

Public consultation on the Draft Framework Guidelines on rules regarding harmonised transmission tariff structures for gas

Cost allocation methodologies and Tariffs for incremental capacity

Questions

I. Cost allocation methodologies

Input assumptions and general principles (2 questions)

1. Do you agree with the current proposal on the information to be gathered regarding input assumptions to run the methodologies (as described in Section 3.2 of the Cost allocation and the determination of the reference price)

No

ENTSOG believes that transparency requirements foreseen by EC Regulations already constitute a comprehensive panel of information available to users (Annex I Chapter 3 Reg.715/2009; REMIT; Reg.347/2013). If additional requirements are introduced, consistency with existing legislation must be kept.

The information to be published in relation to the TSO's tariffs and the calculation thereof is far-reaching and will certainly include confidential commercially sensitive information of TSOs and network users. The protection of such commercially sensitive information is covered by the Third Package (reference to Article 16 (1) & 41 (16) of Directive 2009/73/EC).

Even though the proposed publication requirements could be justified on the grounds of general interest (in term of ensuring cost-reflectivity, non-discrimination, etc.), the existing regulatory control (via tariff approval and/or determination of the tariff methodology by the NRAs) already enables cost reflectivity and non-discrimination to be achieved in a more efficient and less onerous way, without affecting the protection of the TSOs' and users' confidentiality needs. Therefore, the proposed publication requirements do not pass the proportionality test: the transparency measures do not constitute an appropriate method of achieving the objectives of cost reflectivity and non-discrimination since this can be achieved by NRAs in a less restrictive way. The current text imposes the publication of a lot of data, which will represent a non-negligible amount of additional workload, with limited added value for network users.

Despite the overall wish for transparency one must keep in mind the competitive environment between different transit routes providing gas to all Member states and the discretion required in order to maintain such competition. Some of the publication requirements include commercially sensitive information, e.g. "allowed revenues", "incremental costs" and "terrain characteristics". If the above issues can be addressed, particularly with regards to commercially sensitive information, then the published information should be limited to only the information that is relevant for the tariff calculation. Technical information and cost data are, for example, part of the competitive advantage of TSOs involved in pipeline competition and publication of such data should be considered with a view to maintaining competition.

The transparency of unit costs for expansion of the network is also a real problem because making such data available could lead to suboptimal negotiations with potential contractors for future network expansion.

Publishing standardised costs could create misleading reference points that do not reflect differences between different sections of the network.

The input assumptions set out in the consultation document do not sufficiently reflect price cap regimes and the relevant related information, e.g. allowed revenue is specified and this implies a revenue cap regime but a parallel specification for price cap regimes is not made.

Finally, historical re-valuated costs should also be considered, within the observed costs section of chapter 3, as a viable option to reflect the cost of the existing system.

2. Do you agree with the current proposal on the determination of the entry/exit split? (as described in Section 3.3.2 of the Cost allocation and the determination of the reference price)

Yes, but with refinements

ENTSOG is supportive of the fact that the entry-exit split can either be an input or an output of the cost allocation methodology. ENTSOG appreciates that the current FGs provisions give more freedom to NRAs/TSOs to determine the entry-exit split taking account of system characteristics. While ENTSOG believes that a 50:50 split is appropriate for some systems, having it as a general principle applicable to all systems is not appropriate.

It is crucial that the choice of one of the proposed cost allocation methodologies, in combination with secondary adjustments and any appropriate entry-exit split ensures that TSOs are able to recover their revenues within the respective tariff period taking into account realistic booking scenarios.

Currently in Germany the split cannot be set at an entry-exit zone level, because there is more than one independent and autonomous TSO per entry-exit zone. Any split at entry-exit-zone level would imply that all the TSOs calculate the tariffs together and therefore arrange extensive price agreements, which is currently - according to a clear statement of the Bundeskartellamt (German competition authority) - not allowed under the competition law. Any conflict between the Tariff NC and national, as well as EU competition law, needs to be resolved. Within these multi-TSO entry-exit zones, where a common price arrangement between these TSOs is not possible, the split per TSO should be adaptable with regard to their specific circumstances e.g. forecasted bookings.

Circumstances (2 questions)

3. Do you agree with the proposed level of harmonisation regarding the circumstances leading to choose a tariff methodology? (as described in Section 3.3.3 of the Cost allocation and the determination of the reference price)

No

ENTSOG believes, with reference to the principle of subsidiarity, that the circumstances leading to the choice of cost allocation methodology should be a matter for national regulatory authorities. TSOs should have the ability to apply any of the proposed cost allocation methodologies, subject to NRA approval. ENTSOG considers that there is no justification for such a policy choice to be defined at EU-level.

4. Do you agree with the identified circumstances? (as described in Section 3.3.3 of the Cost allocation and the determination of the reference price)

No

The criteria for choosing one methodology instead of another, as described in the draft text provided, don't seem to be based on robust and coherent analysis. From ENTSOG's point of view the criteria are too restrictive. There is no reason provided, why a postage stamp is only allowed for networks where one of the three listed criteria is met. In particular, it is unclear why a postage stamp is only allowed for networks where more than 90% of the capacity is dedicated to the domestic market (and similarly when 90% of the capacity is dedicated to transit). The postage stamp methodology should have a wider applicability. For example, where there is spare capacity in a system then the postage stamp approach could be an appropriate methodology.

Criteria for choosing a virtual point based methodology should not be based on the existence or not of a geographical node. The criteria for choosing the capacity weighted distance approach instead of the matrix or distance to the virtual point approach, should not only consider the drawback of necessary simplifications of the network representation and the benefit of cost reflectivity but also other considerations such as the flow direction and the complexity of networks.

