



Monitoring Report 2010

on the compliance with the Guidelines of
Good Practice of Open Season procedures
(GGPOS)

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INFORMATION PAGE

Abstract

This document E10-GMM-11-04 is an ERGEG document on Monitoring Report 2010 on the compliance with the Guidelines of Good Practice of Open Season procedures.

This report shows the results of the survey, presents the main views of the regulators, operators and stakeholders from OS practical experiences and the most relevant conclusions that can be drawn from them. In order to respect confidentiality, the results in this report are presented in an aggregated and anonymous way.

Target Audience

Energy suppliers, traders, gas/electricity customers, gas/electricity industry, consumer representative groups, network operators, Member States, academics and other interested parties.

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Related Documents

CEER/ERGEG documents

- “ERGEG Guidelines for Good Practice on Open Season Procedures (GGPOS)”, Ref: C06-GWG-29-05c, 21 May 2007 http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_ERGEG_PAPERS/Guidelines%20of%20Good%20Practice/Gas/C06-GWG-29-05c

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1. Executive summary

The Guidelines of Good Practice on Open Season Procedures (GGPOS) were adopted by ERGEG on 21 May 2007, after extensive consultation with stakeholders. They establish a set of recommendations for Open Season (OS) procedures in terms of the role of these procedures, the conditions that call for their application, their structure in two main phases and they provide some general guidance on the necessary coordination between regulators, sponsors and capacity users.

In its 2009 Work Programme, ERGEG planned to monitor the current level of compliance with the GGPOS. The objective of this monitoring exercise is to identify the degree of compliance with these guidelines in recent OS procedures and recommend improvements to the current contents of the GGPOS.

In order to carry out monitoring of GGPOS, a questionnaire was circulated among National Regulatory Authorities (NRAs), OS sponsors and network users in order to gather their views on the development of a number of OS procedures in the analysed period – from the publication of the GGPOS to the time of distribution of the questionnaires. This survey was open from 7 July until 18 September 2009. 41 responses were collected in total: 8 from NRAs, 8 from sponsors and 25 from users.

This report shows the results of the survey, presents the main views of the regulators, operators and stakeholders from OS practical experiences and the most relevant conclusions that can be drawn from them. In order to respect confidentiality, the results in this report are presented in an aggregated and anonymous way.

The main topics addressed in the consultation were the conditions that call for an OS, the role of the regulator in the OS process, the information provided to the market in the beginning of the OS process, the reliability of the non-binding phase, the capacity allocation process and the coordination of NRAs and OS sponsors on cross-border aspects.

The main conclusion drawn from the consultation is that there is a significant degree of non-compliance with past OS procedures with the GGPOS with regards to the transparency of the procedure and the insufficient level of coordination between NRAs and TSOs.

Therefore, ERGEG highlights the need for further guidance on the information to be provided at the beginning of the procedure, on the timetable of the OS, on the “economic test” or on the methodology applied to decide how much capacity will be built, on the tariffs and underlying methodologies and on the capacity allocation process. Improved coordination between TSOs and NRAs in case of cross-border projects should also be promoted as many users have criticised the non-compatibility of the products offered during some of the OS with those of adjacent system operators. They pointed out a lack of coordination on timing and different legal and operational rules on interconnection points. In addition, the survey has emphasised the need to provide more concrete guidance on the non-binding phase in order to obtain more serious commitments from the market as the sponsors often take into consideration overestimated requests when defining the terms and conditions of the project.

2. Introduction: Scope and method

The main objective of this report is to assess the key features of the OS procedures developed in the European countries since the publication of the Guidelines of Good Practice of Open Seasons (GGPOS). The aim is also to find out the most significant difficulties and positive aspects in each case according to the views of the regulators, sponsors and users involved, in order to identify the need for possible modifications or new recommendations to include in the current GGPOS.

For the analysis, three different target audiences have been surveyed, namely: the National Regulatory Authorities (NRAs), the sponsors of the projects, i.e. the Transmission System Operators (TSOs) and LNG system operators and the network users who have taken part in the analysed OS.

The survey has been conducted for 12 OS procedures involving 8 European countries. As the GGPOS were published in May 2007, this survey concerns the most recent terminated OS as well as the ongoing ones, for each network and infrastructure (transmission, LNG and storage facilities).

Some OS were excluded from the survey, as the process was not in an advanced stage at the moment of release of the survey. This was the case of the OS aiming at increasing the interconnection capacity between France and Spain at Larrau and Biriadou in 2013, launched in July 2009. The responses received from the users regarding this OS were however taken into account to the extent that they provide general remarks on the OS process.

The survey used for completing this monitoring exercise consisted of three different questionnaires addressed to NRAs, sponsors and network users, via the online tool on ERGEG website. The ERGEG survey counted on the participation of 8 NRAs involved in the 12 surveyed OS, 8 sponsors participating to 7 of the surveyed OS and 25 users taking part to 10 OS.

Table 1: Regulators participating in the survey

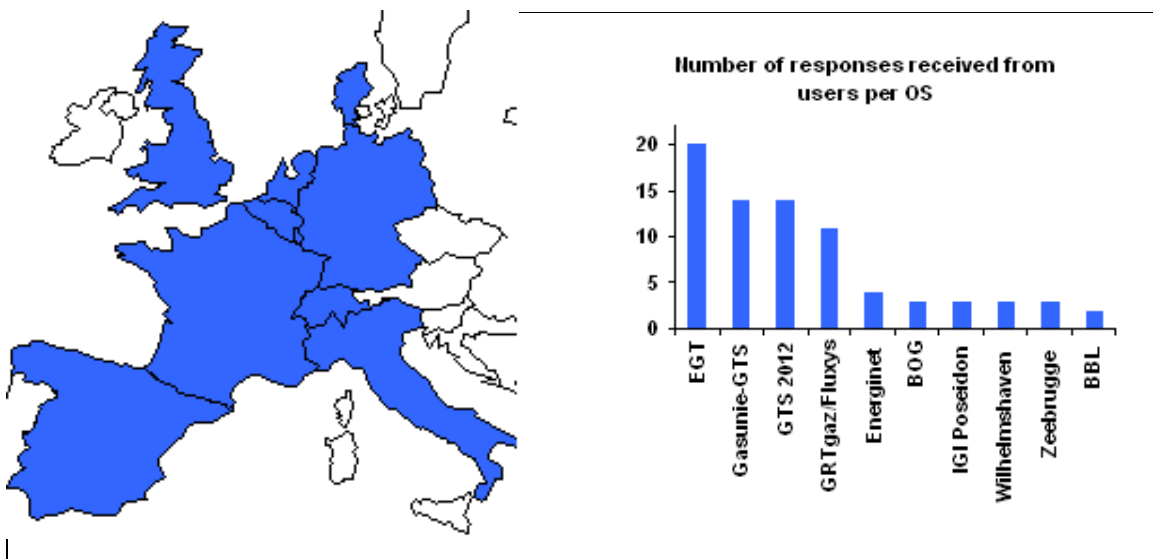
Country	Regulator	Open season
Austria	Energie-Control GmbH - e-Control	BOG OSP 2008
France	Commission de Régulation de l'Énergie - CRE	GRTgaz/Fluxys
Belgium	Commission pour la Régulation de l'Électricité et du Gaz - CREG	- Extension Zeebrugge terminal - GRTgaz/Fluxys
Denmark	Energitilsynet - Danish Energy Regulatory Authority - DERA	Energinet OS
Germany	Bundesnetzagentur - BNetzA	- EGT Open season - OPAL, NEL, KAPAL - Wilhelmshaven - Integrated Open season GTS-Gasunie
Italy	Autorità per l'Energia Elettrica e il Gas - AEEG	IGI Poseidon
Poland	Urząd Regulacji Energetyki / The Energy Regulatory Office of Poland - URE	Gaz system OS
The Netherlands	Office of Energy Regulation (Energiekamer) - NMa-EK	- Integrated Open season GTS-Gasunie - GTS 2012 - BBL

Table 2: Sponsors participating in the survey

Country	Sponsor	Open season
Belgium	Fluxys LNG	Extension Zeebrugge terminal
Belgium	Fluxys NV	GRTgaz/Fluxys
Germany	E.ON Gastransport GmbH	EGT Open season
Germany	Gasunie Deutschland Transport Services GmbH	Integrated Open season GTS-Gasunie
Denmark	Energinet.dk	Energinet OS
France	GRTgaz	GRTgaz/Fluxys
Netherlands	Gas Transport Services	GTS 2012
Poland	Operator Gazociagow Przesylowych Gaz-System. S.A.	Gaz system OS

25 users from 9 different countries participated in the survey. They took part in 10 of the surveyed OS. The figure below shows the number of responses received from users per OS. 4 of the surveyed OS received a high number of responses: EGT, Gasunie-GTS, GTS 2012 and GRTgaz-Fluxys.

Fig. 1: Overview of the users participating to the survey



Foreword on methodology:

In order to ensure confidentiality, the results presented in this report are often on an aggregated basis. For some questions, it was necessary to present the results by anonymous OS (OS1, OS2, ..., OS10). It should be highlighted here that this classification does not correspond to the ranking of the OS as presented in Figure 1 above.

For all figures in this report, the answers *Not Applicable* "NA" refer to the OS procedures that were in progress at the moment of the survey.

Table 3: Scope of the GGPOS monitoring: countries and Open Seasons

Open Season (abbreviation)	Open Season (full name)	Country
BOG OSP 2008	Development of new transmission capacities in Baumgarten-Oberkappel (WAG)	Austria
GRTgaz/Fluxys	OS for increasing cross-border capacity between France & Belgium <i>Coordinated OS between GRTgaz (French TSO) and Fluxys (Belgian TSO)</i>	Belgium, France
Zeebrugge	Extension of Zeebrugge terminal	Belgium
Energinet.dk OS 2009	Increase of entry-exit and transmission capacities in the Danish gas system	Denmark
Gasunie -Gastransport	Coordinated capacity development at both sides of the border between Northern Germany and the Netherlands <i>Integrated OS between Gasunie De. (German TSO) and GTS (Dutch TSO)</i>	Germany, The Netherlands
E.ON Gastransport (EGT)	Allocation of transmission capacities in EGT network	Germany
OPAL, NEL, KAPAL	Capacity allocation in transmission pipelines by Wingas	Germany
Wilhelmshaven	Development of a new LNG Terminal in Wilhelmshaven (Northern Germany)	Germany
IGI Poseidon	Development of cross-border capacity between Greece & Italy	Italy
Gas System	Development of new cross-border capacities with Denmark and Lithuania	Poland
GTS 2012	Expansion of Gastransport Services gas network as of 2012	The Netherlands
BBL	Cross-border capacity in the interconnector between United Kingdom and the Netherlands	The Netherlands

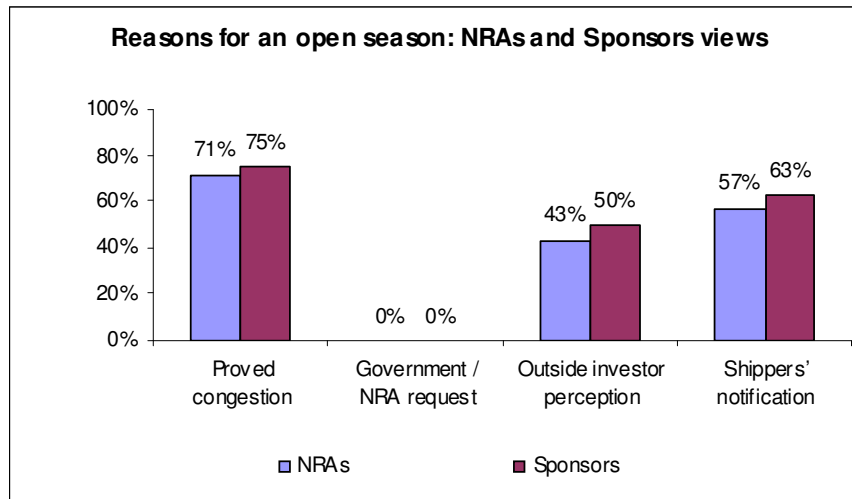
3. ERGEG findings from the monitoring exercise

The purpose of this section is to assess ERGEG's findings from the monitoring exercise and draw conclusions related to the current degree of compliance with the GGPOS. The section is structured according to the main topics that have been surveyed in the monitoring exercise, referring to the different sections contained in the GGPOS: conditions that call for an OS, the role of the regulator, the information given at the beginning of the OS, the non binding phase, the capacity allocation process, the binding agreements, the results and the coordination with the operators of adjacent systems.

3.1. Conditions that call for an Open Season

NRAs were asked about the conditions or situations that, in their view, call for the organisation of an OS. Sponsors were asked more specifically why they took the decision to launch the OS (topic related to paragraphs 17 to 22 of GGPOS). The answers received from NRAs and sponsors delivered the following results:

Fig. 2: Reasons for an Open Season



The respondents explained their answers by describing the particular situations that triggered the OS. They explained how congestion was proved or how investors took their investment decision in each particular case.

According to two regulators, the congestion was considered proved through the existence of refusals from the TSO to accept requests from shippers or as a result of a market screening procedure. In one case, a regulator stressed that there was evidence of contractual congestion, but it was not possible to prove formally the existence of physical congestion. In this regard, another regulator believed that the existence of only contractual congestion, through an inefficient use of infrastructure, with no physical congestion, should not lead to the construction of new infrastructure.

A regulator pointed out that the EC Interpretative notes on the 3rd Package recommend OS procedures for new infrastructure projects exempted from TPA access (Art. 36 of Directive 2009/73/EC). This is the case for one OS, which actually responds to a different logic than the rest. The concerned project was decided by an outside investor based on its perception of a need for new import infrastructure, not due to congestion problems, which according to the respondent do not exist. The OS was seen as a way to bypass the incumbent as main gas importer and to foster competition in the market, allowing for a certain percentage of capacity to be allocated to third parties. However, it is important to stress that the sponsor benefitted in this case from a TPA exemption.

In another case, the lack of available capacity pointed out by the shippers was acknowledged by the concerned TSO in its internal strategic planning, and the need for new capacity was also justified in the light of a decrease in indigenous production.

In one country, the TSO has to publish a quality and capacity document once every 2 years, identifying where congestion could arise in the future and the level of availability of capacity. This document focuses on the need for extra capacity and how the TSO or DSO must fulfil this need. The NRA audits this document by checking the promised versus the realised.

Section 3 of GGPOS establishes that, before launching an OS, full use should be made of existing infrastructure via the application of appropriate congestion management procedures (CMP) to solve contractual congestion. In addition, it foresees that if physical congestion exists, and is substantial enough, additional investment is needed.

This does not seem to have been the case for all surveyed OS. In one answer, the respondent explicitly recognises that the existence of physical congestion could not be proved, and the OS was launched on the basis of an existing contractual congestion. In another case not only physical congestion was unproved, but actually no contractual congestion had been observed either. The decision was taken by the investor for competition reasons.

