Accompanying Document for the Network Code on Harmonised Transmission Tariff Structures for Gas

ENTSOG Document on the Policy Choices for
Network Code on Harmonised Transmission Tariff Structures for Gas
for ACER Reasoned Opinion

This document constitutes the Accompanying Document for Network Code on Harmonised Transmission Tariff Structures for Gas (hereinafter 'the Accompanying Document') which accompanies the Network Code on Harmonised Transmission Tariff Structures for Gas for ACER Reasoned Opinion (TAR0450-14, hereinafter 'the TAR NC').

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

ENTSOG hereby disclaim all responsibility for any changes to the TAR NC as presented. Such changes may result from, amongst others, the results of 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 TAR NC and the Accompanying Document 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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PART I. INTRODUCTION

WHAT HAPPENED?

➢ Who and why is doing this

The 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 'ACER').[6]

➢ Consultations on the draft versions of the 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.[9] The responses to the consultation on

[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.
[9] All non-confidential responses: http://www.entsog.eu/public/uploads/files/publications/Tariffs/2014/TAR334-

the initial draft TAR NC have been taken into consideration during the development of the refined draft TAR NC.

On 7 November 2014, ENTSOG published the refined draft TAR NC (TAR0350-14)[10] for public consultation in a form of Stakeholder Support Process (hereinafter 'SSP').[11] The Analysis of Decisions Document (TAR0351-14)[12] supporting the refined draft TAR NC clarified the chosen policy approaches, explained the refinements made further to the public consultation on the initial draft TAR NC and encompassed 11 consultation questions on which stakeholders were asked to provide their answers. Except for one question dedicated to the development process for the TAR NC, the questions were aimed at identifying the stakeholder level of support of the Chapters of the refined draft TAR NC.

The consultation period ran over 2 weeks and closed on 21 November 2014. ENTSOG received 28 responses, one of which was marked as confidential.[13] In addition, for the convenience of the public, ENTSOG published the comparison between the initial draft TAR NC and the refined draft TAR NC in order to help the market to easily identify the changes made to the legal text after the 2-month consultation on the initial draft TAR NC.[14]

➢ 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

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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/TAR0350_141107_Refined%20Draft%20TAR%20NC_for%20SSP.pdf.

[11] 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.

[12] Published on ENTSOG's website: http://www.entsog.eu/public/uploads/files/publications/Tariffs/2014/TAR0351_141107_Analysis%20of%20Decisions%20Document_for%20SSP.pdf.

[13] All non-confidential responses: http://www.entsog.eu/public/uploads/files/publications/Tariffs/2014/TAR0435_141121_SSP%20Responses%20per%20Question.pdf.

[14] Published on ENTSOG's website: http://www.entsog.eu/public/uploads/files/publications/Tariffs/2014/TAR0426_141112_Comparison%20of%20Initial%20and%20Refined%20Draft%20TAR%20NC.pdf.

Workshop (15 January 2014), 5 Stakeholder Joint Working Sessions (11 and 27 February, 14 and 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 public consultation in a form of SSP on the refined draft TAR NC (7 – 21 November 2014), a number of Prime Mover meetings and other meetings with key stakeholders to discuss specific issues in relation to the TAR NC development.

ENTSOG would like to thank the respondents to the public consultations for their feedback and the active participants for their continuous involvement in the TAR NC development process.

WHAT IS THIS DOCUMENT?

➢ What is the added value of this document as compared to the Analysis of Decisions

Pursuant to Article 10(1) of Regulation (EC) No 715/2009, ENTSOG has an obligation to conduct an extensive consultation process when preparing network codes and in particular, to 'aim at identifying the views and proposals of all relevant parties'. The Analysis of Decisions Document clarifies the chosen policy approaches and provides explanations for the refinements made further to the public consultation on the initial draft TAR NC. Hence, the Analysis of Decisions 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 – for the purpose of preparation of the refined draft TAR NC.

As compared to the Analysis of Decisions Document, the issues captured in the Accompanying Document – which is developed for the purpose of supporting the TAR NC for the submission for ACER reasoned opinion – were treated by ENTSOG as explained below.

1. For some issues addressed in the Analysis of Decisions Document, ENTSOG included the stakeholder feedback received both during the public consultation on the initial draft TAR NC and during the SSP consultation on the refined draft TAR NC. Thus, the whole picture of the discussion by the market throughout the development of the TAR NC is provided. In particular:

    - Where the arguments expressed by the market during the SSP consultation on the refined draft TAR NC were the same as the arguments provided during the public consultation on the initial draft TAR NC, ENTSOG deemed that no further changes should be made in the relevant areas of the TAR NC since these arguments have already been carefully considered by ENTSOG. Instead and to the extent possible, ENTSOG enhanced its rationale with some additional arguments and/or provided a more detailed explanation for the chosen policy approaches.
    - Where ENTSOG made further changes to the relevant areas of the TAR NC, having considered new arguments expressed by the market during the SSP consultation on

the refined draft TAR NC, the explanation for the chosen policy approaches is provided.

2. For some issues not addressed in the Analysis of Decision Document, ENTSOG made changes to the relevant areas of the TAR NC and provided the explanation of its rationale for the chosen policy approaches in the Accompanying Document, such as for:

   - The changes to address the issues that – due to the difference between the content of the initial draft TAR NC and the refined draft TAR NC – were raised within the SSP consultation on the refined draft TAR NC but not during the public consultation on the initial draft TAR NC.
   - The changes made after the SSP consultation on the refined draft TAR NC and hence, for the sake of transparency of the network code development process, explained in the Accompanying Document.

Hence, ENTSOG would like to note that for the completeness of the understanding how the stakeholder feedback received throughout the development process of the TAR NC has been taken into consideration, this Accompanying Document and the Analysis of Decisions Document are read in conjunction with each other. To the extent not covered by the Accompanying Document, ENTSOG rationale for the chosen policy approaches provided in the Analysis of Decisions Document is still valid.

➢ How this document is structured

Part I of the Accompanying Document indicates the steps of the TAR NC development process involving consultation with the stakeholders and the correlation of this document with the Analysis of Decisions Document.

Part II of the Accompanying Document follows the structure of the Chapters of the TAR NC. A number of issues relevant to the content of the Chapter is highlighted following the same structure: (1) 'TAR FG requirements' where the relevant portions of the TAR FG text are lifted; (2) 'stakeholder feedback' where the summary of stakeholder views on a given issue – received during the public consultations – is provided; (3) 'rationale' where the explanation of the chosen policy approach is indicated. Following the approach taken for the Analysis of Decisions Document, the rationale for a number of issues is explained without following the indicated structure but in a form of a short explanatory 'box'.

Part III of the Accompanying Document is the SSP report which indicates the high-level overview of the responses received during the SSP consultation. For each of the questions asked within the SSP questionnaire, the overview of the answers is provided and the main issues raised by the respondents are highlighted. Also, a number of graphs are included for illustrative purposes.

WHAT'S NEXT?

The TAR NC and the Accompanying Document (with the SSP report included) are to be submitted for ACER reasoned opinion. As indicated in the invitation letter by the EC, 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).[15] After the TAR NC is submitted to ACER, they have 3 months to provide a reasoned opinion on the TAR NC, as foreseen by Article 6(7) of Regulation (EC) No 715/2009.

[15] 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.

II. RATIONALE AND EXPLANATION FOR THE CHOSEN POLICY OPTIONS

1. CHAPTER I. GENERAL PROVISIONS

a. Transmission services definition and dedicated services

Framework Guidelines Requirements

'These Framework Guidelines, upon which the Network Code on Tariffs will be based, apply to the transmission services offered at all entry and exit points on the gas transmission systems operated by gas Transmission System Operators (TSOs), irrespective of whether such points are physical or virtual. **The Network Code on Tariffs shall propose and justify a consistent definition for transmission services** in line with Section 1.3.'

'Transmission service [is] any service necessary to transport natural gas through a transmission system, excluding balancing, flexibility, metering, depressurization, ballasting, odorisation and any other dedicated or specific service.'

'Upon approval or determination by the NRA, **specific charges for dedicated services and/or dedicated infrastructure** (such as the provision of metering services), **may be established**, provided that such charges will be in accordance with the objectives of the Framework Guidelines. The revenue collected from these charges on aggregate will be limited to a maximum of 5% of total (allowed) revenues. **The Network Code on Tariffs shall provide for a list of TSO services that could be covered by the provision**.'

Stakeholder feedback on draft versions of the TAR NC

At the SJWSs and in the initial draft TAR NC consultation feedback, the stakeholders raised concerns with the definition of transmission services and dedicated services. In their informal feedback, ACER also raised a 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:

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

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, and hence 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 refined draft TAR NC included an amended definition of transmission services and a new definition of dedicated services. During the SSP consultation, stakeholders raised issues related to the definition of 'dedicated services'. It is still deemed unclear and not specific enough. Some stakeholders asked for the inclusion of a list of dedicated services or the

inclusion of a cap, since otherwise it would remain a potential backdoor for charging network users outside of the cost allocation methodology of the TAR NC. One respondent was of the view that charging for any non-transmission-services related costs should be explicitly forbidden, to avoid an attempt to recover such costs via transmission tariffs. On the other hand, two respondents supported our approach for both definitions, deeming that it provides greater clarity.

Rationale

The proposed definition of transmission services in the TAR FG is aimed at the identification of those transmission services needed for the transmission of natural gas with the exception of those activities which may be linked to local requirements (e.g. regional and local transmission activities, flexibility services, metering, depressurisation, ballasting, quality conversion, biogas related services, odorisation and any other dedicated or specific service). At the same time, a part of dedicated services seemed to be included in the transmission services, as Section 3.1.1 of the TAR FG mentions specific charges for dedicated services as part of the cost allocation methodology. In order to avoid confusion and provide clarity with regard to the treatment of dedicated services, it has been decided to omit the possibility to have a separate charge for dedicated services with a 5% total revenue limit.

During the development of a consistent transmission service definition, one should keep in mind the purpose and consequences of such a definition. In fact, the definition of 'transmission services' is closely related to the 'cost allocation methodology', as only the part of the allowed or target revenues, which relates to the provision of transmission services is part of the cost allocation methodology described in the NC. The remaining part can be charged differently to network users or to other parties.

Furthermore, developing a definition of transmission services must take into consideration the wide diversity of TSOs and their respective tasks and systems (e.g. the points between transmission and distribution grids can be set differently or some TSOs provide dispatching or maintenance services to third parties, e.g. DSOs or industry). At the same time, stakeholders request clarity and transparency, particularly in relation to tariffs and charges they have to pay. Hence, a definition must provide both clarity as well as flexibility.

In summary, a definition of transmission services and dedicated services must fulfil the following criteria:

- Allow for cost-reflective tariffs and charges;
- Give clarity and transparency about all tariffs and charges network users have to pay.

A too narrow definition of transmission services could potentially exclude some costs which should be allocated following the cost allocation methodologies described in Chapter II, because they are necessary to provide transmission services. On the opposite, a too wide definition could potentially include some costs associated with non-transmission services.

This could lead to a subsidisation of non-transmissions activities by transmission service users, which could result in distortions to cross-border trade and situations of cross-subsidisation.

From a network user perspective, transparency regarding all the costs they have to pay directly and the opportunity to respond on the allocation of these costs seem to be very important.

The chosen definition gives TSOs and NRAs the opportunity to reflect on TSO's system and its characteristic in the part of allowed or target revenues, which is used as an input to the cost allocation methodology. At the same time, dedicated services, as defined as services to specific network users, or infrastructure operators, or at specific entry or exit points, are charged differently. To improve transparency and give stakeholders the opportunity to assess and comment on the apportionment of allowed or target revenues as well as all tariffs and charges they directly have to pay, the TAR NC includes some provisions for dedicated services charged to specific network users and at specific entry or exit points. Like the process and the result of the application of the cost allocation methodology, the dedicated services charged to specific network users and at specific entry or exit points and the calculation of charges for these have to be consulted and approved by the NRA and then published. Services charged to infrastructure operators or third parties are excluded from these obligations. 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.

Additionally, it was decided, that the dedicated services definition does not include an exhaustive list of services. Such a list in the TAR NC would limit future changes in dedicated services that may be recovered via TSOs and could be too narrow or wide taking into account the TSO characteristics.

German Quality Conversion Fee

In Germany the two existing entry-exit zones are set up as cross-quality market areas. That means traders have full freedom regarding the quality of the gas they feed into the entry-exit zone. Physically the transmission grids for L-gas and H-gas are separated. In the situation where network user/balancing group manager feeds in L-gas to deliver to a H-gas end consumer a quality conversion has to take place. Therefore, compensation energy is needed (sale of H-gas, purchase of L-Gas). The provision or purchase of the compensation energy is the task of the market area operator (GASPOOL, NCG). According to the German Federal Network Agency's provisional regulation of 24 August 2011 (BK7-11-002-E2), in order to cover the compensation energy costs a market area operator (entry-exit zone operator) is obliged to levy a conversion charge as of 1 October 2011.

The conversion costs are borne by the relevant market area operators and do not constitute a part of the TSOs' revenue cap and thus are not covered by transmission services or dedicated services according to the definitions of TAR NC.

Future costs for network adaption

During the last few years a continuous drastic decline in the domestic German production took place and is expected to continue in the next few years. Also the Netherlands announced the upcoming decrease of L-gas production and a resulting reduction of the export amounts from 2020 onwards. The consequence will be reduction of L-gas exports to Germany to zero until 2029. In order to assure the security of supply the future lack of L-gas must be compensated with additional amounts of H-gas. This will have a huge impact on German networks because the German grids have to be modified in order to bring H-gas into the areas currently supplied by L-gas. This modification of infrastructure must take place in the upcoming years. The allocation of these costs is a political issue and should be tackled on a national level.

