Draft Pilot Framework Guidelines on Capacity Allocation Mechanisms

Questions for stakeholders, february, the 26th

General

1. What are your main views of the proposed measures? Do you think Network codes based on these guidelines can achieve non-discriminatory and transparent capacity allocation and the fulfillment of the capacity allocation principles set out in the Third Package of Energy legislation?

GDF SUEZ / GLOBAL GAS & GNL supports ERGEG's approach on these guidelines which recommend :

- a target model which allows ERGEG to be more prescriptive vis a vis TSOs,
- a more directive approach to harmonize capacity products and allocation rules,
- adjacent TSOs, as well as regulators, to cooperate on capacity allocation in order to prevent contradictory measures to be implemented on both sides of interconnection points.

GDF SUEZ / GLOBAL GAS & GNL agrees that the harmonization of access rules to cross border interconnection points can contribute to achieve non-discriminatory and transparent capacity allocation and the fulfillment of the capacity allocation principles set out in the Third Package of Energy legislation.

2. What are your views of the implications of each for the measures for sector in which you operate? In particular, we are interested to understand the nature of the implications in a qualitative way (and, if available, any quantitative evidence on costs and benefits would be extremely welcome).

The 3rd package has been decided because some stakeholders of the energy business where unhappy with the market developments under the 2nd directive which, in their view, had not overcome structural obstacles. They considered notably access to capacity as blocked by congestion (physical and/or contractual) while the lack of available capacities, makes it often difficult for new comers to develop commercial activities.

If appropriately implemented, most of the proposed measures should have positive outcomes in this respect.

This being said, GDF SUEZ / GLOBAL GAS & GNL would like to draw ERGEG attention on the necessity to make sure that the underlying target model shall not create new rigidity or negative side-effects because of an excessively theoretical approach on very tricky matters for which no ideal or unique solution is evident.

In particular, the choice of auction as the standard allocation rule and the right timeframe for its implementation throughout the European networks, the impact of the new rules (including tariffs aspects) on the existing contracts and the exact functioning of bundled products still need to be thoroughly assessed, as well as the final implications of a pure hub-to-hub target model.

In GDF SUEZ / GLOBAL GAS & GNL view, some of the measures contemplated remain too vague at this stage or look like they have not been fully thought through.

The concern is even higher in the case of the CMP–rules, as they are likely to be adopted via the comitology procedure. It is essential that ERGEG and the Commission take fully into account the feedback of the stakeholders before setting the rules on this highly sensitive question.

Scope of the Arrangements

3. Do you support the scope of the draft framework guidelines proposed?

Even though entry points from LNG-terminals, and entry/exit points to or from storage facilities are not covered by the draft framework guidelines, capacities offered on these points by TSOs should also be harmonized with the entry/exit capacities offered by system storage or terminal operators.
Therefore, GDF SUEZ / GLOBAL GAS & GNL suggests that ERGEG guidelines recommend storage and LNG operators to cooperate with TSOs. As a consequence, GDFSUEZ / GLOBAL GAS & GNL supports the idea that LNG or storage capacities should be commercialized as combined products with transport capacities and be part of the scope.

Existing contracts

4. What are in your views of the challenges that existing contractual arrangements create with regard to capacity allocation? What would be the possible ways to overcome those challenges?

Amending capacity clauses in existing contract shall not lead to withdraw and reallocate capacities, especially when capacity are still available on the primary market. But It may be considered as an opportunity for some shippers to resell (respectively to return for free) the capacities they do not need anymore.
GDF SUEZ / GLOBAL GAS & GNL considers that the challenge only exists on contractually and/or physically congested points:

Finding a way to free up capacities for new entrants 'needs is the only way to respond to a lack of capacity in the short term..
One solution to overcome these challenges, which has been successfully applied in France, is to create firm releasable capacity (article 7.2.1.2 Marketing of Releasable Capacities of the GRTgaz transmission contract):
"… in the event that a shipper should have obtained more than 20% of marketable firm capacities, a fraction of the share of the firm capacity it holds above these 20% is converted into releasable capacity. Released capacity may be released for the benefit of another shipper only if the capacity it holds is strictly less than 20%. After a shipper transfers a share of the annual firm capacity it holds, the share of its capacity converted into releasable capacity is recalculated accordingly"
The firm releasable capacity is released month by month only if no more or not enough firm capacity if offered.

One could set different thresholds but, in any case, it seems to be a meaningful tool in order to open the market of long-term capacity.

