



EREGG principles: Capacity allocation and congestion management in natural gas transmission networks

An EREGG Public Consultation Document

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Listing of Abbreviations

AGGM	Austrian Gas Grid Management
CAM	Capacity allocation mechanisms
CMP	Congestion management procedures
DG Comp	Directorate General for Competition
ENTSO-G	European Network of Transmission System Operators for Gas
ERGEG	European Regulators Group for Electricity and Gas
FCFS	First come, first served
GGPOS	Guidelines of Good Practice for Open Season Procedures
NRA	National Regulatory Authority
OSP	Open Subscription Period
TSO	Transmission System Operator
UIOLI	Use it or lose it

Executive Summary

The function of national regulatory authorities (NRA) and, in the future, the Agency is to promote the creation of a single, competitive EU gas market. Access to gas transmission infrastructure is a central issue which must be carefully addressed in order to achieve this goal. Capacity is a scarce resource which must be allocated efficiently amongst market participants. Capacity allocation mechanisms (CAM) and congestion management procedures (CMP) have an important influence on the nature of competition and on the development of trading mechanisms.

This document sets out ERGEG's position on CAM and CMP for interconnection points between adjacent networks (cross-border as well within Member States), to be used as a basis for proposing modifications to the existing Regulation (EC) 1775/2005. Moreover, it seeks to initiate discussion on ERGEG's input to the draft Framework Guidelines for CAM and CMP. The European energy regulators have committed to work diligently during the interim period between the adoption of the 3rd Package and the date when the Agency for the Cooperation of Energy Regulators (Agency) is able to fully exercise its powers, to provide assistance to the Agency for the Cooperation of Energy Regulators (Agency) by preparing inputs to the Framework Guidelines. This outcome of this consultation will be used as a basis for proposing modifications to the Guidelines annexed to Regulation (EC) 1775/2005 and will serve as a background paper for the Agency, which may be utilised in the development of the Framework Guidelines for the network codes. This document is divided into three sections:

Section 1 of this document provides ERGEG's approach to CAM and CMP, including the legal background and ERGEG's priorities. These are based on the following pre-requisites: Capacity allocation mechanisms and congestion management procedures must be transparent and non-discriminatory; they must combine technical and economic efficiency while addressing the various needs of markets participants. While promoting an evolution of regulation at a European level, the proposals developed in this consultation paper are sufficiently adaptable to address the various national situations within a coherent system at an EU level. They are driven by the following concerns: satisfaction of shippers' actual capacity needs, which include stability and flexibility of access, and promoting the liquidity of the European gas market resulting in the development of efficiently working gas hubs.

Section 2 sets out ERGEG's principles on CAM and CMP. Each general principle is complemented by proposals for correspondent text which ERGEG considers suitable for replacing the existing Guidelines annexed to Regulation (EC) 1775/2005 on conditions for access to the natural gas transmission networks¹, via comitology.

Section 3 sets out the specific questions to which ERGEG seeks stakeholder response. ERGEG welcomes comments from all stakeholders on the issues raised in this paper. The closing date for responses is the 20 March 2009.

¹ http://www.energy.eu/directives/l_28920051103en00010013.pdf

Introduction

Competition in natural gas markets is based on opening essential facilities to all suppliers in a transparent and non-discriminatory way. Rules for third party access are therefore a key element of market functioning, in particular as far as transmission is concerned. Transmission capacity is indeed a scarce resource which must be shared among market participants in a way that promotes competition and security of supply.

Establishing common rules at a European level has been a challenge due to the differences existing between national gas systems in terms of demand, production, import dependency and storage availability. In addition, some countries are important transit corridors while, in others, which are less connected to the rest of the European grid, most of the gas entering the system is consumed locally. This situation has justified the principle of progressive market opening in the European Union, first by defining limits to the eligibility of consumers and, second, by implementing regulations offering enough freedom to national authorities to look for rules adapted to their initial market situation.

However, after ten years, the liberalisation process requires further development. Regulatory and contractual obstacles to cross-border gas flows remain a major barrier to market integration at a European level. ERGEG, therefore, has decided to develop its approach to capacity allocation and congestion management and identify ways of improvement.

ERGEG's work is based on the general pre-requisites to be applied to gas transmission infrastructure: capacity allocation mechanisms (CAM) and congestion management procedures (CMP) must be transparent and non-discriminatory; they must combine technical and economic efficiency while addressing the various needs of market participants. While promoting the evolution of regulatory decision-making at a European level, the proposals developed in this document are sufficiently adaptable to address the various national situations within a coherent system at an EU level. They are driven by the following concerns: meeting shippers' actual capacity needs, which include stability and flexibility of access, and promoting the liquidity of the European gas market, resulting in the development of efficiently working gas hubs. The present document is a step in the process to create more homogenous market areas for gas within Member States, which remains the main objective, by introducing principles on CAM and CMP.

This document sets out ERGEG's position on CAM and CMP for interconnection points between adjacent networks (cross-border as well as within Member States) to be used as a basis for proposing modifications to the Guidelines annexed to Regulation (EC) 1775/2005 and will serve as a background paper for the Agency, which may be utilised in the development of the Framework Guidelines for the network codes.

This document is divided into three sections, as follows:

1. Definition of ERGEG's approach to CAM and CMP
2. General principles on capacity offer, allocation and congestion management, from which concrete proposals to improve cross-border gas transport are derived
3. Specific questions concerning CAM/CMP to which ERGEG seeks stakeholder response

1. ERGEG's approach to CAM and CMP

The function of national regulatory authorities, and in the future of the Agency, is to promote the creation of a single competitive EU gas market. Access to gas transmission infrastructure is a central issue which must be carefully addressed in order to achieve this goal. It is useful to recall that networks are essential facilities and that transmission capacity is a scarce resource which must be allocated efficiently amongst the market participants. Capacity allocation mechanisms (CAM) and congestion management procedures (CMP) have an important influence on the nature of competition and on the development of trading mechanisms.

As concluded in the European Commission Directorate General for Competition's (DG COMP) sector inquiry², the EU natural gas market suffers from a lack of competition; under-developed network access for new entrants is identified as a barrier to entry. Evidence shows that, at many interconnection points, capacity is fully booked on a long-term basis, hindering the development of competition. Bringing some firm capacity back to the market via improved CAM and CMP has, therefore, been identified as a priority for ERGEG, within the existing regulatory context and the amended Regulation as proposed in the Third Energy Liberalisation Package (3rd Package).

It is important to note that the present consultation document focuses on CAM and CMP at interconnection points between adjacent networks (cross-border as well within Member States). It is based on the EU market model as expressed in Directive 2003/55/EC and Regulation (EC) 1775/2005 as well as on a pragmatic approach addressing the concrete needs of market participants. It sets out proposals to maximise the use of existing pipelines and ensure cross-border compatibility of CAM and CMP.

The document provides a set of general principles for CAM and CMP. The final principles may be used by the Agency as an input in their efforts to develop Framework Guidelines that will provide guidance to the European Network of Transmission System Operators for Gas (ENTSO-G) after implementation of the 3rd Package. Each general CAM and CMP principle is complemented by proposals for corresponding provisions, which ERGEG considers suitable to replace the existing Guidelines annexed to Regulation (EC) 1775/2005 via comitology.

1.1. Legal background

The proposals developed in this document are based on requirements stipulated by Articles 4 and 5 of Regulation (EC) 1775/2005 and refer to definitions in Article 2 of Regulation (EC) 1775/2005. The following documents have been taken into account:

- Existing Guidelines on third-party access service and on principles underlying the capacity allocation mechanisms, congestion management procedures and their application in the event of contractual congestion, annexed to Regulation (EC) 1775/2005 on conditions for access to the natural gas transmission networks
- Commission staff working document on capacity allocation and congestion management for access to the natural gas transmission networks regulated under Article 5 of Regulation 1775/2005/EC on conditions for access to the natural gas transmission networks ; SEC(2007) 822

² <http://ec.europa.eu/competition/sectors/energy/inquiry/index.html>

- Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) 1775/2005; COM (2007) 0532

Concerning the 3rd Package, the proposed amended Article 5 of Regulation (EC) 1775/2005, Article 4a³ states that

“Transmission system operators shall implement and publish non-discriminatory and transparent congestion management procedures which are based on the following principles:

- (a) In the event of contractual congestion, the transmission system operator shall offer unused capacity on the primary market at least on a day-ahead and interruptible basis;*
- (b) Network users who wish to re-sell or sublet their unused contracted capacity on the secondary market shall be entitled to do so. Member States may require notification or information of the transmission system operator by network users.”*

The new Regulation prioritises the removal of contractual congestion. While allowing flexible tools to accomplish this task, it includes a minimum requirement for TSOs to make available day-ahead and interruptible capacity as foreseen in Article 5 Regulation (EC) 1775/2003. It also sets out a requirement for further development of secondary markets for capacity.

1.2. ERGEG priorities on CAM and CMP

Stimulating competition, to the benefit European energy consumers, is one of ERGEG’s primary concerns. To achieve this, increased liquidity in the wholesale markets is required. Such liquidity will facilitate new entrants’ access to gas, so that they can meet the demand of end-consumers.