It is also remarkable that in none of the analysed OS was the decision taken by the Government or the NRA, which is a possibility considered in the GGPOS. It has not been necessary either to adopt another option also observed by GGPOS, which is the direct notification by the shippers to the NRA or the relevant national authority. In most cases, a notification to the TSO has triggered the decision. Sometimes, the TSO has even taken the decision without receiving any prior notification.

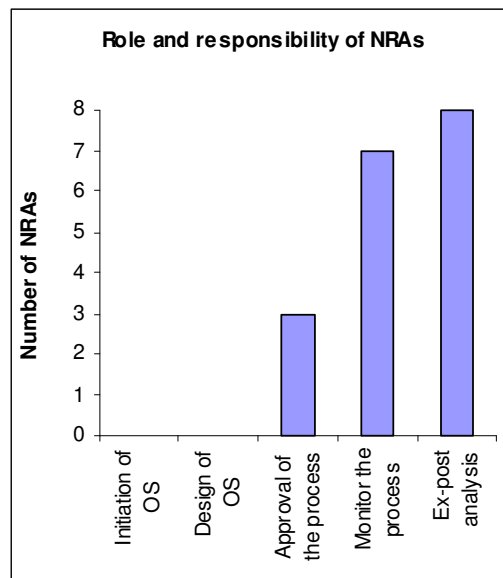
3.2. Role of the Regulators in the Open Season process

The GGPOS include several provisions allowing or directly recommending a role to play by the NRA. The survey included a set of questions to NRAs on the role they had on the OS.

3.2.1. Involvement of the NRA in the various steps of the open season procedure

The NRAs were asked about their involvement in the initiation, design, approval, monitoring and ex post analysis of the process.

Fig. 3: Role and responsibilities of NRAs in the OS



The analysis of the results shows that NRAs are most frequently involved in the advanced and latest stages of the process, approving in some cases the OS process, almost all monitoring the process, and performing an ex-post analysis. Some NRAs provided the following elements:

- One NRA is also in charge of facilitating coordination with the TSOs and NRAs of the adjacent networks;
- Another NRA does not approve investment plans. Its involvement in the OS responds to its own initiative.
- For another NRA, the initiation and the design of the OS are realised by the TSOs. The NRA approves and monitors the process and works in close cooperation with neighbouring TSOs and NRAs.

- Finally, another NRA is consulted and informed by sponsors during the design and executing-period of the OS. It also carries out an ex-post control and ex-post misuse intervention if formal complaints are filed.

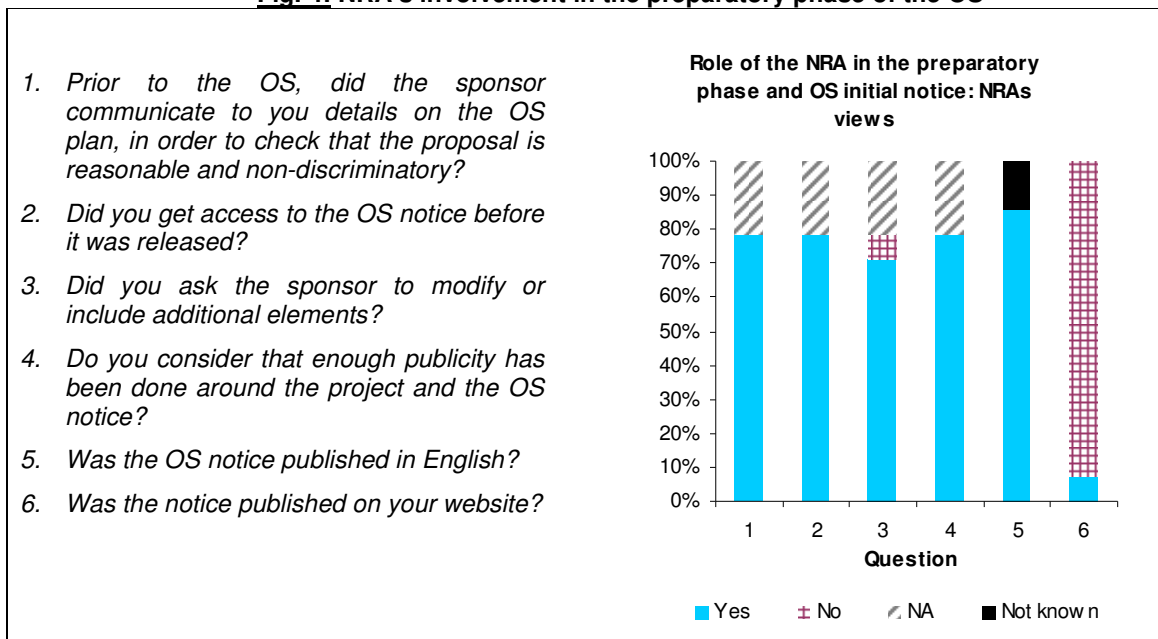
This result contrasts a little bit with the answer provided by the sponsors. All the sponsors consider that they involved their NRA from the beginning of the OS. The different perception of sponsors, compared to NRAs, may lie in the fact that sponsors consider that the OS starts when the process is approved by the NRA or even launched.

The GGPOS establish, in section 5 (paragraph 49) that the NRA may wish to evaluate whether the OS produced satisfactory results. According to the survey, all NRAs have performed such an ex-post analysis of the results of the OS.

It is also interesting to compare these findings with the answers from NRAs when asked whether their national legislation limits their involvement in OS processes. This question provides a 50% of answers as a “yes” and a 50% as a “no”. Some nuances have been added by NRAs to their answers. For instance, one of the “no” respondents clarifies that, though they are not limited by legislation, they have no explicit approval powers in the OS process either. Another NRA is not involved in the physical planning of investments, as the investment decisions are not approved by the NRA but submitted and approved by the relevant Ministry. In another case, OS are not explicitly foreseen in legislation, but it is one possibility to fulfil the TSOs obligation for network expansion according to market needs. A “yes” respondent explains its limitation is due to the fact that OS are not envisaged in the law, whereas a last NRA recalls they have no role at all in OS processes.

NRAs were questioned more specifically about their degree of participation in the preparatory phase, related to some provisions of GGPOS (section 4.1.1 – paragraph 25). In particular, they were asked on the following aspects:

Fig. 4: NRA’s involvement in the preparatory phase of the OS



This graph reveals that for all the OS, the sponsors sent to their NRAs details on the OS. All NRAs had also access to the initial notice before its publication and actually all but one asked for modifications or additions to it. All NRAs considered enough publicity was given to the OS. Finally, only one NRA published the notice in its own website.

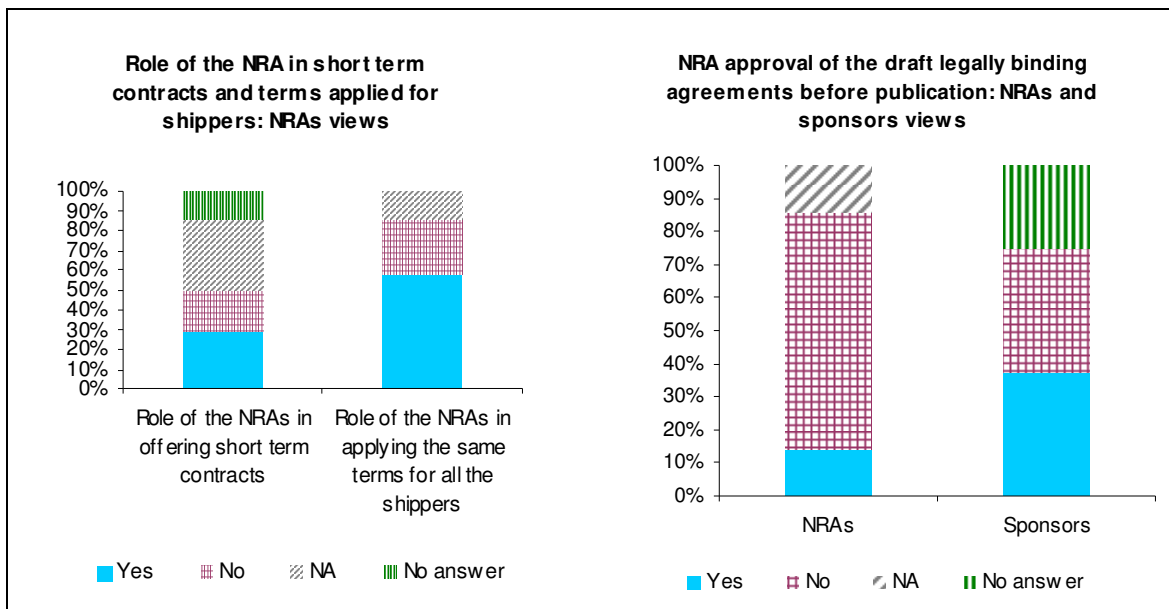
In the preparatory phase of the OS, the GGPOS (paragraph 25) recommend the sponsor to forward the details of the OS to the NRA in order to verify that the sponsor’s proposal is reasonable, non-discriminatory, and consistent with the guidelines laid down in the GGPOS, and reflecting market demand and technical-economic constraints. While the results of figure 3 above show that the NRAs are not involved in the initiation and design of the OS, figure 4 reveals that all NRAs having taken part in OS had access to the OS initial notice beforehand and had actually asked for modifications or additions. The recommendation to have the OS process monitored by the NRA has also been followed as well in most cases (7 out of the 8 OS).

3.2.2. Role of the NRAs in particular features of the OS process: terms of agreements, short term contracts and bank guarantees

Three more precise questions were asked on the NRAs’ involvement in three other particular features of the process: the assessment of the terms of the agreements applied to shippers, the offer of short-term contracts in the process, and the assurance of non-discrimination in bank guarantees and fees.

The NRAs answered in a positive way in more than half of cases when asked whether they made sure that the same terms were applied for all shippers in the agreements. Concerning the role of the NRAs with regards to short term contracts, the results show that there are a variety of situations. Most NRAs did not approve the draft legally binding agreements before their publication.

Fig. 5: Role of the NRAs in the terms of the shippers’ agreements, short term contracts and draft legally binding agreements

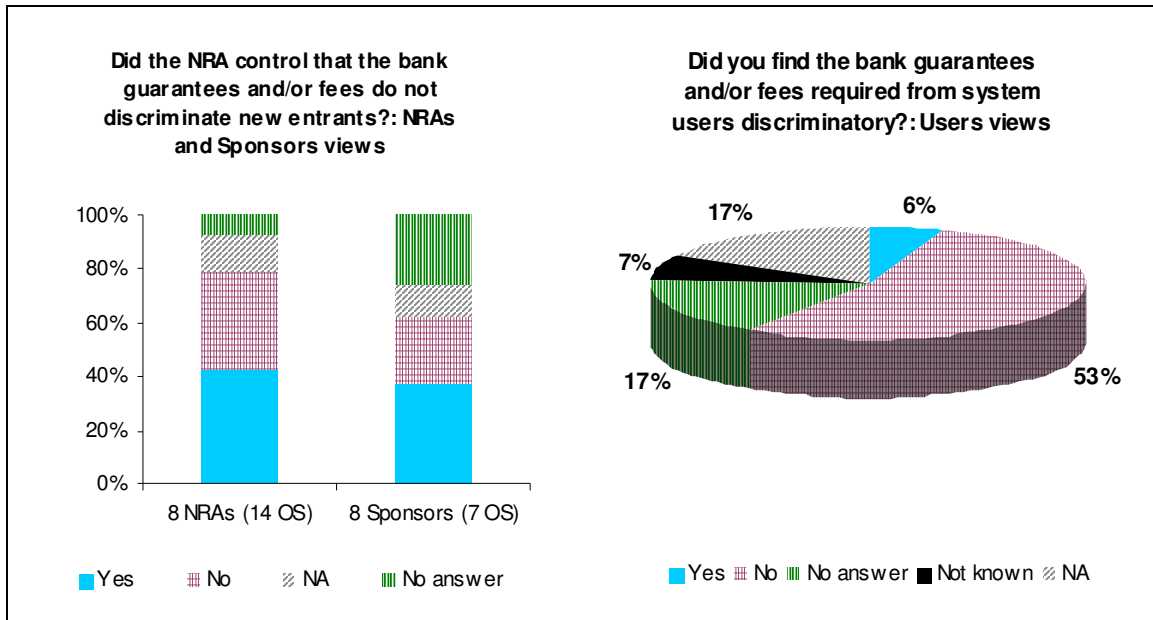


Paragraph 28 of the GGPOS states that the draft of the legally binding agreements the OS participants will be asked to sign should be approved by the NRAs. The results of the consultation show that this recommendation was not applied for most of the surveyed OS.

The GGPOS also recommend NRAs to have access to the terms of the agreements between shippers and project sponsors and to verify that the same terms are applied to all shippers (paragraph 45). According to figure 5, this has been the case for more than half of the OS, which can be seen as a medium degree of compliance with this recommendation.

NRAs and sponsors were both invited to describe the involvement of NRAs in ensuring non-discrimination in bank guarantees and fees. The users were also asked whether they found these fees or guarantees discriminatory. Their answers were as follows:

Fig. 6: Role of the NRAs in controlling the non discrimination of bank guarantees



Although in many cases the NRA did not actively take part in ensuring non-discrimination in fees for participating in OS, a majority of shippers considered that these financial guarantees were non-discriminatory and only 6% of the answers deemed them discriminatory.

The GGPOS (paragraph 44) include one guideline that bank guarantees and fees should be reasonable and should not discriminate new entrants. The NRA should control the level of the requested guarantees and fees to ensure non discrimination. In any case, the results show that, in general, the guarantees and fees applied in the surveyed OS did not discriminate new entrants according to the users.

ERGEG concludes that even though the role of the regulator in the OS process is not clearly established in all the countries, the NRAs were globally involved in these procedures, mainly by checking the initial OS notice before its release, monitoring the whole process and analysing ex post the efficiency of the process. The NRAs often did not approve specific documents of the OS, as the binding agreements, the level of bank guarantees and the terms applied for the shippers.

3.3. Information given prior to the Open Season

The GGPOS focus on the need for transparency at all steps of the procedure, notably in the beginning, with the publication of an OS notice. This OS notice should, among other elements, contain information on the “tariffs for each service the sponsor is offering, or indicative tariffs and underlying methodologies”. Two issues are addressed in this section: the details available in the initial OS notice and the degree of tariffs visibility provided for the surveyed OS.

3.3.1. The OS notice

The aim of the OS notice (or the Information Memorandum) is to give to the market as much information as possible on the sponsor’s project and on the service proposed to OS participants. NRAs and sponsors were questioned in the consultation on the compliance of the OS notice with the requirements of the GGPOS.