Another issue is the lack of a short-term reserve in some countries. It is a difficult task to create such a reserve or to increase its share up to 15-20% of the total capacity when there is no capacity available. Still, it should be an objective for TSOs to set aside gradually the capacity necessary for the purpose of this short-term reserve. This could be done, for example, besides the already mentioned introduction of firm releasable capacities, by converting a part of the firm capacity held by incumbents into interruptible capacity, as incumbents are more able to deal with interruptible products than newcomers since they have a more flexible supply. Another way to proceed could be the implementation of a long-term UIOLI/UIOSI system, as it is the case in France for example.

More generally, an effective congestion management system will be part of the solution, provided that it is both appropriate and consistent throughout Europe. ERGEG will have to make sure that it is the case for its proposed recommendations for its guidelines likely to be adopted via a comitology procedure, as the question is of utmost importance.

In the longer term (more than three or four years from now), only investments made by TSOs through appropriate Open Seasons can help to overcome the challenge of congestion without depriving the shippers of their rights on their already assigned long-term firm capacities and without any booking or revenue risks for the TSOs. National Regulatory Authorities have to set the right incentives for TSOs to develop these new capacities and to find the good balance between the needs of the various stakeholders.
Open Seasons can also help to create or increase the short-term reserve.

5. Should relevant clauses in existing contracts be amended if they contradict the new legally binding set of rules (which will be based on the framework guideline) in order to create a level playing field for all shippers?

As a general rule, GDF SUEZ / GLOBAL GAS & GNL is attached to the principle of legal security for existing contracts, which is a general principle of the European law. Therefore, amendments of existing contracts should be left only to the free will of the parties and any new legally binding set of rules contradictory to usual clauses of existing contracts should really be kept to the minimum, after a thorough assessment of the pros and contra and an in-depth impact analysis providing a clear evidence that the new rules will bring more benefits than detriments.

As such, question 5 is formulated in a ambiguous way. Either the new rules are mandatory, and there is no need to amend existing contracts as these rules will prevail in case of contradiction, or they are not mandatory and there is no need to amend existing contracts, except if the parties are willing to do so. There is no doubt that, if the general terms and conditions of transmission contracts are to change, they must change for all existing relevant contracts in the same way.

That is why the real question is to select carefully the few rules that should be mandatory, given the fact that they will prevail over existing contracts and might change drastically their balance.

GDF SUEZ / GLOBAL GAS & GNL would like to insist on the few clauses of existing contracts that, by no way, should be hurt by any set of new rules. The first class of clauses concerns the possibility to keep on trading at the flange for existing contracts as it would be a very long and tricky process to renegotiate the clauses related to the delivery points of long-term supply contracts. The second one is connected with the necessity to make sure that the shippers will not be deprived from their rights on the capacity they hold on a long-term basis, except in case of misuse and, should it be the case, not in a definitive way. Whatever the congestion challenges may be, any effective congestion management system shall take into account that shippers need to be able to rely on capacity owned under their existing contracts in order to continue to guarantee security of supply via long-term contracts already concluded.

That is the reason why GDF SUEZ / GLOBAL GAS & GNL, while suggesting to free-up capacities in a reasonable manner, through effective tools such as those described under questions 4 and 6, would consider any other re-marketing of capacities as putting at risk the security of supply in Europe and, therefore, as being counter-productive in respect with the general objective of a well-functioning gas market in Europe.

6. Experts have discussed if existing / legacy contracts should be questioned if certain conditions are met, in order to free up capacity, which would then be reallocated. Do you consider such a proposal appropriate?

Framework guidelines shall define a way to open capacity to new entrants for the benefits of final customers.
Opening the market necessarily means opening facilities to new entrants, including transport capacities. To do so, new management clauses shall be able to provide a certain amount of firm capacities to new comers on the short and long term. As it has been done in France and described in question 4, it can be decided that part of the firm capacities already granted to incumbents become releasable.
And those releasable capacities could be part of the firm short-term capacities.

As mentioned also in question 4, the implementation of a sound long term UIOLI/UIOSI mechanism can be contemplated, provided that the affected shipper does not lose its rights for good but only for the duration and under the conditions set by the regulator, if this capacity is requested by third-parties.

TSO cooperation

7. Is the scope of the identified areas for TSO cooperation appropriate to ensure efficient allocation of cross-border capacity in order to foster cross-border trade and efficient network access?

GDFSUEZ / GLOBAL GAS & GNL supports the scope encompassed by the framework guidelines and deems it appropriate. It needs to cover all the topics concerned by TSOs cooperation in order to optimize the use of the capacities and to anticipate and decide coordinated investments in new capacities if needed.

