



EREG Guidelines for Good Practice on Open Season Procedures (GGPOS)

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1 Background

- (1) This document represents ERGEG's final Guidelines for Good Practice on Open Season Procedures (GGPOS), following an ERGEG public consultation process. In May 2006, during the 11th European Gas (Madrid) Regulatory Forum, the European Commission presented a set of draft explanatory notes on Regulation 1775/2005/EC, Art. 5, dealing with capacity allocation mechanisms and congestion management procedures. Among other things, these explanatory notes stated that further clarity was needed on the role of open season procedures.
- (2) At the Madrid Forum, the European Commission indicated that it might request ERGEG's advice on the role of open seasons. ERGEG declared its willingness to provide such advice and began work on a set of draft Guidelines for Good Practice on Open Season Procedures (the draft GGPOS) aimed at ensuring that open season procedures are conducted in a non-discriminatory and transparent manner and result in efficient outcomes. The draft GGPOS identify what the purpose of an open season should be and how an open season should be structured.
- (3) ERGEG published its draft GGPOS on 6 December 2006, for public consultation until 19 January 2007. ERGEG received 15 non-confidential responses and 2 confidential responses. All non-confidential responses have been published on ERGEG's website, at www.ergereg.org. ERGEG has given due consideration to the comments received and have also provided justification of the ERGEG view in the document "ERGEG Public Consultation on the draft GGP on Open Season Procedures (GGPOS) – Evaluation of the Comments Received (C06-GWG-29-05b), which is also available on ERGEG's website.
- (4) During the 12th Madrid Forum (February 2007), ERGEG gave a brief overview of the main issues addressed in the responses it received. The Forum thanked ERGEG for its presentation and invited ERGEG to finalise the GGPOS in close cooperation with the Commission and stakeholders. In order to do this, ERGEG invited all concerned stakeholders to a workshop on open seasons in Brussels, on 19 March 2007, to discuss outstanding issues with regard to the draft guidelines, and in particular the issues raised during the 12th Madrid Forum, namely:

- a. the fact that an open season is a useful instrument to assess the market demand for market capacity, but not the only one; the need to distinguish between the capacity allocation and market evaluation functions of an open season; and the fact that open seasons must take into account specific capacity allocation mechanisms and give consideration to short term capacity bookings;
- b. the appropriateness of open season procedures for all capacity expansions, and in particular the consideration that should be given to the size of a project and whether it is subject to article 22 procedures;
- c. the need for increased coordination between TSOs regarding cross-border and cross-TSO investments and projects, and the establishment of a unique interface;
- d. the need for regulatory cooperation and coordination regarding cross border projects and for good coordination between regulators and TSOs.

The minutes of this Workshop on Open Seasons (March 2007) are available on the workshops section of the CEER website, at www.ceer-eu.org. T

The role of open season procedures

- (5) Energy security and the development of a competitive internal market in natural gas require the availability of sufficient infrastructure. For competition to develop, infrastructure must also be sold at conditions that fit the market's needs and must be accessible on a transparent and non-discriminatory basis.
- (6) Open seasons help an investor, or “project sponsor”¹, fulfil these three tasks. Indeed, open seasons are a two-step process which allows a project sponsor to efficiently consult the market about how much infrastructure it needs, and under what terms it would like this infrastructure to be marketed. It also allows resulting capacity to be allocated on a transparent and non-discriminatory basis.
- (7) Given these advantages, and provided that appropriate incentives are in place, it can be assumed that a properly unbundled project sponsor, in pursuing the interests of a system operator, would use an open season procedure to efficiently identify market needs and allocate capacity.
- (8) In a mature market, an investor may use other market-based mechanisms to identify needed capacity. However, if these mechanisms are to lead to the same efficient, transparent and non-discriminatory outcomes as open seasons, they will need to produce sound investment signals, and be accompanied by robust forecasting systems, as well as well-functioning capacity allocation mechanisms.

¹ A project can also be sponsored by a group of investors. The sponsor can be an existing system operator (SO), or an outside investor, or group of investors. If the sponsor is not an SO and intends to operate the new infrastructure, and signing contracts for infrastructure use, it will need to abide by the unbundling provisions of Directive 2003/55/EC.

(9) In some Member States, investment decisions are made by the government via national planning. In this case as well, if national planning is to produce the same efficient, transparent and non-discriminatory outcomes as open seasons, investment signals must be sound and capacity allocation mechanisms must be well-designed. Thus, as current practice in an open season, system users should be consulted, along with the national regulatory authority (NRA).

