

**Application by Dragon LNG Limited under
section 19C of the Gas Act 1986 for an
exemption from section 19D of the Gas Act
1986**

Ofgem final views

February 2005

Summary

The new Gas and Electricity Directives,¹ amongst other things, introduced a regulated third party access (RTPA) regime for interconnectors and Liquefied Natural Gas (LNG) import terminals. The Directives allow exemption from RTPA to be given by the relevant regulatory authorities, subject to veto by the European Commission. The Directives set down criteria that have to be met in order to justify such an exemption being granted.

On 28 October 2004, Dragon LNG Limited (“Dragon”), then a wholly owned subsidiary of Petroplus Tankstorage International B.V. (“Petroplus”), wrote to Ofgem requesting an exemption under section 19C(2) of the Gas Act 1986 from the application of section 19D of the Gas Act to the entire proposed capacity of its LNG import facility at Milford Haven. As of 30 November 2004 the equity of Dragon is now jointly owned by Petroplus and the throughputters, who are BG Group and Petronas.

In its application, Dragon sets out the reasons why it considers that the Dragon LNG import facility satisfies the criteria contained in section 19C of the Gas Act 1986 for an exemption, as well as the complementary tests set by Ofgem and the Department of Trade and Industry (DTI).

On 26 November 2004, Ofgem issued a consultation² on Dragon’s formal application for an exemption under section 19C(2) of the Gas Act 1986 from the application of section 19D of the Gas Act 1986 in relation to all of the capacity of its proposed LNG import facility at Milford Haven. In summary, Ofgem’s preliminary view was that Dragon’s application is likely to meet all the criteria for exemption and, as such, this project could be expected to have an overall positive impact on competition and security and diversity of supply for the UK. Therefore, Ofgem’s initial view was that it would be appropriate to grant the exemption sought by Dragon.

¹ Directive 2003/55/EC of the European Parliament and of the Council concerning common rules for the internal market in electricity and repealing Directive 96/92/EC; and Directive 2003/54/EC of the European Parliament and of the Council concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC.

² *Application by Dragon LNG Limited under section 19C of the Gas Act 1986 for an exemption from section 19D of the Gas Act 1986*, Ofgem, November 2004.

Ofgem has considered the responses received to the consultation on Dragon's formal application in making a decision on whether to grant an exemption to Dragon from the application of section 19D of the Gas Act 1986 in respect of its proposed LNG import facility at Milford Haven. Ofgem remains of the view that all the exemption criteria are met and therefore the Authority has decided to grant Dragon an exemption in respect of the entire capacity of the proposed Dragon LNG import facility at Milford Haven. This exemption is granted under section 19C(5) of the Gas Act 1986 and it is an exemption from the application of section 19D of the Gas Act 1986. The exemption order is set out in Appendix 1 of this document.

The European Commission has two months in which it can veto a decision by the relevant authority in a Member State to grant an exemption, or request that the regulatory authority amend its decision.³

³ This two month period may be extended by a further month where additional information is sought by the Commission.

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1. Introduction

Background

- 1.1. The new Gas and Electricity Directives, amongst other things, introduced an RTPA regime for interconnectors and LNG import terminals. The Directives allow an exemption from RTPA to be given by the relevant regulatory authorities, subject to veto by the European Commission. With respect to LNG import terminals, the new EU Gas Directive was transposed into GB law with the coming into force of the Gas (Third Party Access) Regulations 2004 on 26 August 2004. Ofgem therefore now has formal powers to grant exemption from the RTPA requirements for LNG import terminals, as set out in sections 19C and 19D of the Gas Act 1986.
- 1.2. The Directives set down criteria that have to be met in order to justify such an exemption being granted. The criteria contained in section 19C(7) of the Gas Act 1986 relating to an exemption for an LNG import facility are:
 - (a) the facility or (as the case may be) the significant increase in its capacity will promote security of supply;
 - (b) the level of risk is such that the investment to construct the facility or (as the case may be) to modify the facility to provide for a significant increase in its capacity would not be or would not have been made without the exemption;
 - (c) the facility is or is to be owned by a person other than the gas transporter who operates or will operate the pipeline system connected or to be connected to the facility;
 - (d) charges will be levied on users of the facility or (as the case may) the increase in its capacity;

- (e) the exemption will not be detrimental to competition, the operation of an economically efficient gas market or the efficient functioning of the pipeline system connected or to be connected to the facility; and
- (f) the Commission of the European Communities is or will be content with the exemption.