The current rule for levying of these costs is laid down in the Cooperation Agreement between German Gas System Operators, which was consulted on the market and approved by the NRA. These costs foreseen for the network modification of both TSOs and DSOs are to be allocated as postage stamp to all domestic and cross-border exit points of TSOs.

These services are provided at a specific entry or exit point or include construction works at specific assets and thus represent dedicated services as defined in the TAR NC.

b. Clause for partial non-application of the TAR NC

A new provision has been included in Article 2 of the TAR NC and the following sections aims to explain the reasons behind ENTSOG's inclusion of this safeguard.

Rationale

Chapter II of the TAR NC comprises the individual cost allocation methodologies, and its application will have an impact on TSOs that do not apply one of the described cost allocation methodologies. For these TSOs, the impact could be significantly adverse, for example in situations where there were previous investments and the change in the regulatory framework might imply potential cross subsidies between network users. Therefore, ENTSOG has decided to introduce in the TAR NC a clause that allows for request for partial non-application of the TAR NC with respect to the transmission system of a specific TSO and that is to be assessed by the EC.

The provision limits the timescales when TSOs can apply for partial non-application. TSOs have 12 months from the entry into force of the TAR NC to provide a justified request for partial non-application to the NRA and/or Member State. The justification will need to be based on an assessment of why certain elements of Chapter II or Chapter II in full should not be applied. The Member State may apply to the EC, who will need to evaluate the request, in order for the TSOs to be able not to apply the indicated part of the TAR NC.

c. Interconnectors

Stakeholder feedback on draft versions of the TAR NC

During the SSP consultation, 5 stakeholders expressed concerns with regards to the application of the TAR NC to interconnectors, remarking that it remains unclear and that the additional text in recital 6 is welcome but is possibly not sufficient and it remains unclear as to how this provision links to the cost allocation test.

Rationale

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. ENSTOG believes that it is appropriate for the specific nature of interconnectors to be taken into account when implementing the TAR NC. Hence, there is a provision in the TAR NC, in Article 2 on the scope, and a specific recital has been also included.

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.

During the initial draft consultation, 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. To provide stakeholders with more clarity on what the specific nature of interconnectors means for the TAR NC, ENTSOG elaborates further here on 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 to 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 incentivise 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 provides 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.

2. CHAPTER II. COST ALLOCATION METHODOLOGIES

a. Complementary revenue recovery charge (CRRC)

Framework Guidelines Requirements

'For points which are not under the scope of the Network Code on CAM, alternative methodologies to collect revenues can be applied, subject to the concerned NRA assessing that these alternative methodologies are cost reflective and do not result in cross subsidies between domestic and cross border points. Before such alternative methodologies are applied, the concerned NRA should submit the result of the assessment to the Agency.'

Stakeholder feedback on draft versions of the TAR NC

A number of respondents had several comments related to the Complementary Revenue Recovery Charge (CRRC) during the SSP consultation. Some respondents did not support the application of this charge at non-IPs. It was also noted that the association with fixed tariffs was not well supported either, as the application of the risk premium and the index should suffice for revenue recovery. A few respondents were of the view that this charge should have distortionary effects on the market and, if it is maintained, it should be levied exclusively at exit points. One respondent noted that the role of the CRRC in the cost allocation test remains unclear.

Rationale

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 includes provisions for a CRRC, where TSOs can have an additional charge to ensure that they recover their allowed revenues. The TAR NC expands on the TAR FG by allowing the application of a CRRC at IPs where a fixed price approach is followed. In such cases, the composition of a TSO's transmission services revenue includes both capacity-based transmission tariffs derived from the cost allocation methodology and the commodity based charges that make up the CRRC. It is important to note that the capacity/commodity split of the transmission services revenue can be done ex-ante the application of the cost allocation methodology and that the CRRC is not simply about managing any under- or over-recovery but may include other elements such as some operational costs and incentives to operate the system efficiently. The use of an index and a risk premium to fixed annual capacity may reduce the revenue to be recovered by the CRRC by reducing the under-recovery component of the CRRC but will not eliminate it. The CRRC is therefore applied to the flows of all network users irrespective of their portfolio of capacity products (fixed or floating annual, or whichever other products etc.).

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. The capacity-based option has been removed and the CRRC is now only commodity based. 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-based transmission tariff to achieve its portion of the allowed revenue, whilst a commodity-based CRRC can be used to manage any under recovery.

The requirement for the NRAs to make an assessment of the cost reflectivity of any CRRC and the impact of any cross-subsidisation between cross-border and domestic points has to be treated in combination with the cost allocation test for the primary cost allocation methodology. The cost allocation test is about the transmission service revenue and not just about that part of it generated by capacity bookings. The test is therefore about the impact on both capacity and commodity revenues collectively on any potential cross-subsidisation between cross-border and domestic points. The identification of the relevant cost drivers used in the cost allocation test will therefore depend on the primary cost allocation methodology used and whether a CRRC is applied.

b. Separate application of methodology in a multi-TSO entry-exit system

Framework Guidelines Requirements

'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.'

Stakeholder feedback on draft versions of the TAR NC

During the initial draft TAR NC consultation, one respondent asked 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. A further respondent indicated the preference to oblige the respective TSOs or NRAs to determine tariffs jointly. It was also mentioned by one respondent that the inter-TSO compensation mechanism is not transparent.

During the SSP consultation, one respondent believed that the same cost allocation methodology shall be jointly applied by all TSOs within the same entry-exit system, as the application of the cost allocation methodology at a TSO level is not in line with the TAR FG and would create inconsistencies; and another respondent was of the view that each TSO has to set up a cost allocation methodology that applies exactly to the needs and conditions of his network.

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.

Rationale

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.

ENTSOG has considered stakeholder feedback and has concluded that the mentioned issues are covered by the TAR NC. ENTSOG believes that the formulation of the 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 TAR NC respects a harmonisation to the extent that is necessary to contribute to the completion and the efficient functioning of the market.

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.

The TAR NC formulation is open to the application of the cost allocation methodologies other than postage stamp; any cost allocation methodology described in the TAR NC can be applied in a multi-TSO entry-exit system. 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. 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.

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.

c. Asset allocation methodology

Stakeholder feedback on draft versions of the TAR NC

There were mixed views on the application of the asset allocation methodology on both consultations. At the initial draft TAR NC consultation, some stakeholders mentioned arguments for this methodology:

- Appears simpler to understand and more obviously cost reflective;
- Should be applied to avoid cross-subsidies between homogenous groups of network users, e.g. domestic and cross-border network users;
- 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';
- Is not in contradiction with the Third Energy Package as calculation of tariffs is not based on point-to-point distance paths.

For the SSP consultation, two respondents welcomed its inclusion but stated they were surprised that it was restricted to countries with high transit flows. Whilst some stakeholders welcomed the inclusion of this methodology, 3 respondents have some concerns about it:

- This methodology was introduced with the solely purpose of decreasing domestic network users tariffs in transit countries so, it creates undue discrimination between network users.
- It is against the spirit of the Third Energy Package, which tries to forbid distinctions between transit and domestic flows. The application of the cost allocation methodology at a TSO level is not in line with the TAR FG and would create inconsistencies.
- The inclusion of another methodology does not increase the harmonisation among EU countries.

Rationale

Due to the construction of major new supply routes and resulting changes in gas flows in the EU, systems with existing transit routes face the problem of decreased capacity bookings and/or the increasing instability of capacity bookings beyond the domestic demand. This capacity volume risk and the following related aspects are currently not sufficiently covered by the cost allocation methodologies foreseen in the TAR FG.

There is a need to address the situation where the capacity volume risk, i.e. the risk of insufficient booking of technical capacities and the recovery of the associated costs cannot justifiably be borne by the resident network users of a given market area. Particularly as the benefits connected to the technical capacity concerned lie with other network users e.g.

those using the system to transit gas to final customers in other market areas. This is especially an issue for systems with a very high degree of assets built for transit flows, but with volatile capacity bookings.

Where the TSO takes over the capacity volume risk for this part of technical capacities in the system and the recovery of the associated costs through the application of a price cap regime, there must be a differentiation of

- costs, the reimbursement of which is guaranteed by resident network users under a revenue cap regime and
- costs, the reimbursement of which is not guaranteed with the possibility to reflect different revenue risk levels for the associated costs of the system.

Therefore it is necessary to enable cost allocation and reconciliation such that the costs are transparently allocated to the resident network users and to network users transiting gas through the market area to final customers in other market areas. This reflects the fact that the transmission costs are ultimately borne by final customers through the gas prices.

This requires the possibility to clearly distinguish costs associated with infrastructure accommodating domestic capacity needs and costs associated with infrastructure accommodating transit capacity needs, including costs reflecting the higher revenue risk level for the TSO.

For these reasons, 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 TAR NC. It represents a comprehensive solution for systems with a very high degree of assets built for transit flows, but with low and/or volatile capacity bookings. 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.

The asset allocation methodology is a transparent and simple methodology with clear input parameters that reflects system characteristics and minimises approximations. It is based on the Supply-Scenarios (incl. N-1) that are agreed with NRA(s) and Member State(s) after consultation with stakeholders. It clearly defines the costs associated with infrastructure accommodating domestic capacity needs and costs associated with infrastructure accommodating transit capacity needs and therefore it serves the prevention of cross subsidization.

The asset allocation methodology is fully in line with the requirements of the Third Energy Package and respecting harmonisation and non-discrimination:

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

- 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;
- the sharing 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.

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.

d. Rescaling

Framework Guidelines Requirements

'A rescaling consists in increasing or decreasing the initial tariffs for the entry and/or exit point.

The Network Code on Tariffs shall only allow rescaling for the following reasons:

- to adjust the allocated initial tariffs that result from the methodology to recover the allowed revenue;
- to avoid negative capacity charges.

While following these objectives, a rescaling may take into account additional constraints, such as the assumed entry-exit split. Rescaling shall be performed by changing the calculated charge. This can be done by either adding a constant or by multiplying it by a constant. The corresponding multiplier or additive constant for entry and for exit points shall uniformly apply to all entry points in the system and/or all exit points in the system respectively.

The description of a tariff methodology relying on a rescaling shall include an assessment of the effect of this rescaling on the entry/exit split obtained from the strict application of the main methodology. In addition, where a rescaling is used to recover costs the assessment shall cover the consistency of this rescaling with the economic signals, locational signals in particular expected from the chosen allocation methodology.'

Stakeholder feedback on draft versions of the TAR NC

For the initial draft consultation as well as for the SSP consultation, a number of respondents considered that rescaling should be only done by the multiplying of a constant, fearing that the addition of a constant will interfere with the locational signals outcome of the cost allocation methodologies.

Rationale

Rescaling can be used as a secondary adjustment or as part of the primary cost allocation methodology. It is used primarily as an adjustment to ensure the entry-exit split or to increase the likelihood that the allowed revenue will be recovered.

Within the methodology, rescaling can be achieved by multiplication or by addition. There were a number of SSP responses that stated support for rescaling via multiplication rather than addition, as it avoids the risk of undermining locational signals altogether when adjusting expected revenue to allowed transmission services revenue.

There are two main reasons why ENTSOG believes that it is necessary to have rescaling via addition:

- Where the primary cost allocation methodology includes rescaling via addition as one of its steps, such as VPB (A);
- For cases where primary cost allocation methodology provides for zero or negative tariffs, rescaling via addition would be more appropriate.

e. Equalisation

Framework Guidelines Requirements

'Equalisation results in the same tariff for a certain set of points in the system. In order to avoid cross-subsidisation between cross-border and domestic customers because of equalisation, each set of points subject to equalisation can only include either domestic or cross-border points.

The Network Code on Tariffs shall only allow equalisation for the following reasons:

- security of supply, applied for points that connect assets that serve such purpose;
- price stability, in order to mitigate local forecast errors and compensate for local flow variations; or
- fostering competition in the retail market and/ or in the renewable energy sector.

For each homogenous set of points, NRAs may decide between implementing locational signals and equalising the tariffs. Justification for this decision shall be provided at national level, taking into account the stability and the predictability of the flow patterns and comparing the potential benefits from the efficiency gains expected of locational signals and the potential benefits of the tariff stability enabled by equalisation.'

'That is the following exhaustive list: 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.'

Stakeholder feedback on draft versions of the TAR NC

After the initial draft definition, some stakeholders asked for more precision regarding the definition of homogenous groups of points, as was specified in the TAR FG.

Rationale

Taking into account the stakeholders comments and ACER informal feedback and in order to be more compliant with the TAR FG, the TAR NC includes a more specific definition of what a homogenous group is, including an exhaustive list of 'homogenous sets of points'.

f. Conditions for application of benchmarking

Framework Guidelines Requirements

'Benchmarking can be used as a complementary step to any main methodology. Benchmarking implies reducing the tariff at one point in order to attract greater gas flows. Higher capacity sales at this point would be expected to offset the need for increased tariffs at other points in order to collect allowed revenues.

Benchmarking shall be limited to the point, where the TSO faces effective competition from other TSOs' point or route. The tariff reduction shall be limited to what is strictly necessary to adjust to the competitive tariff level.

