European Regulators Group for Electricity & Gas

ERGEG principles: Capacity allocation and congestion management in natural gas transmission networks

An ERGEG Evaluation of Comments Paper

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1. Introduction

On the 26th January 2009, ERGEG launched a public consultation on "ERGEG Principles: Capacity Allocation Mechanisms and Congestion Management for Gas Transmission Networks". The goal of the associated consultation document was to set out ERGEG's position on capacity allocation and congestion management for interconnection points between adjacent networks (cross-border and within Member States), in order to initiate discussion on ERGEG's input to Framework Guidelines and on possible modifications to the existing Regulation (EC) 1775/2005.

ERGEG also held a workshop in Brussels on 18 February 2009 where it presented the document to the stakeholders. More than 100 representatives of the European gas industry[1] participated to this event where they had a first opportunity to comment ERGEG's proposals.

Both the workshop and the responses received to the consultation have shown how important the issues of capacity allocation and congestion management are for the market. The document indeed found unusually large resonance in comparison to other ERGEG's gas related public consultations: 37 answers were submitted, including 1 confidential. The non-confidential responses are published on the website of the Council of European Energy Regulators (CEER)[2].

Responses were submitted by the following stakeholders:

- 5 TSOs: GTE (representing the European TSOs), National Grid, EirGrid, Gaslink, one confidential;
- 23 shippers: BP Gas Marketing, Centrica, DONG Energy, Econgas, Gaselys, GDF SUEZ, ExxonMobil, ENI, E.ON, Nederlandse Gasunie, RWE Group, Scottish and Southern Energy, StatoilHydro, GasTerra, Shell, EDF, Edison, EDP Gas, EnBW, Endesa, Iberdrola, Naturgas Energia, Statkraft;
- 7 industry associations: BDEW, BNE, CEDEC, EFET, Eurelectric, Eurogas, GEODE,
- 1 energy exchange: EEX.

11 questions were asked, aimed at getting views on the scope as well as on ERGEG's concrete proposals. ERGEG considers that the number of answers received confirms it has addressed a vital issue in congestion management – and that the market has a fundamental interest in getting to grips with the problems arising from inadequate, inconsistent capacity management procedures. Improvements require important changes to today's practise and, in brief, ERGEG agrees with one respondent stating that every stakeholder must do its bit to solve the problem.

<u>Way forward</u>

The 16th Madrid Forum invited "ERGEG to finalise this work [on CAM and CMP], taking into account all comments received from stakeholders." The Commission concluded that "the most

[1] Cf. Annex 3 for a summary of this workshop.

[2] http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS/GAS/E09-PC-36/RR

suitable topic [for a pilot project of Framework Guidelines] would be capacity allocation and congestion management, […] based on the work by ERGEG presented".

ERGEG will thus present a revised version of its Principles on CAM and CMP at the end of 2009. This version will contain proposals for Framework Guidelines as well as proposals for modifying the annexed guidelines to the current Regulation 1775/2005 via a comitology procedure. ERGEG will also conduct impact assessment where needed. Finally, at the next Madrid Forum in January 2010, ERGEG will present draft Framework Guidelines as well as a proposal for a comitology procedure.

2. Synthesis of the public consultation

The main results of the 37 responses received to the public consultation are:

- Large agreement that ERGEG identified the right issues;
- Need for ERGEG's proposals to be more prescriptive;
- Further TSOs and NRAs cooperation needed;
- Variety of capacity products to be offered;
- Procedures and products to be compatible, if not completely harmonised, at both sides of congested IP;
- Secondary markets seen as the best tool to improve capacity use;
- Rejection or scepticism regarding ERGEG's proposals on congestion management.

Hereunder is a summary of the answers topic by topic:

Increase of capacity by more dynamic TSO calculation: These proposals receive a remarkable support, being welcomed by 8 out of 12 of the respondents who explicitly addressed this issue.

FCFS: A large majority of stakeholders (23 out of 25 answers commenting this topic) supports ERGEG's proposal to restrict the use of this allocation methodology, especially in case of congestion. This underlines the need for having a clear and sound definition of congestion.

Allocation methodologies: auctions and pro rata. Auction is the CAM which receives the widest support: 20 answers are in favour of it. Pro-rata is far less supported. Some respondents also mention implicit auction option for the future.

Booking platform: Such a tool is required by 14 out of 20 stakeholders who mention it in their answers.

Mandatory short-term capacity products: A relevant support has been observed, with 13 out of 17 opinions on the concept favouring it. The suggested percentages of capacity to be set aside for short-term products differ, being close to 20% of available capacity.

Bundled capacity products: 22 out of 28 respondents who explicitly addressed this issue support it, even if some of them require bundled and unbundled products to be offered at the same interconnection point.

Capacity buy-back: This proposal is supported by 10 out of 15 respondents who explicitly addressed this issue, while some other respondents express reservations regarding this mechanism.

LT UIOLI: Varied responses have been received: 11 support it (30% of all), 13 are against it (35%) and the remaining 13 give no answer. The main concern regards the definition of underutilised capacity.

Freeing-up capacity (capacity release): This proposal is explicitly rejected by a majority of respondents. 8 respondents support the concept.

Firm ST UIOLI based on a restriction of re-nomination rights: 12 respondents reject this proposal, 11 respondents raise concerns to a certain extent or support it under certain conditions and 5 respondents support this proposal. 8 respondents did not address this proposal.

Incentives for TSOs: 13 respondents are in favour of it.

GTE's answer

Given the role ENTSOG will play once the 3rd Package implemented, it has been considered of particular interest for ERGEG to have extensive discussions with GTE. TSOs will indeed be responsible for drafting the network codes on the basis of the Framework Guidelines developed by the ACER.

GTE expressed its views in its response to the consultation document, as well as during the February workshop and bilateral meetings with ERGEG.

GTE considers that ERGEG's proposals should be more prescriptive in order to limit the options allowed by the 'toolbox' approach. In its view, this is necessary to avoid contradictory measures being implemented on each side of interconnection points. To this end, GTE also requires a higher degree of regulatory coordination.

GTE mentions the merits of incentives for TSOs but requires risks and rewards to be fairly allocated and extra costs to be covered. For GTE, other proposals, such as a more dynamic capacity calculation, bundled products and booking platforms are neither a priority nor very useful at this stage. GTE does not support ERGEG's proposal of a firm short-term UIOLI based on a restriction of re-nomination rights because of its feared impact on the flexibility needed by shippers and on balancing. GTE support the long term UIOLI proposal with some reservation. GTE asks for an implementation schedule to be defined.

Finally, GTE supports the opportunity to test the development of Framework Guidelines based on ERGEG's proposal. This should be done in cooperation with GTE.

3. Answers to the specific questions

(1) Do you agree with the problems that ERGEG has identified with capacity allocation and congestion management? Are there other aspects that should be taken into account?

All responses received agree with ERGEG's problem identification. They particularly emphasize how important it is to improve capacity allocation and congestion management in order to bring forward effectively the integration of European gas markets.

Beyond the problems identified by ERGEG, some respondents propose the following issues to be taken into account as well:

a) Physical congestions and investments

The issue of investment in new capacity has been raised in many responses, with two different approaches.

On the one hand, eight TSOs and shippers believe that it is not enough to tackle contractual congestion but that investments to reduce physical congestion are also needed. Specifically, it is stated that changes to come in gas flows resulting from the provision of new infrastructure such as LNG terminals and from competition itself cannot be handled with the present infrastructures. Many responses seeing a need for expansion put this in rather general terms: "*The necessary expansion (additional capacity) can't be generated just by a more intelligent management and/or usage of existing capacity.*" (Shell Energy)

On the other hand, some respondents urge caution: "*Only where contracted capacity is regularly used and congestions are highly likely to occur additional capacities should be physically extended trough further investments.*" (EnBW)

Many respondents address the issue of the investment signal. Some point out that auction results serve as valid signal for physical bottlenecks. N.V. Nederlandse Gasunie considers that the level of interruption is an important indication to consider expansion of network. Others remind that a properly functioning secondary market discovers the value of congestion by representing the economic costs of alternative optimization solutions.

