



Access to upstream infrastructures: The regulation of third party access.

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Overview

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Introduction

(i) Purpose and scope of the lecture

– Scope:

Third Party Access (TPA) to the upstream gas pipeline network, on the Norwegian continental shelf (NCS), with focus on Gassled.

– Conditions for access to these infrastructures:

- Which infrastructures are included in the upstream network?
- Who is entitled to access?
- Who gives access?
- What are the conditions (including costs) for accessing?
- How is enforced the right to access? Can it be denied?
- TPA in practice? (study case)



(ii) Why is TPA important ?

- The big picture: Maximising the value of the national petroleum resources for the benefit of the Norwegian people and society.

See Section 1-2, Petroleum Act (PA):

“Resource management of petroleum resources shall be carried out in a long-term perspective for the benefit of the Norwegian society as a whole. In this regard the resource management shall provide revenues to the country and shall contribute to ensuring welfare, employment and an improved environment, as well as to the strengthening of Norwegian trade and industry and industrial development, and at the same time take due regard to regional and local policy considerations and other activities.”

- The immediate objectives: Towards an effective resource management through a competitive, transparent and non-discriminatory access.

See Section 2, Regulations relating to the use of facilities by others (IR):

“[...] to achieve efficient use of facilities in order to ensure good incentives for licensees to conduct exploration and production activities with a view to promoting efficient resource management”.



- The detailed picture of the TPA benefits
 - Separation of the gas sales market and the gas transportation market;
 - Gas suppliers and customers get the right to have their gas transported through the network: make pipeline capacity available;
 - Competition through the free movement of gas and transparency provisions;
 - Free choice of supplier for customers.

- TPA, a familiar concept in competition law: see "Essential Facilities Doctrine"
 - Definition of Essential Facilities Doctrine.
 - The concept of essential facilities (in particular applicable to network industries).
 - See Commission Decision Sea Containers/Stena Sealink (OJ [1994] L15, p.8).
 - Review of access to essential facilities under EC/EEA competition rules: under Art. 81 and Art. 82 EC Treaty.
 - The doctrine in EC case law: never recognised by ECJ; reference in several advocate general opinions:
 - Ex: Oscar Bronner, C-/97, of 28 May 1998.
 - ECJ ruling regarding preferential access to energy transport networks: C-17/03 of 7 June 2005.



(iii) The Norwegian context

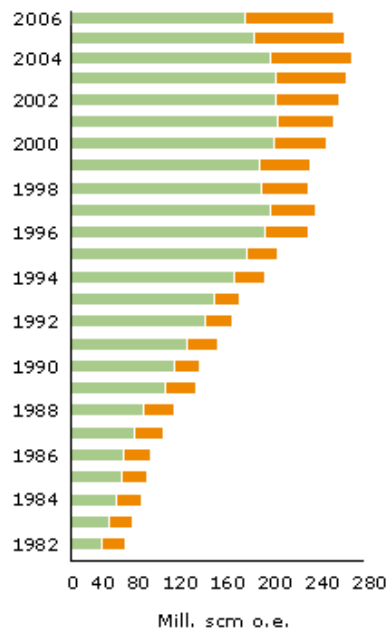
- Focus on gas export:
 - Increase gas export from the NCS (see: Langeled pipeline and Ormen Lange gas field; [Snøhvit](#), Shtokman).
 - Few amounts of domestic gas consumption (See St. meld. *Om innenlands bruk av naturgass*).

- Historical background of TPA in Norway: a regulatory framework largely influenced by EC legislation (towards a European gas market), but not only.
 - TPA as a tool for establishing a competitive market in natural gas. See Recitals (6), (7) and (8) Directive 2003/55/EC.
 - The necessity to further elaborate the TPA upstream.

