Pilot Framework Guideline on Capacity Allocation Mechanisms

Public Consultation Evaluation of Comments

E10-GWG-67-03

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1. Introduction

On request of the European Commission, the European Energy Regulators have agreed to use the so-called interim period until the Agency for Cooperation of Energy Regulators (ACER) becomes fully operational to simulate the development of framework guidelines according to the provisions of the 3rd Package. The European Commission, GTE+ and ERGEG agreed that ERGEG develop a pilot framework guideline on capacity allocation in European gas transmission networks. Subsequently ENTSOG will prepare a pilot network code on CAM.

ERGEG and ENTSOG agreed that a close cooperation of both organisations is necessary to ensure a high quality outcome. The goal of the pilot framework guideline on capacity allocation and the subsequent network code is to harmonise capacity products and allocation procedures at interconnection points in order to foster the integration of markets and hub to hub trading as well as to optimise the use of network capacity across borders.

This pilot framework guideline is based on ERGEG previous work on capacity allocation and congestion management. ERGEG has published in August 2009 the results of the public consultation on its principles and proposals for capacity allocation and congestion management published in January 2009.[1]

On the 18 December 2010, ERGEG launched a public consultation on the draft framework guideline.[2] The Guideline was presented at the 17th meeting of the European Gas Regulatory Forum in Madrid on 14 January 2010 and was well received by the stakeholders.[3]

ERGEG also held a workshop in Brussels on 2 February 2010. More than 100 representatives of the European gas industry 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: 35 answers were submitted, including 3 confidential.

Responses were submitted by the following stakeholders:

> Alpiq Swisstrade, BDEW, BP, Centrica, Dong Energy, E.ON, EDF Energy, EDF, Edison, EDP Gás & Naturgas, EEX, EFET, EnBW, ENI, ENTSOG, EURELECTRIC, Eurogas, ExxonMobil, GasTerra, Gaselys, Gazprom, GDF SUEZ, IBERDROLA, National Grid, POWEO, RWE Supply Trading, Scottish Southern, Statoil, Trans Adriatic Pipelines AG, VNG Verbundnetz Gas, Yara

These non-confidential responses are published on the website of the Council of European Energy Regulators (CEER).

ERGEG is also developing alongside the pilot project proposals to amend, via direct comitology, the guidelines on capacity allocation and congestion management attached to the Gas Regula-

[1] ERGEG E08-GFG-41-09 (15 Jan 2008) and ERGEG E09-GNM-07-03 (24 August 2009).

[2] ERGEG E09-GNM-10-05 and E09-GNM-10-06 (10 December 2009).

[3] http://ec.europa.eu/energy/gas_electricity/forum_gas_madrid_en.htm.

tion. Together, these projects represent the opportunity for ERGEG to establish a clear direction for a European reform in this crucial area.

2. Detailed Responses

2.1. Scope

- **Do you support the scope of the draft framework guidelines proposed?**

On the IPs covered by the FG

Fifteen respondents support in general ERGEG's proposal as it has been formulated. Three other stakeholders are in favour of considering also some of all of the "exempted" points, especially those connecting to LNG and storage. Another respondent underlines that only some of the FG provisions should also apply to the excluded points, especially connecting networks to production, LNG or storage, while another one thinks capacities offered on these points by TSOs should also be harmonised with the entry/exit capacities offered by LSOs and SSOs, and even be jointly offered as combined products.

Some stakeholders think ENTSOG should publish the list of points where the FG would apply, while another think on the contrary that this list should include the points where the FG does not apply. Another respondent thinks the list of entry points are excluded from the scope of the FG, it should also include the entry points from gas production facilities and upstream entry points.

Three respondents think the list of the points published by ENTSOG should also indicate which TSO is appointed as responsible for capacity allocation in each case.

For justifying the exclusion of the exempted points, it is frequently argued the recital 16 of Gas Regulation 715/2009 that states that European network codes are not intended to replace the national network codes for non cross-border issues. Some reasons are given too for including exempted points (points to LSOs/SSOs): the synergy of trading with transport and storage capacities on one centralised web-based platform.

One respondent proposes to include also in the scope the dedicated gas interconnectors between Member States, and also points connecting with LSO/SSOs, but for some considerations which apply just to IPs between TSOs (combined or bundled products). This respondent proposes an alternative wording to F.1.1 with all its proposals.

Other aspects to be covered by the FG: existing vs new capacity, TPA exempted, non-EU TSOs

Three respondents propose to cover in the FG both existing and new capacity. Two others misses at least a statement explaining how new capacity will be dealt with. Another one asks for a consistent approach to new and existing capacity. Finally, another respondent thinks the scope should refer to capacity available for allocation by the TSOs, and not to the capacity as calculated by the TSOs, which might be in part already allocated. This respondent proposes to modify the FG wording to reflect this.

Three stakeholders assume TPA exempted infrastructure is not in the scope, but would like to have a confirmation.

One answer proposes the FG to affect to adjacent TSOs, even if they are not in the EU. Another answer states that the role of OS should be highlighted.

Areas to be potentially tackled by other FG

Several respondents think the FG actually covers areas that should be the object of other FGs. One of them states a matter such as capacity calculation should be covered by a different FG. Another respondent thinks this is inevitable, while another one thinks overlapping and contradiction should be avoided.

Inclusion of CMP in the present FG or implementation of CAM FG in conjunction with CMP guidelines

Some respondents are of this opinion or at least comment on CMP in their answer to this topic 1.

On public service obligations

For one respondent, referring to public service obligations in order to adopt decisions must be justified in all cases and provided with due transparency. The invocation to public service obligations must be provided with sufficient guarantees to prevent that imposed obligations on market agents become real barriers to entry in the markets.

On the implementation of FGs

A respondent thinks that the implementation of the FG is not necessarily a synchronised process at all European IPs at the same time. It would be better to implement them faster in regions with liquid and competitive markets, creating the necessary momentum for doing it in the other markets. Another respondent deems important that the degree of standardization brought in won't reduce possibilities of flexibility.

On the definition of a target model and the interim period, one actor would like to understand the process for selecting the interconnection points for which ERGEG considers interim solutions are needed. They are also interested in understanding the criteria used to identify and conclude on those points.

On the level of detail of the FG and the definition of terms

One respondent thinks the FG should be more detailed to be able to make a real impact assessment. Others would ask for a clearer definition of the terms used in the FG, or just refer to the concepts already defined in the EU regulation. One stakeholder believes a definition of TSO and interconnector is necessary.

ERGEG's view

The scope proposed by ERGEG is widely supported by respondents to the public consultation. ENTSOG will publish and keep updated a list with all the points where the network code on capacity allocation will apply. This list will also include an indication of the TSO or TSOs responsible for the allocation of capacity at each point.