2 Application

(10) There are some investments for which open seasons will produce higher costs than benefits, or may be unfeasible. As a result, the present guidelines do not apply to all types of investments.

(11) The GGPOS apply to the whole capacity of new transmission, LNG and storage² infrastructure including extensions or upgrades to existing infrastructure unless other mechanisms approved by the NRA or other relevant regulatory authorities, and leading to the same efficient, transparent and non-discriminatory outcomes³ as open seasons, are adopted.

(12) However, the GGPOS do not apply to infrastructure that is used exclusively for distribution purposes. Open seasons may be needed for distribution infrastructure that is also used for transmission purposes. This decision should be left to the NRA.

(13) Moreover, the guidelines only apply to investments resulting in a significant amount of new marketable capacity. What constitutes “a significant amount of new marketable capacity” is left to the NRA.

(14) The applicability of open seasons to Article 22-exempt infrastructure, or to potentially exemptable infrastructure, will be treated in ERGEG's guidelines on Article 22 exemptions.

² This being said, ERGEG recognises that LNG and storage projects may be subject to greater technical constraints than transmission projects, and these constraints should be taken into account when designing the open season.

³ The goal of an open season is to size, tailor and allocate capacity on an efficient, transparent and non-discriminatory basis. These are the outcomes any alternate mechanisms should produce.

(15) While ERGEG's Article 22 guidelines are being developed, if an open season is applied to a project that intends on applying for, or has been granted, an Article 22 exemption, the present guidelines could be used to define how the open season ought to be structured.

(16) The GGPOS should not apply to projects that are at an advanced stage and had no prior knowledge of the guidelines. Projects that are at an advanced stage may include projects that have already been granted, or have filed for, an authorisation or license. The final decision as to whether a project is at an advanced stage and should be excluded from the scope of the guidelines is left to the NRA.

3 The conditions that call for an open season

(17) Before initiating an open season and considering whether new investment is needed, full use should be made of existing infrastructure via the application of appropriate congestion management mechanisms to avoid contractual congestion.

(18) If physical congestion exists and this congestion is substantial enough, additional investment will be needed. Ideally, this type of situation ought to be identified before it actually occurs since building new infrastructure typically takes a number of years.

(19) In theory, the operator of the existing infrastructure will see, based on access refusals, forecasts or other signals, that existing infrastructure is no longer sufficient, and will decide to enhance its system⁴. There are also cases where the government or NRA will decide that investment is needed and impose that the system operator make these investments, or will approve investments. In both of these cases, the existing system operator (SO) will be the sponsor of the new infrastructure. Finally, there may be situations where outside investors perceive that there is a need for new infrastructure and wish to sponsor it. The legal framework should allow such investments to take place. In all three cases, an open season involving the NRA and consultations with users would help decision makers estimate exactly how much and what kind of new capacity is needed, while ensuring that capacity is allocated on a transparent and non-discriminatory basis.

(20) If the existing SO or outside investors do not decide, or are not ordered, to carry out necessary investments, shippers may wish to notify the SO that existing infrastructure is no longer sufficient to satisfy their needs. If the SO does not respond appropriately, shippers could turn to the NRA as well, possibly, as other relevant national regulatory authorities for support and confirmation that congestion is substantial enough to justify additional investment. Intervention by these authorities would be consistent with the possibility for Member States, introduced by of Directive 2003/55/EC, Art. 21.4, to take the measures necessary to ensure that the natural gas undertaking refusing access to the system on the basis of lack of capacity or a lack of connection makes the necessary

⁴ SOs should be on the lookout for such situations. They should regularly consult users and conduct their own analysis to assess whether new capacity is needed and an open season ought to be initiated.

enhancements as far as it is economic to do so or when a potential customer is willing to pay for them”.

(21) For transmission infrastructure, including interconnections, if the congestion that has been identified is of a long-term nature, it should be possible for the NRA to explicitly require that the TSO invest, which would in turn be facilitated by the initiation of an open season. Indeed, Directive 2003/55/EC, Art. 2.4, provides that SOs are responsible for “ensuring the long-term ability of the system to meet reasonable demands for the transportation of gas”. This is in addition to Directive 2003/55/EC, Art. 8, which require TSOs, as well as LNG and storage operators, to “develop secure, reliable and efficient transmission facilities”, and to any obligations that might exist at national level.

