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Agency Report

Analysis of the Consultation Document on the Gas Transmission Tariff Structure for the Netherlands

NRA: Authority for Consumers & Markets
TSO: Gasunie Transport Services B.V.

25 July 2018

Contents

1. ACER CONCLUSION 2

2. INTRODUCTION 3

3. COMPLETENESS 3

3.1 HAS ALL THE INFORMATION REFERRED TO IN ARTICLE 26(1) BEEN PUBLISHED? 3

4. COMPLIANCE 6

4.1 DOES THE RPM COMPLY WITH THE REQUIREMENTS SET OUT IN ARTICLE 7? 6

4.1.1 Transparency 6

4.1.2 Cost-reflectivity 8

4.1.3 Cross-subsidisation 10

4.1.4 Volume risk 12

4.1.5 Cross-border trade 12

4.2 ARE THE CRITERIA FOR SETTING COMMODITY-BASED TRANSMISSION TARIFFS AS SET OUT IN ARTICLE 4(3) MET? 12

4.3 ARE THE CRITERIA FOR SETTING NON-TRANSMISSION TARIFFS AS SET OUT IN ARTICLE 4(4) MET? 12

5. OTHER COMMENTS 13

ANNEX 1: LEGAL FRAMEWORK 14

ANNEX 2: LIST OF ABBREVIATIONS 18

1. ACER conclusion

(1) The Authority for Consumers and Markets ('ACM') proposes a postage stamp methodology in the final consultation according to Article 26 of the Network Code on Harmonised Transmission Tariff Structures for Gas ('NC TAR'). In addition, the consultation foresees the application of discounts at entry points from and exit points to storage facilities that are accompanied by the application of rescaling to all entry-exit points. The consultation proposes neither commodity charges nor non-transmission charges.

(2) The NC TAR foresees a cost allocation assessment ('CAA') and the comparison of the chosen reference price methodology ('RPM') with the capacity-weighted distance ('CWD') methodology. The result of the cost allocation assessment[1] for the postage stamp methodology (6.3%) is within the threshold laid out in Article 5 of the TAR NC (10%), and does not require further justification.

(3) The Agency concludes, after having completed the analysis of the consultation documents pursuant to Article 27(3) of the NC TAR, that:

- The consultation contains the required information listed in Article 26(1), with the exception of the three elements listed below in paragraph (4);
- The proposed RPM is compliant with the requirements set out in Article 7 of the NC TAR;
- The compliance analysis pursuant to Articles 27(2)(b)(2)-(3) does not apply as neither commodity charges nor non-transmission charges are proposed.

(4) The Agency recommends that ACM includes the following missing elements in the motivated decision referred to in Article 27(4) of NC TAR:

- Reasoning on how the RPM takes into account the complexity of the transmission network. This is required under Article 7(b) of the NC TAR and should be part of the decision;
- Comparison between the tariffs that are proposed for 2020 and the preceding tariffs for 2019. The Agency interprets this as required under Articles 26(1)(d) and 30(2)(a)(i) of the NC TAR;
- A structural representation of the transmission network. The Agency views this as a best practice pursuant to Article 26(a)(i)(1) of the NC TAR.

(5) In addition, the Agency notes the following two points:

- The Agency considers the peak supply and Wobbe Quality Adaptation services to be related to the 'access to the natural gas transmission networks'. Therefore these services should fall under the scope of the Gas Regulation and the NC TAR;
- The Agency invites ACM to consider whether the use of an inter-TSO compensation mechanism between GTS and BBL is appropriate.

(6) Finally, the Agency concludes that the proposed RPM achieves a high degree of transparency. The methodology is simple and it is presented in a user-friendly manner. This facilitates the reproduction and the forecast of tariffs with great accuracy. The Agency views this feature of the draft Decision as a good practice in the application of the NC TAR.

[1] Throughout this document, 'CAA' is used to refer to the capacity cost allocation comparison index described in Article 5(3)(c) of the NC TAR.

2. Introduction

(7) Commission Regulation (EU) 2017/460 of 16 March 2017 establishes a Network Code on Harmonised Transmission Tariff Structures for Gas ('NC TAR').

(8) Article 27 of the NC TAR requires the Agency to analyse the consultation documents on the reference price methodologies for all entry-exit systems[2]. This Report presents the analysis of the Agency for the transmission system of the Netherlands.

(9) On 16 March 2018, the Agency received the consultation documents submitted by the Authority for Consumers and Markets ('ACM')[3]. The consultation was launched on 1 March 2018 and remained open until 28 May 2018. The Agency received the English translation on 22 March 2018. On 28 June, the consultation responses and their summary were published. The Agency has taken these into consideration for this analysis. Within five months following the end of the final consultation, and pursuant to Article 27(4) of the NC TAR, ACM shall take and publish a motivated decision on all the items set out in Article 26(1).

