

# **Market-Based Investment Procedures for Gas Infrastructure: Issues and Approaches**

## **Public Consultation Evaluation of Responses**

**Ref: C12-GWG-87-03a  
3-December-2012**

## INFORMATION PAGE

### Abstract

This document (C12-GWG-87-03a) presents an evaluation of the contributions received in response to the public consultation document (C12-GWG-87-03)<sup>1</sup> on “Market-Based Investment Procedures for Gas Infrastructure: Issues and Approaches”, which was published as part of the follow-up work for the CEER Gas Target Model<sup>2</sup>. The respondents broadly supported CEER’s work and contributed valuable views and arguments.

This document includes a summary of the responses to each consultation question and a conclusions section, in which CEER presents its preliminary view on the way forward in the development of EU processes for the identification and allocation of incremental capacity in gas transmission networks. This CEER work is intended to lead to the presentation of a “Blueprint for Incremental Capacity” at the Gas Regulatory Forum in Madrid.

### Target Audience

Energy suppliers, traders, gas customers, gas industry, consumer representative groups, network operators, Member States, academics and other interested parties.

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<sup>1</sup> “CEER public consultation document on Market-Based Investment Procedures for Gas Infrastructure: Issues and Approaches”, Ref. C12-GWG-87-03, 18 June 2012, [http://www.energy-regulators.eu/portal/page/portal/EER\\_HOME/EER\\_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS/GAS/Investment%20Procedures%20for%20Gas%20Infrastructure/CD/C12-GWG-87-03\\_%20Market\\_based\\_investment\\_procedures\\_final.pdf](http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS/GAS/Investment%20Procedures%20for%20Gas%20Infrastructure/CD/C12-GWG-87-03_%20Market_based_investment_procedures_final.pdf)

<sup>2</sup> “CEER Vision for a European Gas Target Model – Conclusions Paper”, Ref. C11-GWG-82-03, 1 December 2011, [http://www.energy-regulators.eu/portal/page/portal/EER\\_HOME/EER\\_PUBLICATIONS/CEER\\_PAPERS/Gas/Tab/C11-GWG-82-03\\_GTM%20vision\\_Final.pdf](http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_PAPERS/Gas/Tab/C11-GWG-82-03_GTM%20vision_Final.pdf)

## Related Documents

### CEER documents:

- “Market-Based Investment Procedures for Gas Infrastructure: Issues and Approaches – a CEER Public Consultation Paper”, Ref. C12-GWG-87-03, 18 June 2012, [http://www.energy-regulators.eu/portal/page/portal/EER\\_HOME/EER\\_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS/GAS/Investment%20Procedures%20for%20Gas%20Infrastructure/CD/C12-GWG-87-03 %20Market based investment procedures final.pdf](http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS/GAS/Investment%20Procedures%20for%20Gas%20Infrastructure/CD/C12-GWG-87-03%20Market_based_investment_procedures_final.pdf)
- “CEER Vision for a European Gas Target Model. Conclusions Paper”, Ref. C11-GWG-82-03, 1 December 2011, [http://www.energy-regulators.eu/portal/page/portal/EER\\_HOME/EER\\_PUBLICATIONS/CEER\\_PAPERS/Gas/Tab/C11-GWG-82-03\\_GTM%20vision\\_Final.pdf](http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_PAPERS/Gas/Tab/C11-GWG-82-03_GTM%20vision_Final.pdf)
- “Draft Vision for a European Gas Target Model: A CEER Public Consultation Paper“, CEER, Ref. C12-GWG-77-03, July 2011, [http://www.energy-regulators.eu/portal/page/portal/EER\\_HOME/EER\\_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS/GAS/Gas\\_Target\\_Model/CD/C11-GWG-77-03%20GTM%20PC\\_5-July-2011.pdf](http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS/GAS/Gas_Target_Model/CD/C11-GWG-77-03%20GTM%20PC_5-July-2011.pdf)

### ACER documents:

- “Framework Guidelines on Capacity Allocation Mechanisms for the European Gas Transmission Network”, ACER, Ref. FG-2011-G-001, August 2011, [http://acernet.acer.europa.eu/portal/page/portal/ACER\\_HOME/Communication/News/FG-2011-G-001%20\(final\).pdf](http://acernet.acer.europa.eu/portal/page/portal/ACER_HOME/Communication/News/FG-2011-G-001%20(final).pdf)

### Other documents:

- Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0094:0136:en:PDF>
- Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0036:0054:en:PDF>
- Proposal for a Regulation of the European Parliament and of the Council on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC, COM(2011) 658 final, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0658:FIN:EN:PDF>
- Regulation (EU) No 994/2010 concerning measures to safeguard security of gas supply and repealing Council Directive 2004/67/EC, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:295:0001:0022:EN:PDF>

