

ENTSOLOG Response to Pilot Framework Guideline on Capacity Allocation - An EREG Public Consultation Paper Ref: E09-GNM-10-05

Executive Summary

ENTSOLOG welcomes the opportunity to draft the Pilot Network Code for Capacity Allocation on the basis of ERGEG's proposed Framework Guideline, once the European Commission has officially invited ENTSOLOG to start the respective work.

ENTSOLOG's views on the provisions regarding Capacity Allocation has not materially changed since our previous reaction to the "EREG principles: Capacity allocation and congestion management in natural gas transmission networks - Ref: E08-GFG-41-09" of last year.

We want to highlight that the Pilot Network Code process should not only test the development process but also takes into account the involvement of all parties in such process, and importantly the essential consultation aspects in an appropriate timeline.

To ensure that a Network Code with a highest possible quality can be drafted the Pilot Framework Guideline on Capacity Allocation must strictly limit its scope. Inclusion of indirectly linked topics such as technical aspects or information provision will drastically hamper the development and furthermore interfere in areas for which separate Network Codes are foreseen, therefore ENTSOLOG suggests the exclusion of such additional aspects. In addition to testing the process the Pilot Network Code on Capacity Allocation has to elaborate clear improvements for the entire European market. In this regard in some areas of the proposed current Pilot Framework Guideline remains ambiguous in a number of areas and indeed leaves fundamental questions open and still tends to have characteristics of a tool box e.g. for topics such as allocation methods.

It should be elaborated whether benefits resulting from any new provisions (also considering the implications on the TSOs) are realistic. Furthermore; the driver to introduce any new measure should be based on an economic benefit rather than using any underlining assumptions of benefits.

When defining proposals resulting in IT system changes; the NRAs should focus on how the provisions could be implemented. The viability for Network Operators to introduce them is crucial, therefore realistic implementation times must be considered. Many new measures require complex definition and installation processes requiring extensive resources and cost implications. Any implementation timelines become more evident when additional measures are developed in parallel

and subsequent (later) Codes are developed that need to be supported by an IT system. As such a full Impact Assessment should be undertaken as significant costs will be generated by such developments.

The TSOs must be assured that full recovery of any costs arising through the development and implementation of any new provisions with regards to the Framework Guideline/Network Code are provided for by the respective NRA.

With the development and introduction of effective financial incentives for TSOs an environment can be established in which capacity is marketed in an optimal manner providing for a balanced and appropriate risk / reward framework.

Furthermore, it must be ensured that existing capacity contracts between Users and TSOs remain unchallenged under all circumstances as legal requirements have to be respected.

One of the most crucial steps in the process is a constructive market consultation as the aim is to improve the conditions for Users of the Transmission system. This suggests that their views must be recognised fully, which should also include any justification of selected provisions or indeed any rejections of Stakeholder positions.

General ENTSOG Position

Balanced level of detail

The proposed draft Pilot Framework Guideline on Capacity Allocation has the objective of describing the conditions, and sets the basis for a European wide harmonisation of cross-border Interconnection Points and points between two adjacent systems. Therefore ERGEG should find a way by which a well-balanced level of detail for such a harmonisation can be achieved. We welcome that ERGEG is conducting the present consultation which aims at amending the draft Pilot Framework Guideline as appropriate, whilst taking into account Stakeholder feedback.

On the one hand the provisions must provide sufficient flexibility to reflect specific market situations and evolution as appropriate. The results of the recently conducted ENTSOG Online Survey with regards to Capacity Allocation Methods and Standard Capacity Products; indicates the heterogeneity of the market needs. On the other hand the freedom for NRAs to define individual measures bears the risk that a counterproductive patchwork situation may occur across the European Union.

Furthermore, it is crucial that the guidelines are clear enough to ensure legal and contractual discussions are solved prior to implementation. NRAs must ensure that TSOs are not unduly exposed to conflicting contractual, legal as well as regulatory obligations by the implementation of the provisions and would seek such assurances.

Range of provisions

We welcome that the draft Pilot Framework Guideline has sought to bring clarity on some aspects but the present draft leaves some uncertainty for national regulators to define the arrangement that a Network Code should aim to deliver during a transitory period and subsequently towards the “target model”.

