



**Public Consultation
Questionnaire for the
preliminary scoping on
potential FG on “Rules for
Trading related to technical
and operational provisions of
network Access services and
system balancing”**

Enagás response

19 May 2014

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1 Identified Topics

Based on the KEMA study, stakeholder comments on the annual priority list of the Commission and feedback received on the ACER Madrid Forum presentation on the potential FG RfT, ACER has identified the following topics that could fall within the scope of a potential FG RfT:

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

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

1. Enagás view is that most of the topics above require further harmonization at EU level.
2. It must be ensured that these topics are addressed with no delay. While a new FG/NC would certainly guarantee that these topics are effectively addressed, it must also be also taken into account that these are topics of very different nature. Most of the topics may be attributed to existing binding EU rules, so the need for a new FG/NC is not clear. For example, *Incremental Capacity* is being developed as an amendment to the NC CAM.
3. Following up the essential topics via GGPs would not ensure harmonization.
4. In case a FG RfT was finally developed it should be taken into account that rules for secondary capacity trading (secondary market) and the harmonization of the firmness of the capacity products shall be undertaken as main topics. The establishment of a single wholesale market at European level, required to book bundled capacity at IPs, would also be extremely useful to address a number of practical implementation problems identified by Enagás in its two pilot implementation projects.

2 Capacity products and terms and conditions of capacity contracts

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

- Firmness: unconditional firm / conditional firm (e.g. Depending on temperatures) / interruptible
- Allocability: free allocability / restricted allocability to designated points / restricted to designated points but combined with interruptible free allocability to all points including VTP.
- Tariff relations between different capacity products.

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

5. Enagás' agrees that the conceptual key features of capacity products are the three proposed above. However, Enagás' understanding is that under Regulation 715/2009 "free allocability" is an obligation to ensure that can be traded independently of its location,¹ and "conditional firm capacity" should not exist and any conditional capacity should be considered as interruptible.
6. From Enagás' point of view the firmness of the capacity products is the first key feature but the scoping of the topic is not correctly focused.
7. An important aspect identified by Enagás is how to calculate tariffs for bundled products that have been created by merging firm capacity on one side and interruptible capacity on the other. Enagás view is that the tariff should be formed by adding up the firm tariff on one side and interruptible tariff on the other, and not by creating a new interruptible tariff.

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

8. End-users might have specific needs at exit (consumption) points but this should not be a restriction for fully harmonizing products at IPs. Creating differentiated products for certain categories of shippers or end-users could result on undue discrimination and market segmentation.

¹ Recital 19 of Regulation 715/2009: "To enhance competition through liquid wholesale markets for gas, it is vital that gas can be traded independently of its location in the system. The only way to do this is to give network users the freedom to book entry and exit capacity independently, thereby creating gas transport through zones instead of along contractual paths. The preference for entry-exit systems to facilitate the development of competition was already expressed by most stakeholders at the 6th Madrid Forum on 30 and 31 October 2002. Tariffs should not be dependent on the transport route. The tariff set for one or more entry points should therefore not be related to the tariff set for one or more exit points, and vice versa."

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

9. Yes. Enagás used to offer conditional firm capacity at one physical IP between Spain and Portugal. In essence, the condition was that firmness was only guaranteed if a particular LNG terminal was injecting gas into the network. This product was eliminated in the common understanding of Enagás and the NRA that conditional capacity was not consistent with Regulation 715/2009, limiting free allocability and free cross-border trade.

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

10. Yes, different types of products features can constitute a barrier for cross-border trading, in particular in the case of freedom of allocation.

11. Gas bound to particular entry-exit routes is not freely tradable and decreases liquidity at hubs. This is the reason why Regulation 715/2009 highlights that it is "vital that gas can be traded independently of its location in the system", and why (fully unrestricted) entry-exit systems were recommended more than 10 years ago by European regulators.

12. Hub liquidity is an essential feature of the first pillar of the Gas Target Model. Only two hubs in Europe (NBP and TTF) enjoy a fair degree of liquidity.

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

13. As long as fully unrestricted entry-exit zones are established and free allocability is respected, Enagás does not foresee that the way capacity is allocated (primary market) will create any problem or barrier to gas wholesale trading after the full implementation of the NC CAM.