ERGEG has identified⁴ several issues that must be resolved urgently. These issues primarily relate to the difficulty of new entrants in obtaining capacity. This is due to the lack of available capacity at many cross-border points and to some discriminatory aspects of allocation mechanisms. This results in undue transaction efforts for shippers and an imbalance in the market opportunities available to new entrants as compared to incumbents. This situation contributes to an inefficient use of existing capacity (short-term and long-term) and a lack of liquidity on most European markets.

The DG Comp 2007 sector inquiry also concluded that new entrants are unable to secure primary capacity at key interconnection points due to long-term contracts signed between incumbent transmission system operators (TSOs) and, typically, supply affiliates. Moreover, access to secondary capacity, which should be open to new entrants, is rarely made available, but where it is, it is bought by other incumbents. Therefore, due to the lack of effective congestion management mechanisms on many of transmission systems, it is seldom possible for new entrants to secure even small amounts of short-term capacity. The effective management of congestion is important in order to facilitate new entry and to promote competition.

As a part of the existing legal framework, there are obligations to provide non-discriminatory third party access. Congestion management provisions are already in place, including: use-it-or-lose-it (UIOLI) provisions and secondary capacity trading. The contracts allow the historic capacity holder to re-nominate, typically until two hours before the relevant gas flows

³ COM (2007) 532 final, including 2007/0199 (COD), Article 4a, paragraph (7) (b) on amendment of Article 5 of 1775/2005/EC Regulation

⁴ The last analysis was conducted as part of the development of this document, via an ERGEG questionnaire to all NRAs.

are to commence. Thus, capacity not used by such historic capacity holders is either not released on the secondary market or, if it is, it is only released on a very short-term and interruptible basis. Therefore, congestion management measures need to be implemented more effectively to achieve the goal of functioning third party access and competitive gas markets.

There are two types of congestion: contractual and physical. Contractual congestion occurs when capacity is fully booked, but a proportion of capacity remains unutilised and there is still demand for capacity. Physical congestion occurs where parts of the network flow at their maximum technical capacity and no further flows can be accommodated, but there is still demand for additional flows. In an efficient market, all technically available capacity would be used and demand for additional capacity would signal the need for investment. The main objective of this document is to propose measures which will encourage TSOs to maximise the capacity offered and provide new entrants with better access to capacity.

1.2.1 Stability and security of access

Uncertainty about how to access network capacity is damaging for gas shippers seeking to flow gas across borders. Shippers need clear information on how to access transmission capacity and the pricing of that capacity. They are likely to wish to book a certain amount of capacity over a longer term for gas that they are guaranteed to flow. They will also wish to have the flexibility to obtain additional capacity on a short-term basis for additional peak flows in gas. In an effective, market shippers will have an incentive to sell unwanted capacity on the secondary markets, as it will not be economical to hoard excess capacity.

This requirement can be fulfilled by regularly offering firm capacity products for a range of durations at interconnection points. TSOs must offer complementary products of various durations, with sufficient transparency to allow market participants to develop their business, with a special focus on new entrants.

Guarantees should also be given that, if not used, capacity will be brought back to the market. UIOLI mechanisms achieve this aim by maximising the use of pipelines, while also at communicating the willingness of the regulators' and transporters' to deter capacity hoarding when capacity is fully allocated under long-term contracts. Other mechanisms such as capacity release could also help to provide new entrants with firm capacity in case of market domination by incumbents.

1.2.2 Short-term flexibility

Short-term flexibility is a basic requirement for the development of competitive markets. It provides the correct environment for efficient trading hubs to emerge and provides operators with the ability to manage the intrinsic uncertainty of gas supply businesses. Flexibility can be provided by short-term capacity products offered through flexible CAM such as day-ahead auctions. Flexibility can also be achieved by means of firm and interruptible short-term UIOLI.

However, in a context dominated by long-term contracts, only a small amount of capacity is available for short-term products at interconnection points in Europe. Several options are available to increase this amount, including requesting TSOs to set aside a non-negligible portion of their existing capacity for bookings of one year or less. Such an obligation appears to be necessary with regard to the current Regulation, which states that short-term services must be offered, but does not lay down any threshold.

Short-term capacity products should not be considered as the ultimate solution for achieving competition in European gas markets. Short-term capacity products are part of a “tool box” of several options. In contrast to the electricity a market, the ability to use day-to-day opportunities⁵ has not yet evolved in many of the European gas markets. In this area, the proposed measures cannot yet be based on gas-related evidence, but must build on the experiences in the electricity markets.

1.2.3 Enhancing the utilisation of infrastructure and removing contractual congestion

As previously mentioned, the objectives of CAM and CMP are to allocate existing transmission capacity in a manner that both promotes competition and non-discrimination and optimises use of the infrastructure. Thus, if booked capacity is not fully used and demand exceeds supply (contractual congestion), effective congestion management mechanisms (such as UIOLI, capacity buy-back or methods to improve secondary trading) must be implemented. The congested capacity must be returned to the market to maximise the rate of use of the infrastructure and also to prevent possible capacity hoarding. In doing so, it is important to find means to ensure that capacity is offered on a firm, rather than an interruptible, basis.

Regulation 1775/2005 mentions day-ahead UIOLI mechanisms “at least on an interruptible basis” as a means to manage contractual congestion also avoiding possible capacity hoarding. An effective mechanism may be to apply UIOLI to longer-term capacity in order to prevent shippers from capacity hoarding and / or encourage shippers to offer unused capacity on the secondary market. Such mechanisms must, however, avoid “unfair expropriations” and risks of contract cancellation for TSOs.

Another approach may be to develop a capacity buy-back mechanism, which may encourage TSOs to maximise their offer of capacity.

Finally, in an effective market, ERGEG would expect that shippers would not hold more capacity than they need and for capacity to be traded in a secondary market. It is, therefore, important for NRAs to consider the barriers to secondary trading. One existing barrier may be that some of the current capacity allocation methods do not create pricing signals that would encourage shippers to sell on excess capacity. A market-based approach to capacity allocation through auctions may create such incentives.

In any case, where there is no congestion, there should be no restriction of access to cross-border interconnection. TSOs should introduce capacity allocation methods that ensure all capacity demands are met. Where the congestion is physical, then investment should be considered. However this issue is not addressed within this document.

1.3. Underlying principles

1.3.1 Developing cross-border compatibility of CAM and CMP

To date, regulations in Europe have been developed with regard to national contexts. As a result, capacity products and CAM and CMP differ widely from one country to another and sometimes even from one TSO to another within the same country. This is a source of capacity mismatches at many interconnection points and, hence, sub-optimal use of infrastructure, which is an obstacle to cross-border gas trading.

⁵ Regulation 1228/2003/EC amended by Commission Decision 770/2006/EC amending the Annex to Regulation 1228/2003/EC on conditions for access to the network for cross-border exchanges in electricity.

ERGEG, therefore, supports the harmonisation of capacity products, CAM and CMP, and any efforts to develop, at least, compatible products, in compatible quantities, using compatible timing and processes; including compatible information processes on the both sides of an interconnection point. In the longer term, bundled products at interconnection points may be the objective. Aware of the difficulties associated with this task, ERGEG proposes that TSOs establish action plans for the creation of bundled products.

1.3.2 *Promoting cooperation between adjacent TSOs*

The means by which adjacent TSOs work together to manage cross-border interconnection points has a direct impact on the ease of access for shippers and even the technical capacity made available. ERGEG, therefore, proposes to make some level of cooperation between TSOs mandatory, at least on the timing of capacity allocations, on the booking procedures and on technical parameters to be defined. Some of the guidelines' rules are based on this proposal.

1.3.3 *Hierarchy among the proposals*

The proposals seek to propose solutions for effective, fair, and non-discriminatory third-party access to capacity that are consistent with the different market developments across Europe and with their respective regulatory and legal framework. To achieve this, this document makes the following distinction among its proposals on CAM and CMP:

- Mandatory CAM and CMP, when justified by their importance for market development and integration. In many cases, several equivalent CAM and CMP of different designs but with the same outcome will be available (for example, pro-rata or auctions to allocate congested capacity).
- CAM and CMP to be implemented when needed (e.g., observed scarce capacity, inefficiency of the original capacity allocation). NRAs shall decide when these tools are needed.

The objective of this classification is to avoid being excessively prescriptive, while providing clear guidance.

1.4. **Overview of the proposed CAM and CMP**

In summary, for shippers (in particular new entrants) to be able to access capacity, the following features must be developed:

- TSOs must have a **transparent and clearly defined mechanism** for shippers to request capacity. Where there is no congestion, TSOs **should accept all requests for capacity**.
- Where there is contractual congestion, TSOs may need to implement **better methods of capacity allocation** in order to ensure that new entrants are not foreclosed from the market;
- These methods should ensure that a **range of capacity durations on a regular basis (e.g. daily, monthly or longer-term basis) for a reasonable amount of capacity** through a **fair and non-discriminatory process providing signals in the case**

of insufficient capacity. If shippers are to have an incentive not to hoard extra capacity for peak periods, they must know that they can buy capacity for shorter durations on a regular basis;

- TSOs, therefore, must also take **an active role in managing capacity allocations** and may need **incentives to offer as much capacity** as possible onto the market
- There needs to be **sufficient transparency** with regard to gas flows, capacity availability, the supply and demand balance, capacity pricing, the volume of capacity sold under each capacity product and the technical information requirements for network access.
- Capacity allocation methods at cross-border interconnection points must be compatible.