There is a demand for more clarity concerning two aspects: whether the network code will apply only to existing capacity or also to the capacity brought in by new infrastructure, and whether it will cover or not TPA-exempted infrastructure.

ERGEG proposes that the framework guideline and hence the network code only apply to exiting capacity. Furthermore, ERGEG recommends that open seasons procedures are consistent with the provisions of this framework guideline.

Stakeholders have also reminded ERGEG that the framework guideline on CAM should not overlap with other FGs. This means that the network code on CAM should not include those topics not specifically related to capacity allocation that are already identified to be covered by other FGs according to the Commission[4].

Finally, the network code should ideally refer to concepts already defined in the existing European regulation or include a chapter of definitions instead.

2.2. Approach

28 respondents explicitly highlight the importance of harmonisation and integration of the European gas market. Therefore, they strongly support the development of the framework guidelines and network codes which have identified all the major issues in terms of fostering market development.

But still, some respondents find that some of the recommendations would need further details at the Ffamework guideline stage.

One respondent suggests that "there are numerous options when designing Open-Season-Procedures or auctions. The FG should provide some sort of design guidelines."

One respondent is of the opinion "that a balanced level of detail should be formed by ERGEG in the final framework guideline". He recommends not leaving too many alternatives for respective NRAs to implement measures on an individual basis as this will counteract the harmonisation to be achieved.

Another respondent is of the opinion that "The framework guideline needs to be clear and detailed on auction rules to avoid adverse market impact and to ensure consistency across Europe."

One respondent "supports the harmonization of market designs through EU-wide binding rules so as to avoid NRAs having too much discretion to select from a large variety of instruments."

However, another respondent responded "[being] mindful of the regulated regimes in Europe where there is no issue with access to capacity, like in the GB market. Any legally binding network code must be written in such a way that it will not hinder an already fully functioning mar-

[4] European Commission's Discussion Paper of 18th September 2009 on "Third Package Guidelines and Codes".

ket."

Contrary to that a third respondent "believes that a well-balanced level of detail should be achieved. On the one hand, the provisions included in the FG on CAM should provide enough flexibility to reflect specific market characteristics and on the other, leaving too much freedom for NRAs to define individual measures bears the risk that no harmonisation could be achieved."

ERGEG's view

As a general point on governance, we believe these framework guidelines should be setting principles on what the network codes in the end have to comply with. This is because detailed codes may impose obligations that could hinder more advanced markets and make compliance for lesser developed markets more difficult. Therefore framework guidelines have to ensure a level of flexibility which helps less developed markets to gain momentum and does not impede further progress in more mature markets.

Inevitably, this results in rules which do not provide for full harmonisation in one step. Market development and integration is a gradual process which is not always compatible with a blueprint market model set out in framework guidelines. Against this background, ERGEG has proposed clear targets based on a consistent market model and steps for their implementation.

2.3. Existing contracts

- **What are in your views of the challenges that existing contractual arrangements create with regard to capacity allocation? What would be the possible way to overcome those challenges?**
- **Should relevant clauses in existing contracts be amended if they contradict the new legally binding set of rules (which will be based on the framework guideline) in order to create a level playing field for all shippers?**

26 respondents see the need to create a level-playing field as an essential step to more integrated gas markets in Europe. In most cases respondents accept change of the general terms and conditions of transmission contracts. If such terms and conditions are to change, stakeholders claim a change in the same way for all existing relevant contracts. Additionally, all of them prefer a step-by-step adaption in direct dialog between holders of capacity rights.

Few stakeholders demand that the contracts should strictly remain unchanged, partly because they fear groundless losses for one of the counterparties, in case of the modification of contracts.

One respondent states that a "big challenge for applying a new CAM regime on existing contracts is getting the message through to those affected by the contract changes that putting long-term contracts on a new basis is an essential means to create a European gas market."

In this context, the answers of the respondents can be divided in two groups:

- One group is concerned about the proposed adaptation of existing capacity contracts. They fear that sanctity of contracts could be violated and if the contracted capacity

should be affected they oppose detrimental effects on market stability, on security of supply and endanger future investments.

- The second group understands this part of the guideline in that way, "[…] that this provision is referring to 'relevant clauses' in access conditions or network codes and not in the amount of booked capacity."

These respondents agree in general with the proposal to amend existing contracts provided that new guidelines will only change the organisational elements of the contracts and will have no material effect on volume and price.

But these respondents highlight a few other challenges, too:

a) Time frame

A big challenge is seen in the time period of 6 months, within which existing contracts shall be amended in line with the implemented provisions. Renegotiation between the parties could need more time. One respondent says "[…] we believe the implementation period to amend the high number of existing contracts should be extended to 24 months". Other respondents think that "An implementation period of 12 months with an adequate lead time before beginning of the next gas year (e.g. April of the relevant calendar year), is more appropriate."

b) Costs

Some respondents are worried about the costs which may result from the adaption of existing contracts. They assert that an adaption of the contracts only can be done on a case-by-case basis and in a bilateral way and this process could involve costs and a higher work input.

c) Freeing up capacity

It could be difficult to free up capacity for new entrants. To solve these problems respondents propose different solutions:

- Create firm releasable capacity[5]
- Short-term reserve UIOLI/UIOSI
- Effective CMP
- Open Season
- compulsory release of unused (for a certain time) capacity

All respondents highlight the importance of sanctity of contracts and insist "[…] to maintain the integrity of the origin contract to ensure that the TSOs continue to receive their revenue from investment and the shippers continue to be guaranteed their capacity rights". Additionally many respondents require that flange trading should be still possible.

On the other hand some respondents require the so-called "black-clauses" to be amended:

- Tacit re-conduction
- Unclear content of termination rights
- Ban of resale unused capacity

[5] As introduced in France, cf. Art. 7.2.1.2 "Marketing of Releasable Capacities" of GRTgaz transmission contract.

ERGEG's view

The proposed adaptation of existing contracts has generated many comments and has raised many concerns as to the sanctity of existing capacity bookings.

However, in order to effectively implement new rules, it is ERGEG's view that there clearly is a need to adopt existing capacity arrangements to a changing regulatory framework. Otherwise the implementation of new rules would only affect expiring bookings, meaning that the achievement of a single gas markets would take unnecessary long time. Furthermore, many contractual arrangements foresee amendments in case the legal regulatory framework changes.

The contractual arrangements differ in the Member States. In most countries the contractual arrangements are standardised in general term and conditions or a network code is applicable to all capacity bookings. It is ERGEG's view that the amendments should be implemented no matter where the respective detailed arrangements are to be found.

