Analysis of Decisions Document for Refined Draft Network Code on Harmonised Transmission Tariff Structures for Gas for Stakeholder Support Process

Approved by the ENTSOG Board on 6 November 2014

This document constitutes the Analysis of Decisions Document for Stakeholder Support Process on the Refined Draft Network Code on Harmonised Transmission Tariff Structures for Gas (hereinafter referred to as the 'Analysis of Decisions') which accompanies the Refined Draft Network Code on Harmonised Transmission Tariff Structures for Gas (TAR0350-14, hereinafter referred to as the 'refined draft TAR NC').

For the avoidance of doubt, the Analysis of Decisions shall not be construed as part of the refined draft TAR NC and is publicly disclosed to the market for information and consultation purposes only and without any commitment whatsoever from ENTSOG as to the final content of the TAR NC. In case of inconsistency between the refined draft TAR NC and the Analysis of Decisions, the refined draft TAR NC shall prevail in all circumstances.

Any and all interested parties, in their capacity as professional stakeholders, shall be responsible for seeking to obtain the accurate and relevant information needed for their own assessment and decision to respond to the public consultation. ENTSOG hereby disclaim all responsibility for any changes to the TAR NC as presented. Such changes may result from, amongst others, the results of the public consultation or comitology procedure. The final content of the TAR NC shall be subject to the outcome of the procedure according to Article 5a(1) to (4) and Article 7 of Council Decision 1999/468/EC,[1] as foreseen by Article 28(2) of Regulation (EC) No 715/2009.[2,3] The content of the refined draft TAR NC and the Analysis of Decisions should not be considered to give rise to any specific right or obligation whatsoever to ENTSOG or any of its Members as to any stakeholders.

[1] Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the European Commission as amended by Council Decision 2006/512/EC of 17 July 2006 (OJ L 200, 22.7.2006, p. 11).

[2] 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 (OJ L 211, 14.8.2009, p. 36).

[3] Currently Regulation (EC) No 715/2009 provides for the application of the regulatory procedure with scrutiny. In case of the change of the applicable procedure due to the Lisbon Treaty, the new procedure will apply accordingly.

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INTRODUCTION

WHAT HAPPENED?

Who and why is doing this

The refined draft TAR NC was developed by ENTSOG, an organisation currently comprising 44 TSO Members from 23 European countries,[4] in accordance with the task per Article 8(1) of Regulation (EC) No 715/2009 and following the process foreseen by its Article 6. The preparation of this network code by ENTSOG was initiated by an invitation letter from the European Commission to draft a Network Code on Tariff Structures in Gas Transmission Networks which was received by ENTSOG on 19 December 2013.[5] The development of this network code is based on Framework Guidelines on rules regarding harmonised transmission tariff structures for gas published on 29 November 2013 by the Agency for the Cooperation of Energy Regulators (hereinafter referred to as 'ACER').[6]

Responses to consultation on the initial draft TAR NC

On 30 May 2014, ENTSOG published the initial draft TAR NC (TAR200-14)[7] for public consultation. The Supporting Document (TAR300-14)[8] accompanying the initial draft TAR NC provided clarifications and explanations for the content of the initial draft TAR NC and encompassed 58 consultation questions on which the stakeholders were asked to provide their answers. The consultation period ran over 2 months and closed on 30 July 2014. ENTSOG received 46 responses, one of which was marked as confidential. The respondents to this consultation included network users, traders, producers, suppliers, end users, storage operators and a number of associations. To facilitate the analysis of responses, ENTSOG asked the stakeholders to submit their responses via an online questionnaire.

[4] As well as 3 Associated Partners from another 3 European countries and 4 Observers from EU affiliate countries. See details on ENTSOG's website: http://www.entsog.eu/members.

[5] Published on ENTSOG's website: http://www.entsog.eu/public/uploads/files/publications/Tariffs/2013/20131217%20Invitation%20ENTSOG%20draft%20NC%20TAR.pdf.

[6] Published on ACER's website: http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Framework_Guidelines/Framework%20Guidelines/Framework%20Guidelines%20on%20Harmonised%20Gas%20Transmission%20Tariff%20Structures.pdf.

[7] Published on ENTSOG's website: http://www.entsog.eu/public/uploads/files/publications/Tariffs/2014/TAR200-14_Initial%20Draft%20TAR%20NC_for%20consultation.pdf.

[8] Published on ENTSOG's website: http://www.entsog.eu/public/uploads/files/publications/Tariffs/2014/TAR300-14_Initial%20Draft%20TAR%20NC%20Supporting%20Document_for%20consultation.pdf.

For the convenience of the public, the compilation of all non-confidential responses received by ENTSOG – structured in a reader-friendly format per respondent – was published on ENTSOG's website on 7 August 2014 (TAR0334-14).[9] In addition to that, ENTSOG has prepared Consultation Responses Report representing the unbiased summary of all responses received by ENTSOG and is structured per consultation question (TAR0335-14).[10] The confidential response has also been taken into account (marked as 'Respondent A'). The summary has been based on the responses in the way they were provided to ENTSOG and has not been accompanied by ENTSOG's view thereon. It has been prepared by ENTSOG in order to help the market with easy identification of stakeholder's views and is for information purposes only.

- **Overview of stakeholder involvement and 'thank you'**

In line with its internal process and in compliance with Regulation (EC) No 715/2009, ENTSOG has engaged extensively with market participants, by both organising and participating in events in order to publicise the process and encourage stakeholder involvement.

Throughout the development process to date, ENTSOG has organised a public consultation on the draft TAR NC project plan (19 December 2013 – 20 January 2014), the Kick-Off workshop (15 January 2014), 5 Stakeholder Joint Working Sessions (11 February, 27 February, 14 March, 26 March and 9 April 2014), a public consultation on the initial draft TAR NC (30 May – 30 July 2014), the Consultation Workshop (25 June 2014), the Refinement Workshop (24 September 2014), a number of Prime Mover meetings and other meetings with key stakeholders to discuss specific issues in relation to the development of this network code.

ENTSOG would like to thank the respondents to the public consultation for their feedback and the active participants for their continuous involvement in the TAR NC development process. The responses to the consultation on the initial draft TAR NC have been taken into consideration during the development of the refined draft TAR NC.

[9] Published on ENTSOG's website: http://www.entsog.eu/public/uploads/files/publications/Tariffs/2014/TAR334-14_Initial%20Draft%20TAR%20NC%20Non-Confidential%20Responses%20to%20Consultation_Reader%20Friendly%20Format.pdf.

[10] Published on ENTSOG's website: http://www.entsog.eu/public/uploads/files/publications/Tariffs/2014/TAR0335_140911_Consultation%20Response%20Report_Summary_250914.pdf.

WHAT IS THIS DOCUMENT?

➢ Why this document is needed

Pursuant to Article 10(1) of Regulation (EC) No 715/2009, ENTSOG has an obligation to conduct an extensive consultation process when preparing the network codes and in particular, to 'aim at identifying the views and proposals of all relevant parties'.

At the Refinement Workshop of 24 September 2014,[11] ENTSOG presented the first views on how to consider the stakeholder feedback for the purpose of preparing the refined draft TAR NC. The Analysis of Decisions clarifies the chosen policy approaches and explains the refinements made further to the public consultation on the initial draft TAR NC. Hence, this document is designed to 'indicate how the observations received during the consultation have been taken into consideration' and to 'provide reasons where observations have not been taken into account', as foreseen by Article 10(3) of Regulation (EC) No 715/2009.

It should be noted that during the consultation period, ENTSOG has received informal feedback from ACER on the initial draft TAR NC. These recommendations have also been duly considered when preparing the refined draft TAR NC and for the purpose of developing the Analysis of Decisions. Whenever the Analysis of Decisions provides rationale for introducing or not introducing an amendment in the refined draft TAR NC in response to the informal feedback from ACER, the specific reference to the content of ACER's recommendation is made.

➢ How this document is structured

It should be noted that ENTSOG has not provided the detailed explanation for each amendment made in the refined draft TAR NC but rather sought to address the issues that have been raised by the significant number of stakeholders and by ACER.

The structure of the Analysis of Decisions follows the structure of the Chapters of the refined draft TAR NC.[12] Each Chapter is opened with a brief overview of the refinements introduced in the refined draft TAR NC as compared to the initial draft TAR NC. After that, a number of issues relevant to the content of the Chapter is highlighted following the same structure: (1) 'stakeholder feedback' where the high-level indication of stakeholder views on the specific issue is provided; (2) 'TAR FG requirements' where the relevant TAR FG provisions are included; (3) 'analysis of the issue' where – depending on whether the issue was raised by the

[11] The agenda, all the presented materials and the minutes are published on ENTSOG's website: http://www.entsog.eu/publications/tariffs#TAR-NC-MEETINGS-SJWS--WORKSHOPS.

[12] For the correlation table between the initial draft TAR NC and the refined draft TAR NC, please refer to Annex xx.

respondents, ACER or both – it is indicated how ENTSOG has taken into account the stakeholder feedback received and how ENTSOG interpreted the TAR FG requirement; and (4) 'outcome/conclusion' where it is explained whether the analysis of the issue resulted in any amendments in the refined draft TAR NC as compared to the initial draft TAR NC. Also, for the convenience of the public and better readability of the text, a number of issues have been analysed without following the indicated structure but in a form of a short explanatory 'box'.

WHAT'S NEXT?

➢ How to respond to the SSP consultation

Stakeholder Support Process is a form of public consultation which provides stakeholders with an opportunity to express their support of or their disapproval with the refined draft TAR NC.[13] This consultation will be carried out using the on-line Consultation Response Form similar to the one used for the consultations on the initial draft TAR NC and the draft TAR NC project plan. For the full list of the SSP questions, please refer to Annex 6.

> ***LINK:*** *Please fill in the on-line Consultation Response Form which can be found using the following link:* *https://www.surveymonkey.com/s/BLDMDVV*
>
> *Please submit your on-line response by 21st November, 13.00h CET.*

CONFIDENTIALITY: If you wish your full response submission or any part thereof to be treated as confidential, please mark the relevant sections of your response clearly. Please note, however, that ENTSOG's approach to developing this network code relies heavily on transparent exchange of views across market participants. Therefore, we would encourage you to allow your full response to be made public, unless it is not possible due to the inclusion of commercially sensitive information.

QUERIES: Any questions regarding the refined draft TAR NC or the Analysis of Decisions can be sent to TAR-NC@entsog.eu.

[13] See Article 26(4) of ENTSOG's Rules of Procedure // Published on ENTSOG's website: http://www.entsog.eu/public/uploads/files/publications/Statutes/2012/LGT0105-12_Rev_1_23%2011%202012_ENTSOG_RoP_Amendment_GA(131212)clean.pdf.

➢ Further steps

Once the SSP ends, ENTSOG will prepare the final draft TAR NC and the report on the results of the SSP to be placed into an Accompanying Document. These documents will go through ENTSOG's internal governance before the TAR NC is submitted for ACER's reasoned opinion. The deadline for submitting the TAR NC to ACER is 31 December 2014, and the key dates in the process of the TAR NC preparation can be checked in the Final Project Plan (TAR202-14).[14]

[14] Published on ENTSOG's website, p. 10: http://www.entsog.eu/public/uploads/files/publications/Tariffs/2013/TAR0202-14_140130%20Final%20Project%20Plan%20for%20Tariff%20NC.pdf.

CHAPTER I. GENERAL PROVISIONS

The changes implemented in Chapter I of the refined draft TAR NC as compared to the initial draft TAR NC include the following: refinement of the scope, amending most of the definitions (allowed revenue, locational signal, reference price, regulatory account, regulatory period, seasonal factor, target revenue, tariff period and transmission services) and introducing a new definition of dedicated services.

Scope of the refined draft TAR NC: formulation, extension to non-IPs and treatment of points with third countries

The refined draft TAR NC – following the initial draft TAR NC – preserves the approach of the difference in the scope of its different Chapters as indicated in the TAR FG. Namely, Chapters IV ('Reserve Prices'), VI ('Pricing of Bundled Capacity and Capacity at VIPs') and VII ('Payable Price' in the initial draft TAR NC, 'Clearing Price and Payable Price' in the refined draft TAR NC) have the scope which is limited to interconnection points (hereinafter referred to as 'IP')[15] only.

Also, ENTSOG has considered the informal feedback from ACER regarding the formulation of the difference in the different TAR NC Chapters. Hence, the relevant provision of the refined draft TAR NC was redrafted following the logic that the general rule is that the TAR NC applies to all entry and exit points and only some of its Chapters have the scope limited to IPs.

Within the consultation responses, stakeholders indicated different views as to the amount of rules for points other than IPs. In particular, the following views were expressed: to extend the scope of 'limited to IPs' Chapter to non-IP as well, to limit the scope of application to IPs only for Chapter IV on reserve prices, to apply the whole TAR NC to IPs only. ENTSOG have considered the stakeholder feedback and deleted the related provision from the initial draft TAR NC. The rationale for this change is that the extension of some of the TAR NC rules to non-IPs is left at the national level and hence, does not need to be tackled in the EU-wide network code.

The stakeholder feedback regarding the application of the TAR NC rules to entry points from and exit points to third countries was also diverse. Having considered this feedback and being

[15] Defined in Article 3(10) of the CAM NC as 'physical or virtual point connecting adjacent entry-exit systems or connecting an entry-exit system with an interconnector, in so far as these points are subject to booking procedures by network users'.

in line with the ideas expressed at the Consultation Workshop,[16] ENTSOG has refined the relevant formulation to ensure that the application of the TAR NC to such rules is left at the NRA discretion and does not have a precondition of the CAM NC application at those points.

SPECIFIC NATURE OF INTERCONNECTORS

- **Stakeholder feedback**

Some respondents to the initial draft TAR NC consultation commented on the relevant provision regarding the specific nature of interconnectors included in the Article on scope saying that the TAR NC 'shall be applied taking into account the specific nature of interconnectors, in particular with regard to having an effective revenue recovery mechanism'. The majority of these respondents said the provision was not clear and sought more clarity on what it meant.

- **The TAR FG requirements**

The specific nature of interconnectors was not referred to in the TAR FG. However, both the CAM NC and the BAL NC recognise the specific nature of interconnectors and state that this should be taken into account when implementing the network codes.

- **Analysis of the issue**

Most of the stakeholders commenting on this provision asked for more clarity on how the TAR NC will be applied to interconnectors, for example by defining the specific nature of interconnectors.

A distinction between transmission networks and interconnectors is already made in the Directive 2009/73/EC. Article 2(17) of that Directive defines an 'interconnector' as 'a transmission line which crosses or spans a border between Member States for the sole purpose of connecting national transmission systems of those Member States'. Recognising that distinction, both the CAM NC and the BAL NC require the specific nature of interconnectors to be taken into account in their implementation. Therefore, a reference to 'taking into account the specific nature of interconnectors' in the TAR NC is consistent with the previous approach taken in the network codes.

[16] See the materials presented at the Consultation Workshop (p. 61-63) // Published on ENTSOG's website: http://www.entsog.eu/public/uploads/files/publications/Events/2014/TAR%20NC%20Consultation%20Workshop%20-%20All%20presentations%20for%20the%20TAR%20NC%20CWS%20Final.pdf.

To provide stakeholders with more clarity on what the specific nature of interconnectors means for the TAR NC, this section elaborates further the specific nature of interconnectors. It refers to recognising the characteristics of those interconnectors which act as a bridge between neighbouring entry-exit systems and which make them require different regulatory treatment from meshed transmission networks. Such interconnectors have the following characteristics:

- They are single pipelines with very few entry/exit points.
- They have no captive demand, i.e. no directly connected demand from network users.
- They are not directly connected to downstream distribution networks.
- They may compete directly with other assets such as storage, LNG and other pipelines in providing flexibility to the connected transmission networks.
- They connect neighbouring entry-exit systems but do not necessarily form part of an entry-exit system.
- Flows and consequent bookings are significantly more unpredictable than for TSO networks, particularly if the pipeline is physically bidirectional.
- They provide additional market integration and security of supply benefits to the markets they connect.

The specific characteristics of interconnectors mean that some of the rules described in the TAR NC will not necessarily work effectively for interconnectors. If floating capacity prices were to be the only mechanism to recover revenues, tariffs are unlikely to be stable and unlikely to be an effective revenue recovery mechanism, given that interconnectors have relatively greater volatility in flows. If there is an under-recovery situation, simply increasing prices at a limited number of entry/exit points may simply exacerbate an under-recovery situation through a spiral of rising capacity charges and lead to lower bookings and decreased revenue. This would risk the financability of the interconnectors, potentially leading to less cross-border capacity and reduced market integration.

The inclusion of the clause relating to the specific nature of interconnectors is intended to allow the NRAs the ability to consider a range of options of deal with this risk and to find the most appropriate solution for the relevant interconnectors. Interconnectors will need some measure of revenue and tariff stability in order to ensure the continued financability of the business and the ongoing availability of capacity. The ability to offer fixed prices will be important to encourage some long-term purchases, allowing interconnectors to compete with other flexibility sources in offering such guaranteed price services. A multiplier cap of 1.5 may not be

enough for interconnectors to incentive long-term bookings, nor achieve revenue recovery if they are heavily reliant on short-term bookings in the future. Subject to NRA approval, interconnectors should be permitted to have fixed prices and wider multipliers if this facilitates effective revenue recovery.

In order to ensure a level playing field with competing flexibility sources, it is important that interconnectors can set prices at competitive levels and that NRAs are able to also agree charges that reflect competitive pressures. It is also important to ensure that transparency obligations do not reveal commercially sensitive data to competitors, particularly when they are not under the same publication obligations. Furthermore, in considering the benefits that storage provide to the transmission system it is important that NRAs ensure that this does not distort competition with interconnectors.

Finally, in establishing a regulatory framework for interconnectors including an effective revenue reconciliation mechanism, ENTSOG does not believe this TAR NC prohibits NRAs considering the wider benefits that interconnectors provide to Member States and consumers. If NRAs agree these assets provide a wider benefit to consumers (e.g. a recognised security of supply and/or market integration benefit) the TAR NC should not prevent other options being agreed by NRAs.

- **Outcome/conclusion**

ENSTOG believes that it is appropriate for the specific nature of interconnectors to be taken into account when implementing the TAR NC. Hence, in addition to the provision indicated in the TAR NC Article on the scope, a specific recital has been included in the refined draft TAR NC.

ALLOWED REVENUE DEFINITION

- **Stakeholder feedback**

A significant number of respondents wanted a refinement to the definition of 'allowed revenue'. In particular, to explicitly mention that the level of allowed revenues is subject to NRA determination. Other concerns were expressed over the lack of clarity over the term 'given time period' and whether this should be linked to the regulatory period or the tariff setting year. There was also some confusion stated over whether the current definition refers to revenues from all regulated services or only those for 'transmission services' and that the definition should be clarified.

➢ **Analysis of the issue**

ENTSOG recognises that some clarification is required with respect to the role of the NRA in setting or approving the allowed revenue and whether the allowed revenues refer to all regulated activities of the TSO.

The term of 'given time period' remains unchanged. This flexibility in the definition is to reflect any differences regarding the timings of regulatory period, tariff setting period and revenue setting year under which the allowed revenue should be recovered. For example, for some regimes the tariff year is the same as the revenue year in which the allowed revenue has to be recovered (e.g. 1 January to 31 December). For other regimes the tariff year may run from 1 October to 30 September but the allowed revenue is recovered over the period 1 April to 31 March.

➢ **Outcome/conclusion**

The definition has been changed to state that the allowed revenue is set or approved by the NRA and that the allowed revenue applies to both transmission services and dedicated services.