Reading guide

(10) Chapter 3 presents an analysis on completeness, namely whether all the information in Article 26(1) has been published. Chapter 4 focusses on compliance, namely whether the RPM complies with the requirements set out in Article 7 of the Code, whether the criteria for setting commodity-based transmission tariffs as set out in Article 4(3) are met, and whether the criteria for setting non-transmission tariffs as set out in Article 4(4) are met. This document contains two Annexes, respectively the Legal framework and a List of abbreviations.

3. Completeness

3.1 Has all the information referred to in Article 26(1) been published?

(11) Article 27(2)(a) of the NC TAR requires the Agency to analyse whether all the information items referred to in Article 26(1) of the NC TAR have been published.

(12) Article 26(1) of the NC TAR requires that the consultation document is published in English, to the extent possible. The Agency remarks that the consultation document was published in English.

(13) Overall, the information in Article 26(1) of the NC TAR has been properly published with the exceptions noted in table 1 below.

[2] With the exception of Article 10(2)(b), when different RPMs may be applied by the TSOs within an entry-exit zone.

[3] The draft Decision for the periodic consultation on the RPM is available at: https://www.acm.nl/en/publications/draft-code-amendment-decision-implementation-nc-tar.

Table 1 Checklist information Article 26(1)

Article	Information	Published: Y/N/NA
26(1)(a)	the description of the proposed reference price methodology	Yes
26(1)(a)(i) **26(1)(a)(i)(1)** **26(1)(a)(i)(2)**	the indicative information set out in Article 30(1)(a), including: • the justification of the parameters used that are related to the technical characteristics of the system • the corresponding information on the respective values of such parameters and the assumptions applied	Yes. The Agency recommends ACM to publish a structural representation of the network. See paragraph (30) of this Report.
26(1)(a)(ii)	the value of the proposed adjustments for capacity-based transmission tariffs pursuant to Article 9	Yes
26(1)(a)(iii)	the indicative reference prices subject to consultation	Yes
26(1)(a)(iv)	the results, the components and the details of these components for the cost allocation assessments set out in Article 5	Yes
26(1)(a)(v)	the assessment of the proposed reference price methodology in accordance with Article 7	Yes. The reasoning of how the RPM takes into account the complexity of the network is missing. See paragraph (29) of this Report.
26(1)(a)(vi)	where the proposed reference price methodology is other than the capacity weighted distance reference price methodology detailed in Article 8, its comparison against the latter accompanied by the information set out in point (iii)	Yes
26(1)(b)	the indicative information set out in Article 30(1)(b)(i), (iv), (v)	Yes
26(1)(c)(i) **26(1)(c)(i)(1)** **26(1)(c)(i)(2)** **26(1)(c)(i)(3)**	where commodity-based transmission tariffs referred to in Article 4(3) are proposed • the manner in which they are set • the share of the allowed or target revenue forecasted to be recovered from such tariffs • the indicative commodity-based transmission tariffs	Not applicable
26(1)(c)(ii) **26(1)(c)(ii(1)** **26(1)(c)(ii)(2)** **26(1)(c)(ii)(3)** **26(1)(c)(ii)(4)**	where non-transmission services provided to network users are proposed: • the non-transmission service tariff methodology • the share of the allowed or target revenue forecasted to be recovered from such tariffs • the manner in which the associated non-transmission services revenue is reconciled as referred to in Article 17(3) • the indicative non-transmission tariffs for non-transmission services provided to network users	Not applicable

26(1)(d)	the indicative information set out in Article 30(2);	Yes. The comparison between the estimated tariffs for 2019 and the proposed tariffs for 2020 is missing. See paragraph (18) of this Report.
26(1)(e) **26(1)(e)(i)** **26(1)(e)(ii)** **26(1)(e)(iii)** **26(1)(e)(iv)**	where the fixed payable price approach referred to in Article 24(b) is considered to be offered under a price cap regime for existing capacity: • the proposed index; • the proposed calculation and how the revenue derived from the risk premium is used • at which interconnection point(s) and for which tariff period(s) such approach is proposed • the process of offering capacity at an interconnection point where both fixed and floating payable price approaches referred to in Article 24 are proposed	Yes

4. Compliance

4.1 Does the RPM comply with the requirements set out in Article 7?

(14) Article 27(2)(b)(1) of the NC TAR requires the Agency to analyse whether the proposed RPM complies with the requirements set out in Article 7 of the NC TAR. This article refers to Article 13 of Regulation (EC) 715/2009 and lists a number of requirements to be taken into account when setting the RPM. As these overlap, in the remainder of this Chapter the Agency will take a closer look at the five elements listed in Article 7 of the NC TAR. In the draft Decision[4], ACM interprets that compliance with Article 7 should not lead to reference prices that are in breach of the requirements stated in Article 13 of Regulation (EC) 715/2009. The Agency agrees with this interpretation.