This is why ERGEG has decided to stick to the proposed arrangement despite the concerns raised in the consultation and propose that all the existing contracts are adapted to reflect the new capacity allocation arrangements. In ERGEG's view, in most systems, these amendments require only minor changes to the transportation arrangements. Basically, the provisions concerned are the ones on allocation mechanisms, product definition including lead times and the design of interruptible products.

In some Member States the interdiction of separate capacity for transit purposes will cause more fundamental changes to existing arrangements. This is inevitable since any differentiation between transit and domestic capacity undermines the creation effective entry-exit systems and of liquid wholesale markets and is therefore incompatible with the aim of creating a single energy market.

Regarding the adaptation of existing transportation arrangements many respondents feared that the introduction of bundled capacity products will cover currently allocated capacity which might require a renegotiation of commodity contracts where the gas is delivered at the border. ERGEG intends to establish new market activities next to the existing market arrangements. Therefore, it was decided not to extend capacity bundling to existing contracts but to limit it to all available capacity for the time being. It should be noticed however that ERGEG has introduced a sunset clause relative to the bundling of the technical capacity (see para 2.3.1 of the framework guideline and hereunder)

European Regulators agree with those stakeholders commenting that expiring contracts shall not be subject to tacit extension. "Evergreen clauses" fundamentally impede the development of competitive European gas markets.

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

The majority of respondents highlight the importance of the sanctity of contracts and the respect of existing contracts, again. They stress the uncertainty caused by the undefined term "certain

conditions".

One respondent imagines the following conditions to question the existing contracts:

1. All entry points are fully booked
2. Open Season has been conducted, but it does not fulfil market demands
3. One market player is dominating the existing long term bookings.

ERGEG's view

Terminating all the capacity contracts would constitute very serious intervention in the shippers' autonomy and would require robust justification. However, intervention on this scale would not really solve the problem of congestion management or of capacity allocation. Booked capacity will continue not to be fully used. Moreover, the big market players will most likely continue to take large shares of the capacity. Thus, there will continue to be not enough capacity available for short term optimisation.

This is why at this stage ERGEG does not propose a complete re-allocation of the entire capacity. European regulators believe that as a general rule less restrictive measures will greatly help to develop the European gas market. In a number of specific cases competition authorities have taken action regarding the level of long-term bookings. In some cases commitments by the companies concerned have been made which will help to make capacity available to the market.

2.4. TSO Cooperation

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

All stakeholders, except of one respondent, deem the proposal regarding TSOs' cooperation as appropriate and useful. Nevertheless, one respondent declares that the scope of TSO cooperation is too far-reaching and should be developed in a separate framework guideline and subsequent network code. Many respondents support the proposed scope for TSOs' cooperation.

Some respondents stressed some difficulties which may have to be solved reaching order to achieve the proposed target model. They ask ERGEG to take regional distinctions into account, such as the ones which not directly linked with the proposal.

Finally a broad range of answers required a deeper and more improved cooperation between the NRAs to achieve the target model.

ERGEG's view

Cross-border cooperation and coordinated TSO activities are essential if the European markets are to be fully integrated. Much of the cooperation between adjacent TSOs will not be directly triggered yet by a simple obligation to implement compatible or harmonised rules. The requirement to cooperate will bear fruit only if it is sufficiently concretised in the network code.

ERGEG appreciates the broad support for the proposal on TSOs' cooperation. This provision does not intended to pre-empt a future framework guideline on more specific issues but sets out minimum standards which are necessary to improve current capacity management practices. The originally proposed provision will therefore remain unchanged in substance. Amendments refer to improvements of the wording.

- **Should a European network code on capacity allocation define a harmonised content of transportation contracts and conditions of access to capacity?**
- **Should a European network code on capacity allocation standardise communication procedures that are applied by transmission system operators to exchange information between themselves and with their users?**

First, all responders encourage ERGEG to pursue this purpose. Additionally the majority supports a definition of harmonised content of transportation contracts and conditions of access to capacity.

Secondly, most answers stressed that there is no need for too detailed rules. Maybe, too detailed rules hinder to deal reasonable with specific situations. One respondent summarised the exercise of such harmonized content as followed: "Nonetheless they should be technically and economically reasonable".

Another respondent in detail requires the standardisation of capacity products, data transfer, allocation mechanism, timeline and procedures and wants a European "ISO" "[…] who orchestrates the different […] and manages cross-border balancing zones."

Another respondent wants the network code to set out that the relevant data that should be published at every interconnection point. Furthermore the standardization of communication procedures, a coordinated information system, IT-infrastructure and compatible electronic on-line communications.

Another respondent states that there are standardised conditions which "[…] already exist among some TSOs (e.g. TSOs in the NCG market area), and could progressively be extended to adjacent TSOs […]".

Generally there is no objection against the standardisation of communication procedures. However, some respondents only require some "basic standardization of communication procedures".

One respondent just wants this topic to be co-ordinated within the pilot framework guideline, not developed. Another one wants this to be treated in separate framework guidelines.

Another respondent supports a broad standardisation; otherwise some negative effects could arise: "Since the implementation would be time consuming and cost intensive, it is particularly important that there is a strict standardization to enhance economies of scale. A broader approach and less stringent implementation would potentially lead to a negative cost-benefit analysis. It is important that the standardization will be elaborated by all market participants including not only TSOs but also shippers […]."

Some responders allude to the Edig@s- protocol, which already exists and could be adapted, optimized and extended.

ERGEG's view

ERGEG is encouraged by the broad majority supporting its proposals on a harmonised content of transportation contracts and conditions of access to capacity. The TSOs should be required to apply harmonised contracts, codes and communication procedures under the regime of codes developed under the proposed framework guidelines.

Some changes have been made to the original proposal making clear that most importantly the communication procedures in relation to shippers need to be harmonised. Harmonised communication procedures and contracts will reduce the shippers' transaction efforts. There is no need for them to become familiar with many different procedures and shippers who are able to enter one market can easily enter all European markets.

However communication procedures between TSOs also need to work properly but there is no immediate need to standardise them across Europe.

Reference to transparency has been deleted since transparency has been subject to a comitology procedure. The new annex to the Regulation No 715/2009 now covers all the information relevant to the market.

2.5. Capacity products

- **What are your views of our proposals regarding capacity products?**
- **Do you agree with the idea of defining a small set of standardised capacity products that do not overlap?**
- **Should TSOs offer day-ahead and within-day capacity products?**
- **Should European TSOs offer the same capacity products at every interconnection point across Europe?**
- **Should TSOs offer interruptible capacity also in cases where sufficient firm capacity is available?**

2.5.1. Breakdown and offer of capacity products

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

Set of capacity products and capacity breakdown

A majority of respondents agree that a small set of standardised capacity products that do not overlap should be defined and offered across Europe. One respondent does not see any harm in some products overlapping. Some respondents require the capacity product range to be flexible enough to meet market needs, the capacity breakdown to be dependant on local or regional specificities, or the possibility to offer additional products on top of the general set of standard-

dised capacity products.

