# ACER Call for Evidence

## on the conditions for the application of FDA UIOLI pursuant to paragraph 2.2.3.1 a) - d) of the CMP Guidelines

# PC_2016_G_03

Evaluation of responses

15 December 2016

Agency for the Cooperation of Energy Regulators
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# Contents

# 1 Introduction

According to paragraph 2.2.1.2 of the Commission Guidelines on Congestion Management Procedures[1] ('CMP GL') the Agency for the Cooperation of Energy Regulators ('the Agency') has to publish a yearly monitoring report on contractual congestion[2] at interconnection points ('IPs'), taking into consideration, to the extent possible, capacity trading on the secondary market and the use of interruptible capacity.

Paragraph 2.2.3.1 specifies the conditions[3] under which a specific CMP - i.e. the Firm day-ahead Use-It-Or-Lose-It mechanism ('FDA UIOLI') - is to be applied. The Agency has used each of these conditions as an indicator for contractual congestion ("congestion indicators"). Accordingly, in the ACER Congestion Reports[4], the Agency had identified contractual congestion at those IP sides where at least one of the conditions of the "congestion indicators" (conditions 2.2.3.1 a) – d)) was fulfilled.

Some stakeholders (including TSOs, NRAs and network users) have expressed doubts on whether the "congestion indicators" are able correctly to identify actual situations of contractual congestion. Some stakeholders suggested to include also other elements or criteria in the decision-making process about whether an IP side is to be considered "contractually congested" and therefore would require the application of the FDA UIOLI.

The Agency therefore invited stakeholders to formulate concrete suggestions to improve the existing "congestion indicators" and/or define additional criteria to be used by the Agency in its congestion analysis. Such criteria were requested:

- appropriately to reflect / describe circumstances that identify persistent existence of contractual congestions at IP sides,
- to be objective and replicable,
- to be based on data which is or will have to be made available at least to the Agency in a timely manner,
- and to be applicable - with reasonable efforts - across the EU.

While launching this exercise in the form of a survey, the Agency did not commit to propose any amendments[5] to the existing CMP GL provisions concerning the "congestion indicators" to the Commission.

Next to the above-mentioned main topic, the questionnaire covered a number of additional issues which were raised in the recommendations section of the Agency's latest Congestion Report.

[1] Commission Decision of 24 August 2012 on amending 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: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012D0490&from=EN

[2] Article 2(1)(21) of Regulation 715/2009 (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0036:0054:en:PDF) defines contractual congestion as a situation where the level of firm capacity demand exceeds the technical capacity

[3] i.e. points a) – d) of paragraph 2.2.3.1

[4] Latest Report: ACER annual report on contractual congestion at interconnection points (period covered 2015), 3rd edition, 31.05.2016: http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/ACER%202016%20Report%20on%20Congestion%20at%20IPs%20in%202015.pdf

[5] The CMP GL may be amended according to Article 23 of 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 (Gas Regulation): http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0036:0054:en:PDF

# 2 The consultation process

On 9 August 2016, the Agency launched on its website a "Call for Evidence on the conditions for the application of FDA UIOLI pursuant to paragraph 2.2.3.1 a) - d) of the CMP Guidelines". With this call, the Agency consulted stakeholders via an online-survey, focussing on the existing congestion indicators and how they could be improved.

14 stakeholders[6] responded to the public consultation, which closed on 23 September 2016. Their replies to the 9 questions raised in the survey are published on the Agency's website[7] and analysed in the following chapter. In addition, three NRAs responded to the survey. Their answers were incorporated in the assessment table (see chapter 3, column "Agency views").

The breakdown of stakeholders' responses by type are represented in Figure 1 below.

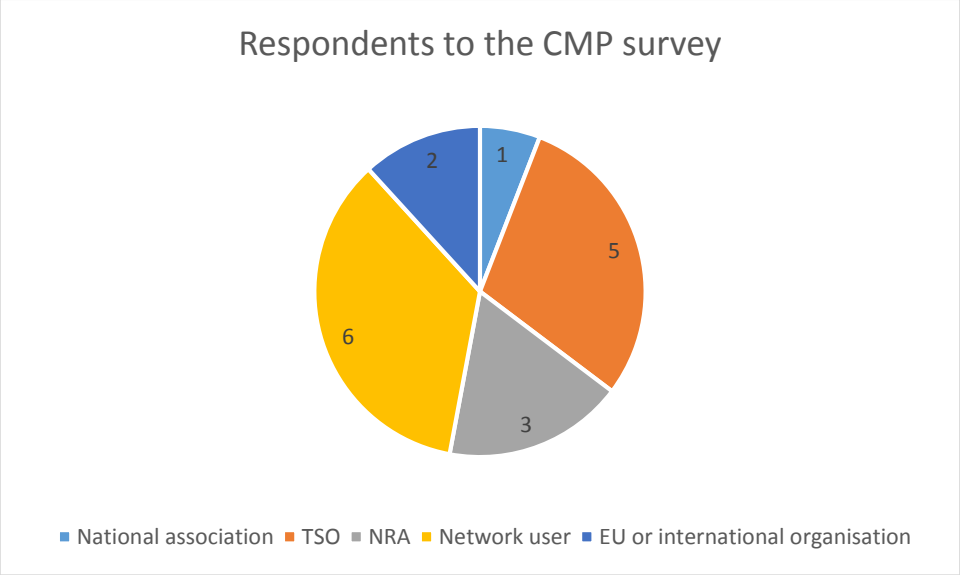


*Figure 1: Respondents by type*

The Agency notes that a few respondents used the opportunity of the survey to comment on and propose amendments to the Network Code on Capacity Allocation Mechanism ('NC CAM'). Those aspects are not assessed in detail in this document, as most of them have in the meantime been addressed in the revised NC CAM[8].

