



**ETSO comments on the draft Congestion Management
Guidelines of EC Regulation 1228/2003**

22 June 2005

Observations:

- 1. Modifications proposed by ERGEG are highlighted in red.**
- 2. Modifications proposed by ETSO are highlighted in blue. Most of the modifications are based on the ETSO previous comments from 15 December 2004, which do not seem to have been considered up to now.**

GUIDELINES ON CONGESTION MANAGEMENT

NOTE: UNLESS IT IS DIFFERENTLY SPECIFIED, THESE GUIDELINES APPLY TO CONGESTION MANAGEMENT ON ALL INTERCONNECTIONS, INCLUDING MERCHANT INTERCONNECTIONS.

GENERAL PROVISIONS

1. Regulatory powers of the regulatory authorities involved must be in line with the requirements on regulators' duties in the Article 9 of the Regulation (EC) 1228/2003.
2. The regulatory powers referred to in 1 above must be made compatible within the given legal framework and transparently communicated to all the involved parties.
3. Cross-border exchange of information for the purpose of congestion management must be enabled, removing all unnecessary barriers and limitations, by all involved market participants, TSOs and regulators.

1. EFFICIENT USE OF AVAILABLE TRANSMISSION CAPACITY

- 1.1. TSOs shall endeavour to accept all commercial transactions including those incurred by cross border trade not operating any transaction based distinction.
- 1.2. In case the scheduled commercial transactions are not compatible with secure network operation, the TSOs shall coordinate to alleviate the congestion complying with the grid operational security while bearing in mind that any associated costs are at an economically efficient level, for example through curative redispatching or countertrading in case other lower cost measures cannot be applied.
- 1.3. Where structural congestion exists, considering the fact that the European continental network is a highly meshed network and that the use of interconnection lines has an effect on the physical flows of electric power, congestion management procedures and system operation between TSOs shall be coordinated as far as possible and calculations of the capacity available to the market shall take into account the ~~actual~~ best estimate for forecasted physical electric power flows.
- 1.4. When there is no congestion, there shall be no restriction of access to the interconnection. Where this is usually the case there need to be no permanent general allocation procedure for access to transmission service. Of course, in case

there is actually congestion, TSOs will manage the situation according to previously published market based rules.

4.4.1.5. The capacity allocation at an interconnection shall be coordinated and implemented using common allocation procedures by the TSOs involved. These common allocation procedures should be described in detail by TSOs, approved by the responsible Regulators and the description made transparently available to all the users.

4.5.1.6. Coordination between TSOs shall at least include the secure operation of the grids and the optimisation of the allocations in view of the promotion of fair and efficient competition ~~and the secure operation of the grids~~. This coordination shall take into account the actual best estimate for forecasted global grid situation with physical flows resulting from all transactions accepted by other TSOs.

4.6.1.7. Coordination shall also include the exchange of information. The nature, time and frequency of information exchange shall be compatible with the functioning of the electricity markets. The information exchange shall in particular enable all TSOs affected by the physical electric power flows resulting from transactions accepted by other TSOs to forecast these flows and to take them into account in the assessment of available interconnection capacities.

4.7.1.8. The actual best estimate for forecasted physical electric power flows, resulting from transactions accepted by other TSOs are best taken into account when at least a regional co-ordination between TSOs covers all the steps from capacity calculation ~~and to~~ allocation and includes clear assignments of responsibility for ~~to~~ the operation of the different parts of the network. There is a risk, that must be avoided cost-effectively, to have a sub-optimal result for the physical electric power flows and therefore for competition among market participants, if each interconnection is treated only bilaterally between the two TSOs concerned without consideration of transaction and flows elsewhere.

4.8.1.9. ~~A single~~ eCo-ordinated ~~multilateral~~ allocation procedures for allocation of capacity to the market at least yearly, monthly and day-ahead shall be applied latest from [01.January 2007] in the following areas:

- Northern Europe~~Nordel~~ (i.e. Denmark, Norway, Sweden, Finland, Germany, Poland),
- North-Western Europe (i.e. Benelux, Germany, ~~Austria~~, France),
- Northern borders of Italy (i.e. Italy, France, Switzerland, Germany, Austria, Slovenia),
- Central Eastern Europe (i.e. Germany, Poland, ~~Czechia~~ Republic, Slovakia, Hungary, Austria and Slovenia),
- ~~Iberian peninsula~~ South Western Europe (i.e. Spain, Portugal, France),

- ~~between the~~ UK, Ireland and France,
- Baltic states (i.e. Estonia, Latvia, Lithuania).