TRANSMISSION SERVICES AND DEDICATED SERVICES

➢ **Stakeholder feedback**

The stakeholders raised concerns with the definition of transmission services and dedicated services within the initial draft TAR NC. In their informal feedback, ACER also raised the concern regarding the transmission services definition. A large majority of stakeholders who responded to the initial draft TAR NC consultation stated that they believed the definitions should be improved. The main issues outlined within the consultation responses were that the definition:

- is too open-ended and lacks clarity;
- is vague and open to national rules;
- of non-transmission services should be added for more clarity;
- results in inability to understand the cost allocation methodologies and predict tariff costs

Stakeholders suggested that a clear definition of non-transmission related services ('dedicated services') should be included in the TAR NC. Without a clear definition, costs associated with non-transmission services could be recovered via tariffs with the costs of non-transmissions activities being subsidised through transmission tariffs. This could result in distortions to cross-border trade and situations of cross-subsidisation.

➢ The TAR FG requirements

The TAR FG outlines the need for a clear definition of transmission services and some requirements for other services.

➢ Analysis of the issue

The definition within the initial draft TAR NC focussed on transmission services, and did not include a definition of dedicated services. The dedicated services costs were derived by exception rather than by definition.

Respondents outlined a number of areas for improvement. One of the main areas was the lack of definition of costs outside of transmission services, where stakeholders were focused on the clear differentiation of the transmission and non-transmission services related costs.

Developing a definition of transmission services taking into consideration the wide diversity of TSOs and their respective systems and the clarity requested by stakeholders results in a compromise between additional detail and functionality. The revised definition provides an improved clarity, whilst allowing TSOs the scope to recover their costs.

For transmission services definition foreseen in the initial draft TAR NC and the necessary improvements to such definition and other related requirements, stakeholders stated that this definition should:

- focus on the transportation of gas, only transport-related charges could be billed at transport points;
- cover all non-discretionary tariffs that are charged to network users for access to the system;
- be made as broad as possible;
- ensure a clear distinction between transmission and non-transmission services to avoid any possible cross-subsidy and that there is transparency over the excluded activities e.g. dedicated services costs.

The aim of the TAR FG is to provide a clear definition and rules for what costs should be included in the derivation of transmission tariffs. ENTSOG's approach regarding the TAR FG requirement on the 5% cap for what is referred in Section 3.1.1 as 'dedicated services' has been explained in the Supporting Document[17].

[17] Published on ENTSOG's website (p. 26):
http://www.entsog.eu/public/uploads/files/publications/Tariffs/2014/TAR300-14_Initial%20Draft%20TAR%20NC%20Supporting%20Document_for%20consultation.pdf

➢ Outcome/conclusion

The refined draft TAR NC has a revised definition for transmission services and includes a new definition of dedicated services. The definitions aim to clearly define the regulated services that can be included in the each of the two pots. To improve transparency, the refined draft TAR NC has some provisions for dedicated services charged to specific network users and at specific entry or exit points.

The dedicated services definition does not include an exhaustive list of services. The rationale for not providing such a list in the TAR NC is that this list may limit future changes in dedicated services that may be recovered via TSOs.

Requirements for dedicated services

The refined draft TAR NC defines dedicated services as 'the regulated services other than transmission services provided by the transmission system operator to specific network users, or infrastructure operators, or at specific entry or exit points'. However, the requirements of NRA approval, consultation, review and transparency only refer to those dedicated services that are 'charged to specific network users and at specific entry or exit points' (i.e. excluding the dedicated services provided to the infrastructure operators and ensuring that these are dedicated services 'charged' rather than 'provided'). The illustration below demonstrates which particular dedicated services (those in yellow) are subject to these requirements:

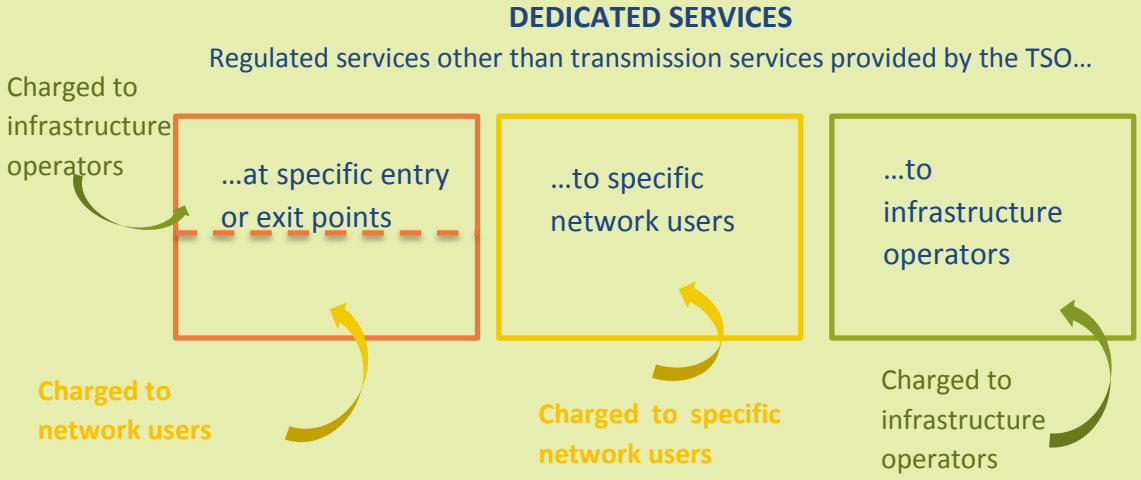


Figure 1. Dedicated services

Such limitation ensures that: (i) the stakeholder concerns of additional transparency for charges that shippers are to pay are addressed; and (ii) the confidentiality of commercially sensitive information is preserved.

CHAPTER II. COST ALLOCATION METHODOLOGIES

The changes implemented in Chapter II of the refined draft TAR NC as compared to the initial draft TAR NC include the following: streamlining the composition of the allowed/target revenue, deleting the notion of the cost allocation approach, introducing additional parameters of the primary cost allocation methodologies, simplifying the drafting for the calculation of the distance, redrafting and aligning the description of the primary cost allocation methodologies, amending the details of the secondary adjustments and introducing the criteria for the application of the asset allocation methodology. In addition, a few Articles of this Chapter have been grouped into a new Chapter III 'Consultation Requirements' since the content of the consultation and the associated review has been enlarged for the purpose of the refined draft TAR NC.

Composition of the allowed / target revenue

Article 4 of the refined draft TAR NC has been redrafted to ensure better clarity regarding the two components of the allowed/target revenue, namely the transmission services revenue and the dedicated services revenue. Also, ENTSOG has considered the stakeholder feedback regarding the difference foreseen by the initial draft TAR NC between the cost allocation approach and the cost allocation methodology. To address the concerns raised by the respondents, ENTSOG deleted the distinction between these two notions thus simplifying the wording of Article 4.

The Article has also been restructured by way of following the logic of a parallel approach regarding the particular part of the allowed/target revenue and how it is recovered. Below is the illustration of the composition of the allowed/target revenue of a TSO and the respective charges by which such revenue is recovered. Effectively, all the charges of a TSO foreseen by the TAR NC are split into the two boxes: transmission tariffs (charged for the provision of transmission services) and charges for dedicated services (charged for the provision of dedicated services). Transmission tariffs are those representing capacity-based charges, calculated via the application of the cost allocation methodology, and commodity-based charges that are calculated separately from each other and are limited to a flow-based charge and a complementary revenue recovery charge.

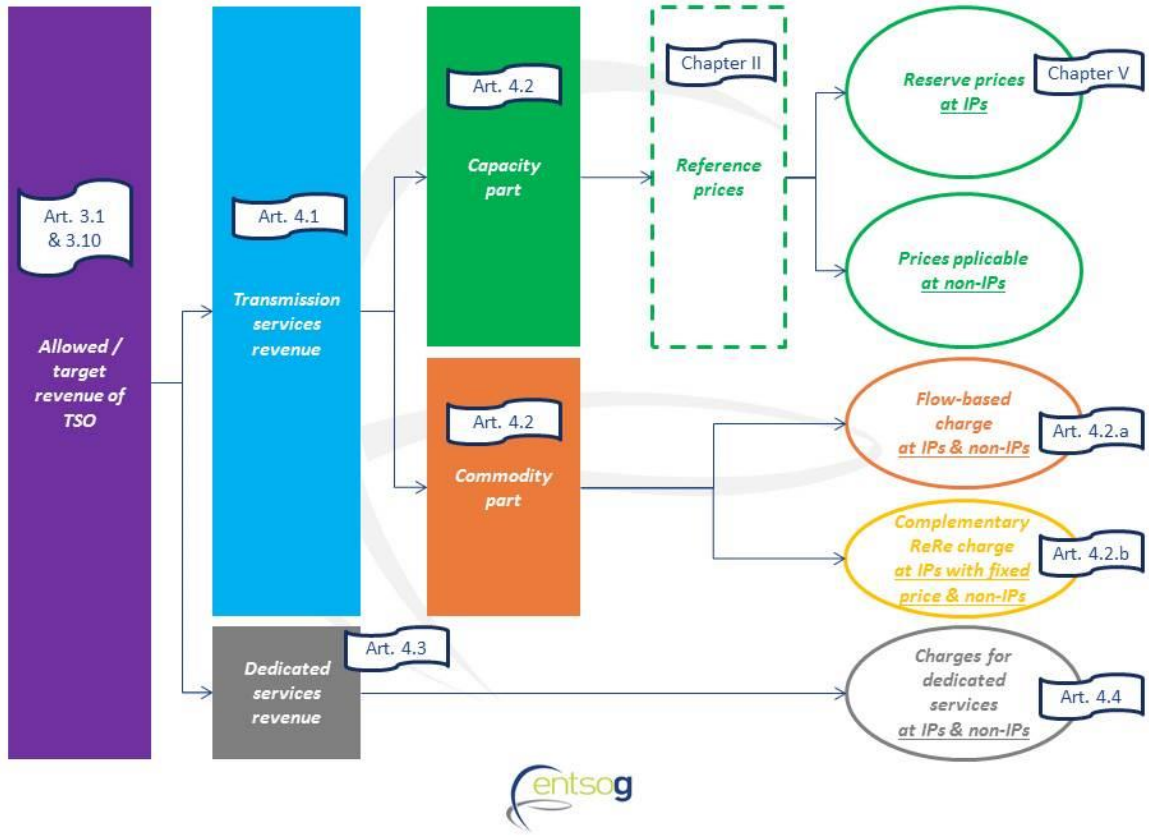


Figure 2. Composition of allowed / target revenue

FLOW-BASED CHARGE

- **Stakeholder feedback**

Stakeholders requested clarifications and a deeper description of what is meant by 'in-kind', making more explicit the link to supply of gas.

- **The TAR FG requirements**

Section 3.1.1. of the TAR FG foresees the following: 'The collection of the revenues shall be based on capacity charges, except in the following cases:

- Upon approval or determination by the NRA, a **specific charge** related to the volume actually flowed by network users could be established to cover costs that are mainly driven by the volume actually flowed by networks users (such as compressor fuel cost). Where applied, **this charge** shall be levied equally for all entry points and equally for all exit points, based on the actual flows of individual network users.'

- **Analysis of the issue**

Stakeholders expressed the need for further harmonisation and clarity of drafting in relation to the flow-based charge issue, mainly requesting a better definition of the concept and its boundaries.

Additionally, an uncontrollable risk for users of allocation mismatching and imbalances has been outlined in the case where flow-based charges are applied in monetary terms on one side of an IP and in-kind on the other side.

Usually charges are expressed in monetary terms, while expressing them 'in-kind' is an extension of the usual charging concept. The term 'charge' may be intended as a tariff or price expressed only in monetary terms. To avoid this restrictive interpretation, the refined draft TAR NC – as well as the initial draft TAR NC – clarifies that the specific flow-based charges can be expressed both in monetary terms or in-kind, i.e. not levied in terms of currency but as gas volumes or energy amounts. In practice, the TAR NC allows TSOs to charge users with flow-related quantity of gas with the purpose of covering some cost elements directly related to volumes injected or withdrawn from the network (such as fuel gas, losses, shrinkage and unaccounted for gas).

The choice is currently adopted in various Member States across Europe providing benefits as outlined below for the systems as a whole and specifically to TSOs and users.

In general, the charge is applied as percentage to volumes injected/withdrawn by users at entry/exit points and is known ex-ante by all players, being set or approved by the NRA. The

related gas volumes are to be supplied from shippers to the TSO to cover compression station fuel requirements and other flow-based items (losses, shrinkage, unaccounted for gas).

For TSOs, this mechanism provides advantages since the gas needed for the above-mentioned purposes is delivered by network users without the requirements for the TSO to activate purchase contracts, thus resulting in:

- no exposure to price and volume volatility;
- minor costs: TSOs avoids the transactional costs linked to administrative managements of the contracts underlying market actions to buy gas.

For users, charges in-kind for flow-based costs provide for:

- higher transparency: the costs attributed to the TSO for flow-based items is exactly the one born by them and known as part of their supply contracts;
- administrative and operative easiness: network users know in advance how much these costs elements will affect their final commercial positions. Moreover, their balancing situation related to the items at stake can be determined earlier. In this respect, the reported risk of imbalances at the IP is excluded.

Finally, for the system as a whole, an in-kind charging mechanism for flow-based costs can determine:

- general cost reduction: TSO costs to organise the activities to acquire gas on the market are avoided and therefore not passed-through to the Users. Additionally, it is likely that shippers will generally gain from economy of scale and expertise when buying gas compared to TSOs, considering the volumes shippers and TSO respectively contract and their different core-business activities;
- administrative streamlining: TSOs, users and also NRAs will have less activities to be managed or controlled.

➢ **Outcome/conclusion**

The TAR NC text has not been changed since stakeholders concerns were mostly related to a request of clarification of the proposed text.

COMPLEMENTARY REVENUE RECOVERY CHARGE (CRRC)

➢ Stakeholder feedback

Some respondents expressed concern about the lack of clarity on the meaning and purpose of the CRRC with a resultant lack of transparency in both its derivation and how this charge will be used. There were particular concerns where the CRRC could be 'capacity based' as to how this would relate to the capacity charges calculated through the cost allocation methodology and its role in revenue recovery. Some respondents were also concerned as to whether such a CRRC could create potential barriers to cross-border trade and that transparency would be required on any assessment by the NRA on the impact of any CRRC. A few respondents even expressed the desire for the CRRC to be deleted, as it creates risk for the TSOs gaining additional revenues.

A concern was also raised about restrictions on the use of rescaling within the cost allocation methodology for setting capacity tariffs at points where a CRRC can also be applied.

➢ The TAR FG requirements

The TAR FG allows for 'alternative methodologies' to collect revenues to be applied for points which are not under the scope of the CAM NC, subject to the concerned NRA assessing whether or not these alternative methodologies are cost reflective and do not result in cross subsidies between domestic and cross border points. The TAR NC extends the application of CRRC to points under the scope of the CAM NC where capacity with a fixed price mechanism has been made available.

➢ Analysis of the issue

The concept of the TSO having the option of using a CRRC is allowed by the TAR FG and is retained in the refined draft TAR NC. The text has been modified to take account of respondents' concerns about the lack of clarity of the original drafting and restricted the CRRC to being only commodity based to deal with concerns as to how a capacity based CRRC would interact with the capacity charge derived through the cost allocation methodology.

One of the purposes of a CRRC is to mitigate potential cross subsidies between holders of fixed price capacity contracts and those users with floating price contracts. The refined draft TAR NC expands on the TAR FG by allowing the application of a CRRC at interconnection points where a fixed price approach is followed.

➢ Outcome/conclusion

The section on CRRC has now been simplified. The option for it to be capacity based has been removed and the CRRC is now only commodity based. This results in a clearer text and

addresses some of the concerns as to how two different capacity charges could be used for revenue recovery. The restriction on the use of rescaling where a CRRC is used has also been removed to reflect that rescaling may be appropriate to set a capacity tariff to achieve its portion of the allowed revenue, whilst a commodity based CRRC can be used to manage any previous under recovery.

SEPARATE APPLICATION OF METHODOLOGY IN A MULTI-TSO ENTRY-EXIT SYSTEM

➢ Stakeholder feedback

One respondent asks whether it is possible to separately apply any cost allocation methodologies foreseen by the initial draft TAR NC in a multi-TSO entry-exit system, whilst another indicated the preference for application of the cost allocation methodology separately only. However, a further respondent indicated the preference to oblige the respective TSOs or NRAs to determine tariffs jointly. In their informal feedback, ACER sees the proposal of the draft NC as a deviation from the TAR FG that impacts the entry-exit split as well as the establishment of VIP. It was also mentioned by one respondent that the inter-TSO compensation mechanism is not transparent.

➢ The TAR FG requirements

Section 3.3 of the TAR FG states that: 'One and the same primary cost allocation methodology shall apply to all entry and exit points on an entry-exit system. This rule shall equally apply to entry-exit-zones including several TSO networks. Nothing in the Network Code on Tariffs shall prevent NRAs from establishing and/or approving for each entry-exit zone comprising several TSOs networks an inter-TSO compensation mechanism, as this may be required to reconcile collected revenues with allowed revenues.'

➢ Analysis of the issue

ENTSOG has considered stakeholder's feedback and has concluded that the mentioned issues are covered by the TAR NC.

In the case where there are entry-exit systems that include several TSOs, ENTSOG has developed a formulation which allows the concerned NRA(s) to decide whether the cost allocation shall be applied jointly or not and whether an ITC-mechanism shall be established or not, taking into account the specificities of the zone and of the TSOs involved.

The refined draft TAR NC formulation – as well as that of the initial draft TAR NC -is open to the application of the cost allocation methodologies other than postage stamp. A potential

commercial impact for some TSOs may be covered by an inter-TSO compensation. This does not affect the applicability of a certain methodology. An example is provided in the annex 2.

Where tariff calculation is carried out jointly by all TSOs within an entry-exit system, the entry-exit split at the zone level as well as for each TSO could be given as input parameter to the cost allocation methodology. Where the methodology is applied separately, the entry-exit split may be set per TSO separately (based on cost drivers). The entry-exit split at the zone level is the result of all the splits. Thus, independent from the number of TSOs within an entry-exit system and the decision whether tariffs are calculated separately or jointly, the resulting entry-exit split does not contradict the TAR FG.

In the relevant Article on the VIP price calculation, ENTSOG has already considered the correlation between the number of TSOs, the methodology of calculating tariffs and the further step to calculate the tariff for a VIP. From ENTSOG's point of view the calculation has been written in a clear and transparent manner and has no detrimental effect on the establishment of VIPs.

In addition to the stakeholder feedback, ENTSOG has also considered the TAR FG requirements. The TAR FG asks for one single methodology to be applied in an entry-exit system. In line with the TAR FG, the TAR NC specifies that within an entry-exit system e.g. only the postage stamp methodology is applied either at entry-exit system level or by each TSO. For the application of a cost allocation methodology, the number of TSOs within one entry-exit system that calculate their tariffs jointly or separately does not matter. Potential commercial interdependencies due to several TSO in the same system may be reflected in the inter-TSO compensation that decreases or increases the individual revenue that is an input to the cost allocation methodology, in order to meet the allowed revenues after compensations have taken place.

Additionally, the TAR FG states clearly that nothing shall prevent the NRA from establishing an inter-TSO compensation as this may be required. The TAR FG does not require a concrete calculation within the TAR NC. On the contrary, the TAR FG formulation gives the NRA the power to decide *if* and *how* it may be applied. Since publication requirements are in place, no detrimental impacts from this proposal are expected.

- **Outcome/conclusion**

ENTSOG believes that the formulation of the refined draft TAR NC – as well as the initial draft TAR NC – neither creates any negative impact to the market nor infringes TAR FG requirements. Instead, the formulation gives the NRA the power to better reflect national characteristics. In line with the scope and objectives of the TAR FG, as well as being consistent with Article 13 of the Regulation (EC) No 715/2009, the refined draft TAR NC – as well as the initial draft TAR NC –

respects a harmonisation to the extent that is necessary to contribute to the completion and the efficient functioning of the market.