With regards to the last paragraph of section 3.3.3., ENTSOG does not see the rationale for limiting the choice of "technical capacity" to networks applying cost allocation methodologies that do provide locational signals and "booked capacity" (or expected contracted capacity) to networks applying cost allocation methodologies that do not provide locational signals.

In summary, the choice of cost-allocation methodology should ultimately remain with the individual NRA/TSO to reflect system specificities rather than having prescriptive rules in the FG.

Primary Methodologies (6 questions)

5. Do you agree with the 4 generic Methodologies and their level of harmonisation as a basis for the description and harmonisation of current European Tariff approaches? (as described in Section 3.4.1 of the Cost allocation and the determination of the reference price)

Yes, but with refinements

The four methodologies are considered to be a good basis to calculate the tariffs but ENTSOG members would welcome the possibility to consider the content of the proposed methodologies in the development of the tariff network code'. The current text proposed for chapter 3 of the FG is overly prescriptive and goes beyond article 6 of Regulation 715/2009 which requires the framework guideline to set clear and objective principles. Therefore the details of the methodologies may be more appropriately determined during the development of the tariff network code.

As a general point for all the proposed methodologies, the formulas appear to only take account of booked/forecasted capacity as an input, ENTSOG would also like the possibility to use forecast flows as an input parameter. This flexibility is necessary because booked capacity is not always a suitable input such as for systems where the forecasts of booked capacity are unreliable due to the lack of long-term contracts subject to Ship-or-Pay clauses. In such cases, the value of forecast flows should be taken into consideration. The formulas could be amended to reflect this necessary flexibility.

It would be helpful to clarify that costs related to specific needs and directly attributable to a specific entry or exit point (for example, odourisation or specific metering installations which serve only one specific exit point or compression costs upstream of an entry point) may not be included in the cost allocation to all points. In a previous version of the FG, (published on Jan 31st) ACER stated that ‘NRAs may decide to exclude the revenues related to some dedicated services (e.g. metering, odourisation ...) and/or some dedicated pieces of infrastructure (e.g. lower pressure networks to supply only domestic customers).’

Whilst these four methodologies provide some choice for TSOs with meshed networks, ENTSOG considers that another methodology; the “Asset allocation approach” should be included with reference to relatively simple, networks. This methodology is outlined in appendix A below.

Appendix A: Asset allocation approach

The asset allocation methodology is relevant for transmission systems with relatively simple topology where it is possible to identify assets in those transmission systems which are serving the interests of identifiable and homogenous groups of network users. In such systems this methodology is a suitable way of how to prevent cross-subsidies between those groups of network users.

Steps to follow:

1. The homogenous groups of network users, and the assets serving the interests of those groups of network users, are identified.
2. The assets are allocated to the identified groups according to their utilisation in relation to those homogenous groups of network users, taking into account the relevant network parameters including in particular peak gas demand and security of supply.
3. If some supporting assets are necessary to provide the service to different groups of network users, they are allocated to each group in proportion to the already allocated assets based on point 2.
4. The entry and exit points, used by the respective homogenous groups of network users, must be identified and then the corresponding estimated capacity booked by the respective groups of network users at these points is identified.
5. The entry-exit split between the entry and exit points used by the respective identified homogenous groups of network users is applied in line with the principles described in chapter 3.3.2.
6. The tariff according to the applied entry-exit split and estimated booked capacity at the identified points is calculated. Where the identified points are used by several identified groups of network users this may necessitate the setting of one common tariff at the respective point, and then an adjustment to the entry-exit split might be necessary.

For the above proposed ‘Asset Allocation Approach’, the circumstances for using this methodology could be where there are transmission systems with relatively simple topology and where it is possible to identify assets that serve the interests of identifiable and homogenous groups of network users.

ENTSOG also considers that in future it may be necessary for TSOs/NRAs to amend existing methodologies and/or to propose alternative methodologies subject to market consultation.

6. Do you agree with the description of the “postage stamp” methodology? (as described in Section 3.4.1.1 of the Cost allocation and the determination of the reference price)

Yes, but with refinements

ENTSOG generally agrees with the postage stamp methodology but would like to suggest the following refinement. ENTSOG notes that the entry-exit split is required in the formula provided within the existing text. The entry-exit split may be determined in a number of ways; for example, as a predetermined split, a split calculated by reference to the ratio of capacities, or by actual cost attribution to entry and exit. The network code could develop an alternative formula that allows the entry-exit split to be an output of the methodology.

7. Do you agree with the description of the “capacity-weighted Distance” methodology? (as described in Section 3.4.1.2 of the Cost allocation and the determination of the reference price)

Yes, but with refinements

ENTSOG generally supports this methodology, as described in section 3.4.1.2. ENTSOG notes that the entry-exit split is required in the formula provided within the existing text. The entry-exit split may be determined in a number of ways; for example, as a predetermined split, a split calculated by reference to the ratio of capacities, or by actual cost attribution to entry and exit. The network code could develop an alternative formula that allows the entry exit split to be an output of the methodology.

8. Do you agree with the description of Variant A of the “virtual point based” methodology? (as described in Section 3.4.1.3 under the title Variant A of the Cost allocation and the determination of the reference price)

Yes, but with refinements

It is not clear if the application of the cost allocation methodology requires the peak entry and exit flows or if the methodology could work by considering the expected booking, as the increases refer to an increase in supply and not in costs. As Variant A is hard to describe in detail, the description should allow the refinement of the Variant A approach during the elaboration of the Network Code.