[6] See Annex II for the complete list of stakeholders. Two TSOs (GAZ-SYSTEM, Eustream) and one network user (EDP Group) disagreed with the publication of their original responses. Upon the Agency's request, they have nevertheless provided a non-confidential version for publication.
[7] http://www.acer.europa.eu/Official_documents/Public_consultations/Pages/PC_2016_G_01.aspx
[8] The NC CAM amendments have been voted on by Member States in the Gas Committee Meeting of 13 October 2016. The new NC CAM is expected to be applicable as of 1 April 2017.

# 3 Summary of responses and Agency views

| Respondents' feedback | Agency views |
|---|---|
| **Question 1: Do you consider the existing "congestion indicators" (conditions 2.2.3.1 a) – d) of CMP GL) appropriate and sufficient to determine the existence of contractual congestion (as defined in Regulation 715/2009) at IP sides? In case not, what alternative indicators would you suggest? Please be as concrete as possible with your proposal and provide a justification.** | |
| 13 answers: Yes (3), No (8), Neutral (2)<br><br>**Positive answers**<br>- Stakeholders agree with the congestion indicators as symptoms of a situation of contractual congestion. Amendments to congestion indicators shall not be seen as a matter of priority. What should be prioritized is the involvement of the Agency in promoting a harmonised use of congestion management procedures at both sides of an IP.<br><br>**Neutral answers**<br>- Even though proper, the current congestion indicators could be completed by additional assessment mechanisms.<br><br>**Negative answers` reasoning**<br>- Two stakeholders agree that the use of this `imprecise` definition has resulted in the identification of some IPs as contractually congested, when it was not the case;<br>- Having a premium during an (annual, quarterly, monthly) auction or no capacity made available in these primary auctions does not provide sufficient information to conclude whether market players have difficulties to get proper access to cross-border capacity;<br>- Indicators do not take into account the possibility to book capacity on a day-ahead or within-day basis, or through the secondary market;<br>- These indicators can only identify a risk of contractual congestion no later than in the monthly auction and do not take into account the longer term bookings of shippers, but only the previous year and two subsequent years. | **1. Current criteria can induce "false-positive"**<br><br>Article 2 (21) of the Gas Regulation[9] defines contractual congestion as "a situation where the level of firm capacity demand exceeds the technical capacity".<br>Congestion criteria intend to identify situations at IPs when (a) there is unmet demand for capacity and (b) the capacity is not fully used to flow gas.<br><br>The majority of respondents consider that current congestion indicators of the CMP GL are not sufficient to reveal the existence of "real" (i.e. problematic) contractual congestion. Indeed, it can happen that some IPs are considered congested according to the current indicators, whereas market players have no difficulty accessing firm cross-border capacity, notably on shorter time frames (10% quota) or via the secondary market.<br><br>Thus, the Agency is of the view that applying only the current indicators can result in "false positive" results (i.e. IPs are "formally" considered congested, although there are no access problems associated with it).<br>The Agency will thus consider proposing additional indicators to facilitate assessing whether any "formally" detected congestion is critical and thus requires a certain CMP measure, or not. If and once these have been accepted as formal amendments to the CMP Guidelines, they could be implemented in practice.<br><br>**2. Possible alternative criteria**<br><br>Some stakeholders consider that not only the booking of capacity can provide an indication on contractual congestion, but also the utilisation of capacity. |