GDFSUEZ / GLOBAL GAS & GNL is of the opinion that joint anticipation and realization of cross-border investment is probably the only topic which cannot be easily solved. The revision of ERGEG GGP on Open Seasons in order to foster the organization of coordinated cross-border Open Seasons, on the basis of the experience gathered thanks to the first combined OS launched within the various Gas Regional Initiatives, could be a way to tackle this problem. The main question, however, lies probably in the heterogeneous incentives of the TSOs on the two sides of a border : regulators have to find a way to better harmonize these incentives.

GDFSUEZ supports the idea that TSOs cooperation is mainly important to solve contractual congestion:

- It shall first reduce congestion due to different types of capacity products, allocation procedures and management clauses.
- It shall maximize technical available capacities and the use of it if common data exchanges, interoperability rules and operational procedures are applied by TSOs on both side of each interconnection point.

Contracts, codes and communication procedures

8. Should a European network code on capacity allocation define a harmonized content of transportation contracts and conditions of access to capacity?

GDF SUEZ / GLOBAL GAS & GNL supports the view that the European network code on capacity allocation should define a harmonized content of transportation contracts and conditions of access to capacity.
Nevertheless, GDF SUEZ / GLOBAL GAS & GNL thinks that, in order to reach this target, TSOs shall take into account that there are differences between facilities in a network (storage, LNG terminal, transmission between balancing zone and at cross border points). Providing harmonized access to capacity may also lead TSOs to sometimes consider, if possible, several networks as a unique system in order to share facilities, in particular within-day flexibility, if it can help to maximize the capacity offered or to mitigate risks. Regional dimension could help TSOs alleviate obstacles to a smoother access to capacity.

9. Should a European network code on capacity allocation standardize communication procedures that are applied by transmission system operators to exchange information between themselves and with their users?

GDFSUEZ / GLOBAL GAS & GNL supports the idea that the network code shall request TSOs to align communication procedures on both sides of interconnection points.

Capacity products

10. What are your views of our proposals regarding capacity products?

GDF SUEZ / GLOBAL GAS & GNL approves of the proposal for a glossary to define the capacity products, especially firm, interruptible and UIOLI terms.
GDF SUEZ / GLOBAL GAS & GNL considers that a capacity product is commonly defined by

- Its type : firm, interruptible, UILOI, ...
- Its duration : yearly, seasonally, monthly, weekly, daily, ...
- Its time step : daily or hourly
- Its unit : it shall only be kWh

GDF SUEZ / GLOBAL GAS & GNL wishes the guidelines to define clearly what are the differences between long and short-termcapacities, especially as regards the duration. In GDF SUEZ / GLOBAL GAS & GNL view, long-term capacity means capacity booked for strictly more than one year.

11. Do you agree with the idea of defining a small set of standardized capacity products that do not overlap?

GDF SUEZ / GLOBAL GAS & GNL supports the proposal of ERGEG to define a small set of standardized capacity products. There should only exist firm and interruptible types with different durations (within-day, daily, monthly, seasonally, annual and multi-annual) and time step (per day, per hour).

GDF SUEZ / GLOBAL GAS & GNL desires to introduce on a large scale, on top of these standard products, some other services related to capacity management, such as : wheeling, capacity booking on the basis of the real physical net flow (entry flow minus exit flow), capacity coupling, etc. These services could avoid a contractual overbooking situation on entry/exit points by considerably increasing the flexibility of this management, maximizing the offer of capacities and optimizing their use.

GDF SUEZ / GLOBAL GAS & GNL speaks also for the definition in the pilot guidelines of a unique commercial energy unit among Europe which should be Kwh.

12. Should TSOs offer day-ahead and within-day capacity products?

Firm day-ahead products are useful tools. As regards within-day products, GDF SUEZ / GLOBAL GAS & GNL supports the idea that they should be marketed as and correspond to the total available UIOLI capacity. If a shipper nominates more than its booked capacity and if technical capacity is available, TSO should immediately assign it to the demanding shipper. If this assigned capacity comes from non-sold out firm capacity, shippers shall have to pay for it as a firm capacity, at the day-ahead reserved price for example.

GDF SUEZ / GLOBAL GAS & GNL is of the opinion that intra-day assigned UIOLI capacity should be interruptible in principle. Nevertheless, GDF SUEZ / GLOBAL GAS & GNL proposes that UIOLI capacity shall be offered as firm capacity in the case there is still firm available capacity or for shippers which have a smaller portfolio and/or hold less than a share of the commercialized firm capacity to be determined by the national regulators.