(22) If a TSO is unwilling to satisfy demands it deems unreasonable due to technical or economic constraints, it should state what these constraints are. The NRA ought to be responsible for evaluating these claims and taking appropriate action.

4 The structure of the open season

(23) This section of the guidelines describes the open season's two phases. During the first phase, the sponsor assesses how much capacity the market needs and under what terms. During the second phase, the sponsor offers capacity to the open season participants and, if satisfied with this offer, open season participants sign a binding agreement with the sponsor. Different methods can be used to allocate capacity during the second phase, but the method chosen by the sponsor must be transparent and non-discriminatory.

4.1 First Step: the assessment of the market's needs

4.1.1 The preparatory phase

(24) Prior to the open season, the sponsor should consult with system users to assess how much capacity the market needs and under what terms (price, contract duration; firmness etc.). In parallel, the sponsor should evaluate economic and technical constraints.

(25) Afterwards, and prior to the start of the open season, the sponsor should forward the details of the open season it plans on conducting to its NRA. This will allow the NRA to verify that the proposal made by the sponsor is reasonable and non-discriminatory, and consistent with the present guidelines. NRAs may waive the requirement of ex-ante approval of Open Season proceedings where efficient ex-post instruments and remedies against abusive Open Season proceedings are in place. In particular, the NRA will verify that the proposal broadly reflects market demand and technical and economic constraints. If the NRA has any concerns regarding the sponsor's proposal, they should be resolved before the beginning of the open season. The NRA should in principle be able to order modifications to the proposal. The NRA will need to continue to monitor the open season until its conclusion and raise and help resolve any additional concerns that may emerge.

(26) The sponsor then needs to inform potential users about its proposed project. This should be done before the start of the bidding period so as to allow system users to study the proposal before having to file requests for capacity.

4.1.2 The open season notice

(27) The sponsor's open season notice should be sufficiently publicized to attract interest from third parties and to permit their meaningful participation. Avenues used to publicise the notice should include appropriate national and international media, the sponsor's website and if agreeable the relevant regulatory authority's website. To avoid discriminating against foreign shippers, the notice should be available in English.

(28) The goal of the open season notice should be to give open season participants as much information as possible on the sponsor's project and therefore the service the open season participants are being proposed. All notices should at least include the following general information:

- the start and end dates for making non-binding offers: this period shall be long enough to attract as many market participants as possible; the length of the period should be adapted to the size of the project; a minimum period of three months is suggested;
- how to make non-binding offers;
- arrangements in place to ensure the confidentiality of information received from open season participants; if arrangements are in place to ensure the confidentiality of information provided by the project sponsor, they should be applied in a non discriminatory way and should not produce discriminatory outcomes;
- the methodology, or "economic test" that will be used to decide how much capacity is ultimately built;
- the allocation rules that will be applied in case the demand indicated in the open season can not be fully met - if contract duration or any other factors should influence the allocation, those factors should be mentioned;
- the date on which capacity allocations will be communicated to open season participants;
- the date by which open season participants will be asked to sign a binding agreement;
- creditworthiness guarantees and deposits open season participants will be asked to provide when signing binding agreements;
- drafts of the legally binding agreements open season participants will be asked to sign; these drafts should be approved by the NRA;

- the procedures and timetable for ensuing regulatory approvals;
- possible regional coordination problems and responses;
- mechanisms to deal with cost-overruns;
- penalties applied to the sponsor if capacity is not delivered on time.

(29) In addition, the notice must include specific information about the project itself. For a typical transmission project, open season participants should at least be informed about:

- existing technical capacities, if any, as well as historical booked and used capacity patterns, so as to allow open season participants assess whether buying interruptible capacity might be more advantageous than investing in new capacity;
- the project's intake and offtake points and any alternative intake and offtake points under consideration;
- technical and available capacities, as well as operating pressures, at each intake and offtake point, and for each design under consideration;
- the in-service dates of each design under consideration;
- possible capacity expansions beyond the initial project and their in-service dates.