The GGPOS state that all notices should include some general information, some specific information about the project, information related to each possible design and capacity expansion and some information related to coordination with adjacent system operators (paragraphs 27-33). The responses are synthesised in the following table:

Table 4: OS initial notice¹

		Was this information included in the O.S. notice?				
		Yes	No	NA	Not known	No answer
A. General information						
Information on the start and end dates for making non-binding offers	NRAs	79%	0%	0%	21%	0%
	Sponsors	100%	0%	0%	0%	0%
Process to make non-binding offers	NRAs	79%	0%	0%	21%	0%
	Sponsors	88%	13%*	0%	0%	0%
Confidentiality arrangements for information received from O.S. participants	NRAs	86%	0%	0%	14%	0%
	Sponsors	88%	13%*	0%	0%	0%
<i>Methodology or "economic test" to decide how much capacity will be built</i>	NRAs	43%	29%	0%	21%	7%
	Sponsors	38%	38%	25%	0%	0%
The allocation rules applied in case the demand indicated in the O.S. can not be fully met	NRAs	64%	7%	0%	21%	7%
	Sponsors	50%	50%	0%	0%	0%
The date on which capacity allocations will be communicated to O.S. participants	NRAs	71%	0%	0%	21%	7%
	Sponsors	75%	25%	0%	0%	0%
The date by which O.S. participants will be asked to sign a binding agreement	NRAs	71%	0%	0%	21%	7%
	Sponsors	88%	13%	0%	0%	0%
Creditworthiness guarantees and deposits	NRAs	71%	0%	0%	21%	7%
	Sponsors	100%	0%	0%	0%	0%
<i>Drafts of the legally binding agreements</i>	NRAs	43%	21%	0%	21%	14%
	Sponsors	50%	50%*	0%	0%	0%
<i>The procedures and timetables for ensuring regulatory approvals</i>	NRAs	21%	14%	64%	0%	0%
	Sponsors	38%	63%*	0%	0%	0%
Possible regional coordination problems and responses	NRAs	57%	7%	0%	36%	0%
	Sponsors	50%	50%	0%	0%	0%
<i>Mechanisms to deal with cost-overruns</i>	NRAs	29%	29%	21%	14%	7%
	Sponsors	13%	75%	13%	0%	0%
<i>Penalties applied to the sponsor if capacity is not delivered on time</i>	NRAs	29%	43%	21%	0%	7%
	Sponsors	25%	50%	25%	0%	0%
B. Specific information related to the project						
<i>Existing technical capacities or historical booked and used capacity</i>	NRAs	43%	21%	36%	0%	0%
	Sponsors	75%	25%*	0%	0%	0%
Project's intake and off-take points	NRAs	71%	0%	29%	0%	0%
	Sponsors	88%	13%*	0%	0%	0%
Technical and available capacities as well as operating pressures	NRAs	50%	21%	29%	0%	0%

¹ The information in red refers to 50% or less of "yes" responses.

	Sponsors	63%	25%	13%	0%	0%
The in-service dates of each design under consideration	NRAs	50%	29%	21%	0%	0%
	Sponsors	63%	38%	0%	0%	0%
<i>Possible capacity expansions</i>	NRAs	43%	14%	21%	21%	0%
	Sponsors	50%	38%	0%	13%	0%

C. Information related to each possible design and capacity expansion

<i>Secondary trading arrangements</i>	NRAs	43%	21%	0%	21%	14%
	Sponsors	25%	50%	13%	0%	13%
<i>UIOLI arrangements</i>	NRAs	50%	14%	0%	21%	14%
	Sponsors	25%	63%	0%	0%	13%
Available contract lengths	NRAs	71%	7%	0%	21%	0%
	Sponsors	63%	25%	0%	0%	13%
Available capacity types (firm / interruptible)	NRAs	64%	7%	7%	21%	0%
	Sponsors	63%	25%	0%	0%	13%
Tariffs for each service offered, or indicative tariffs and underlying methodology	NRAs	57%	14%	0%	21%	7%
	Sponsors	50%	38%*	0%	0%	13%

D. Information related to coordination with adjacent SOs

<i>Information about the products offered on adjacent systems</i>	NRAs	7%	50%	0%	36%	7%
	Sponsors	75%	13%	0%	0%	13%

* In this case, a large share of respondents specified that this information was not included in the initial OS notice, but was communicated to market parties through consultations or published on the TSO's website.

The survey results show that the details provided in the initial OS notice were broadly compliant with the GGPOS requirements. Some general information on the project was often missing in the case of the surveyed OS, with regards to the economic test or the methodology adopted to decide how much capacity will be built, the procedures and timetables for ensuring regulatory approvals, the mechanisms to deal with cost overruns and the penalties applied to the sponsor if the capacity is not delivered on time. However, most of the NRAs considered that this missing information did not really represent an obstacle to a proper assessment of the process for the users. The surveyed OS notices did not also include specific information on the projects, notably on the existing technical capacities or historical booked and used capacity and on the possible capacity expansion. Details on the secondary trading and UIOLI arrangements were also often missing, but in many cases the sponsors specified that this information is communicated to market parties through consultations or published on the TSO's website. The information on the products offered on adjacent systems is also a key element which is often not detailed in the OS notice.

NRAs and sponsors brought the following comments to explain their answers on some specific issues:

- **Economic test:** According to the GGPOS, the methodology applied to decide how much capacity is ultimately built (the economic test) should be published in the beginning of the process, in the OS notice. For 5 regulators (involved in 6 surveyed OS), the economic test was published, and in 4 cases, this element was not provided in the beginning of the process. According to TSOs, the economic test was only published in 3 OS (over 8). In general, 4 TSOs consider that the publication of this test in the OS notice is too early. According to one TSO, the OS notice aims at identifying potential capacity needed from the users. The definition of economic criteria cannot be done at this stage of the process as the size of the project is unknown. Another TSO explained that the allocation rules were discussed at a later stage with the NRA and published after the concluding phase. Moreover, two other TSOs agreed that the economic test is not applicable since the capacity is adjusted (as far as this is technically possible) according to market demand. Finally, a TSO highlighted that the GGPOS do not contain sufficient information on how the economic test should be carried out.
- **Cost overruns:** The GGPOS state that mechanisms to deal with cost-overruns should also be published in the OS notice. This element was published in 4 OS according to NRAs and in only one OS according to the sponsors. Five regulators consider however that this information is essential

and could constitute an obstacle for a proper assessment of the process if not included in the notice. There is however a certain consensus among sponsors that there is no need to publish this information in the notice, as it is a risk supported by the TSOs.

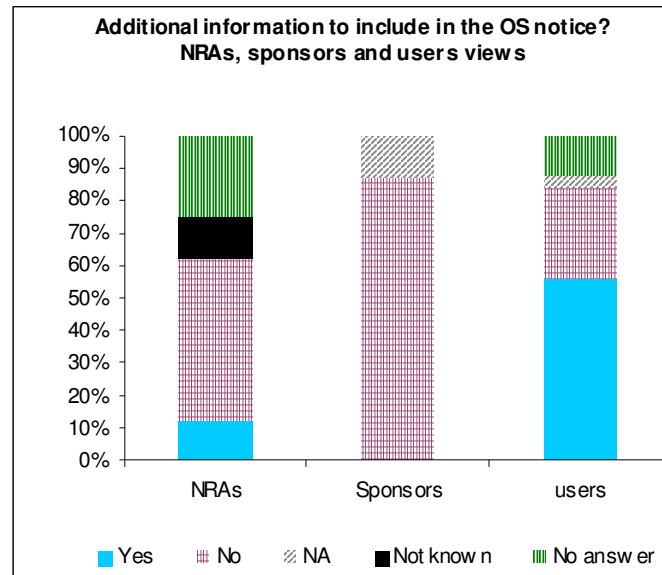
- **On the penalties** applied to the sponsor if capacity is not delivered on time: two sponsors stated that penalties are not accepted by the sponsor in case of delays.
- **On the technical and available capacities as well as operating pressures:** Most TSOs publish information related to capacity but two of them consider that publishing data in the OS notice related to operating pressures is not relevant.
- **The in-service dates of each design under consideration:** In three OS, this information was not published. In two cases, the sponsor argued that indicative dates can be given at the beginning of the project but do not reflect a commitment from the sponsor. A TSO explained that the in-service dates of each design were not known in the initial phase, as the designs were further developed after the market consultation. These dates were finally published after the concluding phase.
- **Possible capacity expansions:** two TSOs justified their negative answer by the fact that the initial capacity is not known at the start of the OS and is dependent on the bids received during the OS.
- **Tariffs for each service offered, or indicative tariffs and underlying methodology:** in two cases, the sponsors stated that this information was not published in the initial notice but did not provide additional comments. Two other sponsors (“yes” respondents) explained that, as the capacity created during the OS will be added to total existing capacity, the current tariffs already published on their websites will apply. For NRAs, in 8 OS, tariffs or indicative tariffs were provided in the initial notice. In two cases, NRAs answered “no” but did not give additional explanations.
- **Information about the products offered on adjacent systems:** Six TSOs stated that they publish the necessary information on the products offered on the adjacent TSOs, but many of them specified that the links to the adjacent SO websites are provided. One TSO did not give an answer and another one answered negatively, but explained that this data is available on the internet websites of adjacent TSOs.

Specific data for LNG and storage projects are also required in the GGPOS. This survey did not involve any storage OS. For the two surveyed LNG projects:

- NRAs confirmed that the type of ships the terminal is able to accept is published in the OS notice – confirmed by one sponsor.
- The description of the nomination procedure and of the scheduling process is not included in these two OS notices – confirmed by one sponsor.
- No answer was given for the publication of capacities and capacity fees for docking, storage, regasification and emission components – confirmed by one sponsor.

NRAs, sponsors and users were asked whether some additional information should be included in the OS notice.

Fig. 7: Additional information in the OS notice



For sponsors, the data required in the OS notice are sufficient. One regulator proposed that it should include more information, in particular on the coordination with the OS of adjacent SOs.

The users have different views: 56% of the respondents consider that the notice should include more information :

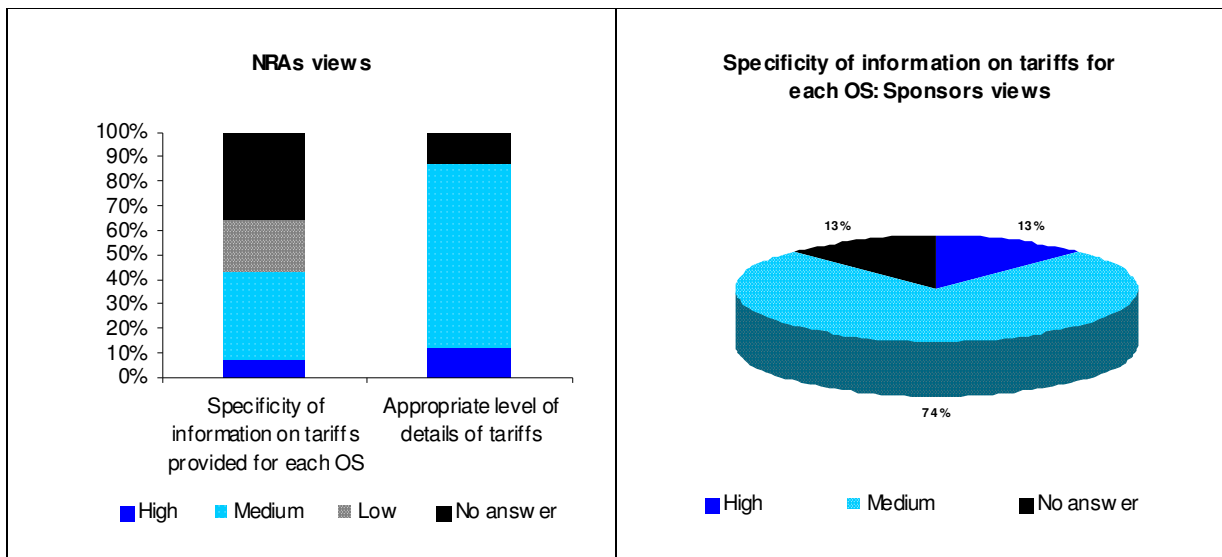
- Many users complained about the lack of clarity regarding the investment decision process, more specifically on the triggers for the TSO that will lead to the development of capacity and on the criteria for prioritisation in the selection process. Users also requested more transparency on the development planning of the TSO.
- Further information on the economic test was requested by one user. Another user taking part in three OS commented that the economic test was never published. This user explained that in these conditions, it is difficult to know how much to bid to be able to satisfy the investment criteria.
- Two users asked for more information on the expected investment and on investment volumes in case all requests are not fulfilled.
- Five users emphasised the need to publish more details on the tariffs and the price of capacity per unit. If tariffs' ranges can not be provided, one user explicitly requested to provide a step-out clause in the contract, in the case of a tariff increase above a predefined threshold. Another user expressed the need for the users to be informed of the status of tariff approval discussions with the national authorities. One user also complains that the indicative tariffs were occasionally published, but they were not supported by an underlying methodology or subject to a number of changes.
- Two other users expressed a need to provide complete information on the level of cooperation with TSOs of adjacent systems, with a joint initial OS notice in the case of coordinated OS.
- Three users need more information on the timetable of the OS. They specifically criticised the lack of clarity on the deadline for binding submissions.
- More clarity on all terms and conditions of the booking agreement and on the capacity allocation process is also needed by the users.

3.3.2. Tariffs visibility

The transparency of the tariffs for each service offered by the sponsor is one of the main requirements of the GGPOS. Paragraph 30 states explicitly that for each design under consideration and each possible capacity expansion, the sponsor will need to inform the users about the tariffs for each service, or indicative tariffs and underlying methodologies. More precisely, according to paragraph 43 in the GGPOS, the tariffs or indicative tariffs and underlying methodologies should be clear, even “where long term tariff or tariff methodology is not provided for long term capacity, users should be given all available elements to evaluate possible tariff movements as precisely as possible”.

NRAs and sponsors were asked about the specificity of information on tariffs that was provided to the market before the beginning of the OS. NRAs were also asked a general question on the appropriate level of details that should be given to the market in the beginning of the OS.