This document consults on the various proposals that seek to address these provisions. The second part of the document sets out a proposal for general principles. These principles will be offered to the Agency for use as input to the development of Framework Guidelines, which will provide guidance for the ENTSO Gas for the development of comprehensive CAM and CMP rules and codes. The general principles are complemented by more detailed proposals for amending the existing Guidelines annexed to Regulation (EC) 1775/2005 via comitology.

The general principles present capacity products, capacity allocation management and congestion management procedures, summarised as follows:

- **Capacity products:** different durations, firm and interruptible, releasable capacity products
- **Capacity allocation mechanisms:** open season or long-term auctions for allocating new capacity; open subscription period (OSP) and pro-rata or auctions, as the standard CAM for existing capacity; “first committed, first served” and day-ahead auctions in some specifically defined cases
- **Congestion management procedures:** long-term “Use It Or Lose It”, interruptible and firm short-term “Use It Or Lose It”, capacity buy-back mechanisms and secondary market
- **Lack of available capacity:** optimisation of capacity calculation and maximization, rules to discourage capacity hoarding (such as long-term use it or lose it provisions, reservation for short-term bookings, and secondary markets)
- **Putting unused capacity back on the market** by enhancing the usability of interruptible capacity (such as improved transparency and firmness-information provided day-ahead) and day-ahead allocation of unused capacity (such as redesign of nomination timetables and restrictions of re-nomination rights).
- **In some cases, an appropriately designed incentive** may provide an effective and efficient mechanism for regulators to influence the behaviour of TSOs and shippers.
- **Co-ordination between systems** by promoting co-operation among adjacent TSOs.

As the structure of European gas markets and the structure of networks differ, the mechanisms and procedures to be applied in Europe cannot be identical in each Member State. On the other hand, procedures should be compatible, as far as needed, to support cross-border gas flows and the functioning of a competitive market. To this end, the proposals are based

on the principle that specific mechanisms and procedures must be implemented by virtue of a decision by the NRA.

The proposals for amending the Guidelines annexed to Regulation (EC) 1775/2005 are designed as a “tool box” of mechanisms and procedures to be implemented, where appropriate. Referring to the specific situation at a given border, the relevant NRAs shall decide on what specific tools to apply. If two Member States are involved, coherent procedures shall be applied.

2. ERGEG’s principles on CAM and CMP, including proposals for amending the Guidelines annexed to Regulation (EC) 1775/2005

This document presents the CAM and CMP principles ERGEG is developing. These principles seek to facilitate effective, fair, and non-discriminatory third party access and thereby support the development of a competitive gas market in Europe.

In addition to these principles, ERGEG is making proposals to amend the annex to the Regulation (EC) 1775/2005. These proposals are derived from the ERGEG principles or, at least, are consistent with these principles. As these proposals remain within the scope of the provisions of Article 4 and 5 of Regulation (EC) 1775/2005, they are suitable for legally-binding adoption into the annex of the Regulation via comitology, according to Article 9 para 1 (b) of Regulation (EC) 1775/2005.

ERGEG's principles and proposals on CAM and CMP seek to guarantee security, predictability and flexibility for all shippers seeking access to transmission capacity. Therefore, the principles state that TSOs shall regularly offer capacity products of various durations via transparent, fair and non-discriminatory allocation procedures. Adjacent TSOs shall cooperate in order to optimise the use of the networks and to offer compatible products. Finally, TSOs and shippers shall find ways to bring unused capacity back onto the market in the short and the long-term.

ERGEG’s principles and proposals for amending the annex to the Regulation 1775/2005 set out below. The principles and proposals address four topics: (G1) third party access services and principles on general issues; (G2) principles on capacity offer and products; (G3) capacity allocation mechanisms; and (G4) congestion management procedures.

2.1 Scope of the principles

The ERGEG principles laid down in this document shall be applied, at a minimum, to actually or potentially contractually congested interconnection points between adjacent transmission systems, i.e. cross-border as well as within Member States, as far as these points are subject to booking procedures.

Proposed text for amending the Guidelines annexed to Regulation (EC) 1775/2005:

G1. Third party access services

G1.1 Scope. The rules on capacity allocation mechanisms and congestion management procedures in these Guidelines apply to actually and potentially contractually congested cross-border interconnection points, as well as interconnections between adjacent transmission systems within the same Member State, insofar as the points are subject to booking procedures by shippers.

The national regulatory authority shall determine the interconnection points which are at least potentially congested and thus subject to capacity allocation mechanisms and congestion management rules according to these guidelines.

Exit points to end consumers as well as to LNG-terminals or storage facilities are not subject to these Guidelines.

2.1.1 *Other issues related to CAM and CMP*

This document focuses on CAM and CMP issues and does not directly address other related issues.

This is, for example, the case of additional revenues which can be generated by the application of the proposed CAM and CMP. According to ERGEG principles, the allocation procedures potentially result in additional income for TSOs. This is likely with regard to auctions and is likely to occur when TSOs free up capacity by the described means. One way to utilise such surplus revenues is to use the monies to increase physical capacity or to redistribute it among network users in the form of a tariff reduction, subject to the national regulatory authority's approval.

Transparency is a pre-requisite for the functioning of the CAM and CMP. This is why, although it is not a pure CAM and CMP issue, Annex 1 of this document presents a proposal for additional transparency requirements to be included in the Guidelines annexed to Regulation (EC) 1775/2005. Transparency on some specific data is an essential part of CAM and CMP.

2.2 **ERGEG principles on general issues**

2.2.1 *Co-operation between adjacent TSOs*

In order to optimise the use of the networks and the capacity offered, adjacent transmission system operators shall cooperate at the technical and operational level. To this end, they shall exchange all necessary information. This information shall comprise, inter alia, forecasts on entry and exit flows, availability of networks, balancing energy and real-time flow metering.

Example: The independent system manager of five transmission systems in Austria, Austrian Gas Grid Management (AGGM), is an illustration of how cooperation between TSOs can increase available capacity. AGGM is responsible for capacity and gas flow management and third party access. TSOs must enter into contracts which require the exchange of data between TSOs, other system operators and AGGM and the provision of all the necessary information to AGGM. After the introduction of AGGM in 2003, the peak capacity offered was increased by 10% without investing, as a result of AGGM's improved network coordination.

Proposed text for amending the Guidelines annexed to Regulation (EC) 1775/2005:

G1.2 Cooperation

Transmission system operators shall cooperate with other transmission system operators with clearly assigned responsibilities to promote efficient cross-border trade and efficient network access. This shall require transmission system operators to exchange relevant data, coordinate maintenance and capacity calculations in order to maximise available capacity.

National regulatory authorities may prescribe further details.

Adjacent transmission system operators shall allocate capacity simultaneously and shall coordinate congestion management procedures.

G1.2.1 Increase of available capacity by enhanced cooperation.

When planning day-to-day network operation, adjacent transmission system operators shall exchange information, including forecast entry and exit flows as well as the availability of network components, of capacity buy-back mechanisms, if any, and of balancing energy, in order to optimise use of the network as a whole through operational measures.

2.2.2 Implementation of compatible products and procedures

TSOs shall implement compatible products and follow compatible procedures on each side of an interconnection point. This concerns, inter alia, the type of contract, booking procedures (lead time, reservation notice, etc.), capacity duration, available capacity, nomination and, if relevant, re-nomination procedures.

This also applies to interruptible capacity. Adjacent TSOs shall apply compatible procedures regarding the offer, allocation and interruption of interruptible capacity. Otherwise interruptible capacity products may not be used by shippers at interconnection points; there should not be different interruption patterns on each side of the border for shippers.

Reducing the operational complexity of cross-border shipping and full product compatibility will significantly reduce the obstacles to the development of cross-border flows. Compatibility is vital for the integration of adjacent markets and, ultimately, for the achievement of the single European market.

Proposed text for amending the Guidelines annexed to Regulation (EC) 1775/2005:

G1.2.2 Transportation contracts and codes

Transmission system operators shall align their transportation contracts and network codes so that transaction costs are minimized for shippers. National regulatory authorities may set out further details.

If necessary, transmission system operators adjoining more than one system may apply different terms and conditions at the interconnection points to different systems, in order to ensure compatibility with the methods applied in the adjacent systems.

G1.2.3 Procedures

Transmission system operators shall implement standardised communication procedures. They shall utilise information systems and electronic on-line screen-based communications as a means to provide adequate data to network users and to simplify transactions, such as nominations, capacity contracting and transfers of capacity rights between network users. National regulatory authorities may set out further details relating to standardised communication procedures.

2.2.3 Minimum requirements for capacity calculation

It is recommended that TSOs follow a dynamic approach with regard to the calculation of technically available capacity. This approach requires, in particular, TSOs to re-calculate technically available capacity on a regular basis, with reference to actual technical conditions (e.g. calorific value, temperature, expected consumption). This is without prejudice to the ability of TSOs to offer capacity above the existing technical capacity.

