

## **ENTSOG Position Paper on ERGEG Congestion Management on European Gas Transmission Networks – Recommendations for Guidelines Adopted via a Comitology Procedure Ref: E09-GNM-10-07**

### **1 Executive Summary**

ENTSOG welcomes the opportunity to comment on ERGEG's Comitology Guideline on Congestion Management E09-GNM-10-07. We are supportive of the CMP Guidelines' objective to outline principles that may lead to an increase in the availability of unused capacity and would like to reiterate that this response reflects our previous responses to the CAM/CMP Principles which were provided via various written responses and meetings during 2009.

It must be ensured that in developing the Congestion Management Guideline through a separate approach in advance of, or parallel to, the development of the Network Code for Capacity Allocation (CAM) the multiple linkages between the two areas are considered. Presuming that the CAM Network Code meets the standard set by the CAM Pilot Framework Guideline and an efficient allocation of capacities is achieved, the allocation of additional capacity through the CMP Guidelines could potentially interfere with the aspects of the CAM Network Code. Therefore, formulating a CMP Guideline either in one comprehensive stream or after the CAM Network Code is defined would be preferable in this respect. Furthermore, during the definition process any conflicts with other Code areas such as Tariffs, Balancing or other areas must be avoided.

ENTSOG's view is that the most efficient approach to achieve a well functioning and balanced redistribution of capacity in case of contractual congestion is by introducing clear, well functioning incentive mechanisms for TSOs on the basis of an appropriate risk/reward assessment.

It should be elaborated whether benefits resulting from any new provisions are realistic. Furthermore; the driver to introduce any new measure should be based on evident economic benefit rather than using any underlying assumptions of benefits. When defining proposals resulting in IT system changes; it should be considered 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. Implementation delays become more evident when several additional measures are developed in parallel that need to be supported by ICT systems. As such a more comprehensive Impact Assessment should be undertaken as significant costs will be generated by such developments.

It must be assured in the CMP Guideline that full recovery of costs arising through the development and implementation of any new provision with regards to the Comitology proposal is 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 managed in an optimal manner providing for a balanced and appropriate risk / reward framework.

A precise framework for the NRAs' coordination and decisions on cross-border IPs would be welcomed. ENTSOG considers that the CMP Guideline should describe a harmonised approach for Europe. The CMP mechanisms should be defined appropriately including the underlying criteria to be followed for each one. The provisions should be applied at all times (regardless of the level of congestion) and should be identical for all IPs in Europe.

We strongly support the move to harmonisation within Europe, but the guideline should include an assurance that the TSOs' revenue streams concerning CMPs are appropriately protected and any such improvement is not introduced that expose the TSO to inappropriate risks; nor the reduction in their revenues. ENTSOG would therefore request that this principle is included directly in the Guideline.

## 2 General Views

### 2.1 Observation

It is crucial that the recommendations developed do not interfere (but complement) the Framework Guideline/Network Code on CAM or any other areas for which a separate Network Code is foreseen, e.g. capacity calculation, emergencies, balancing or capacity charges.

It is not always evident how the work streams identify what should be subject of what particular area. Principles of the CAM Framework Guideline e.g. capacity surrender, capacity calculation, interruptible nominations are also included in CMP Guideline. Furthermore, ENTSOG questions if interruptible capacity is a CAM or CMP issue? It is also not evident as to why a provision on Capacity charges for Capacity sales is included in the CMP Guideline rather than the one on CAM? Covering Capacity charges under CMP may lead to some confusion as the charging regime will be developed separately at a later date via the Tariff Code.

Therefore, ENTSOG is of the opinion that such elements should not be included in the proposed CMP Guideline.

### 2.2 Cost recovery

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 by the TSOs. ENTSOG therefore requests that this point is included directly in this Guideline.

Besides ensuring that incurred costs can be fully recovered; the guideline should provide a protection of the TSOs' revenues which could be endangered by the provisions like surrendered capacity or capacity buy-backs.