NRAs shall apply benchmarking on a case by case basis and shall reason such decision, including the following:

- a proof that 'effective pipeline-to-pipeline competition' exists, based on national and EU competition law, by demonstrating that the relevant competing systems imply a real choice for the system users;
- the demonstration that the outcome of any methodology would not allow to meet the competitive tariff level;
- the demonstration that the outcome of benchmarking leads to better meeting the objectives of the Gas Regulation;
- the effect of the benchmarking on the entry/exit split obtained from the strict application of the main methodology.

In this process, neighbouring NRAs shall cooperate with each other in order to ensure a consistent and compatible approach across the Member States concerned.

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. NRAs shall publish any points that are benchmarked and shall communicate it to the Agency.'

Stakeholder feedback on draft versions of the TAR NC

One respondent supported the revised benchmarking criteria. A number of respondents stated that they did not agree with the concept of benchmarking and the fact that TSOs could apply for such a provision as it undermined the principle of cost reflectivity, with a number of respondents stating that ACER should review the application of benchmarking.

Rationale

Benchmarking can be used as a complementary step to any main primary cost allocation methodology. Benchmarking is limited to the point(s), where a TSO faces effective competition from other TSOs' for capacity. The tariff derived from the primary cost allocation methodology is reduced to a competitive level compared to the other 'competing' TSO.

The aim of benchmarking is to reduce the tariff of the TSO with the higher tariff to the same or similar level to that of the competing TSO to attract greater gas flows to that TSO.

The assumption that a decrease in tariffs at competitive points will lead to higher capacity bookings may be correct; however, this may not lead to the recovery of the expected revenue at that point. Therefore, a decrease in the tariff at the competitive point may lead to an under recovery of allowed revenue from that originally forecast.

Therefore, there is a provision within the TAR NC that, with agreement from the NRA, a TSO can increase the tariffs to cover the potential shortfall in allowed revenues that occur as a result of benchmarking. See Figure 1 below for a simple example.

Also, if the entry-exit split is used as an input parameter to 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.

Calculation of tariffs for TSOs	**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		400		100
Total forecasted booked exit capacity		600		120
Entry tariff		0,38		0,25
Exit tariff		0,25		0,21
TSO A applies Benchmarking at entry points without increasing of tariffs on other points	Assumption: TSO B has free entry capacity. No bookings for TSO A on entry points when applying entry tariff (0,38). TSO A has to decrease the entry tariffs to get the estimated amount of 400 KWh/h/a booked			
New entry tariff	0,25			
Exit tariff	0,25			
Revenue earned from Entries	100			
Revenue earned from Exit	150			
Total earned Revenue	250			

Revenue under-recovery	**-50**	If Article 18(3) is not applied, under-recovery is forwarded to the next tariff/regulatory period. This will result in an increase in tariffs for TSO A at all points. Where all other factors remain the same, TSO A has to lower the tariff at the competing entry-point even further, which leads to an increase of the amount going in to the regulatory account.
Consequences for Entry/Exit Split (Art. 18 (2) NC TAR):		
Entries	40%	
Exits	60%	

Figure 1. Application of benchmarking

Increasing tariffs at other points on the TSOs system should not be a basic principle, and only used to ensure the TSO recovers its allowed revenues in the same year. Therefore, Article 18(3) explicitly has the clear precondition that it is expected that the allowed revenues will not be obtained as a result of benchmarking. To minimise cross-subsidisation, increasing of tariffs should be borne uniformly by all other entry or exit points within the TSO. Furthermore, the adjustments of tariffs referring to Article 18(3) are limited to the capacity-based transmission tariffs only.

Our 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. We believe that Article 18(3) is necessary to remedy the risk of a permanent under-recovery of TSOs with competitive entry points with its application requiring approval by the NRA.

g. Description of cost allocation methodologies

Framework Guidelines Requirements

'The Network Code on Tariffs shall specify that the choice of a cost allocation methodology is limited to the four primary cost allocation methodologies described below.'

Rationale

ACER informal feedback to the initial draft TAR NC was that the overall level of detail regarding the description of most of the methodologies was lower than in the TAR FG, with the approach in the initial draft TAR NC not providing sufficient transparency and tariff predictability.

Given this feedback, ENTSOG has worked on the detail of the methodologies. For all the methodologies, formulas have been included when we considered them helpful for the

understanding of the calculations. In addition to that, the matrix methodology and the capacity weighted distance methodology have been slightly redrafted; and for virtual point based methodology (variant A) an in-depth redrafting was carried out. The aim of all these changes is to make the process of the calculations more understandable.

h. Circumstances of capacity allocation methodologies

Framework Guidelines Requirements

'The use of a postage stamp methodology should be limited to networks where one of the following criteria is met:

- a significant majority (at least 2/3) of the transmission capacity (proportion to be further specified by the Network Code on Tariffs), is dedicated either to the domestic market or to cross border gas flows; or
- the difference between the average distance travelled by cross-border flows and the average distance travelled by domestic flows does not exceed a threshold, which shall be determined in the Network Code on Tariffs.

Where this is not the case, the selected methodology should be different from postage stamp and shall take account of the following considerations:

- In a network with a unique geographical node where all the flows converge can be identified, the virtual point based methodology is recommended;

The choice for or against the matrix methodology, or the virtual point methodology, relative to the capacity weighted distance methodologies, shall consider both the drawback of necessary network representation simplifications and the benefit in cost reflectivity, as compared to the capacity-weighted distance approach.'

Stakeholder feedback on draft versions of the TAR NC

One respondent stated that, since the requirements stipulate few restrictions on what methodology can be used, it would be far better to strengthen the obligations on both TSOs and NRAs to justify the recommendation and then the final choice made.

Rationale

ACER informal feedback on the initial draft TAR NC was that ENTSOG had not carried out a further analysis of the 'circumstances' in selecting a primary methodology and applying secondary adjustments.

ENTSOG has provided certain criteria for the postage stamp and virtual point based methodologies and has tried to further specify the detail criteria for all the methodologies, however, it was not possible to identify sensible criteria and it was deemed that, given the critical importance of the issue, it was worthy to allow room for this discussion to take place at a national level.

i. Storage

Framework Guidelines Requirements

'The Network Code on Tariffs shall specify that, in setting or approving tariffs for entry and exit points from and to gas storage facilities, NRAs shall consider the following aspects:

- The benefits which storage facilities may provide to the transmission system.
- The need to promote efficient investments in networks.

NRAs shall also minimize any adverse effect on cross-border flows.'

Stakeholder feedback on draft versions of the TAR NC

Some SSP responses stated that their proposals and concerns expressed as part of the initial draft TAR NC had not been addressed. Specific points were: provisions for storage ignored the principle of no double charging; default tariff should be zero. Also, additional transparency should be provided on the application and justification of how the conditions in Article 20(1) are applied.

Rationale

The provisions within the TAR NC for the determination of the storage tariffs reflect the provisions outlined in the TAR FG. These provisions aim to reflect the specific nature of storage whilst not being too prescriptive in order to enable each NRA to assess the treatment of storage within the TSOs' system.

Member state	TSO	Specific transport tariff for storages?	Tariff characteristics summarised
UK	National Grid	yes	Potential to use product with Zero reserve price, commodity charge only applied for gas used by the storage facility
DE	Open Grid Europe	yes	Exit tariffs reduced 50%
DE	Thyssengas	yes	>60% reduction exit, small reduction entry
IT	SNAM Rete Gas	yes	More than 60% reduction entry and exit
FR	GRTGaz	yes	More than 80% reduction on entry and exit
NL	GTS	no	-
ES	Enagas	yes	Zero exit tariff and zero entry tariffs
PT	REN	yes	Entry tariff reduced by 97%
BE	Fluxys	Yes	Exit tariff reduced by about 50%, no reduction of entry tariff

Figure 2. Local signals at UGS. Source: ACER, IIA FG Tariffs.

As illustrated above, there may be a rationale for a reduction of the tariffs for the entry and exit points from storages. However, the reasons for the provisions of such discounts may differ among countries.

In general, it is agreed that the gas storages may provide several benefits to the gas system. However, each gas system has its own specificities and not all storage facilities provide the same benefits or incur the same costs. Therefore, the potential net benefits will be better addressed at a national level rather than in the TAR NC.

ENTSOG has discussed the possibility of setting a default rule such as zero price for entry and exit transmission capacity charges at TSO-SSO interconnections. Stakeholders supporting this option argue that, leaving aside underground storage facilities that are also production sites, the gas that enters into the storage facilities has already paid an entry charge and the gas that exits the storage facilities will also exit the transmission network, so will pay an additional exit charge.

The exit and entry charges for storage reflect the costs of providing transmission services to the storage facility including the transmission investment needed to connect the facilities. If storage is not charged for these transmission services by setting a zero price as a default will lead to cross-subsidies as other network users pick up these costs. Therefore, we believe that each Member State needs to carefully consider the net benefits storage provides to the transmission system, and the impact of changes in storage tariffs on other network users to ensure these benefits are then reflected in appropriate storage tariffs. To provide clarity on how these benefits are assessed, we have included provisions in the TAR NC for NRAs to provide an explanation of how they have considered the provisions when determining storage tariffs.

Since there are also conflicting views, including the view that the specific nature of storage should be considered on a case-by-case basis, we are of the opinion that the decision of a tariff reduction should be done at a national level, by the respective NRA.

j. Alternative capacity products

Stakeholder feedback on draft versions of the TAR NC

A number of respondents outlined their support for the inclusion of provisions to highlight the treatment of alternative capacity products. In addition, a number of respondents stated their concern that the provision opens up the ability to implement new charges outside the cost allocation methodologies or the consultation requirements. A number of respondents stated that the text should be included in a separate Article with the text clarified or included within dedicated services.

Rationale

Currently, several firm capacity products are offered in some systems. Similarly, there can be alternative commodity based charges other than the standard CRRC. These capacity products reflect the specific nature of each TSO network, 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, to reflect the circumstances of this utilisation and to avoid inefficient investments:

Shorthaul products in the UK – In order to avoid the inefficient bypass of a TSO's network, users can elect to pay an optional shorthaul tariff as an alternative to both the entry and exit commodity based CRRC. The tariff can be derived from the estimated cost of laying and operating a dedicated pipeline built to the TSO's specification. A charging function can be calculated based on a range of flow rates and pipeline distances. The larger the load and the closer to an entry point the smaller the shorthaul commodity based charge should be as this reflects the unit cost of laying a pipeline. Shorthaul charges should only be attractive for large exit points situated close to an entry point such that at certain distances and loads it will become cheaper to pay the standard CRRC charges.

Shorthaul / restricted allocable capacity products in DE – These allow firm use of the transmission system at the booked entry point to one or more defined exit points – or use of the transmission system at the booked exit point from one or more defined entry points. Use of the virtual trading point is excluded.

Dynamically allocable capacity products in DE – These allow firm use of the transmission system at the booked entry point to one or more defined exit points – or use of the network at the booked exit point from one or more defined entry points. The Virtual Trading Point can be also used on an interruptible basis.

Conditional firm capacity products in DE – These allow firm and freely allocable use of the transmission system, provided certain conditions (e.g. flow situation in the system, temperature) are fulfilled In order to allow suitable charges for these products.

The provision on alternative capacity products has been included in the TAR NC. NRA's approval is guaranteed in all cases. ENTSOG would like to note that in order to meet a stakeholders' request during the SSP consultation and moving towards transparency, the charges related to these products or the information related to their derivation will need to be published every tariff period, by the responsible party of setting the tariffs (TSO or NRA, as relevant).

3. CHAPTER III. CONSULTATION REQUIREMENTS

a. Use of postage stamp as methodology counterfactual

Framework Guidelines Requirements

'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.'

'For the avoidance of doubt, 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. Where the proposed methodology is the Postage Stamp methodology, the obligation to provide the counterfactual can be omitted.'

Stakeholder feedback on draft versions of the TAR NC

In the initial draft TAR NC consultation, some stakeholders were of the view that there would be merit in requiring the postage stamp to be used as a harmonised cost allocation methodology counterfactual, in order to demonstrate the trade-offs between cost reflectivity and simplification in Member States not using the postage stamp. 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 this option as they felt this would not allow the highlighting of the benefits which may arise from using a more cost reflective methodology which generates locational signals.

During the SSP consultation, four stakeholders argued against the fact that the postage stamp methodology is exempted from a counterfactual. The different views expressed were:

- The postage stamp is the easiest and least transparent way and implies that TSOs applying it won't try to assess the optimised way to allocate grid costs.
- This will reinforce a bias in favour of TSOs, since if applying postage stamp, it won't even have to be measured against the former methodology.
- Postage stamp needs to be assessed against other (possibly) more cost reflective cost allocation methodologies.

Rationale

Stakeholder's views expressed on the initial draft TAR NC consultation on applying postage stamp as counterfactual have been 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 consistent with the TAR FG provisions.

As for the use of an alternative counterfactual methodology by TSOs that already apply the postage stamp, ENTSOG considers not appropriate to include this obligation. Given the fact that an advantage of postage stamp is simplicity, and thus fewer resources need to be involved on its calculation, if a counterfactual were to be made compulsory, an important benefit of its application would vanish. To omit the obligation of counterfactual for these cases is in line with the TAR FG provisions.

b. Review and consultation every four years

Framework Guidelines Requirements

'At least every 4 years, or more frequently if deemed appropriate by individual NRAs, NRAs, shall review and update the detailed explanation and reasoned justification concerning the selection of a tariff methodology. Any proposed changes to the methodology arising from the review shall be consulted on publicly and subject to NRA approval before implementation.'

Stakeholder feedback on draft versions of the TAR NC

Nine respondents to the SSP consultation are concerned about the fact that a consultation every four years will only be carried out if the outcome of the review indicates the necessity of a change.

