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To CEER and ERGEG

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Public consultation on pilot framework guideline on capacity allocation on European gas transmission networks

Dear Sir/Madam,

We warmly welcome the initiative of ERGEG to adopt a legally binding network code, which shall improve regulatory harmonization throughout Europe, deepen market integration and regulatory define the harmonised content of transportation contracts and conditions of access to capacity.

Please find attached the comments on the ERGEG public consultation document E09-GNM-10-05 from 10 December 2009. We hope that our comments are helpful and are looking forward to a fruitful discussion in the future.

If you have any questions in relation to our remarks please do not hesitate to contact us.

Yours faithfully,


Oliver Maibaum

Managing Director Exchange
Senior Vice President Customer Relations


Roman Zyuzev

I EEX Remarks on Harmonization, Transparency and Non-discrimination

EEX welcomes the ERGEG's initiative to adopt a legally binding network code and supports harmonization and unification of the national legislative and regulatory framework in the European Union. Further, we support the harmonization and standardization of capacity products, market designs, nomination procedures and transport codes.

- **The harmonization of capacity products and adoption of a legally binding transport codes will benefit both the transmission system operators (TSO) and other gas market participants.** TSOs will have the possibility to better assess their real need for new capacities, to use capacities in a more efficient way and consequently to be able to release more capacity to the market in all timescales at a market prices. Market participants will enjoy easier access to capacities and will be able to bring more market depth by integrating capacity backed trading to their trading portfolio.
- Bearing in mind the structural differences of European gas markets and the structure of gas networks in different European countries, **the products and procedures should be compatible and support cross-border gas flows** and the functioning of a competitive market. The European legislator should lead the process and pursue the goal of maximizing the available transport capacity for the users. Proposals which are aiming at **harmonizing the regulation and support of market-based solutions** we see as positive.
- ERGEG principles are paramount in developing fair and flexible capacity allocation mechanism (CAM) and congestion management procedures (CMP) provided that **capacity is released to the market in an optimal and non-discriminatory manner, while combining technical and economic efficiency and addressing the needs of various market participants.**
- **Transparency and non-discrimination are the pre-requisites for fair competition.** It concerns the access to networks, but also the trading with capacities itself. Capacity is a scarce resource and must be allocated efficiently amongst market participants. Efficient capacity allocation will lead to an increase of liquidity, an increase in the number of trading participants and will boost the competition. A possible barrier to the development of competitive gas markets in Europe is the existing market structure, which results in the large market share of incumbents. On this issue we propose that the **relevant regulatory and/or competition authorities should have the possibility** to facilitate efficient, non-discriminate and transparent market design.

II Specific Remarks and EEX Proposals

Here, we would like to address some issues listed in the ERGEG public consultation document E08-GFG-41-09 and make some further comments and proposals regarding the structure of the gas market.

- EEX proposes to hold primary capacity allocation and secondary capacity trading through a **centralized web-based platform**, regarding the following principles: anonymity, non-discrimination, transparency and flexibility. The **platform should publish the necessary data on a daily basis, give references for the market participants concerning their short- and long-term transport trading strategies and provide a clearing solution**. EEX would therefore recommend running the suggested auctions by one dedicated auction office with one common platform or technology, which will provide security and anonymity. The situation, that each Transmission System Operator (TSO) develops and runs its own IT system for the auction should be avoided.
- EEX strongly welcomes the **anonymous auction** – as a suitable capacity allocation mechanism, which will benefit the interests of new market entrants and small shippers, increase the liquidity and promote further competition.
- EEX strongly supports the promotion of the **bundled products**. The bundling of capacity is the crucial element in facilitating cross-border market integration, as it increases available capacity, reduces transaction efforts and focuses all liquidity at the virtual hubs.
- TSOs should be obliged to have a **transparent and clearly defined mechanism for shippers to request capacity**. We strongly support the ERGEG proposal for the obligatory publishing by the TSOs of following dates: forecasts on entry and exit flows, technical capacity (time dependent), availability of networks, balancing energy and real-time flow metering. Further, with reference to shippers needs in consolidated information, we favour the **compilation of the relevant information from TSOs on one dedicated web-based platform**. Considering European Energy Exchange's (EEX) operating experience with transparency issues in power sector (power plant data transparency platform which contains mandatory and voluntary information about installed and available capacity and net production) and in line with cooperation with German TSOs, EEX trading platform may serve as provider of consolidated information.
- EEX welcomes the optimization and **maximization of available capacity and establishment of the rules which discourage capacity hoarding**, in particular secondary markets, long-term use it or lose it (UIOLI) or use it or sell it (UIOSI) provisions and reservation for short-term bookings.
- We strongly favour the financial firmness of capacities. The existent procedure with 100% physical fulfilment of capacity can lead to the capacity undersupply and should be avoided. The **change to 100% financial fulfilment is needed**, as long as the reduction of physical fulfilment does not harm the capacity owner financially. Compensation payments reflect the opportunities cost of non-shipment. TSOs should manage the capacities portfolio and trade on the secondary market with capacity rights at market prices. The risk shift from the network shippers to network operators for achieving the profit margin is acknowledged.