[9] 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

| Respondents' feedback | Agency views |
|---|---|
| **Recommendations**<br>→ Use of additional indicators, such as :<br>- Availability of a liquid secondary market for capacity; shippers' utilisation of capacity; the availability of long-term interruptible capacity, the propensity of interruptible capacity to be curtailed, and wholesale gas price spreads;<br>- Actual nominations vs booked capacity;<br>- Actual nominations vs technical capacity;<br>- IPs which are 100% booked (long term, short term) and / or used in certain point in time of the month;<br>- Percentage of time when net nominations are not reflecting spot geographical spreads, once day-ahead transportations costs are taken into account;<br>- Availability of capacity through other CMP mechanisms such as OS&BB, surrender of capacity or LT-UIOLI;<br>- Linking what happens in the auctions and the spreads between linked markets: if there is a premium on the reserve price, while booked capacity is underutilised, this would be more significant evidence of congestion to be managed or the premium could be an indicator by itself;<br>- More dynamic evaluations, close to the considered period (e.g. results of M-1 auction) can also represent an effective way to show contractual congestion situations to be possibly solved via FDA UIOLI (applied to days of month M in a selective way, avoiding to extend the mechanism to periods where no evidence of congestion is identified). | The Agency recognises that this could be of interest to get a full picture on the functioning of the IP. The Agency will consider proposing amendments to the congestion indicators better to assess whether detected contractual congestion at a certain IP is critical for the market.<br>One suggestion from stakeholders is to set a ratio of nominations/booked capacity per direction and per IP. If the nominations are often well below the level of booked capacity, it could mean that the shipper is "hoarding" capacity. This analysis is already part of Agency's CMP Implementation Monitoring (effect indicator).<br>Some respondents also proposed linking auction results (premium on a reserve price or not) to the actual nominations of capacity, especially when *gas market price spreads are high*. However, a minimum capacity utilisation ratio (limiting "capacity hoarding") beyond the ratio described in the CMP GL triggering the Long-Term UIOLI should not be considered. As stipulated by one respondent, some shippers need to preserve the flexibility of their portfolio and therefore do not systematically nominate their whole booked capacity.<br>In order to circumvent this, a respondent proposed to have a look at the percentage of time when net nominations are not reflecting spot geographical spreads.<br>The Agency considers that capacity utilisation ratios could provide further indications for a better assessment of (problematic) contractual congestion. The Agency already started calculating such ratios for the NC CAM & CMP implementation ~ and effects monitoring purposes and will further work on refining those indicators with a view possibly to propose amendments of the CMP GL. |
| **Question 2: Do you think that the "congestion indicators" should further specify how to take into consideration capacity trading on the secondary market and the use of interruptible capacity? If so, please indicate how this should be done. Please give reasons for your answer.** | |
| 13 answers: Yes (5), No (5), Neutral (3)<br><br>**Positive answers**, recommending :<br>- The existence of a secondary market should be taken into account given the significant role it can play in providing access to capacity (released by shippers); | **1. Secondary capacity market**<br><br>Should an IP be considered as "contractually congested" according to current CMP criterions, it seems relevant to have a look at capacity trading on the secondary market. |

| Respondents' feedback | Agency views |
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| - An indicator should evaluate the amount of day-ahead interruptible capacity offered to the market, once firm capacity is fully booked;<br>- New congestion indicators could be considered, for example the amount of yearly interruptible capacity offered to the market, or the amount of quarterly interruptible capacity offered to the market;<br>- The sale of interruptible capacity and additional firm capacity also needs to be considered.<br><br>**Neutral answers**<br>- Secondary markets are a fundamental CMP, but the secondary capacity trading (especially on shorter timeframes and for smaller volumes) is facing obstacles such as high fees, too long lead times for confirmation by TSOs and significant limitations (illiquid, not anonymous and without a proper credit risk management);<br>- Not as a criterion (this could make the indicator more complicated), yes as part of the assessment,<br><br>**Negative answers` reasoning:**<br>- Secondary capacity trading should not be construed as an indicator of congestion, but rather as a tool to solve congestion issues;<br>- Secondary markets do not provide sufficient evidence neither for future capacity availability nor capacities on offer;<br>- Trades made on the secondary market have no influence on the congestions at a particular IP and on the available capacity.<br><br>**Recommendations** :<br>- To take into consideration the real use of capacity booked, examined during already specified periods, when demand exceeded offer. The limit should be reasonable, because flexibility and capacity reserve can also have value for shippers. | Experience shows that, at some IPs, where capacity was auctioned at a premium, shippers had the opportunity to access capacity via the secondary market.<br>The Agency considers that looking simply at trading on the secondary market cannot be sufficient to determine whether future capacity will be available in the case of a future contractual congestion.<br>Thus, rather than an indicator of contractual congestion, the secondary market should be considered as an important tool, in addition to the existing CMPs, to release capacity, thus to remedy identified contractual congestion. It can be used to characterise whether an individual congestion situation is critical or not, i.e. whether shippers encounter difficulties in accessing firm capacity or not.<br><br>Thus the Agency may advocate changing the CMP GL in order to give more flexibility to the Agency/NRAs to consider the extent of secondary firm capacity offers and trading in their assessments. A decision on whether a certain (additional) CMP is required at a specific congested IP or not could then be based on such data (which is already provided in the Agency's congestion reports).<br>The Agency recognises that the secondary market is currently not liquid for the majority of IPs, especially on shorter timeframes. The Agency will further work on this issue.<br><br>**2. Interruptible capacity**<br><br>By definition, booking of interruptible capacity cannot remove a contractual congestion ("Contractual congestion means a situation where the level of **firm** capacity demand exceeds the technical capacity.").<br>Using interruptible capacities as part of the assessment to determine whether the IP is congested or not would thus imply amending the definition of "contractual congestion" (eliminating the notion of "firm capacity").<br>The Agency's past congestion analyses included information on the offer and bookings of interruptible capacity. However, this information did neither have an influence on the notion of "existence of contractual congestion" nor on the automatic consequence of having to apply the FDA UIOLI. |