Ten respondents propose and recommend a specific set of capacity products. Most of the proposed capacity products set range from within-day capacity to yearly products; four respondents also recommend to offer multi-yearly products.

Two respondents insist on the necessity to be able to book long term contracts needed to underpin in transmission and upstream production investments.

Eight respondents wish a harmonised set of capacity products to be offered at each interconnection point. Two respondents want that, on top of those products, additional products could be offered. Eight respondents require capacity products offered to reflect markets needs, to be in line with traded commodity products and balancing requirements. For this, seven respondents require that the set capacity products offered should subject to regular market consultation and one of these respondents requires clarification on who will be responsible for the consultation. Three respondents state that the breakdown should be adapted to the specific conditions of each interconnection point.

Two respondents wish firm capacity products to be financially firm.

Short term capacity

A majority of respondents fully support that a percentage of available capacity is set aside for firm short term capacity bookings. Three respondents support it but insist that this should be done with extreme caution, two of them underlining the risk of over-investment.

The respondents' proposals for the percentage of short term capacity range from 10 to 25% of the available capacity. Four of them just state that this percentage should be reasonable. Others argue that this percentage should be determined by national regulatory authorities or by ENTSOG when drafting the network code or to be consulted with regional stakeholders. Two respondents answered that the introduction of additional competencies for the national regulatory authorities regarding the setting aside of a part of the available capacity for short term products should be avoided.

Within-day and day-ahead products

Five respondents are explicitly in favour of within-day and day-ahead products and almost all the capacity product set proposed by respondents (cf. above) include one of them at least. Few respondents state that within-day capacity products are not needed, and one other state that these products should not be introduced where there is no need or where it can not be implemented.

Two respondents support capacity products up to the last minute of physical exercise and the development of new products (e.g. hourly or blocks of hours).

Interruptible capacity

Three respondents underline that interruptible capacity, though not optimal, still play an important role for the optimisation of network use and cold be helpful to shippers where demand is flexible (interruptible clients) or where shippers have storage. However, two respondents insist that harmonising interruptible capacity at cross-border points is a prerequisite for the offer of in-

terruptible capacity and its usability.

Two respondents require that only one single class of interruptible product is offered.

Four respondents declare that transmission system operators should not offer interruptible capacity in cases where sufficient firm capacity is available. Two respondents, see no need to offer interruptible capacity, where there is no congestion or where there is no probability of interruption. Even more, eight respondents answer that interruptible capacity should be offered only if no firm capacity is available. Some of these respondents argue that offering interruptible capacity when firm capacity is still available would lead to a situation where the probability of interruption is more difficult to calculate and the price of interruptible capacity does not reflect the probability of interruption.

Only three respondents state that interruptible capacity should be offered independently from firm capacity.

Two respondents want shippers to be able to upgrade their interruptible capacity in firm capacity under certain circumstances. Two other respondents oppose this possibility.

Four respondents require that interruptible capacity is priced according to risks and inferiority and that the probability of interruption (or at least the information to assess this probability), the maximum duration of interruption, the maximum frequency of interruption are well defined and made transparent.

One respondent is concerned that the introduction of long term interruptible products would potentially undermine the value of firm products.

Transit capacity

One respondent agrees that there should no discrimination between access to networks for transit and domestic purposes.

One respondent state that a prohibition of transit products would not lead to increased liquidity. One other respondent declare that the term “transit” is not defined and is hardly mentioned in the 3rd Package. He wonders what the definition of “separate capacity” used in the draft framework guideline is and what the proposed solution is to the economic and legal which would arise from a prohibition of transit.

ERGEG’s view

Set of capacity products and capacity breakdown

The respondents to the public consultation largely confirm the need for a small set of standardised capacity products and many of them propose capacity product sets which are fairly similar. Some of them require that a harmonised set of capacity products is offered at each interconnection point and other state that the capacity breakdown should be adapted to the local market conditions. Some respondents also underline that the capacity products offered should be in line with markets needs and commodity and balancing products. This is why they require regular market consultations on these products.

These responses support ERGEG’s proposition that transmission system operators shall define a small set of capacity products to be offered at each interconnection point in the forthcoming

network code on capacity allocation. ENTSOG's online survey regarding the capacity breakdown is a first positive step toward the definition by transmission system operators of such a set of products fitting corresponding to market needs.

These responses also support ERGEG's proposal that the capacity breakdown shall be defined at each interconnection point with regard to market conditions. However, the breakdown shall be subject to proper and regular consultations. This is one reason why ERGEG introduced in the final version of its framework guideline on capacity allocation an obligation for transmission system operators to consult on this matter before the breakdown is decided.

Two respondents draw the attention to the need for long term contracts. ERGEG recognises the market's desire of long term capacity commitments to trigger investments and develop new capacity. The framework guideline on capacity allocation mechanism does not preclude shippers' long term capacity commitments, which can be collected:

- either through long term auctions. These are covered by ERGEG's provision on auction,
- or through open season procedures. ERGEG recommends that open season procedures are consistent with the provisions of this framework guideline (cf. the provision "*Scope*"). Furthermore, these procedures are covered by ERGEG's guidelines on open season (GGPOS)[6].

The approach to introduce financially firm capacities would give the TSOs considerably greater freedom in handling capacity. However, these advantages of financially firm capacities are largely theoretical at the moment, as they are based on requirements which are not currently met in the gas market in any way. It must be possible to assess the level of compensation payments clearly. It must be possible to establish for every transportation order, precisely and objectively, how high the financial loss would be if transportation is not carried out. However, there is no generally accepted gas price. Nor is there a uniform balancing regime whose prices would also have to be factored into an assessment of the level of compensation payments in cases where the missing liquidity does not allow buying or selling the not transported gas volumes. Cross-border capacities are no longer physically firm in the financially firm capacities model. Thus the shipper can no longer say in advance in the destination market whether he is in possession of gas or "just" money. This will only not make a difference if the shipper can convert the money to gas again in this market at any time. It is necessary to be able to do so because in every transaction there is a shipper at the end of the chain who has to transport the gas physically to the final consumer or physically to a storage facility. It follows that the financially firm capacities model will be applicable only if the markets on both sides have reliable liquidity at all time. However, the proposals must not presuppose the existence of liquidity already.

