FUNC Case reported by AGGM ("Auction restrictions NCG")
Issue Identification no: 605-19-08-30-0927

Disclaimer:
This paper reflects the policy discussions in the underlying bodies of ACER and provides guidance on the conditions under which it might be appropriate for TSOs to reallocate capacity from interconnection points to domestic points and vice versa in exceptional cases. The paper also incorporates the technical inputs from ENTSOG. The guidance does not replace possible decisions by national regulatory authorities and competent courts.

I. General description of the case

On 30 August 2019, the Austrian distribution area manager AGGM reported a case on the Functionality platform. AGGM stated that since 2017, specific conditions have been announced by the TSO on the PRISMA platform for all annual and quarterly auctions in the German NCG market area, e.g. the conditions for the quarterly auction on 6 November 2017 by terranets bw:
"RC Lindau, RC Basel: In case the offered capacity for the first quarter 2018 is not sold out during the auction on November 6th, 2017, terranets bw is obliged to re-allocate the respective capacity to other connection points. Therefore, it will not be possible to book the unsold capacity in the following monthly, daily and within-day auctions."

Apparently, the German Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway (Bundesnetzagentur, BNetzA) requested TSOs operating in the NCG market area to re-allocate capacities after the annual and quarterly auctions, which is confirmed by corresponding references given by the TSOs on the PRISMA platform.

AGGM is of the opinion that this procedure is non-compliant with the rules of the network code on capacity allocation mechanisms in gas transmission systems (CAM NC).

II. Further information from NCG TSOs

The TSOs operating in the German NCG market area – Fluxys TENP, GRTgaz Deutschland, Thyssengas, terranets bw, Open Grid Europe and bayernets – provided further information on the topic of reallocation:

- In the period between 2018 and 2020, GRTgaz Deutschland reallocated 362 MW (2018), 218 MW (2019) and 205 MW (2020) from the IP Medelsheim to DSOs within its network. The reallocation is only temporary though, since the Exit Medelsheim is fully booked from the year 2021. Fluxys TENP reallocated 250 MW for January and February 2020 from the IP Wallbach / VIP Germany-CH to internal market points from terranets bw. In 2019 36.8 MW was reallocated from the IP Basel (terranets bw) to be used on internal exits. This reallocation is valid for Q1, Q2 and Q3 of 2020. After this period the capacity will again be available to be booked at the IP Basel. Thyssengas and bayernets did not reallocate capacities from IPs to domestic exits within the above-mentioned time period. They pointed out that the re-allocation procedure had not taken place at all IPs in the NCG market; rather, only those IPs which can create a flow mechanical benefit are taken into consideration.
- The quantities to be reallocated are deducted from the available capacities to be offered after the respective auction has been conducted on PRISMA and the capacity has not

been sold. The TSOs informed the network users upfront on PRISMA and in the German network development plan that unsold capacity may be shifted to other points. Although unsold capacity was available at certain points of time, no capacity was reallocated at the IP Oberkappel because a high interruption rate indicated a strong demand for the exit capacity at the IP. Starting in 2012, the German and French NRAs were informed concerning the effective reallocation from Medelsheim. Since 2016/2017 no information in this matter has been exchanged anymore. The following basically applies: capacities of specific IPs can be used to safeguard firm capacities like internal orders. This applies only if it is flow mechanically possible. A prerequisite for this is a part of the network that is free of any bottlenecks.

- In the event that all internal exits could be supplied with firm exit capacity and there would be additional firm capacity available, such firm capacities would be allocated to IPs with additional capacity need or would be marketed in competition.
- The main reason for reallocating capacities was to safeguard internal orders, protected customers or system-relevant power plants. Internal ordering indicates the capacity need for the next calendar year. As long as not all internal orders can be granted as firm capacity, there will be a reallocation from not used firm exit capacity at IPs as described above in order to support the degree of security for internal orders.

III. Reactions from ACER CAM TF

i. Consensus and dissent among NRAs

There seems to be consensus that:

- there can be – and in fact there are, just in a couple of Member States – situations of competition between capacity offered at IPs and capacity offered at domestic exit points (DEPs) either in distribution networks or regional transport networks.
- the CAM NC does not address the above issue of capacity offered at DEPs; which is particularly critical if there is significant demand for this capacity both at the IP and the DEP.
- in the long term, increasing demand for DEPs should be satisfied by infrastructure expansion as part of network development planning.