| Respondents' feedback | Agency views |
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| | Interruptible capacity offers - as well as a liquid secondary capacity market - can help alleviating the negative effects of contractual congestion and therefore have a similar function as the CMPs.<br><br>The capacity trading on the secondary market and the use of interruptible capacity are only two of the factors that may satisfy the network users' needs regarding access to capacity. NRAs propose to take into account in their analyses other factors (e.g. day-ahead or within-day firm capacity products offer) to determine the existence of contractual congestion at IP sides. |
| **Question 3: In cases of contractual congestion, do you consider FDA UIOLI to be an appropriate mechanism to mitigate the effects of the identified contractual congestion? If not, what alternative or additional measure would you suggest to address the congestion and why?** | |
| 14 answers: yes/unconditional (2), yes/conditional (6) no (5), neutral (1)<br><br>**Positive Answers**<br>- FDA UIOLI is effective in making capacity available in the day-ahead timeframe<br><br>**Negative answers**<br>- Two respondents noted that FDA UIOLI is not effective where it has been used<br>- Some respondents note that OSBB and LT UIOLI are sufficient to deal with contractual congestion FDA UIOLI is only acceptable in the short-term, with some other respondents noting that FDA UIOLI is not the only mechanism to resolve contractual congestion (noting OSBB as another appropriate mechanism)<br>- Shippers are exposed to an unnecessary risk, by the systematic imposition of restriction of re-nomination rights when no contractual congestion actually exists.<br>- As there are very few points where real contractual congestion occurs, a stakeholder presents its worries that following the Agency`s report, NRAs will be inclined to impose the FDA UIOLI, which entails negative consequences for shippers. | The Agency is of the view that FDA UIOLI is an appropriate mechanism to deal with short-term contractual congestion and provide firm day-ahead capacity.<br>However, there are other mechanisms, such as the Oversubscription and Buy-back (OS&BB), which can resolve contractual congestion and provide firm day-ahead capacity as well.<br><br>NRAs consider that – rather than an automatic FDA UIOLI application - discretion should be given to them to analyse the specific situation in order to conclude if they apply the basic rule (FDA UIOLI) or the alternative (OS&BB) for resolving contractual congestion to remedy its adverse effects. In order to avoid a situation where neither FDA UIOLI nor OS&BB is applied on a contractually congested IP, FDA UIOLI should be kept as the default option. Making unused capacity available to the market - at least on a day-ahead basis – is crucial for short-term gas market prices to converge among hubs. |

| Respondents' feedback | Agency views |
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| - FDA UIOLI is only acceptable as an absolute back-stop measure when OSBB is unable to be applied. FDA UIOLI entails a further limiting effect in the case of a bundled capacity IP product, by reducing the flexibility of the entire capacity.<br>- FDA UIOLI undermines the shippers' rights of using their long-term capacity contracts.<br>- 2 respondents agree that the mechanism punishes shippers with more than 10% capacity. The mechanism will inevitably determine restrictions to flexibility, which impose swift reactions on the shippers towards price signals and market conditions and might, under certain circumstances, affect the ability to supply gas to the market where it is needed.<br>- FDA UIOLI obliges the TSO to offer a short-term product in response to a long-term issue, in a market where flexibility is highly valued to respond to a sudden cross border demand.<br><br>**Recommendations :**<br>- 9 respondents agreed that it is imperative that implementation of OSBB takes place more broadly and use it instead of FDA-UIOLI.<br>- Other appropriate measures: a liquid secondary market for capacity with a proper credit risk management by the TSO, no limitation on the products proposed by the shippers and the availability of interruptible capacity on a long term basis;<br>- The selection of OSBB and FDA UIOLI should be up to each Member State;<br>- It is a must that the same mechanism is implemented in a coordinated way at both sides of the IP.<br>- 5 respondents agreed on the harmonization of rules applicable by deleting point 5 of paragraph 2.2.3 of the CMP GL, on the reason that all parties should be treated the same way.<br>- 1 respondent highly encourages the use of a short-term use it or lose it congestion mechanism.<br>- If OS&BB is in place and not effective, only then the FDA-UIOLI should be applied. If physical congestion is in place, no CM mechanism will solve the problem. | The Agency recalls its recommendation of the past Congestion Reports and CAM/CMP Implementation Monitoring Reports that TSOs should prioritise the maximisation of technical firm capacity (e.g. via dynamic recalculation of capacity) over the application of OS&BB for products beyond a day's duration. If technical capacity is maximised dynamically, there should be little extra room for TSOs left to oversubscribe capacity for products longer than a day. Then, both FDA UIOLI and OS&BB can still deliver "additional" capacity through the re-offering of unused capacity on the day-ahead level. Both mechanisms could work in parallel at both sides of an IP, as long as both tools enable a firm day-ahead offer of bundled capacity.<br><br>The Agency is aware that contractual congestion occurring for products beyond a duration of 1 day cannot be resolved with FDA UIOLI or OS&BB for DA capacity. Nevertheless, the negative effects of contractual congestion (market price spreads which cannot be arbitrated on) can be remedied at least in the day-ahead and within-day timeframe.<br><br>To resolve the longer term contractual congestion, TSOs/NRAs may consider a range of options, e.g. facilitating the secondary market, offer LT interruptible products, enforce LT UIOLI, propose to modify the other current CMPs, etc. |

