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ACER consultation on Scoping of a potential network code on rules for trading

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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 standardisation)
- Secondary capacity markets
- Virtual trading point (VTP) design/access, and hub issues
- Transparency rules
- Licensing requirements for market participants other than TSOs

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

A1: [OGP believes a new network code on Rules for Trading is not needed. The issues mentioned above are best addressed during implementation of the existing guidelines and network codes, and do not merit a new network code.](#)

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.

A2: The abovementioned features of capacity products all result from the trade-offs that have been made when entry-exit systems were implemented. In order to avoid many small zones, entry-exit zones have sometimes been defined beyond what is technically feasible, and this has resulted in various restrictions on capacity products. The KEMA study on entry-exit systems has identified several best practices and barriers in the implementation of entry-exit systems. We suggest that ACER and ENTSOG undertake a coordinated effort, together with stakeholders, to remove these barriers and implement best practices across the EU.

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?

A3: From a producer's perspective, access to firm capacity, with no restrictions should be offered to the largest extent possible.

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

A4: No comments.

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

A5: We believe a (new) network code is not the way to solve the differences in product features. A set of "standard capacity products" in terms of quality could result in a reduction in the amount of available firm capacity. Firm capacity at interconnection points should be either technically firm, or at least financially firm. This would avoid the need for quality restrictions.

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.

A6: Some problems remain with respect to the need to enter into two separate transportation agreements also in the case of bundled products and to the use of bundled capacity. This said, we believe the guidelines and network codes on CMP, CAM, Gas Balancing, Interoperability and Tariffs provide all the tools to remove any outstanding barriers, provided the implementation is done in a coordinated way with a view to facilitate wholesale trading across borders. As an example, the differences in implementation of the rules on CMP don't help in removing barriers.

This only applies to IPs covered by the NC CAM. On other points any potential problems can easily be solved because it only involves a single NRA and a single TSO.

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?

A7: We believe a single standard contract at EU level is not achievable. Differences between the legal systems in different EU Member States will remain. With respect to the differences in product features we refer to our response to question 5.

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

A7a: See our response to question 7.

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?

A8: No comment

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

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

A9: We prefer firm products with no restrictions. TSOs should not shift the risk of interruption to network users, and maximise the amount of firm capacity offered. In this context we prefer that TSOs make OSBB capacity available in case of contractual congestion instead of applying FDA-UIOLI. Additional capacity should be offered as interruptible capacity with a zero reserve price.

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

A10: We believe within-day standard capacity products do not create any barrier to trade, provided the criteria for within-day-obligations as laid down in Article 26 (2) of the Balancing NC are met.

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

A11: The concept of a bundled capacity product has its merits in the allocation phase and for enabling a single nomination. After allocation, the network user will receive 2 contracts, one for exit capacity with the ‘upstream’ TSO and a second one for entry capacity with the ‘downstream’ TSO. These 2 contracts will have different general terms and conditions due to differences in the legal/regulatory framework, which undermines the bundling concept.

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

A12: The bundling concept is creating obstacles for parties that hold existing contracts for unbundled entry and or exit capacity when they would like to increase capacity (either bundled or unbundled).

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

A13: We prefer no rules at all, awaiting implementation of existing NCs.

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)?

A14: We believe that secondary capacity trading is best stimulated by implementation of the existing rules on CAM, CMP and Transparency, supported by tariff rules which incentivise

TSOs to offer firm OSBB capacity over interruptible capacity (i.e. zero reserve price for interruptible capacity). There is no need for additional rules on secondary trading.

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

A15: We do not see the need for additional rules concerning the secondary capacity market, and believe a bilateral capacity transfer is sufficient.

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

A16: Network users should be left free to trade their capacity as they best want. We do not see the need for additional rules concerning the secondary capacity market.

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

A17: The rule that bundled capacity can only be sold as a bundled product on the secondary market is hampering secondary trade, especially when the value or quality of the capacity product is not the same on the two sides of an IP.

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

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.)?

A18: We do not see the need for additional rules concerning the secondary capacity market, and prefer to keep the current regime as is.

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)?

A19: We do not see the need for additional rules concerning the secondary capacity market, but support that the existing transparency rules for primary capacity are implemented and respected.

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.

A20: We prefer no rules at all, awaiting implementation of existing NCs.

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.

A21: We don't believe design elements of hubs provide a barrier to cross-border trade.

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

A22: We don't believe the abovementioned service fees create a barrier to cross-border trade as long as those service fees are commensurate with the costs for providing the services.

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

A23: The NC on Interoperability and Data exchange is to establish a standardised data exchange format for communications between and with TSOs. With respect to the commodity market we don't believe additional rules are needed.

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

A24: We do not see the need for additional rules from the Agency concerning hub trading platforms.

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

A25: We prefer no rules at all, awaiting implementation of existing NCs.

Transparency rules

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

A26: The transparency requirements of the Gas Regulation should ensure that the conditions of transmission services are transparent, clear and easy to access. That this is not always the case was demonstrated by ACER in its recent CMP monitoring report.

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

A27: See the response to questions 26 and 5 above.

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.

A28: See the response to question 26.

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

A29: See the response to question 26.

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

A30: We prefer no additional rules. The existing transparency rules should be sufficient when constructively implemented in a manner that reflects best practices.

Licensing requirements for market participants other than TSOs

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

A31: Different licensing requirements across the EU – as well as different and overlapping reporting obligations – constitute an unnecessary burden to network users. We would welcome a situation where licenses granted in one Member State are mutually acceptable in all Member States. This would be much more efficient and effective versus trying to agree on standard licensing conditions or minimum requirements. It should be possible to try and achieve this when implementing the CAM network code, which requires TSOs to deal with network users across borders.

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.

A32: We prefer no rules at all, awaiting implementation of existing NCs.

Best regards,

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