Rationale

ENTSOG has adapted the TAR NC to go beyond TAR FG's requirements in order to meet stakeholders request on this issue. The consultation on the cost allocation methodologies is to be conducted without any triggers with a minimum periodicity of 4 years.

4. CHAPTER IV. PUBLICATION REQUIREMENTS

a. Implementation monitoring

Framework Guidelines Requirements

'The Network Code on Tariffs shall specify, that all information relevant to implementation monitoring shall be communicated by ENTSOG to the Agency pursuant to Articles 8(8) and 8(9) of Gas Regulation.

The relevant information, and associated timing of communication, shall be determined in full by the Agency in close cooperation with ENTSOG within three months after the entry into force of the Network Code on Tariffs. This information shall be subsequently updated when appropriate. ENTSOG shall maintain a comprehensive, standardised, digital data archive of the information required by the Agency.

The relevant information shall include, but shall not be limited to:

- direct tariff related aspects, such as percentage changes in tariffs, the amount of over- and under-recovery in each year and the size of regulatory accounts;
- beneficiaries and/or concerned parties of the potential over- and under-recovery;
- number of cross-border tariff-related discrimination complaints;

- the value of multipliers or seasonal factors per product, interconnection point, etc. in each year;
- fulfilment of the transparency norms, formulated in the Network Code on Tariffs, in a qualitative and quantitative manner.

The Agency shall share this information with NRAs.'

Rationale

ACER has outlined their concerns in their informal feedback that the TAR NC does not reflect 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, ENTSOG's working level response on the Open House material of 31 January 2013, ENTSOG's response on the draft TAR FG of 18 July 2013).

ENTSOG's obligation to monitor and analyse the NC implementation is foreseen by Article 8(8) of Regulation (EC) No 715/2009. Therefore, we do not believe repeating the monitoring of the provisions within the regulation is required within the TAR NC following the precedent established by the CAM NC and the BAL NC.

In addition to ENTSOG's obligation to monitor and analyse the NC implementation as set out in the Regulation, Regulation (EC) No 715/2009 and the Agency Regulation (Regulation (EC) No 713/2009) also foresee the task of NC implementation monitoring falling on ACER. In particular, Article 9(1) of Regulation (EC) No 713/2009 stipulates the wider scope of ACER's monitoring.

We would like to note 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.

b. Allowed revenue publication

Framework Guidelines Requirements

'The following is a non-exhaustive list of relevant information which should be published, and which may be further defined by ENTSOG in preparing the Network Code on Tariffs, relating to the achievement of the objectives mentioned in the first paragraph of this chapter:

I. Inputs for the cost allocation methodology applied, adjusted to the level necessary to run the methodology, including:

A. Inputs on the allowed revenues

- allowed or expected revenues; […]'

Stakeholder feedback on draft versions of the TAR NC

There were a number of comments on the definition of allowed revenue within the initial draft TAR NC. The revised drafting included in the TAR NC aims at providing further clarification with respect to the role of the NRA in setting or approving the allowed revenue and what components are included in the allowed revenues.

Rationale

Allowed revenue is defined in the TAR NC for TSOs that have revenue cap regimes. Allowed revenues are the revenues that such TSOs are allowed to recover from network users. The revised definition states that the allowed revenue is made up from transmission services revenue and dedicated services revenue. There are separate definitions for transmission services and dedicated services and how these revenues are recovered.

The term of 'given time period' remains unchanged from the initial draft TAR NC. This flexibility in the definition is to reflect differences regarding the timings of each TSOs 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.

ENTSOG would like to note that in order to meet a stakeholder request in SSP consultation, the information related to the changes on the allowed revenue will need to be published every tariff period by the responsible party (TSO or NRA, as relevant).

Confidentiality of commercially sensitive information

ACER noted that the 'the confidentiality of commercially sensitive information' general principle is a narrow repetition of Regulation (EC) No 715/2009 and might open the door for not fulfilling the publication requirements.

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.

Hence, ENTSOG decided to maintain it in the TAR NC as a general reference of the necessity to preserve the confidentiality of commercially sensitive information recognised by the Third Package.

c. Tariff model

Stakeholder feedback on draft versions of the TAR NC

Transparency has been an issue widely discussed throughout the development of the TAR NC. During the SJWSs workshops, stakeholders asked ENTSOG to include a provision in order to oblige responsible parties to publish the tariff model. Stakeholders clearly indicated that they require 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.

For the initial draft TAR NC consultation, a large number of stakeholders highlighted the importance of this request, in order to improve tariff predictability for network users. Many 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.

During the SSP consultation, stakeholders noted the effort ENTSOG made for the refined draft TAR NC on transparency issues but the majority noted they would prefer the publication of the full tariff model. It was noted that the proposed sensitivity analyses are not sufficient as alternative for such a model. Network users need to be able to make their own predictions of tariff evolution using the actual tariff model itself. One respondent to

the SSP consultation noted that the obligation to publish a 'complete' tariff model would allow them to estimate tariffs beyond the current regulatory period and gain a better understanding of tariff evolution.

Rationale

ENTSOG has included two options for addressing stakeholders concerns regarding the publication of tariff model in the TAR NC: publication of a simplified tariff model or, as an alternative, sensitivity analyses enabling network users to estimate themselves the possible evolution of transmission tariffs in the future.

ENTSOG believes that these two options address the stakeholder concerns for being able to calculate the transmission tariffs themselves and estimate their possible evolution in future. The simplification of the model to be published aims: on the one hand, to protect commercially sensitive information that needs to be preserved from publication; and on the other hand, to eliminate the potential situation that the more complex model may decrease the understanding of such tool. The simplified model should in any case enable network users to estimate future tariffs. If sensitivity analysis is chosen instead of providing a simplified model, then once again, stakeholders will have all available information enabling them to make a reasonable assessment of the sensitivity of the possible future tariff adjustments as a result of different parameters. In other words, what they will receive is the outputs of the full tariff model, without being provided with the actual model itself.

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 who is responsible for calculating the transmission tariffs.

d. Tariff changes and trends; publication of reference prices, multipliers and seasonal factors

Framework Guidelines Requirements

'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.'

Stakeholder feedback on draft versions of the TAR NC

Some stakeholders welcomed the provision of indicative reference prices prior to the commencement of auctions; however an overwhelming majority felt that a binding reference price should instead be provided. It was felt that this was a very reasonable request and that shippers should not be expected to bid in blind into an auction or in other words, shippers should not be expected to buy something without knowing the price of the

product they were purchasing. The majority of stakeholders welcomed the publication of binding multipliers and seasonal factors prior to the start of auctions.

Rationale

During the consultation process of the development of the TAR NC there has been a clear message from the market, that market participants would require full transparency regarding how tariffs are derived in addition to having the ability to predict what future tariffs may look like over a number of years into the future.

This was not a specific requirement of the TAR FG regarding transparency, however ENTSOG has taken the stakeholder feedback into consideration and as a result, as a minimum, either a simplified version of the tariff model used by TSOs/NRAs to calculate reference prices or sensitivity analysis will be provided to the stakeholders.

As has been further requested by the stakeholders, the TSO or the NRA, as relevant, will provide an explanation of the reasons why the tariffs changed in comparison to the past and why it may change in the future, based on the best estimation of the future data. The provision of sensitivity analysis can be seen to be in excess of the TAR FG requirements.

Interested stakeholders will not only have the opportunity to understand the evolution of tariffs over a number of years but will also have the ability to estimate more closely, the value of any capacity planned to be purchased for the next tariff year due to the fact that the TAR NC will require TSOs or NRAs, as relevant, to publish indicative reference prices for the upcoming gas year prior to commencement of auctions. Given the timing of the annual auctions, some TSOs and NRAs would not be in the position to provide a binding reference price due to the fact that annual accounts may not be closed out by this time and in some cases any under-recovery of revenues that will arise due to the fact that TSOs and NRAs would be publishing inaccurate binding references prices would not be recouped for two or more years.

In addition to this, the TAR NC also includes the requirement for TSOs or NRAs, as relevant, to publish binding multipliers and seasonal factors prior to the auction start date. This will enable shippers/traders etc. to optimise their capacity booking strategies and based on shippers' individual demand curves, estimate the optimum mix of long- and short-term capacity.

5. CHAPTER V. RESERVE PRICES

a. Multiplier ranges depending on congestion

Framework Guidelines Requirements

'The Network Code on Tariffs shall set out that, in determining multipliers the following conditions apply:

Table 1: Multipliers

Duration of the short term product	Multiplier range without congestion	Multiplier range with congestion
Quarterly and monthly	0.5 – 1.5	0.5 – 1
Daily and within day	0 – 1.5	0 – 1

Congestion shall be defined as in point 2.2.3.1 of Annex I to Gas Regulation. When the NRA decides to allow multipliers, the NRA shall take into account whether the TSO has offered additional capacity that has been paid by incentives as defined by Section 2.2. of Annex I of the Gas Regulation..'

Stakeholder feedback on draft versions of the TAR NC

This issue has been widely discussed with stakeholders. During the SSP consultation, ENTSOG noted that 8 respondents agree with the deletion of the ranges depending on congestion. One respondent considered on the other hand that the link was appropriate, although congestion is inadequately described in CMPs.

Rationale

The link between multipliers ranges and congestion as defined in CMPs was widely discussed throughout the development of the TAR NC. There were different issues arising:

- The definition of congestion: it might need to be reviewed in the future, and moreover, until CAM NC is fully implemented across EU, there will be no certainty that the results of the ACER's monitoring report are not misleading when identifying which interconnection points are subject to contractual congestion. ENTSOG considers this is not acceptable as the criteria for allowing different ranges need to be clear, consistent and stable.
- The link between congestion as defined in CMPs and multipliers: this link has been also widely discussed. Some stakeholders consider that this link is incorrect, as multipliers are mainly a tool for TSOs/NRAs to avoid under recoveries and thus to prevent tariff instability. Considering multipliers are a tool for revenue recovery, the definition of congestion as set out in point 2.2.3.1 of Annex I to Regulation (EC) No 715/2009 is only an indicator but does not in any case guarantee that revenue recovery at the specific points is assured, many other factors play an important role on revenue recovery and more in depth analysis of market evolution seems to be required.

- Timing concerns: clear timely issues arise on the use of the results of the monitoring report to establish multipliers. A definition based on historical data might not be fit for purpose. For establishing the multiplier ranges for year i, the report from year i-1 will be used, that will analyse the results for the auctions for year i-2. Two years lap might mean the multiplier ranges adopted do not reflect anymore the current situation of the market.

For the initial draft TAR NC, ENTSOG included a condition evaluating physical congestion and gave the NRAs the right to evaluate contractual congestion when setting the multiplier ranges. The feedback received during the initial draft consultation showed clear concerns regarding this issue and made ENTSOG reconsider this approach and propose a deviation from the TAR FG on this point to ACER.

ENTSOG's decision is to delete the different ranges depending on the situation of congestion. 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:

Short term products	Multiplier ranges
Quarterly and monthly	0.5 - 1.5
Daily and within day	0 - 1.5
* Multipliers higher than 1.5 up to 5 (max) are allowed under specific circumstances (see next section)	

Figure 3. Multiplier ranges

The situation of physical and contractual congestion no longer play a role on distinguishing different ranges, but are to be taken into account by the NRA when setting or approving the level of multipliers.

b. Safeguard on multipliers

Framework Guidelines Requirements

'The Network Code on Tariffs shall set out that, in determining multipliers the following conditions apply:

Table 1: Multipliers

Duration of the short term product	Multiplier range without congestion	Multiplier range with congestion
Quarterly and monthly	0.5 – 1.5	0.5 – 1
Daily and within day	0 – 1.5	0 – 1

Congestion shall be defined as in point 2.2.3.1 of Annex I to Gas Regulation. When the NRA decides to allow multipliers, the NRA shall take into account whether the TSO has offered additional capacity that has been paid by incentives as defined by Section 2.2. of Annex I of the Gas Regulation.'

Stakeholder feedback on draft versions of the TAR NC

ENTSOG included two clear questions regarding this 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.

In the SSP consultation, there were 4 respondents who agreed with our current approach on this issue. However, 10 respondents explicitly reject the current approach and consider that a cap for the multipliers of 5 is too high and will hamper short term trading and limit market liquidity. There were also some critics to the safeguard formula (it is not considered objective) and some respondents consider that ACER's opinion should be included at least when multipliers higher than 1.5 are being considered.

Rationale

According to the TAR FG, multipliers should not be higher than 1.5 in any circumstance. However, the possibility to have multipliers higher than 1.5 under certain circumstances was proposed by ENTSOG when the draft TAR FG were consulted and it has been widely discussed during the development of the TAR NC. ENTSOG firmly believes that the safeguard needs to be included in order to prevent negative consequences in many systems across EU.

ENTSOG has support from a number of market participants in order to take this approach, and in order to address some concerns, has included clear criteria for the safeguard in order to determine when higher multipliers can be applied and has included a new cap for multipliers when the criteria is met. NRA approval is required. 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.

The criterion 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 1 - 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.

