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Agency Report

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

NRA: Comisión Nacional de los Mercados y la Competencia (CNMC)

Main TSO: Enagás

21 November 2019

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1. ACER conclusion

(1) The Comisión Nacional de los Mercados y la Competencia ('CNMC') proposes a Capacity Weighted Distance ('CWD') methodology with a 50/50 entry-exit split. Transmission tariffs to and from storage facilities are 100% discounted. Furthermore, CNMC proposes to apply a commodity-based transmission tariffs and no non-transmission tariffs.

(2) The Agency, after having completed the analysis of the consultation document pursuant to Article 27(2) of Commission Regulation (EU) 2017/460 of 16 March 2017 establishing a Network Code on Harmonised Transmission Tariff Structures for Gas ('NC TAR'), concludes that:

- The consultation document contains the required information listed in Article 26(1) of the NC TAR, with the exception of the comparison with tariffs applicable in the prevailing year;
- The consultation document in Spanish is comprehensive, but it is not fully translated into English; therefore non-Spanish speakers may miss elements of the overall RPM design;
- The choice of the CWD as the proposed Reference Price Methodology ('RPM') is overall compliant with the principle of cost-reflectivity: the initial cost-reflectivity is lowered by the application of adjustments, but the resulting RPM strikes a good balance between simplicity and final cost-reflectivity;
- The criteria of Article 4(3) of the NC TAR for setting the commodity charge are met;
- The simplified tariff model is compliant with the requirements of Article 30(2)(b) of the NC TAR: even though CNMC does not include in it the values of the fixed charges per customer and their calculations[1], network users would be able to reproduce and forecast the reference prices using the tariff model and the consultation document together.
- The equalisations of LNG entry points, domestic exit points, entry points from and exit to storages, and the 100% storage discount are compliant with the NC TAR requirements;
- The proposed adjustments create cross-subsidisation among intra-system users, which the Agency does not consider undue;
- The results of the cost allocation assessment ('CAA') formulas are lower than 1%, well below the 10% regulatory threshold, therefore they do not require any further justification;
- There is no relevant volume risk;
- The RPM does not distort cross-border trade;
- The past under-recovery is addressed through a charge levied by the Government; the same Government charge will also recover the costs of services which, in the Agency's understanding, partly relate to access to the gas network.

(3) The Agency recommends that, in its final decision, CNMC:

- Publish the comparison with the prevailing tariffs, clearly stating the assumptions adopted;
- Provide the values of the fixed charges per customer and their calculations in the simplified tariffs model;

[1] Which are by the way included in the consultation document in a dedicated table.

- Include in the allowed revenue the past under-recovery and the other costs which relate to access to the gas network and consider them when setting the transmission, or non-transmission, charge.

2. Introduction

(4) Commission Regulation (EU) 2017/460 of 16 March 2017 establishes a network code on harmonised transmission tariff structures for gas (NC TAR).

(5) 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 Agency's analysis for the transmission system of Spain.

(6) Following the approval of Royal Decree-Law 1/2019, the Comisión Nacional de los Mercados y la Competencia ('CNMC') has consulted on the reference price methodology ('RPM') for the first time since its establishment, since such competence was previously held by the Spanish Government[3].

(7) On 31 July 2019, CNMC launched the consultation and forwarded it to the Agency. On 30 September 2019, the consultation closed. On 30 October 2019, CNMC published the consultation responses in the national language and their summary in English: the Agency has taken the summary of the responses to the consultation document into consideration for this Report. Within five months following the end of the final consultation, and pursuant to Article 27(4) of the NC TAR, CNMC shall take and publish a motivated decision on all the items set out in Article 26(1). The Agency notes that CNMC has missed the deadline of 31 May 2019 specified in Article 27(5) regarding the publication of the motivated decision.

Reading guide

(8) Chapter 3 presents the analysis on completeness, namely whether all the information referred to 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. Chapter 5 includes other comments. This document contains two annexes, respectively on the legal framework and a list of abbreviations.

3. Completeness

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

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

(10) Article 26(1) of the NC TAR requires that the consultation document be published in the English language, to the extent possible. CNMC has published the main parts of the consultation relevant for this Report in English. Yet, some important parts[4] were not translated into English. CNMC offered to explain the content of these parts to the Agency. The Agency appreciates CNMC's

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

[3] According to Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas, recital (32) and Article 41.1(a), the NRAs shall fix or approve transmission tariffs or their methodologies. The previous practice adopted in Spain was therefore not compliant with the EU energy *acquis*.