Short term capacity

The respondents to the public consultation largely agree with the proposal quotas for products of different durations are defined and that a percentage of the available capacity is set aside for

[6] http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_ERGEG_PAPERS/Guidelines%20of%20Good%20Practice/Gas/C06-GWG-29-05c

short term capacity products. However responses diverge as to the exact percentage and how it should be set. ERGEG thus proposes that at least 10% of the available capacity shall be set aside for short term capacity. As for the general capacity breakdown in which it is included, the exact percentage of short term capacity shall be determined for each interconnection point and subject to a market consultation.

Interruptible capacity

Though firm capacity is what shippers are most interested in, some respondents to ERGEG's public consultation also value interruptible capacity products as helpful. However, in their view, interruptible capacity at cross-border point can only be useful if harmonised. Indeed, as for firm capacity, non harmonised interruptible capacity, e.g. with different interruption patterns, also create capacity mismatches, which ERGEG seeks to reduce at interconnection points. This said, ERGEG recognises that harmonising interruptible capacity on both sides of interconnection points is a tricky issue. For example, it might be difficult for the network code to define the methodology to calculate the likelihood of interruption. This is why ERGEG reduced the ambition of its proposal regarding interruptible capacity to some specific characteristics of interruptible capacity products.

Transit capacity

Physical transit flows are a reality in many Member States which will not fundamentally change with the implementation of the proposed market model. However, ERGEG is of the firm view that offering separate capacity for transit purposes, i.e. a separation between capacity designed for supplying domestic markets and capacity limited to transit use, is not compatible with the establishment of functioning entry-exit-systems required by the 3rd Package. The fragmentation keeps shippers who have opted for transit capacity out of domestic markets. By limiting the purpose of usage, it also subdivides capacity markets that are fragmented anyway. This is why ERGEG decided not to change its initial proposal regarding the prohibition of dedicated transit capacity.

2.5.2. Cross-border products

- **Recital 19 of Regulation (EC) 715/2009 states that gas shall be traded independently of its location in the system. Do you think that cross-border products will facilitate the exchange of gas between virtual hubs of adjacent markets?**
- **Do you support full bundling of cross-border capacity into one single capacity product, including a limitation of the possibility to trade at the border so that gas is traded at virtual hubs only in order to boost their liquidity?**
- **Do you consider combined products to be an appropriate interim step towards bundled products?**
- **Should capacity at two or more points connecting the two same adjacent entry-exit systems be integrated into one single capacity product representing one**

single contractual interconnection point?

15 respondents explicitly support the bundling of cross-border capacity and the creation of hub-to-hub services. One of these respondents underlines this is a medium / long term aspiration as this will not occur whilst legacy contracts are in place and another would welcome more details from ERGEG about how bundling shall be applied in practice at single interconnection points.

However, 16 respondents are opposed to the full bundling of cross-border capacity into one single capacity product. These respondents require that shippers have the choice between bundled (or combined) products and separate exit/entry products at interconnection points. They do not want trading at the flange to be precluded. For some of them, bundled products should be offered as an additional product to separate exit and entry capacity products, while one respondent state that transmission system operators should be obliged to offer a minimum share of available capacity as combined/bundled capacity. The reasons why full bundling is rejected and why these respondents want the possibility to trade at the flange to be maintained are listed below:

- Trading at the flange is seen as an effective tool to guarantee security of supply and this could not be fully compensated by hub trading or storage.
- Trading at the flange allows parties to do cross-border trades without being present in both countries. It is needed to meet the differing needs of gas shippers. For one respondent trading activities should not be constricted by regulators.
- The full bundling of cross-border capacity would not be compatible with the market mechanisms including spot markets and trading hubs. One respondent state that it would be incompatible with its national network access regime.
- Full bundling might reduce the overall capacity offered.
- The full bundling of cross-border capacity would reinforce the market power of a handful players holding capacity on both sides of interconnection points.
- Bundling of capacities at the border of the EU would unilaterally facilitate access to the European markets for dominant producing companies.
- Forced change in contracts with delivery points at the border should be avoided since this would require fundamental changes to all cross-border supply contracts with delivery at the flange.
- The 3rd Package does not provide for a restriction of the trading at the flange and there would be no legal basis in the energy European for this. Introducing full bundling via comitology would exceed the implementing powers of the European Commission.

Two respondents also argue that trading at the flange will not undermine capacity at the hubs. One other respondent thinks that ERGEG has not explored at all that this change of paradigm will have on the structuring of the portfolios of the great majority of European players, in particular with regard to security of supply; can not be fully compensated by hub trading or storage.

Three respondents strongly support the full bundling of cross-border capacity as its absence unnecessarily reduces liquidity at hubs. One of these respondents declares that trading at the flange could be allowed during a transitional period.

Eight respondents support the introduction of combined products. For three of these respondents, combined products are adapted for the interim period, before bundled products are implemented, while one of them prefers combined products to bundled products. However, for many respondents, what combined products are and how bundled products would be implemented is not clear from ERGEG's proposal.

Seven respondents support that capacity at two or more points connecting the two same adjacent entry-exit systems is integrated into one single capacity product representing one single contractual interconnection point. Two respondents are sceptic on the cost-benefit ratio of the creation of single contractual points and one respondent fears that considerable amount of capacity could get lost.

ERGEG's view

The responses clearly support the introduction of bundled capacity products as described in ERGEG's consultation document. However, almost a majority of respondents want trading at the flange to remain possible and therefore reject the full bundling of cross-border capacity into one single product as well as the bundling of existing capacity contracts.

First of all ERGEG wants to underline the following points:

- In ERGEG's view, bundled capacity is a prerequisite for the functioning of flexible short-term capacity markets across Europe and for prices between different markets to converge. The shorter the duration of a capacity, the greater the impact of transaction costs on the overall price in business management terms will be. Day-ahead capacity and intra-day capacity will only be able to play the role of stimulating the market development in an optimum manner if the needed capacity is bundled.
- ERGEG however thinks that, in some cases, freeing up capacity contracted on both sides of interconnection points on a voluntary basis in order to bundle it would contribute to the integration of market.
- It will be up to the European Commission, in cases it decides to launch a comitology procedure once ENTSOG has drafted the network code on capacity allocation, to decide whether there is a legal basis for the full bundling of cross-border capacity.
- ERGEG's framework guideline only applies to interconnection points between market zones within the European Union. Thus, there would be no bundling of capacity at the borders of the European Union.
- The so called "beach trading" undertaken in the United-Kingdom would remain possible as the entry points into the British transmission system from the upstream pipeline network and the production fields are not subject to the framework guideline on capacity allocation.