(15) Since the concepts of **transparency**, **cost-reflectivity**, **non-discrimination**, **cross-subsidisation** and **cross-border trade** are closely related[5], the Agency concludes with an overall assessment. Special attention is paid to the allocation of revenues between intra-system and cross-system routes. In §49 and §51 of the draft Decision, ACM states that cost-reflectivity is related to non-discrimination, undue cross-subsidisation and non-distortion of cross-border trade in a way that these principles "effectively equate to the requirement of cost-reflectivity"[6]. The Agency agrees with this statement.

4.1.1 Transparency

(16) Article 7(a) of the NC TAR requires that the RPM aims at ensuring that network users can reproduce the calculation of reference prices and their accurate forecast. The simplified tariff model is complete and gives network users the option to set a number of input variables for the forecast of tariffs, as required by Article 30(2)(b) of the NC TAR. The Agency considers that network users would be able to reproduce the calculation of the reference prices. The Agency further considers that network users would be able to forecast reference prices. Also, network users would be able to compare the reference prices proposed with the reference prices of other tariff periods of the regulatory period.

(17) The proposed calculation, together with the information provided as part of the draft Decision, greatly facilitates transparency on the tariff structure, because:

- first, the RPM is a postage stamp methodology that is easy to understand and replicate;
- second, the information required for replicating the reference prices is publicly available in full[7];
- third, there is one single revenue input that is allocated via the RPM. All costs are considered as transmission costs, with no commodity charges or non-transmission charges

[4] See §52 of the draft Decision.

[5] The principle of cost-reflectivity is related to the principles of cross-subsidisation and non distortion of cross-border trade. Tariffs that are fully cost-reflective do not result in any form of cross-subsidisation (and hence they do not distort cross-border trade), as they charge users for the exact costs they cause to the system. Following this reasoning, tariffs that are less cost-reflective may result in cross-subsidisaiton between users.

[6] See §51 of the draft Decision.

[7] See §56 of the draft Decision.

proposed. This further increases transparency, as the reserve prices derived from the reference prices are not subject to any additional charge[8];

- finally, the tariff model allows separately to input the allowed revenues for the different transmission services[9]. In the view of the Agency this represents a good practice that allows increasing the accuracy of the reference prices forecast.

(18) Complementary to this, the Agency notes that the requirement of comparing the tariffs for the prevailing tariff period (2019) and for the tariff period for which the tariffs are calculated (2020) is not entirely fulfilled in the draft Decision[10]. 'Appendix B5 tariff model' of the draft Decision provides a comparison between the proposed tariffs for 2020 and the tariffs for 2019. However, the 2019 tariffs are not calculated with the methodology that will be used in 2019, but with the methodology of the proposed tariffs for 2020. The 2019 tariffs that should be compared with the proposed tariffs for 2020 should be calculated according to the RPM that will be used in 2019. ACM shall include this information as part of the motivated Decision pursuant to Article 27(4). The Agency interprets Articles 26(1)(d) and 30(2)(a)(i) as follows:

- Article 26 lists and describes the elements to be included as part of the periodic consultation on the RPM. It refers to Article 30, which lists the information to be published before the tariff period. The same requirements in Article 30(2) are used for both the periodic consultation on the RPM and the publication requirements.
- Article 30(2)(a)(i) requires an explanation of "the difference in the level of transmission tariffs for the same type of transmission service applicable for the prevailing tariff period and for the tariff period for which the information is published". This requirement is clear in the context of Article 30 (information to be published before the tariff period).
- However, there is room for interpretation in the context of Article 26 (periodic consultation). The Agency understands that:
    - .i. The requirement in Article 26(1)(d) to provide indicative information should be read in such a way that the objective is to provide a *best estimate* in the consultation document of the information that would later be provided as part of the publication requirements.
    - .ii. 'Tariff period for which the information is published' refers to the first tariff period for which tariffs are calculated according to the consulted RPM. In the case of the Netherlands, this is the year 2020.
    - .iii. 'Prevailing tariff period' refers to the tariff period preceding the tariff period for which the information is published. The final tariffs for the prevailing tariff period will be made available after the final consultation as part of requirements in Article 30.

[8] Tariffs for the services Wobbe Quallity Adaptation and peak supply are charged on top of the tariffs calculated using the postage stamp methodology. These services are nevertheless not part of the allowed revenues. See paragraph (45) of this Report for more information.

[9] See Appendix B5 Tariff Model of the draft Decision. The section on 'Parameters' allows using multiple corrections for the allowed revenues of the different transmission services. In addition, the model allows changing the CPI and the forecasted contracted capacity.

[10] The requirement is laid out in Articles 26(1)(d) and 30(2) of the NC TAR.

