

ENTSOG's Response to ACER's 'Draft Framework Guidelines on Rules Regarding Harmonised Transmission Tariff Structures for Gas' Consultation

Executive Summary

ENTSOG welcomes ACER's consultation on the 'Draft Framework Guidelines on Rules Regarding Harmonised Transmission Tariff Structures for Gas' which offers stakeholders an opportunity to assess the Draft Tariff FG.

It is important that the focus of the Draft Tariff FG concentrates on where the transmission tariff structures have a clear impact on cross-border trade. Transmission systems across Europe have developed organically at different rates, each with its own specific characteristics. In addition, transmission systems are underpinned by different regulatory regimes such as revenue cap, price cap, rate of return (cost plus) and market based pricing. Some regulators have applied a combination of regulatory regimes where the regulatory rules consist of elements from different types of regimes. In some cases harmonisation of transmission tariff structures can produce positive effects but in other cases it can be counterproductive to the issues that the harmonisation is trying to address. It is of paramount importance to focus on the issues that need to be fixed and to apply appropriate levels of harmonisation only where it is justifiable.

ENTSOG believes that cost allocation is a national issue and that different systems can co-exist on either side of an interconnection point ('IP') as long as the cost allocation methodologies comply with tariff principles in themselves.

ENTSOG agrees that the use of a regulatory account is a useful tool in non-price cap regimes for ensuring that TSOs earn their allowed revenues and any over recovery is returned to end consumers via transmission tariffs. The Draft Tariff FG proposes two methods for the reconciliation of the regulatory account which may not be appropriate for all TSOs. ENTSOG therefore believes that it is important that a choice of methods is available to TSOs to allow them to manage under and over recovery of revenue effectively.

ENTSOG continues to advocate the use of a revenue equivalence principle ('REP') with regards to the pricing of short term products because it avoids over-pricing and under-pricing of short term products. The implementation of the REP would ensure a reduction in cross-subsidisation between different users, it would provide balanced pricing of short term capacity products and it would support more stable revenue recovery.

ENTSOG is concerned about the very short implementation timeframe, 12 months, which has been specified in the Draft Tariff FG. Another concern is the absence of any transition period. Most regulatory regimes have a periodical element, whereby costs, rates of return, revenues and tariffs etc. are assessed and one or more of these elements is set for a defined regulatory period. In addition, under some regulatory regimes tariffs are set or recalculated each year prior to the start of the gas year. Both of these timing issues should be taken into consideration when discussing a proposed implementation timeframe. The Draft Tariff FG also asks TSOs to discuss the implications of tariff changes with counterparties and this fit with the proposed timeframe. Considering all of the above, it would not be feasible to properly implement the Network Code on harmonised transmission tariff structures for gas ('Tariff NC') in 12 months and setting such a strict timeline could be detrimental to the implementation of the consistent Tariff NC provisions across different systems.

ACER's proposal that the Tariff NC would apply to existing contracts is a cause of concern to ENTSOG. The application of the Tariff NC to existing contracts will generate legal uncertainty, which is contrary to the overarching aim of the network code to promote and contribute to the efficient functioning of the market. It could also lead to such negative impacts as the termination or renegotiation of capacity contracts. In practical terms, the time and manpower needed for the renegotiation of existing contracts would be considerable. The impact of making a change to existing contracts should be proportionate to the expected benefits of such a change. Therefore, ENTSOG is of the opinion that existing contracts should not be challenged.

Introduction

ENTSOG welcomes the opportunity to respond to ACER's consultation on the Draft Tariff FG. The Draft Tariff FG aims at setting clear and objective principles for the development of the Tariff NC. The ENTSOG response is in the form of answers to the questions set out in the consultation questionnaire which accompanied the Draft Tariff FG.

Please provide the Agency with your full contact details, allowing us to revert to you with specific questions concerning your answers.

Name:

Position held:

Phone number and e-mail:

Name and address of the company you represent:

Please indicate, if your company/organisation is:

- a. European association**
- b. National association**
- c. TSO**
- d. Shipper or energy trading entity**
- e. End-user**
- f. Other (e.g. Power Exchanges, Storage Operator etc.), namely:.....**

1. General provisions. Scope, application, definitions and implementation (Chapter 1 of the draft Framework Guideline)

ENTSOG is responding to this consultation without prejudice to the previously expressed view¹ that the scope of the Tariff FG should be limited to where tariff structures have a clear impact on cross-border trade.

We believe that the retroactive usage of the future Tariff NC rules bears a high additional risk to TSOs' cash-flow positions and enterprise value. This risk should be acknowledged and properly remunerated by NRAs. Tariff methodologies with little room for considering local specificities that apply to TSO networks with third party access (TPA) could potentially distort competition between TSO networks and pipelines with TPA exemptions. With the creation of the single European gas market, such competition between TSO networks and pipelines with TPA exemptions will exist on a European level and could possibly intensify over time.

1.1. Please explain whether any of aspects of the application of the draft FG (NC) to existing contracts would cause disproportionate effects on gas business in relation to 3rd Package objectives?

Yes, several aspects of the application of the Draft Tariff FG to existing contracts would cause disproportionate effects on gas businesses. The Draft Tariff FG states that the Network Code shall be implemented within 12 months from its entry into force and shall apply to both new and existing contracts. There are two issues with this stipulation: firstly, that the Tariff NC must apply to existing contracts; and secondly, that the implementation of the Tariff NC with regards to existing contracts must be done within 12 months. See also ENTSOG's response to question 12.

The Draft Tariff FG proposes that the transmission tariff element of an existing contract will have to be amended to comply with the final Tariff NC to remain legally valid. This creates a number of concerns particularly with regards to the sanctity of contracts and the possibility for network users to step out² of contracts in the event that regulated tariffs change. The application of the

¹ ENTSOG response to ACER consultation on scope of tariff structure framework guideline (TAR058-12), 15 March 2012.

² In some countries, shippers have the right to step out of their transportation contract if the tariffs increase for example by a certain amount above inflation.

Tariff NC to existing contracts will generate legal uncertainty, which is contrary to the overarching aim of the network code to promote and contribute to the efficient functioning of the market (see Article 6 (2) of the Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 ('Regulation')) and to the general principle of the European Union ('EU') law of legal certainty. Given the number of significant changes proposed in the Draft Tariff FG, it is almost certain that tariff levels will change considerably. In addition, the lack of a transition period means that those changes are likely to be steep in nature rather than smoothed over a period of a number of years.

This issue of the application of the Tariff NC to existing contracts presents a significant concern³. It could lead to negative impacts such as the ending of commitments by capacity contract holders in the event any existing contract can be legally terminated. In practical terms the time and manpower needed for the renegotiation⁴ of existing contracts would be considerable. Thus, consistent with its previous position as regards the draft Network Code on Capacity Allocation Mechanisms ('CAM NC'), ENTSOG is of the opinion that existing contracts should not be challenged. The application of the Tariff FG (NC) to existing contracts would entail the following two disproportionate effects:

- Any opening of the existing contracts leads to legal uncertainty and could cause disputes and the cancellation of some contracts. This risk is not balanced in a proportionate way by any added value from applying the Tariff FG/NC to existing contracts.
- If the level of tariffs is influenced by the Tariff FG (NC) (e.g. prices for non-physical backhaul capacity), then the economical balance of existing contracts will be affected. This will lead to shortfalls of revenue with potentially no compensation, which could

³ The CAM FG contained a stipulation that mandatory bundling of capacity would have to apply to existing contracts and this was written into the CAM NC under protest by ENTSOG due to legal concerns. These concerns have been shared by stakeholders and the EC is now proposing to remove the default rule for the application of mandatory bundling to existing contracts so that it can be replaced with a best efforts clause.

