



Gas storage facility owners and operators, gas shippers, gas suppliers and other interested parties

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18 December 2009

Dear Colleague,

Final Decision: Storengy UK Limited's application for an exemption from section 19B of the Gas Act 1986

On 1 October 2009, Ofgem published a consultation document (the 'October Consultation') setting out its initial view that an exemption should be granted from requirements regarding third party access.

This letter sets out Ofgem's final view and decision on Storengy UK Limited's ('Storengy') application.

Background

In April 2008, GDF Storage Limited¹ submitted an application under section 19A(6)(a) of the Gas Act 1986 (the 'Gas Act') requesting an exemption² from section 19B of the Gas Act in relation to the Stublach salt cavern storage facility which is currently under construction in Cheshire, North-West England. Section 19B of the Gas Act concerns the requirement to provide third party access to gas storage facilities.

The Stublach gas storage facility will consist of ten salt caverns in total. Construction will take place between 2010 and 2012. The first four caverns will be ready to commence storage services during autumn 2013 whilst the remaining six will become operational by autumn 2014. The construction of all ten salt caverns is referred to as Phase 1 of the development; any decision to expand the facility will be taken at a later date and consequently has not influenced our current decision.

Phase 1 of the Stublach project consists of 1,500GWh of gas storage space: 175GWh/day of injectability and 175GWh/day of deliverability. The facility is classified as mid-range due to its ability to deliver gas from its maximum stock at full capacity for up to two months.

Ofgem's consideration and final decision relates to Phase 1 of the Stublach project only. Were the facility to expand further then Ofgem would have to reconsider whether nTPA at

¹ The original application in April 2008 pre-dated the merger between GDF and SUEZ which took place on July 2008. As a result of the merger, GDF was renamed GDF Suez Group. Storengy UK Limited is a wholly owned subsidiary of the GDF Suez Group.

²Section 19A(6)(a) of the Gas Act 1986 states that the Authority shall give an exemption with respect to a new facility where it is satisfied that either "(a) use of the facility by other persons is not necessary for the operation of an economically efficient gas market or (b) the requirements of subsection (8) are met."

the facility, including Phase 1 of the project, was technically and/or economically necessary for providing efficient access to the system for the supply of customers, and therefore whether the exemption granted for Phase 1 should be retained or revoked.

Exemption Criteria

The Gas and Electricity Markets Authority ("the Authority") exempts storage facilities from the requirements of negotiated Third Party Access ("nTPA") when it considers that the use of the facility by other persons is not necessary for the operation of an economically efficient gas market in GB. This provision is contained within Section 19A(6)(a) of the Gas Act 1986.

Ofgem is also required to interpret national law in the context of European Legislation. Therefore, when assessing an exemption application under Section 19A(6)(a) of the Gas Act 1986, we have considered, as set out in Article 19 of the Second Gas Directive³, whether nTPA is technically and/or economically necessary to provide efficient access to the system for the supply of customers^{4, 5}.

In June 2009 Ofgem issued an Open Letter⁶ setting out what factors may be considered in order to determine whether nTPA at a minor facility is technically and/or economically necessary for providing efficient access to the system for the supply of customers. That is, we will examine whether the exemption is likely to distort the market and provide a materially worse outcome than if the exemption is not granted. As stated in the letter, whilst there is no single test to demonstrate whether an exemption should be granted, we will examine a number of indicators to assist us in forming a view on whether an exemption should be granted.

The October consultation document

As indicated above, our initial view was that an exemption should be granted to Storengy. The October Consultation explained the grounds on which we considered that Storengy had met the criteria for the exemption to be granted.

Ofgem received six responses to the October Consultation⁷. All six respondents agreed with Ofgem's overall analysis that nTPA at the facility is not technically or economically necessary for providing efficient access to the system for the supply of customers and that an exemption should therefore be granted in this instance.

³ Directive 2003/55/EC concerning common rules for the internal gas market, 26 June 2003
http://energy.eu/directives/I_17620030715en00570078.pdf

⁴ Although the Third Gas Directive was adopted on 3 September 2009, the provision relating to storage will not come into effect until March 2011. The provisions of the Third Directive are not expected to materially impact on Ofgem's consideration of this exemption application.