These areas are indicative, flexible and can be adapted if necessary for practical reasons (i.e. if market and congestion developments require to re-organize some area(s) and their members) so that allocation procedures include all the interconnections considered optimal by all concerned TSOs and regulatory authorities.

Compatibility of the congestion management procedures among these seven areas shall be:

- (1) Foreseen in the overall concept and planned with migration path for all areas from the outset - i.e. a “global” compatibility between all regions to form a truly integrated IEM must be envisaged. ~~EREG will produce a report regarding compatibility issues once the regional approaches are in place. (ETSO comment: the publication of such a report is welcomed by ETSO but should it be explicitly included in the Guidelines?)~~
- (2) In the meantime Regulators shall take specific measures to mitigate any restrictive impact of differences in congestion management between different areas.

~~4.9.1.10.~~ TSOs shall endeavour to optimise the extent to which capacity is firm – having regard to the obligations and the rights of the TSOs involved and the rights of market parties – in order to facilitate effective and efficient competition.

~~4.10.1.11.~~ The congestion management procedure to be followed by the TSOs and network users involved shall be coordinated so that it is carried out on a common timetable across the affected (regional or wider, EU) markets, in order to be most effective in line with the Article 6(4,5).

~~4.11.1.12.~~ Where organised wholesale electricity markets exist special attention must be paid to non-discrimination regarding bilateral ~~tr~~ansactions.

~~4.12.1.13.~~ The financial consequences of failure to honour obligations associated with the allocation of capacity shall be attributed to those who are responsible for such a failure. Where market participants fail to use the capacity that they have committed to use, they shall be exposed to the loss of rights to such interconnector capacity, likewise, a penalty. ~~if~~ a TSO does not fulfil the obligation, it will be financially liable to compensate the market participant for the loss of interconnector capacity rights, however, in all cases limited the value of the capacity right. No consequential losses shall be taken into account for this purpose. for the consequences. The method for the determination of this liability shall be set out in advance, and must be subject to approval by the relevant national Regulator or Regulators. The key concepts of the liabilities that accrue upon penalties and consequences on failure to honour obligations shall be described in detail within the description of the actual congestion

management method that will be made available transparently to all the users. All these concepts (together with the congestion management method) need to be approved by the involved regulatory authorities.

~~1.13.~~1.14. Efficient use of cross-border capacity entails that all unused and non allocated capacity will be made available for re-assignment (~~use or lose it principle~~) and that the allocation procedure shall take into account different time horizons. In order to allow the TSO to re-assign the unused capacity, market participants shall inform the TSO within a reasonable time ahead of the relevant operational period on whether they intend to use allocated capacity.

~~1.14.~~1.15. Whenever necessary, re-assignment of unused capacity should take into account also problems relevant to the degree of competition, market structure and market power issues.

2. MECHANISMS FOR CONGESTION MANAGEMENT

2.1. The TSOs, or, where appropriate, Member States, shall provide non-discriminatory and transparent standards, which describe which congestion management methods they will apply under which circumstances. These standards, together with the security standards, shall be described in publicly available documents.

(1) Congestion management method must be market based. For this purpose allocation of capacity shall be made only by explicit (capacity) or implicit (capacity and energy) auctions. Both methods can coexist on the same interconnection.

(2) If congestion involves at least two interconnections, i.e. if transactions on one interconnection significantly affects ~~possible transactions~~ the physical flows on other interconnections (this could occur e.g. in the areas defined in these Guidelines in 1.8), the congestion management method must be coordinated. This means in particular compatibility and common approach for all the congested interconnections in terms of:

(a) Use of a transmission model ~~Calculation of capacity dealing efficiently with interdependent physical loop flows~~

(b) Allocation of capacity using a consistent contractual framework with market participants

(c) Obligation on capacity holders to provide information on their intended use of the capacity, i.e. nomination of capacity for explicit auctions

(d) Timeframes and closing times

(e) ~~Products~~ Allocation periods (e.g. day ahead, intra-day, long term, etc.)