It should be clarified, why Variant A should only apply to meshed networks and Variant B only to non-meshed networks. Both variants should be available for approval by NRAs if they fairly attribute underlying costs. Within meshed networks the centre of consumption might be localised in a specific area of the system and also it could be possible to identify the use of Variant A within a non-meshed network. Moreover, it’s not clear under which assessment it is assumed that this methodology might be applied only with reference to incremental costs (as specified in the footnote n. 6) and not with observed costs.

Technically, variable $Split_{ex}$ should be corrected as follows: “is the share of revenue to be collected from exit point” and variable N_j should be corrected as follows:” is the number of exit points”.

9. Do you agree with the description of Variant B of the “virtual point based” methodology? (as described in Section 3.4.1.3 under the title Variant B of the Cost allocation and the determination of the reference price)

Yes

10. Do you agree with description of the “matrix” methodology? (as described in Section 3.4.1.4 of the Cost allocation and the determination of the reference price)

Yes

Secondary adjustments (4 questions)

11. Do you agree with the 3 proposed secondary adjustments and their level of harmonisation? (as described in Section 3.4.2 of the Cost allocation and the determination of the reference price)

Yes, but with refinements

In relation to secondary adjustments, the text in the consultation document (chapter 3) should read ‘the NRA may determine or approve the adjustment of methodologies via secondary adjustments’ instead of ‘the NRA may decide to adjust methodologies....via secondary adjustments’ for the sake of consistency.

ENTSOG agrees with the proposed secondary adjustments as long as a refinement is made to the benchmarking of tariffs to allow its appropriate application in price cap regimes.

An NRA should be able to allow additional secondary adjustments to be applied as long as the selection of an additional secondary adjustment was subject to industry consultation or was compliant with a set of high level objectives.

12. Do you agree with the proposal regarding the “rescaling”? (as described in Section 3.4.2.1 of the Cost allocation and the determination of the reference price)

Yes, but with refinements

ENTSOG agrees with the proposal regarding “rescaling” but would like to highlight that the rescaling to avoid negative charges would need to be carried out in a different way (e.g. capping the charge at zero) to rescaling for the purpose of meeting the allowed revenue, i.e. the rescaling value will not necessarily be a constant in this situation. In terms of the text on page 14 we suggest an amendment as follows: ‘The corresponding multiplier or top up shall uniformly apply to all entry points in the system and/or exit points in the system *except in the case where you are avoiding negative charges*’.

ENTSOG would also like to suggest the following text change which inserts ‘and’ into the following sentence from the proposed chapter 3, ‘*Rescaling shall be performed either by topping up the calculated charge with a constant ‘and/or’ by multiplying it by a constant*’. This is to make possible the application of a rescaling in the form of $((\text{tariff}+k1)*k2)$, uniformly applied to all entry and/or exit points as already stated in FGs. In terms of the absolute effect, constants have a strong impact on low tariffs while multipliers have such an impact on high tariffs. A mixed approach could mitigate these possible undesired effects.

13. Do you agree with the proposal regarding the “equalisation”? (as described in Section 3.4.2.2 of the Cost allocation and the determination of the reference price)

Yes, but with refinements

Generally, ENTSOG welcomes equalisation, or averaging, as a secondary adjustment because it increases the simplicity of the tariff structure and therefore increases the comprehension of tariffs by network users. ENTSOG also welcomes the possibility to embed equalisation in the various methodologies by creating a homogenous set of points at the beginning of the calculation.

ENTSOG, however, finds that no satisfactory justification is provided for the proposed restriction that a set of points subject to equalisation can include strictly domestic (non-CAM NC) points or strictly cross-border (or CAM NC) points. ENTSOG maintains that where the benefits of simplicity and uniformity are higher than any costs which could be created by subsidies between cross-border and domestic customers, equalisation should be permitted. ACER itself suggests additional tangible and intangible ‘reasons,’ or benefits, to counter any cost of cross-subsidisation.

ENTSOG is concerned about the level of prescription with regards to the so-called ‘homogeneous set of points’ which are itemised in footnote 12 and calls for the text to be amended. ENTSOG, with reference to the principle of subsidiarity, calls for the definition of sets of points subject to equalisation to be determined or approved by national regulatory authorities. NRAs are best placed to make the trade-off between the costs and benefits of equalisation, finding, for example, justification for equalisation for all entry points (both non-CAM NC and CAM NC).

14. Do you agree with the proposal regarding “benchmarking”? (as described in Section 3.4.2.3 of the Cost allocation and the determination of the reference price)

Yes, but with refinements

ENTSOG welcomes the inclusion of benchmarking of tariffs in the draft framework guideline, however further improvements are needed in order to allow its efficient application. ENTSOG is concerned about the restrictive circumstances under which benchmarking of tariffs may be applied. Effective pipeline to pipeline competition may not be the only reason that you would consider benchmarking of tariffs; there are other reasons where it may be appropriate to apply this methodology. This has been foreseen in article 13 of the Regulation which states that where appropriate NRA’s may take account of benchmarking of tariffs (an explanation about this is given in the Commission staff working document (SEC (2007 535))).¹

The precondition of demonstrating competition based on national and EU competition law is too strict. The existence of alternative routes, and a network users’ ability to choose between different routes, should be enough for the application of benchmarking. In this context the involvement of adjacent NRAs would be unnecessary.

The current provision in the draft tariff framework guideline relating to the benchmarking of tariffs only refers to allowed revenue and therefore seems to be applicable just for revenue cap regimes. The secondary adjustment of benchmarking should be extended to allow benchmarking in price cap regimes. Therefore ENTSOG proposes the inclusion of an additional secondary adjustment which would allow benchmarking of tariffs in price cap regimes where TSOs bear the capacity risk. (See Annex B below)*.