- **Shipper's capacity**, which is neither used as nominated nor re-nominated, **should be converted into firm day-ahead capacity** (short-term UIOSI or UIOLI principle) in both directions at any interconnection point and released back to the market by the adjacent TSOs. **Day-ahead capacity should be allocated by auction only**. Here, we support the redesign and harmonization of nomination timetables and the removal of existing rights for re-nomination of firm capacity to increase the liquidity.
- **EEX welcomes the capacity overbooking**, as long as it leads to an increase of short- and long-term capacity and the eventual capacity buy-back does not cause the financial discredit of the capacity owner.
- **In the case of network enhancement, new additional capacities should be added to existing capacity disposals with market-based prices.**
- In event of unforeseen available capacity TSOs should market 100% of the forecasted capacity as firm capacity at spot and derivatives market. We propose the disposal of **unforeseen available capacity** via auction on the spot and derivatives market.
- Should the capacity rights be physically extracted from the capacity owner, although he has nominated, he has a **right for an opportunity cost offset from the TSOs** in the way that he has no financial discredit. Otherwise, the TSO can recall on the day basis the non-nominated rights from the capacity owners at a respectively lower price (the retail price or the market price) and organize the day-ahead auction.
- We also propose the **establishment of a central register for capacities rights**, which should enable and boost the trading of capacity in Europe. The assigned independent service provider should implement and manage the central register of usage rights, where the market participants can notify the changes of the ownership.

III Response to ERGEG Consultation on Pilot Framework Guideline on Capacity Allocation on European Gas Transmission Networks

General

EEX supports a harmonized approach to capacity allocation and congestion management. CAM and CMP are integrated issues that cannot be drafted or consulted on separately. We believe that network codes based on these guidelines can achieve non-discriminatory and transparent capacity allocation in Europe and are basis for EU wide harmonization. Here, we support one common approach instead of different measures developed by national regulators. Opportunities for national regulatory authorities to change the rules and principles of the European standard should be limited.

EEX encourages the allocation of secondary and primary capacities through auction mechanisms, however it should be noted that success is highly dependent on the definition of this process and the underlying products. Key issue here is to incentivise the maximisation of firm primary capacity and more efficient capacity utilization and allow capacity bookings to match the needs of market parties.

Scope of arrangements

The lists of points, which are excluded from scope, contain entry/exit points to or from storage facilities and entry points from LNG-terminals. We would propose to include them into the scope of arrangements, as we see the synergy of trading with transport and storage capacities on one centralized web-based platform.

Existing contracts

EEX agrees with ERGEG position, that TSO's old capacity contracts, but also relevant clauses in capacity contracts may be amended 6 months after entering into force of new grid code. Furthermore, existing legacy contracts could be questioned if certain conditions are met, in order to free up capacity, which would then be reallocated.

