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Public Consultation Questionnaire

“Rules for Trading related to technical and operational provisions of network access services and system balancing (FG RfT)”

Identified topics

ACER has identified the following topics that could fall within the scope of a potential FG RfT:

- Capacity products and terms and conditions of capacity contracts (limitations to free allocability and standardisation)
- Secondary capacity markets
- Virtual trading point (VTP) design/access, and hub issues
- Transparency rules
- Licensing requirements for market participants other than TSOs

Q1: Are the topics identified above the most relevant ones when it comes to Rules for Trading at EU level? Please specify which issue - if any - would merit further elaboration and rank the three most important Rules for Trading aspects.

Capacity products standardization has already been addressed by the CAM code and sufficient time should be allocated to analyze the response of the market to it before new rules are proposed.

Differently, terms and conditions standardization – credit guarantees, termination clauses – and secondary capacity trading harmonization – full inclusion in PRISMA at pre-defined cost based fee – may however be beneficial.

Equally, the introduction of a EU passport for gas could provide a valuable contribution to reduce red-tape obligations. This said, we doubt that the above requires the need for developing an additional network code. Most of the issues should be addressed during the implementation of the existing guidelines and network codes.

Capacity products and terms and conditions of capacity contracts

Q2: Do you agree that the key features of capacity products (besides its location, its direction and its duration) are as follows:

- Firmness: unconditional firm / conditional firm (e.g. depending on temperatures) / interruptible

- Allocability: free allocability / restricted allocability to designated points / restricted to designated points but combined with interruptible free allocability to all points including VTP
- Tariff relations between different capacity products

Please rank the most important aspects of capacity products for your business. If there are other aspects you find more important, please name them and explain why.

The usability of capacity – firmness or alternatively reliable predictability of interruptions – ranks first among the features of capacity products to be taken account on equal footing with the tariff level itself and the predictability of the tariff level and the timing of its setting.

In a context of increased volatility, tariffs stability and relatively low entry tariffs remain essential to attract new volumes to the market.

Moving forward towards the offer of within day products on PRISMA could further contribute to improve the trading opportunities, as would avoiding unnecessary time constraints for capacity booking.

Finally, we note that the KEMA study on entry-exit systems has identified several best practices and barriers in the implementation of entry-exit systems. We suggest that ACER and ENTSOG undertake a coordinated effort, together with stakeholders, to remove these barriers and implement best practices across the EU with regard to the scope of EU codes implementation.

Q3: Do you think that certain user categories (e.g. power plants, household suppliers, traders, gas producers, storage users etc.) have specific requirements/needs regarding capacity products? If so, which?

Certain user categories to some extent will always have specific requirements / needs, however, to ensure all network users are able to compete on a level playing field, there should be equal rights to capacity for all market participants.

The possibility to obtain short term capacity in order to better profile capacity booking and contribute to cross-border trading, hub liquidity and price convergence should all be given appropriate consideration. This should happen without jeopardizing access to long-term capacity that is necessary to underpin new investment.

Equally, access to firm capacity without restrictions should be offered to the largest extent possible.

Q4: Do you have experience with different levels of product firmness and allocation restrictions (i.e. different capacity designs¹⁰)? Please provide examples.

A number of cases exist in Europe and the related inconsistencies cause problems in particular with respect to bundled capacity where lack of harmonization in capacity calculation, level of firmness and nomination procedures ultimately results in a suboptimal outcome.

Q5: Are different types of product features (in terms of firmness and freedom of allocation) barriers for cross-border trading? If yes, please provide an example of such a barrier. If yes, do you think that a set of “standard capacity products” in terms of quality (e.g. firmness rules, allocability) enshrined in a network code would provide a solution? Do you believe that the

benefit of implementing such a solution outweighs the costs? Could you provide examples of such solutions?

In principle solutions to these problems should be found in appropriate and coordinated implementation of the CAM and the CMP network codes. Focus should be on this rather than on delivering a new network code. In fact, a set of 'standard capacity products' in terms of quality could result in a reduction in the amount of available 'firm' capacity and also reducing the possibility to accommodate the buyers and the markets needs for specific products.