ERGEG has extensively consulted on the issue of bundling cross-border capacity, through its public consultation and through numerous exchanges with individual stakeholders, network operators, ENTSOG and the European Commission. After careful consideration, ERGEG thinks that, in the longer term, full bundling of cross-border capacity will positively and significantly contribute to the integration of the European gas markets and to the developments of gas flows between European hubs. This way a more careful approach to market structural concerns is possi-

ble. Once capacity is fully bundled the liquidity that is currently fragmented to hundreds of bookable points will be allocated to a number of trading points that will be further reduced as the integration of the European gas markets progresses.

In order for the full bundling of cross-border capacity to deliver its benefits within a reasonable period of time, ERGEG believes that there is a need for a "sunset clause". Without such a clause, capacity bundling will not be able to significantly contribute to market integration and to the facilitation of cross-border gas flows before years or even decades. This is why the introduction of a provision requiring the technical capacity to be fully bundled five years after the entry into force of legally binding network code seems appropriate.

This provision does not mean that the holders of entry and/or exit capacity contracts will lose their capacity rights at interconnection points. Rather, this will make trading at the flange impossible and, in case of delivery point located at the flange, will require determining a new delivery point. This new delivery point would be the market place either upstream or downstream from the flange.

This new "sunset clause" provision means that by 2017, the technical capacity at interconnection points in Europe should be bundled. In ERGEG's view, this period of time is sufficient for TSOs and shippers to prepare and implement the details of the bundling of existing capacity contracts. In order to support this, ERGEG also introduces a progressive process to bundle the interconnection capacity before the deadline set in the sunset clause. ERGEG thus proposes that the available capacity on one side of an interconnection point exceeding the available capacity on the other side of the interconnection point shall be allocated for a duration not exceeding the expiration date of the corresponding capacity on the other side of the border.

With the introduction of bundled products shippers would be compelled to become active in two adjacent markets themselves. This will definitively be a major change for shippers and will alone greatly raise the number of shippers operating in the international arena. This in turn is likely to exert noticeable pressure on the further convergence of network access rules applying in the European Union.

For TSOs the proposal of fully bundled capacity and single contractual interconnection points mean that there will be a need for further intensive cooperation. On the other hand, the proposed arrangement means that TSOs will be able to manage their networks more freely than has been the case up to now. All network-related decisions will be taken by the TSOs. Above all, this applies to deciding which interconnection point is the most suitable for the netted transports of all shippers' nominations. This also creates additional direct possibilities of shifting the points in time for the gas to be transported and eventually in most cases to offer more capacity.

2.6. Capacity Allocation

- **Should auctions be the standard mechanism to allocate firm capacity products?**

The majority of respondents prefer auctions as the standard mechanism to allocate firm capacity. On the other hand some other stakeholders do not support auctions as the standard allocation mechanism. In the views of two respondents auctions are not the most efficient means of allocating capacity. For one of them argues that it is not reasonable to promote one exclusive mechanism at this stage. There is a need to fully assess inter alia the implications of such a

model.

ENTSOG highlights that a clear picture for capacity allocation has to be developed in the future if compatibility is sought and an efficient market is to be delivered. The results of the ENTSOG CPC Online Survey illustrates that no single opinion in this regard exists throughout the market at least for the time being.

All other stakeholders accept auctions as "[…] the most market-orientated method of allocating the regulated capacity" (TAP). Out of 21 respondents answering this question 17 respondents support auction as allocation mechanism at least for some products. Most of the respondents have different ideas on the detailed models and conditions of using auctions and different alternatives.

According to some respondents the allocation mechanism should not be the same in case of congested interconnection points and of non-congested interconnection points or in fully liberalised and less liberalised markets.

Many respondents are in favour of short-term capacity auctions with a market clearing price (all shippers of the auction pay the same marginal price which is determined by the highest successful capacity offer). Some propose that the reserve price is the cost-reflective regulated price.

One association agrees with the proposal to allocate capacity by means of auctions but supports the proposed guideline to allow pro-rata allocations in an interim period. Not all markets may have reached an adequate level of maturity and liquidity for auctions to be found appropriate, or perhaps the legal framework may have to be adapted.

First of all, stakeholders underlined the importance of a clear, intelligent auction design, which ensures trust in the procedure of all market participants and avoids misuse of the allocation mechanism. In this context, some stakeholders stressed the danger for less solvent competitors of continuous overbidding and practices of methodically blocking the market. For these reasons the allocation design should ensure allocations in a fair, transparent and non-discriminatory manner.

Secondly some respondents referred to the UK experience, where auctions already in use and lessons could be drawn from.

Although most stakeholders presented clear targets for the allocation method and precise ideas on the detailed auction design, some responses required that ERGEG should not set out too detailed allocation rules, but ensure to reach the target of the allocation system. In fact, ENTSOG should design auction terms, of course in close cooperation with all stakeholders.

Some respondents require that at non-congested IPs capacity must be allocated on a first-come-first-served basis.

Finally, the majority identified the need of closer NRA cooperation.

ERGEG's view

All capacity products are to be sold at a specific time. This time is to be published in advance so that all shippers have the opportunity to express their interest in this product during a defined period in advance.

Auctions are the preferred method for allocating capacity wherever feasible and appropriate.

They are seen as an appropriate target model for Europe by an overwhelming majority of respondents. They are considered as the most efficient means of allocating scarce capacity, and reveal the value of the capacity. Through auctions, the capacity is allocated to those shippers who value it most. Auctions are also the preferred method for re-allocating unused capacity freed up through UIOLI provisions. In ERGEG's view, issues arising from market structure and behaviour of market participants (such as vertical integration or market dominance) largely exist regardless of the allocation method, and can in principle be addressed in part through the detailed auction design. In order to meet the market's needs at each interconnection points, the detailed auction design shall be subject to regular consultation and will be approved by the regulatory authorities concerned.

However, ERGEG wants to maintain some flexibility. Therefore, pro-rata allocation will be allowed in cases when conditions are not met for efficient and fair auctions for longer-term products. This might in particular be the case where auctions would result in distorted bidding behaviour. It will be up to the competent regulators to decide whether the conditions are met or not. Over time and with the evolution of market conditions, pro rata allocation will be phased out.

First-come-first-serve capacity allocations are generally disallowed as ERGEG consider the allocation methodology as discriminatory at points where actual or potential congestion occurs. The responses to the former public consultation largely support this ban of FCFS for the allocation of capacity. This is why ERGEG proposes allocation by means of auctions or pro-rata procedures.

One concrete issue arises: how should capacity which has not been sold during a non discriminatory and transparent allocation window (i.e. through an auction or a pro-rata procedure) be reoffered to the market. If capacity remains available after it has been offered through an allocation window, then it can be presumed that there is no congestion. In this case, in ERGEG's view, there are two options:

1. The one preferred by ERGEG: re-assigning unsold capacity to shorter-term capacity products.

2. Another option is to allocate the capacity which is still available after the non discriminatory and transparent allocation window to shippers requesting, i.e. to allocate it on a first-come-first-served basis.