1.3. It should be noted that it is against these exemption requirements that Ofgem will assess any application for exemption. Whilst there may appear to be some minor differences between the criteria in the Gas Act 1986 and those contained in the new Gas Directive, Ofgem does not consider that there are any material differences between the two sets of criteria.

DTI/Ofgem exemption policy

1.4. In June 2003, the Department of Trade and Industry (DTI) and Ofgem issued a joint consultation document concerning new regulations to apply to LNG facilities and interconnectors.⁴ This document set out the initial views of the DTI/Ofgem regarding the regulatory regime for interconnectors and LNG facilities. In addition to a quantitative competition analysis, DTI/Ofgem identified three areas that it considered would be minimum requirements for an exempt regime:

- ◆ effective capacity allocation in terms of an initial offer of capacity to market (though under specific circumstances this condition might be loosened);
- ◆ effective mechanisms to ensure that capacity is not hoarded i.e. Use It or Lose It (UIOLI) arrangements; and
- ◆ information provision requirements relating both to the regulator and potentially also to market.

⁴ *LNG facilities and interconnectors, EU legislation and regulatory regime, DTI/Ofgem initial views, DTI/Ofgem, June 2003.*

1.5. In November 2003, the DTI and Ofgem issued final views in relation to the new Directives and the resulting regulatory regime.⁵ By and large, the final views document confirmed, and clarified, the position set out in the initial views document. DTI and Ofgem expanded upon grounds for withdrawal of an exemption:

- ◆ breach of exemption criteria;
- ◆ breach of competition law;
- ◆ bankruptcy; or
- ◆ mergers / acquisition activity.

1.6. At the time, there were several potential projects that were moving to financial close prior to the Directives becoming transposed into GB law. Project developers requested early guidance as to whether they could expect their particular project to be exempt from RTPA. Ofgem said that while it would be prepared to give such guidance, any guidance would need to be informed by consultation on a case-by-case basis. Any such consultation would be on the basis of a draft application for exemption prepared by the relevant infrastructure developer. Ofgem indicated that while it would aim to ensure, as far as possible, that any potential guidance that was issued gave comfort as to the likely regulatory treatment of particular infrastructure, any such guidance issued would also be constrained to a significant extent by necessary legal caveats.

1.7. Ofgem received draft applications for exemption in respect of three projects. In each case, Ofgem consulted upon, and issued regulatory guidance to, each project. The first application was from Gastransport Services (GTS) for the proposed Balgzand Bacton pipeline project (BBL).⁶ The second application

⁵ *LNG facilities and interconnectors, EU legislation and regulatory regime, DTI/Ofgem final views, DTI/Ofgem, November 2003.*

⁶ *Gastransport Services, Draft application for an exemption for the Balgzand Bacton Pipeline project (BBL),*

was received from Qatar Petroleum and ExxonMobil for the proposed South Hook LNG import terminal at Milford Haven in Wales. The third application was received from Dragon for the proposed LNG import terminal, also at Milford Haven.⁷

- 1.8. In each case, Ofgem expressed the view that the application for exemption would be likely to meet each of the exemption criteria set out in the relevant EU legislation. In these documents, Ofgem stated that once legislative authority was granted to Ofgem in respect of the ability to grant exemptions to LNG facilities from the RTPA requirements, Ofgem would expect to undertake a formal consultation process in respect of formal applications it received for exemption.
- 1.9. In each case, Ofgem's views were submitted to the European Commission which indicated general support for Ofgem's position.

