

# **UK - Norway Co-operation Implementation Group**

**Consultation Work Group**

**Code of Practice Sub-Group**

## **Unlocking Value *Through* Closer Relationships**

### **Report of the UK-Norway North Sea Co-operation Workgroup August 2002**

#### **Recommendation No 11 – Review of Infrastructure Codes of Practice**

##### **Introduction**

Recommendation No 11 of the UK/Norway PILOT/Koncraft report, “Unlocking Value *Through* Closer Relationships” was to “Assess the need for a Common Code of Practice for access to cross-border (non-regulated) infrastructure, based on the principles of the existing UK and Norwegian codes”.

This report establishes the differences between the two Codes and makes some proposals as to the way forward in relation to the need, or otherwise, for commonality between the two Codes. These proposals are given within each section below.

The conclusions of the report address the initial recommendation.

In addition, as part of Recommendation 5 “Guidelines to the 1998 Framework Treaty” there is set out the required processes in relation to Article 6 “Priority and third Party Access”. Although any reports on Recommendation No 5 and No 11 are separate documents they are based upon common principles and objectives and therefore the two documents should be considered as compatible.

It should also be noted that in the UK the DTI are facilitating with the UK industry a review of the existing UK Code of Practice. It will be necessary, therefore, for the conclusions of both the PILOT/Koncraft and the DTI/UK industry reviews to be considered.

The two Codes of Practice are similar in nature in that the Norwegian version has used the UK version as a base document, but has then applied variations to meet the needs of the Norwegian Industry.

It must be highlighted that the recommendation requires a review of the application of the Codes of Practice to *non-regulated* infrastructure. This therefore excludes the Gassled owned infrastructure that has a regulated regime for access conditions.

##### **Process**

The review has been performed by considering the two Codes against a number of different parameters. Where there are differences each issue is considered to determine the impact of the difference and to evaluate whether there is any merit in aligning the processes.

The parameters considered include: scope; legal powers; access; maintenance of the Code; third party agreement approval; imposition of terms; non-discrimination;

funding; separation of services; transparency, timeliness, conflict of interest; procedures; and, dispute settlement.

The relevant terms for each parameter as currently written are included in Appendix 1.

## **Review**

### **Scope**

The UK Code has the widest application and applies to all infrastructure on the UK Continental Shelf, onshore gas terminals and oil stabilisation facilities.

This may be in conflict with some inter-Governmental Treaties where jurisdiction and procedures for third party access are defined differently:

- The Frigg Treaty provides for the Vesterled pipeline to be governed by the Norwegian Government on the UK Continental Shelf, with the jurisdiction being with the UK Government in UK Territorial Waters and onshore.
- The Norpipe Treaty provides for the Norpipe pipeline to be governed by the Norwegian Government on the UK Continental Shelf, UK Territorial Waters, and onshore.
- The existing UK/NW Framework Treaty provides for third party access issues to be governed by the Government responsible for the location of the third party access location.

It is therefore necessary that the existing UK Code be reviewed and amended such that clear interpretation of the extent of the application of the UK Code with regard to existing UK/NW Treaties be given.

It should be noted that the UK Code does not highlight any particular arrangements to be applied with respect to gas produced from the Norwegian Continental Shelf and delivered into UK infrastructure.

It is also recognised that the current Code proposals in the UK go beyond the requirements of UK legislation.

The UK Code recognises that for Gas Processing Terminals in the UK there is the obligation on Owners for the publication of third party access terms and conditions, including indicative tariffs.

The Norwegian Code only applies to NW Continental Shelf offshore production infrastructure and oil and gas pipelines owned by licenced Joint Ventures. It should be made clear that the Norwegian Code should be applicable all non-regulated infrastructure on the Norwegian Continental Shelf, including pipelines on other Continental Shelves where the Norwegian Government has jurisdiction on access. For the avoidance of doubt it should also be made clear that the Norwegian Code does not

apply to Gassled owned infrastructure where the Norwegian Government is responsible for determining entry and exit conditions.

***Proposals:***

*It is necessary that the existing UK Code be reviewed and amended such that clear interpretation of the extent of the application of the UK Code with regard to existing UK/NW Treaties be given.*

*It should be made clear that the Norwegian Code should be applicable all non-regulated infrastructure on the Norwegian Continental Shelf, including pipelines on other Continental Shelves where the Norwegian Government has jurisdiction on access.*

**Legal Powers**

Both Codes recognise that the UK and Norwegian Governments have the legal authority to impose terms and conditions upon Owners upon appeal by third parties applying for access to infrastructure.