[4] E.g.: on the past under-recovery and the Government charge, on the methodology to create the tariff groups, etc.

attitude, but would have preferred that the relevant documents be translated in full, to the benefit of international stakeholders and to allow the Agency an immediate access to the entire file.

(11) Overall, the information in Article 26(1) of the NC TAR has been properly published, as showed in Table 1 below. However, CNMC has not published the comparison of the proposed tariffs with the ones charged in the prevailing year. CNMC argues that it is not possible to publish a meaningful comparison, since the prevailing tariffs have been decided by the Government following a different, not comparable, and not publicly available, methodology. While the Agency acknowledges the limited role of CNMC in the current tariffs setting, it believes that a meaningful comparison could have been provided in the consultation document[5]. The Agency therefore recommends CNMC to publish in its final decision the comparison with the transmission tariffs in the prevailing year, clearly stating the assumptions adopted.

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
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
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)	Not applicable
26(1)(b)	the indicative information set out in Article 30(1)(b)(i), (iv), (v)	Yes[6]
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	Yes
26(1)(c)(ii) **26(1)(c)(ii(1)** **26(1)(c)(ii)(2)** **26(1)(c)(ii)(3)**	where non-transmission services provided to network users are proposed: • the non-transmission service tariff methodology therefor • the share of the allowed or target revenue forecasted to be recovered from such tariffs	Not applicable

[5] See paragraph (53) for additional details.

[6] There are no non-transmission revenues.

26(1)(c)(ii)(4)	• 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	
26(1)(d)	the indicative information set out in Article 30(2);	Partly[7]
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	Not applicable

4. Compliance

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

(12) Article 27(2)(b)(1) of the NC TAR requires the Agency to analyse whether the proposed reference price methodology complies with the requirements set out in Article 7 of the NC TAR. Said article refers to Article 13 of Regulation (EC) 715/2009 and lists a number of requirements to take 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.

(13) CNMC has proposed a Capacity Weighted Distance (‘CWD’) methodology, using forecasted capacities and minimum distances between points as inputs. CNMC states that the proposed RPM is based on the principles of sufficiency[8], efficiency, non-discrimination, transparency and objectivity, and promoting competition and efficient gas trade.

(14) The Agency finds that the stated principles are broadly in line with the spirit of the NC TAR.

4.1.1 Description of the network

(15) The Spanish transmission system network can be considered a meshed one.

[7] The consultation does not comply with Article 30(2)(a)(i), since it does not provide the comparison with tariffs in the prevailing year. Moreover, the calculation of the proposed fixed charge per customer is shown only in the consultation document, but not in the simplified tariffs model.

[8] With the term sufficiency, CNMC means that the tariffs of each of the activities must guarantee the recovery of the revenues corresponding to such activity, in compliance with the forecasts made. The same consultation document also proposes separate RPMs for liquefied natural gas (‘LNG’), storage, and distribution activities, which are out of the scope of this Report.

(16) Beyond the main TSO, Enagás, there is also a second TSO, Reganosa[9]. The distribution of tariff revenues is subject to an inter-TSOs compensation (ITC) mechanism[10].

(17) Overall, the Spanish transmission network has the following relevant points:

- 2 entry and exit Interconnection Points (IPs) with France, namely Irun and Larrau, forming the Virtual Interconnection Point (VIP) Pireneos;
- 2 entry and exit IPs with Portugal, namely Badajoz and Tuy, forming the VIP Iberico;
- 2 entry IPs from non-EU countries [11], namely Tarifa and Almeria;
- 6 entry points from Liquefied Natural Gas ('LNG') facilities[12];
- 3 entry points from national production;
- 1 entry point from biogas production;
- 4 entry points into, and exit points to, storage facilities;
- 244 domestic exit points.

(18) As described in detail in Section 4.1.3.2, CNMC proposes groupings of certain types of points.

(19) CNMC clearly defines the scope of application of the consulted RPM: it apply only to the transmission network as defined in the EU law[13]. Thanks to this approach, users of the IPs contribute to recover only the allowed revenue associated with the national network, while domestic consumers also face the tariffs recovering the allowed revenue of the regional network[14].

(20) The Agency considers CNMC's choice clear and a best practice in terms of network delineation to avoid that users of IPs bear the cost of assets other than transmission.

