

Mrs Fay Geitona
ERGEG
28 Rue le Titien
1000 Brussels
Belgium

Brussels, 26th of February 2010

Purpose: Public Consultation on the Framework Guidelines Draft for Capacity Allocation

Dear Ms. Geitona,

Iberdrola welcomes the opportunity to respond to ERGEGs *“Framework Guidelines Draft for Capacity Allocation”*. We appreciate very much the work developed by ERGEG over this process, as well as the participation required to the market agents. We believe that it is essential for the consultation process to be aligned with market needs from the first proposal.

Iberdrola supports the content of the *“Framework Guidelines Draft for Capacity Allocation”*, especially in regard to aspects associated with cooperation between TSOs, product harmonisation, maximising available capacity, procedures and information transparency, standardisation of communication procedures, the binding character of firm capacity offered by the TSOs and the offer of uninterrupted capacity (should other options not be viable).

However, the Draft proposes auction procedures as the main option for primary capacity allocation. In our opinion, auctions are envisaged for contractual congestions, namely, situations where, even though there is no commercial capacity available, in practice, there is availability of physical capacity.

We highlight that not all European points of interconnection are subject to contractual congestion, while there are other situations in play:

1. There are points at which commercial capacity is available: In these cases, the auction process, as the method for allocation of capacity, does not provide any advantage over a FCFS type allocation, as there is no problem of lack of entry capacity for the shippers.

We understand that **in the presence of available commercial capacity, the FCFS method is more simple**, giving a greater freedom of schedules to shippers and with lower administration costs. This is apart from taking account of anti-hoarding mechanisms that discourage contracting capacity as a mean of blocking the entrance of other shippers.

2. There are other points physically congested: This is, for example, the case of the Spain-France interconnection, where historically there has not been enough physical capacity available for the shippers. This situation is being dealt within the South Gas

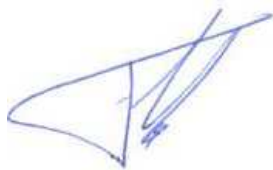
Regional Initiative by offering new physical capacity through Open Season mechanisms. These mechanisms involve a shippers commitment to contract capacity for a minimum of 10 years.

It should be considered that these **capacity allocation mechanisms may involve disproportionate risks for shippers** and could delay the construction of infrastructures. In our opinion, it is necessary to distribute risks including additional criteria to improve the market integration and the guarantee of supply, so the risks do not fall entirely on the shippers.

On the other hand, the proposal accurately includes the need to maximize available capacity. However, we consider it is necessary **to include initiatives aimed at releasing capacity in the event of contractual congestion**. This would include regulatory measures to discourage contracting capacity for the purpose of hoarding, which would avoid more drastic measures such as revision of contracts. These measures could be, for instance, a requirement for minimum use of capacity and/or giving the shippers the right to have enough entry capacity in the case of getting (switching) existing customers (the “rucksack” principle).

In line to the above, we attach a more detailed annex of observations, organised according to the items proposed in the Draft.

We reiterate our gratitude for the opportunity given to the market agents on participating in the elaboration of the Draft. In the case of Iberdrola, should there be any doubt or question regarding the proposals or observations contained herein, please do not hesitate to contact us.



Fernando Lasheras

Director of the Iberdrola Brussels Office

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F1.1 Scope of application

This Draft states that the Network Code, to be adopted by reason of the Framework Guidelines on the Allocation of Capacity, shall be applied by the TSOs taking into consideration possible concurrent obligations of public service.

In this regard, we believe that referring to public service obligations in order to adopt decisions must be justified in all cases and provided with due transparency.

Article 16 of the EC Treaty reflects that European Union policy relating to public service operators, still emphasizes the will to deregulate network public services and to expand the scope of competition in national markets. The invocation to public service obligations must be provided with sufficient guarantees to prevent that imposed obligations on market agents become real barriers to entry in the markets.

For instance, it would be questionable if agents with provisions of public service obligations had capacity contracting privileges. This might be the case of Portugal, where law contemplates a last resort wholesale shipper linked to the presence of regulated tariffs for all types of final customers and privileged capacity rights of use versus other shippers.

F1.2 Adapting pre-existing capacity contracts

The Draft states that within six months after the enforcement of the Capacity Allocation Network Code, TSOs must modify those clauses of pre-existing capacity contracts incompatible with Network Code statements.

We consider it can be difficult to introduce substantial changes within pre-existing capacity contracts and we believe that priority should be given to regulatory measures that primarily encourage market agents to release the capacity they do not need. In this sense, a promising measure could be a requirement for minimum use of capacity associated with Open Season for the release of capacity that would enable market agents to adjust their own contracts.

On the other hand, in those cases where this measure would have to be applied (contractual congestion) it would lead to shippers defenceless if contracts were modified at the discretion of TSOs. Should this be the case, we propose relevant Regulating Authority acting as an arbiter to solve discrepancies between parties.