Finally, some responses also give view on the allocation of new capacity. Some favour Open Season Procedures which, in turn, are questioned by others. Within Open Season Procedures, both pro rata allocation and allocation by auction are preferred.

b) Cost coverage

Most responses, and namely those from TSOs, point out that a fair recovery of cost is an integral part of good regulatory governance. This does not require further discussion with regard to the proposed principles.

c) Tariffs

Several responses highlight that tariff issues are not addressed in the public consultation document. Statkraft, for instance, writes: "*Tariffs are also highly relevant when discussing the products.*" Centrica adds: "*In developing capacity offerings, the effect of tariff differentials between different products must also be taken into consideration.*"

Concrete pricing proposals are made in many of the responses. Concerning the pricing, many respondents underline the importance of setting up prices of interruptible products significantly below prices for firm capacity. (For more on interruptible capacity and its pricing, cf. part 4)

ERGEG's view

ERGEG's consultation document is clear on the scope. The objective is to address the allocation of capacity which is actually available or will become available to the market, e.g. after the expiration of long term contracts. The document does not directly address network development; investment and the allocation of capacity to be developed; trigger for investments and investment decision making are therefore not in the focus of the document. ERGEG underlines that the creation of new transmission capacity at cross border interconnection have been partly tackled in its Guidelines of Good Practices for Open Seasons (GGPOS)[3].

However, ERGEG is aware that CAM and CMP can provide investment signals, notably as far as auctions and to a certain extent a pro rata are concerned when providing evidence of congestion. Auctions additionally provide information on the commercial value of the needed capacity. Both can provide signals on needed physical developments, while ERGEG considers FCFS is not appropriate for this purpose.

Costs for TSOs related to the implementation of proposals should be taken into proper account.

ERGEG's proposals do not include a tariffication concept. Nevertheless, given the importance of this issue, ERGEG has identified detailed work on harmonised tariff structures as second priority during the interim period until the agency is operational and is preparing principles on capacity tariffication.

(2) The scope of ERGEG's principles and of the derived proposals covers bringing capacity to the market where there is currently contractual congestion. Do you agree with this approach?

While some respondents advocate limitation to congested points, others believe that consistent arrangements are needed to be applied at all IPs, and that import entry points, in particular, must be included.

[3] These GGPOS are currently monitored by ERGEG and will be revised them in 2010, if needed.

This actually raises the need of having a clear and sound definition of congested or potentially congested points. Centrica underlines this identification problem: "*Potential contractual congestion is in practice often difficult to identify with any certainty*" (Centrica). Iberdrola proposes a solution: congestion management should be applied "*if the available capacity is less than a pre-established percentage of the total interconnection capacity (e.g. 15%, 20%, etc).*"

In addition, the scope of the ERGEG consultation document is proposed to be extended also to storage and/or LNG capacity by five respondents.

ERGEG's view

There is a broad agreement among respondents that ERGEG's proposals should at least apply to congested points and potentially congested points. Beyond that, many respondents require the proposals to be also applied to non congested points in order to provide for consistent arrangements throughout Europe. However, ERGEG is hesitant to extend the scope of its proposals to non congested points, given that this might represent an unnecessary regulatory intervention where there is no difficulty to get access to capacity. ERGEG is also aware that the definition of "potentially congested points" would be in any case controversial.

That is why ERGEG will propose in its revised principles on capacity allocation and congestion management that its proposed rules should apply to every interconnection point between market areas. ERGEG will take the consultation responses into account in its revised version of its Principles on CAM and CMP to consider the extent to which the same rules should apply. A possible approach could be to grant coordinated exemptions to the rule for both sides of the interconnection point in the absence of congestion.

(3) In principle, European regulators consider FCFS allocation potentially discriminatory. Do you share this view? What do you think about the proposed mechanisms (OSP with subsequent pro-rata allocation or auctioning)?

Respondents overwhelmingly reject FCFS. In case of congestion, they prefer auctions over pro rata.

Almost all respondents consider that FCFS is potentially discriminatory in case of contractual congestion. This view is very largely shared by shippers, new entrants as well as incumbents, associations and EEX. Iberdrola suggests that FCFS should be prohibited where the available capacity is below a given percentage of the total capacity, e.g. 15% or 20%.

Even in the absence of congestion, 12 respondents (nearly one third of them all) reject FCFS, while 14 respondents find some advantages to this allocation methodology (the remaining third does not state a preference). The respondents supporting FCFS state that, in the absence of congestion, FCFS is a simple, suitable and cost-effective allocation methodology.

When considering alternative allocation methodologies, 10 respondents support the proposal to apply open subscription periods which are, as BDEW rightly points out, not an allocation method itself. Yet 3 respondents reject open subscription periods, while 24 do not specifically address this issue. Among other comments received, it is noted that open subscription periods could be problematic too, if not properly designed. The attention is also drawn to the timing of capacity allocation.

In case of congestion, a large majority declares a preference for auctions (20 respondents in favour of it, 3 against and 14 not addressing it). Pro-rata allocation is far less supported, 9 respondents reject it and only 6 respondents support it in some cases. Thus most of the respondents consider auctions as the best way to establish in a transparent and non discriminatory way the market value of capacity and to give the right investment signals. However, some respondents also point out that auctions may have biases. BNE rejects auctions because of the price overheating which may result from this mechanism.

In order to address the bias which may affect auctions, respondents suggest enhancements in the following areas: balance between large and small market players, coordination between adjacent TSOs, determination of the auction price, use of the proceeds from the auction and synchronisation with the gas trading markets.
The concerns expressed on pro-rata allocations are mainly due to the speculations or “bidder's game”, which arguably can lead to artificially high capacity requests and consequently random results.

Pro-rata is also rejected because participating shippers do not receive capacity according to their needs. Some respondents state that these drawbacks could be compensated for by a well-functioning secondary market on which the capacity initially misallocated could be passed on.

Some respondents (4) consider both allocation methodologies suitable, depending on the degree of market development and/or on the products to be sold, e.g. short term or long term products. One respondent considers a combination of pro-rata and auction possible, while another one is specific about the combination: "*Allocation on a pro-rata basis, in case of long-term capacity contracts; allocation via auction, in case of short-term (one year and less).*" (Edison)

5 respondents also recommend considering implicit auctions, which could be helpful at a later stage, at least for short term products.

ERGEG's view

The responses show there is a consensus among the stakeholders on the need for significant improvements of capacity allocation mechanisms in Europe. ERGEG's view in that regard is thus very largely shared by shippers, new entrants as well as incumbents, associations and EEX. ERGEG considers the responses largely support its proposal to limit the use of FCFS to non-congested interconnections.

Regarding allocation procedures, auctions appear to be the preferred methodology. ERGEG would like to underline that its proposals deliberately did not specify the design of the auctions; auctions development is considered as a dynamic process which can take different forms, depending on the market context.

Respondents have highlighted a number of costs and benefits associated with the adoption of either auction or pro-rata mechanisms to allocate transmission capacity. These responses will help ERGEG to study in more detail the circumstances under which each mechanism is most suitable.

Implicit auctions require liquid marketplaces on both sides of the border. This is seldom the case today in Europe. Yet ERGEG explicitly mentioned this possibility in its proposals G3.3.

(4) In your view, what is the future importance of the proposed capacity products (firm, interruptible, and bundled) and of the proposed contract duration (intra-day up to multi-annual)?

a) Variety of products

Almost every respondent confirms that market participants need a variety of capacity products, with different variations, ranging from intra-day to multi-yearly, to be available. In their view, flexibility in terms of product choice and duration at the primary allocation stage enables shippers to optimise their portfolio, to monetise their gas, and to reduce reliance on second best measures to deal with contractual congestion.