ENTSOG recognises that ERGEG has considered the markets objection to the “tool box approach” as suggested in ERGEG’s CAM/CMP Principles Document published in January 2009. Nevertheless, in the draft Pilot Framework Guideline alternatives for NRAs on how capacity access can be organised is still open as to which model would bring the best outcome to attain the suggested “target model” (e.g. should auctions or pro-rata/OSP be applied in congested systems). Therefore, ENTSOG is of the opinion that for sustainable progress in compatible capacity allocation procedures all NRAs should try to find a compromise amongst themselves and provide a clear view.

ENTSOG is of the opinion and strongly suggests that aspects such as data exchange, maintenance, secondary capacity, nomination arrangements, definition of standardised communication procedures, transparency requirements, capacity calculation and booking platforms should be developed within subsequent Network Codes.

Impact Assessment

A major aspect to be considered is how such proposed principles could be implemented as this will be one of the most crucial parts of the process. The current proposals give no realistic indication of anticipated implementation timescales. Legal, regulatory and contractual barriers should be contemplated and the necessary time to resolve these issues will be essential. As detailed in the GTE response to ENTSOG’s CAM/CMP Principles Document in January 2009 (and subsequent dialog) the TSOs strongly underline the importance of conducting a sound Impact Assessment. In addition to the identification of possible options to achieve the envisaged result the economical benefits to be realised for all system Users on both a short and long-term basis should have been elaborated, as it is not clear if all aspects are advisable under all situations and at the same time.

In ENTSOG’s view the Impact Assessment conducted by ERGEG should have focused more on the economical aspects addressing the above mentioned criteria adequately; rather than as it would appear justifying why the NRAs consider the suggested provisions are needed and should therefore be included in the Pilot Framework Guideline.

Costs

Regardless of any specific suggested provision, it must be highlighted that implementing any new measure will result in significant costs and a requirement for additional resources for the TSOs. Prior to the introduction of complex IT solutions, detailed processes must be developed and agreed. Once implemented the administration of new processes will also necessitate additional resources to manage the new arrangements. Any costs associated with the development, implementation and operation of new arrangements is to be fully recovered as appropriate by the TSOs.

ENTSOLOG would therefore like to see assurances from ERGEG that this point is included directly in this (and any subsequent) Pilot Framework Guideline(s).

Development process

With regards to this consultation, ENTSOG expects that the responses provided by all Stakeholders will be reflected adequately in the final Pilot Framework Guideline and that ERGEG (acting as ACER) in line with Art. 10 paragraph 3 of Regulation EC/713/2009 will indicate how the responses received during the consultation were taken into account and where responses were not taken into account will provide such reasoning.

Furthermore, although Art. 3 paragraph 6 of Regulation EC/715/2009 defines a period of at least two months as the period for consultation. A sufficient time period to consult upon a guideline which sets the basis for European wide rules should be chosen that is proportional to the significance of the subject area and its possible implications on the European gas market. Moreover, it must be stressed that according to Art.6 paragraph 3 of Regulation EC/715/2009 that two months are considered as a minimum consultation period (“... consult ENTSOG and Stakeholders on Framework Guidelines during a period of no less than two months”).

The views of all parties should be considered and appropriately reflected in the final revised version. ENTSOG is interested in understanding if Stakeholders opinions play a role (and to what extent) in revising the draft guideline, when for instance a majority of the Stakeholders do not favour or indeed reject some or all of a proposal.

Although ERGEG and the European Commission had decided to separate the processes to create rules for Capacity Allocation and Congestion Management into two different streams, ENTSOG would like to reiterate that these issues are very much interlinked. Therefore, ENTSOG would have welcomed that both Capacity Allocation and Congestion Management had followed the Framework Guideline / Network Code process as defined in the Third Package. The application of extensive consultation throughout the entire process actively involving all Stakeholders seems beneficial for both subject areas.

An ERGEG response

ENTSOLOG would like to invite ERGEG to submit an open, written reaction to this response explaining the NRAs views on the provided positions before the Pilot Framework Guideline is finalised. This should also encompass an explanation of what positions were taken into account and for what reasons others may not have been accepted. Such a written explanation would assist ENTSOG as we must understand the reasoning behind all measures in order to transform them into appropriate Network Code Provisions.