Proposed text for amending the Guidelines annexed to Regulation (EC) 1775/2005:

G1.3 Capacity calculation

When assessing technical capacity, TSOs shall consider the maximum amount of capacity that can physically be used. Technical capacity must be calculated through transparent methodologies, using best available and cost-efficient procedures by transmission system operators. Transmission system operators shall identify all capacity that can be physically used in order to maximise the offer of capacity to the market. When forecasting system use for the purposes of identifying technical constraints, transmission system operators may also consider market trends, historical flow data and data on results of allocation processes.

National regulatory authorities may define further details of capacity calculation. This may cover, in particular, the calculation of short-term capacity down to day-ahead capacity, to be based upon transmission system operators' current knowledge of, inter alia, the actual calorific value of the gas, expected consumption, climatic conditions, system configuration, and the availability of network components. Where so requested by the national regulatory authority, transmission system operators shall justify their capacity calculation.

2.2.4 Network security and emergencies

The application of ERGEG principles does not reduce or question the TSO's responsibility for security of network operation and supply.

Proposed text for amending the Guidelines annexed to Regulation (EC) 1775/2005:

G1.4 Network security

In applying the rules of this Guideline, transmission system operators shall take into account the network security requirements and the integrity of the system concerned.

The services provided shall take into account the facilities' technical constraints. Any limits on the services offered shall be made public and duly substantiated.

G1.5 Emergencies

Should difficulties in meeting contractual delivery obligations arise due to system integrity reasons beyond the transmission system operator's control, transmission system operators shall notify network users and seek a non-discriminatory solution without delay, e.g. proportionate reduction of nominated flows. Where possible, transmission system operators shall consult network users on procedures prior to their implementation and agree them with the national regulatory authority.

2.2.5 Incentivisation

NRAs may provide commercial incentives for TSOs to interact with the market and ensure capacity is allocated efficiently. This may be done by allowing TSOs to retain a certain share of the revenues (and costs) generated through congestion management mechanisms depending on the performance of the system.

Effective incentive mechanisms can ensure that it is in the TSOs' commercial interest to act in a specific way. It may also be possible to frame an incentive so that it applies to the behaviour of other network parties, such as gas shippers.

A simple incentive can be an effective substitute for complex rules and regulations and may result in a more immediate and efficient response by the TSO. One advantage of an incen-

tive mechanism is that it leaves the TSO, or other affected parties, to design and implement a mechanism that will most efficiently achieve the desired outcome.

It is important to note though that the effectiveness of incentive mechanisms is influenced by different factors across Europe, including market structure, vertical integration of the transmission, or differences in regulatory frameworks.

Proposed text for amending the Guidelines annexed to Regulation (EC) 1775/2005:

G1.6 Incentivisation

Where appropriate, national regulatory authorities may incentivise transmission system operators to achieve the aim of these Guidelines and to properly comply with the requirements resulting from these Guidelines.

2.3 ERGEG principles on capacity offer

Adjacent TSOs shall offer firm and interruptible capacity products which are compatible with the network access systems by adjacent TSOs (see above), as well as with existing and future mechanisms for trading gas.

Capacity published as available shall be binding on TSOs since this is a prerequisite for allocating it on a pro rata basis and for conducting auctions. Separate capacity for transit purposes shall be avoided in order to ensure maximum liquidity of capacity markets.

Proposed text for amending the Guidelines annexed to Regulation (EC) 1775/2005:

G2. Capacity offer and products

G2.1 Capacity offer

All available capacity shall be offered by transmission system operators in a transparent and non-discriminatory manner as firm and interruptible capacity for long- and short-term contracts.

Transmission system operators shall offer capacity on a regular basis for all products and durations defined in point G2.2.

Transmission system operators shall offer firm and interruptible capacity at any interconnection point in both directions. At unidirectional points, backhaul capacity shall be offered at least on an interruptible basis. The capacity offered shall be expressed in energy units per unit of time.

The transmission system operators shall offer the capacity available plus any remaining capacity not previously allocated and any capacity from previous allocations released by capacity holders.

The offer and use of separate capacity for transit purposes shall be avoided.

The offer of capacity shall be binding on the transmission system operator. Capacity allocations shall not take place outside the standard allocation procedures as applied according to these Guidelines.

2.3.1 Capacity duration

Taking into account the conditions set out in Article 18 para 3 of Directive 2003/55/EC, TSOs shall ensure that shippers can book capacity for a full range of short- and long-term durations, for example⁶:

- More than 5 years
- More than 1 year to 5 years
- One year or less (e. g. yearly, half-yearly and / or seasonally, quarterly)
- One month or less (e.g. monthly, weekly, daily, intra-day)

The combination of capacity products of various durations is necessary to achieve both, stability and flexibility of access. If shippers have access to a range of capacity durations, it will incentivise them to buy as much capacity as required over longer timescales, while allowing them to procure additional capacity at short notice for unexpected peaks. For this to work, shippers must be offered capacity on a regular basis, through a fair and non-discriminatory process. If shippers are to have an incentive not to hoard extra capacity for peak periods, they must be confident that they can buy capacity for shorter durations on a regular basis.

Capacity products with durations of more than 5 years are the standard offered by many TSOs today. They are often the only ones provided to the market and, in most situations, are fully booked by incumbents.

Capacity products with durations of 2 to 5 years may also be requested by shippers, depending on the market structure. Products with these durations may meet the needs of new entrants developing supply activities to end-consumers: They need stability of access, but are unable to commit themselves for more than a few years.

Offering capacity with a duration of one year or less facilitates bringing capacity onto the market on a regular basis and, hence, new entrants' access to capacity. However, it should be noted that where capacity is already fully booked, the segmentation will not result in additional capacity that can be provided to the market.

TSOs shall thus offer capacity products of various durations to meet the various needs of shippers. NRAs shall be entitled to require TSOs to offer a certain quantity of capacity products of various durations.

Proposed text for amending the Guidelines annexed to Regulation (EC) 1775/2005:

G2.2 Capacity products

The capacity offer shall be developed by transmission system operators, following proper consultation with users and supervised by national regulatory authorities. The capacity products shall accommodate market needs, as far as possible. Such consultations shall be published, along with all relevant documents, on the transmission system operator's website. The consultation shall be conducted without prejudice to the national regulatory authority's power to approve or to set rules regarding the capacity offer.

The transmission system operators shall define firm and interruptible capacity products of different durations. Depending on the demand for capacity, transmission system operators shall offer a suitable percentage of technical capacity for the different capacity contract durations. The products offered shall be subject to proper consultation of market participants and reviewed by national regulatory authorities. Any decision in relation to the prod-

⁶ Annex 2 sets out proposals for capacity products of short- and long-term durations.

ucts offered shall take into account the requests from market participants and the development of competitive gas markets.

2.3.2 Capacity products of one year and less

Part of the technical capacity shall be set aside for capacity products of one year and less. Some of this shall be reserved for yearly capacity products.

The provision of capacity products of one year and less shall be mandatory for the following reasons:

- they allow new entrants access to capacity, even those with limited financial commitment capabilities;
- they reduce the risk of market foreclosure by incumbents
- they help to bring capacity onto the market on a regular basis

This provision of capacity products of one year and less shall be mandatory, unless the primary and secondary market and the UIOLI procedures provide shippers with satisfactory access to capacity, which could justify an exemption.

This is because, in some cases, there may be liquid primary or secondary markets for capacity of various durations or functioning UIOLI mechanisms. In this situation, shippers could obtain access to the capacity they need, even for a short duration, via this primary or secondary market. In this particular situation, there would be no need for a mandatory offer of capacity products of one year and less.

The minimum level of capacity of one year and less to be offered is a decision which should be reached on a national basis, taking into account market needs. ERGEG proposes that a realistic range for the short-term capacity share is 10% to 25% of the technical capacity.

Proposed text for amending the Guidelines annexed to Regulation (EC) 1775/2005:

G2.2.1 Short-term capacity

A reasonable proportion of the available capacity shall be set aside for short-term capacity products to be offered on a firm basis, unless the primary and secondary market and the UIOLI procedures provide shippers with satisfactory access to capacity. This proportion shall be subject to national regulatory authorities' approval.

G2.2.2 Intra-day capacity

National regulatory authorities may require that any capacity becoming available to the transmission system operator within day shall be offered immediately, as far as the national regulatory authority considers this necessary.

Network users are entitled to submit nominations on an interruptible basis at any time. Transmission system operators shall use best endeavours to comply with these nominations.

2.3.3 Interruptible products

Subject to approval by NRAs, TSOs may choose between different interruption procedures, such as pro-rata interruptions or the "last committed, first interrupted" principle. If other transparent, fair and non-discriminatory interruption procedures exist, they may also be

used. Meanwhile, adjacent TSOs shall apply compatible interruption procedures (see point G1.2.2).

Interruptible short-term (intra-day) UIOLI capacity is required from day-to-day for the day-after or intra-day: capacity for day *D* is required by means of the nominations and re-nominations (beyond the booked capacity rights). The original capacity holder keeps the right to re-nominate, thus interrupting the intra-day capacity allocated through the UIOLI mechanism.