Respondents underline the importance of a good balance between long-term and short-term products. Many of them remind the importance of long-term bookings, which in their view are necessary for ensuring security of supply, for hedging market risks in trading, for consolidating new entrants' portfolios or for filling up storages. The answers also indicate that respondents are interested in diverging capacity durations. While, for instance, Shell Energy mainly refers to the availability of long-term products, Statkraft is more interested in a better offer of short-term products. Some of them also warn against capacity to be split in too many products. E.ON is thus in favour of offering just "a limited number of products."

In order to develop capacity products which accommodate market needs, many shippers and associations require market consultations to be used.

b) "Mandatory offer of short term products"

13 respondents are clearly in favour of reserving capacity for short-term capacity products. The provision of short-term products is mainly seen as a way to encourage new comers to enter markets where the competition is still developing or as a flexibility tool to size arbitrage opportunities and to face with peak demand: "*Reserving part of the capacity on offer for short term bookings could encourage new entrants to the market*" (BP). 3 answers make specific proposals on reservation percentages: "*In our view, a good balance could be 80 % multi-annual, annual or seasonal products, 10 % monthly products and 10 % daily products*" (Naturgas Energia). For Centrica, the short-term proportion should diminish when liquidity on primary and secondary markets increase.

4 respondents are not in favour of this proposal. It is argued that this could lead to market distortions and reduce incentives to book long term capacity (Scottish & Southern Energy). Moreover, for one respondent, any definition of ceilings and pre-determined quotas of products of a given duration "*may fail to respond to market needs*" (StatoilHydro).

c) Role of interruptible capacity

First of all, it has to be underlined that all the responses mentioning firm capacity underline the absolute need for it, notably "*in order to meet the clients' requirements*" (Iberdrola). Beyond that, interruptible products are seen by 13 respondents as a helpful tool to improve the full use of capacity, but only if market participants are able to evaluate the risk of interruption.

For that, it should be and provided that prices of interruptible capacity are well under those applicable to firm capacity (DONG, Shell), which results in a proposal to significantly reduce tariffs for interruptible capacity.

By contrast, 7 respondents consider that interruptible capacity is of lesser importance or that it does not help increasing liquidity. "*Interruptible capacity helps shippers to optimize flows on short notice. It is not what shippers need to base a business case upon*" (E.ON).

Some respondents rejecting FCFS have also concerns about FCFS being used for interrupting capacity in case of "Last Committed First Interrupted". They therefore recommend capacity to be interrupted on a pro rata basis. A new concept for interruptible capacity is raised by Centrica, who suggests selling interruptible products by auctions and, when congestion occurs, to interrupt first users who paid the least.

d) Bundled products

The establishment of bundled products is largely supported, as 22 respondents are in favour of it without reservation. "*Bundled products should be a top priority in the process*" (BDEW). According to Gaselys the "*ultimate target should be adjacent TSOs to offer unique bundled products*". GasNatural highlights that "*bundled products are needed to minimize the risk shippers face*".

Some responses discuss how bundling could be realised. Gaslink refers to the arrangements in place between Gaslink and NationalGrid: shippers booking capacity at the entry point are given a voucher without which it is not possible to book exit capacity. Alternatively, allocation and use of capacity is coordinated through an agent.

The responses cite further advantages of bundled products. On the one hand, cooperation between TSOs will be improved (Edison), while EEX notes that "*the promotion of the bundled products (…) focuses all liquidity at the virtual hubs.*"

3 respondents express concerns on bundled products being the only option available. Bundled products should not discriminate against shippers who choose to hold capacity only on one side of an interconnection point. Centrica rejects bundling "*because gas is bought and sold at the border.*" ExxonMobil does see the benefits of bundling, but suggests that it be made optional, as "*bundling hides the true cost of providing a service and leads to a lack of transparency.*" GTE even expects a bundled product may not be required anymore once processes have been harmonised.

ERGEG's view

ERGEG's recommendations have been based on combining flexibility and visibility; this objective gives a particular importance to the variety of capacity products offered to the market. The responses confirm how useful it is to offer capacity products of different durations. Most of the respondents also support ERGEG's proposal to allow for short-term bookings. ERGEG considers it is necessary to open a dialogue with the market to define both the characteristics of capacity products and the breakdown of capacity among them. ERGEG will therefore propose to have regular market consultations as this will enable the variety of products offered to respond to the needs of market participants.

The responses also confirm ERGEG's view that firm capacity is primarily what market players need. Efforts therefore have to be put on maximising firm capacity offer as well as on ERGEG's proposals aimed at improving the usability of interruptible capacity.

Shippers and TSOs largely agree that bundling capacity at the borders would significantly foster cross-border trading and thus competition in the European gas market. ERGEG agrees that moving toward bundled products would be an import step forward in view of building a single EU gas market. European regulators therefore confirm their intention that action plans are drawn up for bundled capacity. ERGEG will consider developing more concrete proposals in its revised principles.

(5) What is the role of secondary capacity trading?

The question of the future role of the secondary market prompted a large number of responses. For all respondents a well-functioning secondary market trading is essential. They consider that secondary markets play two main roles. First of all, many respondents highlight the benefits that shippers can draw from efficient secondary markets in oder to optimise their trading portfolios: sizing market opportunities, not carrying imbalance positions or avoiding the risk or not being able to deliver on contract. For many others, secondary markets are first and foremost a useful way for maximising the utilisation of the available physical capacity. As such, the secondary market can provide for the re-offering of primary capacity that may otherwise not be utilised, thus deriving a market price for such capacity. In GEODE's view, "*the secondary capacities shall not be traded by shippers but traded back to TSOs and allocated as the primary ones*." Other respondents do not go so far, but call for trading on dedicated platforms.

3 market participants express limitations regarding the effects of secondary trading. For BNE and Gasterra the development of secondary markets does not directly contribute to guarantee the availability of long-term capacities which according to them is the most important objective today. In addition, for Econgas, efforts should rather concentrate on the development of primary capacity trading.

Views on secondary market pricing likewise differ. A price cap is called for in 4 comments: Centrica and GDF Suez suggest capping prices for secondary capacity to avoid primary capacity holders to game the market: "*120% of the published tariff, for instance*" (GDF Suez). Others advocate price signals coming from the secondary market: "*For congested points the value represents the economic costs of alternative optimisation solutions.*" (StatoilHydro).

Other considerations concern the products that should be traded on the secondary market. When considering the operational implementation of secondary markets, some respondents underline that shippers must have the possibility to divide capacity into its constituent parts in order to sell them (i.e. individual season, month, day or even hour from longer term products) EEX believes that "*secondary market products are marketable products which can be acquired on the primary market*".

A large number of responses explore the incentives shippers have to offer their capacity on the secondary market. Yet some respondents believe that concrete incentives are needed: "*Sufficient incentives or penalties mechanisms have to be put in place*" (Gaselys). Several propose that an effective UIOLI process in place should also help to facilitate an active secondary market. Through enabling to the third parties the use of the unused capacities, the capacities owners are incentivised to trade them on the secondary market.

Many respondents also give their views on the design of (secondary) trading platform.

ERGEG's view

Market based mechanisms are, in general, ERGEG's preferred options. Even if its principles on CAM and CMP have not given a lot of emphasis to secondary markets for capacity ERGEG share the view that functioning secondary markets are important and that the constraints that hamper the development of secondary markets need to be tackled. ERGEG agrees that incentives for shippers to put unused capacity on the secondary market will greatly help the development of secondary trading as congestion management tool. Therefore, ERGEG's proposals, in particular those on congestion management, mainly focused on incentivising shippers to pass on their unused capacity to other shippers and on minimising the transaction effort. When revising the document, ERGEG will consider adopting specific proposals on how secondary markets should shape up. ERGEG will in particular, use responses to the consultation to improve its principles base any of its proposals on the respondents' comments related to secondary markets.