Fig. 8: Appropriate level of details on tariffs



One sponsor considers that the information on tariffs published in the beginning of the OS was very specific: as the capacity planned to be constructed during the OS is added to total existing capacity, the same tariffs will apply; these tariffs were already published on the sponsor’s website. For 5 other sponsors, the degree of details provided on tariffs is considered “medium”:

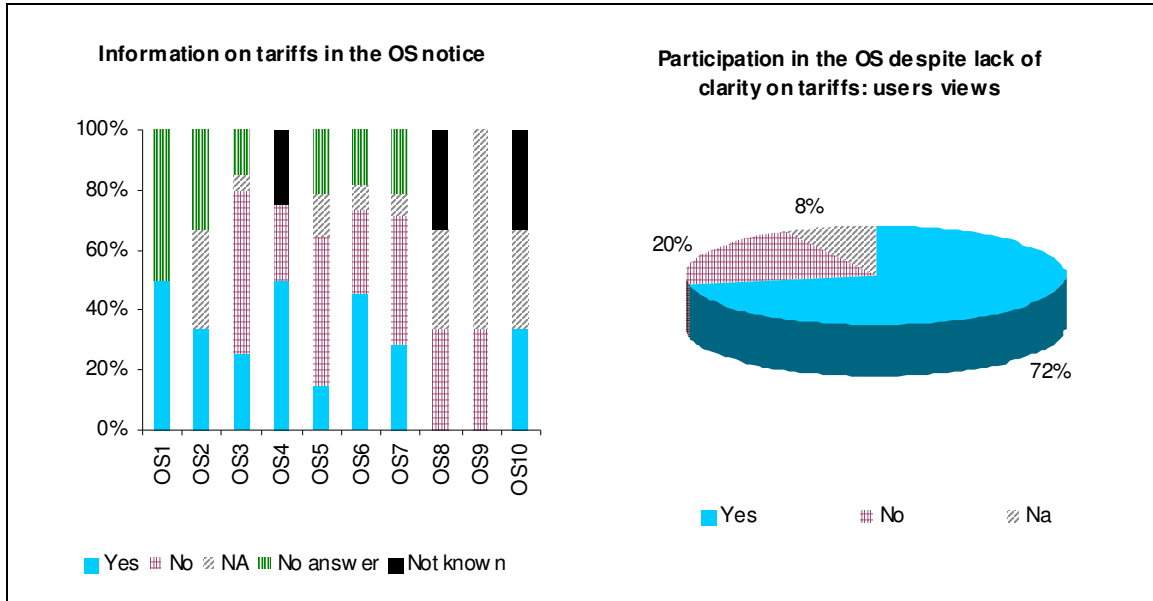
- In one case, an indicative tariff was given to the market in phase 1. In phase 2, a reference was made to the applicable regulated tariffs with a tariff cap to contractually allow shippers to commit for long term capacity.
- An expected tariff range was indicated in another OS.
- A sponsor indicated that before the beginning of the process, he communicated to the market that the rates provided within the OS will be calculated in accordance with the national legislation.
- For one sponsor, contrary to the requirements of GGPOS, the sponsor is not able to present the amount of capacity and price in phase 1.

NRAs broadly agree that the tariff regime and the calculation method should be specified and communicated at the beginning of the OS. According to a regulator, the tariffs presented must be precise enough to allow potential users to evaluate the costs of use of the infrastructure.

However, for many regulators, the future costs of the potential investment will determine the tariffs and, in this case, it is difficult to provide a very detailed tariff level. In general, for the surveyed OS, NRAs were able to provide indicative information on the tariffs, like the current prices or a tariff prognosis.

The market has a different view on the tariff visibility provided at the beginning of the process. The users were asked about their views on the clarity of information included in the OS notice on tariffs, or indicative tariffs and underlying methodologies. They were also asked if they have decided to participate in an OS despite a lack of clarity on tariffs, in order to identify the importance of this parameter in their decision to take part in the OS.

Fig. 9: Tariffs visibility according to the users



For most users, information on tariffs and methodologies prior to the OS is often not clearly delivered. Many of them agree that this uncertainty on tariffs entails a high financial risk for them and hinders informed business decisions. In some cases, only a range of tariffs was published. For most of the OS, an indicative tariff was provided, based on the current regulated tariff. This information is not sufficient for the users as they do not have an indication on the possible tariff evolutions between the date of the OS and the date of capacity availability. One shipper explained that a sponsor has finally introduced a step-out clause in its agreement, in case the fees reach a maximum level. Some respondents also mentioned the disputes between the TSOs and their NRAs on tariff issues.

Many users broadly agree that the information concerning the long term policy, tariffs rules and calculation method is clearly insufficient. One of them also stated that in some countries, the tariffs of the current year are not published. Some users reported also a change in the terms and conditions during the OS, without any guarantee or compensation for project delay.

Despite this context, the lack of clarity on tariffs did not hamper the participation of many users in the OS, mainly because of their need for additional transport capacity. Many of them state that they do not have any other choice in accessing capacity, due to the massive congestions in particular in the North West of Europe (as explained by one shipper). The users thus need to secure their supplies and develop their portfolios, even if they support the risk of non-transparent tariffs.

In conclusion, this survey has revealed the concerns of the users with regards to the level of transparency provided in the beginning of the OS procedures. The survey has also shown that in many cases, the degree of detail provided on the tariffs and underlying methodologies is unsatisfactory.

EREGG concludes that there is a crucial need to increase the transparency of the OS procedure especially regarding the timetable of the OS, the investment trigger, the coordination with the adjacent system operators and the methodology to be used for the tariffs settings, at least before users take binding decisions in the OS process.

3.4. The Open Season Process

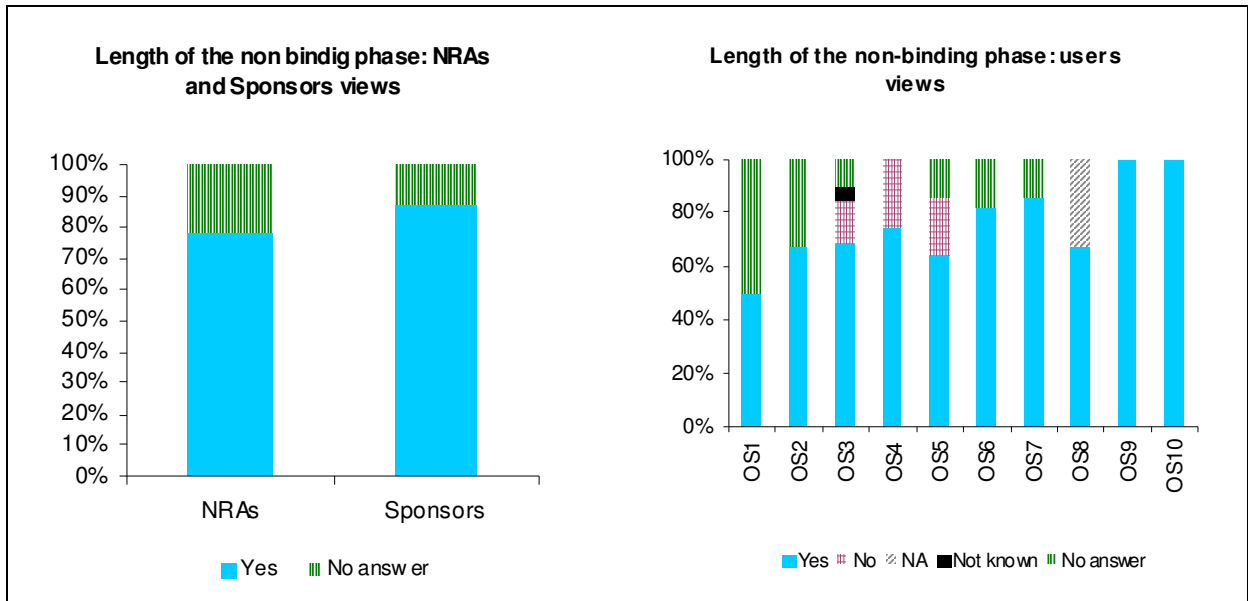
The GGPOS provide also several recommendations on each step of the OS process: the non binding phase, the capacity allocation by the sponsor and the signing of binding agreements for the users and the publication of the results after the final investment decision.

3.4.1. Non-binding phase

According to the GGPOS, an OS procedure should include a phase where non-binding bids can be submitted to the sponsor, on the basis of the OS notice (paragraphs 34 and 35). It is also recommended that this period should be long enough to attract as many participants as possible. The length of the period should be adapted to the size of the project with a minimum of 3 months (paragraph 28).

Several questions were put to NRAs, sponsors and also users in relation to the development and outcome of the non-binding phase of the OS. All the participants (NRAs, sponsors and users) were asked whether they considered that the non binding phase was long enough to attract a sufficient number of participants.

Fig. 10: Length of the non binding phase



It is remarkable to observe that all NRAs and sponsors that answered the question consider that the non binding phase is sufficiently long. One regulator explained that a two-month pre-information phase was launched and the non binding phase took place after these two months. A sponsor met each potential user to discuss further the answer to the notice, the actual interest in the project and potential improvements in the services.

Concerning users, the majority of respondents also consider that the non-binding period is long enough. However, in three of the 10 OS analysed, some users deemed the non-binding period too short. It is interesting to observe that these less positive answers do not correspond to those OS where the non-binding period was shorter (except for one case). Therefore, it is not possible to draw a conclusion on a minimum necessary length for non-binding periods.

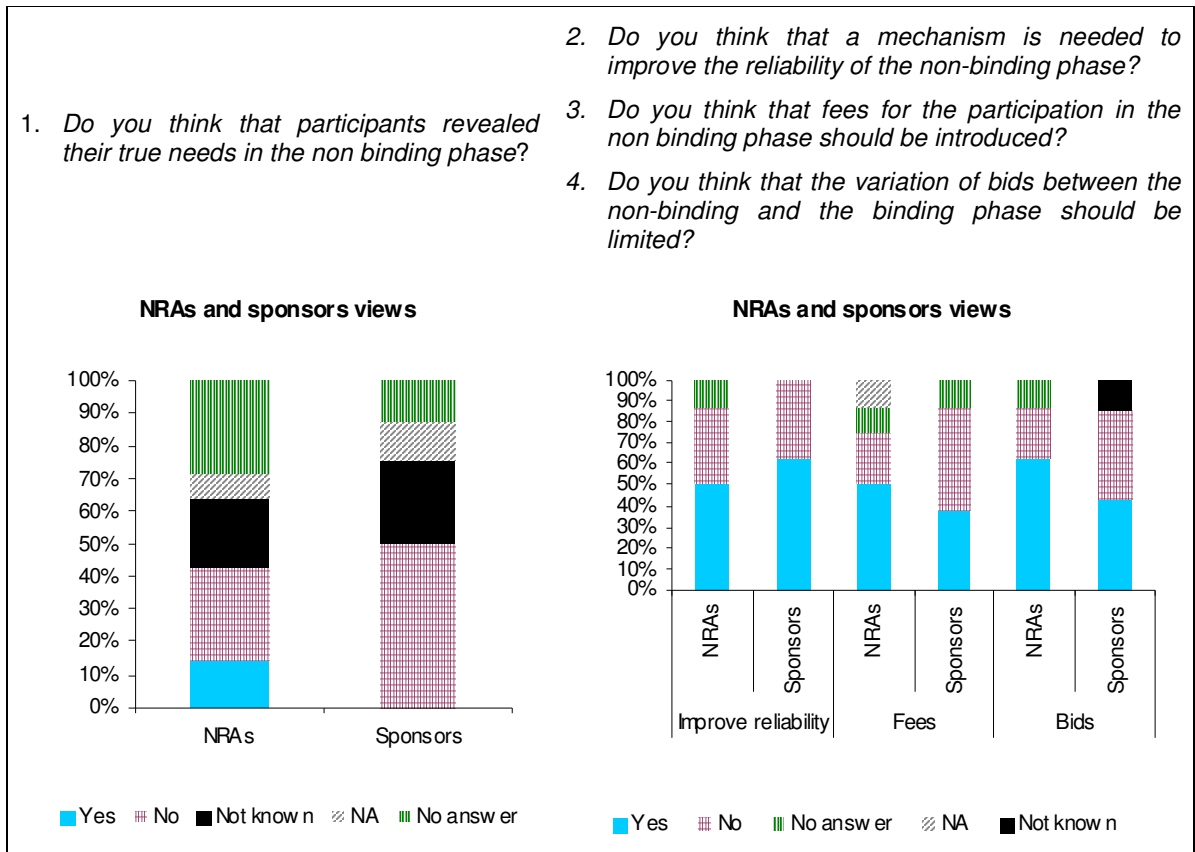
One user explained that, for one OS, the three-month non binding period is enough because it does not require an internal approval of their commitment. Some other respondents point out that the problem was not so much the duration, but the fact that the non-binding period was more engaging than it should be regarding some aspects, like grid points, maximum capacity, the inability to change the non-binding request during the binding phase, or the need to participate in the non-binding phase in order to take part to binding one.

Other users stress the need to take into account non-working periods such as the summer when launching the non-binding period, mentioning some examples of OS where this has been the case and has represented an additional difficulty regarding time deadlines.

In another case, a respondent underlines that in most cases, the sponsor fails to fulfil its own obligations, delaying the whole process and keeping OS participants bound beyond the original period whilst the sponsor is not. This shows that there is a crucial need for the NRAs to agree on the methodology and the economic test in advance.

The non binding phase was initially designed in order to allow the sponsor to assess the market needs and to gauge the interest in creating additional capacity. However, some market parties criticised the reliability of this phase, as it does not provide the necessary incentives for the participants to reveal their real needs. Four questions were addressed to NRAs and sponsors in order to test the need to implement a new mechanism to stimulate realistic requests from the market.

Fig. 11: Reliability of the non-binding phase



Most respondents (NRAs and sponsors) consider that there is a certain lack of reliability in the non-binding phase. In the case of only two OS (out of 12), two regulators think that the non-binding phase gave the appropriate signal on the market needs. In the other cases, the needs were overestimated during the first phase. Regulators and sponsors agree that there was significantly higher interest in the non-binding phase for all the surveyed OS, than in the binding phase and in the final agreements.

Some NRAs recognised that the non-binding phase is designed to gauge the market demand for capacity and that bids will always vary between the two phases. For 4 NRAs, a mechanism is needed to improve the reliability of the non-binding phase. These NRAs are also in favour of imposing some fees for the participation in the non-binding phase. Two NRAs added that the level of these fees should be high enough to prompt realistic requests without discriminating any user.

Five sponsors consider that a mechanism to increase the efficiency of the non binding phase would be useful. Three of them are in favour of introducing some fees in the non binding phase. For one sponsor, a part of TSOs extra costs resulting from OS could be recovered via these fees. Two of them also consider that the limitation of the bids variation between the two phases would limit the resources needed for the project design development and could help avoiding inefficient work during the planning phase of the OS. One sponsor considers that the non binding phase should not include any conditions with regards to requested capacity.

ERGEG concludes that there is a need to implement a mechanism to increase the reliability of the non binding phase and stimulate more realistic needs from the market. However, if such a mechanism is introduced, the sponsor should provide a high degree of transparency in the beginning of the OS process.

3.4.2. Capacity allocation process

The GGPOS do not make suggestions on the capacity allocation methodology to be used in the OS processes, but stress that a transparent and non-discriminatory allocation mechanism is necessary to the achievement of successful results. Nevertheless, the GGPOS recommend that the OS notice should contain an explanation of the allocation rules to be applied (paragraph 28). The GGPOS (paragraph 41) also foster the surveillance of this feature by the NRAs during the two phases of the process: "different capacity allocation methods can be used, but the method that the sponsor chooses must be transparent and non-discriminatory. The NRA must ensure that this is the case".

According to the GGPOS, in the binding phase a second round of capacity allocation could be organised: "If the participants are not satisfied with their allocation and decide to relinquish the capacity they have been offered, this capacity will typically be offered to other OS participants." NRAs and sponsors were asked to report their capacity allocation method in the first and second round. The responses received from NRAs and sponsors are synthesised in the following table.