(30) For each design under consideration and each possible capacity expansion, the sponsor will also need to inform users about:

- quality specifications;
- nomination, renomination and measurement procedures;
- capacity overrun and balancing regimes;
- secondary trading arrangements;
- UIOLI arrangements;
- available contract lengths: these contract lengths need to be compatible with competition law; the sponsor shall always offer long-term as well as short term contracts;
- available capacity types (firm/interruptible);
- minimum lot sizes;
- the tariffs for each service the sponsor is offering, or indicative tariffs and underlying methodologies :
 - if the tariffs depend on the level of total subscriptions, and if open season participants will only be able to bid once before signing binding agreements, the tariffs should be given for all possible subscription situations;

- tariffs, or indicative tariffs and underlying methodologies, should be set or approved by the regulator before the beginning of the open season;
- if indicative tariffs and underlying methodologies are provided they should incorporate all the information available to the project sponsor, so as to allow users to evaluate final tariffs as precisely as possible;
- consistent with Art 4.2 of Regulation 1775/2005, fees for short and long term capacity “shall not result in arbitrarily higher or lower tariffs not reflecting the market value of the service”;
- where a long-term tariff or tariff methodology is not provided for long-term capacity, users should be given all available elements to evaluate possible tariff movements as precisely as possible;
- any remaining elements of the transportation contract necessary for system users to assess services on offer;
- if any of the above elements are already present in existing and publicly available regulations and network codes, reference can be made to these regulations and codes.

(31) Finally, consistent with section 7 of the guidelines on coordination with adjacent SOs, the open season notice should contain information about products on offer on adjacent systems. Information about these products should be as detailed as the information provided by the project sponsor about its products.

(32) Notices for LNG projects should be checked by the NRA, should follow the above format as closely as possible, and should aim at achieving a similar level of detail so that open season participants are able to assess the services they are being offered, while taking into account technical differences relative to transmission. For example:

- a. the notice will need to list the type of the ships the terminal is able to accept;
- b. the description of the nomination procedure will need to include a description of the scheduling process;
- c. capacities and capacity fees will need to be given for the different components of the service.(e.g. docking, storage, regasification and emission components); if services are marketed in bundled form, open season participants should know what the bundles comprise.

(33) Notices for storage projects should be checked by the NRA, should follow the format for transmission projects as closely as possible and aim at achieving a similar level of detail so that open season participants are able to assess the services they are being offered, while taking into account technical differences relative to transmission. For example:

- a. the notice will need to state any gas-in-store thresholds users may be subject to;
- b. the notice will need to describe storage services (e.g. how many flow inversions users will be entitled to as part of the basic service);
- c. capacities and capacity fees will need to be given for the injection, space and withdrawal components of the service;
- d. the notice will need to describe regulatory issues, such as Public Service Obligations (PSOs) where applicable.

4.1.3 Non-binding bids on the basis of the open season notice

(34) The open season shall allow interested parties to indicate the amount and type of capacity (delivery and receipt points; contract duration, firmness) they would like for each design under consideration and expansion size under consideration. If strictly necessary for engineering and planning purposes, interested parties should also inform the sponsor about the expected upstream and downstream systems they will rely on.

(35) The open season will also allow users to comment on any modifications to the sponsor's proposal that would better accommodate their needs; including at a minimum modifications regarding:

- the date of commencement of service;
- the service duration (in years; long term/short term);
- the types of services on offer (firm/interruptible services);
- the intake and offtake points ;
- the amount of capacity made available at each point;
- the products offered by adjacent SOs.

4.1.4 Adjustments and decision process after bids have been received

(36) If, after bidding, capacity fees or any other important information in the open season notice changes materially, another bidding round will need to be organised.

(37) If the open season reveals that demand for capacity is lower than capacity on offer, and capacity on offer cannot be reduced by a proportional amount:

- a. if applicable, the sponsor may wish to conduct another round of bidding using a different tariff;
- b. otherwise, there needs to be an economic test to decide whether an investment must go ahead or not:
 - i. the economic test should be approved by the regulator;
 - ii. demand can turn out to be insufficient at the end of the open season's first phase (because non-binding bids have been insufficient) or at the end of the open season's second phase described in the next section of the guidelines (because winning open season participants have turned down the allocations proposed by the sponsor). The economic test should address both situations (see paragraph 47) ;
 - iii. the sponsor should be able to go ahead with the investment if it believes that sufficient demand will eventually develop and if it is ready to take on the financial risks associated with the project (i.e. that consumers do not carry the risk of potentially stranded assets).

(38) If the open season reveals that there is too much demand for its proposed project, the sponsor should amend the size of its project and conduct another open season based on this new proposal, unless it is not technically viable.

4.2 Second Step: the sponsor's proposed capacity allocation, and binding agreements

(39) Market tests allowing the project sponsor to gauge how much demand exists in the market and what terms for the sale of capacity would best fit the market are essential. But to be truly effective, these tests must be followed by a non-discriminatory allocation of capacity. This section sets general principles aimed at guaranteeing such an allocation.