(6) How do you assess the proposed measures to enhance the availability of firm capacity and to improve short-term and long-term congestion management?

Many respondents state that the implementation of the proposed measures could enhance the availability of capacity and the congestion management in the short and long term. One respondent believes that the measures should focus on dominant players.

a) Dynamic capacity calculation and enhanced TSO cooperation

Proposals related to the increase of available firm capacity based on a more dynamic capacity calculation and also on a greater TSOs' cooperation and possibly combined with a capacity buy-back mechanism receive an overwhelming support. According to 8 out of 12 respondents who explicitly refer to the issue, a dynamic capacity calculation should be implemented; taking into account all relevant facts and parameters, and it should be regularly reviewed. Enhanced capacity calculation methodology would allow maximising the capacity offered to the market.

Opinions diverge as to how much additional capacity can be gained from dynamic calculation: "*EFET believes that there is huge potential to maximise available capacity through improved methods of capacity calculation, in particular the implementation of dynamic modelling by TSOs.*" Yet GTE sounds a note of caution: "*The resulting capacity may be relatively small*."

The responses that were received on this issue agree that "*TSOs should, however, work collaboratively to maximise the capacity released at border points*" (ExxonMobil). Iberdrola makes a concrete proposal on how this could be achieved in practice: "*We believe that strong and complete Operational Balancing Agreements (OBA) should be established between adjacent TSOs in order to maximise bookable and operational capacity.*"

ERGEG's view

The answers indicate a strong stakeholders' support for enhanced capacity calculation methodology, which should aim at maximising the firm capacity offered to the market. Given that most of the important points face long-term bookings and thus no capacity is available, dynamic calculation should be welcomed as it would provide for additional capacity.

As regards the proposals on TSO cooperation with a view to maximising capacity there seem to be no need for changes of ERGEG's proposals.

b) Commercial means: buy-back mechanisms and purchase of physical energy

The responses concentrate on whether "buy back" mechanisms are a suitable instrument for increasing capacity.

10 out of 15 respondents who explicitly refer to the issue are in favour of the introduction of a capacity buy-back mechanism, which would further increase the available capacity. Centrica supports "*…the buyback process for increasing firm capacity offers to the market* " according to which "*…TSOs should move to a maximum technical capacity approach that takes into account a certain risk of not being able to deliver all the sold capacity*" (EnBW). In the event that they cannot fulfil their obligations "*TSOs should be entitled and obliged to buy back capacity at a market price….*" (StatoilHydro).

EFET underlines that "*…even where there is contractual congestion it is unlikely that all capacity will be nominated and as such there will always be unused capacity – which represents a deadweight loss. TSOs should be able to anticipate and react to this outcome by initially selling more than 100% of the capacity that is actually available. In the unlikely event that more than 100% capacity is nominated TSOs can opt to 'buy-back' capacity from market participants*."

Some respondents are in favour of increasing capacity at a favourable price "*as long as the costs are below the expenditures for a physical upgrading*" (RWE), and point out that this is a market-based approach: "*Those who value the capacity most will demand a higher price to give up their firm rights*" (Centrica). Others see in the instrument above all a means for creating short-term capacity: "*This could also solve the historical problem of incumbents holding all the available capacity for security of supply reasons by making more capacity available on the short term market*" (BP).

Some of the respondents raise questions on the financing of such a measure. "*A key question is whether the buy-back mechanism will cover effectively all risks and costs incurred by shippers*" (Eurogas), "*Certainly, this approach requires that revenue regulation of TSOs is adjusted accordingly*" (EnBW) and "*Tariff regulation must offer incentives for the TSO to assume a higher risk.*" (BDEW)

However, capacity buy-back is not advocated without reservations: "*First of all, in our view, the applicability of this mechanism to systems different from the British should be better analysed*" (Edison). 5 respondents explicitly reject the mechanism: "*What would happen if the TSO was not able to buy back the capacity in case of overbooking? It would not be correct that shippers who bought firm capacity have it interrupted*" (Edison) and "*If TSOs have an obligation to offer to buy-back sold capacity surrendered by shippers, in order to manage a constraint, this may lead to a general practice of overbooking capacity in a speculative manner*" (ExxonMobil). Another respondent rejects capacity buy-back because of the degradation of the firm quality and of its drawbacks on sale and supply contracts (ENI).

The few respondents who mention flow commitments, i.e. purchase of physical energy, are in favour of it.

ERGEG's view

Capacity buy-back, which is today practised in the UK, attracts a fair number of positive comments. At the same time, respondents underline many concrete issues and challenges regarding this mechanism that need to be further explored. With regard to these answers, ERGEG therefore concludes that it is necessary to further analyse capacity buy-back and will consider whether its proposals should be revised. There is also some support for the purchase of physical energy, which already plays an appreciable role in some Member States. ERGEG is aware that the combination of a more dynamic capacity calculation with the use of commercial means (capacity buy-back, flow commitments) would represent a fundamental change in the functioning of Continental European gas systems and, considering how welcome they are by the market. This is why ERGEG proposes to conduct an impact assessment on concrete proposals to be kept in this area.

c) Incentives for TSOs

Incentives on TSOs are perceived as crucial by up to 13 respondents. They are believed to result in more efficient outcomes (Scottish & Southern Energy). GTE agrees highlighting that "*many of the options in ERGEG's 'toolkit' could be implemented through the development of new economic incentives for TSOs.*"

It is also indicated that the TSOs' willingness to take on the economic risk sometimes associated with the introduction of new methods can also benefit from the attendant opportunities: "*We see that additional incentivisation may make TSOs willing to free more capacities if the possible extra financial risk is covered by extra revenue*" (EnBW).

Some responses would even call for incentives to secure performance of normal duties as operating, maintaining, and constructing an efficient system. On the contrary, some other disagree: "*it should be a matter of course that TSOs are allocating the maximum capacity and not an extraordinary task they should be additionally incentivised.*" (GEODE)

Some respondents make concrete proposals: "*One possible solution to facilitate better access to capacity would be to split the revenues that TSOs receive into Capacity/Commodity elements*" (BP).

ERGEG's view

ERGEG's proposal to improve TSO performance by setting incentives found an important resonance among the respondents. All valuable aspects that emerged should be considered when the document is revised, bearing in mind, however, that incentives should only concern targets which are directly under the TSOs' control.

d) Booking platform

The usefulness of the capacity platforms proposed by ERGEG for allocating primary and secondary capacity is explicitly advocated by up to 14 respondents. Some even strongly favour the idea of joint offer and auction of the primary and secondary capacity, as it would increase the liquidity of capacity trading:

"*Indeed, the implementation of common procedures should be started as soon as possible (…), such as web-based platforms for primary capacity allocation and secondary capacity trading*" (Edison).

"*In the long term, the objective should be to establish a general capacity exchange and to ensure that all primary and secondary capacities are offered on the exchange*" (E.ON).

Crucial are joint platforms: "*It is also important to establish joint platforms between adjacent transmission system operators*" (Iberdrola). And: "*They should be reduced to a limited number, though*" (Statkraft).

Only five respondents are not in favour of setting up such platforms. Centrica fears unnecessary delay, high costs and prices. GTE advises focusing on congestion management rather than on platforms.

For some respondents in favour of capacity platforms, it is important that a joint web-platform be implemented including all the entry and exit points between markets. The question of fees is also raised underlining that only a limited fee should be charged for platform services. Several responses point out that use of the platforms must have short transfer lead times.

For many respondents the most important feature is to guarantee anonymity of trading parties when posting offers and demands. A lack of anonymity might cause problems: "*Shippers offering their unused capacity to other market participants may reveal their trading strategy to the market*" (GasNatural). Others call for the opposite: "*Shippers must keep the right to choose its counterpart*" (GdF Suez).