- 2.2. National regulatory authorities shall regularly evaluate the congestion management methods, paying particular attention to compliance with the principles and rules established in the Regulation and the Guidelines and terms and conditions set by regulators themselves in compliance with the aforementioned principles and rules. Such evaluation should include consultation of all market players and dedicated studies.
- 2.3. In case of structural congestion, the congestion management methods shall ensure that the physical power flows associated with all allocated transmission capacity comply with network security standards ~~being at an acceptable level~~. A particular request for transmission service shall only be denied when the physical power flows resulting from its acceptance, in addition to the other accepted requests, lead to an expected situation where secure operation of the power system can no longer be guaranteed, and where that request has an economic value (expressed through willingness to pay) lower than other request accepted under the same contractual conditions whose rejection would also secure the power system.
- 2.4. National regulatory authorities and TSOs shall ~~make efforts to~~ harmonise the procedures for congestion management on different interconnections in order to facilitate efficient trade across several interconnections.
- 2.5. Where requests for transmission service do need to be constrained, the following rules shall be applied:
- (1) In situations where there is a high correlation between the capacities available to the market at congested borders, coordination among the involved TSOs is of utmost importance.
 - (2) Methods for congestion management adopted shall give efficient economic signals, promote competition and be suited for regional application.
 - (3) Depending on the conditions of competition, it may be necessary that the congestion management mechanisms allow for capacity allocation to be both for long term and short term transmission capacity. They may then be implemented for example on an annual, monthly, weekly, daily and intra-day basis. The allocation method may depend on the timeframe, for example long term allocation (yearly, monthly) ~~could~~will require ~~e.g.~~ explicit auctions and short term allocation (~~intra-day-ahead~~) ~~could~~will require ~~e.g.~~ implicit auctions.
 - (4) Mechanisms for an intra-day congestion management of interconnector capacity shall be established in a coordinated way and under secure operation conditions, in order to maximize opportunities for trade and to make provisions for cross-border balancing.

- (5) Each ~~of~~ capacity allocation procedures shall allocate a prescribed fraction of the available interconnection capacity plus any remaining capacity that was not allocated in previous allocations and any capacity released by the capacity holders from previous allocations.
- (6) An appropriate allocation of capacity among the different timeframes that may include an option for keeping a minimum percentage of the interconnection capacity for the daily or intra-daily allocation shall be proposed by the relevant TSOs and approved by the respective Regulators. In defining their proposals the TSOs shall take into account:
 - (a) The characteristics of the markets
 - (b) The operational conditions, such as the implications of netting of the schedules firmly declared
 - (c) A level of harmonization of the percentages and timeframes adopted for the different capacity allocation mechanisms in place
- (7) Congestion management mechanisms shall ~~allow network operators to~~ reveal the value placed on capacity (either directly or indirectly) and produce directional price signals to market participants at different time horizons.
- (8) Congestion management mechanisms shall ensure that capacity is allocated to those who place the highest value on capacity together with adequate incentives to ensure ~~that they are going to use its~~ use. This shall apply to each capacity allocation mechanism in place and each timeframe.
- (9) Assignees of transmission capacity shall be required to pay for allocated capacity according to a methodology based on the economic value of that capacity as revealed by the process in (7) and (8) above.
- (10) ~~Other than in the case of merchant lines,~~ Other than in the case of merchant lines, ~~Establishing~~ non-cost reflective reserve prices in capacity allocation methods shall not be allowed.
- (11) In principle, all potential network users will be permitted to participate in the allocation process subject to non discriminatory criterion ~~without restriction~~. Exceptionally, restrictions may be made for reasons of market dominance.
- (12) In order not to risk creating or aggravating problems related to any dominant position of market player(s), the ~~competent-relevant~~ and/or competition regulatory authorities, if appropriate, may impose restrictions in general or on individual company for reasons of market dominance. Reasons for such measures must be proven by well-founded facts.