4.1.2 Transparency

(21) **Article 7(a)** of the NC TAR requires that the RPM ensure that network users can reproduce the calculation of reference prices and their accurate forecast.

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[9] Reganosa owns and operates 130 km of transmission networks situated in the North-West of Spain, connecting the LNG terminal of Murgados, also owned and operated by Reganosa, to the rest of the Spanish transmission network owned by Enagás.

[10] The ITC mechanism is referred to in the Sections 4.6 and 7 of the consultation document. Additional details can otherwise be found in Transitional Provision 4 of Law 3/2013, 4 June. CNMC has been consulting on the existing ITC mechanism as it intends to adopt it also in the following regulatory period.

[11] Respectively from Morocco and Algeria, both supplying Algerian gas.

[12] It is also possible to flow gas out of the transmission network at the LNG virtual exit points. This is a feature of the single storage tank model aimed at increasing the liquidity of the Spanish gas hub by allowing gas contained in the LNG tanks to be traded at the virtual trading point.

[13] As defined in Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and in Regulation (EC) 2009/15 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) 2005/1775, Article 2: 'transmission' means the transport of natural gas through a network, which mainly contains high-pressure pipelines, other than an upstream pipeline network and other than the part of high-pressure pipelines primarily used in the context of local distribution of natural gas, with a view to its delivery to customers, but not including supply. As such, CNMC applies the RPM only to the national network, the so-called trunk section of the primary transmission network.

[14] The so-called local influence and secondary transmission network, which CNMC has treated as distribution networks as regards tariffication.

(22) CNMC claims the transparency of the consultation document and the resulting RPM based on the fact that the criteria for allocating the allowed revenue to infrastructures, the input information, and the parameters applied in the methodology are explicitly defined and publicly available**.**

(23) The Agency broadly agrees with CNMC's general considerations. The Agency also welcomes that CNMC has made publicly available the full tariff model in electronic format.

(24) However, the consultation document, and consequently the RPM, do not provide full transparency since:

- The consulted methodology is not fully translated in English;
- There is only little mention, at least in the English version of the public consultation document, of how the past and new under/over-recovery will be addressed[15];
- There is no comparison with the reference prices of the prevailing year.

(25) Moreover, the Agency notes that the tariff model in electronic format does not carry information about the fixed charge per customer[16] which is reported in the consultation document.

(26) Overall, the Agency considers that network users would be able, by connecting the information provided in the consultation document and the tariff model, to reproduce and forecast the reference prices.

(27) The Agency recommends CNMC to add the value of the fixed charge per customer and their calculations to the simplified tariffs model.

4.1.3 Cost-reflectivity

(28) **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.

(29) CNMC proposes to use a CWD RPM as described by Article 8 of the NC TAR.

(30) CNMC proposes to use:

- A 50/50 entry-exit split;
- A 97/3 capacity-commodity split.

(31) In order to apply the CWD methodology, CNMC has developed a simplified model of the transmission network, which it uses to simplify the complexity of the real transmission network. CNMC then applies the drivers of the CWD to the simplified model of the transmission network. CNMC provides explanations on how the simplification has been carried out and a graphical representation to show the main outcome of such a simplification.

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[15] For the years 2014-2017, the Agency understands from the Spanish version of the consultation document and oral clarifications with CNMC that the Government will have to decide on how to fix a charge covering the over/under-recovery of all gas regulated sector segments (transmission, distribution, LNG, and storage). More details are provided in Section 5 of this Report.

The potential over/under-recovery stemming from the new methodology will concur to the allowed revenue of the following tariff period (x+1), as an outcome of the definite settlement which happens by 1 December of every tariff period (x) for the previous tariff period (x-1). See sections 4.1 and 7 and of the consultation document and additional provision three and Annex I of the proposed decision accompanying the consultation document.

[16] See paragraph 4.1.3.5 for more details.

(32) The Agency considers the simplifications adopted reasonable and the explanation provided sufficient.

4.1.3.1 Inputs to the methodology

(33) The proposed CWD RPM uses as inputs:

- The minimum distances between each entry and exit point;
- Forecasted contracted capacity at entry and exit points.

(34) CNMC provides a summary explanation on how the forecasted capacities have been calculated and extensive information on their values in the consultation document.

(35) The Agency, already by relying on the information available in the English version of the consultation document on the specific topic, considers the choice of the inputs to the methodology reasonable[17].