Table 5: Capacity allocation methods applied in round 1 and round 2 of the OS

OS	Round 1	Round 2
1	Pro-rata allocation mechanism	Not specified
2	Pro-rata allocation mechanism based on prioritizing procedure with specific criteria	Relinquished capacity offered to other OS participants as announced in the initial notice.
3	Priority to long-term contracts with pro-rata mechanism if all the requests are not satisfied	Not specified

4	Pro-rata mechanism if all the requests are not satisfied	Several rules of re-allocation if necessary
5	The initial rule was to give priority to long-term contracts (pro-rata allocation mechanism), but all the requests were satisfied	No second round (all requested capacity was allocated in the first round)
6	All the requests were satisfied	No second round (all requested capacity was allocated in the first round)
7	All the requests were satisfied	No second round (all requested capacity was allocated in the first round)
8	In case of overbookings, coordination of the allocation mechanism with the NRA	In case of overbookings, coordination of the allocation mechanism with the NRA

Several NRAs highlighted the expectation of the sponsor of fulfilling all the capacity requests made by shippers, an objective that has been reached in some of the surveyed OS. However, two NRAs responded that, in cases where meeting demand is not possible and congestion arises, priority in allocation would be given to long-term contracts – more than 10 years - and two used a pure pro-rata allocation mechanism. A third NRA reported the use of a pro-rata mechanism associated to a priority criteria related to network efficiency and security of supply. In another case, the allocation mechanism would be coordinated *ex-post* with the NRA in the event of congestion.

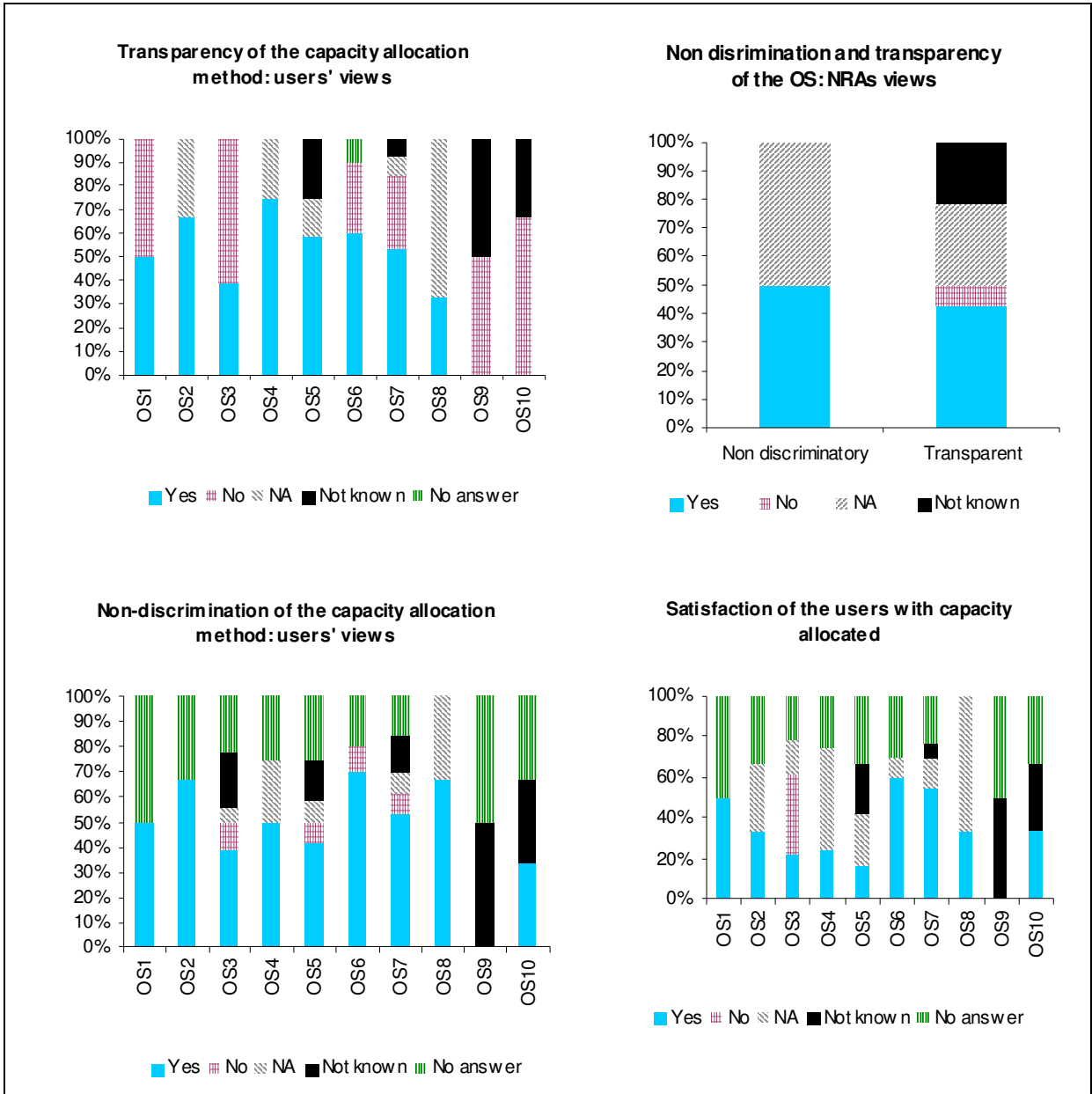
Allocation mechanisms in the second round were reported to be the same as the ones applicable in the first round, except in two cases: one in which the NRA reported that several rules of re-allocation could be applied by the sponsor in case of congestion, without giving more details about them, and other in which the relinquished capacity from first round would be offered to the other participants of the OS.

In line with the responses given by the NRAs, three sponsors confirmed that capacity allocation is done according to shippers' demand, fulfilling their requests. This has also been reported to be the aim of the sponsor in one ongoing OS. Two respondents have defined a pro rata allocation to be applied in case of congestion (two ongoing OS). One last sponsor informed that the first round has been already a unique unilaterally binding phase and that allocation has been based on a prioritisation of a combination of different criteria. Concerning the allocation method in the second round, the refused capacity (allocated in the previous round) was offered to other participants of the OS in only one case,.

In conclusion, in the surveyed OS, the pro-rata mechanism was often used to allocate capacity when all the requests could not be satisfied. Several sponsors often gave priority to long term bids, even if relevant variations in the allocation methods were in place.

The NRAs and the users were asked to assess the capacity allocation mechanism, with regards to transparency and non-discrimination.

Fig. 12: Non discrimination and transparency of the Capacity Allocation Mechanism



NRAs have made a positive assessment of the implemented methods. Apart from the non-applicable cases, all allocation processes were considered non-discriminatory, and only in one instance did the NRA not consider it transparent, without giving the reasons for this negative evaluation.

Assessment of the users points to a probable lack of information on the allocation procedures, as they show a higher degree of disapproval in relation to the transparency than to what concerns the non-discriminatory character of the allocation procedures.

The figures related to the transparency of the capacity allocation method show that shippers were not completely satisfied with the amount of information provided by the sponsor on the topic. If working with aggregated numbers, less than half of the respondents had a positive evaluation of the transparency level of the OS, whilst disapproval levels were above 30%. Nevertheless, shippers' assessments were very heterogenic for the different OS procedures and therefore analysing the results and comments for each of them can also provide some interesting conclusions.

A few shippers, involved in several of the surveyed OS, made general comments about similar features of the allocation procedures. One of them deemed the allocation procedures in four OS as not transparent enough, whereas another respondent stressed the complexity of allocation rules in 6 OS although he has not judged the mechanisms as non-transparent.

In the OS 3, one respondent complained about the lack of an allocation rule in the OS notice, a criticism that has been reinforced by another agent, according to whom the final allocation rules were only revealed after the capacity had already been allocated between the shippers. The results of such an allocation have also prompted objections from the participants, many of whom have questioned why only a small part of their capacity requests have been fulfilled without any clear justification given by the sponsor.

Finally, the problem of a final allocation well below the requested capacity was also mentioned by one of these last shippers when commenting about two OS.

When questioned about the non-discriminatory character of the allocation method, the participant shippers gave a better feedback than in what concerned the transparency of the procedure. More than 60% of the respondents deemed the capacity allocation mechanism as non-discriminatory, whereas only 9% of them gave a strict negative answer.

Although disapproval levels have dropped comparing to the question on transparency, the "not known" answer was much more representative, especially in the OS 3, 5 and 10, which had the worse evaluation regarding transparency in the previous question. Hence, these migrations from "no" to "not known" are likely to reflect exactly the lack of information on allocation procedures, which ultimately has impeded some shippers from assessing whether or not it was non-discriminatory.

Concerning non-discrimination, two respondents complained about the use of size and duration of contracts as the allocation criteria, which has been the case in OS 4, 5 and 6. According to them, the sponsors that give priority to bigger volumes and longer duration requests ultimately create significant barriers to entry, since new entrants do not usually have the resources to engage into such contracts. One of them, commenting specifically on the allocation mechanism adopted in OS 5, has also included the price risk as a variable that hampers the participation of small companies. Still in what refers to this last OS, another shipper has emphasized the fact that the capacity allocation mechanism adopted was not compliant to the GGPOS.

The allocation method of the OS 3 also prompted remarks from several agents. Two of the comments were related to non-predicted mid-process changes in the allocation mechanism. As stated by one of them, participants were not aware of this aspect of the allocation rules when bidding in the non-binding phase and were unable to amend their bids accordingly in the binding phase. Both respondents, along with many others, have expressed their dissatisfaction with the final allocated capacities. Another agent complained about the fact that the allocation priorities used were independent from firm demand and influenced by external factors.

Another aspect considered by participants as discriminatory in the OS 3 is the differential treatment between existing and new capacity. The main problems are centred around the impossibility to bid on the existent capacity, even if the accepted timeframe for bids within the OS was not compatible with the investments plans of the shippers. Also, there have been complaints about the application of different tariffs for previously booked and the capacity allocated in the OS. This last situation, according to one agent, would raise significant economic and competitive advantages to the established shippers.

As a final point, three shippers made similar general comments highlighting the importance of information transparency with regard to the credibility of any OS allocation mechanism. In their opinion, without having access to essential pieces of information such as flow data, capacity demands and allocations, and a transparent allocation mechanism, agents will always have concerns about discrimination.

More generally, the users were also asked whether they were satisfied with the capacity finally allocated to them. Many users participating to the OS3 (around 40% of them) were not satisfied with the capacity allocated by the sponsor. Three of these explained that the procedure for allocating capacity remains a black box for them, because the sponsor did not give any reason for rejecting requests. One user explained that for one other OS, the participant needed to indicate the minimum and maximum acceptable capacity when signing the binding agreements. As the allocation of capacity often takes place one year after the beginning of the OS, this user considers that the participants have a significant disadvantage in their planning, as they are bound by the capacity range indicated, even if they acquire at a later date new important information affecting their bookings. In the same manner, another user explained that at the time of signing the binding agreements, information on tariffs was not available and it was not possible to change the bids afterwards.

As highlighted before, the GGPOS do not suggest any specific capacity allocation mechanism to be used in OS processes. However, in section 4.2 (paragraphs 39 to 47), it states that the principles of transparency and non-discrimination should be respected, along with other more specific recommendations.

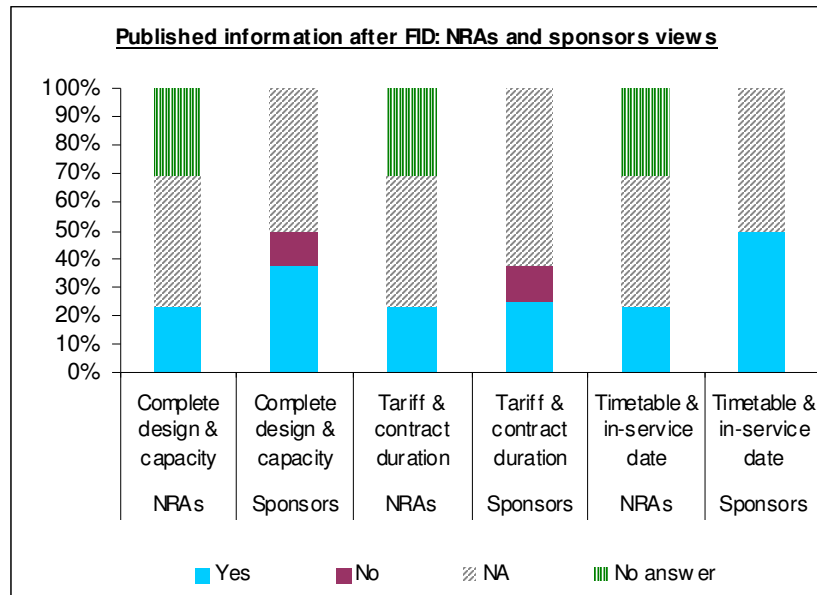
Concerning transparency, EREGEG concludes that a major source of non-compliance seems to be related to the lack of a well-defined capacity allocation mechanism from the beginning of the OS. Among the comments, there were cases in which the allocation was to be coordinated ex-post with the NRA, others where the method changed in the middle of the process, or in which it used very subjective criteria.

When an OS allocation mechanism lacks transparency, users will have doubts about the non-discriminatory character of the procedure. Aside from this issue, the different conditions given to established and new shippers, especially when it comes to tariffs and the priority to longer term contracts – that can favour big companies and hinder new entrants – seems to be the most controversial of the rules regarding discrimination between users.

3.4.3. Publication of the OS results

The GGPOS state that after the final investment decision, the sponsor should make public information on the investment decision (complete design and capacity of the project, timetable for work and estimated in-service date) and on tariff and contract duration (paragraphs 48 and 49).

On this matter, NRAs and sponsors were asked whether the information on the complete design and capacity of the project, timetable for work and estimated in-service date, tariff and contract duration was made publicly available once the final decision taken and the binding agreements signed.

Fig. 13 : The publication of the OS results


Many OS were still ongoing when surveyed. For the closed ones, it is interesting to note that the information on the completed design, the capacity decided for the project, the timetable for work and estimated in-service date are often published by the sponsor. Concerning the information provided on the tariff, one sponsor answered that an estimated tariff range was given to the users. This sponsor added that commercially sensitive information, such as the specific duration of individual contracts was not made publicly available.

For two ongoing OS, the sponsors insured that all this information will be included in the final stage of the process.

In another ongoing OS, a NRA explained that the best tariff prognosis were provided during the shippers' meeting and on the sponsor's website, along with the timetable for investments. NRAs gave the following reasons for not publishing the above mentioned elements:

- The information is commercially sensitive;
- The FID is not taken yet;
- The information is confidential because the OS concerned an exempted infrastructure;
- The project was abandoned before taking the final investment decision.

3.5. Coordination of regulators and OS sponsors

Coordination is a crucial aspect to be taken account by NRAs and TSOs when designing an OS. The GGPOS provide some guidelines on the coordination of the OS with adjacent system operators and between NRAs (paragraphs 50 to 52). ERGEG recommends that the sponsor of a project has to coordinate with adjacent SOs and develop combined products. Three conditions have been cited in the GGPOS:

- Participants should be able to access services on adjacent systems;
- The products offered by the sponsor and adjacent SOs have to be compatible;
- The products have to be offered in a coordinated way, using compatible and/or coordinated timetables and processes.