(40) If bids received during the first step have passed the economic test and shown that the investment is viable, the sponsor allocates available capacity among the open season participants.

- (41) Different capacity allocation methods can be used, but the method that the sponsor chooses must be transparent and non-discriminatory. The NRA must ensure that this is the case.
- (42) Short term bookings should be taken into account when allocating capacity. Short-term capacity may raise tariffs, but the benefits from increased competition may outweigh these costs.
- (43) If satisfied with the allocation they have been proposed, open season participants enter into a binding agreement with the sponsor. In this agreement and thanks to the additional information the sponsor has gained throughout the bidding process, the sponsor is able to provide open season participants more information on the nature of services offered. In particular:
- a. the tariff, or indicative and underlying methodology, should be clear:
 - i. if only an indicative tariff and underlying methodology can be given, they should incorporate all available information, so as to allow users to evaluate the final tariffs as precisely as possible;
 - ii. where a long-term tariff or tariff methodology is not provided for long-term capacity, users should be given all available elements to evaluate possible tariff movements as precisely as possible.
 - b. the sponsor should state clearly how much capacity it will build.
- The level of information in the agreement should reflect the level of information available to the sponsor.
- (44) The sponsor may require potential system users to provide bank guarantees/and or a fee up to an amount corresponding to certain parameters of the binding agreement. These guarantees and/or fees should be reasonable and should not discriminate against new entrants.
- (45) The relevant regulatory authority must have access to the terms of agreement between the shippers and the project sponsor and verify that the same terms have been applied to all shippers.

(46) If the sponsor does not subsequently deliver the specified capacity, financial compensation should be made available to the open season participants in accordance with any contractual arrangements in place.

(47) If some open season participants are not satisfied with their allocation and decide to relinquish the capacity they have been proposed, this capacity will typically be offered to the other open season participants. The NRA should ensure that whatever arrangement in place is transparent and non-discriminatory. If capacity cannot be resold to other open season participants, the economic test mentioned in the previous section of the guidelines will dictate whether the project should still go ahead.

5 The results of the open season

(48) Once a final investment decision has been taken and binding agreements have been signed, the following information should be made public unless the relevant regulatory authority confirms that this information is commercially sensitive:

- the investment decision made by the project sponsor (complete design and capacity of the project, timetable for work and estimated in-service date);
- tariff and contract duration.

(49) The NRA may wish to evaluate whether the open season has produced satisfactory results. In particular it may wish to assess whether the final investment decision is adequate given market demand and capacity expansion possibilities. To make such a determination, the project sponsor should provide all relevant information to the NRA.

6 Coordination with adjacent SOs

(50) Because a shipper's ability to use capacity on a given infrastructure is often contingent on the availability of compatible downstream and upstream capacity, the sponsor of a project must coordinate itself with adjacent SOs and develop combined products. This means that:

- a. in addition to the services offered by the project sponsor, open season participants should be able to access services on adjacent systems;
- b. the products offered by the sponsor and adjacent SOs have to be compatible;
- c. products have to be offered in a coordinated way, using compatible and/or coordinated timetables and processes, including compatible and/or coordinated information provision processes, underpinned by a precise definition of the duties and responsibilities of the sponsor and adjacent SOs in these processes.

(51) Coordination should start early on. If it has any concerns regarding the degree of coordination between the sponsor and adjacent SOs, the relevant regulatory authority should raise them before the start of the open season, just as it would raise any other concerns regarding the open season's other features, and then continue to monitor and help resolve concerns that might emerge during the open season.

7 Coordination between national regulatory authorities

(52) In some cases, the project sponsor will have to coordinate itself with foreign SOs. For example, this will be the case when an open season is organised for a transmission entry point. In these cases, there will also be a need for coordination between national regulatory authorities:

- a. national regulatory authorities must ensure that their respective regulatory frameworks are clear enough and share a sufficient degree of similarity so that it is possible for the project sponsor and adjacent SOs to design open seasons involving compatible products and processes; they should also ensure that whatever differences between regulatory frameworks do exist are not a barrier to investment;
- b. national regulatory authorities must jointly monitor the open season and resolve concerns regarding the arrangements put into place by the project sponsor;
- c. many of the issues the sponsor and adjacent SOs will need to address will be tied to the allocation of costs and to remuneration. It is essential that national regulatory authorities provide timely and coordinated input on these matters to the sponsor and adjacent SOs.