In Norway the Government also approves all transportation and processing agreements, and has the right to set tariffs independent of the existence of an appeal by third parties.

It is considered by the UK Government that it would take into consideration whether the parties have complied with the Code of Practice before an appeal will be considered.

There is no written procedure in Norway for the process of appeal. However, several cases have established a practice. The process is normally initiated by a written appeal to the MPE from the third party to resolve a negotiation where the third party considers the offer received to be unfair. MPE will invite the relevant parties to bring forward their views before they either, set terms and conditions, or request the parties to continue negotiations based upon principles set by the MPE. In the petroleum legislation it is stated that the MPE shall, when setting terms and conditions, allow the owner a reasonable rate of return based upon the investment and risks involved. “Reasonable” rate of return is not defined in the legislation, but has for transportation infrastructure historically been set at 7%. For processing infrastructure no guidance on a rate of return has been provided.

**Access**

In the UK access terms and conditions are by negotiation.

In Norway access terms and conditions for non-regulated infrastructure are by negotiation, albeit with guidance of what the MPE considers as a reasonable rate of return that an Owner of a pipeline system should apply. For regulated infrastructure access terms and conditions are published.

### **Maintenance of Code**

The UK Government maintains the Code with input via consultation from the offshore industry.

In NW the Code is prepared by the industry and submitted to the Government for approval.

Both Codes require a review as a maximum every three (3) years.

***Proposals:***

*It would be more appropriate if the Codes were the responsibility of the industry (facilitated by Government) in both countries.*

### **Non-discrimination**

There are no differences between the UK and Norwegian Codes regarding non-discrimination, with both requiring all requests for access to be considered without favour to any party.

### **Funding**

There are no differences between the UK and Norwegian Codes regarding funding of any investment required for third party access, with both requiring the third party to accept costs where the Owners do not wish to fund any required new facilities themselves.

### **Separation of Services**

There are no differences between the UK and Norwegian Codes regarding separation of services. As a general rule services are to be unbundled between infrastructures unless third parties have specifically requested a “one-stop-shop”.

### **Transparency**

Under UK legislation it is necessary for gas processing facility Owners to publish indicative third party access terms and conditions, including indicative tariffs. In addition, the current draft of the revised UK Code proposes that infrastructure Owners publish indicative terms and conditions for all infrastructure where it is anticipated that there would be third party business.

It should be noted that at present, infrastructure tariffs offered to third parties are declared to and published by the DTI.

The Norwegian Code only requires Owners to provide to OLF details of indicative offers and for OLF to publish these eight (8) weeks later.

*Proposals:*

*There would be merits in there being consistency across the North Sea in this process and consideration should be given to a more pro-active approach to the publication of infrastructure information being taken by all Owners. Nevertheless the degree of information to be made available needs to be carefully considered by Owners taking into account contractual provisions in joint venture agreements and competition law.*

### **Conflict of Interest**

The UK Code is silent on the issue.

The Norwegian Code proposes that Owners and third parties act on the basis of licence groups and that where there is a conflict of interest with one company having interests as both a third party and an infrastructure Owner then the company should participate in the group in which it has the largest equity interest.

There are some issues that this issue raises. It is not necessarily consistent that the largest equity interest has the largest value and, the issue of joint versus divided rights selling of capacity needs to be considered in respect of Competition Law.

### **Competition Law**

The UK Code is clear in its view that general Competition Law applies to all UKCS activities. Unfortunately there is no further guidance as to how this would apply in third party access negotiations.

The Norwegian Code is silent on the issue of competition law.

*Proposals:*

*The general issue of joint venture arrangements and whether negotiations can be carried out on a joint or sole basis needs to be addressed with some form of “guidance” given.*

### **Procedures**

The general provisions of timescales are consistent between the UK and NW Codes.

*Proposals:*

*The timetables proposed should only be considered as indicative, not as a rule. It may be more appropriate for the Code to promote the agreement of a timetable that both parties will abide by, and only indicating the time that it might take to conclude arrangements.*

## **Dispute Settlement**

Although the UK Code does not include a dispute settlement procedure reference is made to the DTI “Guidance on application for resolution of disputes over third party access” in which full details are set out of the issues that the DTI will consider in determining a dispute.

There is no reference in the NW Code with regard to dispute settlement.

## **Conclusions**

The review of the UK and Norwegian Codes of Practice has identified that there are already many similarities between the two Codes as the Norwegian code was based upon the UK Code. Where differences do exist they are as a result of the limited facility application of the Norwegian Code, the regulatory regime variances, and the legislative arrangements within each country.