(iv) Some figures about the Norwegian upstream gas pipeline network

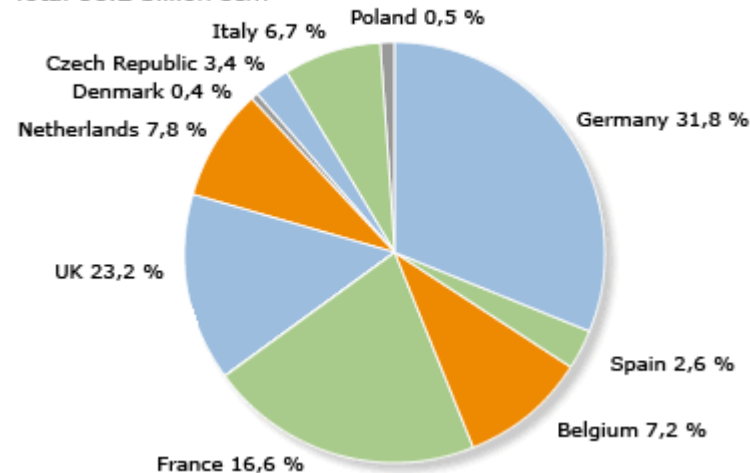
- More than 7800 km of offshore gas pipelines. Most part is Gassled.
- 99 to 99.5% of the natural gas produced on the Norwegian Continental Shelf (NCS) exported.
- Total gas production in 2006: 87 billion scm. (15 per cent European consumption).

Total production 1982 - 2006



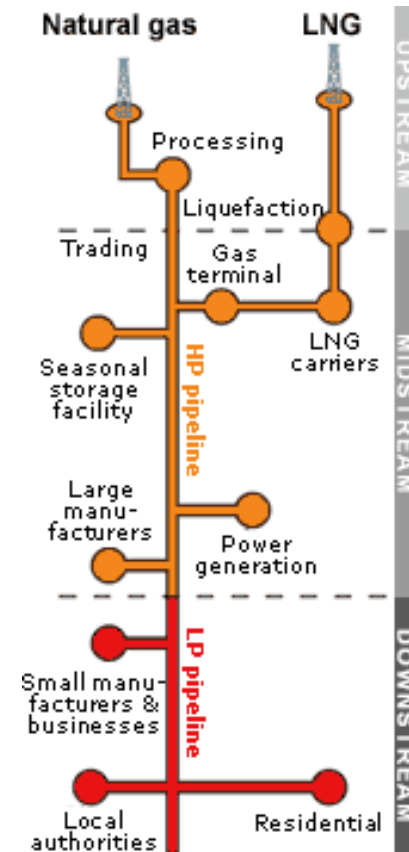
Norwegian gas exports to Europe 2006

Total 86.2 billion scm



1. Organisation of the upstream gas pipeline network: the basics

- Distinction between upstream and downstream gas infrastructures.
- Distinction between the 2 categories of upstream pipelines within the Norwegian network.
2 distinctive legal regimes:
 - PA Section 4-8 - PR, Chapter 9 – TR;
 - Regulations relating to the use of facilities by others (IR).
- Challenges:
 - The different categories of pipelines:
 - Field-to-coast and coast-to-coast pipelines.
 - Inter-field and intra-field pipelines.
 - What is included at midstream level and which rules apply?



(Source: www.total.com)



2. Regulatory framework for TPA in Norway

2.1. Norway's obligations regarding the EEA Agreement

See: St. meld. Nr. 27 (2001-2002) Om EØS-samarbeidet 1994-2001.

2.2. The TPA principles contained in EC law:

- **Directive 98/30/EC** of the European Parliament and of the Council of 22 June, 1998 concerning common rules for the internal market in natural gas (OJ L 204 of 21.7.1998), as amended. EØS Committee Decision nr. 123/2001 Art. 1. Repealed by:
- **Directive 2003/55/EC** of the European Parliament and of the Council of 23 June 2003 concerning common rules for the Internal market in natural gas (OJ L 176 of 15.7.2003, p.57), as amended. EØS Committee Decision nr. 146/205 of 2 December 2005. Entry into force: 01.06.2007.
- **Regulation (EC) nr. 1775/2005** of the European Parliament and of the Council of 28 September 2005 on conditions for access to the natural gas transmission networks (OJ L289 of 3.11.2005, p.1) – Integrated in the EEA Agreement by Decision 102/2007. Entry into force pending.