Inter-TSO compensation mechanism

ENTSOG would like to further clarify the rationale for the drafting of Article 5(5):

ENTSOG believes that in line with the power of the NRA to set or approve the allowed revenues of a TSO, it should also be within the NRA's power to decide whether an inter-TSO compensation mechanism is needed for the respective entry/exit zone. This way, the fact that national gas transmission networks evolved differently and the different networks are heterogeneous can be taken into account, appropriately. Therefore, it should be assessed on a case by case basis whether an inter-TSO compensation mechanism is needed and how it should be implemented to reflect this. The cost for implementation of such a mechanism and the impact on the market needs to be considered prior to implementation. The task given to the NRA is therefore the key for a decision that fosters the internal energy market whilst respecting the principle of subsidiarity and impacts on the market. Only the relevant NRA is close enough to fully understand the complexity of this issue. In the case where compensation is deemed necessary by the NRA, it should be determined on an entry-exit system level, in order to reflect the circumstances that are behind the rationale for the introduction of such mechanisms. As the inter-TSO compensation is a part of the allowed revenue, it will be published together with them, and therefore transparency according to the TAR FG objectives will be provided.

Entry-exit system mergers and cost allocation methodology application

ENTSOG would like to further clarify the rationale for the drafting of Article 5 of the TAR NC combined with footnote 12 of the TAR FG.

Footnote 12 of the TAR FG refers to intermediate steps that may be allowed by the NRA in the case of a cross-border merger of entry/exit zones. In the commercial world of natural gas transportation and hubs being the market places for the commodity, borders of the Member States are not in focus and do not matter. What do matter are entry-exit-systems. Therefore, a merger of systems within a Member State or cross-border shall be treated the same way. Furthermore, it is not clear why a cross-border entry-exit merger would be assessed differently in comparison to an entry-exit merger within a Member State. Distinguishing between cross-border mergers and those within a country would be a violation with the principle of non-discrimination. Non-discrimination as a general principle of Community law means that comparable situations should not be treated differently. A distinction would therefore infringe the European law.

AIRLINE APPROACH FOR THE CALCULATION OF THE DISTANCE

➢ Stakeholder feedback

A significant number of stakeholders challenged the option to use the airline approach to calculate the distance between two points. They argued that the airline approach was not cost reflective and preferred to have a harmonised approach to calculate the distance using the path approach. In contrast, some stakeholders proposed to only use the airline approach, unless it is demonstrated that this would lead to a substantial distortion of the cost allocation. One stakeholder suggested limiting the applicability of the airline approach to really meshed networks with changing flows or for simpler matrix-type cost allocation methodologies.

➢ The TAR FG requirements

The TAR FG specified that the '*Network Code shall define possible objective approaches to distance and average distance […]'*. In addition to this, it is also stated that distance can be calculated as '*the shortest distance from each entry- to exit-points'* (see footnote 14).

➢ Analysis of the issue

Within a de-coupled entry-exit system, full cost-reflectiveness cannot be assured. The transport costs can be massively different using the same entry point, but different exit points. As entry- and exit-points have to be priced independently, the real costs of the transportation can never be charged accurately. However, average costs of using specific entry- or exit-points may vary within the grid, so the question of cost driver arises. Within the capacity-weighted distance methodology as well as potentially in the cost allocation test, distance is an average cost indicator.

To calculate the distance, two approaches have been included in the TAR NC. The airline approach calculates the distance as a straight line between these points using geographical coordinates. In contrast, path approach uses the precise path from entry- to the exit-point to calculate the distance between these points. The advantages and disadvantages of both approaches are outlined below.

	Airline approach	Path approach
Advantages	• Transparent and easy to calculate and to check	• Precise, especially where some pipelines don't follow straight lines between two points, but others do
Disadvantages	• Imprecise, where pipelines deviate greatly from the straight lines	• Complex calculation, especially in highly-meshed systems

Table 1. Advantages and disadvantages of the different approaches

Whereas the path approach seems to be more precise, airline approach is easy to calculate and to check. In fact, whether the greater precision of the path approach outweighs their costs to use it depends on the specific grid. The weights of entry and exit points will differ only slightly using airline or path distance in most cases.

- **Outcome/conclusion**

ENTSOG considered both approaches carefully and came to the conclusion that both approaches are well-founded for different grids and thus are included in the refined draft TAR NC. The appropriateness of the chosen approach shall be justified in the consultation of the cost allocation approach and approved by the NRA.

ASSET ALLOCATION METHODOLOGY

- **Stakeholder feedback**

A significant number of respondents were supportive of the inclusion of the asset allocation methodology as an additional primary cost allocation methodology in the TAR NC. The main reasons put forward were that the methodology

(1) appears simpler to understand and obviously cost reflective;

(2) should be applied to avoid cross-subsidies between homogenous groups of network users, e.g. domestic and cross-border network users;

(3) addresses the capacity volume risk in countries with high degree of assets built for transit flows and enables measures to mitigate an asymmetric reallocation of costs such that 'captive' domestic consumers have to bear disproportionately high costs, which shall be prevented in particular in "transit countries";

(4) is not in contradiction with the Third Energy Package as calculation of tariffs is not based on point-to-point distance paths.

A considerable number of respondents were not supportive of the inclusion of the asset allocation methodology as an additional primary cost allocation methodology in the TAR NC. The main reasons put forward were that the methodology

(1) creates concerns when allowing its application across the EU regarding differentiated contributions to revenue reconciliation;

(2) allows the distinction of different homogenous groups of network users that can be as many as possible and not just two (domestic and transit);

(3) raises the question of being compliant with the 3rd Energy Package and respecting harmonization and non-discrimination.

- **The TAR FG requirements**

The TAR FG stipulates the inclusion of four primary cost allocation methodologies (i.e. postage stamp, capacity weighted distance, distance to the virtual point and matrix) in the TAR NC.

- **Analysis of the issue**

In addition to the four primary cost allocation methodologies foreseen by the TAR FG, a fifth methodology, the 'asset allocation methodology', has been included in the initial draft TAR NC. Based on the stakeholder support expressed for the inclusion of the asset allocation methodology into the TAR NC especially for addressing the capacity volume risk in 'transit countries' while taking into account the concerns regarding differentiated contributions to revenue reconciliation when allowing its application across the EU preconditions were introduced.

These define 'transit countries' as those with cross-border exit capacities on a level of at least the daily domestic peak demand occurring with a statistical probability of once in 20 years (1 in 20) which implies an approximate ratio of at least 50:50 between domestic and cross-border capacities in the transmission system.

The application of a price cap regime in parallel with a non-price cap regime (revenue cap regime) as the second precondition describes the measure necessary to mitigate an asymmetric reallocation of costs to 'captive' domestic consumers.

As there may be more than one homogenous group of network users besides the domestic and general transit network users, e.g. network users using capacities of the system to supply certain Member States, the differentiation of multiple homogenous groups of network users must be possible, provided that this is properly justified by e.g. a cross-border cost allocation for Projects of Common Interest in form of a revenue guarantee mechanism established by the relevant NRAs or Member States.

Regarding the question of compliance of the cost allocation methodology with the requirements of the Third Energy Package and respecting harmonisation and non-discrimination it should be highlighted that

(1) the calculation of tariffs under the methodology is not based on point-to-point paths;

(2) the result of the methodology are single tariffs for each entry point and exit point of the overall entry-exit system, based on the allocation of costs to the points used by the respective homogenous groups of network users;

(3) the allocation of costs within homogenous groups of network users and not between those groups is in line with the principle of non-discrimination that prohibits the different treatment of materially equal situations as well as the equal treatment of materially different situations.

In certain situations and for relatively simple, unmeshed networks, the application of one of the original four primary cost allocation methodologies could lead to sub-optimal results compared to a cost allocation based on the direct allocation of assets. In simple unmeshed networks, where it is possible to identify assets in transmissions systems that serve the interests of identifiable and homogenous groups of network users, the asset allocation methodology would be more suitable. This is particularly necessary where the revenue recovery mechanism is insufficient to guarantee the TSO's full recovery of the asset value and reconciliation is necessary to or from customers in other markets where approved by the relevant NRAs.

Therefore in addition to the four cost allocation methodology described in the TAR FG, the asset allocation methodology has been included as a fifth methodology in the refined draft TAR NC.

➢ **Outcome/conclusion**

The preconditions for the application of the asset allocation methodology were introduced in the refined draft TAR NC.

HOW TO APPLY RESCALING

➢ **Stakeholder feedback**

ENTSOG received several responses related to the approach for rescaling in the Initial Draft TAR NC. The following is a summary of those responses:

- A significant number of stakeholders expressed greater support of rescaling using the multiplication of a constant, or its application on a percentage basis. The argumentations is that this avoids the risk of undermining locational signals altogether when adjusting expected revenue to allowed transmission services revenue.
- One stakeholder has the view that, if the addition of a constant is maintained in the TAR NC, it should be based on a regressive approach for exit points, i.e. the largest is the consumption of the point, and the lowest should be the unitary cost of capacity.

➢ **Analysis of the issue**

The fear from stakeholders is that the addition of a constant endangers the locational signals resulted from the cost allocation methodology. But for some methodologies, such as VPB (A), this is needed as it is a step within the primary cost allocation methodology. Moreover, for the cases where there are tariffs equal to 0, this addition is needed (and the multiplication approach would not work) in order to ensure that the revenue to be recovered corresponds to the transmission services revenue.

The possibility to apply rescaling by adding a constant to the tariff or all entry and/or all exit points was included in the TAR FG.

➢ **Outcome/conclusion**

ENTSOG's analysis of the issue resulted in no amendment in the refined draft TAR NC.

HOMOGENOUS POINTS FOR EQUALISATION

➢ **Stakeholder feedback**

Some respondents asked for further clarification and precision regarding the definition of homogenous groups of points.

➢ **The TAR FG requirements**

The footnote n°32 in the TAR FG states that: homogenous set of points is defined as: Entry interconnection points, Exit interconnection points, Domestic entries, Domestic Exits, Entries from Storage, Exits to Storage, Entries from LNG terminals, Exits to LNG terminals, Entries from production points.

➢ **Analysis of the issue**

A number of stakeholders agreed with the description of Article 17 about equalisation but they want more specific description of 'homogenous set of points', as was included in the TAR FG.

➢ **Outcome/conclusion**

After considering remarks from ACER and stakeholders, in order to be more compliant with the TAR FG, the refined draft TAR NC will contain an amendment as compared to the initial draft TAR NC including the exhaustive list of 'homogenous sets of points'.

CONDITIONS FOR APPLICATION OF BENCHMARKING

- **Stakeholder feedback**

Some stakeholders raised their concerns, that the conditions for the use of benchmarking are not clear and asked for distinctiveness. Furthermore, ACER asked for an additional pre-condition and to explicitly state, that all the conditions have to be met at the same time to allow the application of this secondary adjustment.

- **Analysis of the issue**

ENTSOG took all the stakeholders and ACER's concerns into account and changed Article 18.1 accordingly.

- **Outcome/conclusion**

The redrafted version of Article 18.1 contains an additional condition for the use of benchmarking: '*where the result of its application better meets the objectives set out in Article 1 of Regulation (EC) No 715/2009'.* In addition to that, ENTSOG clearly stated that the conditions are a cumulative list. With the current drafting we believe having provided an outcome that fully addresses stakeholders and ACER's concerns.

TARIFF INCREASE AT OTHER POINTS DUE TO BENCHMARKING

- **Stakeholder feedback**

Some respondents raised their concerns about the fact that the increasing of tariffs at other points in the grid because of benchmarking at one point seems to be a basic principle of the benchmarking section. Furthermore, it was stated that this would be not compliant with the Regulation (EC) No 715/2009.

- **The TAR FG requirements**

Section 3.3.2.3 of the TAR FG states that: *'The proposal for reducing a tariff based on benchmarking , as well as the corresponding tariff increases along with the NRA´s reasoning, shall be publicly consulted before the tariffs are set.'*

- **Analysis of the issue**

ENTSOG has considered stakeholders´ feedback carefully and decided that the aforementioned issues are in accordance with the TAR FG. We agree that the compensation by increasing tariffs should not be a basic principle but only binding to the condition that the allowed revenues of TSOs will not be obtained. Therefore, Article 18(3) explicitly has the clear precondition that it is

expected that the allowed revenues will not be obtained. The application of the use of benchmarking is approved by NRA in accordance with the decision according to Article 20(3).

The assumption that a decrease of tariffs at competitive points lead to higher capacity bookings is not necessarily safeguarded. In case the entry-exit split is used as a parameter of the primary cost allocation methodology in accordance with Article 9 (3) of the TAR NC, a decrease of tariffs due to benchmarking may result in a permanent inability to collect the allowed revenues. An example is provided in Annex 3.

. Article 18(3) ensures for such cases that TSOs are able to obtain the allowed revenues by deviating from a given entry-exit split, preventing thus the creation of a permanent gap between allowed and realised revenues.

To minimise cross-subsidisation, ENTSOG´s view is that the increasing of tariffs should be borne uniformly by all other entry or exit points. Furthermore, the adjustments of tariffs referring to Article 18(3) are limited to the capacity-based charges only.

- **Outcome/conclusion**

ENTSOG´s view is that Article 18(3) of the TAR NC is in line with the scope and the objectives of TAR FG requirements and the Regulation (EC) No 715/2009. In fact, we believe that Article 18(3) is necessary to remedy the risk of a permanent under-recovery of TSOs. With the aforementioned explanations we believe stakeholders concerns are addressed.

CONSULTATION OF SECONDARY ADJUSTMENTS

- **Stakeholder feedback**

During the consultation process a number of stakeholders indicated the need to update Article 20 in order to include chosen secondary adjustments as subject of a consultation of a respective TSO/NRA, due to the fact that secondary adjustments are a fundamental part of the overall cost allocation approach and therefore must be consulted upon.

- **Analysis of the issue**

According to the Article 20, prior to the application of the chosen cost allocation methodology a consultation shall be completed by the transmission system operator(s) or the national regulatory authority, as relevant. In the first paragraph of the Article 5, the cost allocation methodology covers both (i) the primary cost allocation methodology, as well as (ii) the secondary adjustment(s) and this definition of the cost allocation methodology is used in the entire TAR NC. Since the consultation is needed to be performed on a cost allocation

methodology, it covers the secondary adjustments as well and there is no need of further specification.

Please note, that in the entire TAR NC, term 'cost allocation approach' used previously has been changed to 'cost allocation methodology'.

- **Outcome/conclusion**

Due to the above mentioned fact, that stakeholders concerns regarding the secondary adjustments as a part of a consultation are already covered by the initial wording of the TAR NC, there is no need for further change of the Article 20.

POSTAGE STAMP AS METHODOLOGY COUNTERFACTUAL

- **Stakeholder feedback**

Regarding the need to include in the consultation of the cost allocation methodology the results of the application of an alternative methodology, some stakeholders addressed this topic, but they all considered, in general, that there would be considerable merit in requiring the postage stamp to be used as a harmonised cost allocation methodology counterfactual throughout the EU. Their arguments were based on the assumption that this would provide stakeholders with a single holistic view of how EU transmission tariffs could be determined consistently across the EU and that it would also demonstrate the trade-offs between cost reflectivity and simplification in Member States not using the postage stamp. Additionally, some stakeholders also considered that a single counterfactual methodology would also provide stakeholders with a high level comparative view of relative TSO efficiency across the EU.

As to the possibility of TSOs currently using the postage stamp being exempted from applying another cost allocation methodology as counterfactual, some stakeholders voiced their concern with such option as this would not allow the highlighting of the benefits which may arise from using a more cost reflective methodology which generates locational signals.

Another stakeholder also expressed a concern regarding the fact that in some specific Entry-Exit Systems the postage stamp methodology may arise due to the circumstances criteria to be considered as a valid cost allocation methodology and as such not representing a true option for that particular system.

- **The TAR FG requirements**

The TAR FG states that '*A methodology counterfactual shall be developed consisting in providing all the information listed in Section 2.1, for at least one other of the cost allocation methodologies specified in Section 3.3.1.*'.

- **Analysis of the issue**

Considering that only a minority of respondents addressed this issue, their view on the benefits of having the same counterfactual throughout Member States to assess the cost-reflectivity of methodologies applied to a particular system is unanimous. Stakeholder's views on this issue have been thus taken into account by ENTSOG, as most of their arguments were considered pertinent, given the improved transparency they add to the TAR NC. The possibility to compare the chosen methodology to the postage stamp methodology enables to show how the chosen methodology better meets the requirements of Regulation (EC) No 715/2009 in terms of non-discrimination and avoiding cross-subsidisation. This option is also consistent with the TAR FG provisions. Hence, ENTSOG agrees on having at least the postage stamp methodology as counterfactual for the consultation process.

As to the possibility of the postage stamp not meeting the circumstances criteria in a particular Member State as mentioned by one stakeholder during the consultation process, ENTSOG consider that the benefits in providing an overall comparative assessment throughout the EU clearly outweighs the referred restriction problem caused by the circumstances criteria and that stakeholders would at the end benefit from a better assessment of tariffs in that particular entry-exit system, even if the postage stamp could not be applied.

As for the use of an alternative counterfactual methodology by TSOs that already apply the postage stamp, ENTSOG understand and support the principle behind the stakeholder's arguments (cost-reflectivity assessment), but at the same time consider that this provision can only be included as an option for those cases, since an obligation to provide an alternative cost allocation methodology would be in contradiction with the provisions of the TAR FG in this respect and shall thus not be included in the refined draft TAR NC.

As to the possibility of using the postage stamp methodology even if it does not comply with the circumstances criteria set out in the Network Code, this option finds support in the TAR FG's text, where it clearly states '*the Postage stamp methodology can be used for counterfactual purposes, even where the postage stamp methodology cannot be applied as the cost allocation methodology because of the restrictions specified in the 'Circumstances' criteria*'.

Furthermore, the right not to provide a counterfactual if the methodology used by a TSO is already the postage stamp is also supported in the TAR FG: '*Where the proposed methodology is the Postage Stamp methodology, the obligation to provide the counterfactual can be omitted.*'

➢ **Outcome/conclusion**

The refined draft Tariff Network Code proposes to expand FG's requirement by determining that at least one of the cost allocation methodologies to be used as counterfactual shall be the postage stamp methodology.

In line with the above decisions taken, article 20 '*Selection and approval of the cost allocation methodology*' of the refined draft TAR NC was reviewed. In its new wording, paragraph 2, related to the information to include in the consultation document on the cost allocation approach methodology, now states:

'*e) the information as set out in paragraphs (b) to (d) at least for the postage stamp methodology.*'

STORAGE

➢ **Stakeholder feedback**

A number of stakeholders during the Consultation process requested an exemption of storage facilities from entry and exit transmission capacity charges at TSO-SSO interconnection. The reason for such approach as a default rule would be avoidance of double payment of transmission capacity charges and recognition of any benefits storage has made towards reduced transmission system investment. In contrary to that, there was also a request from a stakeholder for no different treatment for storage-related transmission tariff.

Some of stakeholders in their responses also requested a more detailed description on the methodology in setting tariffs at storage connection points, taking into account principles of efficient investments, cost reflectivity and discrimination between network users and making possible to base transmission tariff at TSO-SSO interconnections on substantiated costs and benefits arising from storages connections.

➢ **Analysis of the issue**

Even in situations where the utilisation of storage facilities constitutes only a temporary discontinuation of a natural gas transmission, the setting of a zero price as a default rule for entry and exit transmission capacity charges at TSO-SSO interconnections may lead to significant cross-subsidies and/or under-recovery of the respective TSO, where the specifics of each storage facility is not taken into consideration. Since there are also conflicting views, including the view that the specific nature of storages should be considered on a case by case

basis, we are of the opinion that the decision of a tariff discount should be done on the national level, by the respective NRA.

- **Outcome/conclusion**

The outcome from the analysis of stakeholder feedback is to (i) not apply any specific default rule for special treatment of entry and exit transmission capacity charges at TSO-SSO interconnection and (ii) keep the decision to be done on the national level, by the respective NRA. No specific update of the Article 23 is needed, The wording of this Article as provided by the initial TAR NC draft is keeping all the decision making power for the NRAs and is in line with the TAR FG, which already states that the net benefit of storage to be considered when determining tariff levels.