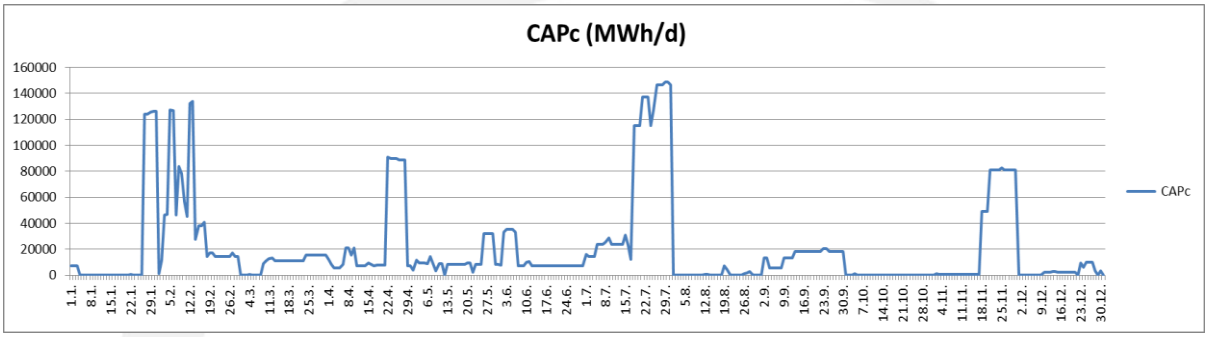

Figure 4. Short term capacity bookings for year 2012

Input data:

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

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

$$N_m = \frac{max\,(CAP_{c,i}) \times 366}{\sum_{i=1}^{366} CAP_{c,i}} = 7{,}20$$

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

Example 2 - 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 2013/2014 in one Member State. Real demand data at an IP are used, considering the hypothesis that shippers don't have long term contracts but optimise their bookings taking into consideration the real capacity needed each day.

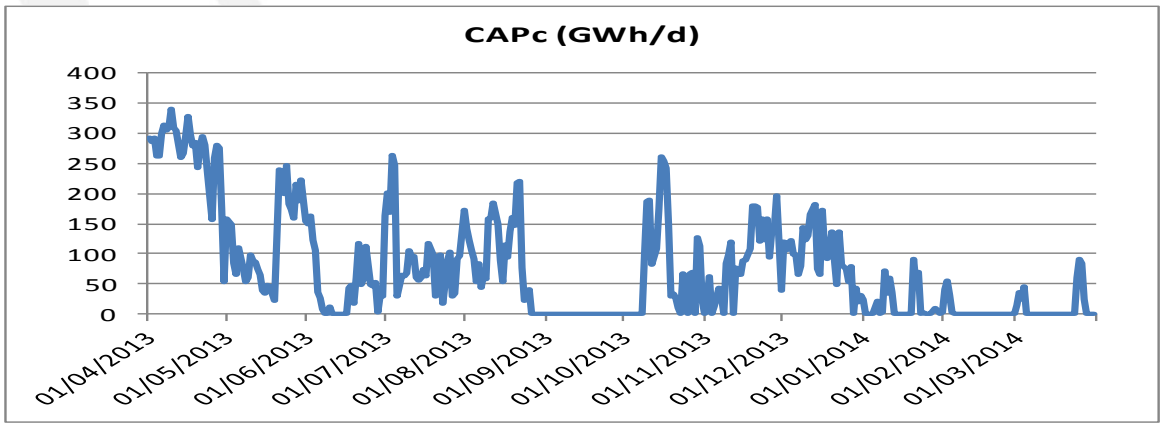

Figure 5. Short term capacity bookings for year 2013/2014

Input data:

$max\ (CAP_{c,i})$ = *339.971 MWh/d*

$\sum_{i=1}^{365} CAP_{c,i}$ = *28.023.182 MWh/d*

$$N_m = \frac{max\ (CAP_{c,i}) \times 365}{\sum_{i=1}^{365} CAP_{c,i}} = 4{,}4$$

In this case, according to the criteria, ***multipliers can be higher than 1.5 but no higher than 4.4****.*

c. Ex-post and ex-ante discounts combination

Framework Guidelines Requirements

'The Network Code on Tariffs shall set out that reserve prices for interruptible capacity be set at a discount to the reserve price of the firm standard capacity product with equivalent duration.

The Network Code on Tariffs shall set out a methodology for determining reserve prices for interruptible capacity.'

Stakeholder feedback on draft versions of the TAR NC

This issue has been also widely discussed with stakeholders. In order to adapt to stakeholder's concerns, ENTSOG decided to make the ex-ante discount compulsory for all standard interruptible products offered. However, in the SSP consultation, ENTSOG noted that there is still opposition to the fact that the ex-post discount is still included, even if now the ex-ante discount is compulsory. 11 stakeholders were of this view, while two respondents considered that the combinations approach should be maintained. The following explanation aims to define clearly why the combination is still deemed as needed and clarify the criteria for its use.

Rationale

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.

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.

This flexibility will help TSOs and NRAs to find the appropriate discount that better reflects the economic value of each type of interruptible product offered that depend on national circumstances and specifics.

The above listed conditions for possible application of the combined approach are aimed at absence of either physical (first condition) or contractual congestion (second condition). Since the interruption of capacity products only applies in case of existence of physical congestion, which also implies the existence of contractual congestion at the same time, we are of the opinion that fulfilling at least one of these criteria leads to very high probability of no interruption of such capacity product. This is the case for a number of interconnection points across all Member States which offer interruptible capacity, however, have never faced interruption.

Absence of the physical and/or contractual congestion needs to be taken into account when calculating probability of interruption reflected in the level of provided ex-ante discount. In the case of no historical observation of physical congestion and contractual congestion, the interruptible capacity products offered with an ex-ante discount will have very low risk of being interrupted, and therefore the ex-ante discount will be very low, or even no discount will be provided. In these situations the combined approach might be offered to help to maintain the current offer of different interruptible products, which are useful for the market from the network users' perspective as well as from the TSOs', as TSOs are able to maximise offered capacities as well as flexibility for network users.

It is important to mention that ex-post reimbursement is provided on the top of the ex-ante discount and thus, the total discount provided to shipper by combined approach shall be in every case at least equal, or even higher than a pure ex-ante discount. Therefore, in certain situations the combined approach would be a good way how to reflect the risk, as the ex-post discount can better take into account the actual probability for the network user to be interrupted compared to the ex-ante discount which is based only on the historical or expected probability of interruptions.

d. Ex-post discount formula

Framework Guidelines Requirements

'The Network Code on Tariffs shall set out that reserve prices for interruptible capacity be set at a discount to the reserve price of the firm standard capacity product with equivalent duration.

The Network Code on Tariffs shall set out a methodology for determining reserve prices for interruptible capacity.'

Rationale

In the initial draft TAR NC, the formula for calculation of the ex-post discount for the interruption was as follows:

$$E_{Rm} = B \times \left(\frac{E_m}{q \times h_m}\right) \times \sum_{R=1}^{h_R} q_{diff\ R}$$

Where:
E_{Rm} is the amount to be reimbursed for an invoicing period within a given contract;
B is the adjustment factor applied to reflect the estimated economic value of the type of standard capacity product for interruptible capacity;
E_m is the contractual payment for an invoicing period within a given contract excluding, if any, the auction premium;
q is the amount of contracted capacity *with respect to one hour or one day;*
h_m is the number of hours or days of an invoicing period within a given contract;
$q_{diff\ R}$ is the amount of interrupted capacity with respect to each hour or each day when the capacity was interrupted;
h_R is the number of hours or days of an invoicing period within a given contract when the capacity was interrupted.

The above mentioned formula aims to calculate the discount for interruption in the case where a pure ex-post discount is offered, however, it is not applicable in case of combination of ex-ante and ex-post approach. The reason is partial double counting of ex-ante and ex-post discounts, which will occur in case the capacity is interrupted, because the formula does not take into account the provided ex-ante discount.

For example, if the ex-ante probability of interruption is 10%, in case the real interruption will be lower, there is no need of further reimbursement in such invoicing period, because interruption up to 10% is already covered by the ex-ante discount. Additional reimbursement should only take place where the real level of interruption is higher, and only for the part of interrupted capacity which exceeds the ex-ante probability of interruption. This led to a change of formula, which now appears as follows:

$$E_R = B \times E \times \max\left(\frac{\sum_{i=1}^{n} CAP_{diff,\,i} \times D_i}{CAP \times D} - Pro; 0\right)$$

Where:
E_R is the amount to be reimbursed for an invoicing period within a given contract;
B is the adjustment factor applied to reflect the estimated economic value of the type of standard capacity product for interruptible capacity, which shall be no less than 1 and may differ per standard capacity product for interruptible capacity of a certain duration;
E is the contractual payment for an invoicing period within a given contract excluding, if any, the auction premium;
CAP is the amount of contracted capacity with respect to one hour or one day;
D is the number of hours or days of an invoicing period within a given contract;
$CAP_{diff,\,i}$ is the amount of interrupted capacity with respect to each hour or each day when the capacity was interrupted for each interruption i;

D_i is the number of hours or days of an invoicing period within a given contract when the capacity was interrupted for each interruption i;
n is the total number of interruptions that the standard capacity product underwent during the invoicing period within a given contract;
Pro is the probability of interruption of the type of standard capacity product for interruptible capacity as set out in Article 33.

Functionality in the changed formula is explained on the following 2 examples.

Example 1

Input assumptions:

CAP – Contracted capacity: 15 MWh/day

D – Duration of contract: 30 days

E – Contractual payment: 100 EUR

Pro – Ex-ante probability of interruption: 0.2

Ex-ante discount: 20% = 25 EUR

Real interruption: 3 days

B – adjustment factor: 1

Calculation of ex-post discount:

$$E_R = B \times E \times \max\left(\frac{\sum_{i=1}^{n} CAP_{diff,\,i} \times D_i}{CAP \times D} - Pro; 0\right)$$

$$E_R = 1 \times 100 \times \max\left(\frac{15 \times 3}{15 \times 30} - 0.2; 0\right)$$

$$E_R = 100 \times \max(-0.1; 0)$$

$$E_R = 100 \times 0$$

$$E_R = 0$$

Result:

Ex-post discount is equal to 0 EUR, due to real level of interruption lower as the ex-ante probability of interruption.

Example 2

Input assumptions:

CAP – Contracted capacity: 15 MWh/day

D – Duration of contract: 30 days

E - Contractual payment: 100 EUR

Pro – ex-ante probability of interruption: 0.2

Ex-ante discount: 20% = 25 EUR

Real interruption: 9 days

B – adjustment factor: 1

Calculation of ex-post discount:

$$E_R = B \times E \times \max\left(\frac{\sum_{i=1}^{n} CAP_{diff,\,i} \times D_i}{CAP \times D} - Pro; 0\right)$$

$$E_R = 1 \times 100 \times \max\left(\frac{(15 \times 9}{15 \times 30} - 0.2; 0\right)$$

$$E_R = 100 \times \max(0.1; 0)$$

$$E_R = 100 \times 0.1$$

$$E_R = 10$$

Result:

Ex-post discount is equal to 10 EUR. Real level of interruption was 30%, which is covered by ex-ante discount of 25 EUR and additional ex-post reimbursement of 10 EUR.

e. Non-physical backhaul

Framework Guidelines Requirements

'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.'

Stakeholder feedback on draft versions of the TAR NC

This issue has been also widely discussed with stakeholders and ACER. During the SSP consultation, 3 respondents agreed with the approach of ENTSOG on pricing non-physical backhaul, while 6 respondents considered the marginal approach in the TAR FG as more appropriate. One respondent is of the view that non-physical backhaul should be priced at a discount, reflecting the fact that the reverse flow does not originate fuel costs.

Rationale

The 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.

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. ENTSOG would like to state the following:

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

ENTSOG would like to note also that in case the marginal approach is taken, the issue of competition when firm and backhaul products are offered in parallel in order to enter the same entry-exit system will need to be resolved. If stable forward flows are present in these cases, backhaul products could be used for gas transmission at very low prices, creating cross subsidies and a detrimental situation for TSOs.

f. Reserve prices: A & B factors

Framework Guidelines Requirements

'The Network Code on Tariffs shall set out that reserve prices for interruptible capacity be set at a discount to the reserve price of the firm standard capacity product with equivalent duration.

The Network Code on Tariffs shall set out a methodology for determining reserve prices for interruptible capacity.'

Stakeholder feedback on draft versions of the TAR NC

There was limited feedback on this issue at the SSP consultation, only two respondents commented explicitly on this topic, and both showed support for ENTSOG's approach. Flexibility is needed as these factors shall reflect the economic reality of interruptible products in each system, according to their views.

Rationale

ENTSOG has developed a methodology for determining the discounts for interruptible capacity products. A and B are the adjustment factors applied in order to calculate the level of the interruptible discounts, which aim is to reflect the estimated economic value for each type of interruptible capacity product.

The CAM NC allows a wide range of different interruptible products to be offered, as long as they are offered with the same duration as the firm standard capacity products and the interruptible capacity offered is not detrimental to the amount of firm capacity on offer. The CAM NC establishes the obligation to offer daily interruptible products at IPs where firm capacity is sold out day-ahead, but there is freedom for TSOs to offer a wide range of products other than this minimum requirement. The pricing methodology needs to reflect this reality of different types of interruptible products and thus ENTSOG considers appropriate not to harmonise the level or establish any threshold for the parameters A and B.

We have received diverse feedback on this issue. ACER's view is that the introduction of these factors does not contribute to harmonisation. Our decision in order to accommodate to the different types of interruptible products but moving towards harmonisation is to have A and B approaches 'symmetric'', i.e. both factors shall be no less than 1 in any case. The value for each different type of product is to be decided at national level to cover the above mentioned reality of types that will be offered. This way, flexibility is provided at national level in order to allow the discounts to reflect the cost of the risk born by shippers.

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.