| Respondents' feedback | Agency views |
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| **Question 4: In its latest congestion report[10], the Agency recommends clarifying the scope of criterion d) of paragraph 2.2.3.1 of the CMP GL to align it with the other congestion criteria. The current wording of criterion d) considers an IP side not congested, if capacity for at least one month was offered out of the 12 months in the preceding year's rolling monthly auction procedures. The Agency would propose amending the text so that all 12 monthly products should be offered at an IP in order for it not to be considered as contractually congested, as there is no way to test "demand exceeding offer" in auction regimes if no such product is offered. (Also, no quota applies for monthly products).** | |
| 13 answers: Yes (2), No (7), Neutral (4)<br><br>**Positive answers**<br>- The indicator proposed by the Agency will be valuable to identify IPs that are only congested during certain periods of the year due to several circumstances: injection/extraction of gas from underground storages, usage of congested upstream points, etc.<br>- The other stakeholder highlighted that an exceptional congestion on a month should not activate the congestion mechanisms.<br><br>**Neutral answers` reasoning**<br>- Leave the wording as it is. The new definition might lead to the situation that an IP is considered to be congested even if this is not the case.<br>- Neutrality of another respondent depends on whether congestion indicators are only a trigger to initiate a proper analysis of whether there is actually an issue with accessing capacity.<br><br>**Recommendations**<br>- If the Agency is considering the amendment of the text, it would be sensible to focus the monthly analysis to the emergence of auction premium (demand>offer) rather than to the simple lack of offer of monthly products (which can be due to maintenance or a temporary technical problem);<br>- A more realistic approach would be to assess the picture over a longer period, but not necessarily a full year, perhaps 3-6 months. | The Agency notes that the majority of the (few) respondents does not support its suggestion to adapt the text of criterion d) of paragraph 2.2.3.1 of the CMP GL, which would potentially increase the number of "false-positive" instances of detected contractual congestion. There could be reasons for e.g. a 1-month non-offer of capacity (maintenance, for example), which would not qualify as contractual congestion.<br>Nevertheless, a longer period of non-offer (e.g. 3-6 months) and the season (e.g. winter) in which it occurs could be considered when refining this indicator. Taking all, negative, positive and neutral responses to this question as well as the Agency´s conclusions in its latest Congestion Report into account, the Agency considers that further analyses on the contractual congestion indicators are needed. |

[10] Latest Report: ACER annual report on contractual congestion at interconnection points (period covered 2015), 3rd edition, 31.05.2016: http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/ACER%202016%20Report%20on%20Congestion%20at%20IPs%20in%202015.pdf

| Respondents' feedback | Agency views |
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| **Negative answers` reasoning**<br>- This approach is thought not to solve the problem, but to complicate it even further;<br>- The definition of `contractual congestion` itself should be amended, and not the `congestion indicators`.<br>- Current indicators are irrelevant and create "false positive" indications of congestion. The proposed amendment would only increase these "false positive" indications of congestion and would therefore be a step in the wrong direction.<br>- The non-availability of at least one monthly product is a trigger to start usage of the FDA UIOLI and not an indicator when to use it.<br><br>**Recommendations**<br>- The definition of 'contractual congestion' needs to be rectified rather than changing the indicators. | |
| **Question 5: With respect to paragraph 2.2.1 of the CMP GL, the Agency recommends in its latest congestion report that the Commission clarifies**<br>**a) Until when the Agency shall produce congestion reports (or under which conditions the reports are no longer required);**<br>**b) An implementation period for the FDA UIOLI mechanism, if congestion is identified at IP sides only after 1 July 2016.**<br>**Please provide your views on these 2 issues, including concrete suggestions and reasons.** | |
| **<u>Stakeholders` views on a)</u>**<br><br>10 answers:<br>- The Agency should continue to do this based on the amendments made upon the definition of `contractual congestion`.<br>- 4 respondents agreed that the Agency is best to decide on this matter, depending on the relevance of contractual congestion in the future. If the congestion decreases, it might be irrelevant to publish a yearly report.<br>- Costs should be taken into consideration when answering this question.<br>- Some stakeholders suggest that the report should be produced until the FDA UIOLI is implemented on all IPs or that the Agency should continue to issue the report and use it as a tool for supervision at least in the next 2 years. | **<u>The Agency's view on a)</u>**<br><br>The views of the few respondents are divided on the question of until when the Agency shall produce congestion reports (ranging from "termination or replacement" to "indefinite").<br>The Agency considers a continuation of the annual congestion assessment and report elaboration for as long as there is a need for it, but in any case at least for the upcoming two years (allowing to observe possible trends).<br>Whether contractual congestion is decreasing can only be concluded after the yearly assessment is actually performed, which can only then be reported on (even in a concise way).<br>An integration in the Agency's annual Market Monitoring Report might not be practical, as the current timelines do not match. |