Response to ERGEG's consultation document in detail

1. General

- *What are your main views of the proposed measures? Do you think Network codes based on these guidelines can achieve non-discriminatory and transparent capacity allocation and the fulfilment of the capacity allocation principles set out in the Third Package of Energy legislation?*

Please refer to the paragraphs above. ENTSOG is of the opinion that a balanced level of detail should be formed by ERGEG in the final Framework Guideline. We would recommend on not leaving too many alternatives for respective NRAs to implement measures on an individual basis as this will counteract the harmonisation to be achieved. The consequences for the market by applying the suggested measures are not known. ERGEG should conduct an appropriate Impact Assessment elaborating on economic impacts rather than concentrating on the justification of the proposed pilot Framework Guideline. Finally, in order to allow a coherent implementation of the Network Code the compatibility of provisions has to be ensured. In this respect, ERGEG/ACER will have a fundamental role in providing guidance to respective NRAs to create the conditions to implement at a national level the Network Code contents.

- *What are your views of the implications of each for the measures for sector in which you operate? In particular, we are interested to understand the nature of the implications in a qualitative way (and, if available, any quantitative evidence on costs and benefits would be extremely welcome).*

Qualitative implications of each measure are explained below when providing a position on all provisions. However, as stated beforehand a cost benefit assessment should be conducted. We recognise that such an assessment is difficult to accomplish in the time given but there should be an economical analysis of benefits against the costs of the proposed measures.

2. Scope of the Arrangements

The ERGEG Impact Assessment document refers to a "Target model and interim steps" in which it is explained that "Before implementing the target model, interim steps might be needed at some interconnections points". ENTSOG would like to understand the process for selecting the interconnection points for which ERGEG considers interim solutions are needed. Secondly the TSOs are interested in understanding the criteria used to identify and conclude on those points.

- *Do you support the scope of the draft framework guidelines proposed?*

The TSOs agree and welcome that the provisions in a Network Code should "apply to cross-border interconnection points between two or more Member States as well as interconnections between adjacent entry-exit-systems within the same Member State". If 'scope' refers to "what is in scope of the arrangements" then ENTSOG is of the opinion that the draft Pilot Framework Guideline currently seeks to cover too many areas for which separate Network Codes are envisaged.

In addition, the scope should be referred to capacity available for allocation by the TSOs and not to the capacity as calculated by the TSOs which might be in part already allocated. In this view, ENTSOG suggests refining the second paragraph of the section F1.1 by modifying the sentence as follows:

“This Framework Guideline applies to capacity as *available for the allocation* ~~calculated~~ by transmission system operators. “

3. Existing contracts

ENTSOLOG understood that in response to Stakeholders questions during the workshop on 2nd February 2010, ERGEG clarified that existing contractual rights will not be affected by the introduction of these proposed Pilot Framework Guidelines and subsequent Network Codes. We are of the strong position that this provision contained within the Guideline should be deleted. If it refers to amendments of Access Conditions or National Codes then it is understood that the TSOs will immediately change provisions which are not in line with the Network Code. However, if contracted capacity could in any sense be affected, ENTSOLOG cannot accept this article and furthermore it could lead to contractual amendments which may lead to disadvantages for both TSOs and network Users.

- *What are in your views of the challenges that existing contractual arrangements create with regard to capacity allocation? What would be the possible ways to overcome those challenges?*

It is important to note that existing contracts were concluded under the rules overseen / provided by NRAs and Member States at that time of signing. The framework guideline concerning CAM should clearly state that Capacity Allocation of available capacity is meant, rather than the re-allocation of already contracted capacity. In addition, the application of efficient Congestion Management Procedures equally applied to all IPs throughout Europe should lead to the freeing up of unutilised capacity which can then be offered to the market.

However, ENTSOLOG’s understanding is that this provision is referring to “relevant clauses” in Access Conditions or Network Codes and not in the amount of booked capacity. Amending the TSOs Access Conditions (Codes) will require significantly more than six months to efficiently introduce any such changes. Some Member States have strict governance around changing Code arrangements often requiring a national consultation to introduce a change unilaterally. This needs to be considered in the context of the short timeline proposed by the guideline. In many cases these amendments will imply not only changes to Network Codes but also relevant modifications to IT systems which, due to the likely considerable amount of resources involved, can be started only when TSOs will be certain about the outcomes of the Comitology process.