TSO cooperation

EEX supports ERGEG's principles and welcomes the ERGEG's proposal to make some level of cooperation between TSOs mandatory: on the timing of capacity allocations, on the booking procedures and on technical parameters. We also welcome the mandatory amendment of congestion management clauses in capacity contracts existing prior to the application within 6 months of the respective national regulatory authority's decision entering into force.

Furthermore, we deeply support standardisation of the operational framework: i.e. processes tools and contracts for capacity booking, trading and usage should be standardised and fit for purpose. TSOs should also harmonise the tools available to offer and manage capacity rights; the resulting simplification could benefit competition between shippers and make new entry easier.

TSO's cooperation is also beneficial on an international and national level (between market areas), especially with regards to capacity products, in particular bundling of capacities, capacity calculation and maximization. We welcome the emphases in enforcing TSO's co-operation, improving platforms, setting aside a percentage of available capacity for short-term products. In

order to maximise available capacity, the network code shall set out how transmission system operators exchange information when planning day-to-day network operation, including forecast entry and exit flows as well as the availability of network components, of capacity buy-back mechanisms, if any, and of system balancing energy.

The adjacent TSOs shall exchange all necessary information, with regard to forecasts on entry and exit flows, availability of networks, balancing energy and real-time flow metering. The cooperation between the TSOs should lead to increased transparency with regard to gas flows and capacity availability, but also to the harmonization of the technical information requirements for network access and standardization/compatibility of the products offered.

There should be a clearer requirement on TSOs to maximise available capacity, and market-based approach to capacity allocation through auctions should be developed to encourage this:

- TSOs may retain a certain share of the revenues generated through congestion management mechanisms depending on the performance of the system;
- Buy-back of capacities to increase the available capacities must be possible.

Further, TSOs should guarantee transfer of the contractual capacities rights from market participants to the secondary market without any legal or operative restrictions. To facilitate more efficient trading of primary and secondary capacity we would rather propose to establish it on the existing centralized exchange-based platforms for energy trading instead of the approach when TSOs have to establish itself a certain number of booking platforms. Energy exchanges not only offer anonymity, non-discrimination, transparency, standardization to its participants, but also possess know-how in trading with energy commodities, guaranty independent market surveillance and provide clearing solutions. Also, we strongly favour the idea of joint offer and auction of the primary and secondary transport and storage capacity, as it would increase the liquidity of capacity trading.

Contract, codes and communication procedures

We support the idea, that the network code shall define the harmonized content of transportation contracts and conditions of access to capacity. The network code shall set out the relevant data to be published at every interconnection point. It shall standardize communication procedures that are applied by transmission system operators to exchange information between themselves and with their users. Coordinated information systems, IT-infrastructure and compatible electronic on-line communications shall be utilised particularly for capacity booking and transfers of capacity rights between network users.

Capacity products

EEX strongly supports standardization of capacity products. We propose a small set of standardized capacity products, both short- and long-term.

Capacity products will gain in importance, as cross-border trading is expected to increase within the next years. In order to assure the discrimination-free allocation of transport capacities, under the existence of the long-term delivery contracts and associated volume- and price risks of the market participants, a certain part of transport capacities should be disposed on the derivatives market to assure the long-term liquidity. Here, we strongly support offering the capacity with duration of one year or less. This should facilitate bringing the capacity onto the market on a regu-

lar basis and allow new entrants access to capacity. Derivative products may have different maturities: month, quarter, season and year.

At the same time, for the fast development of the gas market and emerging of new market participants, part of available technical capacity should be set aside for short-term spot products (up to 25%). Day-ahead auctions (and within-day capacity products) will also provide flexibility, security, predictability and incentives for the shippers not to hoard extra capacity for peak periods, as they would have the possibility to buy capacities for shorter durations on a regular basis.

We strongly believe that the combination of capacity products of various maturities is necessary to achieve both, stability and flexibility of access for the shippers.

Further EEX strongly welcomes the idea of bundling of capacity as a means of facilitating cross-border market integration and of focusing all liquidity at the virtual hubs, as interconnection points will no longer be suitable points for gas trading. Here, TSOs should offer combined or bundled capacity rights to enable Hub to Hub trading. Existing cross-border products, but also separate entry and exit capacity must be converted into bundled or as intermediate step into combined products.