- (13) Priority access rights to interconnection capacity should not be assigned to those contracts which violate Articles 81 and 82 of the EC Treaty. Existing long term contracts should have no pre-emption rights when they come up for renewal but the capacity shall be made available through open, market-based mechanisms.
- (14) To promote the creation of liquid electricity markets, capacity should be ~~freely~~ tradable in secondary markets provided that the TSO is informed sufficiently in advance.
- 2.6. In cases where ~~commercial exchanges nomination for an expected flow~~ between two countries (TSOs) are expected to significantly affects the physical flow conditions in ~~at~~ the third country (TSO), congestion management methods shall be co-ordinated between the two countries (TSOs) concerned and the third country (TSO) through a common allocation procedure. National Regulators shall ensure that no congestion management procedure with significant effects on physical power flows in other European networks, be devised unilaterally.

3. CALCULATION OF INTERCONNECTION CAPACITY

- 3.1. The TSOs shall publish a general scheme for calculation of the interconnection capacity for the different timeframes based upon the electrical and physical realities of the network. Such a scheme shall be subject to approval by the Regulatory Authorities of the involved Member States concerned.
- 3.2. The ~~safety~~ security standards and the operational and planning standards should form an integral part of the information that TSOs should publish in open and public document. Also this document shall be submitted to the approval of national regulators.
- 3.3. TSOs shall offer to the market transmission capacity that is as 'firm' as possible. A reasonable fraction of the capacity may be offered to the market under the condition of decreased firmness, but at all times the exact conditions for transport over cross border lines shall be made known to market participants.
- 3.4. The relevant TSOs shall calculate the interconnection capacities for the different timeframes, using a common network model. The values of these interconnection capacities shall be published together with the corresponding technical assumptions, ~~base case and the main constraints~~.
- ~~3.5 In case of structural congestion, TSOs shall endeavour to optimise the extent to which capacity is firm having regard to the obligations of the TSOs and the rights of market parties in order to facilitate effective and efficient competition. [REMARK: duplicated 1.9]~~
- 3.5. ~~3.6~~ When there is intermittent congestion, restrictions on network access shall apply only for the time when the congestion exists, or should deliver an allocation

via a market based mechanism free of charge in a case where there is no actual congestion requests for transmission access do not exceed the available capacities.

- 3.6. ~~3.7.~~ When preparing the day-ahead grid operation, the TSOs must exchange information with neighbouring TSOs including their forecast grid topology, availability of generation units, and load flows in order to optimise the use of the overall network through operational measures.
- 3.7. ~~3.8.~~ When balancing the network inside the control area through operational measures in the network and through redispatching, the TSO must take into account the effect of these measures on neighbouring control areas.
- 3.8. ~~3.9.~~ While defining optimal network parts for congestion management, TSOs shall be guided by cost-effectiveness and the lowest negative impacts on market. In that sense, TSOs shall not restrict their attention only to the borders of their own control area in order to prevent internal congestion—and TSOs shall avoid limiting interconnection capacity in order to solve congestion inside their own control area. In any case, if the congestion within the control area limits the interconnection capacity, it must be only to the extent that it is justifiable from the technical viewpoint and for reasons of operational security. Such a situation can only be tolerated until the long-term solution is found. The methodology and projects to achieve the long-term solution—alleviation of the structural congestion shall be described and transparently presented to all the users by the TSOs.

4. TIMETABLE FOR MARKET OPERATIONS

- 4.1. The involved TSOs shall publish a general description of the method applied for maximising the capacity available to the market based upon the electrical and physical realities of the network. Such a method shall be subject to approval by the regulatory authorities of the involved Member States concerned. The coordination procedure between the different TSOs involved in the resolution of a structural congestion may consist in general of the following basic steps according to a common timetable:
- (1) Allocation of the available transmission capacity of the interconnections that are involved in structural congestions may take place over several timeframes: one year, one or several months, one week, daily or intra-daily.
 - (2) The access rights of long- and medium term allocations shall be ~~firm~~ transmission capacity rights, ~~with no obligation to be used. It shall be~~ subject to the use-it-or-lose-it principles rule at the time of nomination.
 - (3) Prior to each allocation, the involved TSOs shall jointly publish the capacity which will be allocated as well as the time periods during which the capacity will not be available (for the purpose of maintenance for example). The TSOs shall publish the allocated capacity as soon as possible after each

allocation, as well as an indication of prices paid. Such indications should be subject to approval by regulatory authorities.