⁴ Past experience has taught TSOs that the process of drafting new gas transmission contracts, re-negotiations existing contracts and arriving at final agreements with shippers and NRAs can take several years for just one contract. Therefore, TSOs have an understandable concern about how long the process could be when it comes to redesigning the whole tariff system impacting all contracts.

have serious consequences especially for non-captive markets⁵ that are comprised mainly of transit.

The following is an example of a non-captive market. The example is based on the situation in Slovakia and similar situations of non-captive markets are faced by some ENTSOG members but not all.

An illustrative case is that of the non-captive market of Slovakia, where transit volumes are being re-routed to other alternative routes, e.g. Nord Stream (see figures below), resulting in an increased risk of stranded assets and related costs and to decommissioning in the system. Mechanisms for compensating revenue drops from existing contracts could be really complicated. There is also the risk of opening existing (long term) contracts which might endanger security of supply due to a major risk of further stranded costs and decommissioning of the system. This could have an overall negative impact on the security of supply of gas imports to the EU.

The table below represents the current status before any potential impacts from future Tariff NC rules. It shows that, (i) some TSOs clearly have pipe to pipe competition and that shippers can decrease their bookings when they choose alternative routes and (ii) when the bookings are decreased, the only option for the TSO is to decrease the costs through decommissioning of the infrastructure. This would therefore have a negative impact on the security of supply for Europe.

Table 1. Capacity is in millions m3/day at 20C

Year	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Technical capacity entry from Ukraine	294	294	245	240	240	240	231	231	231	231
Booked capacity entry from Ukraine	282	282	214	190	190	190	176	176	176	176

⁵ [A captive market is where a group of consumers, who through a lack of choice, must purchase a product at the offered price or cease procurement of that product. A non-captive market is where consumers have choice and can purchase the product from alternative sources.] *Definition under discussion*

Moreover, a number of European countries have a high dependency on transit flows. In some cases this dependency translates to more than half of a TSOs' revenue coming from border-to-border contracts while in other cases the revenue from border-to-border contracts can be in excess of three quarters of their total revenue.

1.2. Please explain if any further definitions should be added for clarity of the FG (NC)?

The terminology used for regulated tariffs and regulatory regimes differs across Europe. It is essential that the definitions are clear and more elaborated to ensure a common understanding amongst all stakeholders. Please find below bullet points with comments for some of the definitions included in the Draft Tariff FG and also some additional suggestions.

- Equalisation approach – this should be clarified if the intention is to explain that equalisation is applied to two distinct groups of points, e.g. entry and exit, and that prices are smoothed or levelled. It might be clearer to use uniform or levelled entry/exit.
- Non-physical backhaul flows – ENTSOG does not believe that it is necessary to have a separate product⁶ for this in the code. If however it is to be included, it could be better elaborated such as the following suggestion: 'Non-physical backhaul capacity can be considered as a product only at unidirectional entry or exit points. It is where the volume of gas nominated from a point of receipt to a point of delivery is such that the flow is in the opposite direction to the physical flow. This implies a reduction in the quantity of gas physically imported in the direction of the physical flow.'
- Payable price – this definition would be clearer if it referred to the price at auctions for cross-border capacity.
- Rate of return regime – this needs to be better formulated to clarify what is included in the regime and how it differs from a cost plus regime which is not defined in the Draft Tariff FG.
- Reference price – the definition for reference price could be made clearer by putting the last sentence first so as to establish firstly, that the reference price is the regulated price

⁶ Please see ENTSOG's responses to questions 4.4.2 and 4.4.3 for more information on this topic.

for the firm annual capacity product before secondly, elaborating that it is used as a reference price for other products.

- Regulatory period – the definition implies that allowed revenue is reassessed and adjusted only at the end of the regulatory period while corrections of allowed revenues happen in different systems on a yearly basis. In most systems the regulatory period is more than one year (i.e. a price control/revenue review for agreeing costs and setting prices/revenues) but there are yearly adjustments within the regulatory period to account for under/over recovery, variable parameters like inflation or other adjustments as prescribed in the regulatory settlement. It might be clearer to replace 'tariff structure' in the definition with 'tariff methodology'. Where a hybrid regulatory regime is applied, e.g. revenue cap on domestic and price cap on cross-border flows, the regulatory period for each kind of methodology may differ.
- Revenue recovery – is the defined term, however the Draft Tariff FG refers more often to over and under recovery within the text and therefore over and under recovery could be explained within the definition.
- Allowed revenue/allowed price – there is a definition for 'allowed revenue' which relates to a non-price cap regime but there is not an equivalent definition for 'allowed tariff' with regards to price cap regimes, for the sake of consistency such a definition could be included.

1.3. Please suggest the top-5 *core indicators* for monitoring the future EU-wide implementation of the future tariff FG (NC)?

As communicated in the context of the development of the draft Network Code on Balancing and other meetings with ACER, ENTSOG does not believe that it is appropriate for a network code to establish the indicators that will be used to 'monitor and analyse its implementation and its effect on the harmonisation of applicable rules aimed at facilitating market integration' (as per Article 8(8) of the Regulation). ENTSOG, for its part, does not want to fetter its discretion for its future monitoring activity given the uncertainty over market developments and over which indicators will be appropriate.

2. Cost allocation and determination of the reference price (Chapter 2 of the draft Framework Guideline)

2.1. Transparency provisions

2.1.1. Do you agree with the level of harmonization proposed for the transparency in relation to tariffication methodologies?

ENTSOG's members are already subject to considerable transparency requirements under:

- The 'Transparency Guidelines', to which TSOs have been complying since March 2011;
- National rules adopted with a view to implementing Article 18(2) of the Regulation or earlier in respect of national or local circumstances.

ENTSOG's members are happy to provide useful information in line with Article 13 of Regulation, to help network users to manage their exposure but there should be a balance between the cost of providing information and the usefulness of the information to network users. With reference to the principle of subsidiarity, ENTSOG believes that the objectives of transparency in the Regulation can be satisfactorily attained by the Member States acting individually. In addition, given the varying tariff regimes applied across Member States, it is not apparent that each of the six points would be relevant and/or appropriate in all cases, e.g. use of flow simulations or the evolution of tariffs, in some systems they are re-calculated and approved on a yearly basis. Therefore, some of the six items outlined by ACER will be out of scope⁷ for certain TSOs based on their tariff regimes. In particular, the assumptions on capacity utilisation and subscriptions and on costs, constitute information whose usefulness to network users is not evident at all and that should be possibly disclosed only to NRAs on a confidential basis. According to settled case-law, the protection of commercially sensitive information is a general principle of the EU law (see also Article 339 of the Treaty on the Functioning of the

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As noted in ACER's IIA, in various Member States, a ministry sets transmission tariffs. These situations cause concern because they limit a TSO's ability to provide transparency with regards to the tariff setting process. A TSO may not hold the necessary information if the tariffs are set by another party.

European Union (TFEU)). However, this principle does not prevent the publication of any commercially sensitive information but rather requests that a balance is struck between the benefits of transparency to all customers and the protection of the legitimate confidentiality of the TSOs and their customers. It is not clear that the transparency requirements outlined will help to achieve the objectives of the Regulation.