* (Annex B) In Price Cap regimes, benchmarking shall be used but not limited to the situation where tariffs resulting from a pure application of the chosen cost allocation methodology would not reflect effective pipeline-to-pipeline competition. Benchmarking is a complementary tariff setting methodology to the primary cost allocation methodology used under a price cap regime.

¹ The Commission staff working document (SEC (2007 535)) states that the Regulation requires the application of benchmarking of tariffs only in certain circumstances and in particular if effective pipeline-to-pipeline competition exists benchmarking of tariffs by the regulatory authorities will be a relevant consideration. Therefore ENTSOG sees no reason to limit benchmarking of tariffs only to the particular situation of effective pipeline-to-pipeline competition.’

Benchmarking shall be limited to the points, where a TSO faces effective competition from other transmission points or routes (going through different Member states or entry-exit zones). The resulting tariff adjustment should allow the competitive tariff level to be met.

NRAs shall apply benchmarking in a price cap regime on a case by case basis and may give reasons for such a decision, by demonstrating that:

- “effective pipeline-to-pipeline competition” exists, by demonstrating that the relevant competing systems imply a real choice for the system users;²
- the under recovery risk is borne by the TSO, i.e. price cap regime is applied, and
- the outcome of benchmarking supports meeting the objectives of the Gas Regulation.

In addition, benchmarking should be permitted as a possible primary methodology for those TSOs facing effective competition and whose limited number of entry-exit points all face competition. For such TSOs, NRAs should allow the use of benchmarking as a primary cost allocation methodology. This will ensure a pragmatic, proportionate approach which promotes competition and cross border trade. For example, this is the case for Interconnectors that have a limited number of points and all these entry-exit points face effective competition. Benchmarking may be the best methodology to use in this specific circumstance.

Test (1 question)

15. Do you agree with the proposed cost allocation test? (as described in Section 3.6 of the Cost allocation and the determination of the reference price)

No

ENTSOG welcomes ACER’s effort to demonstrate there is no cross subsidisation between domestic and cross-border network users. However, it seems that the cost allocation test has become obsolete in this new version of the FG. When it was first established it was justified as part of the “top down” approach described in the ACER document of 31/01/2013. According to the letter from the EU Commission to ACER (15/03/2013), the initial “top down” approach has been replaced by a “bottom up” approach as described in the revised chapter 3 on cost allocation methodologies, thereby making the test obsolete.

The obligation to have an appropriate methodology for cost allocation and secondary adjustments, which is updated and monitored through engagement with the NRA (and the transparency requirements), should ensure that the level of cross subsidy is low and consistent with the wider objectives of the tariff setting processes. This test just imposes another layer of complexity and will lead to valuable resources being used by TSOs and/or NRAs to facilitate the test.

If a test were to be applied in its current form then it would be difficult to describe in the NC because contrary to shippers, most TSOs don’t explicitly know at each entry point which part of the capacity is dedicated to national use or transit. In order to split the entry capacity into domestic and cross border capacities, it would be necessary to rely on exit capacity information which doesn’t provide a sound basis for deriving these assumption (because entry and exit capacity are decoupled).

² Some wording of the condition is proposed also for the already included benchmarking as secondary adjustment for revenue cap regimes in FG.

Implementation (3 questions)

16. Do you agree with the proposed implementation measures? (as described in Section 3.7 of the Cost allocation and the determination of the reference price)

No

This response relates to the implementation measure of publishing two methodologies for public consultation only, the following two responses, to question 17 and 18, cover the other implementation issues. ENTSOG sees no merit in the requirement for TSOs to publish all of the data for at least two methodologies which will create additional workload for the TSOs/NRAs with little value to stakeholders. ENTSOG does however support the provision of sufficient evidence to facilitate stakeholders' confidence in the chosen methodology along with reasons for rejecting methodologies and this could be a pragmatic and cost effective solution.

17. Do you agree that at least every 4 years the input assumptions, forecasts and choice of methodology shall be revised by the NRAs regardless to the applicable national revision cycles? (as described in Section 3.7 of the Cost allocation and the determination of the reference price)

No

Input parameters and methodologies are normally reviewed by NRAs during the national revision cycles. It is unclear what value is added by mandating that extensive revisions are carried out every four years when this could mean the duplication of work for TSOs/NRAs that have national revision cycles that are more or less than four years.

There could be merit in reviewing some input parameters more frequently than your national regulatory cycle but changing the methodology too frequently could create uncertainty and instability for network users. Regulatory certainty is important for network users and therefore major changes, such as a change to the methodology should be carefully considered and announced publicly in advance to allow stakeholders to have a comfortable time frame for consideration, thus mitigating against instability and uncertainty. This is without prejudice to more frequent data updates.

18. Do you agree with the proposed mitigating measures in case of a tariff increase (applying at a tariff increase of more than 25%)? (as described in Section 3.7 of the Cost allocation and the determination of the reference price)

Yes, but with refinements

In general, ENTSOG agrees with the proposal to introduce mitigating measures in the case of tariff increases, especially because this provision could improve tariffs stability and predictability. ENTSOG believes that it may be more appropriate for NRAs to apply mitigating measures on a case by case basis because the current measure being proposed may not be suitable in certain circumstances. However if such mitigating measures are kept in the framework guideline then the following elements should be taken into consideration.

With reference to the level of the cap proposed by ACER in the consultation document (equal to 25%), ENTSOG highlights the following:

The level of the cap should be supported by reasons that justify the chosen level. Although 25% might seem like a large change in tariffs, there may be higher percentage changes in tariffs because of the application of

the multiplier rules in the endorsed FG due to a substantial impact on booking behaviour. The cap level should take into consideration the risk of premature termination of existing contracts with regards to national law.

In relation to the application of the level of the cap, there needs to be more clarification.