4.1.2 Cost-reflectivity

(19) Article 7(b) of the NC TAR requires the RPM to take into account the actual costs incurred for the provision of transmission services, considering the level of complexity of the transmission network. The transmission system network in the Netherlands can be considered a meshed network. This is reflected in the choice of capacity as a cost driver.

(20) The proposed RPM consists of a postage stamp methodology complemented by the application of discounts to storages (entries to and exits from storage facilities), and as a next step the rescaling of tariffs to all entry-exit points. The Agency concludes that this methodology is compliant with the principle of cost-reflectivity as required by Article 7(b). This conclusion is based on the argumentation laid out in paragraphs (21) to (27) of this Report.

(21) First, there are several steps described in the draft Decision related to the application of the RPM that ensure that cost-reflectivity is made effective at the level of the entry-exit zone. Cost-reflectivity does not only depend on the choice of cost drivers, but also on how the revenues are grouped and allocated to entry-exit points. These steps are laid out in Articles 3(2), 3(6) and 6(3) of the NC TAR and they enable the RPM to comply with the principle of cost-reflectivity. The draft Decision describes them in §54:

- All the allowed revenues[11] (including both costs caused by capacity and distance, and costs not caused by capacity and distance[12]) are treated as a single input to the RPM**.**
- All costs are allocated via the same RPM.
- The RPM is applied to all entry-exit points[13].

(22) Second, while the postage stamp methodology and the CWD methodology result in different reference prices, the Agency finds no evidence of the CWD methodology delivering a greater degree of cost-reflectivity. The differences in reference prices are the result of the postage stamp methodology allocating costs on the basis of a capacity cost driver, and of the CWD methodology allocating costs on the basis of capacity and distance. The draft Decision analyses these differences in terms of maximum and minimum price differences, the impact on different user segments, and the impact on border points[14]. Looking at these differences, and considering the information provided, the Agency cannot conclude that any of the two RPM better allocates the costs of the network[15]. The choice of using a postage stamp methodology is justified by the simplicity of the postage stamp calculation and by the public status of all its input. In comparison, some of the input to the CWD methodology is not public, as the contracted capacity at some points of the network is confidential[16].

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[11] See paragraph (45) of this Report on the services of Peak Supply and Wobbe Quality Adaptation which are outside the allowed revenue and are not allocated via the RPM.

[12] See §30 of the draft Decision.

[13] See paragraphs (27) and (35) of this Report on the exception applied to Julianadorp.

[14] The reference prices of both methodologies are compared in paragraphs §96-99 and sections B7 and B8 of the draft Decision.

[15] Reference prices calculated with the postage stamp methodology are averaged on the basis of total forecasted contracted capacity, while the CWD methodology results in different reference prices per point depending the average distances between the points in the network and the contracted capacity. A postage stamp methodology is likely to result in some degree of cross-subsidisation, whereby users flowing gas over smaller distances pay more than the costs they cause to the system.

[16] See §59 of the draft Decision.

- Supportive of this conclusion are the results for the CAA, which show that both methodologies allocate similar costs to cross-system and intra-system use[17]. The postage stamp methodology allocates a higher proportion of revenues to cross-system use than to intra-system compared to the CWD methodology, however this difference is small.
- Overall, the Agency appreciates the level of detail provided in the comparison between the reference prices from the two methodologies as a good practice. This includes the differences in reference prices analysed per user segment and border, together with the calculation of the CAA for both methodologies.

(23) Third, the degree of cross-subsidisation indicated by the CAA for the postage stamp methodology remains within the threshold of 10% defined in Article 5(6) of the NC TAR and does not require further justification. The CAA results are provided pre- and post- adjustments (0.5% and 6.3% respectively). The low degree of cross-subsidisation shown by the CAA can be taken as a further validation of the principle of cost-reflectivity. The CAA additionally shows that storage discounts and rescaling have an impact on the cost-reflectivity of reference prices (see paragraph (24) of this Report). The Agency concludes that the degree of cost-reflectivity achieved in the allocation of costs to intra-system and cross-system use is compliant with Article 7(a).

(24) Forth, the discount applied to entry points from and exit points to storage facilities, together with the rescaling applied to all entry-exit points, introduces some cross-subsidies as all users of the entry-exit system subsidise the use of storage facilities. This impacts the CAA as a share of intra-system costs is placed on cross-border IPs. The application of these instruments is allowed by the NC TAR (see Articles 6 and 9 of the NC TAR), and its effects remain within the CAA threshold defined in Article 5 of the NC TAR.