ERGEG's view

Even if the respondents are not unanimous, there does appear to be general agreement that capacity platforms provide an efficient way of allocating capacity if they are suitably designed. Moreover, the anonymity proposed by ERGEG is supported by the majority of respondents.

f) Withdrawal of capacity (long term UIOLI) and freeing up of capacity (releasable capacity)

The proposals to free up unused capacity (releasable capacity) and to withdraw underutilised capacity (long-term UIOLI) receive a slightly positive acceptance: 8 stakeholders are in favour of capacity release and 11 would support long term UIOLI, whereas 5 reject and 13 challenge these procedures. Eurogas highlight that systematic underutilisation of capacity has to be tackled. Respondents rejecting these proposals state that they constitute a mix-up of energy regulation and competition law and are too vague or risky in case of the termination of a long-term capacity contract backing an investment. Some comments on long-term UIOLI state that the withdrawal of capacity would constitute a severe contractual intervention and that the conditions to be met would have to be carefully considered.

Many responses, also those that are favourably inclined to long-term UIOLI, detail possible reasons for underutilisation, stating that this should not lead to withdrawal of capacity and pointing out the negative effects of unjustified withdrawal or the threat since the use of the capacity is highly depending on climate. BP also fears that a mild winter could lead to a contract termination, which would then endanger supply commitments.

Edison notes that simply the offer of capacity on the secondary market should afford protection from long-term withdrawal: "*Only the offer itself of unused capacity on the secondary market should then be the considered variable, showing the shipper's intention not to hoard capacity.*"

Only 13 respondents address the question of whether capacity release is a suitable instrument. Centrica notices that in some countries capacity holders have agreed on relinquishing a portion of their firm capacity. The other respondents warn against withdrawing capacity needed by the capacity holder: "*It introduces uncertainty into capacity contracts thereby opposing the aim of creating stable and liquid markets*" (BDEW).

ERGEG's view

By strictly differentiating the criteria for withdrawing capacity, ERGEG was seeking to apply this instrument only in those cases in which it really was appropriate. The responses provide additional aspects to be taken into consideration when the ERGEG principles on CAM and CMP are revised.

e) Short-term firm UIOLI

The proposal which attracts the most numerous comments is the firm short term UIOLI based on a restriction of re-nomination rights. While some shippers support the proposal of firm capacity becoming available one day ahead, a number of respondents (12) reject the proposal of restricting re-nomination rights in its current form whereas others raise concerns or support the proposal under certain conditions (11) . 5 respondents do support the proposals.

This proposal is questioned, among others, for the following reasons:

- Re-nomination rights are needed for the existing market activities to continue under the current settings;
- According to the respondents flexibility is needed to react at short notice, in case of short term demand fluctuations, and for trading operations and gas transfers between hubs;
- Problematic interaction with balancing regimes, especially in case of hourly regimes;
- It is pointed out that the proposals lead to a restriction of the utilisation of storage to provide short term flexibility;
- Possible impairment of gas supplies to gas-fired power stations;
- Restricted re-nomination rights would make long-term import contracts less attractive for importers and producers and wouldn't be consistent with contractual upstream and downstream provisions;
- Risks for security of supply.

5 respondents did support ERGEG's proposal: "*RWE agrees that re-nomination shall be limited in order to improve liquidity on the day-ahead secondary market*". "*We support the redesign and harmonisation of nomination timetables and the removal of existing rights for re-nomination of firm capacity to increase the liquidity*" (EEX). Finally, GEODE would support the "2+2" approach.

Some responses confirm the need for an option for short-term use of unused capacity, highlighting that "*Having an effective UIOLI process in place should also help to facilitate an active secondary market. Short-term auctions for congestion management will improve price transparency and it will also encourage the optimal allocation of gas to where it is valued the most*" (BP).

Individual comments acknowledged both pros and cons: "*Discussions within our membership have resulted in a variety of views including some supportive of targeted restrictions at particular points. In the main, however, our members identified a number of risks that could emerge with restrictions to re-nomination rights*" (EFET).

5 respondents prefer the "Use-it-or-sell-it" variant to ERGEG's proposed "Use-it-or-lose-it" (e.g. BDEW). Yet Centrica points out that UIOSI is effective when followed by UIOLI: "*It can work in conjunction with the option of use-it-or-lose-it, which would remain at a later stage at a zero (reserve) price*".

Some responses suggested changes on individual points: "*In Edison's opinion, the idea to be supported is the one of a very restricted period of time (some hours before the gas-day) in which the shipper may not re-nominate capacity.*" EDF proposes that limiting re-nomination be carried out on a voluntary basis. BNE and E.ON propose to differentiate capacity products with and without re-nomination rights, with a different pricing. N.V. Nederlandse Gasunie sees the need for more legal certainty in applying restrictions: "*The adoption of European guidelines containing when and how to impose any such restrictions would be a considerable improvement.*"

Eurogas argues that a liquid market is not the consequence of a developed short-term capacity market, but a precondition: "*Eventually in a fully liquid market this could develop, but not today when the flexibility to re-nominate, increasing or reducing the initial nominations, is essential*" (Eurogas). Only three respondents mention ERGEG's proposal to introduce a re-nomination window. One agrees that this could be a way forward (EnBW), another proposes increasing the threshold (GasNatural) and a third one suggests a re-nomination margin of 15 percent based on the actually nominated capacity (RWE).

There are diametrically opposed views on the differentiating effect of the proposed “2+2-rule” on shippers holding different shares of the market: "*The restriction of the re-nomination rights should not affect small shippers*" (Statkraft) and "*non-dominant players have no incentive to hoard capacity*" (Centrica). On the contrary RWE states: "*The 2+2 rule seems to come to random results and is discriminatory. Small shippers are disproportionately better off than large shippers*".

The modified lead time is mentioned by one respondent only. As this respondent expects that the lead time could be extended, it rejects the proposal: "*A decision to […] modify lead times could reduce the flexibility of gas suppliers*" (EirGrid).

Two respondents supported ERGEG's proposal to entitle shippers to submit nominations on an interruptible basis at any time (G2.2.2).

ERGEG’s view

ERGEG notes that its proposal aimed at introducing a firm day-ahead UIOLI mechanism received little support from the market and that a considerable number of respondents are concerned about or even reject a restriction of re-nomination rights its proposal is based on. ERGEG concludes it will undoubtedly be necessary to explore and depict the consequences of limiting existing re-nomination rights more clearly. This will be the subject of an Impact Assessment taking a thorough look at the various aspects of this proposal and, in particular, at the concerns rose by the respondents. The responses confirm the need for a short-term capacity market making unused capacity available.

ERGEG would like to emphasise that it considered firm short term UIOLI with the aim to promote the development of secondary capacity markets and, hence, improve the access to unused capacity to facilitate the management of imbalances for new entrants. In addition, it should be reminded that firm short term UIOLI mechanisms are subject to the toolbox approach, i.e. to be implemented only upon decision of the relevant NRA. ERGEG considers that in fully functioning markets where capacity is easily available that such provisions may not be necessary.

Restricting re-nomination rights would provide firm capacity for the day-ahead and thus enhance the liquidity of the day-ahead capacity market which will increase liquidity on the gas markets. One advantage of this is that new entrants will thus be able to better manage their imbalances via market based gas procurement.

If decided, it will be up to NRAs to decide on the level of restriction of re-nomination rights. The introduction of a re-nomination window aims at finding rules "which balance the need to free up unused capacity in accordance with the 'use-it-or-lose-it' principle with the rights of the holders of the capacity to use it when necessary, while at the same time enhancing liquidity of capacity"

(Recital 11 of Reg. (EC) 1775/2005). For example, the proposed “2 + 2-rule” aims at guaranteeing nearly full re-nomination rights to small users, given the size of their capacity bookings and will only reduce to a certain extent the re-nomination-linked flexibility of the incumbents.