2.1.2. Would you support additional requirement(s) to ensure “reasonable and sufficiently” detailed tariff information⁸? For example, one could consider including a provision such as: “the transmission system operators or relevant national authorities shall provide additional information if a significant tariff fluctuation is expected on a specific or on all entry- and exit points”.

Additional requirements should not be necessary if network users understand the tariff methodology and the impact of different parameter.

2.2. Cost allocation and reference price setting methodology, general questions

2.2.1. Do you agree with proposed level of harmonization for the reference price setting methodology, aiming for same methodology for all types of network users per one entry-exit zone?

ENTSOG agrees with the proposed level of harmonisation for the reference price setting methodology with an allowance for some differences as outlined in footnote 7. ENTSOG would like to highlight the text in footnote 7 of the Draft Tariff FG, i.e. that the 'application of the same methodology does not rule out the possibility of different, but still consistent, tariff structures for entry and exit points, as long as these are based on the same or consistent modelling assumptions (i.e. on the requirement for a single calculation methodology, including the same underlying assumptions in terms of cost, demand projections, capital expenditure etc.)' and request that it be incorporated into the main body of the Tariff FG to ensure it is given due importance. In some entry-exit zones, such as those with a high proportion of cross-border flows, using the same methodology would create cross-subsidies. However, in some situations using the same

⁸ Article 18(2) of Regulation states that: 'In order to ensure transparent [...] tariffs [...], transmission system operators or relevant national authorities shall publish reasonably and sufficiently detailed information on tariff derivation, methodology and structure'.

methodology per entry-exit zone would mean that prices have to be arranged between competing TSOs within one entry-exit zone, which should be avoided.⁹

ENTSOG seeks clarification from ACER on the following aspects of the Draft Tariff FG:

'The recovery of costs that are driven mainly by the volume of flows (such as compressor fuel costs) might, upon approval or determination by the NRA, be ensured either via the sale of capacity services or via a specific charge related to the volume actually flowed by shippers.'

==> Please clarify if you mean that the specific charge related to the volume actually flowed by shippers could be 'in kind' (for example: compressor fuel gas).

==> Is it correct that NRAs should consult adjacent NRAs before making any decision on this recovery of costs?

'Where applied, the chosen charge for the recovery of costs that are driven mainly by the volume of flows shall be levied at a TSO level and shall not be applied to specific entry or exit points.'

==> Please clarify what this means in practice, i.e. are charges applied in the same way at all entry and exit points?

'The reference and regulated prices for all entry capacity services, and the reference and regulated prices for all exit capacity services be established using forecast allowed revenues and forecast subscriptions, and using the same methodology for all entry and exit points.'

==> Forecasts of subscriptions are used to establish reference and regulated prices together with the (actual) allowed revenues

On footnote 7, ENTSOG would like a clarification of what the text means. An example would help to illustrate the types of different tariff structures for entry and exit points that could be applied.

⁹ Please see the response to question 12 for more information on the harmonisation of price setting.

2.3. Cost allocation and the Reference price setting methodology, detailed questions.

2.3.1. Do you agree with proposed option for setting reference prices for entry capacity i.e. to have methodology based on major cost driver (e.g. distance) unless use of equal tariffs can be justified?

Cost allocation and the setting of reference prices should be carried out at a national level as long as the reference prices are non-discriminatory.

The Draft Tariff FG states that reference prices for IPs and regulated prices for non-IPs should at least cover fixed costs and therefore TSOs should not be forced to implement zero reserve prices.

2.3.2. Do you agree with proposed option for setting Reference prices for exit capacity i.e. to have methodology based on major cost driver (e.g. distance) unless use of equal tariffs can be justified?

Please see response to question 2.3.1.

2.3.3. Do you agree with the cost allocation principle that revenue from entry points should equal 50% of revenue from all entry and exit points?

In general, ENTSOG does not agree with any firm rule for cost allocation. This should be solved on a national level because each system has been developed in a particular way. Systems are often shaped by national, non-economic and public policies, for example, in terms of sending locational signals that support the priorities of the national system. Furthermore, a firm rule would not necessarily be in line with the principle of non-discrimination as outlined in the Regulation.

2.3.4. Do you agree with application of the proposed options for setting reference prices to all entry and exit points (without any separate mechanism for the domestic points, whilst ensuring no discrimination between domestic and cross-border network usage)?

A consistent methodology for setting reference prices at entry and exit points can be important. However, there are situations where the application of the same methodology is not justifiable¹⁰ with respect to the objectives of the Regulation, such as avoiding cross-subsidies and cost reflectiveness.

ENTSOG seeks clarification from ACER on the following aspect of the Draft Tariff FG:

'The above shall not preclude the harmonisation of methodologies for setting reference prices on both sides of an IP, where agreed between NRAs.' The cost allocation methodology has an impact on all entry and exit points of the system. Setting the tariff at one specific IP of the system differently (through agreement with adjacent TSO) may create inconsistencies (and thus potential cross-subsidies) with other entry and exit points.

2.4. Pricing of entry- and exit capacity on the transmission network to and from gas storage facilities (see also questions under '9' Locational signals).

2.4.1. Do you agree with proposed option to base tariffs for entry and exit capacity on the transmission network to and from gas storage facilities at an adequate discount to other entry and exit points on the TSO?

ENTSOG believes that discounts for gas storage are out of scope for the Tariff FG and should be decided on a national level. Discounts for gas storage facilities should be applied only where there are measurable benefits to the system. If such discounts are to be applied, similar treatment should be offered to other flexibility sources, such as interconnectors, which also provide system benefits and cost savings. ACER's initial impact assessment ('IIA') provides comparative information on whether, and which, separate transport tariffs for gas storage facilities exist in selected Member States. ACER states that 'such discounts are typically substantiated by the positive effect of storages

¹⁰ Footnote seven allows for the possibility of different but still consistent tariff structures for entry and exit points.

on required network investments or the contribution of storages to system stability.' ENTSOG maintains that such discounts could be motivated by public policy objectives, such as security of supply. There should be some flexibility at a national level to facilitate the need for such sources of gas within individual systems.

2.4.2. Do you agree with harmonization of such a discount across all storage points in the EU?

Please refer to response to question 2.4.1.

2.4.3. If you prefer harmonization for an 'adequate' discount, which level of such a discount applied to firm capacity level do you advocate?

- a) 0, because....
- b) 0-30%, because.....;
- c) 30-50%, because.....
- d) 50-80%, because...
- e) 80-100%, because....
- f) No opinion or other suggestions, because....

Please refer to the response to question 2.4.1.

2.4.4. What are your views on harmonization of tariff measures, leading to harmonization of transmission tariff levels across all storage points in the EU (instead of harmonizing a discount across all storage points in the EU)?

Please refer to the response to question 2.4.1. In addition to that response it should also be noted that the Draft Tariff FG exclusively addresses transmission tariff structures and therefore, any consideration of transmission tariff levels is going beyond the scope of the Draft Tariff FG.

3. Revenue recovery (Chapter 3 of the draft Framework Guideline)

3.1. General – interdependency questions.

3.1.1. Do you agree that the current draft FG proposals on Reserve prices for short term products, on revenue recovery and on payable price are consistent together?