Formal application by Dragon LNG Limited

- 1.10. On 28 October 2004, Dragon, at the time a wholly owned subsidiary of Petroplus, wrote to Ofgem requesting an exemption under section 19C(2) of the Gas Act 1986 from the application of section 19D of the Gas Act to the entire proposed capacity of its LNG import facility at Milford Haven. The equity of Dragon is now jointly owned by Petroplus, and the throughputters BG Group and Petronas. The public version of Dragon's application for exemption can be found on the Ofgem website.⁸

Ofgem's initial views

- 1.11. On 26 November 2004, Ofgem issued a consultation paper on Dragon's formal application for an exemption. Ofgem's initial view was that all the criteria for the granting of an exemption were likely to be satisfied and that it

Final views, Ofgem, December 2003.

⁷ *Dragon LNG Ltd, Draft application for an exemption for the Milford Haven LNG import terminal, Final views, Ofgem, June 2004.*

would be appropriate to grant the exemption sought by Dragon. Ofgem invited responses on its initial views and on the draft exemption order to be received by close of business 10 December 2004.

Respondents' views

- 1.12. Ofgem received three responses to the consultation and these responses can be found in full on the Ofgem website. Of the respondents, two agreed with Ofgem's initial view that all the criteria for the granting of an exemption have been satisfied and that it would therefore be appropriate to grant the exemption. The remaining respondent did not comment on Ofgem's initial view. Respondents' views are discussed in Chapter 2.

Ofgem's final view

- 1.13. Ofgem has considered respondents' views in making a decision on whether to grant an exemption to Dragon from the application of section 19D of the Gas Act 1986 for its proposed LNG import facility at Milford Haven. Ofgem's final decision is that Dragon's application meets all of the exemption criteria and, therefore, it is appropriate to grant an exemption to Dragon. Ofgem's final views are discussed in more detail in Chapter 2.
- 1.14. Ofgem has recently clarified the process by which an exemption decision should be notified to the European Commission. If Ofgem decides that the exemption criteria have been met then the Authority will grant the exemption. Ofgem will then submit the exemption decision to the European Commission for it to make its decision as to whether Ofgem's decision should be withdrawn or amended.
- 1.15. Since it is Ofgem's view that all the exemption criteria are met, the Authority has granted Dragon an exemption under section 19C(5) of the Gas Act 1986 from the application of section 19D of the Gas Act 1986 to the entire

⁸ www.ofgem.gov.uk, under "Europe" area of work.

proposed capacity of its LNG import facility at Milford Haven. This exemption order is set out in Appendix 1 of this document.

Way forward

- 1.16. This final views document, together with the exemption order and all supporting documents will be submitted to the European Commission. The European Commission has two months in which it can veto a decision by the relevant authority in a Member State to grant an exemption, or request that the regulatory authority amend its decision.
- 1.17. If you wish to discuss any matters in this document, please contact Adam Higginson on 020 7901 7432.

2. Ofgem's decision

- 2.1. In the consultation document on Dragon's formal application, Ofgem's preliminary view was that that all the criteria for the granting of an exemption were likely to be satisfied and that an exemption should therefore be granted to the Dragon LNG import facility.
- 2.2. Ofgem received three responses to the consultation. This chapter provides a summary of respondents' views and provides Ofgem's final views on the formal application.

Ofgem's analysis of whether the exemption conditions are met

(a) the facility or (as the case may be) the significant increase in its capacity will promote security of supply

Ofgem's initial view

- 2.3. Ofgem considered that the Dragon LNG import facility would be likely to enhance security of supply and that this requirement is therefore likely to be met.

Respondents' views

- 2.4. One respondent considered that the more competing sources of wholesale gas entering the UK gas market via different entry routes the more security of supply will be enhanced.

Ofgem's final view

- 2.5. Ofgem considers the requirement that the facility promote security of supply has been met.

(b) the level of risk is such that the investment to construct the facility or (as the case may be) to modify the facility to provide for a significant increase in its capacity would not be or would not have been made without the exemption

Ofgem's initial view

- 2.6. Ofgem noted that Dragon explains that the project will not proceed unless the exemption is granted as a result of the degree of risk involved in pursuing this project and the extent of the investment and financing needed both for this project and for the other parts of the LNG chain. Therefore, Ofgem considered that the requirement relating to the level of risk of the investment being such that the investment would not be or would not have been made without the exemption was likely to be met.