6. CHAPTER VI. REVENUE RECONCILIATION

There were no significant issues raised at SSP for the Revenue Reconciliation chapter, apart from the remark from several stakeholders regarding the lack of clarity on how under-/over-recovery for dedicated services is handled. ENTSOG has therefore decided to include – as part of the consultation document to be developed in accordance with Article 21 – how the associated dedicated services revenue is reconciled.

Several stakeholders shared the concern on the issue of the mandatory single regulatory account, but ENTSOG has decided not to go beyond the TAR FG requirements on this topic. Thus, to have subaccounts for the purpose of tracking the under- or over-recoveries will be an option.

7. CHAPTER VII. PRICING OF BUNDLED CAPACITY AND CAPACITY AT VIRTUAL INTERCONNECTION POINTS

There were no significant issues raised at SSP process on this Chapter and no changes have been implemented in the TAR NC, apart from small consistency checks and slight simplification of the drafting.

8. CHAPTER VIII. CLEARING PRICE AND PAYABLE PRICE

a. Fixed price mechanism

Framework Guidelines Requirements

'The Network Code on Tariffs shall set out that, notwithstanding any reserve price adjustments determined by the provisions set out in Chapter 5, the payable price determined in a capacity auction shall be a floating price, which consists of the applicable reference price at the time when the capacity can be used plus the auction premium, if any.

The Network Code on Tariff shall include mathematical formulations for the payable price.

The approach to setting the payable price set out above shall also apply for incremental and new capacity.'

Stakeholder's feedback on draft versions of the TAR NC

Fixed price mechanism has been an issue widely discussed throughout the development of the TAR NC. For example, the issue has been raised at every SJWS and stakeholders continue to emphasise the importance of having a fixed price mechanism and have therefore requested that a provision shall be included in the TAR NC to allow for this. For the initial draft TAR NC consultation, a large number of stakeholders highlighted the importance of this request, and in the majority of stakeholder responses in the SSP on this topic were in agreement with the approach taken in the refined draft TAR NC. It was felt that only with fixed priced capacity network users could have long-term certainty and the

ability to plan and that floating prices imply that network users are obliged to commit to contracts without knowing the price they will pay.

The majority of those responding to the SSP consultation on this topic felt that while they did support the fixed price approach as described, they were however concerned with respect to the fact that it is not an obligation for TSOs to provide fixed price capacity and also requested that TSOs be mindful in relation to the payable price at IPs and suggested that complications may arise in a situation where fixed price was offered at one side of an IP but not at the other.

Rationale

Throughout the development of the TAR NC there has been a clear and persistent message from the market that there should be a fixed price option available at IPs when booking capacity over the long-term.

ENTSOG believes that there are a number of benefits in including a fixed price mechanism in the TAR NC, and the following text aims on explaining the benefits of allowing an optionally of fixed and floating prices and how the drawbacks derived of this approach could be solved:

- increased incentives to network users to purchase longer term capacity;
- an option for network users to manage the risk of potential tariff changes;
- increased certainty for the network users who chose to purchase fixed price capacity and which facilitates internal sanction within the network users' companies as the cost of investing in capacity over the long term will be known.

Tariffs with a fixed price mechanism have a distinct advantage over floating tariffs when considering the release of incremental capacity through the use of market based mechanisms. Not only does it make it easier for users to commit to booking capacity over a sufficiently long period to pass the economic test – it makes the economic test a more robust process.

The economic test requires the calculation of the present values of binding commitments of network users for contracting capacity. Since all other parameters in the calculation are known – such as any potential auction premium and potential mandatory minimum premium – then having a reserve price with a fixed price mechanism allows for the present value of the binding commitments to be accurately determined. The economic test is therefore a robust process when using tariffs with a fixed price mechanism.

When floating prices are used then the calculated present value of the binding commitments in the economic test can only ever be an estimate. The accuracy of the test therefore depends on the accuracy of the estimated reference prices. This is partly dependent on the cost allocation methodology used and its ability to estimate future reserve prices over a number of years. The uncertainty of the estimation will increase with each subsequent year

forecast. This may not be a significant issue for simple methodologies such as postage stamp. More sophisticated models, such as those that include flows and flow directions, are dependent on the accuracy of the forecast supply/demand patterns in determining accurate estimated reserve prices as these will vary depending on changes in supply patterns. These forecast supply patterns will depend on factors such as developments in the LNG market, rates of depletion of indigenous production, the economics of exploration and production of new indigenous sources and future investment in transit routes to bring gas to Europe. All these provide challenges in calculating accurate forecasts of floating tariffs over the long term. This in turn reduces the reliability of any economic test in determining whether investment in incremental capacity should proceed.

This has raised the question as to whether a fixed price mechanism could be allowed but that it should be restricted to the release of incremental capacity. Such a restriction is not practical for some systems TSOs. When a network user bids for capacity in an annual auction they do not care if this capacity is existing available capacity or if it is incremental capacity that will be released subject to passing an economic test. It would be confusing to the market and difficult to allocate if unsold technical capacity and incremental capacity were to have different tariff treatments and different allocation processes within the same auction.

It was these reasons that ENTSOG introduced the option to have tariffs with a fixed price mechanism at IPs and to have no restriction on whether this was for existing available capacity or incremental capacity.

ENTSOG is aware that there are a number of issues in providing the possibility 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.

  This, however, should be seen in the context that there could be a far greater cross-subsidisation effect with the introduction of shorter term capacity products under the CAM NC and the use of multipliers that shall be introduced by the TAR NC. Network users will be paying different prices for the capacity they hold depending on the mix of capacity products in their portfolio. These multipliers will typically vary between 0 and 1.5, thus a network user will be flowing against capacity that may be far cheaper or more expensive that the prevailing annual reserve price.

- Reconciliation of potential over or under recovery – as outlined above, different network users will pay different prices for different products and for the same product bought in different auctions. 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 in price volatility, either in the setting of multipliers or in changes to a floating reserve price. There are a number of options for managing this risk:
  - network users purchasing annual capacity with floating tariffs or shorter term capacity products with its applicable multiplier will 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 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 making this provision an obligation. As outlined above both fixed tariffs as well as floating tariffs have advantages and draw-backs.

The TAR FG does not include the potential for future annual contracts to have a fixed price at IPs. 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. The TAR NC includes the option for TSOs to offer fixed price annual contracts along with the obligation to offer floating tariffs where relevant. 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 be some concerns 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 at IPs in addition to floating price mechanisms.

9. CHAPTER IX. INCREMENTAL CAPACITY

The changes implemented in Chapter IX of the TAR NC are addressed in the accompanying document for the Incremental Proposal.

10. CHAPTER X. FINAL AND TRANSITIONAL PROVISIONS

a. Applicability of the TAR NC to the existing contracts and implementation timescales

Framework Guidelines Requirements

'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.'

'In the case of exceptional circumstances such [mitigating] measures may be extended beyond 1 October 2017, by a period not exceeding twenty four months subject to Article 7(4) of the Agency Regulation. These circumstances may include instances, where the transition to the new tariff level by 1 October 2017 would:

- affect the execution of specific contracts;
- not coincide with the commencement of the gas year, tariff setting cycle or regulatory period; or
- where tariffs at individual entry or exit points would increase by more than 20% from one year to the next due to the application of the provisions in the Network Code on Tariffs.'

Stakeholder feedback on draft versions of the TAR NC

In the refined draft TAR NC, ENTSOG included a safeguard for the price of the fixed price contracts concluded before the entry into force of the TAR NC. Within the responses received during the SSP, four respondents indicated their support for this safeguard clause and three respondents pointed out their concerns with respect to this clause.

The respondents that welcomed this clause noted that it partially relieves / significantly accommodates the concerns expressed regarding the absence of a one-off capacity reset clause in the TAR NC.

The respondents that pointed out their disapproval of this clause noted that it is discriminatory and contradicts Regulation (EC) No 715/2009, highlighting the discrimination against existing floating price contracts and new contracts in general. It was also pointed out that safeguarding the existing fixed price contracts will not lead to a level playing field among the market participants and this, does not contribute to the internal energy market.

Rationale

Entry into force date and application date

The TAR NC foresees different dates for its entry into force and its application. 'In legislative acts, a distinction is made, according to the legal effects to be obtained, between the date of entry into force, the date from which provisions are to have effect, and the date of

application.' '[…] entry into force and application […] do not necessarily coincide. The date of application may be set after […] entry into force.'[16]

Knowing the deadline for ENTSOG to submit the TAR NC to ACER for the reasoned opinion (31 December 2014) and 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 respective estimated dates can be calculated as:

- 1 June 2016 for the entry into force; and
- 1 June 2018 for the application date (the later of the following two, as foreseen in Article 50 of the TAR NC: (i) 1 October 2017 (per the TAR FG); or (ii) entry into force date + 24 months).[17]

Implementation scenarios

The calculation for the application date set out above is only applicable in the **'base case' scenario** (ref. Article 50).

The graphical illustration below represents the two solutions for the TAR NC implementation other than the 'base case' scenario, namely:

- '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 shall be referred to as **'do with help' scenario** (ref. Article 48).

  This scenario is based on the last bullet point foreseen in the relevant portion of the TAR FG, as indicated above.

- 'transitional period' (green box): application of the TAR NC as from a later day than 1 June 2018 but in any case no later than as from 1 June 2020. This shall be referred to as **'do with delay' scenario** (ref. Article 49).

  This scenario is based on the first two bullet points foreseen in the relevant portion of the TAR FG, as indicated above.

[16] Joint Practical Guide [for drafting of legislation]: http://eur-lex.europa.eu/en/techleg/20.htm.

[17] The change from 18 months (as foreseen by the initial draft TAR NC) to 24 months (as foreseen by the refined draft TAR NC) is based on the stakeholder feedback received during the 2-month consultation on the initial draft TAR NC.

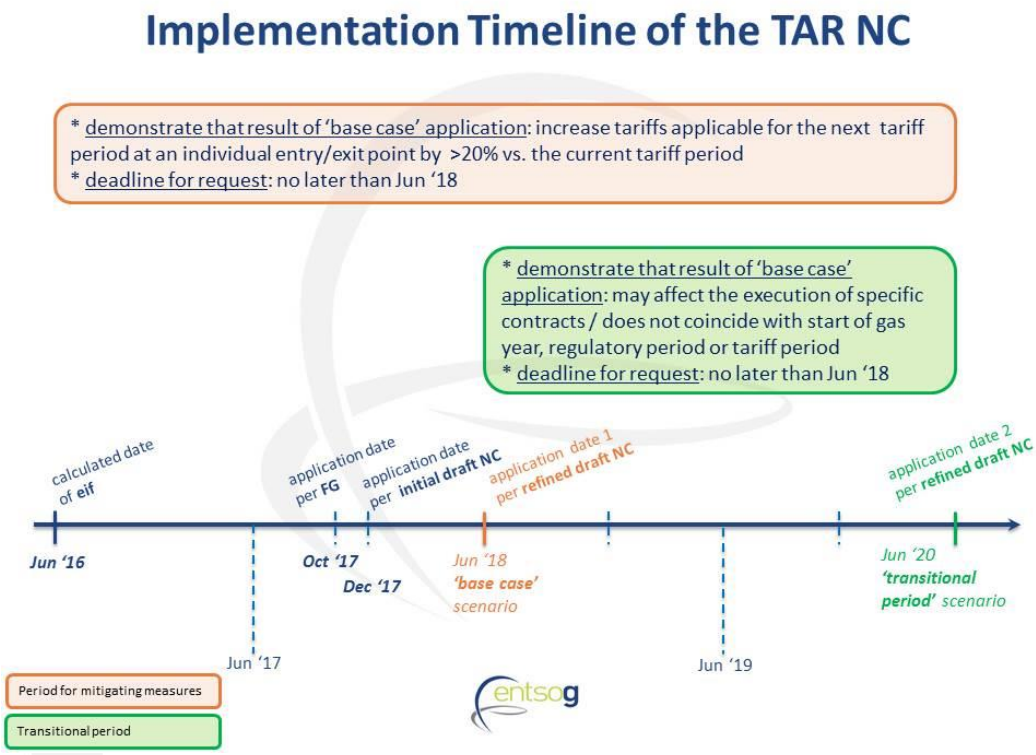

Figure 6. Implementation timeline of the TAR NC

Intention of the TAR FG

The wording or the TAR FG leaves room for interpretation since the reference to 'all contracts' can mean: (i) 'all the contracts concluded after the application date'; or (ii) 'all contracts concluded both before and after the application date'. To gather better understanding of the TAR FG intention, it is necessary to refer to the previous draft versions of the TAR FG provided below:

- 4 September 2012 version[18]: '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.'
- 16 April 2013 version[19]: '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.'

Also, note the evaluation of responses to consultation on the draft TAR FG (4 September 2012)[20]: 'Major number of stakeholders found the September 2012 FG to impact existing

[18] http://www.acer.europa.eu/Official_documents/Public_consultations/PC_2012_G_14/PC_2012_G_14_FG_Tariff_Draft.pdf.
[19] http://www.acer.europa.eu/Gas/Framework%20guidelines_and_network%20codes/Documents/outcome%20of%20BoR27-5%201_FG-GasTariffs_for_publication_clean.pdf.

contracts. Only 1 party stated that application to existing contracts can be done immediately. […] 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.'

ENTSOG's approach

ENTSOG has taken a decision to safeguard certain elements of certain existing contracts from application of the TAR NC and included the corresponding provision in the TAR NC (Article 50).

The intention of the provision is to ensure that the application of the TAR NC shall not affect the transmission tariff level stipulated in the fixed price contracts that were concluded before the date of the TAR NC entry into force. Hence, there are 3 necessary aspects:

(1) Time: under the 'existing' contracts we understand only the contracts made before the TAR NC entry into force.