TSOs operate under different regulatory regimes and therefore the proposed changes for (i) the pricing of short term products, (ii) revenue recovery and (iii) payable price may not work depending on the structure of the regulatory regime and rules underpinning the status quo. The proposals do not work for price cap regimes or for regimes with market-based prices for cross-border points. In a price cap regime, reducing a TSO's flexibility to manage pricing without having allowed revenue or under/over recovery mechanisms creates a risk of lost revenue and a risk to the overall competitiveness of their product. In addition, countries with high cross-border trade have concerns about revenue recovery and the risk of stranded assets. If the issue of different regulatory regimes did not exist then the above mentioned proposals might be consistent together. However, even under such circumstances it is likely that these proposals could exacerbate the same problems that the Draft Tariff FG aims to fix, i.e. reserve prices for short term products (set via multipliers of on average one or less than one) and revenue recovery minimisation.

3.1.2. Are the current draft FG proposals on Reserve prices for short term products, on revenue recovery and on payable price properly addressing the ambition for the pricing of transmission capacity to strike the right balance between facilitating short-term gas trading on one hand and providing long-term signals for covering costs and promoting efficient investments on the other?

Network users that require annual capacity should be incentivised to book annual capacity products. Having short term capacity multipliers of one or less than one creates the risk of a flight from long term bookings to short term bookings and the loss of long term signals. It also puts system investment at considerable risk because the signals for such investments become weakened and the willingness of shippers to make long term capacity bookings diminishes. Finally, the application of low short term capacity multipliers (e.g. one or less than one) leads to a high risk of cross-subsidisation between network users with long term capacity bookings and those that primarily book short term capacity products. For more details see section 4.2.2 on multipliers.

3.2. Regulatory account

3.2.1. Do you agree with the principle to set reference prices to minimise the difference between allowed and collected revenues?

Yes, it is important to set reference prices to minimise the difference between allowed and collected revenues in order to reduce the likelihood of large over and under recoveries that could create significant tariff volatility. Tariff stability is important to the market and tariffs should thus be set to minimise the need for ex-post adjustments. However, this is not applicable to those market areas/Member States where price cap regimes are applied. In some countries and under certain regulatory regimes ex-post revenue recovery may not even be possible.

3.2.2. Do you agree with proposed level of harmonization of using the regulatory account?

Yes, the regulatory account is an important tool that ensures that TSOs recuperate the amount of revenue that they are entitled to under the regulatory regime and that over recovery of revenue is returned to customers in a timely manner via transmission tariffs.

However, under a price cap regime the regulator sets a price and the TSO bears the risk of revenue under recovery and is allowed to sell as much capacity as possible to earn appropriate returns on investment. The TSO is not guaranteed any amount of revenue and in order to balance the risk of under recovery, the TSO also has the opportunity to earn more revenue from increased capacity sales. It is not clear whether or how a regulatory account would work for a price cap regime perhaps just the auction premium may be allocated to the regulatory account in such cases.

3.2.3. Do you agree that NRAs should determine or approve how often and how fast the regulatory account has to be reconciled on a national level, whilst preserving balance between timely cost recovery and sudden adjustments to tariffs?

It is important to preserve the balance between timely cost recovery and sudden adjustments to tariff. Each network across the EU is different and has different requirements that must be considered in terms of the level and timing of debt servicing commitments. Timely and effective cost recovery is important to keep regulated businesses running smoothly from a financial and operational perspective. Sudden adjustments in tariffs must be managed as tariff stability is valued by the market.

ENTSOG seeks clarification from ACER on the following aspect of the Draft Tariff FG:

'Determine or approve, and justify ex-ante at a national level, which fraction of the under or over recovery will be logged on to the regulatory account (and therefore paid by, or returned to, consumers), and which part should be met by the TSO(s).'

What part of the over or under recoveries, in ACER's mind, could not be logged to the regulatory account?

- differences in costs (which would be a cost efficiency incentive); differences in sales (which would be an incentive for TSO's to maximise the amount of sold capacity)?

- In particular, if over/under recovery is exceeding/missing part of the allowed revenue, it should be by definition returned/recovered in its entirety.

3.2.4. What is your view on including the option to use the Regulatory Account (including the potential over-recoveries from auction premium) to contribute to solving congestion? How could this be done, especially in view of principles of non-discrimination and cost-reflectivity? Please give reasons for your answer, including any quantitative evidence, tables and examples.

An auction premium is the difference between the clearing price and reserve price of an auction. Congestion rent is earned when all the capacity at an IP is sold for a price higher than the reserve price. Assuming that all the capacity is sold for a higher than expected price, then the TSO has earned its target regulated revenue and some auction premium revenue. The allocation of capacity at IPs via auctions will be introduced across the EU when the CAM NC comes into force. Even though some TSOs currently use auctions to allocate capacity, it is difficult to assess the level of auction premiums. While there may be auction premiums at one IP, there may be under recovery of allowed revenue at another IP. The use of auction premiums to solve congestion should only be considered, in a non-price cap regime, if the system as a whole has consistently over recovered its regulated revenue. This is of particular importance considering that the Draft Tariff FG states that all entry and exit points will contribute to the reconciliation of the regulatory account through adjustment of either the reserve or regulated price. It would not make sense in a non-price cap regime, for example, to retain auction premiums at one IP for

solving congestion, if under recovery at another IP meant that reserve prices at all IPs would increase.

Furthermore, one has to differentiate between volatile auction premiums which only occur for one or several products and stable auction premiums which occur permanently. Especially in the first case, auction premiums should primarily be used to reduce under recovery at other points in a non-price cap regime. Finally, the auction premium discussion is linked to the provisions of the CMP (e.g. buy back mechanism) and the incremental capacity issue and should be dealt with accordingly through the evolution of the related work streams.

3.3. Reconciliation of Regulatory accounts.

3.3.1. Which option for the reconciliation of regulatory accounts do you prefer?

There are merits to both of the proposed options for reconciling regulatory accounts. It would seem more expedient to allow TSOs, with NRA approval, to apply either option to their regulatory account rather than being too prescriptive in the application of new rules which would reduce a TSO's flexibility to recover revenue in a manner best suited to its system and customer base. Where there is a captive customer base¹¹ a single capacity charge or a capacity charge with an additional charge based on capacity or commodity can be used. However, in systems without captive customers it is unclear how the regulatory account would be reconciled. In the absence of a captive market, additional options to those that have been proposed may be necessary to maintain certain systems.

3.3.2. In line with the interdependency discussion above in question 3.1, what are your views on recovering revenues by means of a separate charge set at the start of the gas year with the aim of minimising the amount that goes into the regulatory account?

The principle when setting tariffs ex-ante should be to minimise the likelihood of under and over recovery of revenue. As outlined below, ENTSOG seeks clarification on how this separate charge might work and the conditions under which it would apply.

¹¹

A captive customer base is where a group of consumers, who through a lack of choice, must purchase a product at the offered price or cease procurement of that product.

ENTSOG seeks clarification from ACER on the following aspect of the Draft Tariff FG:

ACER has envisaged the possibility for a 'separate charge' which can be based on gas flows or on capacity bookings. Will this separate charge be billed during the next tariff period(s), for reconciling the regulatory account from the past, or will this separate charge (positive or negative) be billed only to those network users that created the under or over recoveries based on past capacity bookings?

3.3.3. Do you agree with application of the option on reconciling regulatory account to all entry and exit points (both domestic and cross-border)?