(25) Fifth, the allocation of the quality conversion service via the RPM makes reference prices less cost-reflective. The NC TAR allows costs not caused by capacity and distance to 'be attributed to either transmission or non-transmission subject to the findings of the periodic consultation' (Article 4(1) of the NC TAR). ACM lists three services for which the costs are not caused by both capacity and distance: the connection point service, the connection service and the quality conversion service. These services are allocated as transmission[18]. The costs for the connection point service and the connection service are caused by capacity. The quality conversion service, which represents the larger sum of allowed revenues out of these three services[19], is caused by differences in consumption between low and high calorific gas. When allocating the costs of the quality conversion service via the RPM, capacity is used as a cost driver. The allocation of this service to all users of the network results in cross-subsidisation to low calorific gas users. At the same time, the socialisation of these costs indirectly creates a benefit for users of the network as it is instrumental for having a single gas quality trading market.

[17] The CAA pre-adjustments results are 0.5% (postage stamp) and 0.2% (CWD), and the post-adjustments results are 6.3% (postage stamp) and 4.7% (CWD).

[18] See §29-31 of the draft Decision.

[19] The quality conversion service represents 11% of the allowed revenues for 2020 according to Appendix B.5 of the draft Decision.

(26) Sixth, the draft Decision does not refer to any special treatment of specific points that could have an effect on cost-reflectivity, such as benchmarking, equalisation and clustering. Rescaling is applied to all entry-exit points (including points to and from storage). The impact of this adjustment is also reviewed in paragraphs (23) and (24) of this Report.

(27) In addition:

- The Agency finds the use of a 50/50 entry-exit split suitable. The TAR NC does not prescribe the entry-exit split for the application of the RPM. The ex-ante setting of this split, or its calculation ex-post after the application of the RPM, should be in line with the requirements of the NC TAR as reasoned in this Report[20]. This includes the assessment of reference prices against the results of the CAA and the comparison with the CWD methodology.
- The Agency has examined the scope of application of the NC TAR as proposed by the draft Decision. The Code is applied to all entry-exit points[21], with the exception of Julianadorp, as this IP that connects the GTS network with the BBL interconnector has been taken out of use[22]. This is in line with Article 2(1) of the NC TAR.

(28) On the basis of these arguments, the Agency concludes that the proposed RPM, together with the applied discounts and adjustments, is compliant with the principle of cost-reflectivity.

(29) Additionally, ACM shall provide a reasoning in the motivated decision referred to in Article 27(4) of the NC TAR on how the RPM takes into account the complexity of the transmission network. This is a requirement of the NC TAR as laid out in Article 7(b) and it should be part of the reasoning on the compliance of the RPM with the principle of cost-reflectivity. While the choice of RPM is consistent with a general structure of a meshed network, the Agency notes that the draft Decision does not elaborate on how the proposed methodology takes into account the level of complexity of the network.

(30) Finally, ACM shall provide a structural representation of the transmission network with an appropriate level of detail, to be included in the motivated decision referred to in Article 27(4) of the NC TAR. Article 26(a)(i)(1) of the NC TAR sets the requirement to include any input to the RPM as part of the consultation. The representation of the network is relevant for the CWD methodology and it facilitates understanding, amongst other things, the complexity of the system, and the relevance of distance as a costs driver and hence provides transparency about the choice of the RPM.

4.1.3 Cross-subsidisation

(31) Article 7(c) of the NC TAR requires the RPM to ensure non-discrimination and prevent undue cross-subsidisation. One instrument to evaluate this is the CAA (Article 5 of the NC TAR). The result for the CAA is 6.3% post adjustments. The CAA is not calculated for commodity charges as the draft

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[20] See paragrahps (22), (23) and (24) of this Report.

[21] See §23 of the draft Decision.

[22] The implications the elimination of the Julianadorp IP for cross-subsidisation and cross-border trade are assessed in paragraphs (35) and (40). See additionally §25 of the draft Decision.

Decision does not foresee the use of commodity tariffs. The CAA only assesses cross-subsidisation between intra-system and cross-system network use.

(32) The Agency has not identified discrimination resulting from the correct application of the NC TAR, nor from practices not allowed by the NC TAR. For this analysis, the Agency defines 'discrimination' as 'charging different prices to different network users for the identical gas transmission service'. The allocation of all transmission costs via a single RPM to all entry-exit points minimises the possibility of forms of discrimination not allowed by the NC TAR.

(33) The Agency has not identified undue cross-subsidies. For this analysis, the Agency defines 'cross-subsidisation' as a deviation from cost-reflectivity whereby users of the entry-exit system are allocated tariffs that differ from the costs they cause to the system. This conclusion is reasoned in paragraphs (34) and (35) of this Report.

(34) The results for the CAA are discussed already in paragraph (23) of this Report. These results do not require further justification according to Article 6(4) of the NC TAR. In the view of the Agency, the calculation of the CAA pre- and post- adjustments represents a good practice. Additional remarks on the CAA can be found in paragraphs (22), (23), (24) and (26) of this Report.