| Respondents' feedback | Agency views |
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| - Publishing of the report on an indefinite basis, if the NRAs rely on specific indicators to trigger the application of FDA UIOLI rather than applying them on a permanent basis.<br><br>**Recommendations**<br>- Two respondents recommended the Agency to publish a report which identifies flows that are not found in the MMR, and give up on issuing a report on contractual congestion.<br>- Another one thought that it might be appropriate to consider adding this report as a part to the annual MMR.<br><br>**Stakeholders` views on b)**<br><br>13 answers:<br>- As the FDA UIOLI mechanism should not be used at all, then an implementation period becomes irrelevant;<br>- If the mechanism is maintained, steps for its removal shall be taken when the circumstances for justifying its existence no longer apply.<br>- Others agreed that FDA UIOLI should be forbidden / replaced with OSBB or any other mechanism, defined as an alternative.<br>- 2 stakeholders stated that the FDA UIOLI mechanism should be implemented as soon as possible, taking into account a necessary lead-time before enforcement or after sufficient time has passed for taking into consideration potential changes to contractual arrangements and the IT systems of both the TSO and Shippers.<br><br>**Recommendations**<br>- The application of the FDA – UIOLI mechanism should be linked to its effectiveness in achieving the objectives of the shippers in the actual utilisation of the capacity released under this mechanism.<br>- The Agency's report shall be aligned with the auction calendar, as the shippers must know before the auction about all terms and conditions under which FDA UIOLI is applied. | The Agency concludes that a continued systematic assessment of contractual congestion at EU level would be worthwhile, as long as the current congestion criteria (i.e. assessment "tasks") are kept or amended and the assessment results have a practical use and/or impact (e.g. on NRA decision-making).<br><br>**The Agency's view on b)**<br><br>Apart from the aversion expressed by some respondents regarding the FDA UIOLI mechanism itself and its "automatic" application, the few supporters did not provide concrete proposals on implementation periods required for FDA UIOLI, if congestion is detected.<br>If the "automatic triggering of FDA UIOLI" is kept, an implementation period should – obviously - take into account the time needed for administrative proceedings, IT adjustments and contractual arrangements, where necessary. On the other hand, the application should not be unnecessarily delayed. Considering the practical experience of some TSOs already applying that mechanism, the Agency is of the view that a maximum implementation period of 6 months (after the publication of the congestion report) would be appropriate. |

| Respondents' feedback | Agency views |
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| **Question 6: Do you think the CMP GL should set out an implementation process for the FDA UIOLI, specifying when (under which measurable conditions) to terminate the application of FDA UIOLI?** | |
| 14 answers: Yes (6), No (3), Neutral (5)<br><br>**Positive answers**<br>- Further specifications should be made provided that within the whole previous year (i.e. the one that the current Agency's Report encompasses) the firm day-ahead products were available for market users.<br>- Stakeholders ask for a harmonisation of the CMP procedures applied on both sides of an IP, as each agent should be aware of conditions to be fulfilled for each IP, separately, through ex ante objectives and transparent criteria.<br>- FDA UIOLI should not apply to the capacity bought in a gas year when the measure was not applicable.<br>**Neutral answers**<br>- That the decision to apply it should remain within the relevant NRA`s power of decision.<br>**Negative answers**<br>- NRAs shall only make clear the circumstances in which it plans to withdraw the FDA UIOLI application.<br>- No further effort concerning the implementation of the FDA UIOLI should be made, because this measure has hindered the success achieved by the Third Energy Package in creating competitive and liquid markets. | The Agency is of the view that a further specification of the conditions under which to terminate the application of FDA UIOLI is not required. Apart from a 1-year FDA UIOLI application cycle, the respondents did not propose any convincing, objective, measurable and concrete conditions on the termination of the mechanism, although 6 respondents were supportive of further specifications.<br><br>Paragraph 2.2.3.2 of the CMP GL already provides some general guidance under which conditions an NRA can decide to terminate the FDA UIOLI. The Agency supports the 5 neutral responses, stating that this decision should remain within the NRA's realm. |
| **Question 7: In its latest congestion report, the Agency also suggests to consider extending the scope of" contractual congestion" to the day-ahead timeframe between hubs (requiring the Agency to assess auction premium and the non-offer of firm DA products at a cross-zonal level), which could then also result in the mandatory application of the FDA UIOLI mechanism at IPs/VIPs/IP sides between the corresponding market areas, to promote a short-term gas market price convergence. Do you support this suggestion? Please provide reasons.** | |
| 12 answers: Yes (4), No (6), Neutral (4)<br><br>**Positive answers**<br>- The monitoring of the day-ahead timeframe between hubs might be beneficial, as long as the FDA UIOLI is not applied on a mandatory basis;<br>- On the contrary, another idea is that the mandatory application might maximise the gas flows across borders and favour convergence of the short-term gas prices. | The specifics and practical realisation of an assessment of contractual congestion at DA-level needs to be further elaborated. Currently, it appears that a sensible analysis by the Agency/NRAs would only be possible retrospectively ("ex-post"). However, an integrated / automatized assessment by TSOs could also be explored. |