13. Should European TSOs offer the same capacity products at every interconnection point across Europe?

GDF SUEZ / GLOBAL GAS & GNL considers that it is not necessary to offer the same capacity products at every interconnection point. But commercialized capacity products shall all belong to the same standard products defined in the pilot framework guidelines.
Indeed, harmonized products and allocation rules on an interconnection point can be limited due to technical reasons and limited flexibility tools.

14. Should TSOs offer interruptible capacity also in cases where sufficient firm capacity is available?

GDF SUEZ / GLOBAL GAS & GNL does not support the idea that TSOs should offer interruptible capacity where sufficient firm capacity is available. Interruptible capacity shall only be booked when there is no firm available booking capacity left. If there is sufficient firm capacity, it should never be allowed to book interruptible capacity.

Breakdown and offer of capacity products

15. Should a reasonable percentage of the available capacity be set aside for firm short term capacity products?

GDF SUEZ / GLOBAL GAS & GNL supports the proposal of a reasonable percentage of the available capacity to be set aside for short term firm and interruptible capacities (see also question 4). This amount of capacity is needed to allow shippers to adapt to their market shares on short term. As an example, the ratio commonly applied in France is :

- 80% for long-term capacity (one year or season and more) with a reservation notice longer than 6 months.
- 20% for short-term capacity (less than one year) with a reservation notice shorter than 6 months.

GDF SUEZ / GLOBAL GAS & GNL is of the opinion that it could be relevant to market long-term capacity by splitting it more clearly between medium-term (less than 4 years) and long-term capacity or by offering gradually the long-term capacity to the market, depending on the duration of the reservation notice, as the choice has been made recently for congested points in Belgium for example..

Cross-border products

16. Recital 19 of Regulation (EC) 715/2009 states that gas shall be traded independently of its location in the system. Do you think that cross-border products will facilitate the exchange of gas between virtual hubs of adjacent markets?

GDF SUEZ / Global Gas & GNL understands that cross border products would be set ultimately to avoid trading at flanges by moving it to virtual Hub. GDFSUEZ / GLOBAL GAS & GNL does not support the application of this proposal, all the more if it were to apply to existing supply contracts.

More generally, GDF SUEZ / GLOBAL GAS & GNL would like to emphasize that trading at flanges is not responsible of congestion problems faced at several interconnection points. An effective congestion management system could cope very easily with the continuation of this supply scheme which has proven to be an effective tool, not only to guarantee security of supply but also as a flexible tool to optimize exchange of gas within large market areas, contributing thus to a better integration and functioning of the gas market in Europe.

This being stated, cross-border products, for sure, should facilitate exchange of gas throughout Europe if they are designed in a way that maximizes the offer of capacities and optimizes their use by providing products really suited to the needs of the market and by managing effectively congestion issues.

17. Do you support full bundling of cross-border capacity into one single capacity product, including a limitation of the possibility to trade at the border so that gas is traded at virtual hubs only in order to boost their liquidity?

As stated here-above, GDFSUEZ / Global Gas & GNL does not support full bundling of cross-border capacity, even limited to new supply contracts. In fact it does not seem necessary to impose this provision because suppliers and buyers are in the best place to decide themselves where they want to trade and what fits best their needs.

One has to carefully assess the impact of a hub-to-hub model before contemplating to make it mandatory. It is doubtful if it will boost the liquidity of the hubs besides statistically registered transactions, as the bulk of the gas contracted and traded in Europe will remain for long governed by long-term contracts whose price-mechanisms differ from those of spot markets. Furthermore the implementation of this provision could have very detrimental side-effects, by reinforcing the market power of a handful players holding both sides of the cross-border capacities through bundle products and possibly leading to some kind of implicit destination clauses.
In case bundled products were to be generalized, one should nonetheless preserve the possibility to trade at flange by having two different counterparts at each side of the interconnection point.

18. Do you consider combined products to be an appropriate interim step towards bundled products?

GDF SUEZ / Global Gas & GNL prefers by far combined products as they have recently been designed for the France-Spain Open Season. They can be very appropriate products and should not be contemplated only as interim steps towards bundled products.

19. Should capacity at two or more points connecting the two same adjacent entry-exit systems be integrated into one single capacity product representing one single contractual interconnection point?

