market or that its exemption should be reviewed purely on this account.

**The Case for a Partial Exemption**

Another point raised was to explore the option of granting the exemption for an initial 15 year period then reassessing the prevailing market conditions and deciding whether another 10 years could be further granted. This idea, which has been given some support by ERGEG,⁴ may, however, not be practical or warranted in reality in the present case. Defining ex ante measures/rules under which an exemption may be reviewed could be difficult to establish at the outset. As with any market movements the rules/measures determined at the outset of the exemption period may be insufficient or arbitrary.

Regulators aim to give stability to the market when making decisions so when granting an exemption the Commission must be fair to the applicant and its competitors. The best vehicle for applying conditions to the exemption is in the details of the exemption order.

The notion of granting a partial exemption, although not an exception to the rule, is not the norm, with the majority of LNG regasification facilities being either granted full exemptions or being subject to rTPA. The Commission does, however, note the cases where partial exemptions ranging from 50% to 80% have been granted. Allowing for a partial exemption might work efficiently in creating a partial rTPA-access instead of no access at all also a partially exempted project will at least have a certain contribution to market development. As against that, there is little or no regulatory merit in granting a partial – as opposed to a full - exemption if the objective economic conditions justifying only a partial exemption are not evident, or just for the sake of granting only a partial exemption. The developer of a major LNG infrastructure is entitled to a reasonable measure of regulatory certainty and objective analysis to demonstrate that a partial exemption only is warranted. In continental Europe, where congestion on pipelines is more commonplace, partial exemptions have been granted as a means to breakup incumbent monopolies and create open access for more competition to develop. In the case of Shannon LNG where a full

⁴“Possibility of an exemption review: there is need to establish ex-ante transparent, non-discriminatory, stable and consistent rules on the circumstances under which an exemption can be reviewed” – Ref: E07-GFG-31-07b
exemption has been requested there is no congestion on pipelines into Ireland and the arrival of a new entrant with no existing market share is welcome as a means of creating further competition. The Commission therefore deems the application for a full exemption appropriate in this situation.

The Pivotal Supplier Concept

In Shannon LNG’s response it argued that the concept of the Pivotal Supplier as outlined in the Consultation Paper would create serious difficulties for the project. LNG suppliers will have difficulties understanding the unfamiliar concept (in the gas market at least) and it would create difficulties for Shannon LNG in securing a long term LNG supply contract to serve the Irish market. It is not a concept that is used in the gas market as opposed to, for example, the power generation market where it has been applied. It is not an appropriate measure, Shannon LNG argued, to prevent anti-competitive behaviour in the gas market.

A better way to anticipate and provide for potential competition issues arising at some stage in the future, Shannon LNG argued, would be to ensure that an appropriate anti-capacity hoarding regime is in place, such as a UIOLI policy, and to rely on a more broadly based exemption revocation mechanism in the event of “material change” such as those used in recent UK individual LNG exemption decisions.

The Commission acknowledges that the deployment of the pivotal supplier concept would appear to be rather novel in the LNG market context. It is probably a more familiar analytic tool in the power generation market. In proposing how it might apply to Shannon LNG in the July Consultation Paper, the Commission was seeking to achieve a reasonable balance between the need, on the one hand, to reserve a regulatory right to intervene in the event that the gas market supply structure changed very materially at some stage in the future and, on the other hand, to provide as much regulatory clarity and certainty to the developer and to its trading partners/financiers as to what would trigger such an intervention. The Commission has no wish to subject the Shannon LNG exemption application to a more onerous or prescriptive regulatory treatment than would apply in, say, the UK unless such differential treatment is objectively warranted by market conditions prevailing in Ireland.
The Commission also notes that a more general and broadly based regulatory right to revoke an exemption in the event of a “material change” of market circumstances puts the developer on notice of regulatory intervention, in line with what appears to be the practice followed in the UK. The developer has made it clear that it would be happy to proceed on this basis.

The Commission has therefore decided not to proceed with the pivotal supplier concept as a means of designing an *ex ante* mechanism which would trigger regulatory intervention and potential revocation of an exemption. Instead, the Commission will make an exemption conditional on

1. a general right to intervene and revoke an exemption in the event of a material change in the competitive position of the wholesale gas market in Ireland and
2. the development and approval by the Commission of satisfactory UIOLI procedures in the forthcoming LNG operating licence which Shannon LNG will be required to apply for in any event. The details of such UIOLI procedures will be developed in the future and will be based upon prevailing best practice. The conditions, however, will take into account the unique features of the Irish market and will be consulted upon in the future.

The Commission would add here that it considers that, on balance, for as long as the ICs with the UK remain uncongested, it is difficult to see that an exemption from rTPA should be detrimental to competition in the Irish gas wholesale market and therefore this aspect of Criterion (e) should continue to be met.