- (4) Firm Nominations of transmission rights shall take place sufficiently in advance, before the day-ahead sessions of all the relevant organised markets and before the publication of the capacity to be allocated in the day-ahead or intra-day allocation mechanism. The involved TSOs shall jointly publish the nominated capacity as soon as possible thereafter¹. ~~Firm nominations of transmission rights capacity in opposite directions shall be taken into account for netting in order to efficiently use the interconnection to its maximum of capacity.~~
- (5) The allocation of the available transmission capacity shall take place sufficiently in advance. Before the allocation, involved TSOs shall jointly publish the capacity which will be allocated, taking into account where appropriate the capacity released by any long term contracts and the firm transmission rights and where relevant the netted nominations thereof.
- (6) Where part of the interconnection capacity is allocated through short-term implicit auctioning procedures, National regulatory authorities must pay attention that there is a fair share of capacity between forward bilateral trade and power exchange trade. Depending on the market organization (e.g. existence of organized power exchanges), market structure, and condition of competition in the markets of member states involved, firm transmission rights can be allocated in the day-ahead allocation by implicit or explicit auctioning, or implicit auctioning, a combination thereof can be used. In any case, the day-ahead allocation shall not discriminate between agents that want to use the rights to exercise physical bilateral contracts or to bid into power exchanges. The highest value bids, whether implicit or explicit, should be successful.
- (7) In regions where forward financial energy markets are well developed and have shown their efficiency, However, the Member States National regulatory authorities may decide to allocate all the interconnection capacity through implicit auctioning. In regions where at present no market based capacity allocation procedures exist, concepts for an immediate introduction of market based congestion management shall be pursued. Striving for more sophisticated methods shall not justify a delay in the introduction of methods

¹ After this nomination takes place, an amount of transmission capacity in a structural congestion may still be available to be allocated for three reasons: a) capacity may have been left aside for a short-term allocation; b) unused long and medium term transmission capacity rights may not be nominated; c) firmly nominated transmission capacity rights that have been globally netted thus creating additional but non firm capacity in their opposite direction, might create opposite flows in the same transmission line.

~~according to 2.5 (8) especially in regions where financial energy markets are well developed.~~

- (8) For interconnections for which adjacent markets offer intra-day trading with compatible rules, successive intra-day allocations for the day D of the available transmission capacity shall take place on days D-1 and D, after the issuing of the indicated or actual day-ahead production programs. Before the allocation, the TSOs involved shall jointly publish the capacity which will be allocated, taking into account all netted day-ahead nominations and the day-ahead production programs. The TSOs involved shall jointly publish the allocated capacity immediately after the allocation.
- (9) Liquid, intra-day allocations promise significant benefits if the operational problems can be overcome. Where no short-term intra-day allocations are possible because of operational or data exchange problems, at least a migration path towards intra-day allocations must be defined and committed by the involved TSOs, regulators and other market participants. Monitoring of the migration towards the targeted intra-day solution and where necessary any intervention, shall be done by the responsible regulators, taking into account the benefits of Europe-wide harmonized allocation methods.

5. TRANSPARENCY

- 5.1. TSOs shall publish all relevant data related to network availability, network access and network use including a report where congestion exists, its reason, the methods applied for managing the congestion and the plans to cope with it in the future.
- 5.2. TSOs shall publish all relevant data concerning cross-border trade according to the best possible forecast. This includes the procedures for allocating capacity, including the time and procedure for applying for capacity, a description of the products being offered and the obligations and rights of both the TSOs and the party obtaining the capacity.
- (1) annually: information on the long term evolution of the transmission infrastructure and its impact on cross border transmission capacity
 - (2) monthly: month and year-ahead forecasts of the transmission capacity available to the market taking into account all information available to the TSO at the time of the forecast calculation (e.g. impact of summer and winter seasons on the capacity of the lines, maintenance on the grid, availability of the production units, etc.);
 - (3) weekly (in cases where weekly publication adds significant information quality and contents in relation to monthly publication): week-ahead