Respondents' views

- 2.7. No respondents commented on this condition.

Ofgem's final view

- 2.8. Ofgem maintains its preliminary view that the requirement relating to the level of risk of the investment being such that the investment would not be or would not have been made without the exemption has been met.

(c) the facility is or is to be owned by a person other than the gas transporter who operates or will operate the pipeline system connected or to be connected to the facility

Ofgem's initial view

- 2.9. Ofgem explained that it was clear that the Dragon LNG import facility would be fully separate from Transco, the system operator of the transportation system to which the facility is to be connected. On that basis, Ofgem expected that the requirement that the facility be owned by a person other

than the gas transporter who operates or will operate the pipeline system connected or to be connected to the facility was likely to be satisfied.

Respondents' views

- 2.10. No respondents commented on this condition.

Ofgem's final view

- 2.11. Ofgem considers that this requirement has been met.

(d) charges will be levied on users of the facility or (as the case may be) the increase in its capacity

Ofgem's initial view

- 2.12. Ofgem considered that Dragon should not be required to publish its tariffs as there should, where possible, be equivalence in the information required of LNG facility operators to that generally required of similar activities in relevant gas and electricity markets.
- 2.13. Ofgem explained that under the requirements of the exemption order Dragon could be required to provide Ofgem with such information as tariffs. Therefore, Ofgem considered that it would have a route of access to the necessary information to investigate any disputes raised by market participants over tariffs should such disputes arise. Ofgem also explained that, in certain circumstances, Ofgem has statutory powers to publish or disclose information.
- 2.14. Ofgem considered that on the basis that the importation shippers will be charged an annual charge for the use of capacity at the Dragon LNG import facility, the exemption requirement concerning charges being levied on users on the facility would be likely to be met.

Respondents' views

- 2.15. One respondent was supportive of tariffs being published. However, this respondent was content for non-publication of tariffs on the basis that Ofgem will have access to tariff information and will be able to investigate any disputes raised.

Ofgem's final view

- 2.16. As charges will be levied on all users of the facility, Ofgem considers that the criterion concerning charges being levied on users on the facility has been met.

(e) the exemption will not be detrimental to competition, the operation of an economically efficient gas market or the efficient functioning of the pipeline system connected or to be connected to the facility

Ofgem's initial view

- 2.17. Ofgem noted that Dragon, BG and Petronas were currently finalising the throughput agreements and other binding agreements. Ofgem also noted that one aspect of the formal application had changed from the draft application. This is that Centrica has concluded a purchase contract for gas with Petronas for three bcm of gas per year after an initial ramp up period. This would be delivered through the three bcm per year of capacity that has been bought by Petronas in the initial phase at the Dragon LNG import facility. Ofgem's initial view was that there is not anything about this contractual arrangement for the gas supply that would lead it to change its previous conclusion that the exemption of the Dragon LNG import facility would not be detrimental to competition.
- 2.18. Ofgem considered that Centrica's purchase contract with Petronas is not expected to impact on competition in the retail market given that:

- ◆ Ofgem is not aware of evidence to suggest that new entrants and current market participants will not be able to compete within the retail market because of insufficient access to future gas supplies;
- ◆ the GB market is currently dynamic enough to respond to changes in demand and supply;
- ◆ Ofgem considers that its existing powers under UK and European competition legislation should provide sufficient protection against any future abuse within the GB gas market relating to gas trading. For example, Ofgem has concurrent powers with the Office of Fair Trading (OFT) to investigate and fine companies under the Competition Act 1998 if abuse is found to have occurred.

2.19. Given the above considerations, Ofgem was of the view that these supply deals are not directly relevant to the exemption sought in respect of the Dragon LNG import terminal. Ofgem's initial view was that the project would be beneficial for upstream gas competition and would have no material effect on downstream competition.