Proposed text for amending the Guidelines annexed to Regulation (EC) 1775/2005:

G2.2.3 Interruptible capacity

Transmission system operators shall offer interruptible capacity or equivalent products at any point. If the total amount of interruptible capacity is subject to limitation, the national regulatory authority may ask transmission system operators to offer interruptible short-term capacity beyond these limits.

National regulatory authorities may set out further details of interruptible capacity products.

2.3.4 Maximising firm capacity

TSOs shall maximise the amount of firm capacity offered to shippers. A basic tool is enhanced co-operation between TSOs (see point G1.2.1). In addition to this, TSOs could intervene in gas markets in order to maximise the capacity offered. Subject to NRA approval, TSOs may thus implement commercial means, which could include capacity buy-back mechanisms (see below) and the provision of physical balancing energy or similar means.

Proposed text for amending the Guidelines annexed to Regulation (EC) 1775/2005:

G2.3 Increase of available capacity by commercial means

Transmission system operators shall apply cost-effective measures to alleviate congestion. Subject to the national regulatory authority approval, transmission system operators may develop methods to use of capacity buy-back mechanisms or to procure physical energy in order to maximise and manage the offer of additional capacity. It shall be ensured in this case that any associated costs do not exceed an economically efficient level.

Capacity buy-back is a mechanism (used in some Member States) that allows the system operator to offer additional capacity on a firm basis, above its baseline capacity. However, in the event of congestion, the shippers may submit offers of the price and quantity of capacity, which they are willing to sell. The system operator will accept the lowest offers to buy-back sufficient capacity to relieve congestion. The NRA may offer incentives, which reward TSOs for their efficient use of the buy-back mechanism. This differs from UIOLI provisions, in that it is for the shipper to decide whether to offer the capacity back to the TSO and at what price.

2.3.5 Bundled products

The NRAs shall be entitled to require TSOs to offer bundled products at interconnection points. This refers to the possibility of integrating capacity at all points connecting adjacent systems into bundled products, as well as to the integrated management of entry and exit capacity between adjacent systems. The bundling of capacity is an element in facilitating cross-border market integration. It helps to increase available capacity, to reduce transaction

efforts and to focus all liquidity at the virtual hubs, as interconnection points will no longer be suitable points for gas trading. Shippers intending to book or use bundled capacity must have access, at least, to virtual hubs on both sides of the relevant border.

Proposed text for amending the Guidelines annexed to Regulation (EC) 1775/2005:

G2.4 Bundled products

National regulatory authorities may require transmission system operators to offer bundled products. Bundling comprises integrating capacity at all points connecting adjacent systems into bundled products and calculating the entire technical capacity of the bundled product. The exit and entry capacity at every point connecting adjacent transmission systems shall be integrated in such a way that the transport of gas from one market to an adjacent market is provided on the basis of a single allocation procedure and single booking. The flows shall be allocated to the physical points by the adjacent transmission system operators on the basis of technical criteria.

If the national regulatory authorities determine that bundled products must be offered adjacent transmission system operators shall jointly develop action plans to realise this. These plans shall define interim steps and include a binding schedule. The plans are subject to review by the national regulatory authority.

2.4 ERGEG principles on capacity allocation mechanisms

CAMs are mechanisms used to allocate and re-allocate primary capacity in a transparent, fair and non-discriminatory manner, i.e. to sell existing capacity. Allocating capacity in a transparent, efficient and non-discriminatory manner is also an issue when developing new capacity.

Existing and new capacity shall be allocated through transparent, efficient and non-discriminatory procedures. These procedures shall be approved by the relevant NRAs. Allocation procedures established by TSOs shall allow every shipper looking to obtain access to capacity to request the amount of capacity they are seeking to purchase.

2.4.1 Allocation of new capacity

When developing new capacity, TSOs shall use transparent, fair and non-discriminatory allocation procedures to allocate this new capacity.

- Allocation of new capacity in the long-term shall be carried out using open seasons or long-term auctions. Allocation of new capacity via open seasons shall be transparent and non-discriminatory, as stated by ERGEG's Guidelines for Good Practice on Open Season Procedures (GGPOS), part 4.2.
- If TSOs reserve a part of the capacity developed for short duration bookings (e.g. a duration of one year or less), this short-term capacity shall be allocated via open subscription periods followed by a pro-rata allocation or auctions, unless the NRAs authorise other methods.

When developing new capacity, TSOs shall allow all market participants to request capacity. The capacity allocation procedure used in open seasons shall be transparent and non-discriminatory, following the recommendation of ERGEG's GGPOS, which was developed on the basis of a broad stakeholder consultation. An alternative to open season is long-term auctions, an instrument currently used in the UK.

Furthermore, in some countries, investment decisions may be driven by elements and procedures such as well-supported demand or central planning. Even in these cases, it remains essential that once the investment decision is made, the new capacity is allocated in a transparent, efficient and non-discriminatory way.

2.4.2 Allocation of existing capacity

When existing capacity is allocated, the frequency of capacity allocations and their lead time (i.e. the time between the capacity contract conclusion and its beginning) shall be appropriate with regard to the duration of the capacity contract allocated through the allocation procedures. The longer the duration of the capacity contract, the longer the required lead time.

Prior to allocating capacity, TSOs shall publish the rules of the procedure, i.e. the allocation mechanism itself, as well as the details of the capacity products (duration, starting date, quantity, etc.) proposed to the market.

In order for shippers to be able to request the amount of capacity they require, allocation procedures shall first consist of a phase during which shippers express their requirements. At the end of this phase, each request shall be treated in a fair and non-discriminatory manner.

The second phase is the capacity allocation itself, which shall proceed according to the published rules.

If the demand for capacity does not exceed the capacity offered through the allocation procedure (i.e. in the absence of contractual congestion), TSOs shall accept all requests for firm capacity.

Examples of non-discriminatory and transparent allocation procedures are open subscription periods and auctions (see below proposals).

For capacity products with the same start date, products with longer durations should be allocated before products with shorter durations, as shorter-term capacity is often used to meet the shippers' flexibility after having booked capacity with a longer duration.

After the allocation of capacity with long duration, the remaining unsold capacity, if any, shall be sold via an allocation procedure for capacity products with shorter duration. Successive allocation procedures for capacity with decreasing durations are a way to guarantee utilisation of unused capacity.

In the case of contractual congestion, i.e. if the capacity requested exceeds the capacity offered, the CAM utilised should be either pro-rata or auctions. These two capacity allocation mechanisms are currently used in Europe to address congestion and the choice should be made between them, as both are, in principle, transparent and non-discriminatory. The respective effectiveness of the two options depends upon the market structure. This choice should be subject to NRA approval. When approving capacity allocation mechanisms, NRAs will need to consider the effectiveness of the mechanism, particularly in satisfying demands for a reasonable amount of capacity.

Proposed text for amending the Guidelines annexed to Regulation (EC) 1775/2005:

G3. Capacity Offer and Products
G3.1 Open subscription period
Firm capacity products shall be allocated at regular points in time. During a defined period prior to the allocation, network users shall be entitled to express their interest in booking

capacity (open subscription period). These periods shall be coordinated between transmission system operators. If demand for firm capacity does not exceed the available capacity, all requests shall be fully accepted on a firm basis at the end of the open subscription period.

The frequency of open subscription periods and their lead time (i.e. the time between the capacity contract conclusion and its beginning) shall be appropriate with regard to the duration of the capacity contract offered through the open subscription period. The longer the capacity contract duration, the longer its lead time.

Transmission system operators shall indicate the frequency of the open subscription periods. Transmission system operators shall publish the detailed open subscription period procedure as well as the capacity offered and its duration sufficiently in advance.

G3.1 Capacity allocation in case of actual congestion

If capacity requested during an open subscription period exceeds the capacity offered, it shall be allocated via auctions or on a pro-rata basis.

G3.1.1 Allocation by means of an auction. The relevant national regulatory authorities may decide that any capacity is to be allocated via auctions. The detailed auction design, in particular whether auctions shall be anonymous, is subject to approval by the relevant national regulatory authorities.

G3.1.2 Allocation on a pro-rata basis. The relevant national regulatory authorities may decide that any capacity is to be allocated via a pro-rata mechanism and may define the respective criteria. Every shipper is allocated a portion of capacity equal to the proportion of its specific interest related to the total interest of all shippers in the open subscription period.

2.4.3 Restricting the utilisation of first come, first served (FCFS)

The responses to the survey on CAM and CMP carried out by ERGEG in Spring 2008 showed a broad consensus among European regulators that the “first come-first served” allocation methodology (FCFS) is, in many circumstances, a non-transparent and potentially discriminatory allocation mechanism. Therefore FCFS should not be used, save for exceptional situations where there is no actual or potential congestion.