In some instances, it may be appropriate to apply the reconciliation of the regulatory account to all entry and exit points, e.g. in a non-price cap regime with a captive market. However, in other situations this would not be appropriate, e.g. where an increase in tariffs (due to reconciliation of the regulatory account) would make some IPs uncompetitive compared to other IPs leading to a reduction in use and thereby increasing the required under recovery. The reconciliation of the regulatory account should seek to uphold the principle of minimising cross-subsidies between domestic and cross-border customers. There should be some flexibility for the TSO, with NRA approval, to choose where to apply under or over recovery of revenue. If pipelines are in competition and there is no captive market then it may be necessary to look beyond recovery of revenues from individual TSOs and consider the broader benefits that some pipelines provide, e.g. where security of supply is being provided to more than one country.

One example of the consideration of security of supply is in the electricity industry where Ofgem and CREG have proposed a cap and floor mechanism for new interconnector investment. Interconnector owners are allowed to earn returns within the bounds of a pre-set cap and floor mechanism. If the returns are above the cap then the owner returns them to the national TSO to reduce national transmission tariffs but where returns are below the floor level TSOs will make up the difference and recover the cost through national transmission tariffs.

3.3.4. Do you agree that the regulatory account should be recovered by splitting the total under- or over- recovery across all entry and exit points in the same proportion as set out in the cost allocation methodology?

The split of the under or over recovery across different points is a decision that would be best made by TSOs, with NRA approval, based on the characteristics of the system and the customer base. The reconciliation of the regulatory account should seek to uphold the principle of minimising cross-subsidies between domestic and cross-border customers. However, implementing rigid rules could have unintended consequences; therefore, there should be flexibility for TSOs to manage the allocation of their costs to ensure effective recovery of allowed revenues. It may be necessary to deviate from the cost proportions to enable any under recovery of revenue to be met.

4. Reserve prices (Chapter 4 of the Framework Guideline)

4.1. General

4.1.1. Do you consider it sufficient to have rules on firm, interruptible and non-physical backhaul capacity products or are you aware of other capacity products that should be addressed in the FG?

It is sufficient to have rules on firm and interruptible capacity products in the Tariff FG. ENTSOG does not believe that it is necessary to have a separate product for non-physical backhaul capacity included in the Tariff FG (NC) as it should be treated in the same manner as interruptible capacity.

4.2. Reserve prices (firm)

4.2.1. Do you agree with proposed level of harmonization?

Please see the responses to questions 4.2.2 and 4.2.3.

4.2.2. Do you agree with proposed option for the Reserve price for short-term products including the possibility that the national regulatory authority may decide to allow for higher short-term prices that may apply (via multiplier higher than one, but not higher than 1.5) if there is risk of *significant* under-recovery of allowed revenues?

No, while we agree with the concept of multipliers we don't agree with the proposed multipliers.

The Draft Tariff FG proposes a multiplier of one or less than one with the possibility to apply seasonality whereby the multipliers are on average one or less than one over the year. In addition, with NRA approval, it is possible to have a multiplier of 1.5 or less but not higher than 1.5 on average. While there are upper limits to the multipliers, i.e. 1 or 1.5 on average, there is no lower limit specified. As acknowledged in IIA and the Brattle Group report, zero reserve prices are not appropriate for non-congested pipelines, and low short term prices at non-congested points can have a negative impact on the stability of reference prices. Any rules on the pricing of short term capacity must cater for both congested and non-congested situations.

The pricing of daily capacity requires a higher multiplier and differs from the pricing of monthly capacity as this daily product is sold closer to the time of use. The daily product offers more flexibility to network users and therefore its pricing should reflect this value. Multipliers should be set to a level that encourages shippers to purchase the product that best meets their needs, as set out in the REP (explained in the response to question 4.2.4).

Such limits can be set only in those systems, where revenues are granted (e.g. in a revenue cap regime), because the network users are bearing the capacity risk. However, where the amount of revenues is not granted, NRA shall not determine multipliers and herewith indirectly introduce revenue cap which would cause cross-subsidies between customers in different Member States/market areas and would have negative impact on appropriate rate of return as the TSO would not be given the chance to recover the costs and at the same time the network users would not bear the capacity risk of the TSO.

Example: experience of low multipliers

Experience in Germany has shown that after the introduction of multipliers of one, even for daily capacity, shippers at all entry and exit points tended to book more and more on a short term basis. This leads to volatile capacity bookings, potential under recovery at the beginning and price increases in a non-price cap system. As a consequence, network users who are not able to book short-term, e.g. industrial customers, subsidise other users and investment signals are not provided by network users any more. These effects will be strengthened if capacity congestions were demolished due to CMP measures and security of supply investments.

ENTSOG seeks clarification from ACER on the following aspect of the Draft Tariff FG:

What is the rationale for using 1 or less than 1 as a default rule and 1.5 as the upper limit?

4.2.3. Do you agree with application of the proposal on short-term Reserve prices to entry and exit points where the Network Code on CAM applies, i.e. interconnection points only?

A suitable proposal for the pricing of short term capacity, such as the REP, should apply where the CAM NC applies, i.e. at IPs.

4.2.4. What criteria would you propose to set the Reserve price for short-term products that will be higher than the price of an annual product, to interconnection points?

Short term products should be priced higher than the annual product when there is a risk of under recovery. This risk of under recovery occurs when shippers are expected to profile their bookings. The magnitude of the under recovery is likely to be greater at uncongested points and at entry points feeding markets with a seasonal demand.

In order to calculate appropriate multipliers ENTSOG has previously advocated the use of the REP. With regards to the pricing of short term products the REP prevents two potentially serious problems. Firstly, it avoids concerns of the over-pricing of short term products. The report by KEMA (2009) 'Study on methodologies for gas transmission network tariffs' found that there are high multipliers on short term capacity (p. 13/14) across Europe. This may be justified in a First Come First Served (FCFS) world. Under the auction system set out in the CAM NC, however, it is no longer necessary. The REP addresses the concern that TSOs and NRAs on a national level keep the high multipliers on short term capacity after implementation of the CAM NC. Secondly, it avoids under-pricing of short term products. Without the REP, there is a risk on a national level that short term products are priced too low (as in Germany and the UK), which will lead to a flight to short term bookings with overall loss of revenues. In Germany and the UK, there are under recovery mechanisms in place, so at least TSOs' revenues are ensured (though the market distortions introduced by such a pricing scheme may have undesirable consequences). However, in other regimes over and under recovery correction is not safeguarded or not possible (e.g. in price caps). The implementation of the REP would ensure a reduction in cross-subsidisation between different users and would provide

more stable revenue recovery. ENTSOG would be happy to include a methodology for the REP in the Tariff NC, and to work out design details for its implementation.

4.2.5. Would you agree with using Seasonality (or other criteria, which you may suggest) of the systems as criteria to set the Reserve price for short-term products that will be higher than the price of an annual product, to interconnection points?

The risk that shippers will profile their capacity bookings should be used as a criterion for calculating the reserve price for short term capacity products. In addition, the use of seasonality is also an important tool for setting the price of short term capacity particularly in terms of incentivising network users with long term capacity needs to book annual capacity. Seasonality can also be used to attract additional network usage during the summer months when then systems usually have spare capacity available.

4.3. Reserve prices (interruptible)

4.3.1. Do you agree with proposed option to set Interruptible Reserve prices at a discount to firm capacity where the discount is based on the likelihood of interruption, and to recalculate once a year?

When setting interruptible reserve prices at a discount to firm capacity, the discount should be based on the likelihood of interruption so that the pricing reflects the value of the product. The likelihood of interruption could be recalculated each year.