⁵ We consider that the requirements of the Gas Act for when a minor facility exemption can be granted do not require additional analysis to that which we propose to undertake when considering whether nTPA is technically and/or economically necessary.

⁶ See Open Letter of 16 June 2009:

http://www.ofgem.gov.uk/Markets/WhlMkts/CompanEff/TPAccess/Documents1/Storage%20Exemptions%20Open%20Letter%2009%20For%20publication_.pdf

⁷ These included responses from Eni, Statoil (UK) Ltd, Scottish and Southern Energy, Centrica, EDF Energy and the Gas Storage Operators Group (GSOG) whose members include, Storengy UK Ltd, the parent company/owner of the Stublach facility. Storengy UK Ltd and Ineos Enterprises Ltd felt it inappropriate to be signatories to the GSOG's submission as this consultation relates to their own commercial interests, whilst Statoil (UK) Ltd did not support the views expressed by GSOG.

Ofgem views on consultation responses

This section sets out our views on the responses received. This includes our views on the comments received in respect of: our relevant market definition for the Stublach facility; our analysis for Storengy's capacity at the facility; our technically and economically necessary assessments; other areas where points were raised; and our conclusion that use of the facility by other persons is not necessary for the operation of an economically efficient gas market.

Assessment of "technically necessary"

One respondent expressed concern that Ofgem's assessment criteria for whether nTPA is technically necessary was only suitable for assessing small market players. It was therefore not sufficiently sophisticated to allow Ofgem to conclude that granting a minor facility exemption would lead to physical distortion such that efficient access was not achieved, especially when considering larger facilities.

The October Consultation set out the limitations of our assumptions when assessing the technical necessity of a facility⁸. We therefore acknowledge that such tests may evolve over time in line with the market. Nevertheless, such tests serve as a robust initial indicator as to whether a facility, both large and small, is technically necessary or not. If there are specific circumstances pertaining to a facility then we expect to take these into account and were we to find that a facility failed such initial tests it may be necessary to conduct further analysis as merited.

Assessment of "economically necessary"

1. Market definition

We continue to consider that the relevant product market is the flexibility market and the relevant geographic market is Great Britain. This view was not opposed by respondents. However, we acknowledged in the October Consultation that the product definition of gas flexibility is not straightforward.

In the October Consultation we established that the characteristics of Storengy's Stublach facility mean that it constitutes a Medium Range Storage (MRS) facility. We then discussed other sources of gas which have flexibility characteristics and whether it was appropriate to consider them as close substitutes to Stublach. These included consideration of Short Range Storage (SRS); Long Range Storage (LRS); Interconnector UK (IUK); Balgzand Bacton Line (BBL); LNG; UK Continental Shelf (UKCS); Pipeline Imports; and Demand-Side Response.

Having carefully considered the past behaviour of these gas supply sources, as well as their characteristics and given the difficulties in establishing a robust market definition, we have identified in the October Consultation that there are three appropriate separate potential market definitions in which to assess whether nTPA at Stublach is economically necessary for providing efficient access to the system for the supply of customers. These are set out below:

1. MRS+LRS+43%IUK+Flex Beach
2. MRS+LRS+43%IUK+Flex Beach+50%LNG
3. MRS+LRS+43%IUK+Flex Beach+LNG

⁸ For example, in the demand analysis undertaken we have not analysed all possible demand scenarios going forward, but rather have assessed whether Stublach facility is technically necessary based on data from National Grid Gas's (NGGs) Ten Year Statement (TYS) to reflect normal market conditions. We recognise that under alternative demand conditions, the conclusions from our analysis may be subject to change. Further caveats include the recognition that changes to our underlying supply assumptions may also change the conclusions from our analysis.

Several respondents to our October Consultation expressed the view that such market definitions constituted an underestimation and was therefore a conservative view of the flexible market. Most notably, comments centred around our assumptions of Norwegian, BBL, LNG and IUK flows and the exclusion of SRS and Demand-Side Response. These issues are addressed below:

(a) Norway

Several respondents disagreed with Ofgem's assumption to discount Norwegian supplies as a source of flexibility, arguing that the observed variability in import patterns was a direct function of such flexibility.