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## EXECUTIVE SUMMARY

### ***Objective of the report***

This document presents an evaluation of the thirty contributions received in response to the CEER public consultation on “Market-Based Investment Procedures for Gas Infrastructure: Issues and Approaches”, which was conducted as part of the follow-up work to the CEER Gas Target Model. It consists of a summary of the responses to each consultation question and a conclusions section, in which CEER presents its preliminary view on the way forward in the development of EU processes for the identification and allocation of incremental capacity in gas transmission networks. This CEER work is intended to lead to the presentation of a “Blueprint for Incremental Capacity” at the Gas Regulatory Forum in Madrid (April 2013). This work will also be supported by a consultancy study on incremental capacity, currently conducted under the auspices of the Agency for the Cooperation of Energy Regulators (ACER), in the context of the development of the Framework Guideline on rules regarding Harmonised Gas Transmission Tariff Structures (Tariff FG).

### ***Key messages***

Most respondents to the CEER public consultation reiterated the need for pan-European principles for the identification and allocation of incremental capacity. They call for clear and transparent mechanisms to trigger incremental capacity investment, while many point to the respective advantages of both open season procedures and integrated allocation procedures for incremental capacity.

For most respondents, the decision to invest should be based on the results of an economic test. Such a test would be applied to binding network users’ commitments to book incremental capacity and require a proportion of the investment in question to be underwritten by these commitments. A majority of respondents, however, consider that a full standardisation of economic tests is not necessary, but suggest harmonising general principles. In particular, principles such as regularity and transparency of parameters, which should be published in advance of an incremental capacity procedure, are deemed important.

### ***Conclusions***

CEER is convinced that there is a need for harmonised principles for a procedure to trigger incremental capacity investment, and that the decision to invest should be based on the results of an economic test. This should apply to all Interconnection Points (IPs) where the Capacity Allocation Mechanisms Network Code (CAM NC) is also applied. Pre-phases before the allocation of capacity could serve to screen IPs to determine if there is likely to be adequate market demand for incremental capacity that would justify project design and the offer of incremental capacity. This would also allow for cross-border coordination.

On the quantitative parameters of an economic test, CEER takes into account stakeholders’ view that there may not be a need for harmonisation, but that market, network and regulatory circumstances may be taken into account. At present, CEER is of the view that the CAM NC should enable the integrated allocation of existing and incremental capacity. CEER will conduct further work to propose a framework which allows for this. CEER acknowledges the point raised by stakeholders that different types of investment projects might require alternative approaches and will give this further consideration.

In work on this issue, energy regulators will take careful account of, and coordinate their CEER work with, their ongoing activities in ACER, in particular in the development of relevant FGs and NCs.

## 1 Introduction

Following a request from the 20<sup>th</sup> Madrid Forum (September 2011), CEER issued a public consultation document<sup>3</sup> (C12-GWG-87-03) on 28 June 2012, with the objective to gather stakeholders' views on different approaches for the identification and allocation of incremental capacity, based on market demand and coordinated market procedures.

In line with the conclusions of the Gas Target Model<sup>4</sup>, CEER stressed the importance of ensuring efficient investment in cross-border gas infrastructure, in order to facilitate the development of a single European gas market.

The consultation paper gave an overview of lessons learnt from past experiences with market-driven investment procedures. It also highlighted the main issues to be tackled in order to promote consistency with the regulatory framework deriving from the 3<sup>rd</sup> Package, including the elaboration of network development plans and the introduction of auctions for existing capacity. In its final section, the paper described the different steps of cross-border investment procedures, from the identification of a capacity need to the final approval of the investment. For each of these steps, CEER proposed potential options that could be followed, underlining in each case their potential advantages and disadvantages and some of the factors which would need to be taken into account.

All interested stakeholders were invited to provide comments to CEER's consultation paper and to respond to a non-exhaustive list of questions by 14 September 2012. Thirty responses were received, with two being confidential. Annex 3 of this document lists the names of all the stakeholders who submitted non-confidential contributions.

The present document provides a summary of the responses received to each question. In Section 4 of the document, CEER sets out its preliminary views (evaluation of responses) on the key issues raised by respondents and highlights some of the areas that may require further consideration. Some of these will be explored by consultants commissioned by ACER in the context of the development of the Tariffs FG, where the European Commission has requested that ACER consider formulating principles on incremental capacity. Such consultancy study, expected to be finalised by Q1 2013, will help to inform ACER's views as to whether specific tariff provisions are needed to ensure construction of incremental capacity and as to whether a pan-European approach is needed to set the threshold for the economic or market test. It will also help to inform CEER's views on some of the areas that we are considering in our work on incremental capacity, which is also intended to support regulators' efforts in ACER.