4.3.2. If you prefer a fixed discount, which level of such a discount applied to firm capacity level do you advocate

- a. 0, because....; whereas risk of interruption is.....;
- b. 0-30%, because.....; whereas risk of interruption is.....;
- c. 30-50%, because.....; whereas risk of interruption is.....;
- d. 50-80%, because...; whereas risk of interruption is.....;
- e. 80-100%, because....; whereas risk of interruption is.....;
- f.% (customized value, as above values are chosen arbitrary to allow for a global grouping of answers), because....; whereas risk of interruption is.....; and risk of interruption is calculated as follows:.....

Setting a fixed discount would seem to go against Article 14(1)(b) of the Regulation which states that the price of interruptible capacity shall reflect the probability of interruption.

4.3.3. Do you agree with application of the proposed option to entry and exit points where the Network Code on CAM applies, i.e. interconnection points only?

The pricing of interruptible capacity based on the likelihood of interruption should be applied to IPs.

4.4. Reserve price (backhaul)

4.4.1. Do you agree with proposed level of harmonization?

Please see the responses to questions 4.2.2 and 4.2.3.

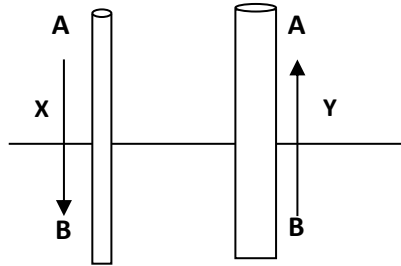
4.4.2. Do you agree with proposed option to set backhaul prices at a discount to firm capacity level so that Reserve prices reflect the level of actual marginal costs (= IT and administrative costs)?

ENTSOG does not believe that it is necessary to have a separate product for non-physical backhaul capacity included in the Tariff FG (NC) as it should be treated in the same manner as interruptible capacity. The pricing of non-physical backhaul as outlined in the Draft Tariff FG does not take account of the fact that the non-physical backhaul product only exists if there is forward flow and the related underlying infrastructure to facilitate it.

ENTSOG advocates that backhaul capacity is very similar to interruptible capacity and its tariff should be similar to interruptible capacity: with a discount reflecting the likelihood of interruption. Let's take the examples as in the illustration below: a virtual capacity composed of two pipes interconnecting system A with system B. One of the pipes has a physical capacity of X kWh/h (or kWh/day) in the direction A to B and the other pipe has a capacity of Y kWh/h (or kWh/day) in the direction B to A. Let's assume that $Y > X$.

Technical capacity:

X kWh/h (or kWh/day)
from A to B



Technical capacity:

Y kWh/h (or kWh/day)
from B to A

The following capacities will be sold at the full price:

- X kWh/h (or kWh/day) firm capacity from A to B at the full price $P_{A \rightarrow B}$
- Y kWh/h (or kWh/day) firm capacity from B to A at the full price $P_{B \rightarrow A}$

For the additional capacity from A to B and from B to A, there is a choice:

- to consider this additional capacity as interruptible (additional gas flowing in the pipe with the physical forward flow capacity) and to sell it at a discount compared to the firm capacity;
- to consider this additional capacity as backhaul (gas 'not-flowing' in the reverse pipe) and to sell it at a zero or very low reserve price (according to the Draft Tariff FG).

Since there is no obvious difference between these two options, ENTSG believes there should be no tariff distinction between interruptible capacity and backhaul capacity.

4.4.3. Do you agree with application of the proposed option on backhaul capacity pricing to entry and exit points where the Network Code on CAM applies i.e. interconnection points only?

As outlined in the response to question 4.4.2 ENTSG does not believe that it is necessary to have a separate product for non-physical backhaul capacity as it should be treated in the same manner as interruptible capacity and should only apply at IPs in the same way that interruptible capacity does.

5. Virtual IPs

Do you support the proposed option for Reserve price in Virtual IPs as EU-wide standard? Please reason your answer, including any quantitative evidence, tables and examples on balance between cost-reflectivity and cross border trade stimulation.

The Draft Tariff FG mandates that the Tariff NC elaborates a combination mechanism for the reserve price for VIPs. ENTSOG considers that there is a risk that decreasing the flexibility of TSOs with regards to this issue could be counterproductive to the objective of cost reflectivity. Accordingly, ENTSOG asks whether harmonisation in this domain is indeed helpful, since the development of an optimal mechanism must at least take the different regulatory regimes into account. In some regimes, a feasible policy option could be to aggregate the points and then calculate the tariff as if it was just one single point, depending on the allowed revenue that should be recovered. In a price cap regime, a feasible policy option could be to price the VIP based on an average of the individual prices of the bundled IPs.

6. Bundled capacity products

6.1. Reserve price (Bundled)

6.1.1. Do you agree with proposed level of harmonization?

Please see the responses to questions 6.1.2 and 6.1.3.

6.1.2. Do you agree with the proposed option that the sum of Reserve prices for unbundled capacity is used as bundled Reserve price?

The sum of the reserve prices for unbundled entry and exit capacity at cross-border points should be used as the bundled reserve price. It is important that the individual reserve prices for cross-border entry and exit capacity are aggregated to calculate the bundled reserve price to ensure revenue recovery.

6.1.3 Do you agree with application of specified the proposal to entry and exit points where the Network Code on CAM applies i.e. interconnection points only?

Yes, the bundled reserve price should apply at IPs in line with the CAM NC.

6.2. Do you support the proposed option for Reserve price (if unbundled) as the EU-wide standard? Please give reasons for your answer, including any quantitative evidence, tables and examples on balance between cost-reflectivity and cross border trade stimulation. We encourage you to specify if you support the Unbundled Reserve price being higher to support bundling of products.

The reserve price for unbundled capacity at an IP should reflect the reserve price of either the entry or exit capacity from which the unbundled capacity originates. Arbitrarily inflating or deflating the unbundled/bundled product price is not consistent with the cost reflectivity principle stated in the Draft Tariff FG. Having different prices for bundled and unbundled capacity would seem discriminatory, particularly if the intention is to price one product at a higher level to make the other product more attractive. If the market requires bundled capacity there should be no need to price unbundled capacity at a higher level purely to incentivise the sale of bundled capacity. Moreover, progressive bundling of capacity is already incentivised by the CAM NC even without taking into account any default rule.

6.3. The Network Code on Tariffs shall specify that the revenues from Reserve price of bundled capacity products shall be attributed to the TSOs proportionally to the Reserve prices of their respective capacities in the Bundled Capacity. The revenues from the auction premium from bundled capacity above the Reserve price shall be split according to agreement between the relevant national regulatory authorities. Furthermore, the Network Code on Tariffs shall in the case that no agreement is concluded before the auction, specify that the revenues from the auction premium shall be split equally between the TSOs.

6.3.1. Do you agree with proposed level of harmonization in that approach above?

Please see the responses to questions 6.3.1 and 6.3.2.

6.3.2. Do you agree with proposed option for splitting auction revenues from bundled products to the relevant TSOs?

With regards to the splitting of auction premium revenues, ENTSOG believes that the most important consideration is the avoidance of distortions in the reserve price setting process. [Where there are cost reflective tariffs on both sides of the interconnection point then a proportional split of the auction premia is appropriate but where tariffs are

not cost reflective then a 50:50 split is more appropriate]¹². The default rule for auction premiums warrants more discussion during the Tariff FG (NC) development process.