Supplies from Norway are clearly observable as variable on a day to day basis. However, we do not consider that such flows should be considered as flexible given the variability in such supplies appear to be determined more by interactions between contractual and production restrictions⁹ rather than being directly responsive to demand and/or price signals.

Ofgem's decision not to include such flows was supported by one respondent. This respondent welcomed Ofgem's recognition of the behaviour of such imports and concurred with Ofgem's assumptions on the flexibility of Norwegian supplies.

(b) BBL

In response to the October consultation document, some respondents expressed the view that operations from BBL have increasing potential to be more flexible, citing the proposed development of a non physical reverse flow facility as a prime example of such future ability. One respondent considered that existing flows have exhibited a degree of flexibility.

Significant contractual delivery obligations mean that capacity on BBL continues to provide predominantly base load supplies. Whilst we have recently observed variability, there is insufficient evidence to suggest this is necessarily a function of increased flexibility, but may be largely a function of parties changing and or renegotiating their contractual positions and Terms and Conditions.

Whilst we therefore consider BBL flows as a baseload source of supply, we do recognise the potential for BBL to become increasingly more commercially responsive, especially given the potential of non-physical reverse flows in the future and the staggered removal of its current third party access exemption in 2016 and 2022. Ofgem therefore expects to review the composition of gas supply as the market continues to evolve and to take account of this in our continued monitoring of exemptions.

(c) LNG

In the October Consultation, Ofgem considered three scenarios for LNG supply, covering 0%, 50% and 100% of deliverability. Recent completion of LNG importation infrastructure, such as that at Milford Haven, makes it appropriate to consider a range of available capacity scenarios. Moreover, given the recent commissioning of such infrastructure we do not have sufficiently robust observable data to base our assumptions on, and thus consider these three scenarios provide evidence on a range of eventualities.

LNG flows are also, arguably, more exposed to global exogenous influences than other sources of supply and therefore its scope to act as a flexible source of supply in the GB market, as opposed to other geographical markets, may be limited.

⁹ Such as the flexible clauses in continental contracts and the terms of the Norwegian production permits as well as external factors such as production disruptions.

Given these issues we therefore consider that our assumptions with respect to LNG flows are reasonable. We expect to use observed behaviour, and any other information available, to inform our views on the extent to which LNG supply should be included in any definition of the flexibility market.

(d) IUK

Ofgem's market definition considered that only a proportion¹⁰ of IUK should be included in the flexibility market. This view was not shared by several respondents who argued that our assumption of 43% of IUK deliverability significantly underestimates IUK's potential contribution in response to price differentials. One respondent suggested that this figure should be closer to 60% given recently observed import levels.

Given current conditions and prevailing expectations for the GB gas market, Ofgem considers that the assumptions made for IUK flexibility are fit for purpose and are again consistent with other industry views including National Grid's Winter Outlook. However, again we acknowledge that such views may evolve over time in light of observable behaviour and any other new information.

(e) SRS

In response to the October Consultation, three respondents expressed the view that SRS should be included in Ofgem's definition of the flexible market given its similar behaviour to flexible beach.

In the October Consultation, Ofgem set out its view that inclusion of SRS was not appropriate in this instance given the characteristics of the Stublach facility, such as its greater ability to cycle gas than SRS, which indicated that it constituted a MRS facility¹¹. This is further supported by the Competition Commission's view expressed in the Centrica/Dynergy merger case that the cost of cycling SRS is expensive as a simple alternative to MRS and LRS¹². We also note the fact that National Grid Gas (NGG) retains some SRS capacity for their own operational use and that this further weakens the role of SRS in the flexibility market.

Again, Ofgem expects to review its assumptions in line with changes to the market, and to consider the relevant market for a particular facility, such that the potential contribution of SRS to flexible deliverability is not overlooked.

(f) Demand-Side Response

It has been argued that the omission of Demand-Side Response from Ofgem's market definition scenarios has provided an overly conservative view of the flexible market.