For example, in some cases, the allocation of capacity with long durations via open subscription periods, followed by auctions or pro-rata allocation may have ensured a non-discriminatory capacity allocation. If shippers requested less capacity than the overall amount available (i.e. there is no congestion), the NRA may agree to the remaining long-term capacity being sold via FCFS. In any case, FCFS shall not be used when it impedes a continuous regular offer of capacity on a transparent and non-discriminatory basis. Intra-day capacity may also be allocated in the order in which requests for capacity are received if, in the view of the national regulatory authority, this represents a sufficiently transparent and non-discriminatory method of allocation of intra-day capacity.

2.4.4 Dominant market participants

A significant barrier to the development of competitive gas markets in Europe is market structure, i.e. the large market share of incumbents. As a measure of last resort, NRAs and competition authorities should have the power to influence the market share of incumbents and thereby the balance between the dominant and non-dominant market participants, i.e. new entrants.

Proposed text for amending the Guidelines annexed to Regulation (EC) 1775/2005:

G3.2 Dominant market participants

All potential market participants shall be permitted to participate in the allocation process without restriction. However, to avoid creating or aggravating problems related to the potential use of the dominant position of any market participant, the relevant regulatory and/or competition authorities, where appropriate, may impose restrictions in general or on an individual company on account of market dominance.

2.4.5 Capacity booking

To maximise transparency and non-discriminatory measures and to reduce transaction efforts for shippers, TSOs shall establish joint platforms, if requested by NRAs. These platforms shall, at least, allow joint booking of the capacity products on both sides of a border and integrate primary and secondary capacity offers.

As a future goal, TSOs should seek to reduce the number of these platforms.

Proposed text for amending the Guidelines annexed to Regulation (EC) 1775/2005:

G3.3 Booking platforms

If requested by national regulatory authorities, adjacent transmission system operators shall establish joint, anonymous, web-based platforms for primary capacity allocation and secondary capacity trading connecting their systems. All capacity is to be allocated via this platform, unless allocated by means of implicit auctions. National regulatory authorities may require primary and secondary capacity to be offered jointly in order to increase the liquidity of capacity trading. National regulatory authorities may decide that secondary capacity shall not be allocated before primary capacity is fully subscribed.

If relevant, adjacent transmission system operators shall jointly develop action plans to reduce the number of platforms, taking into account that this implies harmonized procedures. These plans shall define interim steps and shall include a schedule. The plans are subject to review by the relevant national regulatory authorities.

2.5 ERGEG principles on congestion management procedures

Congestion management procedures are means to satisfy capacity requests when available capacity has been entirely booked, by removing contractual congestion. Given the current booking situation across Europe, effective congestion management procedures are much needed: capacity is often fully booked by incumbents, but underused.

2.5.1 Interruptible short-term use it or loose it (UIOLI)

Interruptible short-term UIOLI allows booked but unused capacity to be freed up at short notice. Shippers with short-term opportunities, e.g. traders willing to realise arbitrage, could thus benefit from this interruptible capacity becoming available.

In some Member States where the volume of interruptible capacity offered is limited, TSOs shall make it possible for shippers to ask shortly before a given day for additional interruptible capacity beyond their subscriptions. Nominations of this capacity can be fulfilled if other shippers do not use all their capacity on this given day.

Based on the requirements in Article 5 para 3 (a) of Regulation (EC) 1775/2005 interruptible day-ahead UIOLI must already be implemented by TSOs.

2.5.2 Firm short-term UIOLI

Firm short-term UIOLI could be a significant enhancement of the interruptible short-term UIOLI. This would contribute to optimising network utilisation. Furthermore, the fact that unused capacity is brought back to the market is an incentive for capacity holders to sell capacity on the secondary market.

In order to make day-ahead firm capacity available, national regulatory authorities may reduce or remove rights for re-nomination of firm capacity, where these rights exist and are applied.

Restricting re-nomination rights would allow day-ahead capacity to be made available on a firm basis.

The firm short-term UIOLI procedure shall describe the respective roles of TSOs, NRAs and any other authority. Firm short-term UIOLI procedures shall be applied by virtue of an NRA decision.

Proposed text for amending the Guidelines annexed to Regulation (EC) 1775/2005:

G4. Congestion Management

G4.1 Firm day-ahead UIOLI procedure

In case the demand for firm or interruptible day-ahead capacity exceeds the supply, transparent and non-discriminatory procedures, such as a firm day-ahead UIOLI procedure, may be established by the national regulatory authorities concerned, in order to bring unused capacity back to the market on a day-ahead basis. These procedures shall describe the roles of the users, the transmission system operators, and the national regulatory authorities. If two Member States are involved, coherent procedures shall be applied.

The firm day-ahead UIOLI procedure consists of a nomination schedule (4.1.1), a limitation to existing re-nomination where the right exists and is applied (4.1.2) and allocation of day-ahead capacity (4.1.3).⁷

G4.1.1 Nomination schedule

At the request of the national regulatory authority and subject to their approval, the transmission system operator shall set the time of nomination so that any resulting day-ahead capacity can be allocated in due time prior to the start of the main trading activities on the last trading day preceding the day of delivery. In this context, the national regulatory authority may request that firm and interruptible capacity are nominated simultaneously.

If the nominated firm and interruptible capacity plus the capacity reserved for re-nomination exceed a defined level, the nominations of interruptible capacity are to be rejected, partially or in total, in order to make a minimum amount of capacity available on a firm day-ahead basis.

Nominations of interruptible capacity that have not been rejected shall be fulfilled on a firm basis. The shipper shall be informed accordingly. Rejected nominations of interruptible capacity shall be considered as nominations on an interruptible basis as long as the ship-

⁷ Annex 3 illustrates the proposed firm day-ahead UIOLI procedure.

per does not replace his interruptible nomination by a day-ahead firm nomination. Day-ahead-firm capacity is nominated separately after the close of the main trading activities.

G4.1.2 Limitation of existing re-nomination rights

In order to make day-ahead capacity available, the national regulatory authority may reduce or remove existing rights for re-nomination of firm capacity and modify the lead-time of re-nominations. This concerns increases and reductions to the initial nomination.

If a reduction of existing re-nomination rights is applied, the modification may include a limitation of a certain amount of the capacity booked by the network user plus a certain amount of the technical capacity at the interconnection point concerned.

The percentage and the lead time of re-nominations shall reflect, in particular, the objectively justified needs of particular shippers or the requirements at specific points, and security of supply.

National regulatory authorities in neighbouring Member States shall coordinate their decisions.

G4.2.3 Offer and allocation of day-ahead firm capacity

Capacity not accepted as nominated and not granted for re-nomination shall be converted into firm day-ahead capacity in both directions at any interconnection point and offered to the market by the adjacent transmission system operators. Day-ahead-capacity is allocated by auction only. Establishing reserve prices in these auctions may be disallowed by the national regulatory authority. The offer and allocation of day-ahead capacity shall be performed in such a way that buyers can take part in daily gas trading. The detailed auction design applied shall be subject to approval by the relevant national regulatory authority.

2.5.3 Freeing up capacity

If no capacity is available for capacity products of short duration (one year and less) due to long-term bookings, then NRAs shall consider the application of tools to free up capacity for capacity products of short duration.

Short-term flexibility is a basic requirement for the development of competitive markets. However, capacity is often fully booked for long durations, which some argue makes it difficult to offer capacity for a shorter duration before the expiration of the long-term contracts. In some cases, contracts are said to have “evergreen” clauses, which considerably hamper the introduction of capacity products of short durations. To overcome this problem, it is necessary to find ways to make capacity available before the expiration of the long-term capacity contracts.

Where the NRA considers it desirable and legally possible, the NRA shall ask shippers who have booked more than a certain part of total firm capacity (incumbents) to release part of their booked capacity, putting it back on the market. This mechanism has some similarities with long-term UIOLI. The difference is that long-term UIOLI is applied when the capacity booked is systematically underused, whereas the releasable capacity is brought back onto the market, regardless of its utilisation by its initial holder.

In some circumstances, it is considered appropriate and legitimate that dominant shippers holding the bulk of the capacity at most entry points of a grid are requested to return part of their capacity to the market, regardless of the utilisation of this booked capacity. In particular, in systems where one or several incumbents have booked most of the capacity on a long-term basis, such capacity releases are considered a feasible way for new entrants to gain

access to capacity within a reasonable timeframe. Without capacity release, new entrants are obliged to wait until the contracts expire before getting the capacity they need.

This mechanism shall only be used when requested by shippers holding less than a certain part of the capacity (small shippers). The capacity released shall be offered as firm capacity products with durations of less than 5 years.

Releasable capacity would only be implemented if so agreed by the TSOs and shippers concerned. Nevertheless, releasable capacity has proven to be a powerful tool, particularly in France, to allow new entrants to obtain access to capacity.

2.5.4 Long-term UIOLI

If a TSO fails to satisfy a shipper's capacity request and if this shipper informs the TSO that the requested capacity is not available on the secondary market, a long-term UIOLI may be applied.

TSOs shall keep capacity use under permanent review and should regularly offer additional capacity to the market. The TSO shall first examine if one or more shippers holding capacity is underutilising the capacity. If the TSO observes that a shipper has used less than a certain percentage of his booked capacity during a specific period of time, including at least one winter month, the TSO shall order the shipper concerned to irrevocably release the proportion (e.g. a certain percentage) of unused capacity, ideally corresponding to the capacity requested by the first shipper. The shipper concerned shall have the right to justify the underutilisation by contesting the reassignment notified by the TSO.