6.3.3. Do you agree with application of the proposal to entry and exit points where the Network Code on CAM applies i.e. interconnection points only?

Yes, the splitting of auction premia revenues should apply at IPs in line with the CAM NC.

7. Payable price

7.1.1. Do you agree with proposed level of harmonization?

Please see the responses to questions 7.1.1 and 7.1.2.

7.1.2. Do you agree with the proposed option to set payable price equal to the current Reserve price for year in which capacity is used plus any premium?

ENTSOG believes that both options could apply as previously set out in the CAM NC. The payable price is an important issue because of the impact that it can have on long term auctions. The Brattle Group report states that there are some risks to choosing a harmonised policy and that although it is true that this could be treated at the EU level, a harmonised policy might not be the best option.

Setting the payable price equal to the current reserve price for the year in which the capacity is used plus any premium has both advantages and disadvantages. Some advantages are that it reduces the risk of significant ex-post adjustments for under recovery of revenues which would be borne by all network users and that it does not discriminate between users buying the same product at different times. On the other hand, it provides network users little certainty about the price that they will pay in long term auctions which could discourage the booking of long term capacity (and possibly undermine long term investments).

¹² *Still under discussion*

In some countries shippers would have the opportunity to terminate contracts if prices increase. This could lead to the instability of long term capacity booking, especially in transmission systems which are in competition with others.

Since the optimal policy option might not be the same for all the systems, ENTSOG believes that both options should be possible.

7.1.3. Do you agree with the application of specified options regarding payable price to entry and exit points where the Network Code on CAM applies i.e. interconnection points only?

Yes, the application of any specified option with regards to payable price should only be at IPs as the payable price is a feature of auctions. The CAM NC will be used to implement auctions but only at IPs.

8. Incremental capacity (no explicit chapter in draft FG, implications at least to chapters 2/3 foreseen).

8.1. Please provide evidence of concrete problems with the current arrangements for incremental capacities, whereas these problems affect tariff structures in EU.

ENTSOG considers that the Tariff FG and the future Tariff NC are not the place to solve any issues related to incremental capacity processes. This topic is being studied by specific working groups external to, and within, ENTSOG. Therefore, due to the high level of interdependency with other issues than just tariffs (e.g. CAM, CMP, and security of supply) our opinion is that further discussion among market participants is essential in order to clarify the topic at a high level before providing specific guidelines.

8.2. Please therefore consider if harmonization, or partial harmonization of any parameters in the “market test” is appropriate within Tariffication principles at EU-level?

Please see the response to question 8.1.

Market tests can be performed in a number of different ways. Currently each TSO carries out its own processes based on the characteristics of their own network. This opinion is in line with the Brattle Group Report.

8.3. Are there any other elements required in the Network Code on transmission tariff structures, to accommodate incremental capacity offer (e.g. influence on regulatory accounts, regulatory periods length, requirement for a fixed for period of years tariffs).

Please see the response to question 8.1. As stated in this response, incremental capacity issues have significant interdependencies with other issues that go beyond tariffs and further work needs to be done on all the interdependent aspects of a market test for incremental capacity.

9. Usage of locational signals (no explicit chapter in FG, implications at least to chapters 2/3/4 foreseen).

9.1 Please provide evidence of concrete problems with the current arrangements for locational signals.

ENTSOG concurs with the ACER view¹³ that locational signal will result from a cost allocation methodology, which takes into account the main cost drivers (such as a distance).

ENTSOG also remarks that Member State governments and NRAs are applying additional specific measures which can encourage/discourage the usage of the network at particular locations (e.g., gas storages and LNG terminals). It is important that national characteristics are taken into consideration and therefore your locational signals should come through your existing methodology.

9.2. Are there any other elements required in the Network Code on transmission tariff structures to accommodate locational signals?

As in the response to question 9.1 above, ENTSOG maintains that locational signals should result from a cost allocation methodology, which takes into account the main cost drivers.

¹³ IIA, p.74.

9.3. Please consider whether the chapter on ‘Reference price’ should have more options added in regard to use of locational signals. Please consider specifically how tariff structures can be used to signal investment for e.g. gas-fired power plants, storages, LNG terminals, etc.

No, ENTSOG does not believe that more options are needed in the draft chapter on 'Reference price' in regard to the use of location signals.

9.4. Shorthaul as a form of ‘locational signal’ in e/e systems.

9.4.1. Should the FG have a tariff structure in place to avoid the incentive for inefficient building of pipelines (to avoid the entry-exit system charges) described above?

Given that shorthaul is a specific/exceptional measure to encourage usage of the network at that particular location, its continued use should be determined by NRAs, taking due account of specific circumstances in local markets.

9.4.2. How could this tariff structure be designed?

As in our response to question 9.4.1, ENTSOG believes that this matter will be best determined by NRAs.

9.4.3. Should there, in order to address risk of cross-subsidies and discrimination - be a limitation on the capacities that can be “shorthaul capacities”? Based on expert advice on current EU-practices, following options are proposed:

- Maximum 50 km (only distances of maximum 50 km can be considered as shorthaul capacities)
- Max 20% of the average gas travelling distance in the E/E system
- Max 10% of the total capacities of a E/E system can be considered as “shorthaul”
- Other, namely:...

Please specifically address who should pay the difference between the shorthaul tariff and the overall tariffs.

As in our response to question 9.4.1, ENTSOG believes that this matter is best determined on a national level.

9.5. Specific treatment of LNG (if any) considered, in view of considering specific storage treatment (see questions under 2.4).

9.5.1. Do you think that tariffs for entry and exit capacity from the LNG terminal could incorporate a discount relative to other entry and exit tariffs on the TSO, similar to the proposed option for underground gas storage?

In line with ENTSOG's position on discounts for gas storage, a discount for a LNG terminal should be applied only where there are measurable benefits to the system or proven transportation cost savings. If such discounts are to be applied, similar treatment should be offered to other flexibility sources, such as interconnectors, which also provide system benefits and cost savings.

10. Effects Entry-Exit Zone mergers & Virtual IPs (no explicit chapter in FG, implications at least to chapters 2/3 foreseen).

10.1. Please provide evidence of concrete problems with the current arrangements for mergers of entry-exit zones at national level.

Entry-exit zone mergers are possible as long as TSOs have the facility to recover allowed revenue from other points. Problems can occur where revenue recovery is not possible, such as in price cap regimes or where there is no captive market.

Experience in Germany has shown that mergers of entry-exit zones are possible without arranged prices and other adjustment mechanisms. However, this requires the possibility of having deviations from a specific entry-exit split as well as ensuring that different price determination methodologies are possible within a merged entry-exit zone. Lost revenues from former IPs have to be re-allocated to the remaining entry and exit points in an efficient way for the networks. Therefore, within merged entry-exit zones deviation from a certain split can be necessary and should be set with reference to the network. It can happen that TSOs lose more entry capacity than exit capacity or vice versa due to the merging of zones. A split referring to an entry-exit system would need price arrangements between competing TSOs within the entry-exit zone, which should be avoided.

10.2. Please advise, if there are alternatives or additional requirements within Tarification setting harmonization steps, to accommodate 'Effects Entry-Exit Zone mergers' (once there). Please consider the Initial (draft) Impact assessment, when answering.