(36) The Agency notes that, over the regulatory period in which the consulted RPM will apply, forecasted entry capacities for LNG are expected to increase by 28%, storage entry capacities by 66%, while all other entry capacities to remain stable. The same analysis for exit capacities shows that forecasted domestic exits will increase by 8%, storage exits will increase by 30%, while all other entry capacities will remain stable.

(37) CNMC's proposed methodology will be valid for a regulatory period of six years. CNMC proposes that the first tariff period of the next regulatory period have a shorter duration, from January 2020 to September 2020, to allow aligning the regulatory periods of the other gas sector regulated businesses[18]. The following five tariff periods of the next regulatory period will match the gas years[19] starting from October 2020 onwards.

(38) The Agency considers the choice on the length of the regulatory and tariff periods reasonable.

4.1.3.2 Adjustments to the application of the RPM

(39) CNMC applies the formula contained in Article 22(b) of the NC TAR to calculate the reference prices at the VIPs.

(40) The Agency agrees with the adopted approach[20].

(41) CNMC applies Article 22(b) of the NC TAR also to establish the reference prices at the entry points into the transmission network from LNG facilities. As a result, all entry points get the same equalised

[17] A more detailed explanation of the forecasting assumptions is provided in Annex I of the consultation document (in Spanish only).

[18] Distribution, storage, and LNG.

[19] Tariffs used to be calculated based on the calendar year.

[20] The Agency welcomes CNMC's intent to correct, in the final decision, the mistaken value of technical capacity reported in the consultation document for the physical IPs forming the VIP Iberico (at the entry point Badajoz, CNMC claimed 80 MWh/d, while the Portuguese NRA ERSE 55 MWh/d; at the entry point Tuy, CNMC claims 0 MWh/d, while ERSE 25 MWh/d). The Agency recommends CNMC to revise the resulting reference prices, if necessary, as a result of the application of the correct values of technical capacity.

reference price, before rescaling, of 223 EUR/MWh, compared to a tariff range before equalisation between 170 EUR/MWh and 322 EUR/MWh[21].

(42) CMNC states that the logic of equalising entry points from LNG is that the LNG facilities are managed jointly by the technical manager of the gas system[22] without the suppliers having the possibility to decide on the use of a specific facility[23].

(43) The Agency understands the logic adopted by the CNMC. At the same time, the Agency notes that, while the equalisation can create a level-playing field among shippers sourcing gas through the LNG regasification plants, the LNG entries become cheaper than other entries from IPs[24]. Overall, the Agency concludes that CNMC applies the adjustments transparently and in compliance with the NC TAR.

(44) CNMC also equalises the reference prices at the entry points from, and exit points to, storage facilities. CNMC moreover proposes to apply a 100% discount to entry points from, and exit points to, storage facilities. CNMC justifies this proposal as storages allow managing seasonal demand peaks, thus reducing the need for additional investments in transmission networks.

(45) The Agency understands the proposed discount as a recognition of the role of storage in gas transmission and security of supply. The Agency finds the discount proposed by CMNC compliant with the NC TAR requirements.

(46) To compensate for the missing revenues due to the storage discount, CNMC proposes to apply multiplicative rescaling factors to all other entry and exit points. The Agency has calculated that the rescaling factors at entry points range from 1.9% to 2.9%, while the one at exit points from 2.2% to 2.8%, depending on the tariff period[25].

(47) The Agency considers the methodology to calculate the rescaling factors compliant with the NC TAR, and the rescaling values reasonable.

(48) Finally, CNMC proposes to equalise all domestic exits. With the proposed CWD RPM, before adjustment, reference prices at domestic exits range from 110 EUR/MWh to 260 EUR/MWh: the equalisation brings the value to 145 EUR/MWh[26]. The proposed equalisation benefits users whose exits are located in the North-West of the country compared to those located in the Central-Eastern part[27], while creating a national level-playing field.

(49) The Agency considers the application of equalisation of domestic exits compliant with the NC TAR. It also considers that the consequent cross-subsidisation between intra-system users is acceptable.

(50) In conclusion, the Agency acknowledges that the application of all proposed adjustments inevitably reduces the cost-reflectivity of the proposed CWD RPM. But since the adjustments are applied in

[21] The values refer to the tariff period from January to September 2020.