(35) Other elements of the analysis on cross-subsidisation are provided as part of the analysis on cost-reflectivity. Potential cross-subsidisation results from:

- Use of a postage stamp methodology that averages reference prices on the basis of total booked capacity (without using distance as a cost driver)[23].
- Services not caused by capacity and distance that are allocated to all entry-exit points via the RPM (connecting point service, connection service and quality conversion service)[24].
- Storage discounts that are allocated to all entry-exit points and the application of rescaling to reference prices[25].
- Removal of the Julianadorp IP. As explained in §25 of the draft Decision, this IP is taken out of use. The revenues associated with this point are socialised to all other points of the network. This generates a cross-subsidy as users of the BBL interconnector are not charged for exiting the network. Instead, these revenues are recovered from all other points of the network. The Agency encourages ACM to assess the effect of the removal of the Julianadorp IP on cross-subsidisation, paying attention to the effect on different network users. Based on the results of this analysis, the Agency invites ACM to consider whether the use of an inter-TSO compensation mechanism would be appropriate[26].

[23] See paragraph (22) of this Report.

[24] See paragraph (25) of this Report.

[25] See paragraphs (23) and (24) of this Report.

[26] According to Article 41(6)(a) of Directive 2009/73/EC,underpinned by Recitals (30), (32) and (33) of the same Directive, Article 13 of Regulation [EC] 715/2009 and Article 27(4) of the NC TAR, the regulatory authority has the competence to set the tariffs, or the methodologies used to calculate them. As an Inter-TSO compensation mechanism is an integral part of such a methodology, the competence to decide on whether an Inter-TSO compensation mechanism should be put in place also lies with the NRA. A priori, the TSO is not in charge of opting whether an Inter-TSO compensation mechanism could or should be relevant. Furthermore, altough Article 10 of the NC TAR obliges the use of an Inter-TSO compensation mechanism in certain cases, this does not restrict the use of an Inter-TSO compensation mechanism to those situations.

4.1.4 Volume risk

(36) Article 7(d) of the NC TAR requires that the RPM ensure that significant volume risk related particularly to transports across an entry-exit system is not assigned to final customers within that entry-exit system. The draft Decision does not report that significantly more gas is transported to other systems than used for consumption.

(37) The Agency acknowledges that the proposed draft Decision does not foresee the application of any explicit measures to shelter captive customers from the risks related to large transit flows.

4.1.5 Cross-border trade

(38) Article 7(e) of the NC TAR requires that the RPM ensures that the resulting reference prices do not distort cross-border trade.

(39) The Agency concludes that reference prices are compliant with the principle of not distorting cross-border trade, because the RPM complies with the principles of cost-reflectivity and non-discrimination, and it does not result in undue cross-subsidisation as laid out in this Report.

(40) At the same time, the Agency notes that there are several features of the draft Decision that impact the overall degree of cost-reflectivity. These features are listed in paragraph (35) of this Report and they result in some degree of cross-subsidisation. While they can impact cross-border trade, the Agency does not view them as a distortion to cross-border trade. This is because the RPM proposed in the draft Decision is compliant with the principles of Article 7 of the NC TAR as assessed in this Report.

(41) Regarding the differences between the postage stamp and the CWD methodologies, the draft Decision provides a comparison between reference prices resulting from these methodologies. This comparison shows the differences per border. In the Agency's view, the level of detail provided by ACM in this comparison represents a good practice[27].

(42) Overall, the RPM is a simple postage stamp methodology that provides a high degree of transparency and that enables forecasting reference prices with accuracy. The RPM is compliant with the principles of laid out in Article 7 of the NC TAR.

4.2 Are the criteria for setting commodity-based transmission tariffs as set out in Article 4(3) met?

(43) ACM proposes not to apply commodity-based transmission tariffs. The criteria for setting commodity-based transmission tariffs as set out in Article 4(3) are therefore not applicable.

4.3 Are the criteria for setting non-transmission tariffs as set out in Article 4(4) met?

(44) ACM proposes not to apply non-transmission tariffs. The criteria for setting non-transmission tariffs as set out in Article 4(4) are therefore not applicable.

[27] Paragraph (22) of this Report looks further into this comparison.

5. Other comments

(45) In the draft Decision, ACM refers to two services (peak supply and Wobbe Quality Adaptation) that are outside the scope of the NC TAR. The reasoning for this exclusion is that these services are not related to the 'access to the natural gas transmission networks'. In the view of the Agency, both services are related to the 'access to the natural gas transmission networks' and should fall within the scope of the NC TAR. Subsequently, they should be treated as either transmission or as non-transmission services[28].