14. The lack of harmonization in the secondary market at IPs might be a barrier to gas wholesale trading. Where different conditions apply on both sides of the border, secondary capacity trading might be hampered.

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

15. Yes they could limit the cross border trade; the harmonization of contract definitions could facilitate the border trade of gas as long the harmonization of the firmness of the capacity products is addressed and the freedom of allocation is truly guaranteed.

16. If inconsistencies remained, to ensure the harmonization is complete and the topics are well addressed, Enagás is of the view that the possibility of establishing a single standard contract at European level should be readdressed.

17. It is worth noting that the Chair of the EFET Gas Committee recently warned² that 'trading capacity at Interconnection Points without first ensuring consistent terms in the bundled TSO contracts potentially introduces systemic risks into the EU gas market. The Transmission System Operators urgently need to set out how they are going to make their contractual terms more consistent. Otherwise, a new EU Network Code will be necessary to define a standardized firm capacity contract for bundled capacity throughout the EU transmission systems.'

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

18. Further harmonization of clauses as regards bundled capacity is required (e.g. interruptibility).

19. It is important to keep in mind the whole context of both implementation and amendments of the BAL NC and CAM NC. The initiative of developing a standard contract, at this moment, would have to deal with the potential amendments of both network codes which are now being implemented in a national level; thus at this interim period it is important to allow the TSOs to develop its own experiences to assess the relevance or not of the need of the single standard contract.

20. If inconsistencies remained after this period, Enagás is of the view that the possibility of establishing a single standard contract at European level should be considered.

² EFET, "EFET Legal Committee endorses Individual PRISMA Gas Capacity Contract", PRESS RELEASE 78/14, 30 April 2014. Available at:

http://www.efet.org/Cms_Data/Contents/EFET/Folders/Documents/PressRoom/PressStatements/2006Today/~contents/FYD2RZQ9ZR6UQRZ2/EFET_PR_78_14.pdf

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

21. Yes. Enagás has carried out, with other TSOs, two Open Seasons in 2009 and 2010 for capacity between Spain and France. Regulatory and contractual provisions as regards Ship-or-Pay obligations were not harmonised. In Spain it was possible according to the national regulations to free-up capacity under long-term contracts at no cost (i.e. long-term contracts are only binding for the TSO but not for the shipper). This has resulted in mid-2013 in the reduction of capacity (down to 0) on the Spanish side, for free, by a shipper, but not on the French side. Open Seasons are held to ensure long-term support from the market and make no sense if there are no effective long-term SoP clauses.

Q9. Assuming everything else being equal (e.g. tariffs), do you prefer: a) Firm products with limited allocability/locational restrictions (ex-ante information on condition of use) or b) Interruptible products (with ex-post information on actual occurrence of interruptions)?

22. As it was stated in question number 2, firm capacity should be firm without any other conditions otherwise it should be interruptible. Therefore, Enagás understanding is that under Regulation 715/2009 it is no longer possible to market firm products with limited allocability.

23. Therefore, Enagás rather prefers interruptible products. Depending on the nature of the interruption the information to provide is sent ex-ante (due to a maintenance of the system, for example) or ex-post (due to different unforeseeable situations)

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

24. There is not a direct relation between within-day obligations and within-day standard capacity products ("rest-of-day capacity products").

25. In the Spanish system a daily balancing regime without within-day obligations is applied, and within-day standard capacity products will be used as of 1st November 2015. No barrier to trade has been identified.

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

26. Yes. See Q 7a.

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

27. Regarding to capacity products and capacity contracts, there are several setbacks that, from Enagás point of view, will be overcome when the implementation period of CAM-CMP & INC CAP, BAL and TAR is finished.

28. On the other hand, there are some issues, as the non-harmonization of the firmness of the products that, despite of they could not mean an obstacle right now they could potentially create a handicap on the use of capacity contracts across European borders.

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

29. Option "a) binding EU rules" is the most affordable one.

3 Secondary capacity markets

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

30. Rules are needed not just to stimulate but to regulate the secondary market. Without any doubt, the regulation of the secondary trading in Europe will lead to an important step towards a well-functioning European gas capacity market.