For example, if ACER foresees that the mitigating measures would only apply in the tariff period following the entry into force of the tariff network code then ENTSOG would like to suggest consideration of a cap over the regulatory period instead. This cap would apply over a regulatory period e.g. 4 or 5 years and would offer greater tariff stability to stakeholders.

With reference to the mitigating measures, more information and clarity is needed and therefore it would be better to discuss this during the network code development in conjunction with stakeholders. It's possible to foresee that in cases where it is necessary to limit the tariff at a specific entry-exit point due to the 25% cap then the tariffs at other entry-exit point(s) would have to be adjusted to ensure revenue recovery in a non-price cap regime. This would allow the use of the regulatory account to be minimised in a non-price cap regime and to guarantee financial neutrality in terms of the cash flows of TSOs.

In any case, when applying such mitigating measures, the TSO's allowed/reference revenues shall be guaranteed, both in economic and in financial terms within the respective tariff period.

Further transparency measures³ and other issues (5 questions)

19. ACER consults on the publication of the following data of the regulated assets on the following:

1. RAB per TSO
2. Depreciation period per asset category
3. Rate of return, as defined by the regulatory rules applicable
4. Variable costs of the system⁴ per TSO
5. Major investment costs per country⁵

Do you deem proportionate the proposed level of harmonisation regarding additional transparency?

No

TSOs already fulfil many transparency requirements and are generally supportive of publishing data, necessary for tariff calculations, that are not confidential (see response to question 1). However, absolute harmonisation is not essential, for example, in revenue cap systems, only the overall revenue cap is important to calculate tariffs, more detailed figures are not necessary. If the figures are commercially sensitive (including financial data that is sensitive for listed companies) or if the information could be misused, the NRA shall preserve the confidentiality of such data.

A particular concern for listed companies is the publication of the RAB and allowed revenues on a forecasted basis as this could raise expectations in the market and have an impact on the share price of the company. Where detailed figures can't be published, a non-binding forecast of tariffs could be provided to the market instead of providing the information for network users to estimate the tariffs. The key principle should be that

³ Based on the concerns raised in the letter from the European Commission to ACER dated 15 March 2013
http://www.acer.europa.eu/Gas/Framework%20guidelines_and_network%20codes/Documents/FG_TAR_concerns_DG%20ENER%202015032013.pdf

⁴ Costs triggered by the actual flows in the system, such as compressor fuel costs, allowing to define the capacity/commodity split

⁵ For example: steel prices, manpower and costs relating to environmental and safety standards

it is for each TSO and NRA to determine exactly what level of transparency is appropriate for network users and consider suitable timescales for development in this area.

20. Do you agree with the level of detail on the proposed provisions on monitoring, as set in section 1.4 of the endorsed Framework Guidelines on rules regarding harmonised transmission tariff structures for gas of 16 April 2013, page 8⁶?

No

ENTSOG reiterates its earlier expressed position that it is not appropriate for a FG to prescribe the obligation to monitor the NC implementation. This is already foreseen in Regulation 715 (Article 9(1) for ACER's obligation and Article 8(8) for ENTSOG's obligation, which to a certain extent overlap) as well as in Regulation 713. The monitoring of the NC implementation is a separate task from that of the NC elaboration and hence, it is out of scope for the FG and the subsequent NC to foresee the details related to such monitoring.

As for ENTSOG's obligation to make available all information required by ACER to fulfil its tasks under Article 9(1), ENTSOG does not have any authority to compel its members to respond to requests for information and data, whereas NRAs do have such authority under the Third Package. It would be more effective and efficient for ACER to seek such information directly from NRAs and would avoid TSOs having to provide the same information to ENTSOG, which they may have already provided to the relevant NRAs.

21. Do you see value in having a standard gas tariff year across the EU, either starting on 1 January or 1 October?

No

From a TSO perspective there isn't any particular value in having a standard gas year across Europe but ENTSOG can see that there might be value in having a standard gas tariff year for stakeholders.

The issue has already been discussed during the CAM NC drafting, when a gas year starting in October was chosen for auctions. The subject of tariffs is linked more to accounting (balance sheets) than to the operational requirements linked to gas flow programming. Several starting dates can be proposed with rational justifications for each of them (sometimes relying on national specificities). Whatever the starting date of the standard year, such harmonisation would need to consider the timing of the setting of the allowed revenue and the reconciliation of the regulatory account.

22. Do you agree to the proposal to consider a 30 day minimum notice period for an NRA decision or TSO communication of changes in the reference prices as compared to entering into force of the tariffs?⁷

Yes, but with refinements

⁶ http://www.acer.europa.eu/Gas/Framework%20guidelines_and_network%20codes/Documents/outcome%20of%20BoR27-5%201_FG-GasTariffs_for_publication_clean.pdf

⁷ See relevant text in the endorsed Draft Framework Guidelines of 16 April 2013, Chapter 2, page 10, footnote 13, http://www.acer.europa.eu/Gas/Framework%20guidelines_and_network%20codes/Documents/outcome%20of%20BoR27-5%201_FG-GasTariffs_for_publication_clean.pdf

ENTSOG believes that the proposed 30 day minimum notice period is appropriate to ensure users have access to information about changes to tariffs.

However, TSOs and NRAs could face some justified reasons for reducing this 30 day reference period. Consideration should be given to the timing for elaborating tariff proposals, to discuss them with the NRA and for the NRA to approve the tariffs, where applicable. In addition, tariff proposals should be defined based on the latest investment and balance sheet data in order to guarantee:

- More cost-reflectivity
- Timely recognition of TSOs' costs
- Availability of "official" data
- A better data basis for the level of forecast bookings
- Tariff updating during the year, i.e. shorter term capacity products.