(46) In addition to the analysis provided by the Agency pursuant to Article 27(2) of the NC TAR, the Agency provides its view on the proposed use of ex-post discounts for interruptible capacity. A request for clarification on this matter was made via the Gas Network Codes Functionality Platform[29] on 3 May 2018. The Agency agrees with ACM's proposed approach to follow Article 16(4) of the NC TAR that states that the "compensation paid for each day on which an interruption occurred shall be equal to three times the reserve price for daily standard capacity products for firm capacity". The Agency does not agree with a limitation of this compensation[30]. The Agency further notes that, according to Article 16 of the NC TAR, ex-post discounts may only be used where there was no interruption of capacity due to physical congestion in the preceding gas year. This should be assessed for every tariff period, in line with Article 28(2) of the TAR NC.

[28] This Report was drafted within a tight legal deadline. Given the complexity of this topic, not all discussions have been exhausted and a more complete analysis may be required.

[29] See http://www.gasncfunc.eu/

[30] Such as the one proposed by ENTSOG in its Second Edition of the 'Implementation Document for the Network Code on Harmonised Transmission Tariff Structures for Gas' of September 2017.

Annex 1: Legal framework

(47) Article 27 of the NC TAR reads:

1. Upon launching the final consultation pursuant to Article 26 prior to the decision referred to in Article 27(4), the national regulatory authority or the transmission system operator(s), as decided by the national regulatory authority, shall forward the consultation documents to the Agency.

2. The Agency shall analyse the following aspects of the consultation document:
(a) whether all the information referred to in Article 26(1) has been published;
(b) whether the elements consulted on in accordance with Article 26 comply with the following requirements:

(1) whether the proposed reference price methodology complies with the requirements set out in Article 7;
(2) whether the criteria for setting commodity-based transmission tariffs as set out in Article 4(3) are met;
(3) whether the criteria for setting non-transmission tariffs as set out in Article 4(4) are met.

3. Within two months following the end of the consultation referred to in paragraph 1, the Agency shall publish and send to the national regulatory authority or transmission system operator, depending on which entity published the consultation document, and the Commission the conclusion of its analysis in accordance with paragraph 2 in English.
The Agency shall preserve the confidentiality of any commercially sensitive information.

4. Within five months following the end of the final consultation, the national regulatory authority, acting in accordance with Article 41(6)(a) of Directive 2009/73/EC, shall take and publish a motivated decision on all items set out in Article 26(1). Upon publication, the national regulatory authority shall send to the Agency and the Commission its decision.

5. The procedure consisting of the final consultation on the reference price methodology in accordance with Article 26, the decision by the national regulatory authority in accordance with paragraph 4, the calculation of tariffs on the basis of this decision, and the publication of the tariffs in accordance with Chapter VIII may be initiated as from the entry into force of this Regulation and shall be concluded no later than 31 May 2019. The requirements set out in Chapters II, III and IV shall be taken into account in this procedure. The tariffs applicable for the prevailing tariff period at 31 May 2019 will be applicable until the end thereof. This procedure shall be repeated at least every five years starting from 31 May 2019.

(48) Article 26(1) of the NC TAR reads:

1. One or more consultations shall be carried out by the national regulatory authority or the transmission system operator(s), as decided by the national regulatory authority. To the extent possible and in order to render more effective the consultation process, the consultation document should be published in the English language. The final consultation prior to the decision referred to in Article 27(4) shall comply with the requirements set out in this Article and Article 27, and shall include the following information:
(a) the description of the proposed reference price methodology as well as the following items:

(i) the indicative information set out in Article 30(1)(a), including:

(1) the justification of the parameters used that are related to the technical characteristics of the system;

(2) the corresponding information on the respective values of such parameters and the assumptions applied.

(ii) the value of the proposed adjustments for capacity-based transmission tariffs pursuant to Article 9;

(iii) the indicative reference prices subject to consultation;

(iv) the results, the components and the details of these components for the cost allocation assessments set out in Article 5;

(v) the assessment of the proposed reference price methodology in accordance with Article 7;

(vi) where the proposed reference price methodology is other than the capacity weighted distance reference price methodology detailed in Article 8, its comparison against the latter accompanied by the information set out in point (iii);

(b) the indicative information set out in Article 30(1)(b)(i), (iv), (v);

(c) the following information on transmission and non-transmission tariffs:

(i) where commodity-based transmission tariffs referred to in Article 4(3) are proposed:

(1) the manner in which they are set;

(2) the share of the allowed or target revenue forecasted to be recovered from such tariffs;

(3) the indicative commodity-based transmission tariffs;

(ii) where non-transmission services provided to network users are proposed:

(1) the non-transmission service tariff methodology therefor;

(2) the share of the allowed or target revenue forecasted to be recovered from such tariffs;

(3) the manner in which the associated non-transmission services revenue is reconciled as referred to in Article 17(3);

(4) the indicative non-transmission tariffs for non-transmission services provided to network users;

(d) the indicative information set out in Article 30(2);

(e) where the fixed payable price approach referred to in Article 24(b) is considered to be offered under a price cap regime for existing capacity:

(i) the proposed index;

(ii) the proposed calculation and how the revenue derived from the risk premium is used;

(iii) at which interconnection point(s) and for which tariff period(s) such approach is proposed;

(iv) the process of offering capacity at an interconnection point where both fixed and floating payable price approaches referred to in Article 24 are proposed.