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<sup>3</sup> "CEER public consultation document on Market-Based Investment Procedures for Gas Infrastructure: Issues and Approaches", Ref. C12-GWG-87-03, 18 June 2012, [http://www.energy-regulators.eu/portal/page/portal/EER\\_HOME/EER\\_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS/GAS/Investment%20Procedures%20for%20Gas%20Infrastructure/CD/C12-GWG-87-03\\_%20Market\\_based\\_investment\\_procedures\\_final.pdf](http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS/GAS/Investment%20Procedures%20for%20Gas%20Infrastructure/CD/C12-GWG-87-03_%20Market_based_investment_procedures_final.pdf)

<sup>4</sup> CEER Vision for a European Gas Target Model – Conclusions Paper, Ref. C11-GWG-82-03, 1 December 2011, [http://www.energy-regulators.eu/portal/page/portal/EER\\_HOME/EER\\_PUBLICATIONS/CEER\\_PAPERS/Gas/Tab/C11-GWG-82-03\\_GTM%20vision\\_Final.pdf](http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_PAPERS/Gas/Tab/C11-GWG-82-03_GTM%20vision_Final.pdf)

The results of this consultation and the consultancy study will support the development of a “Blueprint for Incremental Capacity” setting out an EU-wide approach to identification and allocation of incremental capacity to ensure efficient investment. As requested by the 22<sup>nd</sup> Madrid Forum (October 2012), these concrete proposals will be presented by CEER at the next Madrid Forum, in April 2013.

## 2 Customer Perspective

While infrastructure development is of key importance to secure gas supplies and to facilitate the development of competition to the benefit of end-customers, it also needs to be ensured that capacity developments are properly sized in order to avoid stranded assets as the costs of infrastructure investment are generally passed on to consumers through their energy bills. This socialisation of the investment costs via “transmission tariffs” can potentially lead to price increases for end-customers. The regulatory framework therefore seeks to ensure sound cost-efficient investments, taking into account the supply and security needs of the energy system and the overall welfare of society as a whole. In this regard, establishing a process to identify if, and how much, natural gas is needed by the market can help to determine what, if any, investments are therefore needed.

The purpose of the work undertaken by CEER is precisely to develop EU processes which would allow for sound investment decisions. CEER is building on lessons learnt from past open seasons and integrated auctions applied in Great Britain, which provide valuable insights into factors leading to successful market-driven investments. It also takes into account the changes introduced by the CAM NC and in particular the use of auctions for the allocation of long-term existing capacity. CEER’s objective is to ensure the overall regulatory framework is consistent and allows for efficient investments, supporting the development of competitive wholesale and retail markets.

## 3 Summary of responses

### 3.1 Experience with open seasons

*Q1: “Have you participated in an open season process for cross-border capacity? If so, what are your views on the process? Please provide comments, if you have any.”*

Seventeen stakeholders reported that they had participated in an open season process for cross-border capacity.

Eleven respondents commented that they have gathered valuable experience with open seasons. Many specified that open seasons are in principle a suitable market-based procedure for identifying investment needs and allocating capacity but pointed out that the concept covers a great variety of situations. In particular, five respondents noted that open



seasons were often not in line with the Guidelines of Good Practice for open seasons issued by CEER in 2007<sup>5</sup>, although there have also been good examples in recent years.

One respondent indicated that relying solely on open seasons was not sufficient to meet market demand for new capacity. Two other respondents considered that investments should not be based on long-term commitments from shippers, with one of them advocating a shift towards a central planning approach where Transmission System Operators (TSOs) decide on capacity developments, under the supervision of National Regulatory Authorities (NRAs).

Twenty-two respondents highlighted that open season procedures needed further improvements in the area of transparency. The great majority of stakeholders called for enhanced visibility on the way costs are calculated and tariffs are set, on the level of commitments expected from network users to trigger the investment and also on the key deadlines in the process. They asked for this information to be known in advance, i.e. before the capacity requests are submitted.

In addition, eleven stakeholders pointed to the need for a better coordination between adjacent TSOs and NRAs and advocated a common approach with regard to the allocation methodology, the offer of products and their availability. Some stakeholders also mentioned the lack of consistency between transport contracts, credit requirements and gas quality specifications.

### 3.2 Need to investigate alternative methodologies

*Q2: “Do you consider that current methodologies e.g. open seasons to decide on investments are an appropriate way to identify and integrate new cross-border capacity, or is there need to move away from them? If so, what would your preferred alternative be and why? Please provide your comments, if you have any.”*

Twenty-four respondents considered that, if properly designed, open seasons are viable instruments to decide on investments while most of them welcomed the fact that other allocation methodologies are explored, considering that different circumstances may require different processes.