Q6: In your view, is the way capacity is allocated (primary market) or traded (secondary market) expected to create any problem or barrier to gas wholesale trading after the full implementation of the NC CAM? (Please differentiate in your answer between IPs covered by NC CAM¹¹ and those outside its scope, e.g. LNG, storage)? If not, what outstanding barriers remain after NC CAM implementation? Please provide specific cases and examples, if possible.

Some problems remain with respect to the need to enter into two separate transportation agreements in the case of bundled products and to the actual use of bundled capacity, e.g. provisions on single nomination are vague and fail to identify and assign clear responsibilities for nominating and matching. Moreover, we would like to point at problems in accessing short term capacity to be able to react to price changes both in Italy and Spain.

This said, we believe the guidelines and network codes on CMP, CAM, Gas Balancing, Interoperability and Tariffs provide all the tools needed for removing any outstanding barriers, provided the implementation is done in a coordinated way with a view to facilitate wholesale trading across borders.

Q7: Do non-harmonised contract definitions or terms between neighbouring entry-exit zones limit cross border trade? If yes, please provide examples. Do you think that equal contractual definitions of product characteristics (in terms of firmness or freedom of allocation) can be achieved by compatible contract terms alone (product description along certain parameters) or can this only be achieved by a single standard contract established at EU level?

A single standard contract may not necessarily be the most desirable outcome, as this would limit the flexibility necessary to accommodate national specificities, however it is important that shippers are put in a position to use what they have paid for and no situation should occur where the constraints on one system undermine the features of the product that is made available by the adjacent TSO. To impose a single standard contract is thus not required or desirable.

Q7a: Considering the variety of private law regimes across EU, do you believe a single standard contract established at EU level is feasible? If yes, do you believe that the benefit of such standard contract established at EU level outweighs the costs of its implementation?

We believe that a harmonization process based on mutual recognition of EU granted licenses represents a doable solution. Often licensing procedures are used as opportunities to impose obligations on market players. With a focus on the mere technical and economic abilities of a market party to carry forward the functions which the licenses are requested for, mutual recognition should not be difficult to implement by the market parties. Requirements such as security of supply obligations that often are linked to the licensing procedures would in fact remain as conditions to maintain the license and they could be dealt with in an ex-post manner.

Q8: Have you experienced inefficiencies and risks which make it necessary to harmonise certain clauses in capacity contracts and/or contractual terms and conditions of different TSOs at EU level (given the variety of private law regimes applied across Europe)? If so, what are the inefficiencies and risks experienced that require harmonisation and why?

We have not experienced inefficiencies/risks that make it necessary to impose harmonize clauses and terms - see also our other answers.

Q9: Assuming everything else being equal (e.g. tariffs), do you prefer:

- a) firm products with limited allocability/locational restrictions (ex-ante information on conditions of use) or
- b) interruptible products (with ex-post information on actual occurrence of interruptions)?

Considered the obligation imposed on TSOs to always make capacity available when commitments from shippers materialize, the first option should be preferred. In this perspective OSBB should always be preferred to restriction of nomination and short term UIOLI as the CMP network code correctly imposes, despite a different interpretation has been given in this regard in Germany and Austria. In contexts where OSBB is used, interruptible capacity – to be offered after all firm (technical+additional) has been sold – should be offered with a zero reserve price.

Q10: Given the Balancing NC implementation, which should foresee within-day obligations as an exception, do within-day standard capacity products (“rest-of-day capacity products”) create any barrier to trade?

No, as long as they are priced correctly, i.e. in a non-discriminatory manner, and, in case of within day obligations, they are made available in due time for their use. WD capacity products create a WD opportunity to fully optimize shipper’s portfolio. More in general, we believe within-day standard capacity products do not create a barrier to trade, provided the criteria for within-day-obligations as laid down in Article 26 (2) of the Balancing NC are met.

Q11: Are there any differences in the legal framework/capacity contracts that undermine the concept of a bundled capacity product (treatment after allocation)? If yes, please describe the differences as well as the risk for market participants resulting from those. Please provide specific examples.

The concept of a bundled capacity product has its merits in the allocation phase and for enabling a single nomination. However, after the allocation, the network user will receive 2 contracts, one for exit capacity with the ‘upstream’ TSO and a second one for entry capacity with the ‘downstream’ TSO. These two contracts will have different general terms and conditions due to differences in the legal/regulatory framework, which undermines the concept of bundling.