2.3. Norwegian legal framework

- Act 29 November 1996 No. 72 relating to petroleum activities (**Petroleum Act - PA**).
- Regulations to Act to petroleum activities, laid down by Royal Decree 27 June 1997 pursuant to Act 29 November 1996 No. 72 relating to petroleum activities (**Petroleum Regulations – PR**).
- Regulations relating to the stipulation of tariffs etc. for certain facilities, laid down by the Ministry of Petroleum and Energy 20 December 2002 pursuant to section 10-18 first § and section 4-8 of th Act 29 November 1996 No. 72 relating to petroleum activities (**Tariffs Regulations - TR**).
- Regulations relating to the use of facilities by others, laid down by the Ministry of Petroleum and Energy on 20 December 2005 pursuant to Section 10-18, first §, and Section 4-8 of the Act of 29 November 1996 No. 72 relating to petroleum activities (**Infrastructure Regulations – IR**).

2.4. The 2001 reform



3. Definition of the upstream gas infrastructures in Norwegian law

- Section 1-6 (m) PA.

“Any pipeline or network of pipelines operated or constructed as part of an oil or gas production project, or used to convey natural gas from one or more production facilities of this type to a processing plant, a terminal or a final landing terminal. Those parts of such networks and facilities that are used for local production activities of a deposit where the natural gas is produced are not regarded as upstream pipeline networks.”

See Article 2.2 Directive 98/30/EC, now Article 2.2 Directive 2003/55/EC.
See Ot. prp. Nr. 43 (1995-1996) Om lov om petroleumsvirksomhet, p. 17.

- Section 4-8, al. 1, 2nd sentence PA:

“ access to upstream pipeline networks, including facilities supplying technical services incidental to such access”.

- Section 59 PR, al.1:

“ need of transportation and/or processing” (See Section 69, al. 2, PR)



4. Actors in the upstream gas pipeline network

- Ministry of Petroleum and Energy (**MPE**).
- **Gassled**, owner of the gas pipeline network.
- **Gassco**, operator of the gas pipeline network = ISO.
- Formerly: the Gas Negotiations Committee (**GFU**).
- **Third parties**: gas undertakings and eligible customers.



NB: modification of Section 1-6 (o), PA. From and after 1 July 2007, eligible customers are all customers. In accordance with market opening agenda defined in Article 23.1 Directive 2003/55/EC.

The right to access (Section 59 PR, 1 al.) goes together with an obligation for the owner (Section 61, 1 al. PR).



5. The regulatory approach to TPA

5.1. Legal definition of the TPA

- Legal basis for TPA: Section 4-8, PA, "the use of infrastructure by others".
- EC directives focus on TPA downstream ("gas within"). Norwegian legislation more specific and detailed regarding TPA upstream ("gas into").

5.2. Modalities of access: negotiated vs. regulated

According to the EC Directive and the EEA Agreement, Member States may organise access to the infrastructure in one of the following ways, even combining them:

- **Regulated access:** Access is regulated on the basis of tariffs and/or other published provisions and obligations for use of the network;
- **Negotiated access:** Access is negotiated between parties on the basis of the publication of the main commercial conditions for use of the system.



6. Capacity reservation and allocation

6.1 The notion of "spare capacity"

- Definition: Section 60, al.2, PR
- Determination of available/spare capacities (Section 61, al.1-2, PR)

6.2 Common conditions for access

6.3 Procedure for reservation and allocation of capacity

- Distinction between primary and secondary markets.
- Reservation and allocation of capacity **on the primary market** (Sections 61 and 62, PR).
Time monitoring under reservation and allocation procedure (Section 61, al. 3, PR).
- Access to capacity **on the secondary market** (Section 64, PR)

6.4 Derogation regime: Case of refusal of access to the system

Section 59, al. 5, PR.



7. Regulation of the tariff access

7.1. Definition. Section 60, al. 5, Petroleum Regulations:

Tariff means "*payment for the right to use capacity in upstream pipeline network*".

7.2. Regulated tariffs in the primary market:

- Section 63 PR:
 - Owner must follow the rules of PR for payment (Section 63, al.2, PR);
 - Capacity fee (Section 63, al. 2, PR);
 - 2 tariffs elements: capital and operating.
- Regulations relating to the stipulation of tariffs etc. for certain facilities: tariff determining procedure.
- See [Gassled Tariff Zones](#): A to H. See TR and [GasViaGasled](#).

7.3. Negotiated prices in the secondary market (Section 64, PR).



8. Enforcement aspects of TPA

8.1. Discretionary powers of the MPE

Section 67 PR.