### 2.3 Impact Assessment and Implementation

The implementation of any new measure which involves the development of IT systems must be carefully considered. Besides the costs mentioned above, sufficient time after the approval of the CMP Guideline through the Comitology procedure will also be required to define and implement

sophisticated IT solutions. This aspect is even more challenging when cross-border approaches are to be considered.

An Impact Assessment should elaborate on how proposed principles could be implemented as this will be one of the most crucial parts of the process. The current proposals should give a realistic indication of anticipated implementation timescales. To facilitate this, ENTSOG offers its assistance to identify priorities, possible implementation steps and timelines.

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 the ERGEG CAM/CMP Principles Document in January 2009 (and subsequent dialogue) the TSOs strongly underline the importance of conducting a sound Impact Assessment.

ENTSOG thinks that the Impact Assessment should describe carefully developed options which could be applied realistically. Additionally, economical benefits to be realised for all system Users on both a short and long-term basis should be elaborated. Given that there is a wide range of alternative instruments available to free up unused capacity, the social costs could by far exceed the potential incremental economic benefits.

### **3 Article specific remarks**

#### **3.1 SCOPE OF THE ARRANGEMENTS**

The Draft CMP Guideline should be clear as to when the CMP measures are applied. Therefore, ENTSOG would like to encourage the development of a harmonised approach for CMPs throughout Europe. ENTSOG considers that despite the contractual booking situation (if congested or not) the CMPs should be applied at all times.

This approach makes the challenge of defining what “congestion” means either for each IP in turn or for the wider EU unnecessary. Moreover, this prevents that with alternating bookings the situation - when the measures are applied or not - does not change from day to day but is stable at all times. The Users would then have more certainty of such arrangements. Finally, it removes the necessity for NRAs from defining IP specific arrangements according to the capacity situation and to what extent CMP rules are to be applied. The NRA role would therefore be more of a validation activity that the TSO applied the CMP arrangements as appropriate according to the situation at that point in time / duration.

#### **3.2 BORDER SPECIFIC ADJUSTMENTS**

ENTSOG is not of the opinion that “national regulatory authorities may request transmission system operators adjoining more than one system to apply different terms and conditions at the Interconnection Points to different systems” but that each Congestion Mechanism should be adequately defined describing clear application criteria. Even more, each method should be identical for all EU IPs.

Such a clear approach allows Users, NRAs and TSOs to fully assess the implications on the market and to clearly understand what the method is and when it is applied at all European IPs.

### 3.3 EXISTING CONTRACTS

Existing contracts were concluded under the rules overseen or provided by NRAs and Member States at that time of signing. The CMP Guideline intends to ensure an efficient market outcome through the extensive provisions on UIOLI, surrender of capacity, etc. and should lead to free up under-utilised capacity which can then be reoffered to the market. Changing contract agreements or parts of them will possibly change their value and introduces the risk of legal challenges by contracting parties. The subsequent termination of contracts would lead to stranded assets for the TSOs, create undue financial risks and have substantial impacts on transmission tariffs. Therefore, the CMP Guideline should provide a provision ensuring that the TSOs' revenue streams will be protected. This will foster harmonisation, whilst safeguarding that no risk is placed on the TSOs' income.

### 3.4 INCENTIVISATION

As part of any scheme, the TSO needs to understand the basis on which they could offer more capacity to the market. The introduction of any additional risk would require an assessment of the potential financial benefit and associated cost for covering such risk. A transparent incentive mechanism would encourage the TSOs to optimise the capacity available and drive the economic and efficient operation of the system. Furthermore, with a commercial regime the shippers / Users may also have obligations and incentives placed upon them to ensure an effective market place that protects consumer interests. ENTSOG welcomes that the Guideline encourages NRAs to establish an appropriate incentive scheme. However, it should be made clear that incentives should be of a financial nature.

Financial incentives are the preferred solution rather than any complex mechanism involving rules and regulations. Financial incentives ensure efficient application and implementation of new rules with regards to CMP. Examples in Europe exist where NRAs have successfully created economic incentives which have led to new products and measures being implemented, whilst adequately incentivising the TSOs for their efforts via a risk versus rewards scheme.