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<sup>5</sup> “ERGEG Guidelines of Good Practice - Open Season Procedures (GGPOS)”, Ref. C06-GWG-29-05c, May 2007

[http://www.energy-regulators.eu/portal/page/portal/EER\\_HOME/EER\\_PUBLICATIONS/CEER\\_PAPERS/Gas/2007/ERGEG%20Guidelines%20of%20Good%20Practice%20-%20Open%20Season%20Procedures%20\(GGPOS\)](http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_PAPERS/Gas/2007/ERGEG%20Guidelines%20of%20Good%20Practice%20-%20Open%20Season%20Procedures%20(GGPOS))

In this regard, thirteen respondents commented that a standalone process such as an open season would be most appropriate when dealing with large investment projects, aiming at the creation of a new IP or at significant increases in capacity spanning several IPs. The rationale is that these complex projects require greater flexibility for different options to be considered and also greater time for coordination. In this regard, open seasons are considered well-suited mechanisms but should also be completed with a regular integrated auction process for existing IPs. In the view of these stakeholders, market testing through the long-term auction specified in the CAM NC would be the most appropriate for fairly limited capacity developments based on for instance network configuration, increased compression and potentially downstream reinforcements.

Five respondents indicated that open seasons should remain the standard mechanism for investments in cross-border capacity.

Three respondents advocated for the sole use of integrated auctions.

Two respondents considered that the question should not be whether one pre-defined methodology is appropriate but whether the regulatory and market frameworks are well-designed or not.

Two respondents mentioned that investment decisions should be separated from long-term commitments from network users, i.e. they should not be made conditional on network user's capacity bookings.

### 3.3 Questions to be addressed

*Q3: "Do you think that the paper addresses the right questions? What are the additional questions that should be addressed? What in your view are the main problems that need to be resolved? Please provide comments, if you have any."*

Twenty-three stakeholders confirmed that CEER was addressing the right questions in its consultation paper.

Twelve respondents highlighted the importance of tariffs when considering the allocation of new built capacity. Stakeholders mentioned in particular the need to clarify the issues of payable price (fixed vs. floating) and of potential distortions between users of existing and new capacity. Another question raised related to the allocation of costs generated by the development of multi-purpose core network Infrastructure in entry/exit zones. Finally, some stakeholders underlined the issue of stranded assets and the way these costs are recovered by TSOs.

Eight respondents suggested that CEER investigates the issue of how efficiently incurred investment costs are calculated.

Four respondents questioned the way security of supply and externalities in general should be taken into account when designing the investment procedures and economic tests in particular.

Three respondents recalled that depreciation methodologies, incentives and remuneration principles need to be taken into consideration when dealing with capacity developments.

Two respondents underlined that the introduction of bundling will require harmonisation of the main features of the products offered.

Two respondents mentioned that consent and planning regimes may also need to be harmonised to a certain extent.

Finally, two respondents considered that the paper should take more account of the investments that are not triggered on the basis of long-term commitments from network users.

### 3.4 Relevant scope for CEER work

*Q4: “What should be the scope of this paper? Should our proposals apply to cross-border points only, or should they also apply to entry points to LNG (Liquefied Natural Gas) terminals and entry/exit points to and from storage? Why and why not? Please provide comments, if you have any.”*

Seventeen respondents recommended that the proposals applied only to cross-border IPs to comply with the subsidiarity principle and also to ensure consistency with the scope of the set of measures relating to capacity bookings defined in the CAM NC and the Congestion Management Procedure Guidelines<sup>6</sup> (CMP). Two stakeholders specified that exempted capacity should not be included in the scope of the paper and another one highlighted that further consideration should be given to long distance pipeline projects crossing more than two Member States.

Seven respondents also mentioned the need for consistency with the scope of the CAM NC and CMP Guidelines and thus recommended that the proposals apply to IPs between entry/exit systems.

Most stakeholders mentioned that limiting the scope to cross-border IPs or IPs between entry/exit zones would take into account the specificities of entry points from LNG terminals and storage facilities. However, they asked that the different allocation procedures be made compatible.

Conversely, five respondents advocated for the application of the proposals to all entry points to the transmission system, with one of them specifying that this scope should be restricted in case the proposals become legally binding.

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<sup>6</sup> Commission Decision of 10 November 2010 amending Chapter 3 of Annex I to Regulation (EC) No 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks, [2012/490/EU, 24/08/2012], <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:231:0016:0020:EN:PDF>

### 3.5 Items to be harmonised

*Q5: “What in your view is needed to be harmonised on a European level, what can be done at other levels? Please provide comments, if you have any”*

Fifteen respondents favoured the harmonisation of the process and timings for allocating incremental capacity. On this matter, three respondents recommended that a pre-selection phase is used, potentially based on the Ten-Year Network Development Plan (TYNDP) process, in order to avoid the inefficiencies relating to the organisation of simultaneous market tests at all European IPs.

Fifteen respondents considered that harmonisation should be introduced in terms of the principles and structures of economic tests but most of them specified that the quantitative parameters, including thresholds for triggering the investments, should be defined on a case-by-case basis. However, two respondents recommended the introduction of a maximum threshold that could be required by TSOs/NRAs to trigger the investment.

Eleven respondents promoted the harmonisation of transparency requirements as regard the determination of investment costs, tariff methodologies and economic tests.

Two respondents advocated for the introduction of harmonised cost benefit analyses which would potentially allow for cross-country financing schemes while one respondent suggested that procedures be established to take into account externalities in the decision-making process.