ERGEG would also like to add that in order to further increase the flexibility it has proposed to enable within day nomination on an interruptible basis. ERGEG also propose to reduce the re-nomination lead time and this reduction should also increase the flexibility.

g) Dominant players

5 respondents explicitly object special rules for dominant players, based on a competition policy argument: it is the competition authorities who are competent for penalising abuse of dominant position: "*it is therefore important to ensure that the capacity allocation procedures are transparent so that any abuse of a dominant position can be identified and action taken*" (Scottish and Southern Energy). Respondents consider it problematic if the holder of an import contract could not import his gas because he could not book capacity as a dominant player.

At the same time, 4 responses supported the proposed restrictions, considering them necessary in particular in connection with auctions and as an "*ultima ratio means*" (GEODE).

ERGEG’s view

ERGEG has proposed rules on dominant players in two places. First, freeing up capacity, if required by NRAs, is to be contingent on the capacity held by shippers. Second, NRAs would be able to impose restrictions on dominant players in capacity allocation. This arrangement is identical to point 2.10 of the Annex to Regulation (EC) 1228/2003 on cross-border exchanges in electricity, amended in 2006 via comitology.

h) Existing contracts

For many respondents, a reason for the rejection of a firm day-ahead UIOLI mechanism, of a withdrawal of under utilised capacity and of freeing up capacity is that it potentially implies an amendment of existing contracts. In their view, such amendments are unacceptable, notably because it introduces uncertainty into capacity contracts or could threaten security of supply: "For the sake of trust in the regulatory environment it has to be guaranteed that existing commercial contracts are not impacted" (Shell Energy).

Yet some shippers acknowledge that existing contracts must accommodate the new rules, too. They point out, however, that the proposed adaptation phase of 6 months is too short: "*GDF SUEZ would recommend under G4.4 a duration longer than a six months period for adaptation by TSOs and Shippers of their existing contracts to the new congestion management guidelines. One year minimum is more appropriate*". Edison also suggest 1 year at least. Moreover, it is stated that "*if inconsistencies between current and future system would occur, a migration path compensating commercial impacts shall be foreseen*" (Shell Energy).

ERGEG’s view

It is important to point out that ERGEG's proposals do not question the existence of capacity contracts but would only consist of amending some existing contracts. These amendments would be needed to allow for a swift and uniform implementation of the proposed measures. If ERGEG's proposals were only applied to new contract, then the expected effects of these measures on the market would come too late.

In any case, it should be noted that, in general, reforms and changes of existing rules imply amendments of existing contracts. This has been witnessed in the recent past in many gas European systems. It is thus normal that some ERGEG's proposals could lead to amending the existing once implemented.

(7) What are your views on the proposals? Do they address the problems? Will they lead to more effective capacity allocation methods being developed?

(8) Are the needs of shippers performing supply activities properly taken into account?

These questions were often answered by way of reference to the responses on other issues.

Nevertheless, some respondents maintained that making a distinction between shippers performing supply activities and shippers not performing supply activities was not helpful. Others took up the distinction and criticised, in particular, the proposals on short-term and long-term UIOLI: "*Edison thinks that the needs of shippers performing supply activities are properly taken into account. In general, as reported in the introduction, we think that ERGEG's document does not consider the entire gas system as a single integrated chain. For example, all the aspects related to the upstream/downstream levels of the chain, like the flexibility of supply contracts and the seasonality of gas consumption has not been taken into proper consideration.*"

(9) Are the proposed measures suitable to facilitate development of liquid markets?

(10) In your view, how important are compatible booking and operational procedures between adjacent systems?

a) Harmonisation, compatible booking and operational procedures

All the comments that address ERGEG's proposal for a 'toolbox' conclude that a greater degree of prescriptiveness will be needed:

"*A 'toolbox' approach, leaving it to the regulator to choose between the proposed measures, may lead to inconsistent systems and may endanger the goal of a level-playing field in regulation*" (BDEW) and "*Cross-border rules should be consistent at least within regions*" (E.ON).

This is called for by both shippers and TSOs. "*The proposals therefore need to be more prescriptive in limiting options and need to provide much clearer guidance*" (GTE). Econgas adds "*in our opinion, clear rules are necessary. ERGEG shouldn't be too hesitant on this issue.*"

RWE notes that consistent, binding rules are needed in respect of "*All material characteristics of* *the capacity allocation/congestion management system*" because "*currently, inconsistencies in the Member States' energy laws may hinder cross-border cooperation*". A very large majority of respondents consider that compatible booking and operational procedures between adjacent systems are essential for establishing a transparent and a liquid gas market in Europe:

"*We consider very important the compatible booking and operational procedures between adjacent systems*" (CEDEC). "*We reassert the necessity of a complete harmonisation of congestion management procedures among Member States*" (Eni) and "*Coordination between TSOs is of utmost importance: capacity products, compatible quantities, timing and processes*" (GasNatural).

For some of the respondents, the compatibility of procedures is only a first step before achieving their complete harmonisation amongst Member States. Nearly all responses state that incompatible capacity products and different procedures can create financial and operational risks for market operators and have a negative impact on the market functioning. More specifically, the alignment of contracts and codes and the implementation of standardised communication procedures is considered helpful to minimise the high transaction costs that TSOs, network users and regulators face for dealing with a multiplicity of access regimes. StatoilHydro describes a positive effect of harmonisation that goes beyond reducing the transaction effort: "*Compatible booking and operational procedures between adjacent systems … also have the potential to increase liquidity at hubs because these would become the most natural trading platforms, rather than borders*" (StatoilHydro).

Most shippers and associations underline that such a convergence of procedures requires a high level of cooperation between TSOs and NRAs. Those critical of the harmonisation proposals note that there are systems with viable solutions that would be jeopardised by harmonisation. EFET considers harmonisation is needed first and foremost for allocating capacity whereas contractual congestion issues are more specific to particular markets.

There is little agreement with ERGEG's proposal of implementing harmonised rules at least on both sides of each border: "*The suggestion in the document to import different regimes within one (national) system to harmonise different borders only transfers the problem from the interconnection points to the domestic market. … We think that the challenge is in finding a harmonised approach for all cross-border points in Europe or at least on a supra-national regional level*" (N.V. Nederlandse Gasunie).

What RWE says summarises the responses accurately: "*Rules shall be as specific as feasible. A far reaching harmonisation will minimise the administrative efforts for TSOs, system users and the national regulatory authorities.*" Edison adds: "*Indeed, the implementation of common procedures should be started as soon as possible*."

ERGEG's view

The possibility of choosing from a range of 'tools' was proposed by ERGEG to allow NRAs to adapt the measures to their particular market. With regard to this proposal, nearly all respondents are in favour of common rules across Europe on all issues and for all TSOs, thus largely disagreeing with the toolbox approach.

The message from the market is clear; however ERGEG wants to emphasise that such the proposed toolbox approach would represent an improvement compared to the existing situation. The number of options would indeed be reduced and would facilitate a stepwise harmonisation. In any case ERGEG will reconsider the range of options to be used in specific circumstances in order to provide even clearer guidance in which situation the application of individual measures is deemed appropriate. The responses on the need for more harmonisation will help ERGEG in its work.

In its consultation document ERGEG has sought to strike a balance between harmonisation and consistency on the one hand and the possibility of accommodating special regional, national and local characteristics on the other. Given that its priority is to foster cross-border flows and trading between hubs, ERGEG is clearly in favour of harmonising rules between markets zones. ERGEG is aware that, for some TSOs adjoining more than one system, this might translate into implementing different mechanisms being applied by one TSO adjoining more than one system, (as it is already the case in electricity). We will consider this carefully before revising the principles on CAM and CMP.

For the revised version of its Principles on CAM and CMP, ERGEG will take respondents views into account to investigate further the extent to which common or harmonised rules can be implemented across Europe.

b) Cooperation of NRAs in neighbouring countries

The different national regulatory frameworks should not contribute to maintain the existing fragmentation of access regimes in Europe at a moment when a regional approach is clearly seen as necessary to attain workable solutions for market participants. All the respondents point out that close cooperation among NRAs is needed in addition to the intense cooperation among TSOs if a well-functioning, cross-border gas market is to be created: "*A prerequisite of many proposals is a better coordination between NRAs*" (GTE).