In light of the second bullet point above, there is disagreement concerning whether the current procedure of re-allocating capacity from IPs to DEPs is compliant with Art. 6 and Art. 11 to 15 CAM NC:

- The party initiating the FUNC case (AGGM) argues that this procedure is not compatible with the CAM NC and no re-allocation from IPs to DEPs should take place (also supported by E-Control, ARERA and CRE). This is based on the following reasoning:
    - Article 6 of the NC (and the mention of the capacity offered to distribution networks) should not be the basis justifying capacity reallocation, as it rather deals with capacity calculation (and the maximisation of technical capacity).
    - Moreover, the reallocation of remaining capacities is different from the allocation of competing capacities. Article 8.2 of the NC states that “Each auction process (…) shall allocate capacity independently of every other auction process except (…) where, subject to the agreement of the directly involved transmission system operators and the approval of relevant national regulatory authorities, competing capacity is allocated”.
        - Domestic exit points and interconnection points cannot be considered as “competing points” as defined in the CAM NC, insofar as domestic exit points are not covered by the CAM NC and as the auction process

for the allocation of capacities on IPs is organised independently from the allocation of capacities on domestic exit points;
        - In any case, even if the capacities were to be considered as competing, the involved TSOs and NRAs have not given their approval for such an allocation process.
    - Articles 11 to 15 provide formulas to calculate the capacity to be offered at each auction: this capacity is calculated by subtracting the capacity already sold to the technical capacity (and possibly adding capacity): the reallocation of capacity to other points between two auctions is nor foreseen in the NC.

- The BNetzA is of the opinion that the described approach is compliant with the legal and regulatory framework and does not violate the rules of the CAM NC. Indeed, this approach seems to be appropriate against the background of capacity constraints at other exit points and is in line with the principle of non-discriminatory network access and efficient capacity use.
    - CREG supports the BNetzA position:
        - This FUNC Case should not only be linked to the CAM NC but also take into account the CMP and SOS regulations. The starting point is fulfilling market capacity demand and maximum capacity use, which is not the same as maximizing technical capacity. The TSO when defining its maximum technical capacities on IPs and DEPs starts with scenarios and based on these scenarios, it defines the maximum technical capacity on offer on every IP taking into account the capacity needs on DEP (Protected customers).
        - In certain cases, the TSO might have the obligation to shift. Based on several parameters and in case there is a need and an opportunity for selling more capacity on one or more IPs, the TSO might shift capacity from IP to IP or from IP to DEP and vice versa.
        - The TSO is limited in its shifting behaviour by the contractual obligations. If a shipper has booked firm capacity at an IP or DEP, the TSO must at all times be able to honour the nominations of the network user having firm capacity notwithstanding the fact that based on its knowledge of shipper nominations behaviour it might shift from one IP to another.

ii. Joint Conclusions from ACER's CAM TF

A major motivation and objective of the CAM NC is the implementation of "*a more transparent, efficient and non-discriminatory system of allocation of scarce transmission capacities […], so that cross-border competition can further develop and market integration can progress* (Recital 3, CAM NC).
Based on that, a reallocation of capacities, which due to their nature and the different types of network points and allocation rules involved, cannot be allocated in a straightforward manner as competing capacities according to the CAM NC, might be appropriate as an interim measure to face unforeseen critical circumstances in the case brought by AGGM, if TSOs are guided by the following criteria:

- this does not endanger security of supply both for customers supplied via the IP or the DEP
- there is comprehensive reasoning that
    - there is indeed potential for competing demand for capacity at both IP and DEP
    - in the absence of appropriate network expansion, the level of demand at the DEP cannot be met without allocating capacity from the IP to the DEP

- capacity may be reallocated to the DEP and will be re-allocated again to the IP if it is no longer needed at the DEP, due to network expansion, a decreasing demand or the use of another solution.
- the relevant network operator offering the capacity seeks cost-efficient measures to meet the overall capacity demand and thus render the re-allocation redundant.
- a reallocation of available capacity is the efficient result of an alignment between the involved network operators of the market areas impacted by the reallocation.
- the highest level of transparency is ensured, which should involve a yearly alignment meeting between relevant parties (in particular NRAs and network operators of the market areas impacted by the reallocation) to discuss the above-mentioned conditions and/or measures. The meeting should be initiated by the TSO and the relevant NRA. Furthermore, shippers should be informed of possible reallocation of unbooked capacity prior to the relevant auctions on the capacity booking platforms.
- TSOs and regulators will make their best efforts to assure that this interim measure lasts the shortest period of time possible.

In general terms, the evolution of capacity level at an IP should not be considered without transparency regarding the involved and potential affected NRA(s) and network operators(s) to ensure equal information to all actors.