### 3.6 Auctioning of incremental capacity

*Q6: “Do you agree with the proposals to allocate incremental cross-border capacity via an auction? Why or why not? What are the advantages/disadvantages of using auctions vs. open seasons (in cases where open seasons do not include an auction in the allocation phase)?”*

Please refer also to the responses under question 2 and question 5, as many respondents already covered the issues of question 6.

For some respondents the term “auction” should be used for the allocation of scarce resources, which in principle incremental capacity is not. Therefore, in the following, the term “integrated allocation” is used for the combined long-term allocation of existing and incremental capacity.

Three respondents advocated the exclusive use of an integrated allocation procedure. Sixteen see merit both in integrated allocation and open season procedures. For most of these, integrated allocation is considered to be appropriate for smaller capacity additions at existing IPs and open seasons for complex and large projects across several borders. Two respondents opposed the use of an integrated allocation procedure and called for capacity identification through open seasons. One respondent called for a short term integrated process, due to the limited ability of market participants in the market environment today to enter into binding long-term commitments.

Regarding the advantages/disadvantages of using auctions vs. open seasons, the advantages of integrated allocation procedures mentioned by respondents are transparency, regularity and predictability. Open seasons, in contrast, are claimed to offer more flexibility, efficiency and adaptability to the circumstances at hand.

### 3.7 Design of economic tests

*Q7: “What in your view should be the key considerations for the economic test? How could it be designed? How should risks/costs be allocated?”*

Almost all respondents explicitly or implicitly regard the economic test as the determination whether or not a pre-defined percentage of deemed investment cost is underwritten by system users who submit binding commitments for future capacity payments. The remainder of the investment cost is to be socialised to the consumer via the Regulated Asset Base (RAB) roll in, and to the project sponsor.

Nine respondents stated that, while some harmonisation of the economic test is required, parameters such as the exact threshold of user underwriting for an investment should not be fixed but should be tailored to the network, market and regulatory circumstances for a given project. (See also the high number of responses along this line for question 8, which explicitly addresses the issue).

Five respondents stressed the importance of upfront clarity for participants in an incremental capacity process regarding what level of commitment is needed to trigger and to secure the provision of incremental capacity (without necessarily harmonising it). For these respondents, this implies automatic approval of the investment by the NRA, as long as the threshold is reached and the procedure was conducted properly.

One respondent suggested a public consultation on the investment threshold before it is fixed. Two maintained that a maximum threshold could be harmonised, but NRAs could be free to agree per IP on a lower threshold. One suggestion was that the proportion to be borne by customers via roll in the RAB should be determined by the level of benefit to these customers. Two called for the harmonisation of a minimum threshold to address and lower the risk of stranded investments. Two respondents suggested that parameters such as Weighted Average Cost of Capital (WACC) and depreciation periods need to be agreed across borders.

For three respondents, the question of how positive externalities such as security of supply benefits could properly be quantified and reflected is relevant. Grants or subsidies for security of supply purposes should be taken into account.

Two respondents claimed that due to more short term orientation of the market today, more short term oriented economic testing should take place with higher proportions of socialised costs.

### 3.8 Need for harmonisation of economic tests

*Q8: “Would a fully harmonised economic test across Europe be appropriate, or would it be sufficient to harmonise only the general principle to investments? Why or why not?”*

Sixteen respondents stated that the economic test should not be fully harmonised across Europe; three found full harmonisation desirable but unrealistic; and three argued for full harmonisation. One respondent saw merit in defining a maximum threshold (also see question 7).

Those who opposed full harmonisation of an economic test still called for the harmonisation of principles and the general design of an economic test. Almost all, explicitly or implicitly, considered the economic test as a process of comparing the present value of future financial commitments of system users for a certain amount of incremental capacity with the investment cost estimation for this capacity. The reasons put forward for why it is not desirable to fully harmonise the economic test were the different regulatory regimes and the varying risk profiles of projects (also refer to question 7).

### 3.9 Frequency of market testing

*Q9: “How often should market testing be conducted? a) when potential demand is identified in the annual TYNDP process, b) annually or c) every two years (when potential demand is identified in the community-wide TYNDP)? Please explain your answer.”*

a) Four respondents considered the annual TYNDP process as a good identifier for a potential offer of incremental capacity and for running a market test (with two more mentioning the TYNDP as a demand identifier). It was often stated that regularity or predictability is important.

b) Eleven respondents called for the annual offer of incremental in every long-term allocation round as foreseen by the CAM NC. One respondent qualified this by stating that transparency on when incremental processes would be run is more important than a fixed schedule.

c) Four respondents saw merit in bi-annual market testing upon identifiers in the community-wide TYNDP. Arguments for that are more efficient network expansion planning and the long-term nature of the gas market.