This also makes clear that the consultation document does not say enough on this: "*Not enough attention is paid to the area of cross-border regulatory co-ordination, and the need for cross-border consistency of regulatory decisions*" (Eurogas). Shell Energy points out that not only NRA cooperation is needed to create common rules but also a better legal basis: "*We would appreciate if some more effort could be spend on level playing field all over Europe – alignment of regulatory and legal framework*".

ERGEG's view

European Regulators agree with the respondents that regulatory co-ordination is key to the integration of the European gas markets. On the other hand much of the – highly concrete – consultation document on CAM and CMP so far shows that NRAs are willing and are able to draw up common rules. Encouraged by the positive responses and the clear request from the market to push harmonisation, ERGEG will progress further in this direction in its revision of the document.

(11) Do the proposed measures increase the efficient use of system? What aspects

would you support and like to see further developed?

Most of the respondents have an overall positive assessments of the measures proposed and many of them are in favour of these measures. Overall, the majority of respondents believe that ERGEG has asked the right questions and found the right answers: "Most of the measures proposed are good measures" (EDF).

Yet the respondents' views differ as regards a balance between measures aimed at making long-term capacity available and measures beneficial in the short-term: CEDEC writes, for instance: "*The document seems to be more focused on the needs of traders rather than those who want to enter the market as a supplier to end users.*"

Some of the comments point out the aspects that are not mentioned in the ERGEG document: "*In our opinion ERGEG shouldn't abstract away CAM and CMP from other problems in the system (storage, market areas)*" (Econgas). "*Another relevant issue concerns 'force majeure' clauses usually included in transport contracts*" (Edison) "*One congestion management principle is not mentioned by ERGEG, the so-called ruck-sack principle*" (Eurogas).

Further references of this nature are also given in response to question 1 of ERGEG's consultation. The aspects there were coverage of costs incurred, tariffs, physical congestion and investments, and implicit auctions.

Only GEODE questions whether ERGEG is taking the right approach: "*The solution proposed by ERGEG focuses in the first place on contractual congestions. Better and more effective though, is to yield the contractual capacity bookings to the TSOs, so that shippers are no longer involved in these mechanisms*".

ERGEG's view

In conclusion, responses show a broad consensus with regard to ERGEG's proposals, which are considered by a majority as appropriate to solve (at least partly) the existing obstacles regarding access to capacity. Beyond the critics on some detailed proposals, the market clearly expects the implementation of ERGEG' proposed measures to significantly develop competition in the EU gas market.

The European TSO association GTE is thinking about how the proposals should be implemented, which is already a very important step ahead: "*A major aspect to be regarded in further elaborations of the consultation is how principles could be implemented as this will be one of the crucial parts of the process*".

Annex 1. Responses Received

Responses were received from the following organisations:

Organisation	Abbreviated name
Bundesverband der Energie- und Wasserwirtschaft e.V.	BDEW
Bundesverband Neuer Energieanbieter	BNE
BP Gas Marketing	BP
Confédération Européenne des Entreprises Locales d'Energie	CEDEC
Centrica Energy	Centrica
DONG Energy A/S	DONG
Econgas	Econgas
EDF	EDF
Edison Spa	Edison
EDP Gás	EDP
European Energy Exchange	EEX
European Federation of Energy Traders	EFET
EirGrid	EirGrid
ExxonMobil International	ExxonMobil
EnBW Energie Baden-Württemberg	EnBW
Endesa Ireland	Endesa
Eni Gas &Power	Eni
E.ON Group	E.ON
EURELECTRIC	EURELECTRIC
EUROGAS	EUROGAS
Gaselys	Gaselys
Gaslink	Gaslink
Gasterra	Gasterra
GDF SUEZ	GDF SUEZ
GEODE	GEODE
GTE	GTE
IBERDROLA	IBERDROLA
National Grid	National Grid
Naturgas Energia	Naturgas Energia

N.V. Nederlandse Gasunie	N.V. Nederlandse Gasunie
RWE Group	RWE
Scottish and Southern Energy	Scottish and Southern Energy
Shell Energy Deutschland GmbH	Shell
Statkraft Markets GmbH	Statkraft
StatoilHydro ASA	StatoilHydro

Annex 2. Summary of Stakeholder Workshop

Workshop – ERGEG Principles for CAM and CMP[4]
18 February 2009 from 10:30 to 16:30 hours
Diamant Conference Center, Brussels

Opening address

Dominique Jamme (CRE) welcomed all stakeholders of the workshop on behalf of ERGEG and advised of ERGEG's prioritisation of CAM and CMP issues, as this is necessary to facilitate competitive markets. While changes to the existing regimes are necessary, stakeholders must understand that changes will require changes to existing capacity contracts. Therefore, it will be difficult to reach consensus. A high-level of involvement from all stakeholders will help to ensure that all issues are taken into consideration when reaching a final position. ERGEG is meeting with GTE+ to ensure a pragmatic outcome.

DG TREN presentation: Capacity allocation and congestion management as crucial elements for the development of the single market

Mark van Stiphout (DG TREN) stated that the EC agrees that contractual congestion is a significant issue that must be resolved. The resolution must strike a balance between defining rules for TSOs and allowing TSOs to make their own commercial decisions. In addition, the resolution must take into account the linkages between available capacity, the incentivisation of TSOs and transparency.

ERGEG approach to the consultation document

Benoît Esnault (CRE) presented ERGEG's general approach to developing the CAM / CMP Principles. The principles underlying these proposals are: security of access to capacity and flexibility.

GTE vision and reaction

Jacques Laurelut presented GTE views on CAM and CMP and the initial reaction of GTE to the consultation paper.

Mr. Laurelut stated that GTE wants to engage in dialogue with ERGEG as they are working on

[4] All presentations can be accessed via the following link: http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS/GAS/E09-PC-36/Public%20Hearings

the same issues and workable solutions must be reached. Mr. Laurelut raised four points on which GTE suggest further consideration is required:

1. Allocation mechanisms must be compatible with Gazprom's pro-rata policy5
2. Common booking platforms – GTE considers that it will require identical, rather than harmonised capacity products
3. Distinctions will be required between transit and domestic gas – it will be more difficult to find solutions if these issues are addressed separately.
4. An impact assessment should be conducted for all issues involving all stakeholders

Questions

Following the presentations, questions / comments were raised by the workshop attendees:

1. What is the process to amend Regulation (EC) 1775/2005 ?

    Mark van Stiphout: The EC does not yet have an opinion on the proposals included in the consultation paper. The process going forward will depend on the consultation process and the outcome. The EC would like to see the consultation carried out as a trial run of the 3rd Package framework. It is quite clear that common rules for capacity need to be defined. However, the process going forward depends on timing.

2. Where can I find information on the outcome of the study on TSO incentives?

    Mark van Stiphout: The study on TSO incentivisation has just been launched. A workshop has been organized with the Florence School of Regulation (6 March 2009) as part of this study. However, TSOs should not be rewarded for optimising capacity as this is one of their tasks.

    Pamela Taylor (Ofgem) advised of an incentivisation mechanism that is in place in Great Britain to provide access to capacity. TSOs are incentivised to allow a certain amount of overbooking. TSOs are incentivised to sell in excess of 100% of available capacity, as shippers don't always use 100% of the capacity they have contracted. The primary constraint is contractual, rather than physical. By incentivising overbooking, TSOs are able to make additional capacity available to the market. Although contracted, this capacity will be available a large percentage of the time. During the time where there are physical constraints, the TSOs can buy-back capacity from the shippers at a market-based rate. This incentive encourages TSOs to take on more risk, for which they are appropriately rewarded.

3. The principles need to be clear about what exactly is being incentivised. If TSOs are incentivised to optimise capacity, what is the actual result expected?