In case of a cross border investment, there is also a need for coordination between NRAs. The GGPOS emphasize also that:

- The NRAs must ensure that their respective regulatory frameworks are clear enough and share a sufficient degree of similarity in order to enable the project sponsor and adjacent TSOs to design OS involving compatible products and processes.
- NRAs have also to jointly monitor the OS and resolve concerns regarding the arrangements adopted by the project sponsor.
- Many issues that will be addressed by the sponsor and adjacent TSOs will be tied to the allocation of costs and remuneration. It is essential that NRAs provide timely and coordinated input on these matters to the sponsor and adjacent SOs.

In order to assess the compliance with this guidance, participants to the survey were asked specific questions on coordination.

Fig. 14: Views of NRAs on OS coordination

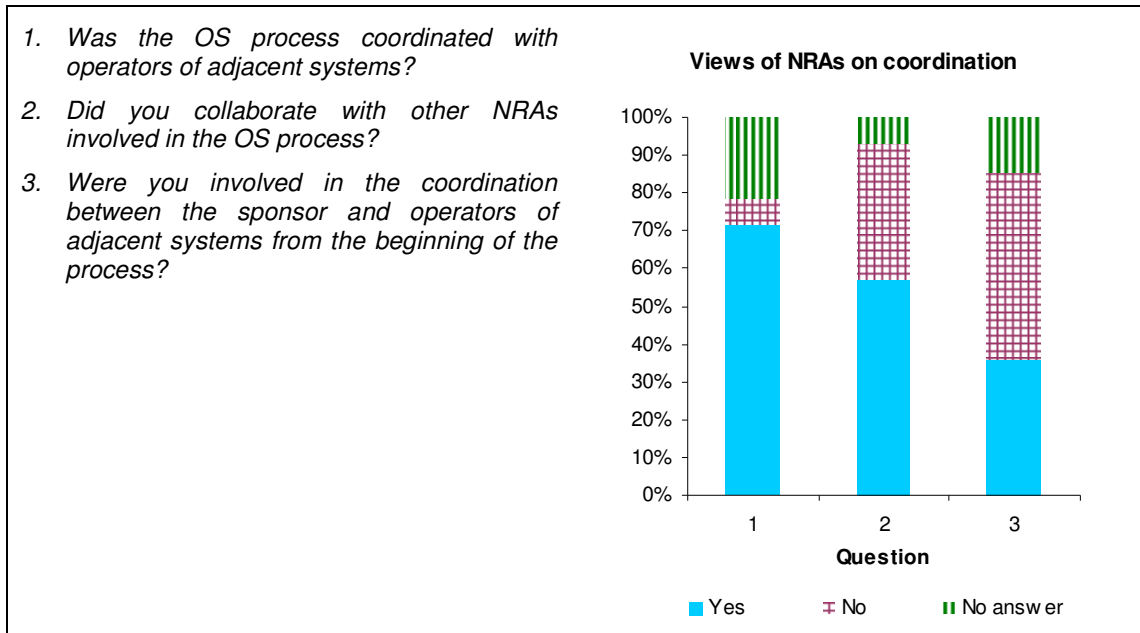
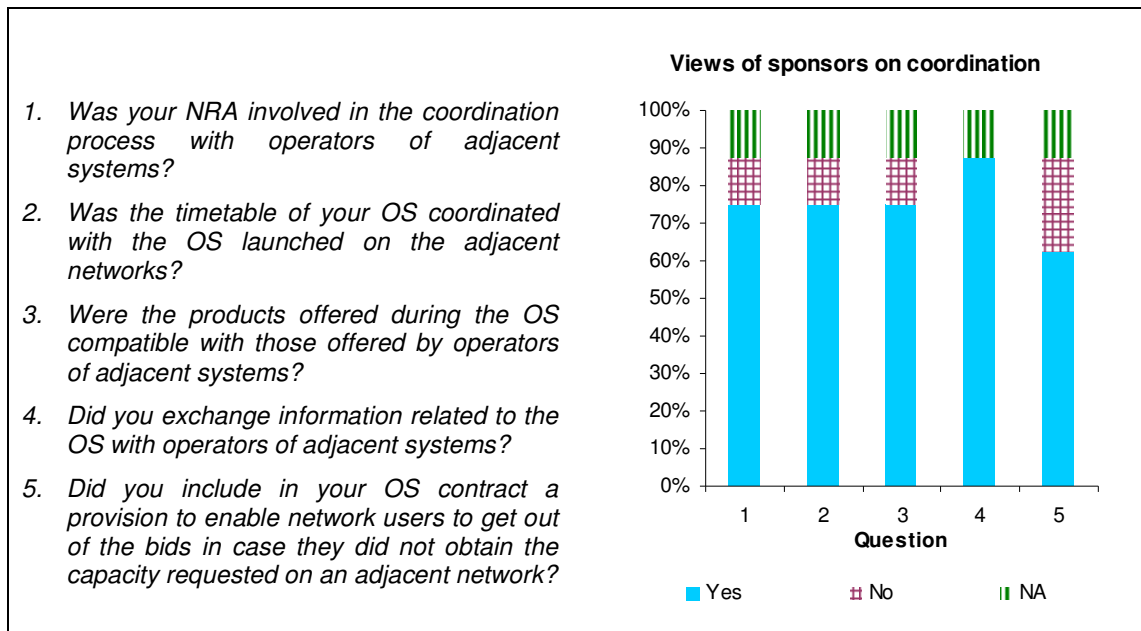


Fig. 15: Views of sponsors on OS coordination



NRAs have a broadly positive assessment of the coordination of OS procedures. In 10 cases, NRAs consider that the OS process was coordinated with operators of adjacent systems. For 8 OS, the involved NRAs responded that they collaborated with another NRA. However, only in 4 cases, the NRAs were involved in the coordination between adjacent systems from the beginning of the process.

According to sponsors, the surveyed OS were characterized by a high level of coordination, especially with regards to the timetable and the compatibility of the products with those of the operators of adjacent systems. In only one case, a sponsor answered negatively to questions 1, 2 and 3 commenting that it did however exchange information on the time schedule, projects and on indicative capacity extensions. In almost all the cases, the sponsor exchanged information with the operators of adjacent systems. One TSO explained that there was a close coordination on capacities, time periods and rules for allocation and alignment of the OS process in the region.

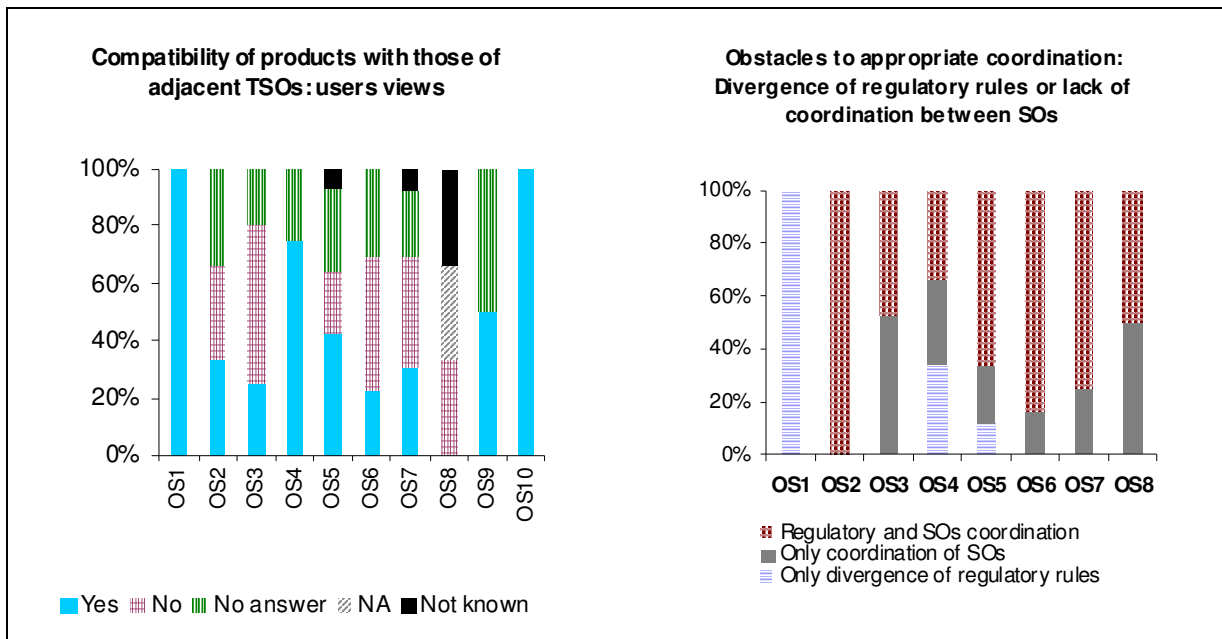
For one coordinated OS, one sponsor explained that the two involved TSOs agreed in a Memorandum of Understanding to consult each other at every step of the process: binding agreements with shippers, investment decisions, approval by the NRAs and commissioning of the capacity. The two sponsors also agreed to share information on engineering, permitting and roll-out of works. This close cooperation aimed at offering the new capacity through a consistent set of services between the two adjacent sponsors. The other sponsor added that concerning capacity, the two sponsors exchanged information on the aggregate requested amount of capacity.

NRAs were asked about the obstacles to an appropriate coordination of OS between operators of adjacent systems. Some of them consider that the main obstacle for an appropriate coordination of OS is mostly related to issues of timetable coordination between OS on interconnection points, when several TSOs are concerned. Other regulators explained that the difficulties of coordination are more related to different national legal frameworks (capacity allocation regimes, tariff structure, and divergence of regulatory rules and of regulators' roles).

The coordination of the OS process with the adjacent system operators is not only about the exchange of information and the cooperation on the timetable. For efficient coordination, the sponsors must also cooperate on contractual aspects. In order to ensure a consistent development of capacities on each side of the border and avoid capacity mismatches, sponsors were specifically asked whether they included in the contract a provision to enable users to get out of the bids in case they did not obtain the capacity requested on an adjacent network. In two cases, the sponsors reported that this “step out” clause was not included in the contract signed with the shippers.

Users were also questioned on coordination, more specifically on the compatibility of the products offered during the OS with those offered by operators of adjacent systems and on the concrete difficulties met during OS related to coordination between adjacent systems.

Fig. 16: Views of the users on coordination



The assessment of the users’ responses shows that many surveyed OS lacked proper coordination and consistency with the processes launched on the systems of the adjacent operators. For the OS gathering a high number of participants, the users consider that the products were often not compatible with those of adjacent TSOs.

One user explained that the coordination is not possible due to the short time frame of the OS. Another respondent noticed that the lack of regular (annual) opportunities to bid for long term capacity worsens the problem of coordination. In many cases, the users reported that the available entry capacity did not correspond to the available exit capacity neither in quantity, nor in quality (firm or interruptible) nor on the timing. One user proposed that all parallel projects should be coordinated by one entity.

The lack of coordination in terms of timing of the OS was often criticised by users. For one user, OS involving adjacent systems should be conducted simultaneously to allow for an efficient evaluation of the available capacity for the users and an assessment of the needed capacity upstream and downstream. Moreover, adjacent operators of infrastructure should also respect the planned date of entry into operation. The lack of compatibility of regulatory provisions more specifically with regards to the definition of tariffs was also criticised by this same user.

One shipper admitted that it is impossible to make specific OS for each interconnection point; however, if the two operators coordinated properly, it should be possible to match the allocated capacity on each side of the border.

Concerning the difficulties met during the OS with regards to coordination, around 6% of the answers pointed out to the divergence of regulatory rules as one of the main obstacles hindering the coordination of the OS. Around 34% explained that the difficulties related to coordination were due to a lack of cooperation between operators of adjacent systems on contractual aspects, timing or technical issues. 60% attributed this lack of coordination to the two elements.

On the differences between regulatory rules, the following clarifications were suggested by the users:

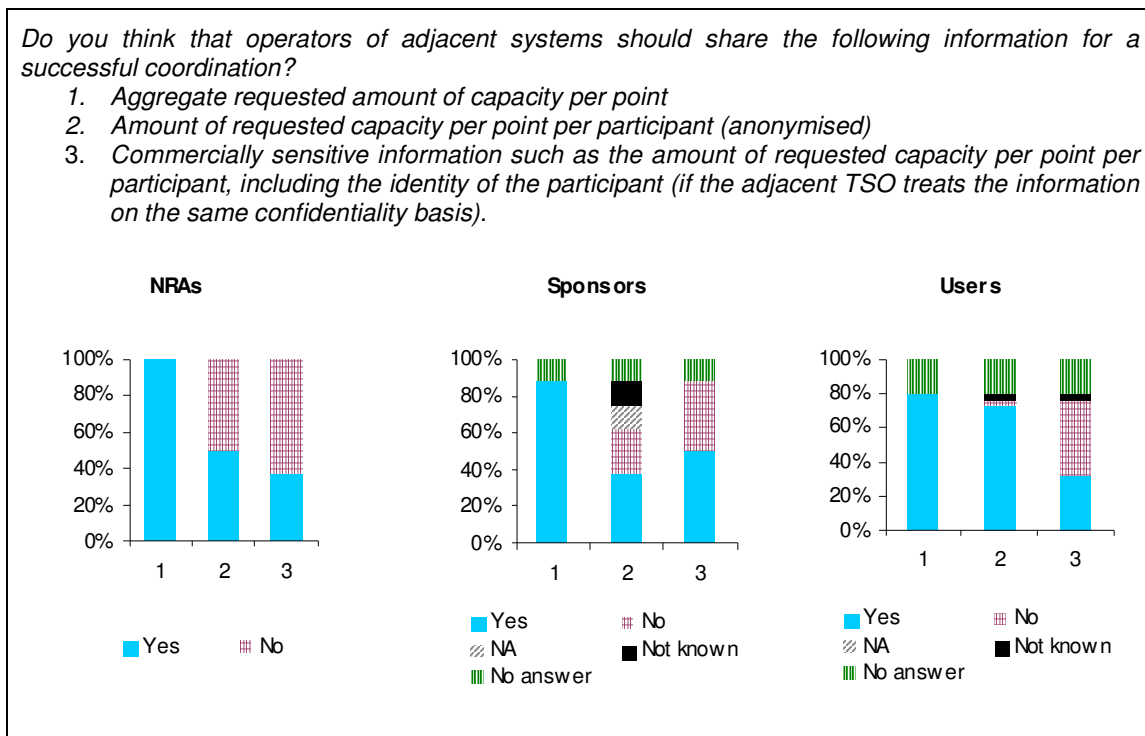
- Even for fully coordinated and integrated OS, the regulatory markets are characterized by different approaches, which makes it very difficult to estimate the impact on tariffs (2 users);
- Participants to OS have to face different legal and operational rules on interconnection points (one user);
- For one surveyed OS, one user reported a delay in the OS while waiting for the NRA approval;
- Some users mentioned the discussions between the NRA and the TSO, which delayed the process in general.