**The Term of an Exemption**

Regarding the term of the exemption, in the original application Shannon LNG sought an exemption of 35 years duration from the commencement of commercial operations of the terminal. The draft decision proposed an exemption of 25 years. There is no relevant precedent for an exemption of greater than 25 years, at least to the Commission’s knowledge. Given the uncertainties that exist

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5 For a prospective customer to regasify a ship load (160,000m³) of gas in Ireland, it would take a customer with a 2mcm demand 46 days to regasify the shipload. A 2mcm demand is equivalent to one 400MW CCGT or 320K domestic homes in winter.
over such an extended period of time the Commission believes that it would not be appropriate to grant an exemption of longer than 25 years. This does not necessarily mean that an exemption would not be extended beyond 25 years, depending on market forces, regulatory regime etc. prevailing at that date. It means that, as of now, the developer can proceed on the basis of a 25 year exemption for as long as the conditions continue to be observed.

Shannon LNG requested in their response of 11th Sept 2009 that 25 year exemptions should apply to both phases of the terminal from the commencement of commercial operations of each individual phase. With regard to this the Commission has no objection in principle to the exemption applying to the second phase from the commencement of operations of the second phase. However, given the uncertainty over the likelihood and date of the second phase being built and consequently the date of such commercial operation, the Commission reserves the right to examine the length of the exemption applying to the second phase at that time.
Particular Conditions which Should Attach to an Exemption

UIOLI (Use-It-Or-Lose-It)

The development of a UIOLI policy and effective anti-hoarding arrangements are seen as vital for this exemption. A UIOLI mechanism will be developed in conjunction with Shannon LNG and industry consultation to ensure there is no systematic or deliberate under-utilisation or capacity hoarding at the Shannon LNG terminal. The UIOLI policy will be modelled on, and be no less stringent than, best practice elsewhere (e.g. the UK). It will also take account of the characteristics and needs of the Irish gas market.

Contracts – Regulatory Scrutiny of Shannon LNG Contracts

Assessing market power can be difficult and in cases of dominance hard to prove. In their submission Shannon LNG (through the Brattle Group report) suggested that it would be difficult for Shannon LNG to withdraw capacity where long term supply contracts are in place. In discussion with Shannon LNG it has been agreed that the Commission will have access to details of such long term contracts.

By gaining knowledge of certain terms of Trade Co’s gas sales contracts i.e. the length of contracts and the quantity of gas to be delivered on a firm basis, the Commission can be assured that Shannon LNG will not be in a position to exercise market power. The Commission therefore directs as part of granting this exemption that sufficient access to the terms of Trade Co’s sales contracts be either presented to the Commission or verified by a third party. This will enable the Commission to safeguard the interests of the gas consumer and industry.
5.0 Conclusion and Next Steps

5.1 Decision

After considering Shannon LNG’s exemption application, the criteria and the consultation responses, the Commission believes that the Shannon LNG project meets the criteria specified in Article 22 of Directive 2003/55/EC. The Commission therefore grants an exemption to Shannon LNG for the full capacity of the terminal (up to 28.3 mscmd) for a period of no longer than 25 years for each phase, commencing on the date of first commercial operations and subject to the conditions set out in the attached Schedule.

5.2 Next Steps

The next step is for the Commission to notify the European Commission of the decision to grant an exemption. This decision document, together with the exemption order and all supporting documents will be submitted to the European Commission. Within two months of notification the European Commission may request the Commission to withdraw or amend the decision to grant an exemption. The two month period may be extended by an additional month where the European Commission requests further information.
Appendix A


Pursuant to the Gas (Interim) (Regulation) Act 2002 and Article 22 of Directive 2003/55/EC, the Commission for Energy Regulation hereby grants to Shannon LNG Limited an exemption from all regulated third party access (RTPA) obligations set out in Articles 18, 25 (2), (3) and (4) of Directive 2003/55/EC in relation to the LNG importation terminal located at Kilcolgan Lower, Tarbert, Co. Kerry, Ireland subject to the attached Schedule.

This exemption shall come into force on the date on which Shannon LNG Limited notifies the Commission for Energy Regulation in writing that all commissioning activities have been successfully completed in respect of the said LNG importation terminal and it is ready to commence commercial operations and, unless revoked in accordance with the provisions of the attached Schedule, this exemption shall continue in full force and effect for a period of 25 years commencing at that date.