    The document does not clearly state that the objective is to maximise the amount of firm capacity available to the market.

[5] Where Gazprom is unable to deliver 100% of the nominated gas, deliveries are made to customers on a pro-rata basis.

ERGEG's principles and proposals on CAM and CMP

Stephanie Neveling (BNetzA) and Fiete Wulff (BNetzA) presented the CAM/CMP Principles as set out in ERGEG's consultation paper.

Questions

The following questions / comments were raised by the workshop attendees in respect of the principles:

1. TSOs need to be endured of a greater level of cooperation with adjacent TSOs? How do you ensure the same tool box is in place? How do you coordinate CMPs?

   ERGEG considers that different procedures / mechanisms will be appropriate depending on the adjacent system. It is up to the NRAs of neighboring countries to ensure same toolbox is used.

   Mark van Stiphout (DG TREN) reiterated that cooperation between TSOs is a legal obligation included in the current Regulation. However, these requirements have not proven to be sufficient and stronger requirements have been included in the 3rd Package.

2. The proposal for capacity buy-back seems insufficient, as the cost of capacity is not the only cost facing shippers.

   The proposal for capacity buy-back has not been fully explored outside of Great Britain. ERGEG has included this as an example of one means of incentivising TSOs to make additional firm capacity available. Further work on incentives will be addressed at a later stage.

3. This proposal makes it the role of TSOs to find to energy to compensate the shipper – how is this consistent with the unbundling provisions?

   This is not in contradiction to unbundling proposals. TSOs are permitted to purchase energy in their capacity as TSO – necessary for system security

4. There should be bigger spreads between firm and interruptible capacity to give shippers an incentive to put firm capacity back on the market.

   The pricing of capacity is significant issue that ERGEG has not addressed and needs to be developed.

5. The value of interruptible capacity is likely to decrease if more firm capacity is made available.

   Dominique Jamme (CRE) agreed with this statement. However, Mr. Jamme stated that shippers only book interruptible capacity if no firm capacity is available. ERGEG is looking to provide shippers with the firm capacity they need.

6. Why are small portfolios protected? What about security of supply?

Big portfolios and Security of Supply are not significantly affected by day-ahead schedules. Incumbents with large portfolios will be able to assess their needs. If something unexpected happens, the impact on larger market participants is less than on smaller players. Therefore, smaller participants need more flexibility in their re-nominations.

Stakeholder views

GTE

R. Bahke presented further comments from GTE:

1. Implementation of CAM/CMP should be cost-neutral to TSOs
2. Implementation of different CAM/CMP across Europe will create problems with bundled cross-border product
3. No distinction should be made between domestic and transit
4. TSOs need certainty; long-term contracts facilitate network management
5. Harmonisation is dependent on decisions taken by NRAs
6. Experience shows that common capacity calculations actually reduces available capacity

Mr. Bahke also queried the common EU capacity calculations, which would require common estimates of demand and supply. Who would be responsible for these estimates? In closing, Mr. Bahke affirmed GTE's willingness to step forward and cooperate on the development of principles.

S. Neveling responded to Mr. Bahke's question in relation to common estimates of supply and demand. ERGEG expects that these estimates will be included in the ENTSOG 10-year investment plan. Ms. Neveling also commented that part of the available capacity must be shorter-term.

EFET

Adam Cooper presented EFET's initial views on the consultation paper. Mr. Cooper stated that long-term change is key, particularly in relation to the allocation of capacity. Congestion management is a secondary issue. In addition, Mr. Cooper raised the following points:

1. The tariff issue is very important and needs to be part of the overall solution
2. Strong compulsory measures may destroy options value, thereby reducing liquidity.
3. ERGEG should not discourage buying long-term primary capacity.
4. UIOSI mechanisms will require that there is gate closure, which doesn't exist in current gas market. Implementation of this may deter further liberalisation
5. Measures must be compatible with broader goals and other measures that are underway.

EFET's overall impression is that fixing congestion management is not the right approach. The market should focus on fixing capacity allocation.

Gaselys

JR Rastoul presented Gaselys' initial views on the consultation paper. Mr. Rastoul stated that Gaselys recognises the benefits of harmonising network rules and implementing efficient CAM and CMP, which will increase trading activity. In addition, Gaselys fully supports the Regional Initiatives, which Gasely sees as a pre-requisite to market development.

However, the proposals are dependent on the implementation of the 3rd Package. Any delays in the 3rd Package will have a direct impact on this issue.

GEODE

Christian Thole presented GEODE's initial views on the consultation paper. Mr. Thole suggested that ERGEG's focus on secondary trading is an attempt to remedy an unsatisfactory system and suggested that the focus should be redirected to find alternate systems.

Mr. Thole asked ERGEG to consider the following rule: if shippers have gas, they are automatically given capacity; congestion will only be a problem in the case of physical congestion. In addition, there should be clear rules with less opportunity for interpretation by NRAs. Capacity calculations and congestion management are the job of TSOs.

RWE

Paul Dawson presented RWE's initial views on the consultation paper. Mr. Dawson stated that RWE was very supportive of ERGEG's proposals and welcomes the focus on transparency. However, there is a question on the area of emphasis. Shippers need longer-term contracts to match customer contracts. Day-ahead capacity is not as important as long-term firm capacity. Long-term capacity allocation is the bigger question

Mr. Dawson supports the UK approach, although considers this approach optimal booking, rather than overbooking. This approach makes available additional capacity that is unlikely to be interrupted and is financially firm. However, TSOs need incentives to take additional risks.

Mr. Dawson raised concerns with the proposal of limiting renomination rights, as this will raise a number of serious regulatory issues to be addressed and may cause market distortions. However, many of these issues will not need to be addressed if the allocation issue is resolved and market liquidity increases.

Questions

In relation to the above presentations, the following questions / comments were raised by the workshop attendees:

1. Firm UIOLI is a significant issue in markets with hourly balancing systems as shippers need to be able to re-nominate within-day.

   ERGEG's proposal would not eliminate re-nominations; it would just restrict the re-nomination amounts to e.g. 2% booked capacity plus 2% technical capacity. This was designed to provide sufficient flexibility for all shippers. Larger shippers will require less flexibility than smaller shippers.

2. How can the original capacity holder obtain the released capacity, if needed?

   The original capacity holder would be able to purchase the released capacity on the same basis as other market participants. The intention is to reduce lead times for re-nominations to help initial capacity holders optimise the use of capacity.

3. Penalties for over-nomination are not mentioned in the paper. In this instance, what would prevent shippers from over-nominating so that they have more flexibility with their re-nominations?

   The restrictions on re-nominations work in both directions.

4. Exxon Mobil supports many of the ideas presented, but is not in favour of the limitation of re-nominations. This is a serious issue which can impact on security of supply.

   ERGEG does not see how this can be a threat to security of supply. The total available capacity remains the same.

5. With the limitation of re-nominations, options lose value. How will capacity holders be compensated?

   Compensation will depend on when the capacity is sold. If a capacity holder chooses to sell unneeded capacity in advance, they can set their own terms for sale. If the capacity is released by the TSO, they will receive market-based compensation.

6. Pricing of capacity not included in document?

   ERGEG will revisit this.

7. Who determines if there is potential congestion?

   It is up to each national regulatory authority to determine if there is potential congestion.

Conclusions

Alexandre Soroko (CRE) presented the conclusions reached at the workshop and the next steps to be undertaken.

The significant points raised during the workshop include the need to:

1. Carefully assess the impact of the proposed principles and rules (e.g. short-term congestion/re-nomination, marketing platform)
2. Assess the interactions with other issues (tariffs, transparency) which are not at the core of this document

3. Further develop the proposals in relation to incentives and buy-back proposals
4. Find means to increase firm day-ahead capacity rather than interruptible capacity

Workshop attendees were asked to submit their responses to the consultation by 20 March 2009.