- *Should relevant clauses in existing contracts be amended if they contradict the new legally binding set of rules (which will be based on the framework guideline) in order to create a level playing field for all shippers?*

If this provision is referring to relevant clauses in Access Conditions or Network Codes then these should be amended where appropriate. If ERGEG is referring to the amount of contracted capacity then ENTSOLOG strongly suggests deleting the provision. Modifications in existing contractual arrangements could also create undue financial risks on the TSOs and have substantial impacts on transmission tariffs. For this reason, only “evergreen clauses” can be changed without generating these risks and incurring legal challenges / hurdles.

- *Experts have discussed if existing / legacy contracts should be questioned if certain conditions are met, in order to free up capacity, which would then be reallocated. Do you consider such a proposal appropriate?*

ENTSOG does not consider such a proposal as appropriate as it would mean the retroactive application of a legal provision (via a final binding Network Code), especially as it is not clear how the strict legal requirements for such a retroactive application could be met. Furthermore it would expose the parties involved to substantial legal risks (infringement of ownership rights etc.) and could endanger planned funding of TSO investments based on already concluded long-term capacity contracts.

The Pilot Framework Guideline should focus on allocating, not re-allocating capacity. Therefore ENTSOG suggests deleting this article.

4. TSO cooperation

- *Is the scope of the identified areas for TSO cooperation appropriate to ensure efficient allocation of cross-border capacity in order to foster cross-border trade and efficient network access?*

In order to ensure an optimal operation of the Transmission networks ENTSOG agrees and supports that all necessary information should be exchanged and maintenance between adjacent TSOs should be coordinated. However, ENTSOG is of the opinion that such provisions are outside the scope of this Pilot Framework Guideline for Capacity Allocation. In Regulation EC/715/2009 there are twelve Code areas defined. Many of these are directly titled with areas that are included in the draft Pilot Framework Guideline. Another reason for this Framework Guideline to focus on Capacity Allocation and not on technical issues is the purpose of testing the Network Code development process according to the provisions foreseen in the Third Energy Package. This purpose was highlighted by the Chairman of the European Regulators Group for Electricity and Gas, Lord John Mogg, in the Madrid Forum XVII on 14/15 January 2010. In addition, ENTSOG considers that an extended content could prevent the successful testing of the Network Code development process.

Nonetheless, it is not evident how the suggested technical measures are able to create extra capacity. However, to shape feasible work areas ENTSOG considers that technical issues have to be discussed, but in parallel Network Codes.

5. Contracts, codes and communication procedures

- *Should a European network code on capacity allocation define a harmonised content of transportation contracts and conditions of access to capacity?*

ENTSOG agrees that this should be the purpose.

- *Should a European network code on capacity allocation standardise communication procedures that are applied by transmission system operators to exchange information between themselves and with their users?*

ENTSOG is of the opinion that these provisions should be co-ordinated but not developed within the Pilot Framework Guideline on Capacity Allocation.

6. Capacity products

- *What are your views of our proposals regarding capacity products?*

This provision should clearly deal with firm capacity as at this stage a respective definition for interruptible capacity on an EU level is still to be elaborated. On the one hand, to best reflect the characteristics of individual networks, interruptible capacity is currently calculated, offered and applied very differently by TSOs. On the other hand the value and role of interruptible capacity may drastically change depending on what kind of Congestion Management Procedures is implemented, the pricing of products and associated incentive arrangements.

For the Pilot Network Code, this provision should focus on firm capacity and exclude interruptible capacity.

The provision on prohibiting the use of capacity for transit purposes should be deleted. In contrast to cross-border flows of electricity, transiting gas flows from the source to their final destination through one or more Member States are a matter of fact and necessary for the base-load consumption of the destination area, especially in the context of security of supply. To that extent this is not meant for trading on the hubs in the transit countries. A prohibition of transit products which are also possible in an entry/exit system would therefore not lead to increased liquidity on hubs.

It would however prevent the TSOs from offering additional products to shippers who know that they, to the extent of their contractual obligations in the destination market area, would like to use the respective transmission system for transit purposes only without trading on the hub in this system to optimise their capacity portfolio. The same applies to hub-to-hub trade between two non-adjacent market areas.