Finally, it's important to highlight that TSOs might need a sufficient period between the publication of the final NRA decision on the tariff elements for the regulatory period and the beginning of the first year of the regulatory period. In fact a new regulatory period could introduce significant innovations that have to be adopted and implemented by the TSO (IT systems updating, network code modification, etc.).

Taking all of this into account, ENTSOG believes that a reference period of 30 days, to be reduced to a minimum period of 14 days for duly justifiable reasons (possibly agreed with NRAs), is better suited to all stakeholders' needs and expectations.

23. In the Framework Guidelines there are no specific measures included to take into account the nature of interconnectors which currently is dealt separately from the national TSO network. Do you find that further provisions for interconnectors are necessary?

Yes, the following measures should be included

The Tariff FG should acknowledge that the application of the subsequent Tariff NC, following the precedents of the CAM NC and the BAL NC, should take account of the specific nature of interconnectors. This different treatment should be allowed by the NRA.

The tariff rules designed for meshed networks may not be appropriate for interconnectors due to the following reasons: absence of inelastic demand; being in competition with alternative gas routes; unsuitable tariff methodologies based on allocation of costs to entry-exit points and simplicity of the network topology. The application of standard rules might result in increases of the possible under-recovery and distortion of competition.

Hence, the following measures should be reflected in the Framework Guideline:

- Possibility to use benchmarking as a primary tariff setting methodology for interconnectors due to the fact that they are in competition with other flexibility sources;
- Where interconnectors provide security of supply to consumers, but are not supported by inelastic demand, NRAs may wish to ensure the continued viability of interconnectors as a source of flexibility through a cap and floor type mechanism. The floor mechanism would need to be ultimately supported by connected consumers that benefit from the security of supply advantage of the interconnector, and
- Where competitors are able to offer customers long term capacity at fixed prices and interconnectors are not supported by inelastic demand, interconnectors should also be permitted to offer fixed prices to

encourage long term capacity bookings. Additionally, these interconnectors should be permitted to price short term capacity higher than long term capacity to also encourage long term capacity bookings. These measures will enable better revenue and price stability on the interconnectors without inelastic demand.

II. Incremental capacity (7 questions – based on the explanatory note on the delineation of incremental tariff issues)

24. Do you agree that the economic test for incremental capacity should be a financial validation comparing the present value of capacity volume commitments times the projected tariff, with the deemed investment cost to release the respective capacity times the fraction committed by shippers (as set out in the formula: $PV \geq DIC * f$)?

Yes, but with refinements

- In principle, the formulation $PV \geq f * DIC$ meets the necessary criteria that the incremental process should be transparent and not overly complex, and should allow shippers to provide a clear investment signal that enables the TSO to make long term investment decisions.
- Recent statements from ACER, however, raise concerns that we may be interpreting the test differently from NRAs. Please refer to ENTSOG's additional paper on incremental capacity which clarifies our interpretation.
- It is important that there is clarity in advance of the process regarding who will validate the results of the economic test.
- A positive market test is only one of the conditions that may need to be met before an investment can proceed. ENTSOG strongly recommends that the results of the economic test are not viewed in isolation but rather, as part of a framework of commitments that should be put in place to successfully drive investment.

25. Do you agree that the principles of the economic test should be harmonised on a European level?

Yes, but with refinements

- ENTSOG supports harmonisation of technical and procedural aspects of the market test. Areas to be aligned could include integration of the economic test into the foreseen allocation mechanisms, and the means by which users are informed about the level of commitment needed. The aim of such alignment should be to ensure that users are well informed in advance of the test about what is required.
- Harmonisation must not constrain the ability of national regimes to select test parameters that reflect the underlying context for the investment. Given the large differences between the market conditions, the types of investment that could take place across the EU, and the costs and risks associated with them, it is crucial that each parameter of the economic test is set at national level up front for each individual project. In particular, the setting of the 'f' parameter should be done on a case-by-case basis (for example: 'f' for an investment linked to a highly captive consumption area would be very different from 'f' for an investment without local consumption and primarily used to interconnect market areas or for trading purposes).

26. Do you agree with the principles of setting the f parameter, where f represents the fraction of investment underwritten by the shippers in the economic test?

Yes, but with refinements

- Provided that ACER's question relates to guidelines to be used when setting ' f ' on a national or project-specific level, ENTSOG agrees in general with the suggested guidelines for setting ' f ', the fraction of investment underwritten by the network users in the economic test.
- Consideration of the regulatory settlement and the recovery of allowed revenues is also a prerequisite for determining the necessary commitment by network users.
- As noted below, an EU-wide pre-set ' f ' value would be highly discriminatory and inappropriate, as situations that are very different would be treated in the same way.
- We note that in some countries, 'binding' commitments by users are not fully binding. For example, in Germany, increases in tariffs above the CPI allow transport customers to cancel their commitments. In Spain, users can cancel their contract after 1 year. Investment can only be successfully facilitated if binding commitments are truly binding.
- It is necessary to define in advance how the part of the DIC not covered by up-front network user commitments ($1-f$) is covered. This is in ENTSOG's view a critical issue. We set out our reasoning and some considerations for a future CAM NC amendment in section D.1 of our separate paper.

27. When external effects influencing f are monetised should the used method be aligned with the CBA analysis of the (TEN-E) Regulation (EU) No. 347/2013 according to its Annex V?