In a merger of entry-exit zones, TSO will seek compensation for the loss of revenue due to the elimination of entry and exit points on the border between the zones. Recovering lost revenue by increasing prices at other points should be possible where the price mechanism in the affected zones is under a revenue cap regime or a rate of return (cost plus) regime. Such a solution will not be possible, though, where a price cap exists. Where a straight-forward revenue recovery is not feasible, other mechanisms might be required.

11. What additional tariff structure measures do you envisage could improve the network code?

Please give reasons for your answer, including any quantitative evidence, tables and examples. Please also, if relevant, suggest and explain reasons why any of the proposed measures should rather have been left to voluntary exchange of best practices at national level (e.g. via Guidelines of Good Practice)¹⁴.

ENTSOG believes that the Draft Tariff FG (NC) could be improved by explicitly providing for the introduction, as initiated by NRAs and/or TSOs (with NRA approval), of incentive mechanisms schemes. ENTSOG believes that any incentive mechanism introduced should be separate from the reconciliation of a regulatory account.

12. Please share below any further comments concerning the draft Framework Guideline.

ENTSOG thanks ACER for the opportunity to make some general remarks concerning the Draft Tariff FG.

Scope

As mentioned above, ENTSOG has responded to this consultation without prejudice to the previously expressed view that the scope of the Tariff FG should be limited to only where tariff structures have a

¹⁴ Please e.g. specifically consider if the FG/NC should include an EU-wide provision providing for 'incentives' for implementation of CMP measures, and or additional EU-wide provisions ensuring that transmission system operators do not experience detrimental effects as consequence of the roll-out of EU-wide implementation of the auctions under the CAM NC and/or other NC.

clear impact on cross-border trade. The scope is broader than that of the CAM NC and of the CMP Guidelines which apply only to IPs between transmission systems and do not apply to domestic exit and entry points. The issue arises whether this scope is in line with the Third Energy Package and in particular with the Regulation. Article 8(7) of the Regulation foresees that 'The network codes shall be developed for cross-border network issues and market integration issues and shall be without prejudice to the Member States' right to establish national network codes which do not affect cross-border trade'. In addition, Recital 16 of the Regulation stresses that 'The network codes prepared by the ENTSO for Gas are not intended to replace the necessary national network codes for non cross-border issues'. In light of this principle, the EC's discretion to adopt the Tariff NC which extends to domestic/non cross-border issues could be questioned. Additionally, the fact that the Tariff FG exceeds the scope defined by the Regulation insofar as it is applicable to points on the transmission systems which are not cross-border points.

Implementation timeframe

The implementation timeframe of 12 months is very short considering the impact that transmission tariffs have on the gas business. Another concern is the absence of a transition period. Most TSOs have experienced changes to their regulatory regime in the past and understand that it is very difficult to end one tariff structure and begin another in 12 months. This is especially true given the nature of tariff calculations which are generally based on a regulatory settlement of 4-5 years with annual updates that often entail a time lag. In addition, the Draft Tariff FG states that the Tariff NC shall apply to both new and existing contracts. Any application of new rules to existing contracts will necessitate considerable time and work for necessary discussions with contract holders.

An implementation period of only 12 months creates further difficulties when TSOs are tasked with informing 'all concerned counterparties, in a timely manner, on the possible consequences the implementation of the Network Code on Tariffs may have on their activities, to allow enough time for them to adapt their practices.' The TSO does not know what possible consequences the implementation of the network may have on the activities of counterparties, because TSOs are not privy to such details with regards to the activities of their counterparties. Therefore, TSOs should not have to advise parties on this subject. Even after implementation of the network code, the tariffs resulting from the structures/methodologies set out in the network will still have to be fixed or approved by the NRAs. Thus it may not be possible to know, at the time that the network code is implemented, what the tariffs may be for each entry/exit point and as such it would not be possible to inform counterparties of this information. Taking this into consideration, it would not be feasible to properly implement the Tariff NC in 12 months and setting too strict a timeline could lead to inconsistent implementation of the Tariff NC provisions across different systems.

Proposed NRA-NRA consultations

There are many requirements on NRAs to consult adjacent NRAs before adopting a decision on some tariff parameters. It is unclear what recourse there will be if NRAs do not reach an agreement except for the reference made to Article 7(4) of the Agency Regulation. This Article is about ACER's requirement to issue opinions upon request. It does not indicate whether ACER would be able (legally) or willing (politically) to serve as arbiter between two or more neighbouring NRAs. In the absence of such arbitration, there is a risk that these processes could take several months or years to reach agreement which could harm the tariff stability over a longer period.

Harmonisation of Price Setting

If some of the proposed tariff arrangements set out in the Draft Tariff FG are applied then there is a risk that they could be in contradiction to the EU rules on competition. The question might arise whether all TSOs, particularly those within a merged entry-exit zone, could be considered as entering into an agreement which infringes upon Article 101 TFEU. As a Treaty provision, this prohibition prevails over secondary legislation (such as Directive No 2009/73 or the Regulation). A violation of Article 101 TFEU leaves open the possibility of challenges before national courts and national competition authorities from any party adversely affected by the contemplated Tariff NC, in particular shippers. Such challenges might lead to automatic nullity of the Tariff NC or of parts thereof, possible damages, etc.

Risk

ENTSOG would like to highlight the risk that the enforcement of an entry-exit system with differential pricing could be hampered if long-term contracts that are binding for users are not in place (e.g. with take or pay commitments), in particular in those systems where there is spare capacity. Users might change the location of contracts to optimise their payments, which could compromise the provisions of the REP and from an operational point of view could lead to a big change in flow patterns. Long term contracts that are binding on network users must therefore be assured.

Introduction of a safeguard for the implementation of the Tariff NC

The implementation of the Tariff NC shall not have detrimental effects on the revenue and cash flow positions of transmission system operators. The Tariff NC shall allow flexibility for different systems and regimes to recover costs appropriately.

13. Please comment on any factual incorrectness of the attached Initial (draft) Impact Assessment, if possible with specific page references, including quantitative evidence, tables and examples from your experience in the gas market(s) (if necessary, subject to confidentiality).

ENTSOG commends ACER for the comparative information available in the IIA and the report contracted with the Brattle Group. ENTSOG notes, however, that in many cases, the information is not available for the 'EU25' Member States with gas markets. ENTSOG believes that the IIA provided by ACER does not provide quantitative information about the potential impact of the proposed tariff arrangements and does not address the issue of the transition from the current tariff regimes to the new harmonised tariff rules.

ENTSOG did note a small number of inaccuracies in the IIA that we would like to communicate:

In particular, in the 'Initial assessment conclusions on RESERVE PRICES FOR SHORT-TERM CAPACITY and for Interruptible capacity (including backhaul); section, on page 54 and 55, in the table 'Relation between prices of monthly products and annual products' and the following table 'Relation between prices of daily products and annual products'. In the case of Hungary, the information could be misunderstood and be misleading. Therefore, please find below some comments on this data and tables.

The above mentioned data are correct for the first month, in the case of monthly and daily products, but as the shipper reaches the 110% (in case of monthly capacity fee) and 145% (in case of daily capacity fee) of the yearly capacity fee for the short term product, this shipper does not have to pay over this amount. Therefore, it serves as a 'cap on payable capacity fee': if the shipper wants to use the same amount of capacity as a monthly product instead of a yearly product, or as a daily product instead of a yearly product, then the multipliers that apply are 1.1 and 1.45 respectively. Even though the multipliers in the IIA report might seem high, with this cap on the capacity fee they are much lower on a yearly basis.