Alternative capacity products

Across the EU, there a number of capacity products used by network users that are not described by the CAM NC. These capacity products reflect the specific nature of each product, such as conditional firm capacity products and shorthaul services.

These products are offered to network users to ensure the efficient utilisation of the transmission system and to reflect the circumstances of this utilisation.

The initial draft TAR NC does not mention these products and how they are treated. It is the assumption that although the initial draft TAR NC is silent on the provision and pricing of these products, the TSO will be able to provide these products with suitable charges. Because there was some concerns that these products, if not mentioned in the TAR NC, may not be able to be provided to network users, ENTSOG has decided to include a provision for these products in the refined draft TAR NC. In addition, how the revenue from these products interacts with the transmission services revenue from standard capacity products is not specifically outlined within the TAR NC.

CHAPTER III. CONSULTATION REQUIREMENTS

This is a new Chapter of the refined draft TAR NC which encompasses the Articles previously placed in Chapter II 'Cost Allocation Methodology'. The reason for regrouping of the Articles is the content change introduced for the consultation and associated review. The initial draft TAR NC foresaw the obligation to consult only on the proposed cost allocation methodology whereas the refined draft TAR NC adds another two components to the consultation: (i) the dedicated services charged to specific network users and at specific entry or exit points; and (ii) the details of offering the fixed price approach. The parallel changes were done for the review to be conducted at least every 4 years starting from the original NRA approval. The Article on cost allocation test has been placed in this new Chapter as well for better readability of the Article on consultation which refers to the results of the cost allocation test as one of the parts of the consultation document.

REVIEW OF THE COST ALLOCATION METHODOLOGY

- **Stakeholder feedback**

A number of stakeholders raised concerns regarding the process of review of the cost allocation methodology. According to responses, rather than simply reviewing and justifying the cost allocation approach applied once approved after having conducted the initial consultation on the cost allocation methodology every four years, TSOs should undertake a full consultation, regardless of whether they intend to maintain the status quo, meaning the cost allocation methodology approved to be applied after having conducted the initial consultation. That should be done in order to enable stakeholders to provide observations about the existing cost allocation methodology and whether it is suitable for another four year period as well as to give stakeholders a chance to comment and propose any changes they deem necessary. The review process could be strengthened through the implementation of a 'feedback mechanism' where the stakeholders could verify and comment on the cost allocation methodology and the secondary adjustment calculations.

The related issue regarding the regular publication of the relevant tariff parameters was also raised by the same stakeholders during the consultation. Stakeholders are of the opinion that any parameters relevant to tariff setting and tariff evolution should be published at regular intervals during the regulatory period, not just at least every 4 years when the cost allocation approach is reviewed under Article 21. The stakeholders also consider that the updated

criterions etc. for each parameter (structural, variable...) should be clear and well known ex ante in order to achieve a reasonable degree of tariff predictability, as required by the TAR FG.

- **The TAR FG requirements**

According to the Section 2.2 of the TAR FG, following the public consultation, it is the task of the NRA to fix or approve the cost allocation methodology. NRAs shall review and update the detailed explanation and reasoned justification concerning the selection of a tariff methodology at least every 4 years, or more frequently if deemed appropriate by individual NRAs. Any proposed changes to the methodology arising from the review shall be consulted on publicly and subject to NRA approval before implementation.

According to Section 2 of the TAR FG fulfilling the data publication requirements should allow network users to be fully aware of the costs underlying the transmission services and obtain a reasonable degree of tariff predictability. For entry and exit points where transmission services are offered, third parties shall be able to understand how individual transmission tariffs have been derived and why they (do not) differ.

- **Analysis of the issue**

According to the initial draft TAR NC, the prior choice of the cost allocation methodology during the implementation of the TAR NC or the change of the type of the once chosen cost allocation methodology has to be consulted. As the consultation process is quite time-consuming and burdensome, ENTSOG believes that it is not necessary to undergo the full consultation process in case of maintaining the status quo (i.e. the cost allocation methodology applied per NRA approval after the first consultation has been completed). In this case – meaning when it is not foreseen to change the type of the applied cost allocation methodology – a justification document including the explanation of the outcome of the review of the applied cost allocation methodology shall be published, in order to enable stakeholders to understand the reasons for maintaining the 'status quo'.

Regarding the publication of the parameters relevant for the tariff setting the TAR NC already contains such an obligation. The Article on the information to be published for each tariff period in the standardised format encompasses, among other things, the parameters of the applied primary cost allocation methodology.

- **Outcome/conclusion**

No amendments have been implemented in the refined draft TAR NC to address this stakeholder concern.

CHAPTER IV. PUBLICATION REQUIREMENTS

The changes implemented in Chapter IV of the refined draft TAR NC as compared to the initial draft TAR NC include the following: simplification of the general provisions, restructuring of the information to be published in a standardised format, introducing additional transparency requirements for dedicated services charged to specific network users and at specific entry or exit points, for flow-based and complementary revenue recovery charges, introducing further transparency requirements for all the transmission tariffs (including the publication of information on tariff changes and tariff trends and of a simplified tariff model), aligning the timing of publication of charges for dedicated services charged to specific network users and at specific entry or exit points with that of the transmission tariffs, introducing the obligation of publishing the indicative reference prices and binding multipliers and seasonal factors ahead of the annual yearly capacity auctions and clarifying the possibility of changing the reference price, the complementary revenue recovery charge and some of the discounts for interruptible capacity within the tariff period.

Confidentiality of commercially sensitive information

In the informal feedback provided to ENTSOG, ACER raised the concern about Article 24(2) of the initial draft TAR NC saying that 'the confidentiality of commercially sensitive information shall be preserved' as a general principle to be followed when publishing the information relevant for tariff calculation. In particular, ACER noted that such provision is a narrow repetition of Regulation (EC) No 715/2009 and might open the door for not fulfilling the publication requirements.

ENTSOG is of the opinion that this provision is to be maintained in the refined draft TAR NC as a general reference of the necessity to preserve the confidentiality of commercially sensitive information recognised by the Third Package. Also, ENTSOG does not find such clause being a narrow repetition of Regulation (EC) No 715/2009 which foresees only two legally binding clauses that appear to be of no relevance for the publication of information relevant to tariff calculation and hence, meeting the TAR NC purposes, in particular: (i) Article 3(4) provides the rules on TSO certification and, in that context, says that NRAs and the EC are to preserve confidentiality of commercially sensitive information; (ii) point 3.4(3) of Annex I tackles the publication of information regarding the balancing services. The recitals of Regulation (EC) No 715/2009 are not legally binding and are of no relevance for the TAR NC purposes either: (i) recital (24) talks about access to information on the physical status and efficiency of the system;

(ii) recital (25) – although mentions the confidentiality requirements for commercially sensitive information – implies a logical link to recital (24).

The provisions relevant for the necessity to preserve the confidentiality of commercially sensitive information are envisaged in Directive 2009/73/EC: (i) Article 16(1) obliges the TSOs to preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its activities; (ii) Article 41(16) foresees that the decision taken by the NRAs shall be made available to the public while preserving the confidentiality of commercially sensitive information. However, a directive is a legal act binding as to results to be achieved – hence, upon transposition in a given Member State. There is no definition at the EU level of what constitutes 'the commercially sensitive information'. ENTSOG deems it necessary to include a specific provision in the TAR NC which – following the precedents established by the CAM NC and the BAL NC – is to be adopted in the form of a regulation and thus, will be directly applicable in all Member States.

ALLOWED REVENUE PUBLICATION

➢ Stakeholder feedback

A number of respondents indicated their concern regarding transparency of all the charges imposed by the TSO. In particular, it was pointed out that all the elements of the final tariffs should be made transparent and clarified. Moreover, in their informal feedback provided to ENTSOG, ACER raised the concern regarding the publication of total allowed/target revenue of the TSO. More specifically, ACER indicated that the publication requirements are restricted only to the transmission services revenue and that it is necessary to publish the allowed/target revenue in total rather than only its part related to the provision of transmission services.

➢ The TAR FG requirements

Section 2.3 of the TAR FG includes 'allowed or expected revenues' under the publication requirements regarding 'I. Inputs for the cost allocation methodology applied, adjusted to the level necessary to run the methodology: A. Inputs on the allowed revenues'.

➢ Analysis of the issue

ENSTOG took account of the stakeholder feedback regarding enhancing the publication requirements and amended the TAR NC text to ensure its clarity.

It was not ENTSOG's intention to skip the obligation foreseen by the TAR FG regarding the publication of the total allowed/target revenue of the TSO. Indeed, the formulation of Article

25 of the initial draft TAR NC was constructed in such way that by virtue of cross-reference foreseen in paragraph 1(a) 'the parameters of the applied cost allocation methodology […]' to Article 6, it would only mean that the transmission services revenue would have to be published as an input parameter to the primary cost allocation methodology. The refined draft TAR NC has been corrected to eliminate this loophole.

➢ **Outcome/conclusion**

The refined draft TAR NC ensures that the publication of both total allowed/expected revenue and specifically transmission services revenue is explicitly envisaged in Article 25 on information to be published for each tariff period and in standardised format.

TARIFF MODEL

➢ **Stakeholder feedback**

Due to the complexity of modelling, a large number of stakeholders highlighted the importance of TSO's publishing their tariff models as network users could not be reasonably expected to develop their own tariff models.

A number of stakeholders highlighted that the publication of the tariff models would provide transparency and improve tariff predictability: this would allow users make more informed decisions and they would be more likely to book the long-term capacity which would increase revenue stability for TSO's. Also, stakeholders indicated that the publication of tariff model would enable them to understand how different tariffs are calculated at different points and to estimate their levels in future.

➢ **The TAR FG requirements**

Section 2 of the TAR FG covers publication requirements and requires both TSOs and NRAs to publish sufficiently detailed information on tariff derivation, methodology and structure to allow third parties make a reasonable estimation of the reference price for future periods. However, the TAR FG stays silent regarding the publication of the tariff model.

➢ **Analysis of the issue**

In general, the Chapter on Publication Requirements has been redrafted to accommodate the stakeholder concerns regarding the necessity of improving the transparency. Its structure follows this logic: indication of the high-level objectives of publication requirements, enlisting of the information to be published in a standardised format (the development of which is a separate task for ENTSOG foreseen by the TAR FG) for each tariff period (including the

information such as the allowed revenue, details of the reconciliation of the regulatory account and the tariffs), the information on tariff changes/trends, the publication notice details and – to address this particular concern raised by the stakeholders – the simplified tariff model or, as an alternative, sensitivity analyses enabling network users to estimate themselves the possible evolution of transmission tariffs in future.

Stakeholders clearly indicated that they required a user-friendly model or tool to enable them understand how the existing tariffs are calculated and how they could change in future periods with different inputs. This was considered a key requirement for users to make informed decisions on their booking strategy: whether to book their capacity requirements with annual, short-term or a mix of products.

ENTSOG appreciate the importance of this information to network users: the refined draft TAR NC has gone beyond the requirements of the TAR FG to require the publication of additional information to allow users model tariff derivation. ENTSOG believes that the two options foreseen in the refined draft TAR NC – a simplified tariff model or the sensitivity analyses – addresses the stakeholder concerns for being able to calculate the transmission tariffs themselves and estimate their possible evolution in future.

ENTSOG would like to highlight that such information needs to be published for each tariff period and therefore should be carried out simultaneously with the publication of the information structured in the standardised format. Also, the task of such publication needs to be fulfilled either by the TSO or by the NRA – depending on whom is responsible for calculating the transmission tariffs.

- **Outcome/conclusion**

ENTSOG has amended the refined draft TAR NC so that the relevant Article includes the two options for addressing the stakeholder concerns regarding the publication of tariff model.

INFORMATION ON CHANGES AND TRENDS

- **Stakeholder feedback**

Some stakeholder explained that they want to have the possibility to ensure that the tariff changes as compared to the past are understood and that the tariff changes in the future are better predictable.

➢ The TAR FG requirements

This issue expands the requirements of the TAR FG about transparency. As indicated above, the TAR FG just state that 'third parties shall be able to make a reasonable estimation of the reference price from published transmission cost data, included a reasonable estimation of the reference price in the subsequent year(s) within the remainder of the current regulatory period.'

➢ Analysis of the issue

The stakeholder feedback has been taken in consideration since the refine draft TAR NC doesn't just give the stakeholder the opportunity to understand the evolution of the tariffs but also will publish an explanation of the level of the transmission tariffs and their evolution.

As it has been asked by the stakeholders, the TSO or the NRA, as relevant, will provide an explanation of the reasons why the tariffs changed as compared to the past and why it may change in the future, based on the best estimation of the future data.

➢ Outcome/conclusion

The refined draft TAR NC has been amended to take in consideration the stakeholder feedback concerning the information on tariffs changes and trends.

Example of information to be published on tariff changes and tariff trends

The table below shows an example whereby:

- the regulatory period is 4 years and we are currently in year 1 of 4
- the tariff setting year is from 1st January to 31st December, and therefore
- additional information is to be published at latest by 1st December
- the product the information refers to is the annual transmission tariff for the yearly capacity product

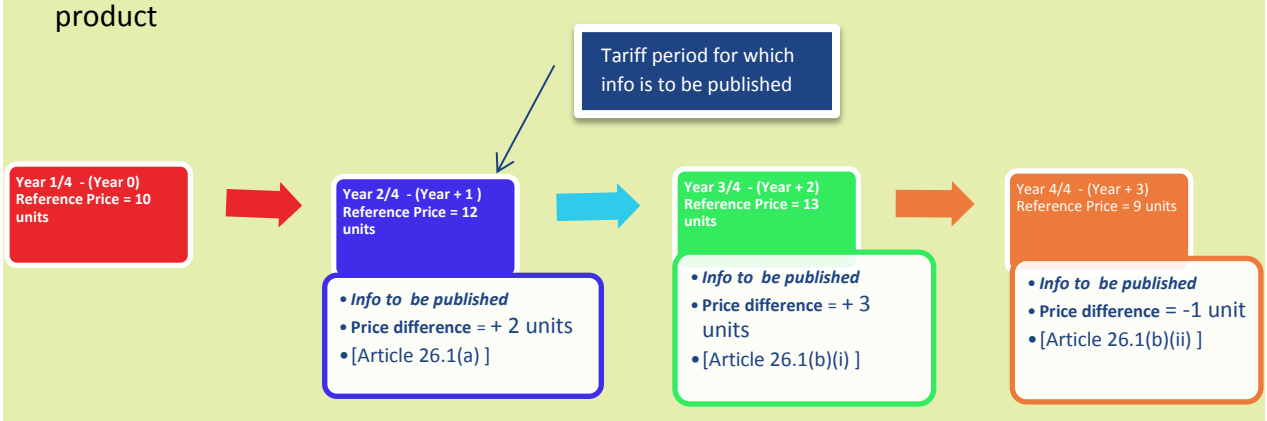


Figure 3. Publication of tariff changes / tariff trends

PUBLICATION TIMELINE

➢ Stakeholder feedback

Stakeholders have outlined a number of concerns associated with the timescales for the publication of the various tariff data and also the stability of this data across the year.

Their main concerns were:

- publication timescales:
  - having a publication notice period of 30 days before the application of new tariffs will result in the price of annual capacity being subject to potential price increases which are known to the network user only 9 months after their acquisition.
- seasonal factors
  - seasonal factors should be made public 30 days in advance the annual yearly capacity auction;
  - any change to tariff should have a 60 days' minimum notice period;
  - any within tariff year changes should be avoided to ensure tariff stability within the tariff period. This should also apply for multipliers as otherwise it would undermine price certainty and therefore shippers' booking strategy;
  - it may result in commercial difficulties for shippers and end-users, and provide cross-border distortion;

Also, stakeholders have asked for the following data prior to start of the annual yearly capacity auctions and not 30 days prior to the start of the tariff year: reference price, multipliers and seasonal factors.

➢ The TAR FG requirements

The TAR FG outlines, at a high level, the information required, and the timescales for its publication. In particular, the TAR FG only stipulate explicitly the publication notice period for reference prices but not for the multipliers or seasonal. The publication timescales foreseen by the TAR FG refer to 30 days ahead of the gas year/tariff period or regulatory period or 60 days in the case where the tariffs increase by 20% or more.

➢ Analysis of the issue

There are a number of changes included in the refined draft TAR NC that aim to address the concerns of stakeholders. Prior to the start of the annual yearly capacity auction, indicative

reference prices as well as binding multipliers and seasonal factors will be published, this will provide network users with the ability to assess the balance between within year and annual capacity products. Such 'prior' publication is aligned with the idea of publishing the binding transmission tariffs in terms of 'how well in advance' – i.e. at least 30 days before the annual yearly capacity auction.

The publication timescales for binding reference price have not been changed in the refined draft TAR NCs due to a potential impact on under-/over-recovery of allowed revenues. If reference prices are published prior to the annual auctions, TSOs will not be able to reflect under or over recovery of the current tariff year into the reference price. This will result in:

- TSOs not being able to redistribute over-recovery or recover under-recovery for a minimum of 2 years.
- Potential cross-subsidies across years;
- Potential for more volatile tariffs across years.

To provide improved information, the refined draft TAR NC has the obligation to publish 'indicative' reference prices prior to the annual yearly capacity auctions. These will provide an indication of the changes in reference price that could occur based on the assumptions used.

Also, ENTSOG has removed the possibility of recalculating the seasonal factors and the some of the discounts for the interruptible capacity within the tariff period. The option of recalculating the discounts is limited to monthly and daily standard capacity products for interruptible capacity and is subject to the criterion of changing the interruption probability by more than 20%. As for the publication timescales, such updated tariffs are to be published as soon as possible. This also refers to the report on the probability of interruption which in this case needs to updated accordingly and published as soon as possible.

➢ **Outcome/conclusion**

A number of changes have been implemented in the refined draft TAR NC to meet stakeholder concerns whilst meeting the TAR FG.

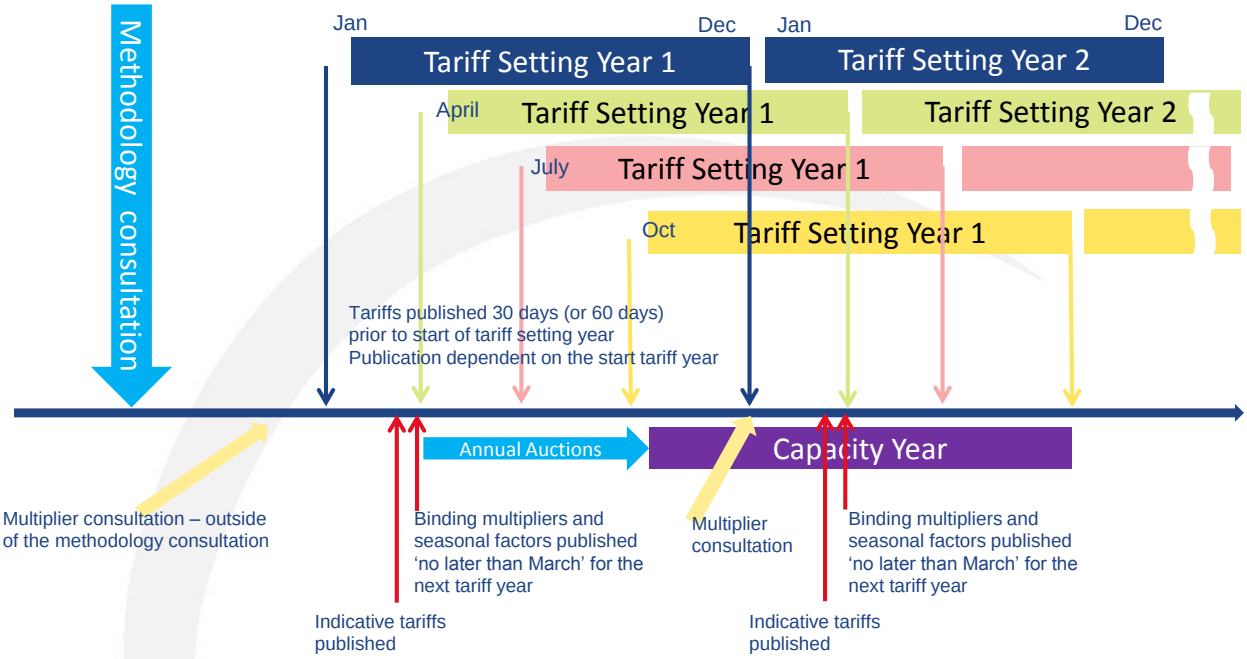


Figure 4. Publication timeline

Change of reference price within the tariff period

It could be the case that during the tariff period, the NRA or the TSO will realise that the difference between the actual revenues expected to be obtained from tariffs and the allowed revenues would be very high at the end of the tariff period, creating a high level of under-recovery.