| Respondents' feedback | Agency views |
|---|---|
| **Neutral answers**<br>- A day-to-day analysis might prove necessary if previous clear signs of congestion are recorded.<br><br>**Negative answers**<br>- The extension of the scope would have a little effect and would potentially hinder price convergence.<br>- Measures which support even more the application of FDA UIOLI should be avoided.<br>- The TSOs should not be required to apply FDA UIOLI in case other CMP mechanisms are in force.<br>- The main barrier to flows at IPs is not so much the congestion, but rather transportation tariffs which are often higher than the wholesale gas price spread. A good solution might be the offering of capacity at market prices, which would allow the shippers to flow gas across the IPs. | In the absence of OS&BB at DA-level, a mandatory ("automatic") implementation of FDA UIOLI may be an option to consider keeping in the CMP GL, if the scope of contractual congestion is extended to the day-ahead timeframe between hubs. (This would match the actual problem with a suitable remedying tool, i.e. resolving DA congestion with a tool that releases FDA capacity.)<br><br>As the NRA's view is to give discretion to NRAs in how they respond to contractual congestion, when accurately identified, then it may be of interest to have more information on what is happing at the day-ahead stage without increasing the instances of mandatory application of FDA UIOLI. |
| **Question 8: In your view, should the Agency assess in more depth[11] the possible existence of physical congestion at IPs? Please provide your view, reasons and concrete suggestions for further possible indicators.** | |
| 13 answers: Yes (3), No (7), Neutral (3)<br><br>**Positive answers**<br>- Physical congestion is much more important than contractual, reason for which the Agency should act towards stimulating the operators to develop the transmission grid.<br>- The physical congestion analysis should complement the contractual congestion analysis, as the physical congestion explains the contractual congestion.<br>- Determining physical congestion at IP sites should not be a difficult task, as it might be done through persistent price spreads between markets, a lack of available capacity / capacity achieving significant premiums at auctions and the routine curtailment of interruptible capacity.<br><br>**Neutral answers**<br>- As from 2017 the existence of physical congestion will be captured in the market demand assessment, to be pursued in the context the amended CAM NC.<br>- Physical congestion implies incremental investments and is better addressed by the CAM NC or identified by ENTSOG`s TYNDP. | The Agency shares the views expressed by the majority of respondents that an assessment of possible physical congestion at IP sides (going beyond the analyses already performed by the Agency on an annual basis) may not be necessary.<br>Currently, physical congestion rarely occurs at European IPs. In addition, adequate regulatory processes dealing with infrastructure investments necessary to resolve or avoid physical congestion already exist (i.e. the national and European "Ten-Year Network Development Plans") or are upcoming (i.e. the "Incremental Capacity process" as set out in the amended NC CAM).<br>In its annual analysis of contractual congestion at European IPs, the Agency will continue to assess actual interruptions of interruptible capacities, which may hint to an existence of physical congestion.<br>On a case-by-case basis and where requested, the Agency may assist NRAs in analysing also other indicators (such as occurrence & persistence of price spreads between connected short-term gas markets). |

[11] To date, the Agency has used the occurrence of actual interruptions of nominated interruptible capacity as an indicator for the (temporary) existence of physical congestion.

| Respondents' feedback | Agency views |
|---|---|
| **Negative answers**<br>- Analysing the occurrence of physical congestion at IPs is an objective of the National, Regional and European network development plan;<br>- Physical congestion is not a main issue in current market conditions;<br>- As from 2017 the Incremental Capacity process will assess the existence of physical congestion by allowing shippers the possibility to trigger incremental capacity.<br><br>**Recommendations**<br>- Scenarios of the future dynamics of demand and supply should determine the needs of the future gas transport system;<br>- Increase the transparency on the process of setting the capacity, under point 3.2.1 of the CMP GL. | |
| **Question 9: Do you have any other suggestions on how to improve the CMP GL?** | |
| **13 answers:**<br><br>1. The offer to shippers of a `reset option` for stranded capacity, to those shippers looking for matching capacity.<br>2. Clarification that the OSBB and the FDA UIOLI may coexist, in the same system, and are not contrasting mechanisms.<br>3. Clarifying that the incentive regime designed in the context of the OS mechanism has to be applied to the offer of additional capacity and not to the additional capacity allocation.<br>4. TSOs shall be remunerated for making available additional capacity independently from its allocation, since the risk the TSOs bear is linked to the level of oversubscription**.**<br>5. CMP GL should clearly state the principle of preventing congestion and the rules should be in place prior to its occurrence.<br>6. The shipper should be treated as an individual entity (in the same way that he contracts the capacity), and not as part of a capital group. In this way the rules will be simpler and the FDA UIOLI more transparent.<br>7. The CMP GL should improve the utilization of transport capacity, while the gas market should not be limited by heavy and complicated regulation. | **1. & 11.** A "reset option" and "conditional surrender" is currently not considered by the Agency. However, the amended NC CAM features a "capacity conversion service", which should address the issue of unmatched capacity demand.<br><br>**2.** The Agency acknowledges the respondents' proposals to improve the CMP GL. Nevertheless, none of the respondents stated that the applicable FDA UIOLI mechanism is ineffective. The Agency acknowledges that it would be simpler for market players to have for each IP a harmonised mechanism. However, the Agency is of the view that both the OS&BB and the FDA UIOLI can in principle co-exist in one and the same system (and even on both sides of an IP). However, with the current limited application of dynamic recalculation of technical capacity this may lead to situations where capacity freed up through OS&BB on one side of an IP may not be matched by capacity offered at the other side of the IP. There might be certain limitations in exceptional cases (e.g. at unidirectional IPs, where the backhaul capacity cannot be "firmed-up" without an FDA UIOLI application), which may require further analysis. In general, however, both mechanisms can deliver FDA capacity, which should be bundled. |