On the lack of coordination between operators of adjacent systems:

- 4 users criticised a non coordination on timing between OS launched on adjacent systems, which prevented shippers from entering into long term commitments. One user suggested to launch OS (every two years) conducted simultaneously in Northwest Europe.
- At interconnection points, the participants to OS do not have any guarantee that they will get the same capacity on each side of the border (two users);

More specifically on OS coordination, NRAs, sponsors and users were questioned on the level of details exchanged between operators of adjacent systems during an OS process.

Fig.16 : Exchange of information between adjacent SOs



There is a unanimity among respondents on the need to exchange the aggregate requested amount of capacity per point between operators of adjacent systems during an OS process in order to coordinate successfully investment decisions on cross borders.

It is interesting to note that only 50% of regulators are favourable of an exchange of individual information on capacity requests per participant, compared to more than 70% of the users. Responses to the survey show that 3 sponsors (over 8) are ready to exchange individual anonymous information on the bids. 3 other sponsors consider that in order to match the capacity on adjacent systems, the capacities per participant can not be shared anonymously. The identity has to be included. Around 30% of the users support the sharing of individual information on capacity request, including the identity of the participants.

The key concern for many shippers is the alignment of border points at both sides of the border with regards to capacity, quality specifications, commitment and timing. One of the users in favour of the individual sharing of data considered that exchange of this information is needed to avoid the risk of mismatch between entry and exit capacity. The user stated that the risk is such that some participants had to withdraw from some OS because of a lack of alignment. In order to ensure valuable alignment of capacity on both sides of the border, one user required that the coordination between the TSOs should be as transparent as possible.

Three users are favourable to the exchange of individual data if needed for an appropriate coordination of investment projects only under the condition that the adjacent TSO treats this information on the same confidentiality basis. Another user agrees on sharing individual data between adjacent TSOs only under the conditions that appropriate mechanisms of coordination are in place, i.e. a participant can request entry and exit capacity at a particular point, and can cancel a certain amount of capacity, without having a penalty.

The users who are against exchanging individual information on capacity requests give the following reasons:

- One respondent is worried about the neutrality of some TSOs;
- Another user suggested differentiating between fully independent operators and bundled operators;
- For two other users, the TSOs should only be concerned about the aggregated demand.

As a conclusion, the evaluation of coordination by the users reveals a high degree of non compliance with the GGPOS. The efforts made by the NRAs and the sponsors to prompt proper and efficient coordination of OS procedures were clearly insufficient. In many cases, the users reported that the products were not compatible with those offered on adjacent systems, with regards to the duration, quantity or quality. They also criticised a non coordination on the time schedule. For many users, the coordination between involved NRAs was not efficient either, as they still have to deal with different operation and legal rules on interconnection points. Finally, users broadly support the exchange of all the necessary information needed for an appropriate coordination of investment projects. EREGEG concludes that there is a need to provide more concrete guidance on the coordination of the OS procedures between TSOs and between NRAs.

3.6. General compliance of the surveyed OS with the GGPOS

The objective of this section is to draw a general evaluation on the compliance of the surveyed OS with the GGPOS. The following elements are evaluated: the compliance of the structure of the OS with the GGPOS, the non-discrimination and transparency of the whole procedure and the assessment of the results of the OS.

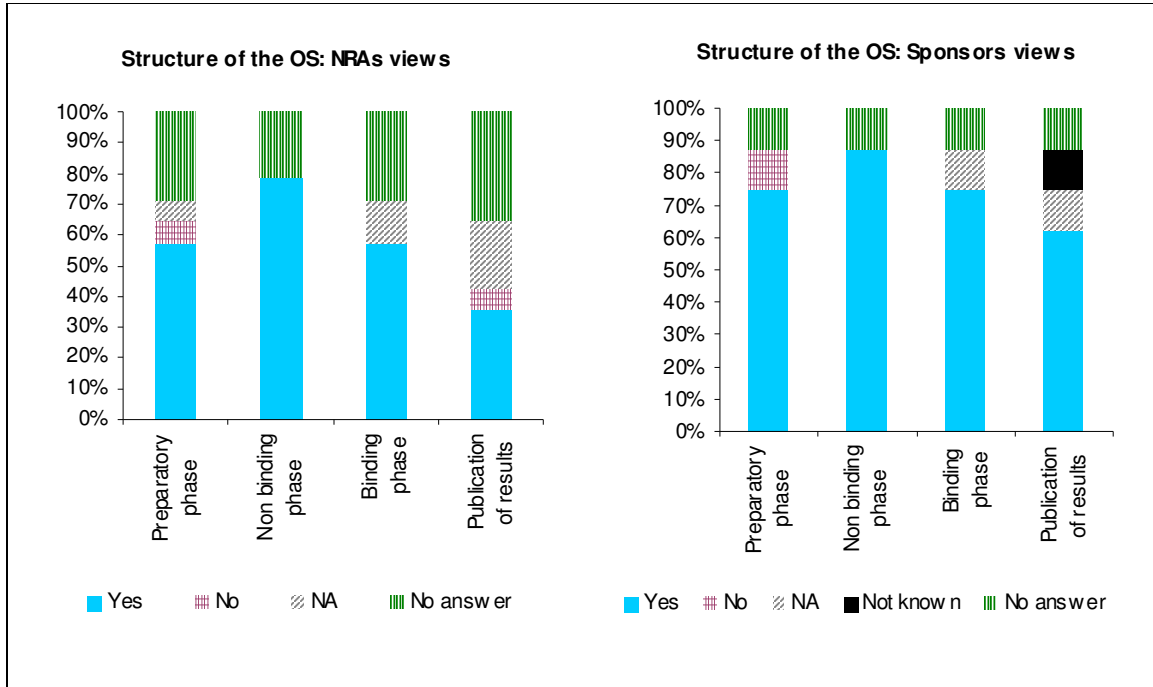
3.6.1. Structure of the OS

All participants (NRAs, sponsors and shippers) were asked whether they feel that, generally, the OS procedures were structured according to the scheme proposed by the GGPOS:

1. A preparatory phase prior to the OS: the sponsor consults users to assess how much capacity the market needs and under what terms.
2. Phase 1: non-binding phase:
 - The sponsor informs potential users about the project through a notice
 - The user indicates the amount and the type of capacity needed on the basis of this notice
3. Phase 2: capacity allocation and binding agreements

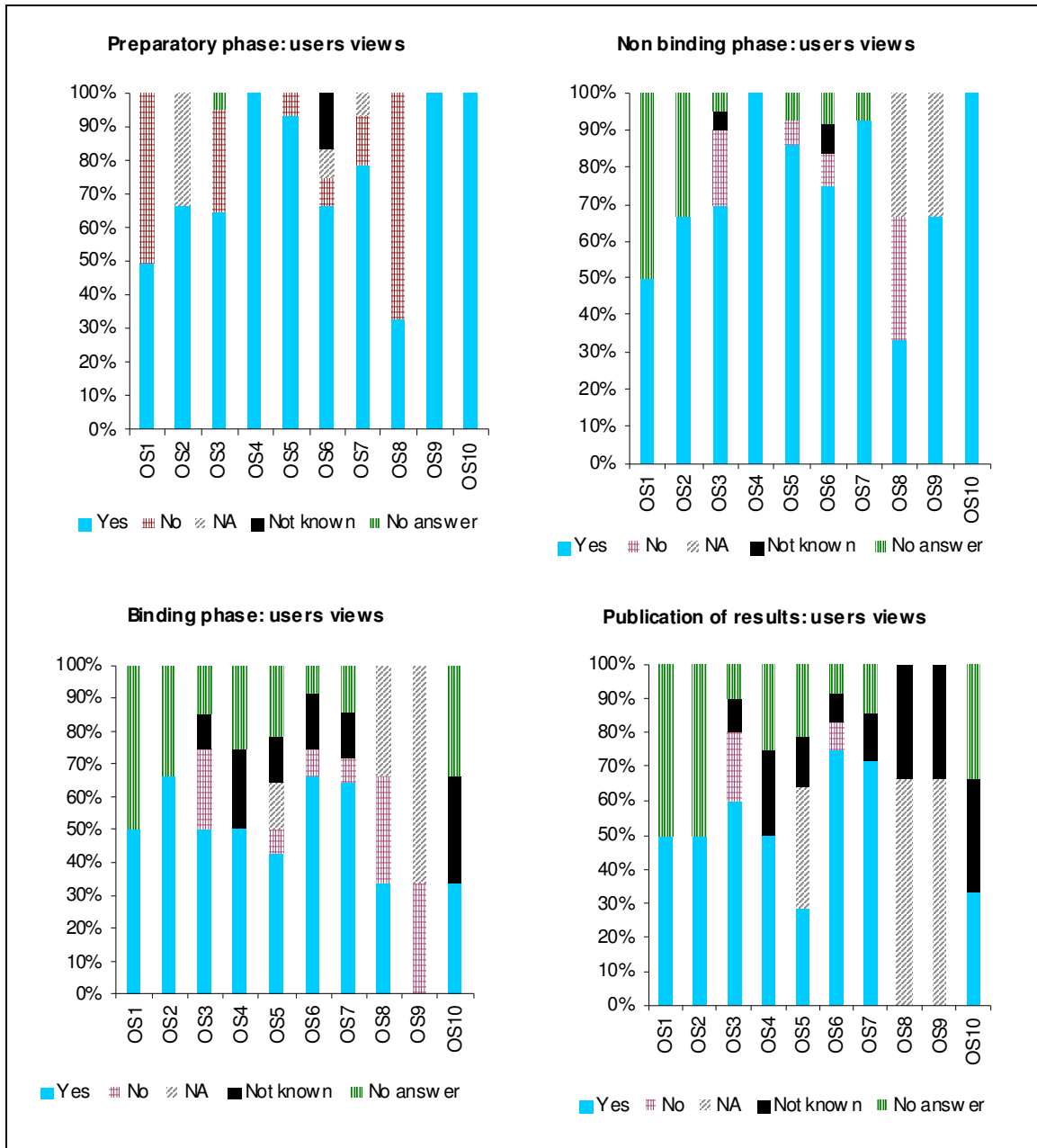
- The sponsor allocates the capacity
 - Users confirm their bids or not. If satisfied with the allocation of capacity, they sign terms of agreement
4. Publication of results

Fig. 17: Structure of the OS according to NRAs and Sponsors



For NRAs and sponsors, a large majority of the surveyed OS were structured according to the GGPOS scheme, with regards to the preparatory phase, the non binding phase and the binding phase. Concerning the publication of results, the figure seems different, reflecting that many OS were not closed at the time of the survey. One NRA explained that the results were only published in aggregated form. In another case, the results were confidential as the OS was related to an Article 22 exemption request.

Fig. 18: Structure of the OS according to the users



The aggregated responses of the users reveal a high degree of compliance with the GGPOS, with regards to the preparatory phase and the non binding phase: 76% and 78% respectively of the responses confirm that the surveyed OS included a preparatory phase and a non binding phase. The picture is different for the binding phase where around 13% of the responses consider that this phase was not compliant with the GGPOS (compared with 50% of “yes” responses). Concerning the publication of the results, 52% answered positively, 6% negatively and 42% of NA, no answer or not known. This is probably due to the fact that many surveyed OS were still ongoing at the time of the survey.

Users had several remarks on the different phases of the OS:

- **On the preparatory phase:**

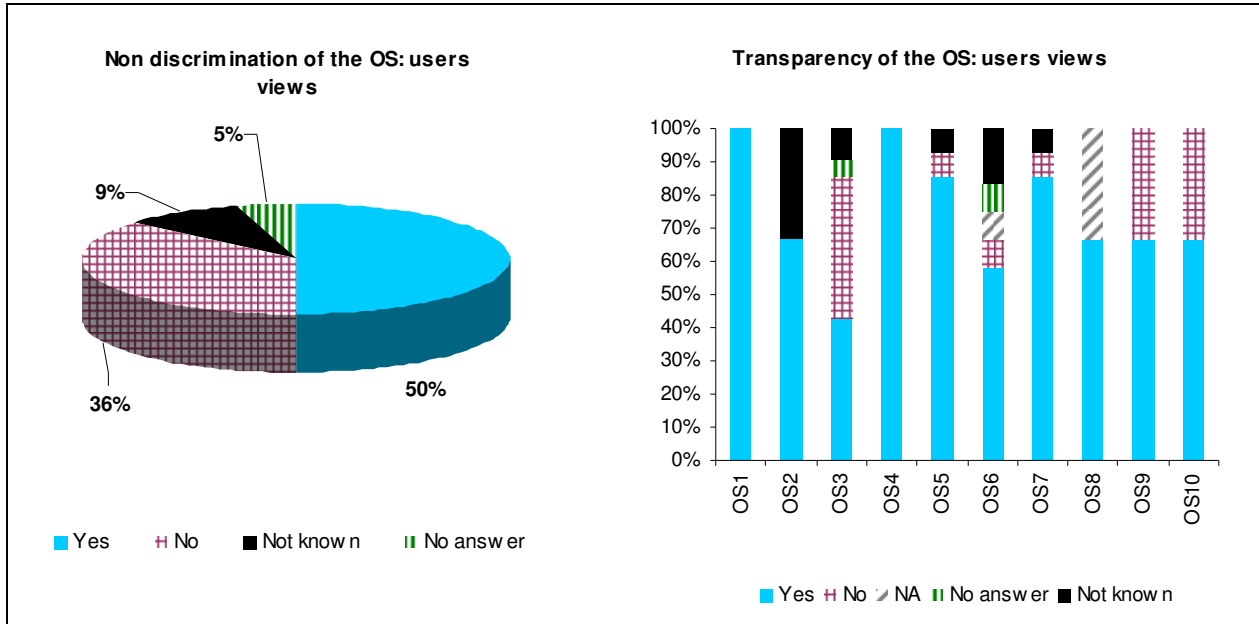
- One user stated that for 4 OS, there was no real consultation on the terms offered to network users;
- Another user highlighted that, in one case, it was unclear for the market whether the infrastructure has been fully utilised through appropriate congestion management principles, prior to initiating the OS.
- **On the binding phase and capacity allocation:**
 - Three shippers criticised the allocation rules because in many cases they do not allow the withdrawal of a bid if the participant is dissatisfied with the allocation;
 - In one OS, two users indicated that when the OS revealed a high demand, the sponsor did not amend the size of the project and organise a new bidding round. The sponsor decided to change the allocation rules instead.
 - A shipper explained that in some cases, participants encountered problems of non coherence, as they get the capacity on one entry point and nothing on the exit one, which makes it impossible to link demands in some special cases with other projects, such as storage projects. This same user explained that there is a significant lack of coordination with cross border countries, where the shippers have to sign two unilateral transmission contracts with the TSOs, with different legal clauses.
 - One shipper requested more flexibility do adapt the demand during the OS.
- **The results of the OS:**
 - One user indicated that the NRA did not evaluate whether the OS produced satisfactory results. The NRA did not assess whether the final investment decision is adequate given market demand and capacity expansion possibilities.