No

- As explained in ENTSOG's separate paper, it is essential that any costs not underwritten by network users are covered by other up-front commitments.
- It would not be appropriate, therefore, to reduce the value of ' f ' based purely on the monetised value of external effects, such as climate resilience and system security. The process of assessing such values using the CBA methodology is separate from the process of gathering binding commitments which is an essential prerequisite for investment.
- However, if NRAs or other public bodies wish to make commitments based on the value of external effects, it is logical that the method used to calculate such effects (to be used as the basis for regulatory or public commitments) should be consistent with the CBA analysis of the TEN-E Regulation. This assumes that the Project Specific CBA includes a qualitative assessment allowing an appropriate degree of flexibility to take into account national effects.
- It is not clear to ENTSOG how the monetised values of the externalities from a purely economic analysis performed via the CBA will be translated and integrated into the calculations of financial analysis of a project, i.e. to the formula of market test. This issue, in our view, deserves further attention from ACER.

28. Which option of tariff adjustment is appropriate for cases where the tariff for existing capacity does not suffice to validate the economic test?

d. Other options should be also considered

- Increases to the reference price (as referred to in ACER's delineation paper) are only half the story; in some cases, discounts may be more appropriate. We prefer instead to refer to potential adjustments to the reference price.
- Regarding the options for implementing adjustments, ENTSOG considers that each of the options set out by ACER has advantages and disadvantages, and believes that at least one further plausible option can be added to the list.
- The most appropriate option will depend on the circumstances. Factors to be taken into account when selecting an option will include market conditions, complexity of implementation in the TSO systems, and the degree of transparency that can be offered to network users regarding the potential payable price under each option.
- It would in our view be logical to present the options as a 'menu', in line with the cost allocation methodologies for tariff calculations. This could be accompanied by criteria to be taken into account in selecting the most appropriate option. The option chosen should be notified to stakeholders in advance of the market test.
- Whichever approach is selected, it is important that any adjustment is applied both to the tariff assumptions used as the basis for the market test, and to the eventual calculation of the payable price at the time of use.
- ENTSOG's views on the specific options are set out in its separate paper.

29. Do you agree that the NRA shall have powers to decide to use an alternative approach for payable price (fixed/ floating) exclusively for incremental capacity?

Yes

- 'Fixed' payable prices reduce uncertainty for network users benefitting from them and thus could serve as an incentive for commitments in an economic test. In discussions with TSOs, users have repeatedly indicated that uncertainty regarding the payable price is a major issue when making very long term commitments, and that an increase in certainty could provide a powerful driver to increase such commitments.
- However, the fixed price approach could be regarded as discriminatory, since over/under recovery of revenue is passed on only to users on floating tariffs. Therefore in some circumstances fixed prices will not be appropriate as they may load an unacceptable degree of risk on to consumers on the standard floating tariffs, particularly where an investment is large in relation to the existing system size.
- In this context, ENTSOG proposes that the TAR NC allow (or not prohibit) NRA discretion to use a fixed payable price approach for the IP(s) affected by an incremental capacity investment. We note that the draft TAR FG already foresees NRA discretion in this domain.
- 'Fixed' in this context means that the path of the payable price is predictable at the time of the incremental offer. In general, the reference price is inflated in line with some pre-determined index.
- It should be recognised that a fixed price approach may create additional risks for TSOs as well as for consumers on floating price contracts, since they lead to greater variability (in each year) of revenues in relation to costs. These risks for TSOs should be taken into account in the tariff-setting process.

30. Should users, who have previously committed to an auction premium on existing long term capacity (in the interim period until a European incremental capacity regime is in place), be compensated when incremental capacity for the year for which the premium was committed is released at a later stage at a lower price ?

No

- The above-mentioned discretion for NRAs to adjust reference prices and/or payable prices raises complications.

- For example, as queried by ACER, should users, who have previously committed to an auction premium on existing long term capacity, be compensated when incremental capacity for the year for which the premium was committed is released at a later stage at a lower price?

> On the one hand ('No'): it would be inappropriate to compensate users who accepted the price for existing long-term capacity at an earlier date. While ACER is rightly concerned about fairness towards network users holding existing long term capacity, it must be recognised that compensation for such users would imply additional costs for other capacity holders, which could equally be characterised as 'unfair'.

> As a general rule, network users committing for long-term capacity at a specified price (regulated price + auction premium), should not be delivered from their payment obligation, including the premium. If NRAs wish to return auction premia for existing capacity to users, they should be returned to the whole market.

> On the other hand ('Yes, with refinements'): reference price differences between existing capacity and incremental capacity may be seen as sub-optimal, as they could discourage users from making long term bookings of existing capacity, for fear of paying 'too much' relative to later users.

- ENTSOG can therefore appreciate both positions, while leaning more towards the 'No' view.

II. General part

31. Additional comments on tariff and incremental issues ACER should consider.

Some parts of the consultation document have raised concerns and have not been covered by previous questions. ENTSOG asks ACER to consider the following points:

(a) Section 3, paragraph 3 on page 3 of the consultation document.

'In particular, the Network Code shall develop appropriate forecasting models, taking into account the relevant TYNDPs, for the input parameters of the tariff methodology.'

ENTSOG doesn't believe that it is technically feasible to develop forecasting models in a network code. Forecasting models are system specific and need to reflect the particular characteristics of a system. This requirement, as it is currently set out in the tariff framework guideline, seems out of scope for the tariff network code.

(b) Section 3.3.1 on page 5 of the consultation document.

The NRA and the TSO should be able to adopt if necessary a capacity / commodity split, justified by the TSO and the NRA, which is not necessarily based on variable costs.

(c) Section 3.3.3 on page 5 of the consultation document.

With regards to the section on circumstances, ENTSOG doesn't believe that it is feasible to elaborate on *'the consequences of the choices with regard to reaching the objectives of these Framework Guidelines'* in the network code.

(d) Section 3.4, 'Main cost allocation methodologies' on page 7 of the consultation document.