| Respondents' feedback | Agency views |
|---|---|
| 8. The fees for the entry/exit area which shall reflect the actual costs incurred by the operator shall be equal fees at the entries.<br>9. Unification of weighting fees in the tariffs of Operators, while reducing the daily rate charge. While normally the scaling of the fees is different for annual, quarterly or monthly products, the fees for daily products should not be increased.<br>10. Contractual stability: FDA UIOLI must not be imposed on existing capacity contracts when at the time of booking the FDA UIOLI mechanism was not applied to this point and/or to the contract period.<br>11. Conditional surrender shall be included in the CMP provisions, as it upholds a twofold advantage: fair treatment of long-term capacity holders (double payment for bundled capacity) and a means to avoid artificially created contractual congestion. | Besides that, paragraph 2.2.3.6 of the CMP GL requires an evaluation of the relationship to be carried out by the NRA, which may result in a decision by the NRA not to apply the OS&BB. Such a decision shall be notified to the Agency and the Commission.<br><br>**3. & 4.** The Agency notes that respondents ask for further clarification, although paragraph 2.2.2.3 of the CMP GL already provides a solid basis for an incentive regime: i.e. the OS&BB scheme shall be based on an incentive regime reflecting the risks of TSOs in offering additional capacity. The scheme shall be structured in such a way that revenues from selling additional capacity and costs arising from the buy-back scheme or measures pursuant to paragraph 6 are shared between the TSOs and the network users. Subject to a further assessment, the Agency's initial view is that there is no need to incentivise the offer (rather than the allocation) of additional capacity, as capacity maximisation (dynamic recalculation) is a core TSO obligation, which should be in the interest of each TSO.<br><br>**5. & 7.** The expressed view is shared by the Agency, but does not require further assessment.<br><br>**6.** One of the respondents claimed that shipper should be treated as an individual entity (in the same way that he contracts the capacity), and not as a capital group. In this way the rules will be simpler and the FDA UIOLI more transparent. The Agency doubts that this proposal is compliant with the provision under 2.2.3.5 CMP GL. This provision clearly states that 2.2.3.3 shall not apply to network users — persons or undertakings and the undertakings they control pursuant to Article 3 of Regulation 139/2004 — holding less than 10% of the average technical capacity in the preceding year at the IP.<br><br>The proposals under point **8** and **9** are out of scope of this document. The Agency sees no need further to assess the issue mentioned under point **10**. |

# 4 Preliminary conclusions and way forward

Considering the limited number of responses received on the survey, no definite conclusions or recommendations can be drawn from this "Call for Evidence". However, some of the respondents' suggestions triggered sensible discussions among the Agency and NRAs on a number of aspects. The initial Agency views on the most important aspects can be summarised as follows:

1. The current automatic application of FDA UIOLI at IPs in case of detected contractual congestion is not supported by a number of stakeholders and NRAs.

2. The Evaluation of Responses shows a tendency in favour of enhancing the congestion analysis by assessing additional indicators (e.g. price spreads, capacity utilisation) and by allowing NRAs to decide based on further considerations and parameters (also using elements already assessed in the congestion reports, e.g. secondary trading, interruptible capacity,…) and not just the occurrence of auction premia and the non-offer of products. The Agency will consider whether additional provisions can be proposed for an amendment of the CMP GL.

3. A continuation of the elaboration of the Agency's congestion report at least for the next two years is considered useful.

4. A deepened assessment of physical congestion is not necessary.

5. A possible extension of the congestion analysis also to cover the day-ahead level and the need for a refinement of the indicator on the "non-offer of monthly products" requires further analysis.

The Agency will continue its assessment and discussions on the issues raised in this document during the 1st quarter of 2017. The work to be continued will be based on the initial Agency views expressed in this document and aims at delivering an Agency opinion/recommendation to the Commission on a potential CMP GL amendment before the end of 2017.

# Annex I - List of respondents

| Name | Type of organisation | Country of Origin |
|---|---|---|
| Ofgem* | NRA | UK |
| Urząd Regulacji Energetyki* | NRA | PL |
| E-Control* | NRA | AT |
| ENTSOG AISBL European Network of Transmission System Operators for Gas | EU or international organisation | EU |
| Enagás S.A. | TSO | ES |
| Gas Transmission Operator GAZ-SYSTEM S.A. | TSO | PL |
| Centrica | Network user | UK |
| Eustream | TSO | SK |
| ENGIE | Network user | FR |
| Polish Oil and Gas Company (PGNiG SA) | Network user (supplier) | PL |
| Association of Energy Trading (TOE) | National association | PL |
| Interconnector (UK) Limited | TSO | UK |
| Eurogas | EU or international organisation | EU |
| National Grid Gas | TSO | UK |
| EDP Group | Network user | PT |
| EDF Group | Network user | ES |
| EconGas GmbH | Network user | AT |

*The replies of NRAs are treated separately.