### 3.5 CAPACITY CALCULATION AND NETWORK SECURITY

#### C2.1 Capacity calculation

ENTSOG shares the view that Capacity calculation is a very important topic. However, we are of the opinion that such a technical issue should be defined in a separate Network Code as suggested in the Commission's discussion paper "Third package guidelines and codes" published on the 18<sup>th</sup> of September 2009. Additionally, ERGEG has included this topic also in the Framework Guideline on Capacity Allocation. Confusion must be avoided as individual Annexes to the Regulation are foreseen for all three topics – CAM, CMP and Capacity Calculation.

Identifying extra capacity by recurrent short-term calculations on a day-ahead or even on intra-day basis is theoretically possible but involves great additional efforts by TSOs in terms of new IT developments and resources especially in complex and highly meshed systems; whereas the resulting capacity enhancement are unknown and may be relatively small. If this involves transferring transmission capacity (system capability) throughout the network, a greater level of complexity will be introduced, especially for day-ahead processes. We wish to emphasise that any obligation to

calculate capacities on a short-term basis with the goal of maximising capacity through more reliable, but still unsecured parameters and scenarios, must not interfere with the obligation of TSOs to guarantee network security.

### C2.2 Network security

Network security is and must remain the clear priority over Congestion Management provisions. There is a mismatch between an obligation for TSOs to overbook their systems whilst they are simultaneously required to “seek a non-discriminatory solution without delay, e.g. proportionate reduction of nominated flows” when the systems capabilities are exceeded. We are of the opinion that a fair balanced share of responsibilities between all involved parties should be defined. The envisaged obligations, such as imposed calculation methods or oversubscription might unduly increase the risk for TSOs. ENTSOG wants to stress that the system Users have an increasing responsibility regarding Security of Supply in the respective Member State and within Europe.

### **3.6 CAPACITY INCREASE BY OVERSUBSCRIPTION AND BUY-BACK ARRANGEMENTS**

ENTSOG understands the reasoning behind oversubscription as an instrument to alleviate contractual congestion. ENTSOG considers the application of such a measure appropriate if the rate of oversubscribed capacity is not prescribed as mandatory / fixed. Depending on the network situation, when any oversubscription quantities are to be offered the decision on the proportion must reside with the TSO (and by definition must allow for different outputs of results), especially when the TSOs are held responsible and liable for network security at the same time.

Without such control in the process by TSOs, there is a risk that any prescribed mandatory / fixed oversubscription arrangements would lead to an increase in the risk of emergency situations which clearly is to be avoided (and would indeed suggest that the market and/or the arrangements were not functioning correctly). In addition a mandatory oversubscription quantity would necessitate even more strict conditions which limit technical and commercial risks (e.g. rules on capacity withdrawal, rules on how to reduce flows in case of physical constraints, limits on compensation payments, etc.). ENTSOG would therefore appreciate that it is made explicit in the provisions that a mandatory ‘fixed’ oversubscription is not intended.

### **3.7 CAPACITY INCREASE BY PROCUREMENT OF SYSTEM ENERGY**

ENTSOG is of the opinion that this proposal could not be implemented to any extent. System energy should be utilised uniquely for system balancing purposes. The available volume for system energy at each IP is limited, and its procurement on an intra-day basis is very costly. Therefore, using system energy in order to increase capacity is highly inefficient and all costs would be ultimately borne by the end consumers. It should be made clear that the priority regarding system energy relates to either balancing or capacity offers as these aspects are very different.

### **3.8 CAPACITY CHARGES**

ENTSOG wishes to highlight that this provision should not be covered in a Guideline on Congestion Management. ERGEG has announced that a specific Framework Guideline will be developed this year covering this aspect. In the conclusions of MF XVII, point 11 it is stated: “*After the summer break, ERGEG will begin its work on a framework guideline on tariffication.*” Additionally, the TSOs would like to emphasise that by tackling only parts of a wider area which affects the entire allocation regime should be considered as a whole rather than as a subset of one topic.