8.2. Agreements for use of capacity

Section 65 PR.

8.3. Dispute settlement procedure

Section 68, PR.

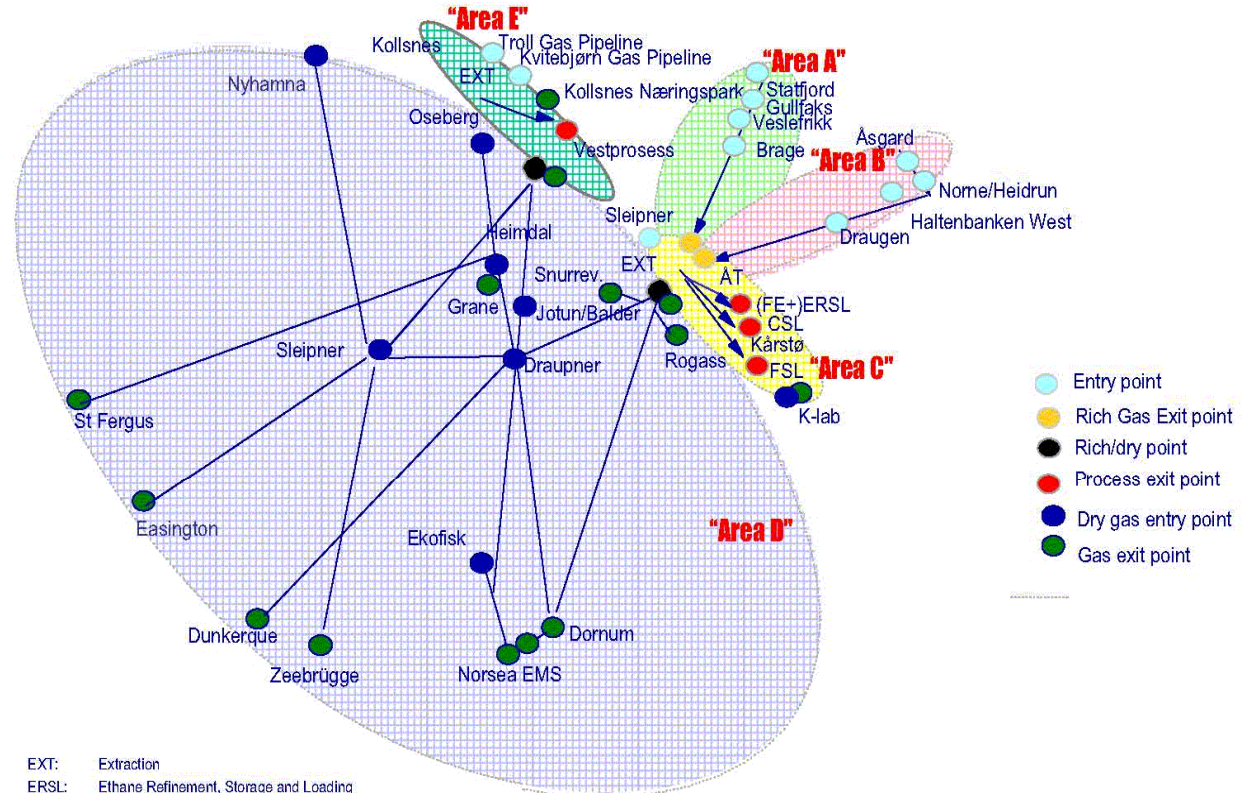


9. Study case

Relevant documents concerning access to capacity in Gassled:

- Terms and conditions for transportation of gas in Gassled;
- Company Agreements;
- Booking Manual;
- Shipper Manual;
- Standard Agreement for Trading of capacity in the Secondary Market.

Booking points:



- EXT: Extraction
- ERSL: Ethane Refinement, Storage and Loading
- CSL: Condensate, Storage and Loading
- FE: Fractionation Ethane
- FSL: Fractionation (propane/butanes/naphtha), Storage and Loading
- CO₂ R: Carbon dioxide removal
- CO₂ K/B: Carbon dioxide blending
- H₂S R: Hydrogen sulphide removal



10. TPA to LNG terminals

- Discussion in class and student presentation.



Concluding remarks