2.20. Ofgem explained that its views as to the exemption not being detrimental to competition continues to be dependent on Dragon providing facilities for secondary trading and anti-hoarding mechanisms (i.e. UIOLI arrangements).

2.21. Having taken into consideration the changes from the draft application, Ofgem was of the view that the requirement relating to the exemption not being detrimental to competition, the operation of an economically efficient gas market or the efficient functioning of the pipeline system connected or to be connected to the facility was likely to be met.

Respondents' views

2.22. One respondent expected Centrica to secure alternative sources of gas to enable it to service its portfolio due to the projected decline in UK Continental Shelf sources of gas in the near future. This respondent suggested

that recent predictions show that there is healthy interest in bringing additional supplies of gas to the UK allowing existing market participants and new entrants to secure gas supplies to service their portfolios thereby enabling competition in the retail market to continue.

- 2.23. One respondent suggested that there is no obvious reason for Centrica to withhold gas from the market given the presence of a liquid traded gas market in the UK. However, this respondent suggested that were evidence to appear suggesting that Centrica was behaving in an anti-competitive manner they would expect the competition authorities to act swiftly and decisively to remedy the situation given that sufficient powers under the competition legislative framework already exist to cater for such circumstances. This respondent concluded that it would appear that the gas purchase contract entered into between Petronas and Centrica would not be detrimental to competition.
- 2.24. One respondent considered that the more sources available from an increased range of independent suppliers of wholesale gas, the greater the pressure that can be brought to bear on wholesale gas prices in the market generally.

Ofgem's final view

- 2.25. At this stage Ofgem considers that the conclusion of a gas purchase contract between Petronas and Centrica is not likely, on its own, to give rise to specific competition concerns. Ofgem has undertaken competition analysis that suggests that these supply deals are not directly relevant to the exemption proposed for the Dragon LNG import terminal and that the operation of the exemption would be unlikely to have a material detrimental effect on downstream competition.
- 2.26. Ofgem considers that both European and domestic competition laws should provide both a disincentive to engage in any anti-competitive conduct in respect of the supply deals, as well as a mechanism through which any anti-

competitive conduct, should it eventuate, could be addressed. Ofgem monitors the retail gas market on a continuing basis and will investigate market structures or conduct that may give rise to competition concerns. Ofgem also notes that any decision that it may make in relation to Dragon's application for an exemption does not preclude or impact in anyway on the operation of the Competition Act 1998 or the Enterprise Act 2002. Any review of the retail market in response to concerns of abuse of market power is therefore freely able to take account of any impact the contractual arrangements relating to this project may be having on competition.

- 2.27. Ofgem considers that the Dragon project should provide material benefits to upstream markets and that the project should have no material adverse effect on downstream competition. Ofgem considers that this project could be expected to have an overall positive impact on competition. Ofgem therefore considers that the requirement relating to the exemption not being detrimental to competition, the operation of an economically efficient gas market or the efficient functioning of the pipeline system connected or to be connected to the facility has been met.

(f) the Commission of the European Communities is or will be content with the exemption

Respondents' views

- 2.28. No respondents commented on this condition.

Ofgem's final view

- 2.29. Ofgem considers that the Dragon project should provide material benefits to upstream markets and that the project should have no material adverse effect on downstream competition. Ofgem considers that this project could be expected to have an overall positive impact on competition. Ofgem therefore considers that the European Commission will be content with the Ofgem's decision to grant exemption to the Dragon project.

The draft exemption order

- 2.30. In Ofgem's consultation document a draft exemption order for the Dragon LNG import facility was included and Ofgem invited views from respondents on the draft exemption order.

Respondents' views

- 2.31. One respondent noted that the form of the proposed exemption matches those exemptions already granted for the proposed South Hook and Isle of Grain LNG import facilities.