Ofgem acknowledged in its October Consultation that Demand-Side Response has not been included in its markets scenarios and the analysis presented is likely to be conservative in this respect given its focus solely on the supply side. However, in this instance, we do not consider this to have materially impacted our analysis. We expect to give further consideration to the inclusion of Demand-Side Response in the future, particularly where our consideration of a potential minor facility exemption is more marginal.

¹⁰ We used the figure of 43% of IUK deliverability or 325GWh/d. This was based on a maximum IUK import level of 30mcm/day (in the context of approximately 70mcm/day total capacity) based on NGG's preliminary assessment of maximum winter outlook capacities for 2009/10.

¹¹ For example the Stublach facility will have the ability to potentially cycle (i.e. fill and empty) up to 15 times in a year (taking into account maintenance and lower flow rates), compared to some SRS facilities that can deliver up to 200GWh/day for 5 days but take over 400 days to refill.

¹² See the Competition Commission's report on the acquisition by Centrica plc (Centrica) from Dynergy Inc (Dynergy) of the Rough gas storage facility, 2003. Centrica plc and Dynergy Storage Ltd and Dynergy Onshore Processing UK Ltd: A report on the merger situation. See: http://www.competition-commission.org.uk/rep_pub/reports/2003/480centrica.htm

2. Economically necessary criteria

As set out in our October Consultation, we have relied upon no single test to demonstrate whether it is economically necessary to offer nTPA at the Stublach facility. Instead we have examined a series of indicators to help us come to a view on whether an exemption should be granted.

Our first test area is market power in which we consider four potential indicators including: market shares; winter period market power; market concentration; and vertically linked markets. The second test area, considers the likely impact of an exemption on effective market signals, including for example the ability to affect the price formation mechanism.

Several respondents to the October Consultation expressed concern that such tests contained certain weaknesses that compromised the robustness of any conclusions drawn. These issues are addressed below:

(a) Pivotality and market share

The use of pivotality as a market power indicator was cited as one such weakness, in which a respondent argued that non-pivotal players may also have an incentive to withdraw supply in order to drive up prices.

Ofgem agrees that certain circumstances may exist in which a non-pivotal player may also withhold gas from the market. However, given that demand can still be met without any of the non-pivotal player's flexible gas and therefore by restricting their flows they could not necessarily be confident this would have any effect/influence on prices.

Another respondent questioned whether Ofgem employed a 10% threshold with respect to analysing market shares. In this respect it is important to re-iterate that no single test we consider should be relied upon to demonstrate whether an exemption should be granted. Ofgem does not have or use an explicit market share threshold, although we note that concerns about potential to distort may be greater if a company has more than 10%¹³.

(b) Herfindahl-Hirschman Index (HHI)

One respondent also questioned why analysis was restricted to gas storage (MRS and LRS) for the purpose of HHI calculations, whilst another noted that an increase in HHI does not necessarily lead to an increase in market prices, thus questioning the value of such a test.

As set out in the October Consultation, HHI's are difficult to calculate and forecast for several of our market scenarios. For example, the capacity ownerships of Rough, Hornsea and IUK change from year to year, and the ownership and control of flexible gas production at the UKCS is opaque. Given the information available, we have therefore focused our attention on calculating HHI's for storage (MRS and LRS) and using this as an initial indicator as to whether a market has potential to deliver non-competitive outcomes, i.e. whether market power can be realised by firms in the market.

We also note that an increase in HHI may not necessarily lead to a concurrent increase in market distortion, nor does it provide conclusive evidence on the level of competition. However, this does not necessarily detract from the fact that such tests are nevertheless important initial steps towards establishing whether market power potential is present. If such initial analysis for example established a significant increase in HHI, any conclusions drawn may then be supported by additional analysis to understand the implications and theory of harm¹⁴, including any unilateral effects and potential to foreclose.

¹³ Typically a 5-10% market share range was identified for Storengy.

¹⁴ When a market is highly concentrated a strong presumption of harm may exist in which either co-ordinated or unilateral efforts are employed to raise prices.

As stated above, Ofgem does not rely on any single test to establish whether it is economically necessary to offer nTPA at the Stublach facility. Our analysis of the impact on market power and market signals forms a fundamental basis to assess whether any further analysis is warranted.