Two responses, while stating no concrete preference as to the frequency of market testing, pointed to the importance of a regular schedule. It has to be clear for network users when they get the “next chance” to commit for incremental capacity. The frequency has to strike a balance between market demand and efficient network expansion. One respondent called for an annual process, unless it is clear that there will be no demand. A non-binding phase could determine this fact.

### 3.10 Relevance of the auction premium

*Q10: “If auctions used to allocate existing capacity result in a congestion premium over the reserve price, at what instance (if at all) should TSOs consider a future enhancement? Please refer to the frequency of occurrence of a premium as well as the size of the premium.”*

Ten respondents pointed out that holding regular integrated auctions for existing and incremental capacity (i.e. Option 1 in the consultation document) would avoid this question in the first place, and would provide a better and timelier indication of the need for future capacity enhancement. In their view, reacting to congestion premiums would not be an advisable approach to identifying the need for new investment, in particular, given the long lead times required to bring new capacity to the market. Related to this, three respondents stated that one of the objectives of incremental capacity auctions should be to minimise or avoid congestion in the first place.

Nevertheless, six respondents noted that congestion premiums arising in the long-term auctions for existing capacity should be seen as a clear indication of the need for further investment; and should either trigger or constitute the inclusion of an IP in the market test. Their view was that in case of congestion premiums for long-term capacity, TSOs should consider future enhancement of capacity and test the market subsequently. Two respondents referred to the materiality and the duration of the auction premium i.e. stating that the premium over the reserve price should be substantial and expected to occur for multiple years in a row in order to trigger the investment. Related to this, three respondents warned against using auction premiums for short term capacity as a signal for new investment, as they do not include information about future or sustained demand for capacity.

Finally, two respondents noted that this question should be dealt with in the context of the discussions of the ACER Tariffs FG.

### 3.11 Criteria for identifying investment needs

*Q11: “What other criteria could be used to identify the need for investment (e.g. frequency of interruptions of interruptible capacity)?”*

Six respondents noted that holding regular integrated auctions would avoid having to specify other criteria that could be used to identify the need for investment, as the true demand for capacity would be revealed at the time of the auction.

Most respondents commented on the example of the frequency of interruptions of interruptible capacity as provided in the CEER consultation paper. Eleven respondents did not consider this to be an appropriate criterion to use to identify the need for investment, arguing that interruptions may well reflect unrelated short term factors such as the weather. Five respondents considered this to be an interesting criteria to use, but only if combined with other criteria such as the ACER monitoring report on congestion (pursuant to the CMP Guidelines), the results of the regular long-term auctions and the findings of the TYNDP report (at both national and EU level). Also, one respondent highlighted that interruptions may not always be a reliable indicator of the need for new investment where capacity is oversold.

Regarding additional criteria, two respondents mentioned congestion premiums arising in the regular long-term auction for existing capacity. Another one mentioned access refusals, direct notification from shippers, TSO and NRA forecasts of long-term congestion, and TYNDPs. Two respondents mentioned wider considerations such as security of supply, environmental benefits or integration of energy islands as factors which could guide investment, but noting such investments may be out of scope of the investment process under discussion. Finally, two respondents referred to the Security of Supply Regulation<sup>7</sup> and the CEER Gas Target Model, stating these may trigger investment in some cases. For example, one respondent noted that the Security of Supply Regulation places obligations on Member States that may require capacity to be built beyond what is indicated by shippers.

### 3.12 Need for a joint allocation of existing and incremental capacity

*Q12: “How could the allocation process be organised? Should existing and incremental capacity be allocated jointly (integrated auction) or as part of a separate process? How could an integrated auction work? (Please take into account different tariff regimes, i.e. fixed and floating when answering.)”*

Eighteen respondents favoured integrated allocation of existing and incremental capacity. Of these, four explicitly favoured Option 1 (i.e. regular integrated auctions) and four favoured Option 2 (i.e. integrated auctions where demand for incremental capacity has been identified beforehand). A number of benefits of a joint allocation were suggested by respondents – transparency (three respondents), minimisation of administration costs (four respondents) and avoidance of risk relating to perception of scarcity (whereby uncertainty around availability of incremental capacity could distort market prices for existing capacity) (one respondent).

One respondent favoured a dual approach whereby integrated auctions would be used to allocate incremental capacity at small existing IPs, and open seasons would be used for more complex allocations or to allocate capacity at new (i.e. not yet existing) IPs.

One further respondent favoured joint capacity allocation in short to medium-term auctions. They felt that decisions on capacity should be based on overall EU goals of energy market integration rather than on cost-recovery grounds. One respondent felt that allocating incremental and existing capacity jointly or separately could produce similar outcomes.

Three respondents preferred separate auctions, with two of these citing increased clarity/less complexity as a reason, and one respondent feeling separate auctions would increase transparency. One respondent preferred open seasons or separate auctions as they felt that the definition of incremental capacity adopted in the consultation document differs from that in the CAM context. Three respondents overall noted the interaction between the allocation of existing and incremental capacity and Framework Guidelines/Network Codes relating to Capacity Allocation Mechanisms and Tariffs.