As long as commercialized capacities remain the same (ie are not reduced), GDF SUEZ / GLOBAL GAS & GNL supports the idea to simplify the contractual network by integrating interconnection point when two or more points connect the two same adjacent entry-exit systems. Special attention shall be paid to the tariff questions if various tariffs had been set at the various interconnection points.

Capacity Allocation

20. Should auctions be the standard mechanism to allocate firm capacity products?

GDF SUEZ / GLOBAL GAS & GNL does not support the view that auctions should become the standard mechanism to allocate firm or interruptible capacity products, except, may be, for day-ahead capacity (or very short-term booking notice). Indeed, there is no definitive and universal criteria imposing to select auction against pro rata. Nor is it proved that auctions will turn out to be for the benefits of final customers.

That is the reason why GDF SUEZ / Global Gas & GNL is of the opinion that it is not reasonable to propose an exclusive mechanism for the target model at this stage, be it auctions or pro-rata. Before promoting auctions as the exclusive allocation mechanism, it is necessary to fully assess what would be the implications of such a model on the tariff of the previously assigned capacity on a same interconnection point. It is not clear, at this stage, whether auctions would mean the end of the principle " a same tariff for a same service" or not, and, if not, how auctions could combine with it.

21. What would be the implications of using auctions for capacity allocation in the markets in which you operate? Is there any way in which auctions can be designed to overcome potential issues resulting from their introduction in those markets?

Whatever the market GDF SUEZ / Global Gas & GNL operates on, GDF SUEZ / GLOBAL GAS & GNL does not see any progress at systematically using auctions to allocate capacities especially as long as it has not been clearly explained and validated if there would be only one tariff at the same interconnection point and how the possible extra revenue of the TSO is going to be used.

22. Do you support pro rata allocation as an interim step? If yes, should pro rata allocation only be used in given situations or market conditions?

GDF SUEZ / Global Gas & GNL supports the idea that no particular allocation target mechanism has to be promoted. Each case has to be thoroughly assessed by TSOs and NRA before deciding which mechanism is the most efficient. In any case, auctions should be tested during a period of time long enough to make sure that they do not trigger detrimental side-effects, especially when there is evidence of physical congestion, before being generalized. According to GDF SUEZ / Global Gas & GNL pro rata allocation mechanism is notably well designed for new capacities to be developed through Open Seasons and should not disappear in the future.

Re-Marketing Booked Capacity

23. Should the network code define harmonized firm secondary capacity products and anonymous procedures for offer and allocation of secondary capacity products in line with those on the underlying primary capacity market?

GDF SUEZ / GLOBAL GAS & GNL supports the view that the network code shall define the same harmonized firm secondary capacity products than for the primary market.
GDF SUEZ / GLOBAL GAS & GNL considers that secondary capacity trading is a very useful tool for shippers in order to adapt their capacities to their needs either by buying or releasing unused capacities.
GDF SUEZ / GLOBAL GAS & GNL keeps supporting the idea that some measures could be put in place to encourage and to ease the development of this secondary market and, particularly, the following :

- All the TSOs should propose a web platform where shippers could post anonymously offers and demands of capacity (ex. Bulletin Board of GTS or GRTgaz),
- TSOs should ask for a limited fee for such a service, in particular if the use of the service is made mandatory,
- Shippers must have the choice either to transfer the usage or the whole ownership of the capacity,
- The price of capacity traded on the secondary market should be capped (120% of the published tariff, for instance) in order to prevent any speculatory behavior
- OTC trading should remain possible, as capacity deals on the secondary market are often linked with commodity deals.

Booking platforms

24. Do you think that all capacity connecting systems of two adjacent transmission system operators should be allocated via a joint, anonymous, web-based platform?

On short term, GDF SUEZ / GLOBAL GAS & GNL supports that capacity connecting systems of two adjacent transmission systems operators should be allocated via a joint allocation procedure. Indeed it does not necessary mean that a web-based platform has to be put in place on short term.

Nevertheless GDF SUEZ / GLOBAL GAS & GNL considers that a joint, anonymous, Web-based platform could be the target.

25. Do you agree that joint allocation of primary and secondary capacity products on these platforms would strengthen capacity markets?

GDF SUEZ / GLOBAL GAS & GNL considers that if all the TSOs propose a web platform where shippers can post anonymously offers and demands of capacity, it would be a good opportunity to launch joint allocation of primary and secondary capacity products if possible.
GDF SUEZ / GLOBAL GAS & GNL has no idea if it would strengthen the capacity markets but it may contribute to optimize the commercialization of the unused capacities.