Terms of the Exemption Order

Storengy, in its exemption application, indicated that it intends to implement Use It or Lose It (UIOLI) anti-hoarding arrangements and that it will endeavour to create a liquid secondary market for unused capacity.

In response to the October consultation, one party suggested the exemption order should contain explicit requirements in relation to UIOLI, transparency and compliance with the GGPSSO¹⁵.

We recognise that the information provided by Storengy on its anticipated use of the facility, transparency arrangements and anti-hoarding and secondary capacity arrangements represents Storengy's initial view at this point in time and may be subject to change in the future. Nonetheless, Ofgem welcomes these early indications that arrangements will be put in place to ensure that capacity is effectively used in the absence of formal nTPA requirements and this is the basis upon which we have assessed the exemption application.

As with our consideration of anti-hoarding arrangements, we welcome Storengy's commitment to provide transparency of information. In this respect we also note that further transparency requirements are set out in the Uniform Network Code (UNC) and under the Gas Regulation (EC) 715/2009, which seeks to build on the recommendations as set out in the voluntary GGPSSO.

In terms of the provision of information to the market, the peak delivery of the Stublach facility is large enough for its flows to be displayed on the real time information on NGG's website. As noted by Storengy, this will add an element of transparency and enable the market to observe its use. In addition, Article 19(4) of Regulation (EC) 715/2009 will require Storengy as the operator of Stublach to publish information, at least daily, on the amount of gas in its storage facility, inflows and outflows and the available storage. The Article also requires this information to be given to NGG so that it can be made public, at an aggregate level. Storengy has indicated its commitment to this provision. As with other commitments made, if such commitments to transparency arrangements are not met, the Authority may review the impact of an exemption and potentially revoke any exemption granted.

As with our consideration of transparency arrangements, we also note that GGPSSO set out voluntary codes of practice for parties not exempt from nTPA to follow. Whilst these codes are not mandatory, these codes contain some elements that relate to non exempt facilities and some elements that regarding transparency that have been formalised under the Gas Regulation 715/2009. Therefore we do not consider it appropriate to make compliance with GGPSSO an explicit condition of the exemption.

¹⁵ Guidelines for Good Practice for Storage System Operators. See http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_ERGEG_PAPERS/Guidelines%20of%20Good%20Practice/Gas/E04-PC-01-14_GGPSSO_2005-03-23_FINAL%20-%20March%202005.pdf

Other Issues

One respondent questioned why Ofgem had moved from describing exemptions granted under Section 19B of the Gas Act as being *de minimis* exemptions. As set out in our June Open Letter, we consider that the term “minor facility” exemption is a more helpful and descriptive term.

In relation to the October Consultation, one respondent indicated a willingness to discuss and share with Ofgem alternative approaches to market assessment that might help to add value with respect to TPA exemptions for large storage facilities. Ofgem expects to continue to review its assumptions and assessment criteria as the market evolves and would welcome such contributions were such an application to be received.

One party called for a policy statement for nTPA regimes and exemption applications to include a consistent overall approach. In June 2009 Ofgem issued an Open Letter indicating its general approach to exemption applications and setting out what factors may be considered in order to determine whether nTPA at a minor facility is technically and/or economically necessary for providing efficient access to the system for the supply of customers.

Further in this respect, Ofgem notes that potential developers in the gas storage market have concerns about the uncertainties associated with how nTPA legislation is enforced within GB and the interpretation of nTPA requirements following the transposition of Gas Directive 2009/73/EC in national legislation. We expect to consult on guidance material next year to reduce such uncertainty.

Summary

As indicated above, we have considered the issues raised in response to the October Consultation. We note in particular the comments on the definition of the relevant market and that our approach has been conservative in relation to Demand-Side Response. However, we do not consider, for the reasons above, that such views require Ofgem to alter its decision. Ofgem's view therefore remains that nTPA at the Stublach facility is not technically and/or economically necessary for providing efficient access to the system for the supply of customers and that a minor facility exemption should be granted.

However, Ofgem will continue to review its approach and consider how best to identify whether a facility is technically and or economically necessary, as part of its ongoing work to keep exemptions under review as the market evolves.