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<sup>7</sup> Regulation (EU) No 994/2010 of the European Parliament and of the Council of 20 October 2010 concerning measures to safeguard security of gas supply and repealing Council Directive 2004/67/EC, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:295:0001:0022:EN:PDF>



Six respondents suggested that auctions should feature regulated prices for incremental capacity. Two of these felt that a regulated price integrated auction would remove the need for a floating tariff, but acknowledged that a floating tariff would still work in this situation. Across all respondents, two expressed a preference for fixed tariffs and one expressed a preference for floating tariffs.

Finally, three respondents did not feel there was sufficient information available to indicate preferred options.

### 3.13 Submission of binding bids

*Q13: "Should shippers' bids into the market test for incremental capacity be binding? If so, how should this best be achieved?"*

Of the thirty respondents, twenty-six suggested that shippers' bids into the market test for incremental capacity should be binding. Of these respondents, eight noted that there could be a non-binding preliminary phase or consultation prior to the binding round of auction bids. Their view was that this would enable the TSO to assess roughly the level of capacity the market would require. One respondent suggested that if a large gap was observed between the first (non-binding) and second (binding) phases then the TSO could potentially change the methodology.

Seven respondents stated that commitment from (and coordination between) NRAs and TSOs would be as important as binding bids from shippers. Three respondents noted that bids should be binding as long as relevant information is made available to shippers ex-ante.

One respondent, whilst suggesting that bids should be binding, also noted that further consideration could be given to the sale of options in capacity as a means of partially funding incremental capacity. In their view, this would be a stronger commitment than a non-binding bid, but would be less binding on shippers than full commitment.

One respondent did not feel that shippers' bids should be binding. Three further respondents did not have an opinion on whether or not bids into the market test for incremental capacity should be binding.

### 3.14 Regulatory approval

*Q14: "What in your view should be the approach to regulatory approval?  
a) automatic if the economic test has been met and bidding process run correctly;  
b) subject to separate regulatory approval processes?"*

Twenty-six of the thirty respondents favoured Option A - that regulatory approval should be automatic if the economic test has been met and the bidding process has been run correctly. One of these respondents suggested an interim period may be possible to allow NRAs to test their ability to define appropriate ex-ante conditions to be met under the economic test. Ten of the respondents in favour of Option A suggested that the rules/parameters of the economic test should be set ex-ante. Six of the respondents noted that they preferred Option A as this would give certainty and confidence to bidders. One respondent suggested that if the economic test was met then approval should be automatic - but in the event of failure to meet the economic test a decision could then be reviewed by the NRA.

However, two of the thirty respondents favoured Option B – that final approval should be subject to separate regulatory approval processes. One respondent noted that a separate regulatory approval process would allow decisions to be made on the basis of overarching EU energy policy, and also that decisions should be coordinated at European level.

Finally, two respondents did not indicate a preference for either option.

## 4 Conclusions

Respondents to this consultation have further reinforced CEER's view that pan-European principles on identification and allocation of incremental capacity need to be developed. As requested by the Madrid Forum, CEER will elaborate on the results of this public consultation to deliver a "Blueprint for Incremental Capacity", to be presented at the next Madrid Forum (April 2013). At this stage, in line with stakeholders' comments, CEER is convinced that the market needs a clear and transparent mechanism to trigger incremental capacity investment, and that the decision to invest should be based on the results of an economic test. However, the exact design of the incremental capacity process and of the economic test still requires further consideration. To this effect, a consultancy study on incremental capacity has been commissioned by ACER (in the context of the Tariffs FG), to be delivered by Q1 2013. This study will help to inform CEER's work for the "Blueprint for Incremental Capacity" to be presented at the next Madrid Forum (April 2013). CEER's "Blueprint for Incremental Capacity" can support regulators' activities in ACER – including ongoing and future work on FGs and NCs for gas.

Taking into account the responses to the public consultation summarised above, CEER has developed preliminary views on some of the issues consulted on.

Regarding the scope of an incremental capacity approach, CEER considers that there would be merits in applying this to all IPs within the scope of the CAM NC, which are cross-border points and points between entry/exit zones. One potential option would be for other points (e.g. to storage, LNG) not to be directly covered by the "Blueprint for Incremental Capacity", but for them to be optionally included upon a decision by the project sponsor and NRA.

CEER sees the need to define the process and timing of the generic steps of incremental capacity processes, potentially including pre-phases. A pre-phase could serve to screen IPs for whether or not there is likely to be adequate market demand, and to allow for project design, tariff estimation and cross-border coordination. CEER intends to provide further guidance on how TSOs and NRAs could coordinate at cross-border points to ensure consistent allocation of bundled capacity products in the "Blueprint for Incremental Capacity". CEER notes that TYNDPs at national and European level could constitute important inputs to this, alongside varying degrees of informal and formal network user input.