In this context ENTSOG would like to point out that the question of how to interpret the European legislation with regard to transit gas flows is at the moment pending before the European Court of Justice. This is the only competent authority to decide in this matter and which therefore does not reside within the remit of ERGEG/ACER to decide upon in a framework guideline.

- *Do you agree with the idea of defining a small set of standardised capacity products that do not overlap?*

ENTSOG agrees that a “small set of standardised firm” capacity products should be defined in a Network Code. The bigger the set of products then the more complex the IT system will need to be implemented by the TSOs and used by market participants. It must be ensured that a “small set of standardised **firm**” capacity products is found which can satisfy the needs considering the evolving commodity market. The results of the ENTSOG Online CPC survey provides a first picture on how this set could look like e.g. daily, monthly and yearly (gas year) were preferred by respondents.

- *Should TSOs offer day-ahead and within-day capacity products?*

A day-ahead product is a daily product with the minimum lead time of one day and is not comparable to a within-day product which is sold and used at a certain time period within a day.

Those two different issues should therefore not be discussed in the same question (or at the same level). In transmission systems where within-day capacity products are deemed useful according to the level of market evolution, e.g. commodity trading and balancing, TSOs should offer such a respective service. However, it should be avoided that such a product must be introduced where there is no such need or cannot effectively be implemented. The offer of a within-day product should be an option but not an obligation.

- *Should European TSOs offer the same capacity products at every interconnection point across Europe?*

To make harmonisation effective it is mandatory to offer identical **firm** standard products throughout Europe.

- *Should TSOs offer interruptible capacity also in cases where sufficient firm capacity is available?*

If interruptible capacity should be offered where sufficient firm capacity is available fully depends on how interruptible capacity is treated.

If the tariff of an interruptible service is below the price for firm services, offering both services in parallel would undermine firm capacity offers. Users would not book firm capacity which is required for the TSOs to secure bookings and generate revenue.

Where the same tariff is charged for firm and interruptible services; Users would not book interruptible but only firm. Both could be offered in parallel even in case sufficient firm capacity is still available, but interruptible services would unlikely to have any added value until the firm is no longer available.

If the quantity offered is limited (to achieve guaranteed maximum interruption levels, or to respect maximum historical probability of interruption) then interruptible clearly competes with firm capacity, as the actual probability of interruption is directly derived from the available firm quantity (and the known remaining Interruptible on sale). As long as firm is still available, the probability becomes a function of the available firm and the contracted interruptible capacity. The probability of not being interrupted will be less but close to 100% and the price should also draw near to the one of the firm capacity.

It is important to point out that the question cannot be answered without a sound definition of the interruptible product and emphasising that this topic is currently out of scope for the Pilot Framework Guideline.

Although ERGEG did not raise this point through a specific question, ENTSOG would like to underline that Regulation 715/2009 (Art. 2 “Definitions” paragraph 1 point 3) permits the expression of capacity in volume; or in an energy unit value. In this view, the Framework Guidelines should be in line with European legal provisions.

7. Interruptible capacity products

Although ERGEG did not ask any question regarding this provision in their instructions to comment on the draft Pilot Framework Guideline, ENTSOG would like to stress once more that before Standard Capacity Products can be developed a sound definition of interruptible capacity should be established within European gas markets.

ERGEG should prescribe in detail what interruptible nominations mean. ENTSOG would like to understand if the NRAs intention is to implement an 'add-on' product after all firm and interruptible capacity is sold out and after respective Congestion Management Procedures are applied. Allowing "free" nominations after both firm and interruptible capacity have been allocated creates an additional class of interruptible products. In turn the product offers a high degree of flexibility to customers and ERGEG should indicate to what extent Users should be charged a premium on the regulated rate. This would be essential in order to provide an incentive to the Users to properly forecast their bookings of firm and interruptible capacity products.

ERGEG needs to provide a clear definition of these products in order to allow ENTSOG to formulate Network Codes that regulate the marketing and operation of these products. In the advent of potential oversubscription provisions the definition should also cover firm capacity. Oversubscription provisions would entail an interruption of firm capacity in the case of congestion.