The long-term UIOLI procedure shall describe the respective roles of TSOs, NRAs and any other authority. Long-term UIOLI procedures shall be applied by virtue of an NRA decision.

Long-term UIOLI can mitigate capacity hoarding based on incumbents' underused long-term capacity contracts. Thus, it is an essential tool to allow new entrants to obtain access to capacity which would not otherwise be available. Scarce capacity that is systematically unused can thus be returned to the market on a firm basis.

In addition, long-term UIOLI measures are effective tools to discourage large participants from overbooking capacity and / or encourage shippers to release unused capacity on the secondary market if needed by other shippers.

Proposed text for amending the Guidelines annexed to Regulation (EC) 1775/2005:

G4.2 Withdrawal of underutilised capacity⁸

Relevant national regulatory authorities may establish procedures for applications for withdrawal of systematically underutilised capacity. An application for withdrawal of systematically underutilised capacity procedure requires:

- shippers request capacity bookings at the particular interconnection point and are unable to obtain this capacity on the primary or secondary market;
- the capacity holder systematically underutilizes at least part of his allocated capacity with a contract duration of more than one year during a specific period covering at least one winter month;
- the capacity owner has not sold or offered in due time and at a reasonable price its unused capacity on the secondary market. National regulatory authorities shall detail the

⁸ The legal basis of long-term UIOLI in Regulation (EC) 1775/2005 is to be reviewed.

criteria to release capacity in order to ensure the application of this point.

- the capacity owner is unable to satisfactorily justify his behaviour and
- the gas market share of the capacity holder on the entry-side of the respective interconnection point exceeds the capacity share defined by the national regulatory authority.

The procedure shall describe the roles of the users, the transmission system operators and the national regulatory authority and must be published. If two Member States are involved, coherent procedures shall be applied. The withdrawal of underutilised capacity procedure includes definitions, specific procedures and withdrawal.

G4.2.1 Definitions

Systematic underutilization and capacity hoarding will be defined by the national regulatory authority according to its responsibilities established in Article 25 para. 4 of Directive 2003/55/EC; technical features of the interconnection point and market environment will be taken into consideration.

G4.2.2 Specific procedures

In order to withdraw capacity determined to be systematically underutilised or hoarded, transparent, non-discriminatory procedures shall be established by the relevant national regulatory authority. If two Member States are involved, coherent procedures shall be applied. The procedure shall describe the roles of the transmission system operators and the national regulatory authorities, with regard to:

- the responsible body for deciding if systematic underutilisation of capacity occurs;
- the way in which the capacity holder is consulted, if appropriate;
- underutilised capacity to be withdrawn;
- the duration of the withdrawal of the capacity;
- the responsible body for withdrawing the underutilised capacity;
- the appeals procedure.

G4.2.3 Withdrawal

The capacity holder can lose his capacity rights, partially or completely, without prejudice to other prerequisites established by the national regulatory authority, for a given period or for the remaining term. Furthermore, the capacity holder can be limited in his nomination rights for a given period to the maximum flows of the previous year. The capacity withdrawn or subject to limits to the nomination rights shall be offered on the primary market by the respective transmission system operator.

Once the capacity is transferred to another user, the initial capacity holder is relieved of any payment obligation for the withdrawn part of the capacity, without prejudice to possible fees related to withdrawal itself.

2.5.5 Secondary market

Shippers not intending to use all their booked capacity shall be able to resell it as secondary capacity. Network users wishing to exchange capacity shall be entitled to do so. TSOs shall facilitate these secondary capacity transactions. Secondary trading should be designed in a way that ensures non-discrimination and transparency.

G4.3 Secondary markets

Transmission system operators shall facilitate trade of capacity rights in the secondary

market. National regulatory authorities may require transmission system operators to define methods to facilitate secondary trading of capacity.

2.5.6 Amendment of existing contracts

The amendment of some congestion management procedures has an impact on market participants' third party access strategies. It is, therefore, deemed necessary to allow shippers to adapt their contractual relations after new mechanisms enter into force.

Proposed text for amending the Guidelines annexed to Regulation (EC) 1775/2005:

G4.4 Existing contracts

All congestion management clauses in capacity contracts existing prior to the application of these Guidelines shall be amended in line with the implemented provisions within 6 months of the respective national regulatory authority's decision entering into force. During this period, network users shall be entitled to reduce or terminate their capacity contracts. Expiring contracts shall not be subject to tacit extension.

3. Responding to the Public Consultation

ERGEG invites all interested parties to respond to this consultation paper, and in particular the questions set out below. Responses should be sent by email to cam-cmp@erreg.org. The closing date for responses is **20 March 2009**.

Any questions relating to this document should in first instance be directed to:

Mrs. Fay Geitona
Tel: +32 2 788 73 30
Fax: +32 2 788 73 50
Email: fay.geitona@ceer-eu.org

ERGEG welcomes respondents' views on our suggested approach; in particular responses to the following questions are sought:

1. Do you agree with the problems that ERGEG has identified with capacity allocation and congestion management? Are there other aspects that should be taken into account?
2. The scope of ERGEG's principles and of the derived proposals covers bringing capacity to the market where there is currently contractual congestion. Do you agree with this approach?
3. In principle, European regulators consider FCFS allocation potentially discriminatory. Do you share this view? What do you think about the proposed mechanisms (OSP with subsequent pro-rata allocation or auctioning)?
4. In your view, what is the future importance of the proposed capacity products (firm, interruptible, and bundled) and of the proposed contract duration (intra-day up to multi-annual)?
5. What is the role of secondary capacity trading?

6. How do you assess the proposed measures to enhance the availability of firm capacity and to improve short-term and long-term congestion management?
7. What are your views on the proposals? Do they address the problems? Will they lead to more effective capacity allocation methods being developed?
8. Are the needs of shippers performing supply activities properly taken into account?
9. Are the proposed measures suitable to facilitate development of liquid gas markets?
10. In your view, how important are compatible booking and operational procedures between adjacent systems?
11. Do the proposed measures increase the efficient use of the system? What aspects would you support and like to see further developed?

Annex 1: ERGEG principles on transparency

Transparency on specific data is an essential part of CAM and CMP: TSOs shall publish physical and commercial flows at interconnection points. These data help shippers to evaluate the likeliness of interruption of interruptible capacity products. This publication should be done in a way that allows for automated analysis.

G5. Transparency
G5.1 Basic principles
G5.1.1. Information shall be published for relevant points. Relevant points are, at least, those points between adjacent markets where capacity can be contracted by network users.
G5.1.2 Transmission system operators shall publish all relevant data on the basis of the best possible forecast. In order to fulfil this obligation market participants shall provide transmission system operators with the relevant data. The way in which such information is published shall be subject to review by the national regulatory authorities.
G5.1.3 When forecasts are published, the ex post values realised for the forecast information shall also be published in the period following that of the forecast, or at the latest on the following day (D+1).
G5.1.4 Transmission system operators shall make their information public in a meaningful, quantifiable, clear, easily accessible way, in a common electronic format including the underlying data on a non-discriminatory basis, in a timely, concise and correct manner.
G5.1.5 Transmission system operators shall publish all data on allocation and usage of capacity products on the respective web-based booking platform.
G5.2 Publication of network and contract related data
Transmission system operators shall publish at least the following information about their systems and services:
G5.2.1 A detailed and comprehensive description of the different services offered and their charges;
G5.2.2 The different types of transportation contracts available for these services and, as applicable, the network code and/or the standard conditions outlining the rights and responsibilities of all network users including standardised transportation contracts and other relevant documents;
G5.2.3 The standardised procedures applied when using the transmission system, including the definition of key terms;
G5.2.4 Detailed provisions on capacity allocation, congestion management and anti-hoarding and re-utilisation procedures;
G5.2.5 Detailed rules applicable for capacity trade on the secondary market;
G5.2.6 If applicable, the flexibility and tolerance levels included in transportation and other services without separate charge, as well as any flexibility offered in addition and the corresponding charges;
G5.2.7 A detailed description of all relevant points interconnecting its system with that of other transmission system operators
G5.2.8 Information on gas quality and pressure requirements, including a full specification

of gas quality parameters and justification and information regarding procedures used for off-spec gas, including any conversion costs, if applicable;

G5.2.9 Transmission system operators shall publish at least once a year, by a predetermined deadline, all planned maintenance periods that might affect network users' rights from transportation contracts and corresponding operational information with adequate advance notice.

G5.2.10 The rules applicable for connection to the system operated by the transmission system operator;

G5.2.11 Any information, in a timely manner, on proposed and/or actual changes to services and conditions.

G5.3 Publication of usage related data

Transmission system operators shall make publicly available capacity and flow information per relevant point. Capacity information shall take into account all relevant information available to the transmission system operator at the time of the calculation. The publication shall consist at least of the following data:

G5.3.1 Information on historic utilisation for the past three years on a rolling basis, in particular, information on actual flows (expressed in energy units per time) at least on a daily basis. National regulatory authorities may require transmission system operators to publish hourly flows.