The second option is acceptable only if some conditions are met:

- the concerned national regulatory authorities have made sure that no congestion will occur between two subsequent allocation windows and after market consultation;
- there are at least yearly and monthly capacity allocation windows under the form of either auctions or pro-rata allocations;
- the unsold capacity which is to be offered on a first-come-first-served basis between two subsequent allocation windows shall be published and available to every market participants.

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

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

Most responders suggest that the auction results might lead to increasing or more volatile prices. Stakeholders also estimate a gain of liquidity and competition within the markets.

Some responders add a few individual remarks: One of them anticipates that auctions are "[…] a more consistent and efficient basis for determining capacity investment at existing IPs than an 'open season' approach".

Another respondent fears that a possible margin resulting from auction prices will end up complete in the TSO pockets. This point is highlighted by some other stakeholders, too. But they accent the need of clear rules to control cases of break-even and non break-even auction results (e.g. duty of investments in debottlenecking) and the possibility of NRAs to sanction TSOs for misuse. He also describes in a second scenario the risk of a competition avoiding behaviour by incumbents (caused by non-cost-covering bids), which may lead to higher end-user gas prices.

One respondent guesses on an adjustment of end user gas price in one zone, caused by the use of same allocation mechanism in that zone.

Another one refers to its experience within markets who already apply auctions and they do not see "any progress at systematically using auctions to allocate capacities as long as it has not been clearly explained and validated if there would be only one tariff at the same IP and how the possible extra revenue of the TSO is going to be".

Regarding the question if pro-rata allocation should be allowed as an interim step stakeholders are undecided. Some of them accept pro-rata as an interim step and some of them do not.

Responders who do not agree with pro-rata allocation argue that this method in fact satisfies none of the market participants. No shipper will receive that capacity which he ordered, unrealistic capacity requests may be a result of such an allocation method. Additionally, some answers allude to the target of the guidelines, the harmonised European energy market, and question if possibilities to keep pro-rata allocation will contribute to that. According to these respondents an interim step is not needed and different allocation methods just hinder the harmonisation.

Stakeholders, who do accept pro-rata allocations as an interim step, argue differently. Some of them suggest on their experience with pro-rata allocations. Others just want to assure shippers' needs, independently from the used allocation method. Another respondent wants to use pro-rata, or other additional methods. After a certain period of time TSOs and NRAs should decide on a case-by-case basis which method is the most efficient one.

ERGEG's view

At congested points where capacity is scarce capacity prices might indeed increase. In ERGEG's view the additional revenues shall not remain with the TSO. Auction revenues exceeding the regulated tariffs shall be used for different aims in accordance with national provisions, such as lowering network tariffs, removing congestion by investments or providing incentives to the transmission system operators to offer maximum capacity.

In an auction procedure those shippers who value the capacity most will get it. Therefore, in developed markets, ERGEG do not see a risk of major distortions since the price spread between the markets caps the premium shippers are willing to pay in an auction.

European Regulators see however a potential risk that in less developed markets auctions result in excessive prices and support anti-competitive behaviour by incumbent capacity holders. This is why pro-rata allocation shall be an optional allocation methodology in cases when conditions are not met for efficient and fair auctions of longer-term products.

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

First of all, all respondents accept secondary markets as a useful tool "[…] to maximise the use of the existing capacity […]".

A small majority prefers harmonised firm secondary capacity products defined in the guideline. All these respondents want to have secondary capacity products which are in line with primary capacity products. To ensure that this target can be achieved "[…] the guidelines and the network code should elaborate requirements on harmonized products […]". But a strict set of rules for secondary markets could be too inflexible.

Just one respondent wishes to apply strictly the same rules for secondary market, which are used on the primary market.

Another respondent elaborates on some measures which could be put in place, to ensure a functional basis of secondary market:

- TSOs should propose a web platform for posting offers and demands anonymously
- TSOs should ask for a limited fee for such a service
- Choice for shippers, either transfer usage or ownership of capacity
- Price capping (120 % of published tariff)
- OTC should remain possible

These proposals deal with problems, which are highlighted by some respondents. There are *inter alia* questions about the costs, the prevention of market manipulations and the final role of TSOs. In this context, stakeholders fear misuse resulting from non-existing rules on one hand; others fear excessively detailed rules because the secondary market should still be a shippers' market.

Furthermore the answers highlighted that the creation of a standardised booking platform for secondary capacities should not forbid OTC capacity trading. Also the "slicing and dicing" of capacity should be possible.

In short, one statement summarises accurately those views which generally prefer some rules for secondary markets: "[…] the framework guideline should indicate that the TSOs must facilitate secondary capacity trading, as long as the traders are communicated in the format suitable for the primary market. The TSO should not be involved in the design of products for the secondary market, as this is an area that involves market parties' only."

ERGEG's view

In general, secondary markets are still poorly developed. This might be caused by the poor design of secondary markets. However, a major obstacle to secondary markets is that in the end shippers have to offer their capacity to their competitors. In particular the fact that offering shippers provide evidence that they have too much capacity and that buying shippers show their capacity needs reduces their willingness of to use secondary markets.

Secondary markets are regulated to a different degree in different Member States. In some Member States regulations on price caps or mandatory platforms are in place. However, it is not the intention to introduce price caps or to disallow OTC capacity trading at the European level.

ERGEG agrees with those respondents who want the secondary market to be aligned as much as possible with primary market. In the end shippers are interested in access to capacity and do not care too much if the acquire it on the primary or on the secondary market.

ERGEG appreciate the support for harmonised firm secondary capacity products allocation in line with those on the underlying primary capacity market and for the proposal that anonymous procedures for the secondary trading shall be implemented. This would help to mitigate the concerns related to the poor development of the secondary markets.

However, ERGEG acknowledges those comments which highlight that secondary market related issues in the framework guideline might overburden the process. Therefore, it has been decided to drop references to secondary markets in the guideline.

2.7. Secondary capacity and booking platform

Booking platforms and joint allocation of primary and secondary capacity

An overwhelming majority of respondents are in favour of a single platform for the trading capacity between adjacent areas. For these respondents, such a platform could be developed from already existing platforms such as in Germany trac-x; or could look like an "Eucabo"-alike platform to handle bundled products for all TSOs within a regional market area; or follow the market model set by the electricity market for the North - West region (CASC-CWE), offering secondary capacity via resale of capacity or a web platform where shippers could post anonymously offers and demands of capacity like GTS's Bulletin Board or GRTgaz; or could just be a "one-stop-shop" for acquiring capacity between market areas. Non-bundled products may also be handled by other platforms. For a respondent, both within-day primary and secondary capacity should be allocated via a central platform and on a FCFS basis.