Under exceptional circumstances (such as the court decision on non-applicability of some tariffs, the potential merging of the entry-exit system), subject to the approval of the NRA, it might be decided to recalculate the reference price within the tariff period in order to smooth the difference between the actual revenues expected to be obtained from tariffs and the allowed revenues.

In any case, the NRA shall be the ultimately responsible party for the approval of the recalculation of the reference price within the tariff year.

CHAPTER V. RESERVE PRICES

The changes implemented in Chapter V of the refined draft TAR NC as compared to the initial draft TAR NC include the following: amending the ranges of multipliers by deleting the link with the congestion definition as set out in CMPs, inclusion of clear criteria on when multipliers higher than 1.5 can be applied and a limit for the multipliers for short term products when this criteria is met, clarification of the criteria to be taken into account by NRAs when setting the multipliers levels, deletion of the 'pure' ex-post discount for interruptible capacity products and inclusion of criteria on when to apply the combination approach.

NRA APPROVAL OF SEASONAL FACTORS

Stakeholder feedback

Stakeholders argued the drafting lacked clarity and needed to be clear in stating seasonal factors, in addition to multipliers, must be approved by the NRAs.

The TAR FG requirements

Section 2.2 (approval decision and periodic review) of TAR FG states that following consultation, NRA should approve the tariff methodologies for the entry-exit system in its Member State. Section 5 (Reserve price) states that NRAs should decide whether to apply multipliers following consultation with relevant stakeholders and the NRAs of adjacent Member States. In adopting their decisions, NRAs should take into account the adjacent NRA's opinions.

Analysis of the issue

Stakeholders argued the drafting lacked clarity and needed to be clear in stating seasonal factors, in addition to multipliers, have to be approved by the NRAs. They were concerned that otherwise seasonal factors could be set without any consultation and transparency.

Whilst the TAR FG only specifically makes reference to NRAs consulting with relevant stakeholders and adjacent Member State's NRAs on the level of the multipliers, we consider the requirement as also covering seasonal factors. Seasonal factors are, after all, one input in calculating an overall multiplier. In any case the general requirements of 2.2 of the TAR FG and Article 13 of Regulation (EC) No 715/2009 already suggest this is part of approving the tariff methodology.

Outcome/conclusion

To provide more clarity as requested by stakeholders we have amended Article 28.4 of the initial draft consultation document. It now explicitly mentions the subject matter of the NRA approval.

CRITERIA FOR LEVEL OF MULTIPLIERS

- **Stakeholder feedback**

A number of stakeholders raised concerns about Article 28 paragraph 5, namely about the criteria that were included in the initial draft TAR NC for the level of multipliers. The majority of them recommended that further criteria should be included. More specifically they highlighted the fact that the level of multipliers should give adequate incentives through long/short term prices to the shippers in order to procure efficient level of capacity and avoid over-bookings. Respondents also stated that the criteria for multipliers should also guarantee tariff stability.

Indeed, a significant number of respondents suggested that the following points need to be taken into consideration when determining multipliers:

- The extent of any congestion
- The need to avoid any cross subsidisation between network users
- The impact of multipliers on trade and flexibility between market areas
- The fact that the level of multipliers will not hamper cross border trading.
- The impact on under/over recovery of transmission services revenue; need of effective revenue recovery
- The impact on the efficient use of the transmission systems in conjunction with the need for long term signals for efficient investment
- The fact that multipliers should be used to minimize the potential revenue shortfall from network users shifting from booking annual capacity to booking short-term products
- The need to facilitate short term gas trading
- The main purpose of multipliers, i.e. the fact that multipliers intentionally attempt to enhance demand at certain times of year and also ensure that TSOs recover required revenues by increasing multipliers at periods of higher demand.

- **The TAR FG requirements**

According to the TAR FG: *'In determining reserve prices and the application of any multipliers that may be appropriate, NRA shall take account of the following:*

- *The balance between facilitating short-term gas trading and efficient revenue recovery;*
- *The balance between facilitating short-term gas trading and providing long term signals for efficient investment;*
- *The need to ensure that multipliers applied to interruptible products reflect the probability of interruption;*
- *The need to ensure that transport contracts signed with non-standard dates or with durations shorter than a standard annual transport contract shall not result in arbitrarily higher or lower tariffs.'*

The initial draft TAR NC included the above mentioned requirements and elaborated further on them, including also the need to address any effect of multipliers in the final revenue of the TSO.

➢ **Analysis of the issue**

ENTSOG respecting the suggestions of stakeholders tried to incorporate all the points mentioned where needed and where these were not already included.

According to paragraph 5 of Article 28:

'When setting or approving the level of multipliers, the national regulatory authority shall take account of the following:

(a) the balance between facilitating short term gas trade and providing long term signals for efficient investment in the transmission system;

(b) the need of effective revenue recovery mechanism through incentivising the network users to contract both short term and long term services;

(c) the need to avoid cross-subsidisation between users and to enhance cost-reflectivity of reserve prices. '

Based on the stakeholder feedback, one main concern that was expressed in the consultation process was the fact that multipliers should promote market flexibility by facilitating cross border and short term trading. At the same time they proposed to highlight as a criterion the impact on the efficient use of an investment in transmission system.

Indeed the aforementioned criteria are captured through the existing points (a) & (c) of the current drafting of paragraph 5.

Considering the effect of multipliers in the revenue of the TSO and the proposal to include as a criterion the impact on under/over recovery of transmission services, ENTSOG considered that this is a further and more explicit explanation of what was included in point (b) of paragraph 4 of Article 28. Therefore, this phrase was adopted and will be included in the refined draft TAR NC.

Stakeholders also expressed their opinion that it should be stated that multipliers should minimize potential revenue shortfall shifting from booking annual capacity to booking short-term products. Tariffs should promote the efficient use of a gas system without resulting in underutilisation of it.

Finally, stakeholders proposed to include criterion concerning the extent of congestion. The initial draft TAR NC had already included a provision for congestion in point (a) of paragraph (1) of Article 29. However, in order to have all criteria consistent in one Article, ENTSOG will merge 29(1) (a) in paragraph (4) of Article 28.

- **Outcome/conclusion**

Taking all the above into consideration, paragraph 5 of article 28 was refined by namely amending criteria (b) of the aforementioned paragraph so that it says *'the impact on under /over recovery of transmission services revenue'* and including one further criterion *'the situations of physical and contractual congestion'*.

MULTIPLIER RANGES DEPENDING ON CONGESTION

- **Stakeholder feedback**

A clear majority stated that congestion should be taken into account but shouldn't be an automatic determinant or even predominant criterion. Other criteria should also be reflected in the decision, such as under-recoveries or impact on cross border trade. Congestion could only be an automatic determinant criterion, if it were defined differently to the ACER congestion report on the basis of point 2.2.3.1 of Annex I to Regulation (EC) No 715/2009. Furthermore, localisation of congestion or market conditions may change in the course of the two years' time lag of publishing the report and the usage of the data.

One respondent suggested removing the link between congestion and the ranges. Instead, the TAR NC should allow multipliers for monthly and quarterly products to be set anywhere between 0.5 and 1.5 and multipliers for daily and within day products to be set anywhere between 0 and 1.5.

➢ The TAR FG requirements

The TAR FG specifies the ranges of multipliers that are applicable at IPs for the different short-term standard capacity products. The proposal from the TAR FG is to set the ranges based on the definition of congestion as set out in point 2.2.3.1 of Annex I to Regulation (EC) No 715/2009. According to this text, if IPs are found to be congested in the ACER's monitoring report, multipliers higher than 1 won't be allowed. During the decision process, NRAs shall also take into account whether the TSO implemented oversubscription and buy-back schemes in the past; however, the TAR FG are not specific about how this shall be taken into account when setting the multiplier ranges.

➢ Analysis of the issue

Already at the SJWSs, stakeholders pointed out, that the definition of congestion as in point 2.2.3.1 of Annex I to Regulation (EC) No 715/2009 seems to be not reasonable. ENTSOG is of the view that the criteria for allowing different ranges of multipliers needs to be clear and consistent. The current definition of contractual congestion in in point 2.2.3(1) of the CMP Guidelines might be subject to review in the future, as the analysis carried out by ACER in the monitoring report is raising concerns about the conclusion with regards to congestion for several IPs across the EU among the stakeholders. Hence, a further condition that evaluates physical congestion was included in the initial draft TAR NC. This further condition was meant as a safeguard, a clear indicator of physical congestion at an IP that will need to be evaluated when the NRAs set the multiplier ranges. Within the Supporting Document, a further alternative approach was presented and consulted.

Stakeholders seem to have strong concerns regarding all the presented definitions of congestion or congestion as a predominant criterion, respectively. ENTSOG shares these concerns, especially as a definition based on historical data may not reflect actual situation. Therefore, ENTSOG considered that a case by case analysis including analysis of contractual situation and potential congestion done by the NRA when approving the multipliers seems to be most suitable.

The requirements of the TAR FG have been reviewed during the SJWSs and the consultation. As stakeholders as well as ENTSOG have serious concerns regarding the definition of congestion as set out in point 2.2.3.1 of Annex I to Regulation (EC) No 715/2009, the refined draft TAR NC will deviate from the TAR FG in that specific point.

As outlined before, the definition of congestion is based on historic data, although multipliers affect the reserve prices of future capacity products. As ACER pointed out, 'multipliers can be applied for the following reasons:

- To facilitate short term gas trades;
- To facilitate revenue recovery.'[18]

Both reasons need an assessment of future needs of shippers as well as TSOs. But the definition set out in point 2.2.3.1 of Annex I to Regulation (EC) No 715/2009 can only slightly indicate whether revenue recovery at the specific points is assured in the future. Even if the behaviour of shippers in the past may indicate the behaviour of shippers in the future, a more comprehensive analysis of market evolution than a mechanistic approach seems to be required. Therefore, when approving the multiplier, potential congestions in the past shall be taken into account, but shall not be a predominant criterion.

➢ **Outcome/conclusion**

To respect stakeholders concerns, ENTSOG decided to delete the congestion definition set out in point 2.2.3.1 of Annex I to Regulation (EC) No 715/2009 as predominant criteria and not to introduce other mechanistic criteria. Multipliers for monthly and quarterly capacity products shall be set anywhere between 0.5 and 1.5 and multiplier for daily and within-day capacity products shall be set anywhere between 0 and 1.5. Existing and expected level of contracted capacity, i.e. contractual as well as physical congestion, shall be one criterion to be evaluated by the NRA when setting the level of multipliers.

SAFEGUARD ON MULTIPLIERS

➢ **Stakeholder feedback**

The possibility to have multipliers higher than 1.5 under certain circumstances has been widely discussed during the development of the TAR NC. ENTSOG included two clear questions about the issue in the public consultation on the initial draft TAR NC. The results of the consultation showed division amongst stakeholders, as a group of respondents consider that having multipliers higher than 1.5 is not acceptable and on the other hand, some respondents believe that higher multipliers are acceptable, provided that circumstances are defined, the process is transparent and there is NRA approval.

➢ **The TAR FG requirements**

[18] see ACER's Justification document, p. 30 (published on the 31st March 2014)

According to the TAR FG, multipliers should never be higher than 1.5. The refined draft TAR NC includes the possibility to have higher multipliers. ENTSOG has included clear criteria in order to determine when higher multipliers can be applied and has included a cap. NRA approval is required in all cases.

- **Analysis of the issue**

ENTSOG has support from some market participants in order to take this approach, and in order to address some concerns, has included clear criteria for the safeguard and a new cap for multipliers when the criteria is met. The analysis on whether higher multipliers are needed can be done on IP basis or by grouping some or all IPs of a transmission system operator.

ENTSOG has provided examples in the Supporting Document and in past SJWSs on the impact that low multipliers could have on some IPs. The impact is an increase of the reference price, which means an increase of the risk for tariff instability at non-congested systems and moreover could be unacceptable for those shippers using the infrastructure in the longer term. For price cap regimes, limiting the multipliers to 1.5 could result in inappropriate revenue shortfalls for TSOs. ENTSOG firmly believes that the safeguard needs to be included in order to prevent negative consequences in many systems across EU.

- **Outcome/conclusion**

ENTSOG has analysed the results for the consultation and has worked on clear criteria for the safeguard. The criteria is to evaluate the ratio of the peak contracted capacity and the average contracted capacity for the whole year, focusing on the short term capacity. Only if this ratio is higher than 1.5, multipliers higher than 1.5 can be applied. The cap for the multipliers will be the number resulting from this ratio or 5, whichever is lower. With this refinement ENTSOG is aiming to address both stakeholders and ACER's concerns, as both clear criteria and a new cap are included in the text.

Example of the criteria for having higher multipliers

The figure below shows real data of short term capacity bookings for all cross border entry and exit points for the year 2012 in one Member State.

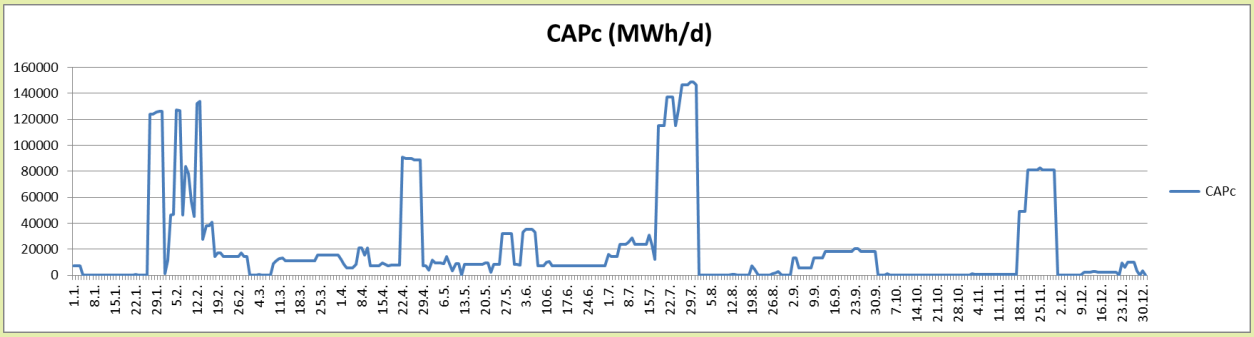


Figure 5. Short term capacity bookings for year 2012

Input data:

$\max(CAP_{c,i})$ = 148.681 MWh/d

$\sum_{i=1}^{366} CAP_{c,i}$ = 7.553.779 MWh/d

$$N_m = \frac{\max(CAP_{c,i}) \times 365}{\sum_{i=1}^{366} CAP_{c,i}} = 7.20$$

In this case, according to the criteria, multipliers can be higher than 1.5 but no higher than 5.

WITHIN-DAY CAPACITY PRODUCT PRICING AS DAILY PRODUCT CAPACITY PRODUCT

➢ Stakeholder feedback

Stakeholders were divided on the fact that there are two possible pricings of within-day products:

- (i) aligned with the daily product; or
- (ii) dependent on the number of remaining hours in the day.

Some respondents requested the removal of the first option, others requested the removal of the second option.

Some respondents also requested that the chosen option should be dependent on the type of nomination which is applied by the specific TSO (option 1 for daily nomination regimes; option 2 for hourly nomination regimes).

➢ The TAR FG requirements

The FG states that: *'The Network Code on Tariffs shall set out that the reserve prices for daily and within-day firm standard capacity products shall be set by reference to the yearly reference price using the following formula:*

*Pst = m * (py/365)*

*Pst = m * (py/8760) * h*

where:

Pst is price of short-term product,

m is multiplier,

py is price of yearly product,

h is duration in remaining hours of the gas day

*For leap years, Pst = m * (py/366) and Pst = m * (py/8784) * h.'*

➢ Analysis of the issue

Considering that the consultation respondents were not aligned (and even in contradiction) on that issue, the TAR NC can thus not satisfy all stakeholders.

Since the TAR FG provides two possibilities for the pricing the short term products, the wording of the Framework Guidelines leaves thus both options open.

➢ Outcome/conclusion

Considering that:

- The initial draft TAR NC was in line with the TAR FG;
- None of the two options proposed for the pricing of within-day products was preferred by all stakeholders

We propose to keep the possibility of having two possible pricing systems for within-day products as is in the initial draft network code.

USE OF POWER FACTOR FOR THE SEASONAL FACTORS METHODOLOGY

➢ Stakeholder feedback

Some stakeholders want to delete the power factor because:

- it could excessively accentuate the differences in capacity prices throughout the year
- seasonal modulation of gas flows should be governed by market signals rather than TSO incentives
- setting seasonal factors up to the power of 2, to incentivise or penalise more clearly months which deviate most from flat usage, appears not to take account of: (i) actual gas requirements; (ii) consumption patterns in some markets, where extremes exist; (iii) ultimately, the end user across markets. For the generation sector in particular, facing increasingly intermittent and unpredictable operations due to provision of back up for renewables, this provides increased risk.

Some stakeholders are of the view that the power factor should be subjected to further requirements:

- the inclusion of a power factor would only be acceptable if multipliers higher than 1.5 are not allowed
- the decision of choosing the power factor should be adequately justified if not equal to 1
- there should be a consultation with stakeholders about the power factor and it should be subject to NRA approval
- ENTSOG should provide examples of how the power factor should be determined

➢ **Analysis of the issue**

Below are ENTSOG's views on the feedback received during the consultation for this issue:

- 'it could excessively accentuate the differences in capacity prices throughout the year'
  - ⇨ An excessive impact of the power factor will always be mitigated by the fact the yearly average of the reserve prices cannot exceed 150% of the annual reserve price, unless a multiplier safeguard clause is applied in which case the limit for the average of the reserve prices is level of the applied multiplier.
- 'seasonal modulation of gas flows should be governed by market signals rather than TSO incentives'
  - ⇨ SF favour LT bookings which, in return, favour cross borders trades and price alignment (once the capacity is paid, a gas trader will attempt to capture any spread between 2 marketplaces) and price stability while preventing cross-subsidies.
- 'Setting seasonal factors up to the power of 2, to incentivise or penalise more clearly months which deviate most from flat usage, appears not to take account of: (i) actual gas

requirements; (ii) consumption patterns in some markets, where extremes exist; (iii) ultimately, the end user across markets. For the generation sector in particular, facing increasingly intermittent and unpredictable operations due to provision of back up for renewables, this provides increased risk.'

⇨ TSOs/NRAs should analyse whether SF are suitable for an IP (suitability depends on the seasonal pattern of the IP).

- 'the inclusion of a power factor would only be acceptable if multipliers higher than 1.5 are not allowed'

  ⇨ SF are to be use if their application facilitates the economic and efficient utilisation of the system and if it improves the cost-reflectivity of reserve prices. The cap of the multipliers is a different issue and thus should not be linked.

- the decision of choosing the power factor should be adequately justified if not equal to 1
- 'there should be a consultation with stakeholders about the power factor and it should be subject to NRA approval'
- 'ENTSOG should provide examples of how the power factor should be determined'

  ⇨ The power factor has already been capped to a level of 2 in order to address previous concerns. An excessive impact of the power factor will always be mitigated by the fact the yearly average of the reserve prices of the same type of ST products cannot exceed 150% of the annual reserve price unless a multiplier safeguard clause is applied in which case the average of the reserve prices cannot exceed the level of the respective multiplier. ENTSOG sees no need in consulting on its particular value and NRA approval of the whole methodology is guaranteed in any case.