Thus, the negative assessment seems to stem mainly from the binding phase, where many users complained from the capacity allocation rules and from a crucial shortage of coordination when signing the unilateral binding contracts.

3.6.2. Non discrimination and transparency of the OS

The aim of the GGPOS is to ensure that “OS procedures are conducted in a non-discriminatory and transparent manner and result in efficient outcomes”. The recommendations on the transparency and non discrimination of the process are present throughout the document, at all the steps of the OS procedure. The users were asked to globally assess the transparency and non discrimination of the whole OS procedure.

Fig. 20: Non discrimination and transparency of the OS according to users



Around 36% of the respondents shippers considered that the OS they were involved in were discriminatory. One shipper considered an OS as discriminatory because of the bank guarantees. Another shipper explains that it is difficult for them to assess whether the results of an OS are discriminatory, as they do not have access to all capacity demands and allocations. This same shipper explained that in many cases, they were allocated inconsistent sets of capacities due to a lack of coordination between operators of adjacent systems (exit capacity without the entry capacity required).

According to two shippers the general lack of transparency and access to information on flow data resulted in the fact that certain participants would have been in a more privileged position than others.

There were also complaints from two shippers about the fact that in some surveyed OS, only large network users were able to mitigate the proposed volume, price and duration risks, thus discriminating smaller network users not able to meet the business scale requirements. Furthermore, a user informed that in some cases, the investment decision of the TSO was independent of firm market demand but related to external factors.

Around 70% of the surveyed OS were considered transparent by the shippers, compared to 18% seen as opaque. One respondent stated that for one surveyed OS, the sponsor did not give any information on the model contracts, penalties, and tariff calculation. According to this respondent, the opacity around the whole process inhibited the decision of potential investors in new gas-related projects. Another shipper mentioned the lack of information on the results and the calculation and price formation for one surveyed OS.

Furthermore, the lack of transparency regarding the criteria considered for taking the investment decisions was very often cited by the respondents. Furthermore, two users reported a lack of transparency at different steps of the OS procedure:

- In one case, a user suggested that it would be useful to have a separate section on the sponsor's website to gather all information on the project: timelines, capacity expansion, results etc...
- Another user pointed out for one OS to the absence of information about the investment level, engagement process with the NRA, the proposed ranking process, the way forward for all requests which will not be approved, especially those with interdependencies with other investment projects.

Concerning coordination, some sponsors did not provide any information on the way they coordinated their OS with the neighbouring TSO. On this issue, another respondent considers that in case of coordinated OS, the two adjacent TSOs should publish a joint release clarifying the terms and conditions as well as a process description of the OS, in order to increase the transparency of the process and the faith of market parties in the coordinated cross border aspect.

More generally, many shippers criticised the lack of transparency of some surveyed OS regarding the timetable, the capacity allocation rules and finally the decision of suspending the project.

For ERGEG, this negative perception on transparency and non discrimination of the users shows that significant improvements can still be realised in the OS process. As explained above, non discrimination and transparency are closely linked: when the OS process lacks transparency, the market can more easily consider the process as discriminating new entrants. On this matter, two major issues were raised by the respondents: the lack of transparency regarding the investment decision and regarding the coordination with adjacent SOs.

3.7. Suggestions on the improvement of the OS process

The NRAs, sponsors and users were consulted on the lessons that could be learned from past OS and on the missing elements that could be added to the GGPOS. The sponsors were also asked for their views on how to improve the whole process. This section synthesises the main suggestions to improve the efficiency of an OS procedure and eventually to complete the GGPOS.

3.7.1. Regulators views

For the three NRAs, the need for an increased coordination and cooperation between adjacent TSOs is very important from the beginning of the process. One NRA stated that the OS procedures are perhaps not adapted to the projects aiming at expanding an entire TSOs network, as coordination with several adjacent system operators is difficult. On the importance of coordination, one NRA cited a concrete example of improving coordination: in case of a delay of the project on one side of the border, the TSO should provide the opportunity to the shippers not to be charged during a predefined period.

As pointed out by one sponsor above, one NRA considers that the NRA should be granted stronger approval power in the OS process, especially since the GGPOS are applied on a voluntary basis.

On the commitment of the shippers, one NRA pointed out that the right balance has to be found between unilateral commitment by the shipper and an appropriate level of risk exposure for the system operator.

One NRA stated that ERGEG should provide some guidelines on the appropriate level of bank guarantees: TSOs require always a high level of guarantees, which is understandable given the importance of the investment decision. These levels of guarantees often discriminate new entrants.

The reliability of the non binding phase was also highlighted by one NRA who considers that there is a need to adopt a clear mechanism in order to obtain realistic demand in this phase.

For two NRAs, there is a need to stimulate incentives in order to reveal adequate capacity requests in the non binding phase and limit the variation of the bids between the non binding and the binding phase. These same two NRAs insisted on the need to put more emphasis on an appropriate cooperation between TSOs on the whole supply route. On this matter, one NRA required that the GGPOS mention explicitly that commercially sensitive information could be exchanged with operators of adjacent systems for investment coordination purposes, under the condition that the operator receiving the information treats it on the same confidentiality basis.

One NRA required that the GGPOS include a recommendation determining the percentage of the new OS capacity available for the short term. Even if the need for long term commitments is clearly recognized, this NRA stated that more contract flexibility in favour of new comers should be provided.

3.7.2. Sponsors views

Two sponsors consider that the efficiency of the OS process could be improved by increasing cross-border cooperation and coordination of NRAs. On the coordination issue, one sponsor pointed out the importance of including the OS in the framework of an ERGEG regional initiative, in order to provide more comfort to prospective shippers. For two sponsors, more serious non binding commitments by participants from the beginning of the process and the reduction of the mismatch of market interest between non binding and binding phase is crucial for the efficiency of the OS. Finally, one sponsor considers that the responsibilities of the NRA in the OS should be included in the national law.

One sponsor stressed that in its case, an early commitment of the NRA on investment conditions would have been helpful. Two other sponsors reported that price visibility is often a major issue for participants.

Two sponsors explicitly required the revision of the GGPOS to take into account the experience of recent OS. For another sponsor, the lessons learned from the past OS and their implication for potential new elements in the GGPOS are still under discussion.

Two other sponsors noticed that more attention should be given to the fact that OS are not stand-alone projects, but they are strongly interrelated with the existing grid.

3.7.3. Users views

According to many users, the efficiency of the OS process can be improved. Many shippers consider that the past OS procedures did not satisfy their needs. The consultation revealed the following key requirements for successful OS procedures:

- **The lack of coordination between TSOs and regulators** was cited by most of the users as a critical element in the past OS. Some OS were delayed because of complaints by shippers on the lack of coordination and ongoing consultations with NRAs.
 - o According to two shippers, coordination between operators of adjacent systems was deficient, specifically on the time schedules (different start dates and durations for OS launched on adjacent systems). Some users hold different levels of capacity or different projects on each side of the border. This user also pointed out to the difference of the capacity allocation mechanisms existing between adjacent Member States.
 - o Furthermore, the divergence of regulatory regimes led to different investment incentives. More specifically, the rates of return, regulatory periods and the procedures to grant TPA exemptions should be further harmonized.
 - o For one user, OS should be conducted regularly, on an annual and coordinated pan-EU basis. This will improve the alignment and greater standardization of offerings needed to achieve liberalization and a fully competitive gas wholesale market.
 - o One user called for a greater focus on harmonization and coordination among TSOs and among regulators. On this matter, a user requested the harmonization of the systems with regards to the volume units of subscription.
 - o According to one user, the conditions of the “step-out” clause should be better defined in the GGPOS, in order to minimize the risks bared by market participants.
- **More transparency on the whole process, particularly on the tariff structure and on the economic test**, is a crucial element for the majority of the users.
 - o One user stated that maximum information is needed in the beginning of the process in order to efficiently evaluate the risks.
 - o For another respondent, the investor should have the possibility to learn in concrete terms under what conditions capacities are available and inform on the timeframe. Another user proposed that the sponsor should provide an effective range of the tariff level when

- allocating the capacity to the users and concluding the binding agreement. However, one respondent stated that tariff ranges should not be allowed in the OS.
- The publication of the economic test was also suggested by three users, especially because allocation processes are not clear. Without details on the economic test, the bidding party has to bear the risk of having capacity mismatches. Two respondents required more transparency on the investment trigger at each point of the OS.
 - Another user explained that the documentation accompanying an OS is often of a poor quality: this respondent explained that there was a lack of clarity on the non binding and binding stage for one of the surveyed OS, which hamper the confidence in the OS process.
 - A respondent suggested putting an obligation on the sponsor to communicate in the initial OS notice the planned period for the OS, in order to enable the shippers to take more informed decision regarding the timing of their participation in OS.
 - One user informed about its need to have more data on gas quality requirements upstream and downstream of the OS;
- According to four respondents, the OS procedure entails a high risk burden on the shippers: shippers seem to support economic risk (with regards to tariff uncertainty) and operational risk (with regards to construction delay). Another respondent states that this breakdown of risks to the detriment of the shippers is due to the early binding capacity bookings, whereas the final investment decision is taken out lately after. One user mentioned that special attention should be paid to OS when TSOs are vertically integrated as they can have cross interests; in this case, investment costs should be supervised by regulators. In the same manner, another user stated that the OS procedure is only interesting for financially strong companies which are able to compensate the financial risk of a long term decision, by booking capacity for 10 years or more. Some users also complained of asymmetric contract obligations, to the extent that the shippers have to make concessions early, unilaterally, bindingly and over a long period, whereas the TSO has the ability to interrupt the investment project at any time, without any consequence or financial compensation (which is contradictory to the GGPOS – paragraph 46). There is a requirement from the market to improve the balance between the rights and obligations of the participants and the sponsors.
 - Two users also criticised the OS procedure because of the **uncertainty and delay around the process**. The delay caused by some OS also has an impact on the realization of new power plants and entails major planning uncertainty.
 - One user called for earlier completion of **ex ante approval by regulatory authorities**, in particular on tariffs and capacity allocation methods, including where capacity is oversubscribed. Another user also stated that it is often unclear to identify the involvement of the NRA in the OS, due to poor coordination with neighbouring countries. According to one respondent, the involvement of the NRA in the monitoring of the OS is a key element to guarantee that the process is fair and transparent and that the final outcome of the OS satisfies market needs.
 - One user commented the **non-binding character of the first phase** which often causes an inflation of the applications, not always transformed into binding demands at a later stage. This fact introduces a bias in the tariff calculation and the declared range of tariffs which are fundamental for the investment decision. This same user suggested introducing a reservation charge, which would be later credited if the binding contract is concluded later. On the non binding phase, one other user suggested the possibility of renominating volumes of capacity during the non binding phase in the light of new information regarding capacity in adjacent systems.
 - Two users suggested that the development of **legally binding guidelines** of best practices in the OS could enhance the procedure and commit parties to adopt clear and transparent mechanisms and to improve their communication with the bidders. For one user, the legally binding guidelines should cover not only the OS procedure, but also precise rules on how and when TSOs have to invest in system extensions.
 - Users suggested the other following elements for improving the GGPOS:
 - Two users highlighted that medium and short term contracts should always be offered alongside the long term contracts.

- A minimum period for each phase of the OS should be introduced in the guidelines.
- Several users insisted on the importance of conducting a preparatory phase in the beginning of the process.
- The GGPOS should further clarify that unsatisfied market needs are only due to physical congestion and that the existing congestion management procedures are efficient;
- One respondent reported that users are bound by confidentiality clauses in the OS contracts that restrain their ability to provide full answers to this survey. This user requested that the GGPOS address these confidentiality clauses.
- Another suggestion was to form an industry discussion forum as part of each OS process, in order to give network users an opportunity to collectively discuss and communicate with the TSO;
- Some users highlighted that OS should not be considered as the only available mechanism for making relevant investment decisions as expressed in paragraph 8 of the GGPOS.

4. Conclusion and way forward

Three key priorities were identified in this consultation in order to improve the efficiency of the OS.

i. Increase the reliability of the non-binding phase

Several issues were raised with regards to the non-binding phase. Some users criticised the fact that this phase is often more engaging than desired, whereas the TSOs and the NRAs consider that this phase is not always reliable as the market needs are often overestimated and do not result in binding agreements at a later stage. As a consequence, the sponsor of the project takes into consideration unrealistic demands when defining the terms and conditions of the investment.

Half of the surveyed NRAs and more than 60% of the sponsors are in favour of introducing a mechanism to stimulate more realistic requests in the non binding phase. Many respondents are in favour of imposing some fees when participating to the first phase. These fees should be high enough to prompt realistic request without discriminating any user. Other sponsors consider that a limitation of the bids variation between the two phases would limit the resources needed for the project design development.

ii. Improve the transparency of the whole process

The survey revealed that in some cases, the sponsor did not provide all the necessary details to the market in due time. This lack of transparency was reported at different steps of the OS procedures. The users complained of insufficient levels of information on:

- The economic test, i.e. on the triggers for the sponsor that will lead the development of the capacity. On this matter, sponsors consider that the publication of this test in the OS notice can not be done at this stage of the project.
- Users requested more transparency on the methodology used for the tariffs settings, at least before they take binding decisions in the OS process.
- Users informed that more transparency is needed on the capacity allocation mechanism. In some cases, this lack of transparency generated some concerns from the users on the discrimination of the allocation rules.

iii. Increase the coordination and cooperation of TSOs and NRAs in case of cross border OS

The consultation revealed a high degree of non compliance with the GGPOS regarding coordination requirements. The survey stressed that coordination between TSOs and between NRAs is crucial for a final outcome which satisfies market needs. The users generally criticised the following:

- The non-compatibility of the products offered during some OS with those of adjacent systems operators, in terms of the duration, quantity and quality of the capacity.
- As several OS were conducted on the European network, many users reported a lack of coordination on the timing between these different projects, preventing shippers from entering into long term commitments.
- Some users also called for increased cooperation on contractual aspects, particularly on the definition of a "step-out" clause that enables users to get out of the bids in case they do not get the requested capacity on the adjacent network.

- Users also support the exchange of all the necessary information needed for an appropriate coordination of investment projects.
- Users sometimes have to deal with different legal and operational rules on interconnection points.

The GGPOS published in May 2007 are aimed to ensure that OS are conducted in a non-discriminatory and transparent manner and result in an efficient outcome. The consultation to monitor the compliance of the 12 selected OS procedures shows that the GGPOS need to be adapted to take into account recent experiences, as the market has expressed its disappointment with the outcome of several procedures and raised a number of deficiencies in the process.

This monitoring exercise has also shown that there has been a significant degree of non-compliance with some particular aspects of the GGPOS, especially regarding insufficient transparency and lack of coordination.

In conclusion, the GGPOS should be revised on the basis of the findings of this survey. More specific guidelines are needed at the European level on the reliability of the non-binding phase, the transparency of the whole process - more particularly on the tariffs, the economic test and the capacity allocation mechanism - and on the coordination between TSOs and NRAs. Further consideration should also be given to how to enforce the compliance of particular recommendations of the GGPOS, which actually derive from the EU regulatory framework.