The current review of the UK Code will make the differences between the Codes more significant.

Nevertheless in addressing the original request to “Assess the need for a common Code of Practice for access to cross-border (non-regulated) infrastructure, based on the principles of the existing UK and Norwegian codes” there must be merit for there to be a common approach and if possible a common Code of Practice for non-regulated infrastructure.

It is understood that the Norwegian authorities are considering broadening the scope of their Code to include offshore processing facilities and non-regulated pipelines, thus providing an opportunity to develop compatibility of the two Codes. Nevertheless, for such compatibility to exist it will be necessary for the development of a common Code to be undertaken by both the UK and Norwegian industries, and require the proposed draft of the UK Code to be revisited.

If this approach is taken it will enable a consistency of approach to third party access to be developed for offshore processing, which will be of particular value to the development of reserves in the median line “corridor”.

UK/NW Action Group

**Recommendation 11**

**“Assess the need for a common Code of Practice for access to cross-border (non-regulated) infrastructure, based on the principles of the existing UK and Norwegian codes”**

<u>Issue</u>	<u>UK</u>	<u>Norway</u>
Scope	All services provided by oil and gas infrastructure within UK Continental Shelf and UK Territorial Waters including offshore processing facilities, oil and gas pipelines, onshore gas terminals and onshore oil stabilisation facilities	Only offshore production infrastructure. Does not include pipelines or terminals that are not part of a licenced Joint Venture.
Gas Terminals	Equal priority and equal misery for new users. Main terms and conditions to be published including indicative tariff charges	No general requirement to publish terms and conditions for gas terminals. However Kårstø and St Fergus terminals are part of Gassled and main terms and conditions are published, including tariffs. Kollsnes is planned to be part of Gassled by 1.1.2004, and its terms and conditions will then be published.
Legal powers	DTI have legal right to impose terms and conditions following appeal by a User. CoP to be followed in these circumstances by Owners and Users	MPE approves all processing and transportation agreements and has the legal right, irrespective of any appeal, to impose terms and conditions
Access	Negotiated	Negotiated Gas Pipelines in Gassled – regulated
Maintenance of Code	Government (DTI). Minor changes will be incorporated via revisions of the Code.	Industry (OLF) and “approval” by MPE. Review in three (3) years.

	Major changes would be made as appropriate and through consultation. Review will be made every three (3) years.	
Third party agreement approval	None	Government (MPE) within three weeks of submission
Imposition of terms	By Government only upon appeal by third party	Government can impose terms and conditions irrespective of the existence of an appeal.
Non-discrimination	All requests for access to be considered without favour. Discrimination involves the application of dissimilar conditions to equivalent transactions. Owners can make capacity available to the User offering the best deal for the Owners.	Owners may make capacity provision for: <ul style="list-style-type: none"> <li>- existing commitments</li> <li>- future equity production</li> <li>- avoid sterilisation of capacity</li> <li>- impact upon existing Users</li> <li>- offer capacity to the User prepared to pay best commercial terms</li> </ul>
Funding	Responsibility of the User to fund investment (including compensation)	By User if Owner does not wish to fund new facilities themselves
Separation of Services	Services to be unbundled, or as “one-stop-shop” at User request	Services to be unbundled, or as “one-stop-shop” at User request
Transparency	Terms and conditions for access, in addition to Gas Terminals, to be published on the Owners website	Owners to inform OLF of initial indicative prices. OLF to publish eight (8) weeks later
Timeliness	Commercial negotiations should proceed in a timely fashion. It is unacceptable for either party to unnecessarily delay the negotiations	Commercial negotiations should proceed in a timely fashion. It is unacceptable for either party to unnecessarily delay the negotiations
Conflict of Interest	General competition law applies to UKCS activities	Owners to act on the basis of licence groups, normally participating in the group in which it has the largest equity interest
Procedures	Owners to publish indicative tariffs and	Indicative offer to be made twenty (20)

	<p>indicative forecasts of available capacity.                  User to provide to Owner all necessary information of the service required.                  Owner to provide detailed technical response within thirty (30) working days.                  Owner to be able agree terms and conditions within one (1) further month.</p>	<p>working days of an application.                  User to provide required information thirty (30) working days after receipt of initial response from Owner.                  Owner to respond to applicant within forty (40) working days with technical details of the service to be offered and amendment to the indicative offer previously proposed.                  Owner to be able to make an acceptable offer within one (1) further month</p>