forecasts of the transmission capacity available to the market ~~for each market time unit (which may be an hour or a quarter of an hour)~~, taking into account all new information available to the TSOs at the time of calculation of the forecast, such as weather forecast, availability of the production units, maintenance and topology of the grid etc.; [ETSO comment: the accuracy requested for each market time unit for week-ahead forecasts gives an impression of accuracy that does not exist in reality (e.g. if compared to monthly). This is in particular relevant if wind forecasts have to be considered.]

- (4) daily: day-ahead transmission capacity available to the market for each market time unit;
 - (5) the total amount of all contracts predating the EU directive 96/92/CE and having a priority right of access to cross border transmission capacity, the daily values of the total capacity taken by them as well as its provisional evolution in the coming years;
 - (6) total capacity already given out by market time unit and all relevant conditions under which this capacity may be used (e.g. auction clearing price, obligations how to use the capacity, etc.), so that the remaining capacity is revealed;
 - (7) total capacity used by market time unit ~~immediately~~ as soon as possible after the moment of nomination;
 - (8) as soon as possible after real-time, aggregated realised commercial and physical flows by market time unit, including a description of the effects of any corrective actions taken by the TSOs (like curtailment) for solving network or system problems;
 - (9) aggregated information for the previous day on planned and forced outages.
- 5.3. All relevant information shall be available for the market in due time for the negotiation of all transactions (such as the moment for negotiation of year supply contracts for industrial customers or the moment when energy bids ~~can have to~~ be sent into power exchanges~~organised markets~~).
- 5.4. All information published by the TSOs shall be made freely available in an easy way. All data should also be accessible in an adequate and standardised means of information exchange, to be defined in close co-operation with market parties. This includes information on past time periods with a minimum of two years, so that new market entrants also have access to this data.
- 5.5. When forecasts are published, the *ex post* realised values of the forecast information shall also be published, in the time period following that to which the forecast applies.

- 5.6. The actual physical flows at the interconnections shall be published accordingly (e.g. on the website) by the TSOs in an appropriately timely manner.
- 5.7. The demand forecast information ~~for each control area~~ shall also be published by the TSO according to the timeframes defined in 5.2. and 5.3 as far as such timeframes are relevant for network availability and use.
- 5.8. Where required by the National regulatory authorities, ~~The~~ TSO shall publish also the relevant information on generation according to the timeframes defined in 5.2. and 5.3, as far as the provision of such data is compliant with commercial confidentiality.
- 5.9. TSOs shall exchange regularly a set of sufficiently accurate network and load flow data in order to enable load flow calculations for each TSO in their relevant area. The same set of data shall be made available to the Regulatory Authorities and to the European Commission upon request. Any TSO collecting information on behalf of other TSOs shall give back to the participating TSO the results of the collection of the data.

6. USE OF CONGESTION INCOME

- 6.1. Congestion management procedures may generate revenue for TSOs via market based mechanisms only in cases where ~~of congestion~~ requests for transmission access exceeding the available capacity. The procedure for the distribution of these revenues will be established by the Regulatory Authorities and it shall neither distort the allocation process in favour of any party requesting capacity or energy nor provide a disincentive to TSOs to in~~de~~crease the amount of available transmission capacity~~congestion~~.
- 6.2. In addition to covering the costs of the allocation procedures, ~~The~~ revenues resulting from the allocation of interconnection capacity shall be used for one or more of the following purposes:
 - (1) Guaranteeing the actual availability of the allocated capacity
 - (2) Network investments required for maintaining or increasing the interconnection capacities
 - (3) As an income to be taken into account in the process of calculating the network tariffs

National Regulators shall be transparent about the ~~priority in the~~ use of these revenues.

- 6.3. The congestion income shall be shared among the involved TSOs ~~Member States~~ according to criteria agreed between TSOs involved and approved by the respective Regulators.