(2) Extent: not all the contract would be exempted but only some parts of it, namely the transmission tariff level. This means that in principle, the TAR NC will apply to fixed price contracts – however, the parts of the contracts related to transmission tariff level will not be affected.

(3) Type: under those contracts we understand the fixed price contracts and not the floating price contracts since at the time of the conclusion of the latter it was foreseen that the price will change in future. Besides, there are mitigating measures in the TAR NC that can be implemented for such floating price contracts, namely measures aimed to reduce the impact of tariff increases of more than 20% due to the implementation of the TAR NC.

This wording of the TAR NC was amended as compared to the wording of the refined draft TAR NC[21] in order to better reflect the 3 aspects outlined above (time, extent and type).[22] In particular, the explanation for the introduced changes is as follows:

[20] http://www.acer.europa.eu/Gas/Framework%20guidelines_and_network%20codes/Documents/EoT_Draft%20Tariff%20FG_16_04_2013_for%20publication_TQ_clean.pdf.

[21] Article 50 of the refined draft TAR NC: 'This Regulation shall not affect the price foreseen in the contracts concluded before the entry into force of this Regulation, where such a price is calculated in a way other than as set out in Article 42(1)(a).'

(1) The aspect of 'time' is introduced by referring to entry into force date as the border separating the contracts into 'existing' and other ones. Those contracts that are concluded before the entry into force of the TAR NC (estimated as June 2016) are safeguarded.

(2) The term 'price' that was used in the first part of the sentence in the refined draft TAR NC is linked to the same term that was used in its second part which, in its turn, has the link to the 'payable price' concept by virtue of the cross-reference to Article 42 on payable price calculation. The TAR NC attributes a specific meaning to 'payable price' and links it only with capacity-based transmission tariffs. Following the consistency check made with regard to the terminology used in the TAR NC and with regard to the respective meanings attributed to a given term and associated language when such term is used, the aspect of 'extent' is now captured with the reference to 'the level of transmission tariffs' but not to 'price'. The explanation of interlinkage between the different concepts is given on the scheme below:

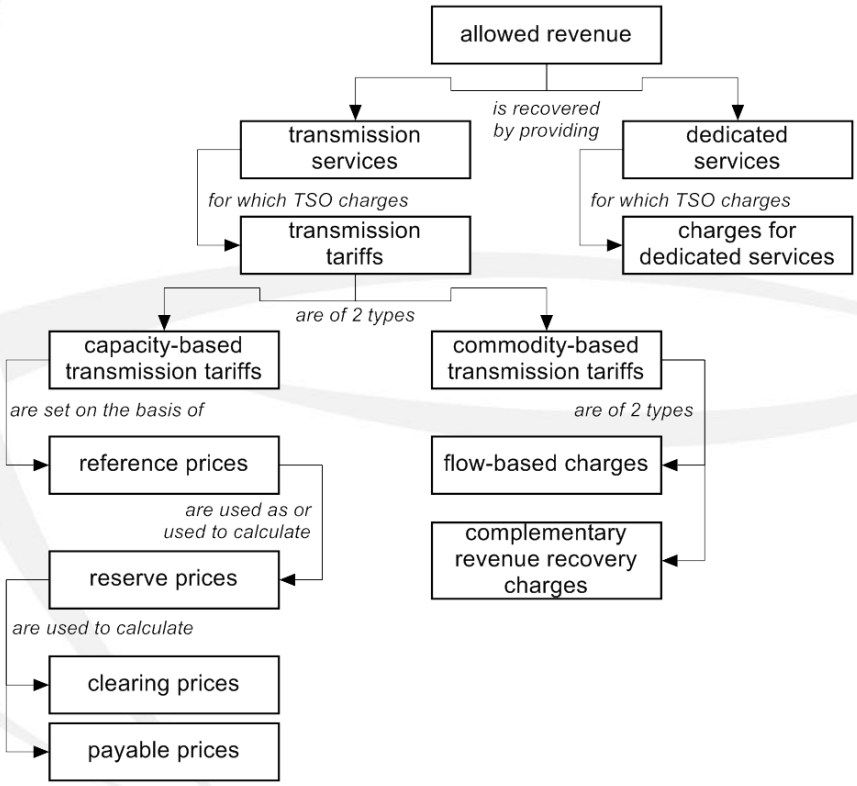

Figure 7. Interrelation of the terminology in the TAR NC

[22] Article 50 of the TAR NC for ACER reasoned opinion: 'This Regulation shall not affect the level of transmission tariffs foreseen in the contracts which are concluded before the entry into force of this Regulation where such contracts foresee no change of their level except for the indexation, if any.'

(3) The aspect of 'type' of contracts that are to be safeguarded (i.e. 'fixed price' contracts) is captured by the portion 'where such contracts foresee no change of their [transmission tariffs] level except for the indexation, if any'. Instead of mentioning 'fixed price' contracts, the refined draft TAR NC foresaw the linkage to floating payable price concept – effectively by referencing to 'fixed' indirectly by saying 'other than' floating. The term 'fixed' was not mentioned in this provision since there is a specific meaning attributed to 'fixed' price (i.a. including indexation and risk premium), and this meaning might not correspond to what is captured in the existing contracts as 'fixed' price. However, the linkage to 'floating' via a cross-reference does not work either for the same reason. There is a specific meaning attributed to 'floating' price (i.e. the reserve price when capacity may be used and the auction premium). Assuming that some 'floating price' existing contract does not foresee the requirement for auction premium, such contracts can also fall under the safeguard clause since indeed the calculation of such price would be 'other than' foreseen in the floating payable price mechanism stipulated by the TAR NC. For these reasons, neither the terms 'fixed' or 'other than floating', nor the cross-references to 'fixed' or 'other than floating' were used in the reformulated provision of the TAR NC.

Justification

The application of the TAR NC to the existing contracts undermines the principle of legal certainty and the protection of legitimate expectations, i.e. the right to act expecting that the existing laws will continue to apply. Previously, ENTSOG expressed its concerns with regard to applicability of the TAR NC to existing contracts, e.g. in ENTSOG's Response (12 November 2012)[23] to the Consultation on the Draft TAR FG (4 September 2012), ENTSOG's Working Level Paper (8 February 2013)[24] in response to ACER's Proposed Updates to the Draft TAR FG in the Open House Material (31 January 2013) and ENTSOG's Response (16 September 2013)[25] to the Consultation on the Draft TAR FG (18 July 2013).

The protection of legitimate expectations and respecting the principle of legal certainty needs to be recognised.

- 'The principle of legal certainty […] provides expression to an important assertion of the rule of law that 'those subject to the law must know what the law is so as to plan their

[23] 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.
[24] http://www.entsog.eu/public/uploads/files/publications/Tariffs/2014/TAR125-13_130208%20Initial%20Response%20to%20Proposed%20Updated%20Tariff%20FG_working%20level%20document.pdf.
[25] http://www.entsog.eu/public/uploads/files/publications/Tariffs/2013/TAR164-13_200813_ENTSOG%20Response%20to%20ACER%20tariff%20consultation_new%20online%20version_final.pdf.

action accordingly'. […] The principle significantly restricts the retroactive operation of the law, and forbids a measure from taking effect before its publication, except under limited circumstances.'[26]

- 'With regard to legal certainty, it is important both for individual citizens and business enterprises as well as other legal entities that they can assess the legality and legal effects of a planned action before it is initialised. Therefore, they ought not be exposed to the risk of burdensome, ex post changes to the legal rules.'[27]
- 'Among the other fundamental principles underlying Union law are the general principles of administrative law and the concept of due process: legitimate expectations must be protected […]'[28]

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 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'.[29]

Indeed, the application of the TAR NC to all the contracts (including the fixed price existing contracts) would affect the legitimate expectations of the parties to such contracts more than legitimate expectations of the parties to the floating price existing contracts since at the time when the contract was concluded, the parties to fixed price contracts did not anticipate the change in the transmission tariff level other than as foreseen by the contract itself (but not due to the application of the TAR NC). The other arguments for safeguarding the transmission tariffs level in the fixed-price existing contracts are:

- It cannot be concluded that the economic equilibrium existing before the entry into force of the TAR NC should be disrupted due to some overriding public interest. In other words, the harmonisation aim does not constitute such overriding public interest that justifies the possibility of disruption of the economic equilibrium achieved by the fixed price contracts.

[26] Herwig C.H. Hofmann, Gerard C. Rowe, Alexander H. Türk 'Administrative Law and Policy of the European Union', 2011.
[27] Ulf Bernitz 'Retroactive Legislation in a European Perspective – On the Importance of General Principles of Law'.
[28] Klaus-Dieter Borchardt 'The ABC of European Union law', 2010.
[29] 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-110/97 Kingdom of the Netherlands v. Council of the European Union [1997], Case C-376/02 Stichting 'Goed Wonen' v Staatssecretaris van Financiën [2005].

- The necessity of safeguarding the transmission tariff level in the fixed price contracts is recognising the proportionality principle. Since such contracts are concluded before the entry into force of the TAR NC, the only way to respect the initial will of the parties to such contracts with respect to the transmission tariff level foreseen in such contracts is to safeguard it. Moreover, the two alternative scenarios for implementation – mitigating measures and transitional period – are not suitable for fixed price contracts. The implementation of mitigating measure is not suitable since it is only possible to do so where it is demonstrated that the increase of the reference price by 20% – whereas the fixed price contracts do not foresee the possibility of the change in the level of the transmission tariffs save for the possible indexation. The implementation of transitional period is not suitable either – since the term of the fixed price contracts may go well beyond the deadline foreseen for the transitional period.

Commodity based charges in existing contracts

Some fixed price contracts (most of which are long-term) contain, alongside the fixed capacity-based transmission tariffs, also the fixed commodity-based transmission tariffs due to the same reasons as in the case of fixed capacity-based transmission tariffs.

In particular, such reasons include: (i) providing certainty for both parties to the contract on the applicable transmission tariffs throughout the whole life of the contract; and (ii) hedging of both capacity- and commodity-based transmission tariffs against subsequent changes. There are two ways in which such commodity-based transmission tariffs can be fixed (in both cases usually as a percentage of the actually transported gas). First, these fixed commodity-based transmission tariffs are set in the applicable price decree of the relevant NRA and the respective contract then stipulates these transmission tariffs (without any possibility of subsequent change) as foreseen by such decree. Second, the fixed commodity-based transmission tariffs may have been set also by the agreement of the parties and then fixed in the respective contract also without any possibility of subsequent change.

Therefore, if – due to application of the TAR NC – the parties to the contract are to change such fixed commodity-based transmission tariffs, the impact is similar as in the case of eventual change of capacity-based transmission tariffs – the non-observance of the legitimate expectations of the parties and discrimination in comparison with the floating price contracts. Such impact is based on the understanding that the potential application of the TAR NC to existing contracts affects more the legitimate expectations of the parties to fixed price contracts containing also fixed commodity-based transmission tariff than that of the parties to floating price contracts. This is mainly due to the fact that such fixed price contracts (which include also fixed commodity-based transmission tariffs) are usually long-term (in comparison to the floating price contracts) and one of the main reasons for the parties to enter into such fixed price contracts (and thus also one of their legitimate expectations) is price stability (based on fixed tariffs both for capacity and commodity

elements) during the whole term of the contract, unlike in case of floating price contracts. In the latter case, the parties do not have any of such legitimate expectations as they enter into such floating price contract bearing in mind that the price (both of its components: capacity-based transmission tariff and commodity-based transmission tariff) may change in the future and accept such risk when such floating price contract is executed. In parallel to justification provided above:

- There is also no public interest that would justify the disruption of the economic equilibrium of the fixed price contracts in their part relating to the fixed commodity-based transmission tariffs.
- The mitigating measures and transitional period are not suitable in this case as such contracts are mostly of a longer term and do not contain provisions for price variations.

Based on the foregoing, it is objectively justifiable to extend the safeguarding clause also for the level of fixed commodity-based transmission tariffs of the existing contracts.

b. One-off capacity reset

Stakeholder feedback on draft versions of the TAR NC

The one off capacity reset has been a request of a large group of stakeholders during the development of the TAR NC, and this was naturally noted in the responses to SSP consultation. The view of these stakeholders is that there is a risk for existing holders of capacity to see a brutal change in the tariff due to the changes in the regulatory framework and thus the possibility to reset the capacity is even more needed. Two respondents are of the view that in parallel of the TAR NC elaboration, an ambitious workgroup should be launched to tackle stranded assets issues.

Rationale

The mitigating measures envisaged in the TAR FG do not include provisions for the development of a one-off capacity reset. However, many stakeholders have included references to the possibility of having a one-off capacity reset option included in the TAR NC. The main reasons for this proposal are:

- 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 with the mitigation measures proposed in the initial draft network code are not sufficient.
- There are a number of benefits to a capacity reset option. These are:
  - 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 one-off capacity reset option, if included in the TAR NC, would have a number of impacts on TSOs and the market. A brief explanation of the below indicates why ENTSOG does not agree with including provisions in the TAR NC to provide stakeholders the ability to hand back their capacity.

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 past booking decision to the TSO and as 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 uncertain.

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.

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 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.

ENTSOG's approach

Taken all these concerns into consideration, a one-off capacity reset option has not included in the TAR NC.

The provisions in the TAR NC are focused on mitigating the potential rise in tariffs resulting from the introduction of the TAR NC. 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 TAR NC in line with those envisaged within the TAR FG.