However, ERGEG proposes that “firm capacities with contract periods of more than one day shall not be higher than the added daily charges”. It must be clarified whether those added daily charges refer to only a few added days or e.g. days added up to a year; as this fully depends on how the capacity allocation regime is defined and what the pricing arrangements are. Such a provision could only be specified when the Tariff Code is developed and therefore this out of scope. It must also be noted that the proposed level of charges for daily capacity can lead to distorted booking behaviours, cross-subsidies between Users and the risk of under-recovery of cost for the TSOs and therefore needs careful consideration. In networks where short-term capacity plays a major role; it is currently being debated to what extent daily capacity tariffs should be increased by in order to show that the proposed level of short term capacity is priced accordingly, compared to other longer term firm products and the price of interruptible capacity.

ENTSOG does not understand why on the one hand ERGEG asked the market in the CAM consultation (still ongoing) for its view on how interruptible capacity should be priced; while on the other hand in parallel in the CMP Guideline ERGEG made the statement that “Interruptible capacity shall be charged sufficiently below charges for the corresponding firm products”. It must be clear that if interruptible capacity is to be cheaper than firm, then this interruptible capacity could only be sold after all the firm had been sold; otherwise the Users would be encouraged to speculate on cheap interruptible capacity instead of utilising the firm product. This would drastically undermine the cost recovery of TSOs and restrict important investment signals. Moreover, it should be investigated whether a low price on interruptible products can also be applied for interruptible capacity where there is only a minimal possibility of being interrupted. According to Article 14 of Regulation (EC) No 715/2009, the price of interruptible products should reflect the probability of interruption.

### **3.9 RE-MARKETING BOOKED CAPACITY**

ENTSOG is of the opinion that the TSOs’ key responsibility is to manage and allocate primary capacity and that they could only act in the secondary market as facilitators, enabling an anonymous “sell-on-behalf” service for instance. This implies that the TSOs’ primary capacity would be allocated first and any subsequent surrendered capacity could only be taken back to satisfy residual capacity demands (for as long such demand would exist), i.e. could only be applied when a new buyer has committed to take over the capacity from a surrendering party.

A crucial aspect to be adopted in the “surrender of capacity” provision is that it must be cost-neutral for the TSOs. To avoid any such financial underwriting by a TSO a subsequent capacity purchaser must be present. Secondly, the tariff charged for the original primary capacity plus the costs for enabling this service must be recovered by the TSOs. This provision should therefore clarify this mechanism when an auction process is applied to ensure that the regulated price / original selling price will be reached (especially when the surrendered product duration is different from the one the primary holder has contracted for). The design of such a proposal with regards to pricing would need to consider that it should be avoided that Users are incentivised to speculate with long term products, and then price it high for short term rents to other users when selling it back. Additionally, this could lead to the submission of misleading investment signals.

### **3.10 FIRM DAY-AHEAD UIOLI**

ENTSOG has the perception that Stakeholders in general raised considerable concerns about the limitation of re-nomination rights. With regards to contracts with certain services and values, we think that the market participants' view should be taken into account when services provided by TSOs are then subsequently limited by the NRAs.

ENTSOG is concerned that through the restriction of re-nomination rights the possibility for customers to react upon supply changes or disruptions is limited. The benefits arising from releasing more capacity need to be considered in the context of the implications of reducing flexibility to existing capacity holders with flexible gas sourcing arrangements. Additionally, a careful assessment of the risk of higher prices should be made as a consequence from any loss of re-nomination flexibility into the offered gas prices. Furthermore, TSOs need to be compensated if their revenues are undermined by the introduction of such a provision.

#### C3.1 Firm day-ahead UIOLI procedure

ENTSOG thinks that an assessment of risks and benefits as mentioned above and an assessment on the demand for a firm day-ahead product has to be conducted.

The timely handling of firm day-ahead capacity should be clarified as the capacity would need to be sold before the commodity trading commences; or vice-versa. The improvement of day-ahead interruptible products would be an alternative to the measure suggested by ERGEG.