Michael G. Tutty

Chairman

Dated

Denis Cagney

Member of Staff of the Commission

Dated
SCHEDULE

PERIOD, CONDITIONS, AND REVOCATION OF EXEMPTION ORDER

A. Interpretation and Definitions

In this exemption order:

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<th>Expression</th>
<th>Definition</th>
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<tbody>
<tr>
<td>the &quot;Act&quot;</td>
<td>means the Gas (Interim) (Regulation) Act 2002, as amended from time to time;</td>
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<tr>
<td>the &quot;Commission&quot;</td>
<td>means the Commission for Energy Regulation</td>
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<td>&quot;Shannon LNG&quot;</td>
<td>means Shannon LNG limited, a company registered in Ireland under company number 368236 and having its registered office at 70 Sir John Rogerson’s Quay, Dublin 2, Ireland</td>
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<tr>
<td>&quot;TradeCo&quot;</td>
<td>means an affiliate of Shannon LNG that has signed long term Terminal Use Agreements with Shannon LNG, providing it with exclusive capacity rights to the Shannon LNG terminal.</td>
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</tbody>
</table>

Any reference in this Exemption to any directive, statute, statutory provision, order or regulation shall be construed as a reference to that directive, statute, statutory provision, order or regulation as extended, modified, amended, replaced or re-enacted from time to time (whether before or after the date hereof).

B. Full description of the facility to which this exemption relates

The Shannon LNG importation terminal located at Kilcolgan Lower, Tarbert, Co Kerry, Ireland and having:

(a) an initial throughput capacity as at the commencement of commercial operation of up to 17 million standard cubic metres of natural gas per day and;

(b) an expanded throughput capacity of up to 28.3 million standard cubic metres of natural gas per day.
C. Period

Subject to section E below, and pursuant to the Act, this exemption will cease to have effect:

(a) in respect of the initial capacity of the facility, 25 years from the date that the facility commences commercial operation; and

in respect of the expansion capacity, at such time as the Commission may determine.

D. Conditions

This exemption is made subject to the following conditions:

1. That the material provided by Shannon LNG to the Commission in respect of this exemption is accurate in all material respects, provided that Shannon LNG shall be given a reasonable opportunity to remedy any inaccuracy identified in relation to such material.

2. Shannon LNG notifies the Commission in writing within ten days of:

(a) the Shannon LNG importation terminal commencing commercial operation;

and

(b) each increment of additional throughput capacity, beyond the initial throughput capacity set out in Condition B (a), commencing commercial operation.

3. Shannon LNG shall furnish to the Commission, in such manner and at such times as the Commission may reasonably require, such information as the Commission may reasonably require for the purpose of monitoring the extent to which the five conditions set out in Article 22(1) of Directive 2003/55/EC are being met in relation to the Shannon LNG importation terminal.

4. If directed by the Commission, Shannon LNG shall formulate and implement a “Use it or Lose it” (UIOLI) policy at the Shannon LNG importation terminal that takes account of (i) the particular features of
natural gas demand in Ireland; and (ii) any reasonable requirements made by the Commission in relation to the content of such policy.

5. This exemption is transferable where the Commission has given its written consent to such a transfer. For the avoidance of doubt all the conditions contained in this exemption order continue unaffected in respect of any person to whom this exemption order may be transferred.

6. Should any of the grounds for revocation arise under section E of this exemption order, the Commission may, with the consent of Shannon LNG, amend this exemption order rather than revoke the exemption order.

7. The Commission may amend this exemption where the Commission has been requested to amend the decision to grant this exemption by the European Commission (such request being made in accordance with Article 22(4) of Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003).

E. Revocation

This exemption may be revoked by the Commission by giving to Shannon LNG not less than four months’ written notice of the coming into force of the revocation, in any of the following circumstances:

(a) where, in the Commission’s reasonable opinion, there is a material decrease in the degree to which the five conditions set out in Article 22 (1) of Directive 2003/55/EC are being met with respect to the Shannon LNG importation terminal as the direct result of:

(i) an action of Shannon LNG or TradeCo; or

(ii) the occurrence of a change of control in relation to Shannon LNG; or

(iii) the acquisition by Shannon LNG of control over another undertaking or,

(iv) a material change in the competitive structure of the Irish wholesale gas market as described earlier in this decision paper
and Shannon LNG has not, within such reasonable period as may be required by the Commission, remedied such decrease to the reasonable satisfaction of the Commission; or

(b) where:

(i) Shannon LNG has failed to comply with a request for information issued by the Commission under paragraph D3 above; and

(ii) the Commission has written to Shannon LNG stating that the request has not been complied with and giving Shannon LNG notice that if the request for information remains outstanding past the period specified in the notice, the exemption may be revoked; and

(iii) such period has elapsed and Shannon LNG has not provided the requested information; or

(c) where:

(i) Shannon LNG has failed to comply with a direction issued by the Commission under paragraph D4 above; and

(ii) the Commission has written to Shannon LNG stating that the direction has not been complied with and giving Shannon LNG notice that if the direction remains outstanding past the period specified in the notice, the exemption may be revoked; and

(iii) such period has elapsed and Shannon LNG has not complied with the direction; or

(d) where Shannon LNG is unable to pay its debts (within the meaning of section 214 of the Companies Act 1963).