The TAR FG gave ENTSOG the mandate to develop a methodology for determining SF. The introduction of the power factor aims at making the SF a more flexible and efficient tool. When the use of SF is deemed appropriate, the setting of the power factor is as follows:

- Power factor < 1, when the aim is to mitigate the effects of the SF on the reserve prices.
- Power factor = 1, when the aim is to set SF proportional to the level of usage/bookings hypotheses.
- Power factor above 1 up to 2, when the aim is to enhance the effects of the SF on the ST reserve prices.

In any case, the yearly average of the reserve prices for ST products cannot exceed 150% of the annual reserve price, unless a multiplier safeguard clause is applied in which case the average of the reserve prices cannot exceed the level of the respective multiplier.

➢ **Outcome/conclusion**

For the reasons above, ENTSOG will not introduce any change related to the power factor in the refined draft TAR NC.

HIGH COMPLEXITY AND UNCERTAINTY OF THE EX-ANTE DISCOUNT FORMULA

➢ **Stakeholder feedback**

Some stakeholders raised the concern that

(1) they doubt whether TSOs will be able to estimate the duration of interruptions and the proportion of capacity that would be interrupted with any degree of certainty;

(2) the formula seems to be too complex.

➢ **The TAR FG requirements**

Point 5.2 of the TAR FG states that the methodology for determining the reserve prices for interruptible capacity offered at interconnection points where firm capacity is offered in both directions shall adequately reflect the risk, namely the likelihood and duration of interruptions and that TSOs shall publish their assessment of the risks of interruption.

➢ **Analysis of the issue**

The components used in the proposed formula, namely the number of interruptions, the average amount of interrupted capacity and the average duration of interruption are parameters which the TSOs will forecast based amongst others on historical data. Therefore the degree of certainty will on the one hand correspond to the probability of past occurrences and on the other hand on possible corrections to those figures which will be justified by the TSOs showing the underlying assumptions for such corrections.

The proposed formula reflects the requirements set out in the TAR FG. The detail put in the formula on how to determine the probability of interruption primarily intends to provide transparency on the component factors included in the calculation. A simplification would of course be possible, however, the underlying factors, such as the assumed number of interruptions, the average duration of each interruption and the average amount of interrupted

capacity would still be used to determine the decisive factors only without showing them in their component detail.

➢ **Outcome/conclusion**

Because of the above mentioned reasons ENTSOG does not consider a change or simplification of the formula as an improvement to the proposed provision.

EX-POST DISCOUNT / COMBINATION OF EX-POST AND EX-ANTE

➢ **Stakeholder feedback**

A significant part of the respondents raised concerns about the pricing of interruptible capacities by application of a pure ex-post discount for interruptible capacity. Some of them see a conflict with the TAR FG and others presumed a transfer of financial risk to the shippers. Stakeholders tend to be in favour of an ex-ante discount and a combined approach of ex-ante and ex-post discount. A few shippers proposed to set a minimum ex-ante discount for interruptible reserve prices.

➢ **The TAR FG requirements**

'… At interconnection points where firm capacity is offered in both directions, the discount(s) for interruptible capacity shall adequately reflect the risk (likelihood and duration) of interruptions, so that if the risk is low, the discount shall also be low. TSOs shall publish their assessment of the risks of interruption. …'

➢ **Analysis of the issue**

ENTSOG has analysed stakeholders' feedback during the refinement phase. The outcome of our analysis is explained below.

The TAR FG does not explicitly mention ex-post or ex-ante discounts for interruptible products but focus on the adequate pricing by reflecting the risk. If the risk (likelihood and duration) is low then also the discount in this regard shall be low.

Following the TAR FG all three options as originally proposed (ex-ante, ex-post and combined approach) are possible. The application of a minimum ex-ante discount is excluded because in that case the pricing would not reflect the adequate risk.

➢ **Outcome/conclusion**

ENTSOG has taken the concerns of stakeholders into account and as a result, the option of applying a pure ex-post discount for interruptible capacity has been removed in the refined

draft TAR NC. The application of an ex-ante discount is set as default pricing option. In addition to the ex-ante discount, an ex-post discount is possible where one of the following conditions is met at a given IP for the previous tariff period:

- The absence of physical congestion; or
- The available firm capacity for the daily standard capacity products exceeds ten percent of technical capacity on average over the year.

The setting of a minimum discount cannot be considered as it is against the TAR FG which requires an adequate relation between risk and discount. This risk is reflected in the discount formulas included in the refined draft TAR NC which form the basis for a further reserve price calculation.

'A' AND 'B' FACTORS

➢ **Stakeholder feedback**

ENTSOG received several comments on this issue. On the one hand, a group of stakeholders is supporting ENTSOG's approach on having a parameter 'A' for the calculation of the ex-ante discount whilst on the other hand, ACER's view is that the introduction of these factors does not contribute to harmonisation and there is no justification for the different approaches for the two parameters and there is no need for A to be greater than 1.

➢ **Analysis of the issue**

- ACER considers that the approach included in the initial draft TAR NC does not contribute to harmonisation.
- A group of stakeholders are of the view that the ex-ante discount should reflect the cost of the risk borne by shippers when they book interruptible capacities. For any interruptible capacity offered for a longer period, the formula is appropriate, and the A parameter should be set higher than one in circumstances where the potential cost of interruption far exceeds the interruptible discount based on the expected probability of interruption.

ENTSOG had the task of developing a methodology for determining the discounts for interruptible capacity that adequately reflects the risk of interruptions. ENTSOG considers the current approach is consistent with these requirements.

➢ **Outcome/conclusion**

In order to address some concerns of lack of harmonisation, ENTSOG has decided to go for the same approach for the factors A and B, i.e. they shall be no less than 1. B won't be set to 1 by default in the refined draft TAR NC. At the same time, it will be clarified that A and B factors are to be approved by the NRA, together with the whole methodology to calculate the discounts.

PRICING OF NON-PHYSICAL BACKHAUL CAPACITY AS INTERRUPTIBLE CAPACITY

➢ **Stakeholder feedback**

Stakeholders were split on the issue of pricing non-physical backhaul capacity. Half of respondents indicated their support of ENTSOG's approach to price it in the same way as interruptible capacity products, whereas the other half agreed with the TAR FG approach to price it at marginal costs.

➢ **The TAR FG requirements**

Section 5.2 of the TAR FG says: *'At unidirectional interconnection points where TSOs offer firm capacity only in one direction and capacity is offered in the other direction on an interruptible basis (non-physical backhaul capacity), the methodology for determining the reserve price shall be set to reflect the actual marginal (additional) costs that the TSO incurs to provide this service and shall not be below zero.'* The refined draft TAR NC does not follow the TAR FG requirements – instead, the same approach as the one taken in the initial draft TAR NC is followed: pricing of non-physical backhaul capacity in the same way as interruptible capacity products.

➢ **Analysis of the issue**

Noting the even split between the respondents' positions, ENTSOG is of the opinion that the same approach as the one taken for the initial draft TAR NC should be kept. ENTSOG, consistent with its previously maintained position, supports the rationale provided by half of the stakeholders, such as: (i) non-physical backhaul capacity is an interruptible capacity product and therefore, should be priced on the same principles as interruptible capacity; (ii) the use of a different approach for non-physical backhaul capacity appears to treat the network users differently, i.e. discriminating between them.

ENTSOG indicated its position regarding pricing of non-physical backhaul capacity throughout the TAR NC development (e.g. see ENTSOG's Launch Documentation[19] and Supporting Document for public consultation on the initial draft TAR NC[20]). In addition to the arguments provided in those documents, ENTSOG would like to state the following:

- Non-physical backhaul capacity has the similar nature as the one of other interruptible products: the difference being the type of physical infrastructure (bi-directional or uni-directional IP) or the conditions for interruption (non-physical backhaul capacity is interrupted if there are not enough nominations and other interruptible capacity is interrupted if there are too many nominations).
- Interruptible capacity is defined in Article 2(1)(13) of Regulation (EC) No 715/2009 as '[…] capacity that may be interrupted by the transmission system operator in accordance with the conditions stipulated in the transport contract' without making a distinction between interruptible capacity offered at a bi-directional IP and non-physical backhaul capacity offered at uni-directional IP.
- Pricing of non-physical backhaul capacity at marginal costs for providing this service means that the TSOs will be forced to offer much larger discounts for this product as compared to other interruptible products. This contradicts the to the rule set out in Article 14(1)(b) of Regulation (EC) No 715/2009 saying that 'the price of interruptible capacity shall reflect the probability of interruption'.
- Apart from the rule established by Article 14(1)(b), Regulation (EC) No 715/2009 does not foresee the requirements for pricing of non-physical backhaul capacity. The CAM NC – which supplements and forms an integral part of Regulation (EC) No 715/2009 – does not foresee the rules for its pricing either. Since non-physical backhaul capacity products is of the similar nature as interruptible capacity products, the rules stipulated in the existing legislation for interruptible capacity products are to be applied.
- The TAR NC which – following the precedents established by the CAM NC and the BAL NC – is to supplement and form an integral part of Regulation (EC) No 715/2009 cannot contradict Regulation (EC) No 715/2009. As explained above, pricing of non-physical backhaul capacity at marginal costs, which ACER envisages to be foreseen by the TAR NC,

[19] See p. 91: http://www.entsog.eu/public/uploads/files/publications/Tariffs/2013/TAR136-13_140122_TAR%20NC%20Launch%20Documentation.pdf.
[20] See p. 63: http://www.entsog.eu/public/uploads/files/publications/Tariffs/2014/TAR300-14_Initial%20Draft%20TAR%20NC%20Supporting%20Document_for%20consultation.pdf.

appears to contradict pricing by reflecting the probability of interruption already envisaged in Regulation (EC) No 715/2009.

- Also, ENTSOG would like to draw attention to the ECJ Judgement of 5 June 2014 in Case C-198/12 Commission vs Bulgaria[21], where the issue associated with non-physical backhaul was under the consideration. The EC claimed that Bulgaria failed to fulfil its obligation under Articles 14, 16(1) and 16(2)(b) of Regulation (EC) No 715/2009 since the virtual reverse flow capacity was not provided at every entry and exit points and stated that the provision of both physical and virtual capacity arises from TSO's obligation to provide maximum capacity to all market participants. The Court concluded that Article 14 of Regulation (EC) No 715/2009 does not require TSOs to provide virtual reverse flow capacity – it obliges not to discriminate when providing existing services but it does not oblige to provide new services. Indeed, if there is no obligation to offer such services, it does not prevent the TSOs from offering them, and where offered, the price for such services is to be in compliance with the existing legislation – namely, the rule stabled by Regulation (EC) No 715/2009 regarding reflecting the probability of interruption. Moreover, the text of the Judgement says '[…] the Commission maintains that such a virtual capacity must be offered on an interruptible basis […]' (point 24).

➢ **Outcome/conclusion**

No change required for the refined draft TAR NC, apart from some rewording for better alignment with the relevant provisions of the CAM NC.

[21] See: http://curia.europa.eu/juris/document/document.jsf;jsessionid=9ea7d0f130d5b18ae478a6494a37a7f7eb1bf9af0293.e34KaxiLc3eQc40LaxqMbN4Ob3yOe0?text=&docid=153307&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=244122.

CHAPTER VI. REVENUE RECONCILIATION

No significant changes were implemented in Chapter VI of the refined draft TAR NC as compared to the initial draft TAR NC apart from aligning the wording to ensure the correct reference s to the transmission services revenue as the only part (i.e. excluding the dedicated services revenue) of the allowed revenue to be reconciled following the rules foreseen in this Chapter.

TRANSPARENCY OF UNDER-/OVER-RECOVERY

➢ Stakeholder feedback

A number of comments were received from stakeholders regarding the issue of transparency on the amount of over- or under-recovery and also related to the introduction of mandatory sub-accounts for the purpose of transparency.

➢ Analysis of the issue

With regard to transparency on the amount of over- or under-recovery, stakeholders felt that this would allow them to anticipate allowed revenue variations in future years, and anticipate how this could affect future tariffs. Stakeholders also felt that it was very important for network users to be able to see the extent of any cross-subsidy between classes of network users that results from having a single regulatory account. Some respondents felt that it was not clear how over- or under-recovery, year after year, would impact tariff structure. They felt that the system may create some cross-subsidies as all users would pay for under-utilised points, particularly cross-subsidies between cross-border and domestic users, and hence that sub-accounts (and transparency of same) should be introduced.

➢ Outcome/conclusion

As ENTSOG had previously included text regarding the requirement for transparency for over- and under-recovery in the initial draft TAR NC, this was made clearer in the refined draft TAR NC namely by clarifying what reconciliation period the transparency requirement relates to. As there is no requirement related to the transparency for sub-accounts this has not been included in the refined draft TAR NC.

CHAPTER VII. PRICING OF BUNDLED CAPACITY AND CAPACITY AT VIPS

No significant changes were implemented in Chapter VII of the refined draft TAR NC as compared to the initial draft TAR NC apart from some consistency checks.

CHAPTER VIII. CLEARING PRICE AND PAYABLE PRICE

The changes implemented in Chapter VIII of the refined draft TAR NC as compared to the initial draft TAR NC include the following: introducing the new Article on the calculation of the clearing price, clarifying the calculation of the payable price for fixed and for floating approaches.

FIXED PRICE MECHANISM

- **Stakeholder feedback**

In their consultation responses to the initial draft TAR NC, stakeholders stated that, in addition to floating tariffs, it should be possible to have fixed tariffs. Stakeholders suggested that it would be worth exploring the different options outlined within the Supporting Document. One important objective should be that shippers with different booking strategies are able to reduce their exposure to tariff fluctuations.

If fixed mechanisms were not allowed, network users' opportunity to conclude long-term commodity contracts could be undermined, since they might not be able to manage their margin risk due to unknown or unpredictable changes in transmission tariffs.

Respondents suggested that a fixed price mechanism would be one way of raising the interest of shippers in committing to long term contracts since it offers more price stability. In addition, it was highlighted that fixed price options would seem appropriate for incremental capacity where predictability is needed for shippers to bid for sufficient long term capacities and thus pass the economic test.

It was also highlighted that there should be a limited set of options, and that TSOs/NRAs should collaborate to ensure the same mechanism applies at both sides of an IP for bundled capacity.

ACER has previously stated their concern with the adoption of fixed prices. Stakeholders suggested that it should be recognised that advocators of fixed price mechanisms are looking for predictability of the price to be paid for capacity booked on a forward basis. It was

highlighted that the price does not need to be fixed nominally at the point capacity is allocated. Instead the prices could be fixed based on differing forms of indexation such as financial inflation measures (e.g. Producer Price Index, Retail Price Index, cost of steel), or directly to an index base related to the calculation of the TSO's allowed revenue. Such approaches could address concerns about cross subsidies between different groups of users.

➢ The TAR FG requirements

The TAR FG does not include the optionality for TSOs to offer fixed tariffs; the provisions within the FG focus on the provision of floating tariffs, the main rationale being that by adjusting the reserve price to the published reserve price when capacity is utilised, TSOs would be able to effectively recovery their revenue and that network users should pay the same price for the same product. If fixed prices were offered by the TSO, network users would be paying different prices for the same products.

The introduction of a fixed mechanism into the TAR NC would therefore constitute a deviation from the arrangements envisaged by ACER.

➢ Analysis of the issue

ENTSOG believe that there are a number of benefits in including a fixed price mechanism in the TAR NC. These are focused on the optionality provided to shippers of a fixed or a floating price. The main benefits are:

- provides increased incentives to network users to purchase longer term capacity
- provides an option for network users to manage the risk of potential tariff changes
- provides increased certainty for the network users who chose to purchase fixed price capacity

There are a number of issues with providing the ability for TSOs to offer fixed prices:

- Cross subsidies – with different network users paying different prices for the same annual product, there will inevitably be some form of cross-subsidisation. This will be managed to some extent with the selection of the index and/or the risk premium for the fixed price. Therefore, although elements of the fixed price will be known at the inception of the contract, when the contract is enacted, the price will be 'updated' using the relevant index. This could lead to the price being higher or lower than the corresponding floating price.
- Reconciliation of potential over or under recovery – as outlined above, different network users will pay different prices for the same product. If there are large amounts of fixed price product, there is an increased potential of over or under recovery of allowed revenues. This

will result in an increased risk of those paying a floating price, having the potential for an increase in price volatility. There are a number of options for managing this risk:

  - network users purchasing capacity with floating tariffs pick up the risk of under- and over-recovery. This may be especially pertinent in the situation where there is an over-recovery where floating tariffs would be lower;
  - mechanisms within the TAR NC such as the CRRC (Complimentary Revenue Recovery Charge) could be used to recover the short fall due to the fixed price contracts being a lower price than floating price. Therefore, the network users who utilise the capacity (including those with the fixed price contracts) will pick up additional costs;

- Obligation or option – some stakeholders have requested that there should be an obligation for TSOs to provide a fixed price mechanism in addition to the obligation to provide a floating price mechanism. There are a number of risks associated with providing such an obligation. As outlined above both fixed tariffs as well as floating tariffs have advantages and draw-backs. The exact impact of the application of floating or fixed tariffs should be made by each TSO individually. For some TSOs whose revenue cap is more stable, long-term contracts are really needed and therefore a fixed tariff regime were more suitable, whilst for other TSOs, a floating tariff regime would be more suitable due to the volatile nature of a revenue cap regime. An obligation to introduce a fixed tariff option for all TSO could lead to an increased risk for the shorter-term booker, due to high volatility of tariffs.

The TAR FG does not include the potential for future annual contracts to have a fixed price. The concept that all parties purchasing the same product should pay the same price is central to the TAR FG. Therefore, the introduction of a fixed price option into the TAR NC is a deviation from the TAR FG.

➢ **Outcome/conclusion**

The refined draft TAR NC has included the option for TSOs to offer fixed price annual contracts along with the obligation to offer floating tariffs. This option is included mainly as an incentive for network users to purchase longer term capacity, providing some certainty and stability for the TSO on future recovery allowed revenues, improving price certainty for network users and improving the signals for potential system development requirements such as incremental capacity.

Whilst there may appear to be some drawbacks regarding the implementation of fixed price mechanisms, we believe that there are provisions in the TAR NC that allow TSOs and NRAs to manage the potential for significant shortfalls or over-recovery without excessive cross

subsidies, such as using the CRRC provisions to manage additional cost recovery. Therefore text has been included in the legal text allowing for the implementation of fixed price mechanisms in addition to floating price mechanisms.

CHAPTER IX. INCREMENTAL CAPACITY

The changes implemented in Chapter IX of the refined draft TAR NC as compared to the initial draft TAR NC are addressed in the Analysis of Decisions document for the Incremental Proposal.

CHAPTER X. FINAL AND TRANSITIONAL PROVISIONS

The changes implemented in Chapter X of the refined draft TAR NC as compared to the initial draft TAR NC include the following: removing the redundant text from the Article on mitigating measures and the contradictory text from the Article on the transitional period, ensuring that the TAR NC does not change the price foreseen in the fixed price contracts concluded before its entry into force, prolonging the time period between the entry into force and the application dates of the TAR NC.

Implementation scenarios

The initial draft TAR NC stipulates the application date of the TAR NC as the later of the following two: (i) 1 October 2017 (per the TAR FG); or (ii) entry into force date + 18 months. Having considered stakeholder feedback, ENTSOG amended the calculation of the application date so that the refined draft TAR NC foresees 24 – instead of 18 months – as a time period between the entry into force date and the application date. This timing was seen by some respondents as realistic and sufficient for proper implementation.

Knowing the timings of different stages of the establishment process post such submission (calculated using the precedents of the CAM NC and the BAL NC establishment), the estimated application date can be calculated as 1 June 2018. This is referred to as the 'base case' scenario (ref. Article 50). In addition to this scenario, the refined draft TAR NC foresees the other two scenarios illustrated below.