- 6.4. TSOs shall clearly establish beforehand the use they will make of any congestion ~~incomerent~~ they may obtain and report on the actual use of ~~these~~ incomerents. Regulatory authorities shall verify that this use complies with the Regulation and Guidelines and that the total amount of congestion incomerents resulting from the allocation of interconnection capacity are devoted to any of the three purposes described in 6.2+ of these Guidelines.
- 6.5. On an annual basis, and ~~by 31st June~~ July [REMARK: aligning with the other reporting dates] - each year, the regulatory authorities must publish a report setting out the use made of the revenues in question together with a verification that this use complies with the Regulation and these Guidelines and that the total amount of congestion incomerents is devoted to any of the three prescribed purposes.
- 6.6. When taken into account in the process of calculating the network tariffs, congestion ~~income rents~~ should lead to a reduction of tariffs on top of any other regulatory method used for the calculation of tariffs.

[ETSO comment: The meaning of this paragraph is not clear as it seems to have several different potential meanings. The wording should be clarified]

- 6.7. The use of congestion incomerents for investments in maintaining or increasing the interconnection capacity shall preferably be assigned to specific predefined projects contributing to relieving the existing associated congestion and with a clear compromise to accomplish them in a reasonable time with particular reference to authorisation process. In the case of TSOs belonging to a holding or in ownership of a state that owns other companies that perform liberalized activities at the same time, complying with this recommendation must be verified and approved by the responsible Regulator. In case of an interconnector (or part thereof) operating as a merchant line lines, the Regulator shall decide on whether or not there is adequate business separation between it and other an-affiliates carrying out ~~merchant line activities is sufficiently separated from~~ any other market activities.

7. TRANSMISSION NETWORK EXPANSION WITH MERCHANT INVESTMENT

1. There shall be open access to both regulated and merchant business model network facilities on non-discriminatory conditions. ~~unless exempted according to Article 7 of the Regulation. Any network charges or~~ Collection of congestion incomerents must be set – or determined via ~~by~~ market based mechanisms - in a non-discriminatory and transparent manner. The regulatory authorities must have the responsibility for ensuring this. For the avoidance of doubt, paragraph 6.1 of these Guidelines shall not apply to interconnectors (or part thereof) operating on the basis of a merchant business model. ~~merchant facilities.~~

2. Initial long-term contracts for transmission capacity may be authorized, if they respect the basic principles expressed in Regulation, these Guidelines and by the Regulators, on congestion management, notably the use-it-or-lose-it rule.
3. The remuneration of the owner of an interconnector (or part thereof) operating on the basis of a merchant business model ~~merchant network facility would~~ may not be regulated on the same basis as adjoining TSO(s) or subject to the provisions of section 6, but, in principle, it shall follow the same rules on open access, transparency and non-discrimination that apply to regulated facilities. However, while the remuneration of a regulated network facility is determined a priori on the basis of incurred costs or the results of an open tender for construction, the remuneration of an interconnector (or part thereof) operating on the basis of a merchant business model ~~network facility~~ shall be based on the congestion incomerents earned by the facility and there will be no regulated limit to its value. This notably implies that the existence of a merchant line cannot prevent the construction of an additional regulated or merchant line, even if it induces a decrease of the congestion rent levied by the merchant line. Equally, the conditions under which any such additional regulated line may be built need to be set out in advance in order to minimize regulatory risk for the merchant investor. Congestion rents shall be the result of an allocation mechanism compliant with the Regulation and these Guidelines.
4. Since there is no regulated remuneration there is no regulated cost to be allocated for interconnectors (or part thereof) operating on the basis of a ~~the~~ merchant business model lines. The remuneration of the merchant investment is obtained solely from congestion incomerents and long-term contracts.
5. ~~In case a merchant direct current line is treated for regulatory purposes as a (G, L) pair, it will have to pay the corresponding national network charges as a generator and a load, in so far as such charges are reflective of national locational charges for the TSO concerned. Additional charges may also be made corresponding to incurred externalities in network operation~~ Future interconnections that are exempted from the Article 7 of the Regulation will be considered as merchant lines.