8. Breakdown and offer of capacity products

- *Should a reasonable percentage of the available capacity be set aside for firm short term capacity products?*

ENTSOG's Online Survey discovered that the majority of the Users are in favour of reservations in this regard. It will be the task for the NRAs to define this percentage of firm capacity for short term use. ENTSOG suggests concentrating on congested points which will limit the risk of unsold capacity. Still, the guaranteed return on the investment may change if short-term capacity is not consistently taken-up by the market. Imposing a fixed share of reserved capacity affects the regulatory scheme of TSOs, existing contracts, and investment decisions. Any such reservation and the risks included have to be properly reflected within the tariff calculation.

ERGEG should make clear how these consequences are to be designed in a Network Code. This is essential for ENTSOG to elaborate further in the Network Code.

9. Cross-border products

- *Recital 19 of Regulation (EC) 715/2009 states that gas shall be traded independently of its location in the system. Do you think that cross-border products will facilitate the exchange of gas between virtual hubs of adjacent markets?*

ENTSOG and Stakeholders need to understand ERGEG's definitions of the proposed cross-border products. In any case we are strongly of the opinion that such services should be an option to be offered to the market as an additional service. Additionally, we cannot accept this provision if TSOs are obliged to apply combined Hub-to-Hub services to already contracted capacity. If separate existing bookings are abolished and existing contracts are challenged, this may lead to a risk which TSOs cannot bear. Secondly, if contracts are terminated it would not be clear to which of the original holders the combined capacity should be allocated. This would lead to discrimination among Users. Furthermore, competition among suppliers would be impeded if their capacity is withdrawn.

Not only competition between Users would be affected, but most of all the competition between import routes is endangered. Non-European parties could not be forced to sell their gas only at a

Hub. If their old contract is abolished, they might use transport options where no such regulations are in place and the TSO would not therefore be able to generate any revenue.

In addition this measure must be considered carefully in terms of prioritisation and implementation order (starting with standard products, allocation method, etc.) in relation to all other aspects to be considered for development. If the entire market can expect an economical benefit out of said procedure it should be carefully assessed in a specific Impact Assessment beforehand. It should be considered if the required efforts will outweigh the potential benefits. ENTSOG is not of the opinion that it is a task of the TSOs to limit trading locations by offering only respective transportation services. In any case trading shall not be limited to virtual trading hubs only i.e. virtual and physical hubs should be treated equally and existing supply delivery points have to be respected (if they are at the border).

- *Do you support full bundling of cross-border capacity into one single capacity product, including a limitation of the possibility to trade at the border so that gas is traded at virtual hubs only in order to boost their liquidity?*

With measures such as bundling; congestions still need to be removed. It does not seem clear to ENTSOG what extra benefit from bundling can be compared to combining capacity. Both methods have the goal to facilitate hub-to-hub trading. It must be stressed that with such measures the overall capacity offered (bundled) as part of this arrangement might be reduced at specific interconnection points.

For the time being, ERGEG should describe in detail how combining and bundling can work on a European level and who will be parties to the contracts after having developed the respective proposals.

- *Do you consider combined products to be an appropriate interim step towards bundled products?*

ENTSOG does not share the view that bundled products can lead to more benefit to Users. The TSOs would like to suggest that combining products is an option for Users in parallel to trading gas directly at the border.

- *Should capacity at two or more points connecting the two same adjacent entry-exit systems be integrated into one single capacity product representing one single contractual interconnection point?*

As already explained above, the extra benefit compared with combined products is not clear and may depend on the zone structures. Furthermore, it must be pointed out that point specific nominations are needed by the TSOs to operate the Transmission systems. The coordination of gas flows between adjacent networks especially in cases where several physical points are present at a border with certain distances between them will become unnecessary difficult.

ERGEG suggests that “one single contractual interconnection point” is to be introduced at borders. ENTSOG strongly suggests in not focusing on the contractual situation, obliging the TSOs to apply only one contract may indeed prevent the goal. Moreover, for the involved parties such a suggestion prohibits the identification of responsibilities and obligations which are currently clearly defined by

the contractual structures. Furthermore, the number of contracts underlying the principle of cross-border capacity offers (through e.g. common platforms) is not relevant to find efficient ways for such TSO coordination. Finding effective solutions may also be done by coordinated procedures irrelevant of the number of contracts; obliging the TSOs to use one single contract may pose a barrier.