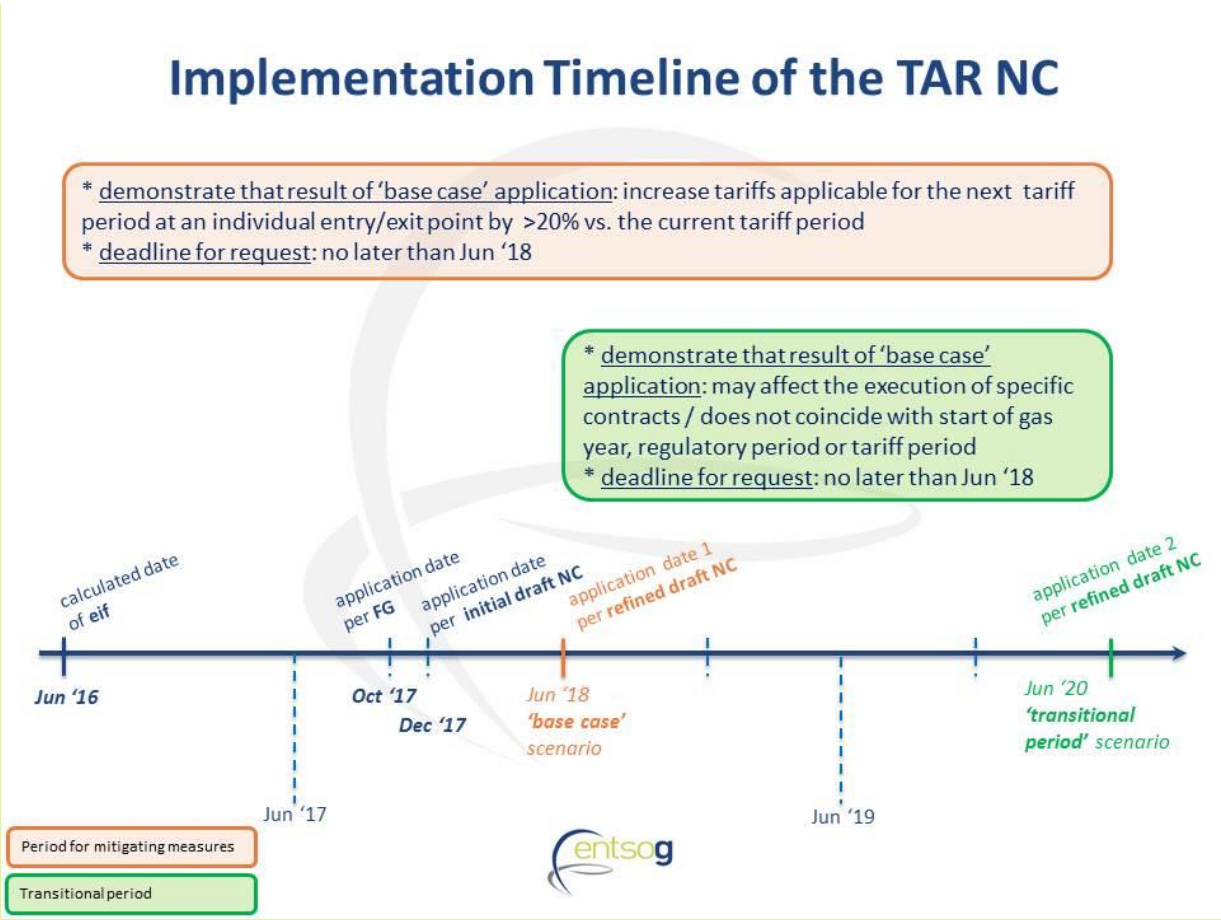


Figure 6. Implementation timeline

- 'mitigating measures' (orange box) : application of the TAR NC as from 1 June 2018 (the same as in the 'base case' scenario) and simultaneous application of some mitigating measure(s) designed to 'alleviate' the impacts originating from the application of the TAR NC. This is a 'do with help' scenario (ref. Article 48 of the refined draft TAR NC).
- 'transitional period' (green box) : application of the TAR NC as from a later day than 1 June 2018. This is a 'do with delay' scenario (ref. Article 49 of the refined draft TAR NC).

ONE-OFF CAPACITY RESET

Stakeholder feedback

Many stakeholders have included references to the possibility of having a one-off capacity reset option in their responses to the TAR NC Consultation. There are two main areas that respondents focus on their arguments for a capacity reset.

The first is that they believe that changes in tariffs resulting from the implementation of the TAR NC has a greater impact on existing long term capacity holders than new short term capacity holders, disadvantaging long term capacity holders that are unable to benefit from short term profiling, resulting in cross subsidies and distorting competition. Mitigation measures proposed in the initial draft network code are not sufficient.

- Current long term contracts may not be fit for purpose in the 'new world'
- The one-off capacity reset will reduce risks on holders of long term capacity
- Long term capacity holders may challenge legality of the TAR NC.
- the capacity reset will not fundamentally change the flow patterns or gas demand
- limited impact on the revenues of the TSO.
- measures can be put in place to deal with the adverse impact of the proposal on high transit systems.

The second area considers the benefits of a one-off capacity reset. These were considered as:

- frees up capacity for the market;
- relieves contractual congestion;
- remove the issue of impact of VIPs on existing capacity holders;
- creates a level playing field for all market participants;
- it is possible to develop mitigation measures for all TSO and ACER issues

The TAR FG requirements

The one-off capacity reset option did not form part of the TAR FG discussions and was not included in the TAR FG.

Analysis of the issue

The implementation of a one-off capacity reset will have a number of impacts on TSOs and the market.

Impact on the Market

The one-off capacity reset option gives shippers the opportunity to hand back capacity without economic consequences even at points where the TAR NC does not lead to a tariff increase or leads to a tariff decrease. Such shippers would be able to pass on their economic risk relating to their booking decision in the past to the TSO and as a subsequently, to the market. This opportunity would be in contradiction to the basic idea of risk-sharing in accordance with the surrender of contracted capacity (2.2.4 Annex I to Regulation (EC) No 715/2009).

The introduction of a one-off capacity reset option could lead to instability in the market and would generate increased tariff instability over a period of time. Depending on the level of rebooking of capacity after the one-off reset option has been implemented, the impact on the tariffs in the short term could be substantial as there could be a significant move to short term bookings. There is likely to be an ongoing impact on tariff stability because substantially lower long term bookings and higher short term bookings could make estimating capacity sales more difficult.

If less overall capacity is booked due to the free surrender of long term capacity, with capacity re-bookings being based on short term capacity at a lower level, then the tariff costs for customers that are unable to reduce their bookings will increase. In addition, if tariffs become too high it will discourage new entrants from coming into the market.

A likely consequence of a one-off capacity reset option could be that the use of the secondary market would also be adversely affected. The level of activity on the secondary capacity markets is influenced by primary capacity being available from the TSOs. If more capacity is made available through the one-off capacity reset option, then it is likely that the secondary markets would be utilised less. Retaining long term contracts or entering into new contracts might no longer be an attractive option, since the option to sell un-used capacity will become more uncertain.

Stakeholders believe that the one-off capacity reset option will free up capacity and reduce contractual congestion. ENTSOG believes that this is not necessarily a benefit as there are already Congestion Management Procedures (CMP) in place to manage contractual congestion e.g. through the surrender of capacity. While CMP allows the surrender of capacity it does so through a mechanism whereby the surrender of capacity is facilitated if some other network user is willing to pay. Under the one-off capacity reset option the capacity is surrendered without any guarantee that it will be rebooked.

Impact on other network users

This one-off capacity reset option could increase cross-subsidies between different users and result in non-cost reflective redistribution of costs, with users unable to hand back capacity, picking up additional costs. Furthermore, this will incentivise network users to further reduce their future long term capacity contracts that will lead to further tariff increases.

A change in contracts for the IPs could have an unintended impact on storage and LNG depending on how the tariffs are set through the cost allocation methodology. Storage and LNG may be adversely impacted if a one-off capacity reset option changes the current transport contracts with the corresponding change in tariffs. Storage and LNG may be subject to higher tariffs on the basis of the contract changes that have taken place with regard to the IPs.

Cross-border trade

Where network users hold long term contracts, they are more likely to take advantage of arbitrage opportunities because they already hold the capacity and therefore the marginal costs of exploiting the arbitrage opportunities are close to zero. If a one-off capacity reset option was introduced then the likelihood is that many network users would return their long term capacity in favour of short term capacity bookings. This could lead to a situation where the increased tariff price results in a decrease in market arbitrage opportunities.

Impact on investment

There are a number of transmission investments across Europe that have been underpinned by long term capacity bookings. Network users have made long term capacity bookings to ensure that pipelines would be built and have made commitments to underpin those investments. If long term capacity bookings can be returned to the TSO with no assurances about capacity being rebooked then those network users that triggered investments in the past and made commitments to support those investments would now have the possibility to walk away from their commitment.

Impact on TSOs

A reduction in long term bookings that underpin steady revenues and the resultant increase in the volatility of annual revenues, could impact the market valuation of the TSO's business. This in turn could have an impact on the tariffs and on the ability of the TSO to invest in the network. There is also a risk on the ability of the TSO to finance its business leading to an increased cost of capital. The uncertainty created by the one-off capacity reset option could create problems for TSOs when seeking funding from the financial markets.

The expected change in shipper capacity booking behaviour will make the process of determining accurate tariffs more difficult and therefore will increase tariff instability. This

would have a further impact on capacity bookings and creates concerns for the TSOs with regard to the recovery of the allowed/target revenue.

The one-off capacity reset option did not form part of the TAR FG discussions and was not included in the TAR FG.

- **Outcome/conclusion**

The one-off capacity reset option was not included in the initial draft TAR NC for a number of reasons related to the impact on the market, on other network users and also due to TSO concerns.

The provisions in the initial draft TAR NC are focused on mitigating the potential rise in tariffs resulting from the introduction of the TAR NC and also ensuring that fixed price contracts entered into prior to entry into force of this Regulation are not affected ENTSOG believes that further consideration is needed with regard to the potential measures that could be implemented to manage tariff change risk. ENTSOG additionally believes that the TAR NC should only include mitigating measures associated with the implementation of the TAR NC.

ENTSOG recognises that the market is in the process of considerable change. The implementation of the TAR NC will bring further changes that will have an impact on network users. ENTSOG has included transitional and mitigating measures in the initial draft TAR NC with the aim of mitigating the impact of the implementation of the TAR NC and the risk of tariff increases.

ENTSOG is not in favour of including a one-off capacity reset option in the TAR NC that aims to mitigate impacts that go beyond the implementation of the TAR NC.

EXISTING CONTRACTS

- **Stakeholder feedback**

A number of stakeholders have raised the concern regarding the application of the TAR NC to the existing contracts – in particular, within the context of a request to introduce a one-off capacity reset option in the TAR NC. The one-off capacity reset option was deemed by stakeholders as a mechanism to mitigate against the application of the TAR NC to the existing contracts which, in the opinion of stakeholders, 'would suffer from a discrimination driven by the new regulatory framework' to be established by the TAR NC. As a main disadvantage of such framework for shippers holding existing long-term capacity contracts, the respondents pointed out the risk of the price increase 'in a way not foreseen when the contracts were

agreed'. Consequently, this may lead to legal actions taken against the TSOs, 'thereby complicating and delaying the TAR NC implementation process'.

➢ The TAR FG requirements

Section 1.4 of the TAR FG sets out the following: 'The provisions in the Network Code on Tariffs, including those relating to or affecting the tariff levels, shall apply to all contracts from 1 October 2017 at the latest.' The mention of 'all contracts' can mean either of the following: (i) 'all the contracts concluded after the application date'; or (ii) 'all contracts concluded both before and after the application date'. Previous versions of the TAR FG say:

- 'The Network Code on Tariffs shall be implemented within 12 months from its entry into force and shall apply to **both new and existing** contracts.' [22]
- 'The provisions in the Network Code on Tariffs, including those relating to or affecting the tariff levels, shall apply to **all** contracts at the latest from October 1, 2017.' [23]

The Evaluation of responses to consultation on the draft TAR FG says: 'ACER carefully considered proportionality, foreseeability and applicability of the measures to existing contracts. ACER is considering to allow for the network code provisions, including those relating to or affecting the tariff levels, to apply to all contracts at the latest from the 1 October 2017. […] ACER considers 1 October 2017 an appropriate start date, by which most Member States will end their currently running regulatory periods and thus could institute the new regulatory periods along with the requirements of the future network code on tariffs.' [24]

➢ Analysis of the issue

ENTSOG acknowledges the concerns expressed by the stakeholders. Indeed, the principle of legal certainty and the protection of legitimate expectations are to be respected. The case law provides the evidence of the following understanding: 'although in general the principle of legal certainty precludes a Community measure from taking effect from a point in time before its

[22] 4 September 2012 version: http://www.acer.europa.eu/Official_documents/Public_consultations/PC_2012_G_14/PC_2012_G_14_FG_Tariff_Draft.pdf.
[23] 16 April 2013 version: http://www.acer.europa.eu/Gas/Framework%20guidelines_and_network%20codes/Documents/outcome%20of%20BoR27-5%201_FG-GasTariffs_for_publication_clean.pdf.
[24] 4 September 2012: http://www.acer.europa.eu/Gas/Framework%20guidelines_and_network%20codes/Documents/EoT_Draft%20Tariff%20FG_16_04_2013_for%20publication_TQ_clean.pdf.

publication, it may exceptionally be otherwise where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected'.[25]

ENTSOG has expressed its concerns regarding the application of the TAR NC to the existing contracts a number of times throughout the TAR NC establishment process.[26] ENTSOG maintains that in principle, the TAR NC will apply to those contracts – however, the legal certainty and protection of legitimate expectations will need to be ensured. Hence, ENTSOG deems it necessary to introduce a provision in the refined draft TAR NC which is aimed at ensuring that the application of the TAR NC shall not affect the price stipulated in the existing fixed price contracts, i.e. some parts of the existing fixed price contracts will be affected by the application of the TAR NC and some parts will not. The border which ascertains the date before which the contract falls under the 'existing' ones is the date of the TAR NC entry into force (estimated to be around June 2016).

Also, ENTSOG would like to clarify the following aspects of the proposed solution:

- The extent to which the existing 'fixed price' contracts be affected:
  - In principle, the TAR NC will apply to fixed price contracts;
  - The parts of the contracts related to price will not be affected.
- Consequences for existing 'fixed price' contracts:
  - Aim is to avoid a conflict with private law (contract law) in relation to existing contracts, in particular on agreed price conditions
  - Ensure the legal certainty and protection of legitimate expectations
- Consequences for existing 'floating price' contracts:
  - The TAR NC application to existing 'floating price' contracts is not prevented;

[25] See e.g. Case 98/78 Racke v Hauptzollamt Mainz [1979], Case 99/78 Decker v Hauptzollamt Landau [1979], Case C-368/89 Antonio Crispoltoni v Fattoria autonoma tabacchi di Città di Castello [1991], Case C-376/02 Stichting 'Goed Wonen' v Staatssecretaris van Financiën [2005].

[26] E.g.: ENTSOG's Response (12 November 2012) to the Consultation on the Draft TAR FG (4 September 2012): http://www.entsog.eu/public/uploads/files/publications/CAM%20Network%20Code/2012/TAR090-12_ENTSOG%20Consultation%20Response%20Document%20-%2008.11.12_Final%20sent%20to%20ACER.pdf; ENTSOG's Response (16 September 2013) to the Consultation on the Draft TAR FG (18 July 2013): http://www.entsog.eu/public/uploads/files/publications/Tariffs/2013/TAR164-13_200813_ENTSOG%20Response%20to%20ACER%20tariff%20consultation_new%20online%20version_final.pdf.

- When the contract was concluded, it was already envisaged that the price will change in the future;
- There are mitigating measures in the TAR NC, namely measures aimed to reduce the impact of tariff increases of more than 20% due to the implementation of the TAR NC.

➢ **Outcome/conclusion**

ENTSOG have introduced the respective clause in the refined draft TAR NC.

Implementation monitoring

In the informal feedback provided to ENTSOG, ACER raised the concern about the initial draft TAR NC does not capture the TAR FG requirements in relation to the NC implementation monitoring.

ENTSOG is of the opinion that the TAR NC must not include any rules regarding the monitoring of its implementation. This position has been maintained throughout the TAR NC development process as well as within the TAR FG preparation process (see e.g. ENTSOG's response to the consultation on the draft TAR FG of 4 September 2012[27], ENTSOG's working level response on the Open House material of 31 January 2013[28], ENTSOG's response on the draft TAR FG of 18 July 2013[29]).

ENTSOG's obligation to monitor and analyse the NC implementation is foreseen by Article 8(8) of Regulation (EC) No 715/2009 and hence, any repetition of such provision on the TAR NC which – following the precedent established by the CAM NC and the BAL NC – is to supplement and form an integral part of Regulation (EC) No 715/2009 would be a redundancy. Regulation (EC) No 715/2009 is binding in its entirety and directly applicable, and each NC is developed on its basis and following the process set out therein.

[27] See answer to question 1.3 (p. 8):
http://www.entsog.eu/public/uploads/files/publications/CAM%20Network%20Code/2012/TAR090-12_ENTSOG%20Consultation%20Response%20Document%20-%2008.11.12_Final%20sent%20to%20ACER.pdf.

[28] See the text in relation to 'Indicators' (p. 2):
http://www.entsog.eu/public/uploads/files/publications/Tariffs/2014/TAR125-13_130208%20Initial%20Response%20to%20Proposed%20Updated%20Tariff%20FG_working%20level%20document.pdf.

[29] See answer to question 20 (p. 11):
http://www.entsog.eu/public/uploads/files/publications/Tariffs/2013/TAR164-13_200813_ENTSOG%20Response%20to%20ACER%20tariff%20consultation_new%20online%20version_final.pdf.

ENTSOG would like to re-iterate that Regulation (EC) No 715/2009 and the Agency Regulation (Regulation (EC) No 713/2009) foresee the task of NC implementation monitoring also for ACER. In particular, Article 9(1) of Regulation (EC) No 713/2009 stipulates the wider scope of ACER's monitoring. There are two main differences with that of ENTSOG:

- ACER is to monitor implementation of not only 'adopted' NCs but also: (i) the NCs at the stage of their elaboration (see paragraph 1); (ii) the NCs that may be elaborated on ENTSOG's initiative (see paragraph 2, 1st half); (iii) the NCs developed upon EC request but not adopted (see paragraph 2, 2nd half).
- for the monitoring of implementation if the NCs that were adopted, ACER is to monitor and analyse not only the effect of those NCs on harmonisation of the applicable rules aimed at facilitating market integration (this part of task is overlapping with ENTSOG) but also the effect of those NCs on non-discrimination, effective competitions and efficient market. The results of such monitoring are to be reported to the EC.

In addition, ENTSOG notes that overall the implementation monitoring task should be tackled outside of the NC for the following reasons:

- Article 8(8) says that this task is to be fulfilled with respect to the NCs that are 'adopted' by the EC. This means that the NC that is 'yet to be adopted' cannot stipulate the provisions regarding the monitoring of its implementation.
- ENTSOG is the forum of the TSO cooperation as envisaged in Article 4 of Regulation (EC) No 715/2009 and Article 4 of ENTSOG's Articles of Association 'Purpose and activities'. It is up to the NRAs to ensure and monitor the compliance of the TSOs with their obligations, and this duty is underpinned by the power to require any information from the TSOs (see Article 41 of Directive 2009/73/EC).
- Neither the CAM NC, nor the BAL NC which are in force tackle the issue of monitoring of their implementation. The consistency across different NCs that are developed on the basis of the same Regulation (EC) No 715/2009 is not kept.