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.

c. Stop-loss clause

Stakeholder feedback on draft versions of the TAR NC

Within the responses to the consultation on the initial draft TAR NC, we received feedback on the potential to include in the refined draft TAR NC the option for a continuous capacity reset. We received a more detailed proposal – based on the same idea of being continuous – as part of the responses to the SSP.

This proposal considers that, for contracts that have an increase in price above a predefined threshold, the parties holding those contracts can chose to hand the capacity back with no penalties.

Rationale

Although the proposal indicated above includes a more detailed explanation of the stop-loss provisions, ENTSOG believes that more detailed consideration of the proposal is needed before it could be included in the TAR NC.

Therefore, due to the fact that the proposal came up late in the time period dedicated for ENTSOG to develop the TAR NC, we propose not to include this provision in the TAR NC now; we think this needs further detailed consideration to allow us to better understand the details and then to consider what impacts this would have if included in the TAR NC e.g. how such a proposal would interact with the arrangements at a Member State level.

III: STAKEHOLDER SUPPORT PROCESS REPORT

1. CONTEXT

On 7 November 2014, ENTSOG published its refined draft TAR NC and the Analysis of Decisions Document and launched the public consultation in a form Stakeholder Support Process (SSP) in which users were asked whether they were able to support the proposed refined draft Network Code on Harmonised Transmission Tariff Structures for Gas ('refined draft TAR NC') and the process used to develop it. The SSP closed on 21 November 2014.

This report summarises the responses received to the SSP. ENTSOG received 28 responses, 10 of which came from national or European trade associations. A document with all non-confidential responses is available on the ENTSOG website.[30]

ENTSOG was recognised for running an open and responsive process and for the very high degree of stakeholder engagement which took place throughout the TAR NC development [see Figure 8 below], however many still had reservations.

Overall, the responses indicate that the refined draft TAR NC is not well supported by the market. Stakeholders continue to have concern with specific aspects in individual Chapters within the TAR NC, and hence explained why they could not support it in full or in part [see Figure 9 below].

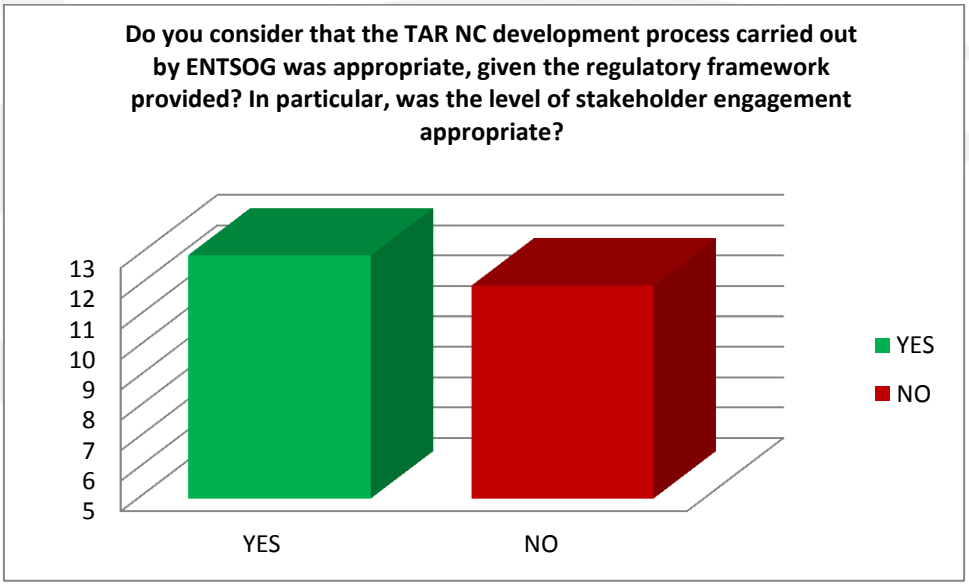

Figure 8. Support for ENTSOG's TAR NC development process

[30] http://www.entsog.eu/public/uploads/files/publications/Tariffs/2014/TAR0435_141121_SSP%20Responses%20per%20Question.pdf

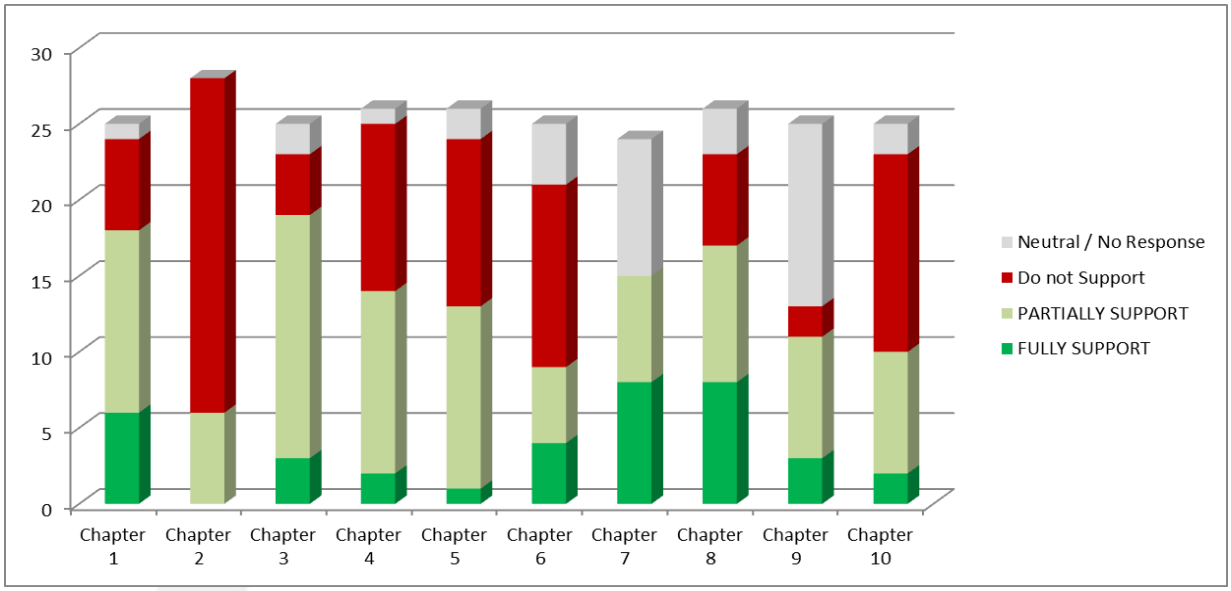

Figure 9. Support for the TAR NC per chapter

Respondents' views are set out as they were provided to ENTSOG. Next section does not offer ENTSOG's view on the merits of these arguments.

2. DETAILED VIEWS OF RESPONDENTS

Question 1: 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.

No. of respondents	25	**Yes**	13	**No**	12	**No Response**	

All respondents held the view that the network code development process that ENTSOG conducted was appropriate. Stakeholders commended ENTSOG for conducting the process to a high standard, ensuring a high level of transparency and stakeholder engagement. The web-streaming of stakeholder workshops was greatly appreciated by stakeholders who were unable to travel. Reviewing the responses at a high level however showed that only 52% agreed with this question, with 48% disagreeing. It was felt that there was inadequate engagement with regard to the issues raised by stakeholders and that many improvements suggested by stakeholders had not been adequately addressed. It was also suggested that 2 weeks was an insufficient time period for stakeholders to provide a comprehensive assessment of all the changes outlined in the refined draft TAR NC.

Question 2: Please indicate your support for Chapter 1: General Provisions (Articles 1 – 3)									
No. of respondents	25	**Fully Support**	6	**Partially Support**	12	**Do Not Support**	6	**Neutral/No Response**	1

72% of respondents either fully or partially supported this Chapter whilst 24% did not. Opinions expressed included the opinion that whilst improvements could be seen regarding scope and definitions, there was little attempt at harmonisation. A number of respondents felt that the term 'dedicated services' was not as clearly defined as they would like and that the Chapter lacks clarity. Another suggestion was that of implementing a 'descoped network code'.

Question 3: Please indicate your support for Chapter 2: Cost Allocation Methodologies (Articles 4 –20)									
No. of respondents	28	**Fully Support**	0	**Partially Support**	6	**Do Not Support**	22	**Neutral/No Response**	0

In relation to Chapter 2, 79% of respondents did not support it with the other 21% having partial support. Many aspects of the Chapter caused concern, most notably the absence of harmonisation, secondary adjustments, the transparency regarding dedicated services charges, double charging for storage, the approach to the calculation of distance and the CRRC charge. Some respondents felt there were too many options for cost allocation methodologies and that there may be room for interpretation when implementing the chosen cost allocation methodology.

Question 4: Please indicate your support for Chapter 3: Consultation Requirements (Articles 21 –23)?									
No. of respondents	25	**Fully Support**	3	**Partially Support**	16	**Do Not Support**	4	**Neutral/No Response**	2

76% of respondents either fully or partially supported this Chapter whilst 16% disagreed with this Chapter as drafted. There was support for the use of the postage stamp methodology as the default counterfactual, however some respondents felt that those TSOs using this methodology as their primary one should not be exempt from providing a counterfactual. It was recognised that improvements were made in relation to consultation requirements, however a number of respondents believed that the chosen cost allocation methodology should not only be reviewed every four years but also consulted upon. Some respondents also felt that is was unclear how often the cost allocation test should be carried out.

Question 5: Please indicate your support for Chapter 4: Publication Requirements (Articles 24 –27)									
No. of respondents	26	**Fully Support**	2	**Partially Support**	12	**Do Not Support**	11	**Neutral/No Response**	1

54% of respondents either fully or partially supported Chapter 4, whilst 42% did not. Whilst welcoming the publication of a tariff model, many respondents felt that this should not be limited to a 'simplified' one but instead should be provided with the full tariff model as is used by TSOs or NRAs as relevant. The obligation to publish binding multipliers and seasonal factors prior to the commencement of auctions was welcome; however stakeholders were of the strong opinion that binding reference prices should also be published prior to auctions and not just indicative ones. Sensitivity analysis was not seen as a suitable substitute to the provision of a full tariff model and a number of respondents also requested a longer notice period for the publication of binding tariffs.

Question 6: Please indicate your support for Chapter 5: Reserve Prices (Articles 28 –34)									
No. of respondents	26	**Fully Support**	1	**Partially Support**	12	**Do Not Support**	11	**Neutral/No Response**	2

50% of respondents either fully or partially supported this Chapter, with 42% disagreeing. The majority of respondents agreed with the delinkage of congestion and the level of multipliers and many also disagreed with an ex-post discount approach to interruptible capacity. Some respondents also disagreed with the proposed higher cap of 5 for multipliers and also with the proposed treatment of pricing of non-physical backhaul.

Question 7: Please indicate your support for Chapter 6: Revenue Reconciliation (Articles 35 –38)									
No. of respondents	25	**Fully Support**	4	**Partially Support**	5	**Do Not Support**	12	**Neutral/No Response**	4

36% of respondents either fully or partially supported Chapter 6, whilst 48% did not. A larger number believed that there should be an obligation on TSOs to use sub-accounts, not only for tracking but also in order to outline, amongst other items, how any over- or under-recovery for dedicated services is handled. The view was also expressed that the revenue reconciliation provisions should also apply to dedicated services in addition to transmission services.

Question 8: Please indicate your support for Chapter 7: Pricing of Bundled Capacity and Capacity at Virtual Interconnection Points (Articles 39 –40)									
No. of respondents	24	**Fully Support**	8	**Partially Support**	7	**Do Not Support**	0	**Neutral/No Response**	9

62% of respondents either fully or partially supported Chapter 7, with no respondent to this question disagreeing. The main issue causing concern is this chapter what the treatment of a VIP where a fixed price approach was used on one side of a VIP with a floating price approach being used on the other. The view was also expressed that the proposal for setting a VIP tariff to replace existing different tariffs with a single 'average' tariff works contrary to the economic and efficient use of the system.

Question 9: Please indicate your support for Chapter 8: Clearing Price and Payable Price (Articles 41 –42)									
No. of respondents	26	**Fully Support**	8	**Partially Support**	9	**Do Not Support**	6	**Neutral/No Response**	3

66% of respondents either fully or partially supported Chapter 8, whilst 23% did not. An overwhelming majority of respondents supported in introduction of a fixed price approach to pricing, however for the most part, they were also of the view that there should be an obligation of TSOs to provide a fixed price approach and not just an option.

Question 10: Please indicate your support for Chapter 9: Incremental Capacity (Articles 43 –47)									
No. of respondents	25	**Fully Support**	3	**Partially Support**	8	**Do Not Support**	2	**Neutral/No Response**	12

42% of the respondents to this Chapter on Incremental Capacity supported the proposed text with 8% showing a lack of support. This Chapter is further analysed in the SSP consultation on the Incremental Proposal.

Question 11: Please indicate your support for Chapter 10: Final and Transitional Provisions (Articles 48 –50)									
No. of respondents	25	**Fully Support**	2	**Partially Support**	8	**Do Not Support**	13	**Neutral/No Response**	2

52% of respondents did not support the text of this final Chapter whilst 40% either fully or partially supported it. Of those who did not support it, practically all expressed disappointment with the fact that their request for a one-off capacity reset has not been met whilst others also expressed concern regarding what they feel is an unequal treatment of capacity contracts and that the TAR NC should apply to all contracts in the same manner.

ANNEXES

ANNEX 1. LIST OF FIGURES

ANNEX 2. LIST OF 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)
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
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)
SJWS – Stakeholder Joint Working Session
SSP – Stakeholder Support Process
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
VIP – Virtual Interconnection Point