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

31. Not in principle but the issue requires further consideration.

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

32. Certain aspects should be harmonised, in particular product standardization and how to bill products when they are split into shorter standard products (e.g. a yearly product is split into 12 monthly products).

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

33. The fact that there is no European rule harmonising the secondary trading of bundled capacity products is hampering the market.

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

34. It should be possible to carry out transactions on the secondary market through the same platform used for booking capacity on the primary market.

35. According to that, Enagás is of the opinion that the most optimal way of secondary capacity trading is to carry out the transactions in the same platform used for booking capacity on the primary market.

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

36. If required for the well-functioning of the market, Enagás would support additional transparency rules for secondary trading.

37. However, regulators should aim at avoiding placing excessive transparency requirements on stakeholders, in particular at avoiding double-reporting by TSOs. REMIT will impose new obligations on transparency and reporting, which will allow

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ACER to access this information. Whether it should be published or not should be analysed by NRAs and ACER.

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

38. As stated above, Enagás view is that these topics above require further harmonization at EU level. If it is finally decided to develop rules to harmonize the topics mentioned before, the option "a) binding EU rules" is the most affordable one.

4 Virtual trading point design/access and hub issues

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

39. Enagás believes that the hub should be independent from traders in order to avoid cross interests.

40. Enagás thinks that the involvement unbundled TSOs on the hub will help to get rid of any barrier.

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

41. Enagás view is that these fees do not generally constitute a barrier to trade, but Enagás has no practical experience in the field.

Q23. Do non-standardised formats represent a barrier for cross-border trading? If yes, do you see a need to establish a standardized data exchange format for trading of wholesale gas products to be used as interface between all potential balancing and trading venues- including key inputs (e.g. trading parties, time, location of trade, trading volumes and price, etc.)-?

42. For the time being the non-standardized formats do not represent a barrier for cross-border trading.

43. However, in the future, when the hub-to-hub transactions will be used, a standardized data exchange format for all Europe will be useful. On the other hand, the Interoperability and Data Exchange NC already establishes a data exchange format for the communications among TSOs as well as for the exchange of data from TSOs to their network users.

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

44. Enagás does not see the need for additional rules at European level; the BAL NC will facilitate the establishment of organized market places at hubs trading platform. The rules should be defined at national level.

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

45. As stated above, Enagás thinks that, awaiting the implementation of existing NCs, the issues already mentioned do not justify the need of another European legislation. Therefore the option "c) no rules at all" is the most affordable one.

5 Transparency rules

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

46. The establishment of joint booking platforms such as PRISMA do not automatically guarantee that contractual conditions of capacity services (incl. usage conditions) are transparent and clear enough. An effort from TSOs and NRAs is required; platforms can only guarantee that the information is accessible, but not that it is transparent and clear.

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

47. The main problem of capacity products with limited allocability is not transparency, but that usage conditions limit the possibilities of creating liquid hubs. These products impede the creation of unrestricted entry-exit areas, no matter how transparently and clearly are its contractual conditions set.

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

48. *Not applicable (from the point of view of a TSO)*

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

49. *Not applicable (from the point of view of a TSO)*

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

50. Enagás thinks that, awaiting the implementation of existing NCs, the issues already mentioned do not justify the need of another European legislation. Thus, the option "c) no rules at all" is the most suitable one talking about transparency rules. The transparency guidelines are already attached to the regulation and REMIT is also introducing a specific legal framework for the monitoring of wholesale energy markets; therefore energy trading is already starting to be screened at EU level in order to detect abuses.

6 Licensing requirements for market participants other than TSOs

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

51. A differentiation should be made between the wholesale and the retail market.
52. Enagás has not identified any problem with regard to different retail licensing requirements in the EU.
53. The establishment of a single wholesale market at European level, required to book bundled capacity at IPs, would also be extremely useful to address a number of practical implementation problems identified by Enagás in its two pilot implementation projects.

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

54. Enagás view is that binding EU rules are necessary to address the wholesale market at European level, as stated in Q1. and Q31.