Regarding the economic test, CEER agrees with the majority of respondents that the structure and principles of the economic test should be defined. The nature of the economic test could be the comparison of deemed investment costs for an incremental capacity step with the net present value binding commitments of network users to make future capacity payments. CEER takes into account stakeholders' view that there may not be a need for harmonisation of the quantitative parameters and that these could be set on a case-by-case basis, to allow for market, network and regulatory circumstances to be taken into account. In such case, however, CEER considers that parameters would most likely need to be set in advance of an incremental capacity process, to ensure transparency. Whether or not a minimum or maximum threshold of commitments to cover investment costs should be defined at EU level merits further discussion and analysis, and will be one of the key questions to be explored in ACER's consultancy report.

With a harmonised general design of an economic test, CEER notes that further regulatory parameters such as depreciation periods and return on capital are likely to be also independent input variables that may not need to be harmonised. However, again CEER is aware of the importance of ensuring transparency in all phases of an incremental capacity process, e.g. in the derivation of tariff estimations.

At present, CEER is of the view that the CAM NC should enable the integrated allocation of existing and incremental capacity. CEER will conduct further work to propose a framework which allows for this. CEER acknowledges the point raised by stakeholders that different types of investment projects might require alternative approaches and will give this further consideration.

It might not be fully possible to render investment approval of NRAs, ministries, or other authorities a mere formality. Nevertheless, CEER will provide further guidance to minimise the likelihood of investments being rejected where an incremental capacity procedure was properly run and the economic test was passed.

Building on this consultation and the present analysis of the stakeholders' views regulators will develop a "Blueprint for Incremental Capacity" working in tandem through CEER and ACER. Efforts and recommendations under CEER are fully complimentary to the provisions of the 3rd Package, the Gas Target Model and ongoing work in ACER on FGs and NCs. CEER provides a useful platform for regulators to undertake additional analysis and cooperation in order to promote regulatory practices and competitive, transparent markets which work to the benefit of consumers.

## Annex 1 – CEER

The Council of European Energy Regulators (CEER) is the voice of Europe's national regulators of electricity and gas at EU and international level. Through CEER, a not-for-profit association, the national regulators cooperate and exchange best practice. A key objective of CEER is to facilitate the creation of a single, competitive, efficient and sustainable EU internal energy market that works in the public interest.

CEER works closely with (and supports) the [Agency for the Cooperation of Energy Regulators \(ACER\)](#). ACER, which has its seat in Ljubljana, is an EU Agency with its own staff and resources. CEER, based in Brussels, deals with many complementary (and not overlapping) issues to ACER's work such as international issues, smart grids, sustainability and customer issues.

The work of CEER is structured according to a number of working groups and task forces, composed of staff members of the national energy regulatory authorities, and supported by the CEER Secretariat.

This report was prepared by the Gas Incremental Capacity Task Force of CEER's Gas Working Group.

## Annex 2 – List of abbreviations

Term	Definition
ACER	Agency for the Cooperation of Energy Regulators
CAM	Capacity Allocation Mechanisms
CEER	Council of European Energy Regulators
CMP	Congestion Management Procedure
FG	Framework Guideline
GGPOS	Guidelines of Good Practice for Open Seasons
GTM	Gas Target Model
IP	Interconnection Point
LNG	Liquefied Natural Gas
NC	Network Code
NRA	National Regulatory Authority
RAB	Regulatory Asset Base
TSO	Transmission System Operator
TYNDP	Ten-Year Network Development Plan
WACC	Weighted Average Cost of Capital

### Annex 3 – List of respondents

Only the names of stakeholders who submitted non-confidential responses are given below.

Name	Organisation	Country of origin
BDEW - German Association of Energy and Water Industries	Association	Germany
BP Gas Marketing	Energy company	United Kingdom
Centrica Plc.	Energy company	United Kingdom
EDF SA	Energy company	France
EFET - European Federation of Energy Traders	Association	EU
Elengy	LSO	France
Enagas	TSO	Spain
Energy UK	Association	United Kingdom
Eni S.p.a.	Energy company	Italy
ENTSOG - European Network of Transmission System Operators for Gas	Association	EU
E.On AG	Energy company	Germany
Eurelectric	Association	EU
Eurogas	Association	EU
ExxonMobil	Energy company	Netherlands
FGSZ Natural Gas Transmission Ltd	TSO	Hungary
Gas Terra B.V	Energy company	Netherlands
Gazprom Marketing and Trading	Energy company	United Kingdom
GDF SUEZ	Energy company	France
IFIEC Europe	Association	Belgium
National Grid	TSO	United Kingdom
Naturgas Energia	TSO	Spain
OGP	Association	EU
RWE Supply and Trading	Energy company	Germany
Sedigas	Association	Spain
Shannon LNG	LSO	Ireland
Statoil	Energy company	Norway
Vattenfall	Producer	Netherlands
Verbund AG	Energy company	Austria