Q12: Are there any other obstacles that hamper the use of such capacity contracts across borders in the EU?

The bundling concept is creating obstacles for parties that hold existing contracts for unbundled entry and or exit capacity, when they would like to increase capacity (either bundled or unbundled).

Q13: Do you think that a) binding EU rules, b) non-binding guidance or c) no rules at all (awaiting the implementation of existing NCs) address the above issues best? If needed, you can differentiate between different topics.

Provided that we strongly support the idea of an EU passport and that we would favor the introduction of harmonized terms and conditions on issues like credit guarantees and termination rights and we would prefer to enter into one single contract when booking bundled capacity, it is probably worth pointing out that the already produced EU network codes have not been fully implemented or tested, while the market is already independently anticipating a number of novelties that were prescribed by the gas target model. Therefore, it might be wise to wait and avoid an imposition of regulation that is unnecessary and that additionally may represent restrictions to the trade and flow of gas within the EU.

Secondary capacity markets

Q14: Do you think that rules are needed in order to stimulate secondary trading in Europe (taking into account the facilitation of trading already in place nationally or at EU-level, including joint booking platforms as demanded by NC CAM)?

Rules have not been sufficiently tested yet so it is difficult to say. We believe that secondary capacity trading is best stimulated by implementation of the existing rules on CAM, CMP and Transparency, supported by tariff rules which incentivize TSOs to offer firm OSBB capacity over interruptible capacity (i.e. zero reserve price for interruptible capacity). Given this there is no evidence of need for additional rules on secondary trading.

Q15: Do you see a need for a fully anonymized secondary capacity market (including third-party clearing) or is a bilateral capacity transfer (with consistent information to the TSO) sufficient?

We do not see the need for additional rules concerning the secondary capacity market but a final assessment would only be possible after having observed post-CAM code market behavior for a sufficiently long period. This said we are open to have an anonymized secondary market for capacity to keep our need of capacity confidential, possibly managed by a broker for capacity trades, next to bilateral capacity transfer opportunities.

Q16: Do you see the need to harmonise the handling of secondary capacity transfers to the primary market with reference to e.g. contract durations, handling, deadlines etc.?

Shippers should be left free to trade their capacity as they best wish. Considered that a possibility to surrender capacity exists as per CMP code, whether it for shippers becomes too difficult to dispose of capacity, they can always give it back to the TSO, which will then have the opportunity to regroup the capacity and sell it as CAM compliant standard product. Therefore, we do not see any need for additional rules concerning the secondary capacity market.

Q17: Are there any rules hampering secondary trading of bundled capacity products? If yes, which ones and where? (Please provide specific cases, examples.)

When the quality of capacity is not the same on the two side of an IP it is likely that the price received by a buyer will correspond to the features of the less attractive side of the bundled product, i.e. a product that bundles firm capacity subject sold under OSBB and interruptible capacity or capacity subject to restriction of nomination will only be bought as interruptible or subject to restriction of nomination.

Also, TSOs may observe lead times for the transfer of capacity rights which are not compatible with secondary trading of short-term capacity products.

Q18: What would be, in your view, the most efficient way of secondary trading of capacity: a) mandatory trading on a limited number of liquid secondary platforms as for primary capacity or b) keep the current regime as is (e.g. many options, venues, etc.)?

The possibility of having access to a limited number of platforms – possibly the same to access primary capacity – should coexist with the possibility to trade capacity elsewhere. This said we do not see the need for additional rules concerning the secondary capacity market.

Q19: Would you support additional transparency rules for secondary trading and what should, in your view, those rules focus on (e.g. reporting on transactions, potentially incl. price)?

As long anonymity is preserved additional transparency may in general be beneficial.

Q20: Do you think that a) binding EU rules, b) non-binding guidance or c) no rules at all (awaiting the implementation of existing NCs) address the above issues best? If needed, you can differentiate between different topics.

The modifications that we find beneficial could easily be addressed at the market level with the already established rules, so we see no need for further hard wired regulation.

Virtual trading point design/access and hub issues

Q21: Are there any design elements of hubs which provide a barrier to cross-border trade (e.g. independence of the hub operator from traders)? If yes, which ones? Please provide specific cases, examples.