Ofgem's decision

After giving due consideration to the responses received to the October Consultation, and for the reasons set out in this letter, we believe that the criteria under Section 19A(6)(a) of the Gas Act is met by the Storengy exemption application¹⁶. Ofgem is therefore of the view that an exemption should be granted from the nTPA requirements set out under section 19B of the Gas Act for Phase 1 of the proposed capacity of the Stublach facility owned by Storengy.

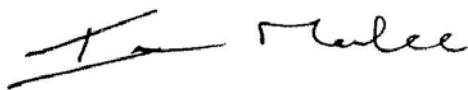
¹⁶ As noted above, Ofgem is required to interpret national law in the context of European legislation. We have therefore assessed whether, as set out in Article 19 of Gas Directive 2003/55/EC, nTPA at the Stublach facility is technically and/or economically necessary for the provision of efficient access to the system for the supply of customers.

For the avoidance of doubt, any views expressed, or decisions made, in respect of the giving of exemptions from section 19B of the Gas Act are expressed or made solely in relation to the relevant criteria for the giving of exemptions set out in section 19A. Any decisions that Ofgem may make, or views that Ofgem may express, in relation to this application for an exemption does not preclude or impact in any way on the operation of the Competition Act 1998 or the Enterprise Act 2002. Further, as the analysis contained in the 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, the Competition Act 1998 or the Enterprise Act 2002.

Finally, it should be noted that as part of its on-going market surveillance activities, Ofgem takes into account the effect of exemptions on the market and that this exemption, as is the case with all other exemptions granted under section 19A(6)(a) of the Gas Act, may be amended or revoked if the Authority considers that nTPA at the Stublach facility is technically and/or economically necessary for providing efficient access to the system for the supply of customers

Attached to this letter is a copy of the exemption order granted by the Authority.

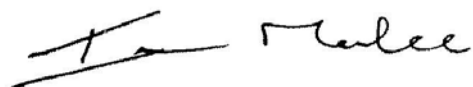
Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ian Marlee', with a horizontal line drawn underneath the signature.

Ian Marlee
Partner, Trading Arrangements

GAS ACT 1986
SECTION 19A
EXEMPTION

Pursuant to sub-section 19A(6)(a) of the Gas Act 1986 (the "Act"), the Gas and Electricity Markets Authority hereby gives to Storengy UK Limited, as a person who expects to be an owner of a storage facility, an exemption from the application of section 19B of the Act, in respect of Phase 1 of the Stublach storage facility located in Cheshire, North-West England, subject to the attached Schedule.

A handwritten signature in black ink, appearing to read 'Ian Marlee', with a horizontal line drawn through the first part of the signature.

Ian Marlee

Partner, Trading Arrangements

Authorised in that behalf by the Gas and Electricity Markets Authority

18 December 2009

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, as amended from time to time
"the Act"	means the Gas Act 1986, as amended from time to time
"the facility"	means the Stublach gas storage facility located in Cheshire, North-West England, being a capacity of 1,500GWh
"facility owner"	means Storengy UK Limited in its capacity as owner of the facility
"facility operator"	means Storengy UK Limited in its capacity as operator of the facility

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

On completion of Phase 1, the facility will provide 1,500GWh of space, a maximum injection rate of 175GWh/day and 175GWh/day of deliverability. This deliverability rate is the maximum which can be achieved when the facility is full.

C. Period

Subject to section E below, and pursuant to section 19A(3)(a) of the Act, this exemption shall come into effect on the date that it is issued and will continue until it is revoked in accordance with Section E.

D. Conditions

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

1. 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 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 this exemption.

3. 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

4. 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.

5. The Authority may, with the consent of the facility owner, amend this exemption.

6. 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 (and as if the transferee was substituted in the definition of "facility" and "facility owner").

E. Revocation

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

1. 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) the Authority considers that the use of the facility by other persons is necessary for the operation of an economically efficient gas market;

(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 entered administration under section 8 of and Schedule B1 to the Insolvency Act 1986;

(iv) the facility owner is found to be in breach of any national or European competition laws, such breach relating to the facility; or

(b) the facility owner has failed to comply with a request for information issued by the Authority under paragraph D2 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 D3 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.

2. This exemption may be revoked by the Authority with the consent of the facility owner.