Here, we see the proposal which anticipates the mandatory requirement by national regulatory authorities to TSOs to offer bundled products as a sufficient basis for the further development of liquidity in gas markets.

Breakdown and offer of capacity products

EEX supports the implementation of new rules to increase the volume of firm capacity rights via oversubscription including the capacity buy-back mechanism and rules for freeing up firm day-ahead capacity.

We welcome the proposal of ERGEG that a reasonable percentage of the available capacity shall be set aside for firm short term capacity products. Here it is important to notice that TSOs should offer all available capacity in a transparent and non-discriminatory manner as firm and interruptible long and short-term capacity products. The transmission system operators shall offer the firm capacity available plus

- any remaining firm capacity not previously allocated,
- any capacity from previous allocations surrendered by capacity holders and
- any unused capacity released through use-it-or-lose-it mechanisms.

Cross-border products

In reference to this issue, bundling of capacity products is vital, as it will increase liquidity at trading points and facilitate liquid short term and balancing markets. In the middle-term it may even potentially pave the way to implicit auctions and market coupling.

EEX strongly welcomes the ERGEG's proposal to offer combined and bundled products. Here, we clearly favour bundled products with a single allocation procedure and single nomination. Combined products may be used as an intermediate step. Herewith the network code shall lay down an action plan to realise bundled products and to replace combined products. This plan shall include a timetable.

Capacity allocation

Capacity constraints have very high impact on market prices. Capacity, being a scarce resource, must be allocated in an optimal, efficient and non-discriminatory manner amongst market participants. Efficient capacity allocation will lead to the increase of liquidity, will increase the number of trading participants and will boost the competition. Capacity Allocation harmonization is a key milestone towards market integration. Here, the proposals which are aimed at harmonizing and strengthening the power of national regulatory authorities are very welcome.

According to proposal of ERGEG the network code shall set out that for the same capacity product the allocation procedures take place at every interconnection point in Europe in a coordinated way. However, an interconnection based approach (rather than all EU-approach) may not sufficiently contribute to European harmonisation. Capacity allocation procedures shall be designed with regard to market conditions and shall be regularly reviewed and revised if necessary.

EEX shares ERGEG's view that the "First come-first served" allocation methodology (FCFS) is a non-transparent and potentially a discriminatory allocation mechanism. We particularly welcome capacity allocation mechanisms with a market-based approach, such as auction, which are carried in a transparent and non-discriminatory way and are easily understandable for all shippers. Anonymous auction also benefit interests of new market entrants and small shippers, increase liquidity and promote further competition on the gas markets. The use of FCFS should be restricted for exceptional situations where there is no actual and potential congestion.

The availability of financially firm capacity should be improved. In the short-term the availability of firm capacity for the development of the day-ahead capacities auction can be achieved through the redesign of nomination timetables and restrictions of re-nomination rights. In the longer term the efficient release of unused capacities should be fulfilled through the return of capacities or redesign of nomination timetables.

Booking platforms

EEX agrees that greater emphasis should be placed on the development of the secondary markets. We acknowledge the great importance of secondary capacity trading, as it provides the necessary additional flexibility for market participants through obtaining of the unutilized capacity and improves access to the market for the new market participants.

In this light, we propose the creation of anonymous, web-based platforms for primary capacity allocation and secondary capacity trading. It should convince the market participants with several benefits: standardization, transparency, security, surveillance, clearing solution and central platform, as an efficient link between trading and settlement. We recommend the independent service provider, with know-how and experience in handling of gas markets to carry out these functions. Further we strongly favour the idea of joint offer and auction of the primary and secondary capacity, as it would increase the liquidity of capacity trading.

Furthermore, we suggest the establishment of central register for capacity rights. To enable and to boost the capacity trading in Europe, an independent service provider, endorsed by the TSOs and with experience in dealing with natural gas markets should implement the central register of usage rights, where the market participants can notify the changes of the ownership.