Ofgem's view

- 2.32. Ofgem proposes to make no changes to the draft exemption order contained as an Appendix to the consultation document. The final text of the exemption order is set out in Appendix 1.
- 2.33. It should be noted that a condition of the exemption is that the material provided by the facility owner to the Authority in respect of the exemption is accurate in all material respects. Therefore if the start date for the commercial operation of the first or subsequent phases of the facility were significantly later than the start date set out in the application this could constitute grounds for reviewing the exemption in respect of that phase. Further, Ofgem would expect the facility owner to promptly inform it of any material change to its plans regarding the relevant start dates for the facility or indeed any other statement of intention (for instance, the commitment to put in place UIOLI arrangements).
- 2.34. For the avoidance of doubt, in the event that any of the circumstances occur which may give rise to revocation of an exemption Ofgem would not automatically move to revoke the exemption by giving four month notice that the exemption order is to be revoked. First, Ofgem would enter into discussions with the party or parties involved to establish whether any of the conditions have not been met. Secondly, in the absence of a need to act

urgently, Ofgem would give the party or parties involved the opportunity in reasonable timescales to remedy the circumstances which have caused the grounds for revocation to arise. In the event that in reasonable timescales the party or parties involved have not remedied the circumstances which have caused the grounds for revocation to arise, Ofgem would at this stage consider giving four months notice that the exemption order is to be revoked.

Conclusions

- 2.35. Ofgem remains of the view that it would be appropriate to grant an exemption for the entire proposed capacity of the Dragon LNG import facility at Milford Haven (i.e. the initial capacity of six bcm per year for a duration of 20 years and the expansion capacity of up to six bcm per year, to be constructed in one or more phases, for a duration of 20 years from the date that each phase of the expansion capacity commences commercial operation) to Dragon under section 19C(5) of the Gas Act 1986 from the application of section 19D of the Gas Act 1986.
- 2.36. For the avoidance of doubt, Ofgem's analysis has been carried out against the exemption criteria and is specific to the application for an exemption that Ofgem is considering. Any decision that Ofgem may make in relation to this application for an exemption does not preclude or impact in anyway on the operation of the Competition Act 1998 or the Enterprise Act 2002. Further, as the analysis contained in this document is in relation to a specific situation, the analysis may or may not necessarily be relevant to a consideration of any related issues that may arise, for example under the Gas Act 1986, the Competition Act 1998 or the Enterprise Act 2002.

3. Way forward

- 3.1. This final views document, together with the exemption order and all supporting documents will be submitted to the European Commission.
- 3.2. As mentioned previously, the European Commission has two months in which it can veto a decision by the relevant authority in a Member State to grant an exemption, or request that the regulatory authority amend its decision.

Appendix 1 Exemption order

GAS ACT 1986

SECTION 19C

EXEMPTION

Pursuant to sub-section 19C(5) of the Gas Act 1986 (the Act), the Gas and Electricity Markets Authority hereby gives to Dragon LNG Limited¹, as the owner of an LNG import facility, an exemption from the application of section 19D of the Act in respect to the LNG import facility located at Waterstone, Milford Haven, Pembrokeshire, SA7 31DR, subject to the attached Schedule.



Steve Smith

Authorised in that behalf by the

Gas and Electricity Markets Authority

Dated 1 February 2005

¹ Registered in England No 04562711; Registered Office: Adelaide House, London Bridge, London EC4R 9HA.

SCHEDULE

PERIOD, CONDITIONS, AND REVOCATION OF EXEMPTION

A. Interpretation and Definitions

In this exemption:

“the Authority”	means the Gas and Electricity Markets Authority established by section 1(1) of the Utilities Act 2000
“the Act”	means the Gas Act 1986 as amended from time to time
“the facility”	means the Dragon LNG import facility
“facility owner”	means Dragon LNG Ltd in its capacity as owner of the facility
“facility operator”	means Dragon LNG Ltd in its capacity as operator of the facility
“throughputter”	means any user of the facility

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

The Dragon LNG import facility with:

- (a) an initial capacity of six billion cubic meters per year; and
- (b) an expanded capacity of up to six billion cubic meters per year, to be constructed in one or more phases.