The barriers we currently face (due to differences in temperature factors, fuel factors, gas day definitions, different deadlines), e.g. from France to Spain, are expected to be overcome once full implementation of existing codes are completed. We don't believe design elements of hubs per se provide barriers to cross-border trade.

Q22: Are the fees (if any), the methods to calculate these fees, the general terms and conditions and/or contracts for service providers/intermediaries for transferring gas via trade notifications according to article 5 of the Balancing NC discriminatory and do they constitute a barrier to trade? If so, please state which of the elements above are problematic and which entry-exit systems are affected. Are there any other issues that create barriers to trade?

We don't believe the above mentioned service fees create a barrier to cross-border trade. In this respect we would also note that we have a strong preference for financial and transparent contribution for fuel gas rather than for in-kind contribution. In this last case at borders you may have different in-kind fuel gas contribution and this would lead to the need to nominate different quantities at the same interconnection points. Also in-kind fuel gas leaves network user with the burden of shipping untradeable quantities.

Q23: Do non-standardised formats represent a barrier for cross-border trading? If yes, do you see a need to establish a standardised data exchange format for trading of wholesale gas

products to be used as interface between all potential balancing and trading venues - including key inputs (e.g. trading parties, time, location of trade, trading volumes and price, etc.)?

The NC on Interoperability and Data exchange is to establish a standardized data exchange format for communications between and with TSOs. Standardized data-exchange will always make life for operations/trading easier. With respect to the commodity market we don't believe additional rules are needed.

Q24: How could the establishment of organised market places at hubs trading platform (via VTPs) be facilitated and should the Agency foresee rules to facilitate it?

We do not see the need for additional rules from the Agency concerning hub trading platforms.

Q25: Do you think that a) binding EU rules, b) non-binding guidance or c) no rules at all (awaiting the implementation of existing NCs) address the above issues best? If needed, you can differentiate between different topics.

We prefer no rules at all, awaiting implementation of existing NCs.

Transparency rules

Q26: Do you think that contractual conditions of capacity services (incl. usage conditions) are transparent and clear enough and easy to access (taking into consideration the establishment of joint booking platforms such as PRISMA)? If not, please name the TSOs/platforms where this is not the case and evaluate it along any of these three parameters (i.e. non-transparent, unclear or difficult to access).

The transparency requirements of the Gas Regulation should ensure that the conditions of transmission services are transparent, clear and easy to access. This is not always the case as demonstrated by ACER in its recent CMP monitoring report.

Q27: Do you consider that the contractual conditions of capacity products with limited allocability (e.g. interruptible hub access, but firm cross-border flow) are transparent and clear enough? If non-transparent and clear enough, what should be improved? (Please provide specific cases, examples.)

Please see 26.

Q28: Do you have access to sufficient information on the condition(s) for interruption of a capacity service and/or its probability? If not, please specify where this is not the case.

Please see 26.

Q29: Do you have sufficient information on the occurrence of the condition(s) for interruption and/or its probability? If not, please specify, where this is not the case.

Please see 26.

Q30: Do you think that a) binding EU rules, b) non-binding guidance or c) no rules at all (awaiting the implementation of existing NCs) address the above issues best? If needed, you can differentiate between different topics.

We prefer clearly no additional rules. The existing transparency rules are sufficient when constructively implemented in a manner that reflects best practices.

Licensing requirements for market participants other than TSOs

Q31: Do you see a problem with regard to different licensing requirements in the EU? If yes, please name the Member State, explain the main issues and propose solutions (such as minimum requirements for licenses at EU level, etc.)

Different licensing requirements across the EU – as well as different and overlapping reporting obligations – constitute an unnecessary burden to network users. We would welcome a situation where licenses granted in one Member State are mutually acceptable in all EU Member States.

This would be much more efficient and effective versus trying to agree on standard licensing conditions or minimum requirements. It should be possible to try and achieve this when implementing the CAM network code, which requires TSOs to deal with network users across borders.

Such a system would be helped by introducing an ex-post verification of potential necessary national requirements.

Q32: Do you think that a) binding EU rules, b) non-binding guidance or c) no rules at all (awaiting the implementation of existing NCs) address the above issues best?

Please see 31.