Nevertheless, 12 respondents believe this should not restrict the possibility to trade secondary capacity OTC out of the platform.

One respondent thinks that implicit auctions – joint allocation of capacity and gas – should be considered for short-term allocation at a later stage.

One user is not in favour of a single trading platform at all.

Twelve respondents agree that joint allocation of primary and secondary capacity products on these common platforms would strengthen capacity markets or at least be positive.

Three other respondents do not think however that joint allocation would be useful or make a difference with regard to the capacity market, since the primary and secondary markets serve different purposes. Two actors believe that joint allocation would be a complex issue and that it should be considered with care. Another respondent believes that priority should be given to the development of efficient secondary markets, and only after that, the issue of joint allocation could be further explored. Finally, a respondent believes booking platforms are out of the scope of the FG on CAM, and its development should not be regarded as an obligation but as an added value when booking capacity. He also thinks that mixing up the regulated business of TSOs with the non-regulated one of capacity trading poses major difficulties and that the effect of joint allocation is hardly predictable at the present stage.

Design of the platform, modalities of secondary trading, products and services provided

14 respondents think that there should be harmonised products and anonymous procedures for secondary capacity in line with those on the underlying primary capacity market. However six stakeholders state that these products and procedures, or more generally secondary markets, should not be in the network code. For a respondent it is important to ensure that secondary capacity products can be combined with primary capacity products to manage a portfolio. Another respondent supports auctions through anonymous platforms as the most efficient allocation method.

Concerning secondary capacity price, three respondents believe as well that the price of secondary capacity should not be linked to the price of primary capacity, since it would prevent users to offer their capacity under the price of primary capacity in case of low demand. One respondent says that a market price shall prevail and there should be neither caps nor floors introduced to it. Another user states that the price for secondary capacity should be capped to avoid speculation. Finally, for another user secondary capacity prices should be allowed to compete with primary capacity prices.

On the modalities and services, two respondents ask the platforms to provide a clearing service as well as relevant information of OTC trades, provided that full cost-recovery and adequate implementation periods are in place. For another one, the design of secondary trading products should be driven by the market. For one stakeholder, before a nomination gate closure there should be no restriction for holders of primary capacity to market them separately in a non regulated secondary market, which may be bilateral or brokered, on a single platform per market, multiple platforms per market or platforms covering multiple markets.

Several respondents support that shippers should have the choice either to transfer only the right to use the capacity or also the complete contract including all rights and obligations. Another stakeholder suggests the establishment of a central register for capacity rights through an independent service provider, endorsed by the TSOs and with experience in dealing with natural gas markets.

One respondent thinks that rules to exchange capacity should be harmonised at European level. More importantly, the same respondent thinks some key contractual aspects should be standardised, such as force majeure definitions and its application. Another respondent also believes that standardisation is one of the benefits a secondary trading platform can bring on, together with more transparency, security, surveillance, clearing solution and central platform, and an efficient link between trading and settlement. For one use, it is essential to find the right balance of standardisation and flexibility which can be achieved by a minimum of primary and secondary capacity platforms. Another user thinks TSOs should ask for a limited fee if the use of the service is made mandatory.

Finally, in the view of a user, to ensure that market participants make use of secondary markets, a number of conditions should be in place: access simple and cheap to capacity, the possibility to split and combine (bundled) products, i.e. fragmentation in time and volume. This user believes that the principles enshrined in the EASEE-gas Common Business Practices on Secondary Capacity Trading provide adequate guidelines.

Funding of platforms, cost coverage and management of revenues

Some respondents raise that the way of how joint systems are funded must be taken with care to avoid generating excessive IT costs. This same respondent suggests incentives for TSOs to facilitate secondary trading through amending tariff methodologies so a proportion of revenue is received through commodity, considering also possible amendments of national legislation where this prevents implementation of the guidelines. Another stakeholder believes that the expenses for the introduction and operation of these web-based platforms should not be burdened to TSOs without compensation. For one respondent, it should be made sure that there are no costs when capacity exchanges are nominated to TSOs, for such costs may be too high and prevent any interest to trade. Broker fees may be charged only when shippers choose to use their services. For another user, it is important to ensure that the costs are proportionate as they will ultimately be passed on to the consumer.

One association states that the marketing of primary capacity must have priority over the marketing of secondary capacity, since this ensures the revenues for TSOs, used to remove congestions or to lower tariffs.

Finally, other respondents it is essential that there is a clear order for the allocation of revenues from a joint and homogenous marketing of primary and secondary capacity. For another actor, network users should be paid a pro-rata share of any auction revenues generated based on the contribution their secondary capacity makes to the total primary and secondary capacity offered.

Responsibilities for TSOs

Eight respondents state that TSOs should facilitate secondary trading, for instance by recording trade and adjust each network users capacity holdings accordingly. TSOs should also facilitate assignment of capacity where the obligations associated with that capacity transfer permanently between users. Another stakeholder believes that ensuring that the TSOs facilitate this process is the only way secondary capacity trading will be a success.

A respondent asks for more clarity in the FG/NC on how secondary trading can be facilitated. Another one thinks TSOs should provide shippers with the facility to register transfers, including those resulting from OTC capacity trades.

For another stakeholder, TSOs should provide a central booking platform where players meet and where OTC capacity transactions should still play a very important role. TSOs should only provide the necessary instruments to manage secondary markets, but should not be assigned the role of managing these markets.

For a respondent, TSOs will have to work closely together in order to harmonise capacity products and communication procedures, and to standardise capacity calculation.

In a respondent's view, TSOs can only facilitate but not act in its original role as TSOs on the secondary capacity market, and TSOs cannot develop definitions for products.

"Slice and dice"

Five respondents are in favour of allowing the possibility to "slice and dice" capacity, i.e. divide capacity into its constituent parts, being able to sell an individual season, month, day or even hour taken from a capacity booking for a longer period.

ERGEG's view

There is broad agreement that secondary capacity trading is of greatest importance to maximise the access and use of capacity and allow the users to have the flexibility they need to manage their portfolio. The main principles contained in ERGEG's proposed framework guideline – establishment of a single platform and joint allocation of primary and secondary capacity – receive, in general terms, good support, provided that the possibility to trade capacity OTC out of the platform is preserved, and costs generated by setting such platforms are recognised and covered.

On the other hand, a relevant number of respondents are not in favour of including in the network code a definition of harmonised products and procedures for secondary capacity, or more widely, they think there is no need to cover secondary markets in the FG. This is why ERGEG dropped the initial provision related to secondary market and only keep the one on the booking platform.