C. Period

Subject to section E below, and pursuant to section 19C(3)(a) of the Act, this exemption will cease to have effect:

- (a) in respect of the initial capacity of the facility, 20 years from the date that the initial capacity of the facility commences commercial operation; and
- (b) in respect of the expansion capacity, 20 years for each phase of expansion capacity from the date that each phase of the expansion capacity commences commercial operation.

D. Conditions

Pursuant to sub-section 19C(3)(b) of the Act, this exemption is made subject to the following conditions:

1. That the material provided by the facility owner to the Authority in respect of this exemption is accurate in all material respects.
2. The facility owner notifies the Authority within ten days of:
 - (a) the initial capacity of the facility commencing commercial operation; and
 - (b) each phase of the expansion capacity commencing commercial operation.
3. The facility owner furnishes the Authority in such manner and at such times as the Authority may reasonably require, with such information as the Authority may reasonably require, or as may be necessary, for the purpose of:
 - (a) performing the functions assigned to it by or under the Act, the Utilities Act 2000, or the Energy Act 2004, each as amended from time to time; or
 - (b) monitoring the operation of the exemption.
4. The facility owner complies with any direction given by the Authority (after the Authority has consulted the relevant gas transporter and, where relevant, the Health and Safety Executive) to supply to the relevant gas transporter such information as may be specified or described in the direction -

- (a) at such times, in such form and such manner; and
- (b) in respect of such periods, as may be so specified or described.

Where the facility owner is prevented from complying with such a direction by a matter beyond its control, it shall not be treated as having contravened the condition specified in this paragraph.

In this condition:

“information”	means information relating to the operation of the pipe-line system which is operated by a relevant gas transporter
“relevant gas transporter”	means any holder of a gas transporter licence under section 7 of the Act owning a transportation system within Great Britain to which the facility is connected or with whom the facility operator interfaces with as a system operator

5. Should any of the grounds for revocation arise under section E of this exemption, the Authority may, with the consent of the facility owner, amend this exemption rather than revoke the exemption.
6. The Authority may, with the consent of the facility owner, amend this exemption where the Authority 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).
7. This exemption is transferable to another facility owner where the Authority has given its written consent to such a transfer. For the avoidance of doubt, all of the conditions contained in this exemption order continue unaffected in respect of any facility owner to whom this exemption order may be transferred.

E. Revocation

Pursuant to sub-section 19C(4) of the Act, this exemption may be revoked in the following circumstances:

1. The Authority may revoke this exemption where the European Commission has requested (in accordance with Article 22(4) of Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003) that the Authority withdraw the decision to grant this exemption.
2. The Authority may revoke this exemption where the European Commission has requested (in accordance with Article 22(4) of Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003) the Authority amend the decision to grant this exemption and the facility owner does not agree (under paragraph D6 above) for this exemption to be amended in the manner so requested by the European Commission.
3. This exemption may be revoked by the Authority by giving a notice of revocation to the facility owner not less than four months before the coming into force of the revocation in any of the following circumstances:
 - (a) where:
 - i. in the Authority's reasonable opinion there is a material change in the degree to which the requirements of sub-sections 19C(7)(a), (c), (d) or (e) of the Act are met with respect to the facility as the result of an action or omission of the facility owner, facility operator, or throughputter;
 - ii. the facility owner has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986, as amended from time to time) of the whole or any material part of its assets or undertaking appointed;
 - iii. the facility owner has an administration order under section 8 of the Insolvency Act 1986, as amended from time to time, made in relation to it;

- iv. the facility owner is found to be in breach of the Competition Act 1998, as amended from time to time; or
 - v. there is merger or acquisition activity in relation to, or by the facility owner, that is detrimental to competition.
- (b) the facility owner has failed to comply with a request for information issued by the Authority under paragraph D3 above and the Authority has written to the facility owner stating that the request has not been complied with and giving the facility owner notice that if the request for information remains outstanding past the period specified in the notice, the exemption may be revoked; or
- (c) the facility owner has failed to comply with a direction issued by the Authority under paragraph D4 above and the Authority has written to the facility owner stating that the direction has not been complied with and giving the facility owner notice that if the direction remains outstanding past the period specified in the notice, the exemption may be revoked.