'One and the same primary cost allocation methodology shall apply to all points, regardless of whether they are entries or exits.'

The draft chapter 3 of the FG envisages that "the same primary cost allocation methodology shall apply to all points, regardless of whether they are entries or exits". ENTSOG doesn't understand why the same cost allocation methodology has to be applied to all points. Consideration should be given to having a different methodology for entries and exits (e.g. postage stamp for entries and capacity-weighted distance for exits). ENTSOG doesn't see the rationale for limiting this freedom.

'This rule shall equally apply to entry-exit-zones which include several TSO networks within a Member State.'

When several TSO networks are regrouped within one entry-exit zone (e.g. as in Germany today but potentially in other countries/regions in the future), the FG seems to impose that the same cost allocation methodology will apply to all entry-exit points. Such an interpretation might have several consequences:

- TSO's would need to determine aligned tariffs within one entry-exit-zone which might reduce any remaining competition at certain entry-exit points and might be in contradiction with European competition law. For example, in Germany, the Bundeskartellamt (German competition authority) is currently of the opinion that TSOs are competing at some IPs and price arrangements between TSOs would infringe European and German competition law.
- Result in the necessity to implement an inter-TSO compensation scheme which could create a huge administrative burden. It has to be assessed whether this burden outweighs additional value.
- Even though this situation is currently only an issue in some specific member states, it will influence future new developments (i.e. the creation of larger entry-exit zones through the merger of current zones will

become even more difficult).

- This rule appears to be discriminatory between Member States with one TSO and those where multiple TSOs operate. The autonomy of TSOs within one entry-exit-zone needs to be better reflected in the FG. The rules stipulated in the framework guidelines endanger individual TSOs autonomy. In particular, where TSOs within an entry-exit zone are not allowed by law to agree on prices, different tariff setting methodologies should be applicable, enabling the TSOs to take into account network specificities as well as to recover the regulated revenues in the future.

TSOs as autonomous companies should be responsible for their own tariffs, even if they are part of a multi-TSO entry-exit zone. This means each TSO should be responsible for its tariff calculation and the assurance of its revenue cap. Only in some cases, e.g. where a TSO is in the middle of a multi-TSO entry-exit zone without any bookable capacity, would an inter-TSO-compensation scheme be needed. In most cases, TSOs in a multi-TSO entry-exit zone should calculate their own tariffs based on the individual parameters reflecting the individual TSO network.

Although the assumption that every entry of gas has a corresponding exit of gas is correct, within a multi-TSO entry-exit zone the level of booked entry and exit capacity can differ significantly per TSO. The main reason for this is that capacity at all IPs connecting the systems of cooperating TSOs cannot be booked by shippers anymore. Furthermore, the situation may arise, where existing and bookable entry capacity of one TSO is not booked, because shippers use the available entry capacity of another TSO within the multi-TSO entry-exit zone. To introduce common price arrangements within the multi-TSO entry-exit zone to solve potential problems should be duly justified taking into account the above mentioned consequences.

If a common price arrangement was not possible due to justified reasons, it would be important to foresee an option to adapt the entry-exit split per TSO with regard to their specific circumstances e.g. forecasted bookings.

(e) Section 3.7, Implementation on page 17 of the consultation document.

Implementation time for the tariff network code:

The April 16th version of the tariff FG references the 1st October 2017 as the date, at the latest, by which the tariff network code must apply. This is not addressed in the consultation document even though there has been another delay to the tariff FG process making a fixed implementation date a concern. ENTSOG would suggest some new text for the implementation section such as '[x] months from the date of entering into force or up to the 1st October 2017 for implementation, whichever is later.' The purpose of this would be to ensure that TSOs received at least [x] months for implementation regardless of any further potential delays.

(f) General Comment

The current draft of the Tariff FG overburdens TSOs. It has to be clarified, whether such detailed requirements are in line with EU-Regulation 715/2009. In the course of the further development of this Tariff FG/NC it should be ensured that European harmonisation does not hamper individual TSOs to recover their allowed revenue as foreseen under national regulatory systems.

(g) General Comment

Please note the importance of the existence of long-term contracts binding upon infrastructure users (and not only upon infrastructure operators, as is the case now) when dealing with tariff issues, and the need for harmonisation across Europe on this matter. Lack of common rules could result in inefficiencies. Another point to highlight is that the enforcement of an entry-exit system with tariffs differentiated by location could be hampered if long-term contract binding for the users are not in place, in particular in those systems where

there is spare capacity. Users might change the location of their existing capacity contracts to optimise their payments, which could defeat the provisions of revenue equivalence and from an operational point of view could lead to a big change in flow patterns. Thus, it is necessary to safeguard long-term contracts which are binding upon network users.

32. Please rank the three most important issues for your company, association.

ENTSOG considers that the consultation document raises a number of important tariff and incremental capacity issues which have been elaborated on through the response document from question 1 to question 31. ENTSOG asks ACER to carefully consider all the issues that have been raised.

In response to this question ENTSOG highlights three important issues, related to the tariff section of the consultation, which are as follows:

- Flexibility to earn allowed/target revenues within the tariff period by being able to choose the cost allocation and tariff calculation methodology that best fits individual system characteristics and through the implementation of effective revenue recovery mechanisms.
- Consideration of the impact of the proposed FG on TSOs involved in competition e.g. pipeline to pipeline competition.
- Publication requirements should be focussed on areas where value for network users can be demonstrated and where the confidentiality of commercially sensitive information is preserved.

ENTSOG still has concerns about the endorsed parts of the FG and how they will interact with the proposed chapter 3. One of the most important issues is to avoid cross subsidisation between network users making long and short term bookings by reconsidering the restrictive rules on short term multipliers and implementing the revenue equivalence principle.