#### C3.1.1 Nomination schedule

It needs to be discussed how general rules on an EU level could be established to avoid conflicts, especially with regards to the tools which are to be introduced by NRAs themselves. In the spirit of the European market, EU-wide nomination schedules are to be applied in order to enable cross-border operation. Otherwise customers who ship gas across one or more borders will face different nomination schedules. As such cross-border operational procedures following the nominations by shippers will become much more difficult. ENTSOG wonders if established rules like the Common Business Practices (CBPs) for Nomination and Matching, which were developed by EASEE-gas, could be applied.

#### C3.1.2 Limitation of existing re-nomination rights

ENTSOG is not convinced that restricting re-nomination rights will lead to the results envisaged by the NRAs. As explained at the beginning of this section, it should be considered that the broad majority of Users so far have objected to this proposal. However if such a measure is to be imposed, joint NRA agreement on this provision is needed to be commonly applied in all EU countries otherwise it is not clear why this is to be put into a European Guideline.

Whenever existing flexibility is reduced in order to resell capacity again through a market mechanism it is very likely that this will lead to a price increase in the various markets as flexibility becomes more expensive (because of the reduced possibilities) and may finally also lead to a decrease in flows.

The implications for balancing costs and their treatment would also require careful consideration as a limitation of re-nomination rights could hinder the procurement of residual (short-term) balancing energy by the TSO and may impact on balancing costs. This may therefore be counter-productive in a

market-based balancing system. There is a danger that this principle may incentivise Users to seek commercial methods e.g. over-booking capacity or over-nominating (leading to incorrect signals) in order to mitigate the risk of being limited in their rights to use the booked capacity.

In order to allow the required flexibility for the Users to cope with such a limitation, effective and liquid intra-day markets would need to be established before an EU-wide implementation could be considered.

### C3.1.3 Offer and allocation of firm day-ahead capacity

ENTSOG supports Short-Term UIOLI on an interruptible basis but not on a firm basis. Interruptible Short-Term UIOLI identifies underutilised capacity which would have no value if a shipper held onto it, but by applying this method would eventually be offered / used by other shippers. If this capacity is offered in this manner then the firm right in effect remains intact. If the firm capacity holder re-nominates upwards (as they would be entitled to do up to their firm capacity rights) then the TSO has the opportunity to scale-back the interruptible quantity. Therefore unused capacity would be utilised on a day-ahead basis and at the same time exclude any interaction or conflict with contractual rights and obligations of the original firm capacity holder.

### **3.11 LONG-TERM UIOLI**

ENTSOG agrees with the general idea that measures are necessary to incentivise shippers to avoid the hoarding of capacity and to firstly offer it onto the Secondary market for other network Users. Failing that, the possibility (subject to TSO terms and conditions) to surrender the capacity back to the TSO could be an alternative option. The design of the commercial arrangements should be done in such a way that the long term UIOLI measure itself is never applied as any potential shipper targeted by this measure should prefer to sell on the Secondary Market, the capacity they would otherwise lose.

However, once implemented any mechanism must be at least cost neutral for the TSO, transparent and non-discriminatory. On a general basis the mechanism should not create a situation where contracts that a TSO had duly obtained are legally challenged, as those contracts have and will play an important role in investment financing. Therefore, it should be avoided that the TSOs are placed in a position that could conflict with their contractual obligations. It should also be carefully considered whether other methods could be introduced which would lead to the increased use of underutilised capacity.

Any withdrawal mechanism should be clearly defined together with the appropriate methodology to calculate the amount of underutilised capacity to withdraw. It must be stressed that it is problematic to determine “systematic underutilisation” due to the fact that the situation can change over time.

Furthermore it should be clearly defined what are the rights and financial obligations of the initial and the new capacity holder. Even more, it should be carefully assessed whether such long-term UIOLI arrangements might undermine the firm capacity market. The economic and operational equilibrium must therefore be guaranteed for the TSOs.