Capacity contracts represent the core business of the TSOs and already existing examples prove that capacity contracts may very well remain an integral part of each TSOs business when both use one platform for offering their respective capacities. Therefore ENTSOG does not see the necessity to combine various entry/exit points of different TSOs into one contract.

10. Capacity allocation

With regards to the provision on First Come First Served, ERGEG foresees this allocation method for within-day capacity. ENTSOG is of the opinion that this could be applied when the market situation suggests such an implementation of this measure and it should therefore not be obligatory.

- *Should auctions be the standard mechanism to allocate firm capacity products?*

ENTSOLOG strongly highlights that eventually a clear picture for capacity allocation has to be developed in the future if compatibility is sought and an efficient market is to be delivered. The results of the ENTSOG CPC Online Survey illustrates that no single opinion in this regard exists throughout the market at least for the time being.

- *What would be the implications of using auctions for capacity allocation in the markets in which you operate? Is there any way in which auctions can be designed to overcome potential issues resulting from their introduction in those markets?*

This cannot be answered by ENTSOG as we do not represent Users and our goal is to find provisions with regard to the entire market. This should be subject to a proper Impact Assessment.

- *Do you support pro rata allocation as an interim step? If yes, should pro rata allocation only be used in given situations or market conditions?*

Leaving room to select and implement one of several different methods will result in a patchwork solution and not allow harmonisation at this point. If different methods could be considered as an intermediate step depends on criteria of when pro-rata is chosen. However, the best allocation mechanism could also be a composition of different allocation methodologies (e.g. pro-rata/OSP for long-term products and Auctions for short-term products) taking into account market structure or capacity duration.

11. Re-Marketing Booked Capacity

It should be clear, that the marketing of primary capacity must have priority over the marketing of secondary capacity since this ensures the revenues for TSOs; which are either used to remove congestions or to lower tariffs. With regards to secondary capacity trading ENTSOG would like to understand if payment flows should be transacted directly between Users or via the TSOs as this is not clear.

- *Should the network code define harmonised firm secondary capacity products and anonymous procedures for offer and allocation of secondary capacity products in line with those on the underlying primary capacity market?*

TSOs can only facilitate but not act in its original role as TSOs on the secondary capacity market. ENTSOG is of the opinion that TSOs cannot develop definitions for products which are in the possession of entities which sell them on the secondary market. Limiting trading on the secondary market is not compatible with the trade freedom of the original capacity owner. In this perspective, the Framework Guidelines and Network Code should not rule how products are sold on the secondary market.

In the Comitology Guideline on Congestion Management a provision with the same title (but different content) is included. This duplication should therefore be avoided as it may lead to misunderstandings.

12. Booking platforms

- *Do you think that all capacity connecting systems of two adjacent transmission system operators should be allocated via a joint, anonymous, web-based platform?*

As already indicated above ENTSOG is of the opinion that booking platforms are not in scope of the Pilot Framework Guideline on Capacity Allocation. The development of booking platforms should not be an obligation but could be offered as an additional possibility to contract capacity. Existing examples already prove that no obligation is necessary to develop such platforms.

However, contractual, operational and legal issues would need to be discussed beforehand also regarding the conclusion of capacity contracts and especially regarding questions surrounding company law. The details of how platforms could be organised must be made clear as establishing such tools would generate high costs and associated effort. Finally installing such complex processes would require an appropriate lengthy time period. ERGEG could not reasonably expect that platforms could be established quickly in one or two years (for example).

- *Do you agree that joint allocation of primary and secondary capacity products on these platforms would strengthen capacity markets?*

The mixing up of the regulated business of TSOs with the non-regulated one of capacity trading poses major difficulties. Allowing the allocation of Capacity through centrally managed hubs may have implications in relation to leveraged assets through financial institutions and the ability to generate revenue. Additionally the IT interfaces of platforms for trading primary and secondary capacity are not comparable. The effect of joint allocation is hardly predicable at this present stage. In any case it is essential that there is a clear order for the allocation of revenues from a joint and homogenous marketing of primary and secondary capacity.

ENTSOG would like to thank ERGEG for the consultation on the above topics.

For any questions and especially to share views on this reaction please contact info@entsog.eu or the ENTSOG staff.