ANNEXES

ANNEX 1: CORRELATION TABLE

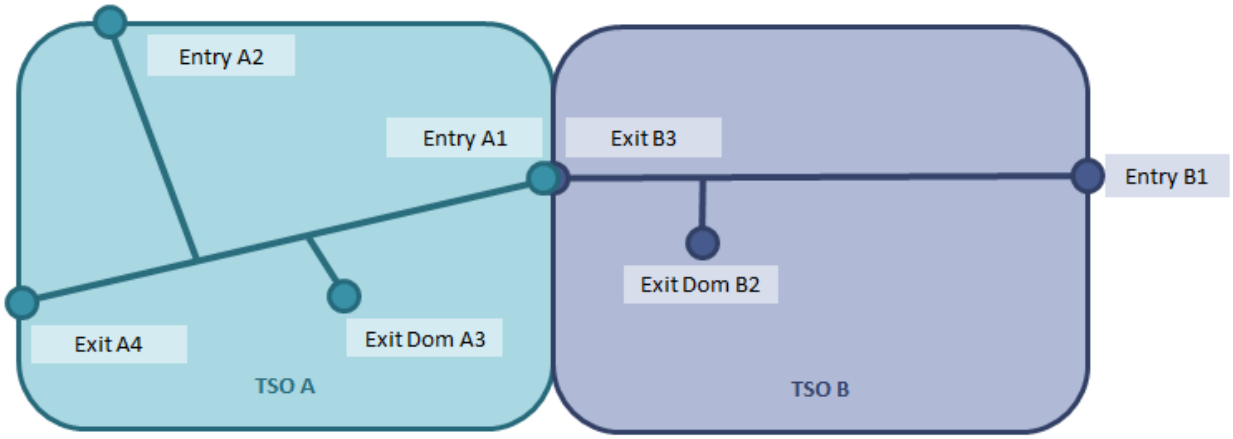
Correlation Table	
initial draft TAR NC	**refined draft TAR NC**
Chapter I	Chapter I
Article 1	Article 1
Article 2	Article 2
Article 3	Article 3
Chapter II	Chapter II
Article 4	Article 4
Article 5	Article 5
Article 6	Article 6
Article 7	Article 7
Article 8	Article 8
Article 9	Article 9
Article 10	Article 10
Article 11	Article 11
Article 12	Article 12
Article 13	Article 13
Article 14	Article 14
Article 15	Article 15
Article 16	Article 16
Article 17	Article 17
Article 18	Article 18
Article 19	Article 19
Article 23	Article 20
–	Chapter III
Article 20	Article 21
Article 21	Article 22
Article 22	Article 23
Chapter III	Chapter IV
Article 24	Article 24
Article 25, 26	Article 25
–	Article 26
Article 27	Article 27
Chapter IV	Chapter V
Article 28	Article 28
Article 29	Article 29
Article 30	Article 30

Article 31	Article 31
Article 32	Article 32
Article 33	Article 33
Article 34	Article 34
Chapter V	Chapter VI
Article 35	Article 35
Article 36	Article 36
Article 37	Article 37
Article 38	Article 38
Chapter VI	Chapter VII
Article 39	Article 39
Article 40	Article 40
Chapter VII	Chapter VIII
–	Article 41
Article 41	Article 42
Chapter VIII	Chapter IX
Article 42	Article 43
Article 43	Article 44
Article 44	Article 45
Article 45	Article 46
Article 46	Article 47
Chapter IX	Chapter X
Article 47	Article 48
Article 48	Article 49
Article 49	Article 50

ANNEX 2: SEPARATE APPLICATION OF A COST ALLOCATION METHODOLOGY IN ONE ENTRY EXIT SYSTEM

Main Sheet:

Situation before merging: each TSO has its own market area

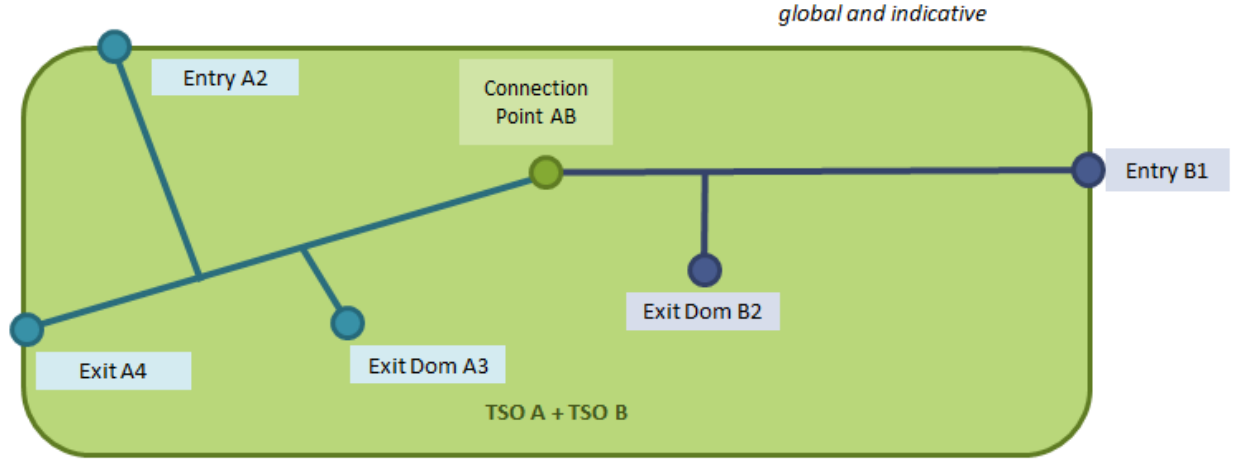


Situation after merging: two TSOs in the market area

Revenue shortfall of points A1 and B3 has to be covered at other points

		Revenue Loss - m€		Revenue Loss - %		Tarif augmentation	
		Post Stamp	CWDA	Post Stamp	CWDA	Post Stamp	CWDA
TSO A	Revenue A1	29 m€	24 m€	41%	35%	69%	54%
TSO B	revenue B3	24 m€	26 m€	38%	40%	60%	66%

global and indicative



Input data						
		Technical cap. - GWh/h	Forecast - GWh/h	Allowed Revenue - m€	Entry/Exit Split : Entry	Entry/Exit Split : Exit
TSO A	Entry A1	10	9	70 m€	50%	50%
	Entry A2	4	2			
	Exit Dom A3	11	11			
	Exit A4	3	1			
TSO B	Entry B1	13	12	65 m€	50%	50%
	Exit Dom B2	3	3			
	Exit B3	10	9			

Tarifs - €/kWh/h/a			
		Postage Stamp	CWDA
TSO A	Entry A1	3,18	2,71
	Entry A2	3,18	5,30
	Exit Dom A3	2,92	2,23
	Exit A4	2,92	10,47
TSO B	Entry B1	2,71	2,71
	Exit Dom B2	2,71	2,19
	Exit B3	2,71	2,88

Entry-Exit Splits is an input parameter for the cost allocation methogologies, based on a major cost driver (technical cap)
CWDA calculated after the technical capacity (and not booked capacity) for the sake of simplicity

Input data						
		Technical cap. - GWh/h	Forecast - GWh/h	Entry/Exit Split : Entry	Entry/Exit Split : Exit	Revenue incl. ITC
TSO A	Entry A2	4	2	22%	78%	70 m€
	Exit Dom A3	11	11			
	Exit A4	3	1			
TSO B	Entry B1	13	12	81%	19%	65 m€
	Exit Dom B2	3	3			

inter-TSO compensation (A -> B)	0 m€

Due to NRA decision / calculation

This ITC can be adapted.

Tarifs - €/kWh/h/a

		Postage Stamp	CWDA
TSO A	Entry A2	7,70	7,70
	Exit Dom A3	4,55	3,90
	Exit A4	4,55	11,70
TSO B	Entry B1	4,39	4,39
	Exit Dom B2	4,12	4,12

Tariff increases		Postage Stamp	CWDA
TSO A	Entry A2	142%	45%
	Exit Dom A3	56%	75%
	Exit A4	56%	12%
TSO B	Entry B1	62%	62%
	Exit Dom B2	52%	88%

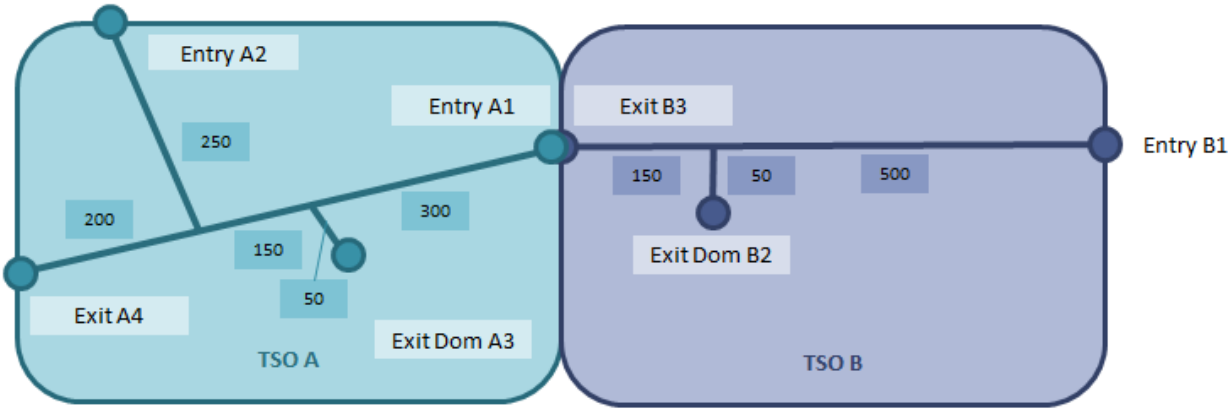
Obtained revenues

		Postage Stamp	CWDA
TSO A	Entry A2	15 m€	15 m€
	Exit Dom A3	50 m€	43 m€
	Exit A4	5 m€	12 m€
Sum		70 m€	70 m€
ITC		0 m€	0 m€
Revenues after ITC		70 m€	70 m€

		Postage Stamp	CWDA
TSO B	Entry B1	53 m€	53 m€
	Exit Dom B2	12 m€	12 m€
Sum		65 m€	65 m€
ITC		0 m€	0 m€
Revenues after ITC		65 m€	65 m€

Distances and CWDA – 2 zones :

Distances - km



TSO A	Total length	950 km

TSO B	Total length	700 km

Capacity Weighted Distance Approach

TSO A

TSO B

Revenues

Entry	35 m€
Exit	35 m€

Entry	33 m€
Exit	33 m€

Tcap - Proportions

Entry A1	71%
Entry A2	29%
Exit Dom A3	79%
Exit A4	21%

Entry B1	100%
Exit Dom B2	23%
Exit B3	77%

Calculation of capacity-weighted average distance

Entry A1	414
Entry A2	450
Exit Dom A3	379
Exit A4	593

Entry B1	627
Exit Dom B2	550
Exit B3	650

Calculation of the weight of each point

Entry A1	70%
Entry A2	30%
Exit Dom A3	70%
Exit A4	30%

Entry B1	100%
Exit Dom B2	20%
Exit B3	80%

Allocation of costs

Entry A1	24 m€
Entry A2	11 m€
Exit Dom A3	25 m€
Exit A4	10 m€

Entry B1	33 m€
Exit Dom B2	7 m€
Exit B3	26 m€

Determination of tariffs - €/kWh/h

Entry A1	2,71
Entry A2	5,30
Exit Dom A3	2,23
Exit A4	10,47

Entry B1	2,71
Exit Dom B2	2,19
Exit B3	2,88

Distances Matrixes

TSO A

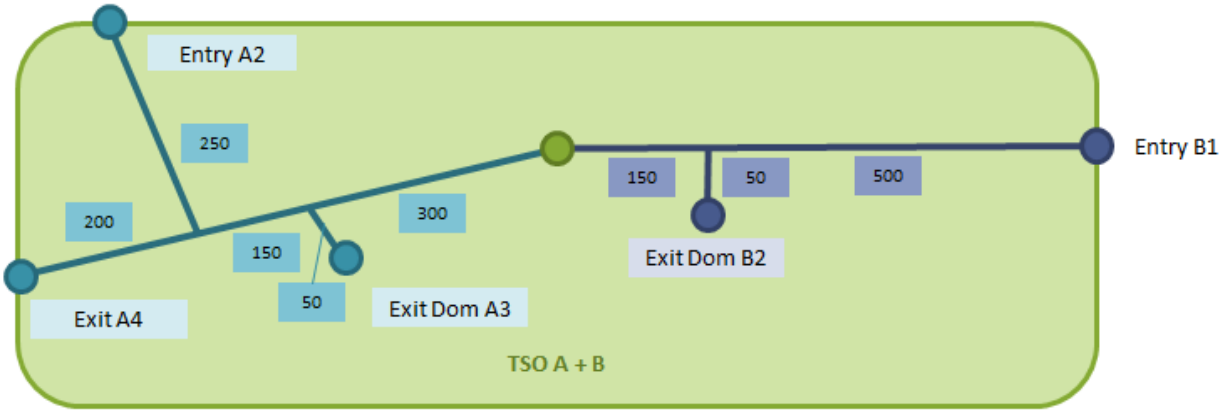
	Exit Dom A3	Exit A4
Entry A1	350	650
Entry A2	450	450

TSO B

	Exit Dom B2	Exit B3
Entry B1	550	650

Distances and CDWA – 1 zone :

Distances - km



TSO A	Total length	950 km

TSO B	Total length	700 km

Capacity Weighted Distance Approach

TSO A

TSO B

Revenues

Entry	15 m€
Exit	55 m€

Entry	53 m€
Exit	12 m€

Tcap - Proportions

Entry A2	100%
Exit Dom A3	79%
Exit A4	21%

Entry B1	100%
Exit Dom B2	100%

Calculation of capacity-weighted average distance

Entry A2	450
Exit Dom A3	450
Exit A4	450

Entry B1	550
Exit Dom B2	550

Calculation of the weight of each point

Entry A2	100%
Exit Dom A3	79%
Exit A4	21%

Entry B1	100%
Exit Dom B2	100%

Allocation of costs

Entry A2	15 m€
Exit Dom A3	43 m€
Exit A4	12 m€

Entry B1	53 m€
Exit Dom B2	12 m€

Determination of tariffs - €/kWh/h

Entry A2	7,70
Exit Dom A3	3,90
Exit A4	11,70

Entry B1	4,39
Exit Dom B2	4,12

Distances Matrixes

TSO A

	Exit Dom A3	Exit A4
Entry A2	450	450

TSO B

	Exit Dom B2
Entry B1	550

ANNEX 3: AN EXAMPLE OF IMPACT OF BENCHMARKING ON THE ORIGINAL ENTRY/EXIT SPLIT WITH THE POSTAGE STAMP METHODOLOGY

This example aims to show how the inability to increase tariffs in other points due to benchmarking in one point combined with a fix entry-exit split would have as a consequence an under recovery of revenues, creating thus cross-subsidies and a permanent gap between allowed and realised revenues

Application of Benchmarking	**TSO A**		**TSO B**	
Revenue Cap; €		300		50
Entry/Exit Split input:				
Entries	50%	150	50%	25
Exits	50%	150	50%	25
Total forecasted booked entry capacity, KWh/h/a		400		100
Total forecasted booked exit capacity, KWh/h/a		600		120
entry tariff €/KWh/h/a		0,38		0,25
exit tariff €/KWh/h/a		0,25		0,21

case 1: TSO A applies Benchmarking on all Entry-Points, without increasing of tariffs on other points	Assumption: there is plenty of free entry capacity by TSO B. No bookings for TSO A on entry points when applying entry tariff (0,38) due to lower prices of TSO B and available capacity of TSO B. TSO A has to decrease the entry tariffs in order to get the estimated amount of 400 KWh/h/a booked	
new entry tariff; €/KWh/h/a	0,25	
exit tariff; €/KWh/h/a	0,25	
Revenue earned from Entries; €	100	
Revenue earned from Exits; €	150	
Total earned Revenue; €	250	
Revenue underrecovery	**-50**	=> Underrecovery is forwarded to next tariff/regulatory period and results in the need of further increase of tariffs for TSO A at all point according to c/a/m and a even higher spread between tariffs of TSO A and TSO B
Consequences for Entry/Exit Split (Art. 18 (2) NC TAR):		
Entries	40%	
Exits	60%	

case 2: TSO A applies Benchmarking on all Entry-Points including increasing of tariffs on other points	Assumption: there is plenty of free entry capacity by TSO B. No bookings for TSO A on entry points when applying entry tariff (0,38) due to lower prices of TSO B and available capacity of TSO B. TSO A has to decrease the entry tariffs in order to get the estimated amount of 400 KWh/h/a booked
new entry tariff; €/KWh/h/a	0,25
new exit tariff; €/KWh/h/a	0,33
Revenue earned from Entries; €	100
Revenue earned from Exits; €	200
Total earned Revenue; €	300
Revenue underrecovery	**0**
Consequences for Entry/Exit Split (Art. 18 (2) NC TAR):	
Entries	33%
Exits	67%

ANNEX 4: ABBREVIATIONS

ACER – Agency for the Cooperation of Energy Regulators
BAL NC – Commission Regulation No 312/2014 of 26 March 2014 establishing a Network Code on Gas Balancing of Transmission Networks (OJ L 91, 27.3.2014, p. 15)
CAM NC – Commission Regulation No 984/2013 of 14 October 2013 establishing a Network Code on Capacity Allocation Mechanisms in Gas Transmission Systems and supplementing Regulation (EC) No 715/2009 of the European Parliament and of the Council (OJ L 273, 15.10.2013, p. 5)
CMP Guidelines – Congestion Management Procedure Guidelines
CRRC – Complementary Revenue Recovery Charge
Directive 2009/73/EC – Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94)
ECJ – European Court of Justice
ENTSOG – European Network of Transmission System Operators for Gas
EU – European Union
IP – interconnection point, as defined by Article 3(10) of the CAM NC
ITC mechanism – inter-TSO compensation mechanism
LNG – Liquefied Natural Gas
LT – long term
NRA – national regulatory authority
Regulation (EC) No 713/2009 – Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators (OJ L 211, 14.8.2009, p. 1).
Regulation (EC) No 715/2009 – 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 (OJ L 211, 14.8.2009, p. 36)
SF – Seasonal Factors
SJWS – Stakeholder Joint Working Session
SSP – Stakeholder Support Process
ST – short term
TAR FG – Framework Guidelines on rules regarding harmonised transmission tariff structures for gas, 29 November 2013
TAR NC – the Network Code on Harmonised Transmission Tariff Structures for Gas
TSO – transmission system operator for gas
VIP – Virtual Interconnection Point

ANNEX 5: LIST OF TABLES AND FIGURES

ANNEX 6: SSP QUESTIONNAIRE

- Do you consider that the TAR NC development process carried out by ENTSOG was appropriate, given the regulatory framework provided? In particular, was the level of stakeholder engagement appropriate? If there is room for improvement, please inform us about possible suggestions for improvement. [Yes / No]
- Please complete the questions below, indicating whether you support the selected section of the refined draft TAR NC. [You can indicate the level of support by marking a cross in one of the four following categories: Fully support, Partially support, Do not support or Neutral / no response.]
    - Please indicate your support for Chapter 1: General Provisions (Articles 1-3)?
    - Please indicate your support for Chapter 2: Cost Allocation Methodologies (Articles 4-20)?
    - Please indicate your support for Chapter 3: Consultation Requirements (Articles 21-23)?
    - Please indicate your support for Chapter 4: Publication Requirements (Articles 24-27)?
    - Please indicate your support for Chapter 5: Reserve Prices (Articles 28-34)?
    - Please indicate your support for Chapter 6: Revenue Reconciliation (Articles 35-38)?
    - Please indicate your support for Chapter 7: Pricing of Bundled Capacity and Capacity at Virtual Interconnection Points (Articles 39-40)?
    - Please indicate your support for Chapter 8: Clearing Price and Payable Price (Articles 41-42)?
    - Please indicate your support for Chapter 9: Incremental Capacity (Articles 43-47)? [This section will be consulted both in the TAR and INC SSP and respondents need only to respond once.]
    - Please indicate your support for Chapter 10: Final and Transitional Provisions (Articles 48-50)?