(49) Article 7 of the NC TAR reads:

The reference price methodology shall comply with Article 13 of Regulation (EC) No 715/2009 and with the following requirements. It shall aim at:

a) enabling network users to reproduce the calculation of reference prices and their accurate forecast;

(b) taking into account the actual costs incurred for the provision of transmission services considering the level of complexity of the transmission network;

(c) ensuring non-discrimination and prevent undue cross-subsidisation including by taking into account the cost allocation assessments set out in Article 5;

(d) ensuring that significant volume risk related particularly to transports across an entry-exit system is not assigned to final customers within that entry-exit system;
(e) ensuring that the resulting reference prices do not distort cross-border trade.

(50) Article 13 of Regulation (EC) No 715/2009 reads:
1. Tariffs, or the methodologies used to calculate them, applied by the transmission system operators and approved by the regulatory authorities pursuant to Article 41(6) of Directive 2009/73/EC, as well as tariffs published pursuant to Article 32(1) of that Directive, shall be transparent, take into account the need for system integrity and its improvement and reflect the actual costs incurred, insofar as such costs correspond to those of an efficient and structurally comparable network operator and are transparent, whilst including an appropriate return on investments, and, where appropriate, taking account of the benchmarking of tariffs by the regulatory authorities. Tariffs, or the methodologies used to calculate them, shall be applied in a nondiscriminatory manner.
Member States may decide that tariffs may also be determined through market-based arrangements, such as auctions, provided that such arrangements and the revenues arising therefrom are approved by the regulatory authority.
Tariffs, or the methodologies used to calculate them, shall facilitate efficient gas trade and competition, while at the same time avoiding cross-subsidies between network users and providing incentives for investment and maintaining or creating interoperability for transmission networks.
Tariffs for network users shall be non-discriminatory and set separately for every entry point into or exit point out of the transmission system. Cost-allocation mechanisms and rate setting methodology regarding entry points and exit points shall be approved by the national regulatory authorities. By 3 September 2011, the Member States shall ensure that, after a transitional period, network charges shall not be calculated on the basis of contract paths.

2. Tariffs for network access shall neither restrict market liquidity nor distort trade across borders of different transmission systems. Where differences in tariff structures or balancing mechanisms would hamper trade across transmission systems, and notwithstanding Article 41(6) of Directive 2009/73/EC, transmission system operators shall, in close cooperation with the relevant national authorities, actively pursue convergence of tariff structures and charging principles, including in relation to balancing.

(51) Article 4(3) of the NC TAR reads:
3. The transmission services revenue shall be recovered by capacity-based transmission tariffs.
As an exception, subject to the approval of the national regulatory authority, a part of the transmission services revenue may be recovered only by the following commodity-based transmission tariffs which are set separately from each other:
(a) a flow-based charge, which shall comply with all of the following criteria:
(i) levied for the purpose of covering the costs mainly driven by the quantity of the gas flow;
(ii) calculated on the basis of forecasted or historical flows, or both, and set in such a way that it is the same at all entry points and the same at all exit points;
(iii) expressed in monetary terms or in kind.
(b) a complementary revenue recovery charge, which shall comply with all of the following criteria:
(i) levied for the purpose of managing revenue under- and over-recovery;
(ii) calculated on the basis of forecasted or historical capacity allocations and flows, or both;

(iii) applied at points other than interconnection points;

(iv) applied after the national regulatory authority has made an assessment of its cost-reflectivity and its impact on cross-subsidisation between interconnection points and points other than interconnection points.

(52) Article 4(4) of the NC TAR reads:

4. The non-transmission services revenue shall be recovered by non-transmission tariffs applicable for a given nontransmission service. Such tariffs shall be as follows:

(a) cost-reflective, non-discriminatory, objective and transparent;

(b) charged to the beneficiaries of a given non-transmission service with the aim of minimising cross-subsidisation between network users within or outside a Member State, or both.

Where according to the national regulatory authority a given non-transmission service benefits all network users, the costs for such service shall be recovered from all network users.

Annex 2: List of abbreviations

Acronym	Definition
ACER, the Agency	Agency for the Cooperation of Energy Regulators
ACM	Authority for Consumers and Markets
CAA	Cost Allocation Assessment
CWD	Capacity Weighted Distance
ENTSOG	European Network of Transmission System Operators for Gas
EU	European Union
GTS	Gasunie Transport Services
IP	Interconnection Point
NC TAR	Network code on harmonised transmission tariff structures for gas
NRA	National Regulatory Authority
RPM	Reference Price Methodology
TSO	Transmission System Operator

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