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For the attention of:
Mr Günther Oettinger, Commissioner for energy, EC
Mr Alberto Pototschnig, Director, ACER

Ref: PRE082-12

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Network Code on Capacity Allocation Mechanisms

Resubmission of the documents to European Commission and ACER

Dear Commissioner Mr Oettinger,

Dear Mr Pototschnig,

ENTSOG is today delivering a revised version of the network code for gas on Capacity Allocation Mechanisms (NC CAM), as requested by the European Commission (EC)'s letter sent on July 18th 2012.

In most respects, the revised NC CAM is in line with the Reasoned Opinion of ACER delivered to ENTSOG on June 5th 2012. It is accompanied by a supporting document detailing the changes made since the delivery of the original NC CAM on 6th March 2012 and, where relevant, how these fulfil the requests of ACER. As far as possible given the demand to resubmit no later than today, ENTSOG has consulted with market participants in order to seek views on these changes.

In four areas, ENTSOG has not modified the NC CAM to be fully in line with the ACER Reasoned Opinion:

- *Quotas for existing capacity:* ACER has requested the reservation of at least 10% of technical capacity for release in the medium term, in addition to the minimum 10% already reserved for short term release. The original NC CAM already exceeded the

requirements of ACER's Framework Guidelines (FG) by specifying that 10% of technical (rather than available) capacity is set aside for the shorter term. ENTSOG cannot support this additional reservation that ACER is now requesting, which would go far beyond the FG. Any further increase in reservation would be likely to have a damaging effect on the market by creating artificial scarcity, which would distort the formation of prices in auctions.

- *Quotas for new capacity:* ACER has requested that the rules on reservations applying to existing capacity should also apply to new capacity that is offered through open seasons or other processes. This implies that at least 20% of any newly built capacity should be reserved for a release after the incremental process, during the regular auctions without any evidence of associated demand. Perversely this "gold plating" requirement would make investments in infrastructure to support cross-border flow and trade of gas much harder, counter to ACER's intention, since those seeking incremental capacity, network users, TSOs and consumers would have to accept more risk. There is no scarcity in longer term capacity; infrastructure can be built to satisfy the requirements of network users and therefore an intervention that artificially inflates the requirement for capacity will only increase cost and risks for all actors.
- *Offer of unbundled capacity:* In its Reasoned Opinion, ACER requests that unbundled capacity arising from a difference in technical capacity at two sides of an interconnection point should be offered no more than one month ahead. ENTSOG considers that such a restriction on the offer of unbundled capacity would be unjustified as it would prevent TSOs from complying with their obligations under Regulation 715/2009 to offer maximum capacity to the market. Differences in the technical capacity at two sides of an IP may vary for a wide range of valid technical, legal, regulatory and commercial reasons and ACER's opinion that such mismatches can often be 'corrected' in the short term is, in ENTSOG's view, misguided.

ENTSOG recognizes, however, that investment may impact capacity availability and that to facilitate the maximization of bundled capacity there may be merit in limiting unbundled capacity release to less than investment lead times. Therefore the NC has been modified to specify that unbundled capacity should only be sold five years prior to the relevant capacity period. This is considered a fair compromise between the 15 years advocated in the original code and the one month requested by ACER.

- *Tariffs:* ACER requested that the "revenue equivalence principle", specifying that the average revenue from a flat yearly product should equal that from a profiled booking of shorter duration products, should be removed from the NC CAM. ENTSOG believes that this change would have a negative impact, as it would remove an important means of protecting network users against undue cross subsidy and TSOs against high levels of under-recovery of allowed revenue. While recognising that a future network code on Tariffs is the appropriate place to include longer term arrangements regarding tariff

structures, ENTSOG considers that it is crucially important for the NC CAM to include suitable interim measures, in order to avoid that the implementation of this NC is jeopardized by any delays in Tariff rule completion.

After discussions with ACER, with market participants and internally, ENTSOG has concluded that it is not able to make the changes requested by ACER in these four areas. Full reasoning for these conclusions is set out in the supporting document for the revised NC CAM. It is in ENTSOG's view critical that the NC CAM should not be further modified in respect of the above four points.

In addition to the issues highlighted above, I would like to reiterate ENTSOG's opposition to the sunset clause, which I raised in my letter of 6th March. This clause, which has been strongly opposed either by ENTSOG and network users throughout the process of developing and revising the NC CAM, continues to be of great concern due to the legal and economic impacts triggered by the implementation of such a clause and the strong doubts regarding its effectiveness in fostering effective competition and efficient functioning of the market.

Regardless of the above points and the sunset clause, ENTSOG is glad to deliver the revised NC CAM and considers, overall, that the revised code represents a positive step towards the achievement of a more integrated internal market. TSOs are already working hard, on a voluntary basis, towards the implementation of the NC CAM with the aim of achieving significant progress by 2014. ENTSOG welcomes the opportunity to work with Institutions, ACER and interested stakeholders during the next phases of the process.



Stephan Kamphues

ENTSOG President