G5.3.2 Aggregated logs of nominated and re-nominated capacity for the past three years on a rolling basis.

G5.3.3 Information on interruptions to flows for the prior three years on a rolling basis, including the likelihood of interruptions and the reasons for interruptions as well as the likelihood of rejection of nominations for interruptible capacity.

G5.3.4 Maximum technical capacity for flows in both directions, contracted firm and interruptible capacity as well as available firm and interruptible capacity for all future years in which capacity has been contracted and at least two years ahead.

G5.3.5 Daily updates of availability of short-term services (day-ahead and week-ahead)

G5.4 Provision of data to supervisory bodies

A set of sufficiently accurate network and flow data shall be made available, upon request, to the national regulatory authorities and to the European Commission by the transmission system operators. The national regulatory authorities and the European Commission shall ensure confidential treatment of these sets of data, by themselves and by any consultant carrying out analytical work for them on the basis of these data.

G5.4.1 Transmission system operators shall keep up to date records of all capacity contracts and all other relevant information in relation to calculating and providing access to available capacity. The national regulatory authority responsible shall have access to these data for the exercise of their duties.

Annex 2: Capacity Products Table

Time horizon	Capacity product	CAM	CMP
Intraday, day ahead, weekly, monthly	Firm and interruptible capacity; intraday and day-ahead capacity	Day ahead auction for daily capacity; First committed, first served in special situations	Firm and interruptible short-term UIOLI; Capacity buy-back; Secondary market
More than 1 month to 1 year	Firm and interruptible capacity; releasable capacity product	OSP; auctions	Capacity buy-back; Secondary market
More than 1 year to 5 years	Firm and interruptible capacity; releasable capacity product	OSP; auctions	Long-term UIOLI; Secondary market
More than 5 years	Firm and interruptible capacity	OSP; Auctions; open season	Long-term UIOLI; Secondary market

Annex 3: Explanation of the proposed procedure for short-term congestion management

(point G4 of the proposals for amending Guidelines annexed to Regulation (EC) 1775/2005)

Basic concept

The application of procedures for short-term congestion management seeks to provide day-ahead firm capacity on the primary market at fully booked interconnection points. For this purpose, existing rights to re-nominate booked capacity may be restricted by NRAs. Capacity holders may still freely use their booked capacity by nomination on the day before, but the initial nominations on D-1 will be binding and may not be changed entirely.

In most cases, there will be some capacity that is neither initially nominated nor granted for re-nomination. This portion can be provided as firm day-ahead capacity by the TSOs.

The concept follows the principle of Recital 11 of Regulation (EC) 1775/2005: "Rules which balance the need to free up unused capacity in accordance with the 'use-it-or-lose-it' principle with the rights of the holders of the capacity to use it when necessary, while at the same time enhancing liquidity of capacity."

Short-term UIOLI and making interruptible capacity firm

Capacity that is neither initially nominated nor granted for re-nomination may be offered as firm day-ahead capacity (short-term UIOLI principle). The proposed firm short-term UIOLI and interruptible capacity both depend on unused capacity. The concept, therefore, contains rules to balance the interest of holders of interruptible capacity and the potential to offer firm day-ahead capacity: where more than 10% of the technical capacity is neither initially nominated nor granted for re-nomination, this portion shall be used to make interruptible nominations firm.

This concept presupposes a nomination schedule as defined in point G4.1.1 of the proposed amendments.

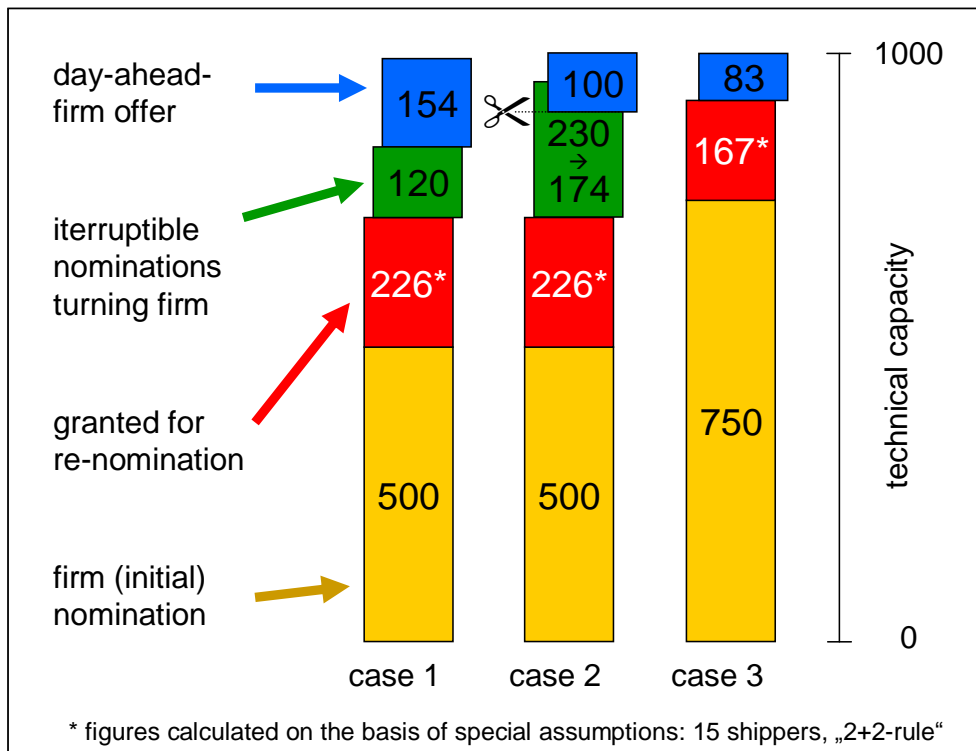


Figure 1: Capacity that is neither initially nominated nor granted for re-nomination will be divided between interruptible capacity owners and firm day-ahead offers as described in the text above

The “two-plus-two” rule

Rule 3.2.2 allows NRAs to restrict existing re-nomination rights “to a certain amount of the capacity booked by the network user plus a certain amount of the technical capacity of the interconnection point concerned.”

A possible value for the restricted amount is 2% of the booked plus 2% of the technical capacity. These limits are proposed on the basis that, in relative terms, smaller shippers need more re-nomination rights than larger ones, since it is likely that smaller shippers have a lower portfolio effect. Where particular shippers or specific points require a higher thresholds, this may be granted by the NRAs.

Conversion of unused capacity into firm day-ahead capacity

The portion of capacity not initially nominated will, in most cases, vary during the day. There may be hours of high usage rates and others of lower levels of usage. This conflicts with the concept of offering unused capacity on a firm basis.

TSOs shall, therefore, use their flexibility to convert the unused portion into a firm day-ahead offers as shown in the graph below. (As many case studies have shown, TSOs regularly diverge from the shippers’ nominations.)

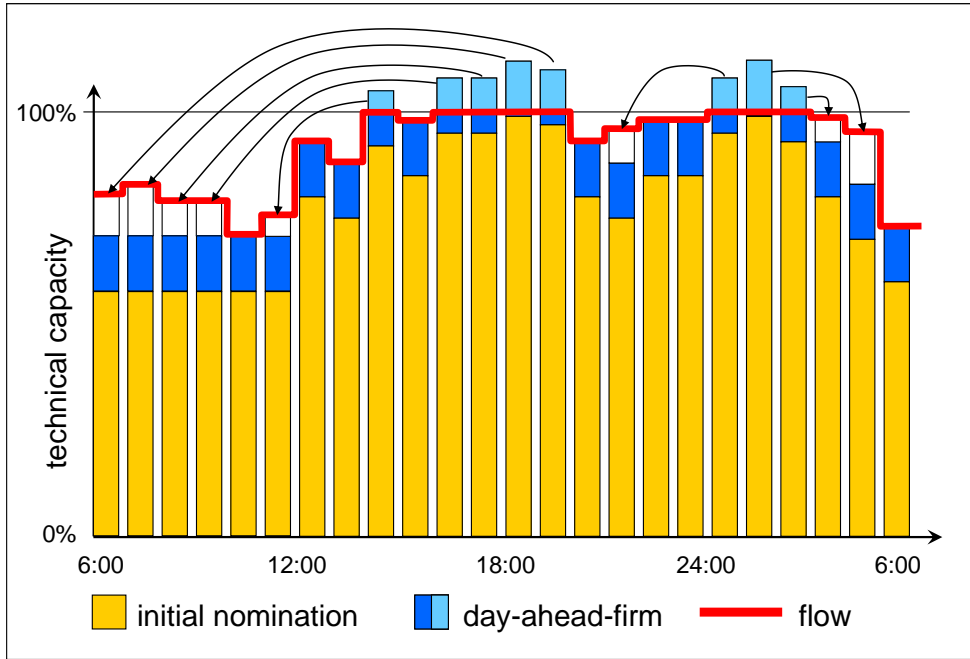


Figure 2: Possible ways for TSOs to use their technical flexibility to convert unused capacity into firm day-ahead offers. (yellow: nomination of firm capacity, blue: day-ahead firm capacity offers, red: TSO's operating curve.)