F1.3 Cooperation between TSOs

We consider this measure to be satisfactory. In our opinion, establishing mandatory cooperation between TSOs and, what is more, specifying the procedures by which TSOs are to achieve such cooperation in issues such as exchange of information, harmonisation of capacity products and capacity allocation, as well as maximising and calculating capacity, will contribute to the necessary integration of the markets.

We believe that maximising available capacity is extremely important and should also include an additional margin in all cases to guarantee security of supply.

However, in spite of the importance given to this matter in the Draft, it does not include measures to release available capacity in the event of contractual congestion (not physical).

It would appear necessary and coherent to establish “anti-hoarding” measures for capacity. These measures could be, for instance, a requirement for minimum use of capacity and/or giving the shippers the right to have enough entry capacity in the case of getting (switching) existing customers (the “rucksack” principle).

F2.1 Capacity products

In the interest of market competition and integration, we believe that at all interconnection points, all capacity products should be standardised and offered within a limited number of capacity products. The definition of this types and groups of products should be consulted previously with the network users.

On the other hand, it would seem advisable for the Network Code to establish the procedure and time periods for consultation.

Moreover, we support and highlight the importance of the measure consisting on making the available capacity supply binding for TSOs, once published. This will require implementing operation procedures coordinated among TSOs that allow the fulfilment of commercial programmes even if a given facility is not available (e.g., with mechanisms such as “Operating Balancing Account”).

F2.2 Interruptible capacity products

We consider the supply of interruptible capacity products appropriate in the event of contractual congestion. It is not necessary, and should therefore not be applied at points of interconnection with surplus capacity.

F2.3 Breakdown and offer of capacity products

In our opinion, the long and short term breakdown of capacity products should adapt to the specific conditions of each interconnection point.

The Draft states that a “reasonable” percentage of total available firm capacity should be offered as firm and short-term. However, points with excess capacity should be given the opportunity of supplying a higher percentage of firm capacity in the long term, versus points with contractual congestion.

On the other hand, we insist on the importance of submitting the decisions affecting the market adopted by TSOs to the approval of the Regulating Authorities and to prior consultation to network users. In this section (F2.3) the decision of the TSOs that should be submitted to consultation and control concerns to the determination of the capacity to be allocated to each type of product (long term / short term).

In this section, the Draft also requires TSOs to offer all available capacity in addition to surplus capacity (firm capacity not allocated previously, capacity returned from previous allocations, unused capacity from UIOLI mechanisms). We reiterate that maximising capacity requires taking not only management short term congestion procedures, but long term capacity anti-hoarding measures, as well.

F3 Allocation of primary capacity

The Draft proposes auctions as the preferred method for capacity allocation. Although this is a valid mechanism for points with contractual congestion, in our opinion it is preferable to use more simple mechanisms such as the First-Come-First-Served (FCFS) methods in points with excess capacity. This method, in addition, provides greater flexibility in terms of contracting timings for shippers and generates lower administrative costs.

Again, taking into consideration that not all the interconnection points are subject to contractual congestion, we believe that the FCFS method should be permitted at those interconnections where sufficient capacity is available.

On the other hand, the pro rata allocation method should be used in cases where the shippers need to acquire capacity due to regulatory obligations (i.e., minimum safety stock).

F3.5 Reserve capacity platforms

We agree with the Draft proposal stipulating the creation of booking capacity web platforms. It is essential that these platforms provide confidence to market operators. Likewise, they would be confidential, easy to use and available in English –at least- at every interconnection point.

Lack of physical capacity at interconnection points

We consider it is necessary to analyse the situation of interconnection points where physical capacity is insufficient, as is the case of the Spain-France interconnection.

The relation between capacity allocation and investments should be analyzed. The mechanisms for the allocation of capacity may involve disproportionate risks that makes it difficult to enlarge or build new interconnection infrastructures.

It is necessary to distribute risk including criteria for the integration of markets and guarantees of supply in the construction of new infrastructures, so the risk does not fall entirely on the shippers.

Definition of the consultation procedure

Lastly, we consider as appropriate that Guidelines define the basic elements of the procedure that will govern consultations (proper consultation) to the market agents by ENTSOG or a specific TSO. This procedure should be regulated in detail in the Network Code.

The procedure for consultation by ENTSOG or a specific TSO should include:

1. Description by ENTSOG or the TSO of the problem to be solved.
2. Resolution proposals by ENTSOG or the TSO.
3. A sufficiently ample period of time for the market agents to issue their reply.
4. Justification by ENTSOG or the TSO of having taken into consideration the proposals of the market agents. Rationale for rejected proposals.
5. Process control by ACER.
6. Possibility of appealing the decision before the ACER.