[22] The technical manager of the gas system ('GTS') is a company separate from the TSO, called Enagás GTS, which has been performing its activity jointly for LNG, transmission and distribution since year 2012.

[23] This is a feature of the single storage tank model adopted in Spain. According to this system, users of any LNG terminal can sell gas to any shipper on the transmission network, independently on their location.

[24] The reader can get the gist of the competitive effects of CNMC's proposed entry tariffs in table 7 of the consultation document, where all entry reference prices are assessed against the average value.

[25] CNMC provides the value of the rescaling factors only for the first tariff period: 1.9%.

[26] The values refer to the tariff period from January to September 2020.

[27] Similar to what it does for the entry points, CNMC also provides a comparison of all exit tariffs in table 8 of the consultation document: domestic exits are lower than average exits, while all other exit tariffs are sensibly higher.

compliance with the NC TAR, the Agency observes that CNMC's proposal strikes a good balance between cost-reflectivity and simplicity of the RPM.

4.1.3.3 Comparison with Capacity Weighted Distance methodology

(51) As indicated in the previous paragraphs, CNMC proposes to apply the CWD RPM as described in Article 8 of the NC TAR. As such, there is no need to compare the proposed RPM with it.

4.1.3.4 Comparison with the tariffs in the prevailing period

(52) CNMC does not provide in the consultation document any comparison with the transmission tariffs of the prevailing period. In order to justify its choice, CNMC claims that currently there are no transmission tariffs as such, but a comprehensive tariff fixed by the Government that includes both transmission and distribution activities. In addition, the methodology for the calculation of current tariffs is not public. Therefore CNMC argues that it is not possible to analyse the differences between the proposed and the prevailing tariffs.

(53) The Agency acknowledges that the Government has so far set the tariffs and that CNMC has played a limited role. However, the Agency considers the missing comparison as an important flaw of the consultation document. The comparison would have helped understanding the changes introduced by the proposed RPM. In this respect, the Agency considers the CNMC's proposed methodology in-transparent and incomplete. At the same time, the Agency appreciates CNMC's cooperation to provide the Agency with a tariffs comparison for the sake of facilitating the analyses presented in this Report. According to the additional information CNMC has provided, the proposed tariffs at entry points are on average 87% higher than the current ones, while exit tariffs are on average 35% lower[28].

(54) The Agency recommends CNMC to provide a comparison with the prevailing tariffs in its final decision.

4.1.3.5 Fixed charge per customer

(55) The Agency understands that 249 million EUR of allowed revenue needs to be recovered in the tariff period from January to September 2020 from domestic exits. Out of this EUR 249 million, nearly EUR 69 million belong to domestic exit points consuming less than 5 GWh/year, for which there is no equipment capable of measuring the maximum demanded throughput over a given period. Therefore, CNMC proposes to apply, for each of the six tariff groups defined on the basis of final consumption levels[29], a fixed charge per customer resulting from the ratio of the allowed revenues to be recovered from each tariff group over the number of customers that fall into the respective tariff group. This charge is a specific feature of the Spanish gas market design, where final customers are directly invoiced the transmission charges.

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[28] CNMC sent a written memo to the Agency on 12 November 2019. The calculations to compare tariffs are based on several assumptions needed to reconcile the current and the proposed methodologies, which are substantially different. Among the proposed entry tariffs, the VIP Iberico shows the highest increase (+157%), followed by the tariffs at the IP Tarifa (+124%); among the proposed exit tariffs, the domestic exits shows the highest decrease (-36%). It is also worth noting that, according to the assumptions made to derive this tariffs comparison, the current tariffs have an entry-exit split equal to 25-75, compared to the 50-50 proposed for the new regulatory period.

[29] CNMC defines six tariffs groups of final customers at the level of the distribution network according to their consumption. See annex III of the consultation document for more details (only in Spanish).

(56) Despite fixed charges per customer not being contemplated as such in the letter of the NC TAR, the Agency, thanks to the clarifications provided by CNMC, understands that it does not alter the cost-reflectivity of the RPM. The Agency recommends CNMC to provide higher transparency on the rationale and application of the fixed-charge per customer in the final decision.

4.1.4 Cross-subsidisation and non-discrimination

(57) **Article 7(c)** of the NC TAR requires the RPM to ensure non-discrimination and prevent undue cross-subsidisation.

4.1.4.1 Cross-subsidisation between intra-system use and cross-system use

(58) For this analysis, the Agency defines 'cross-subsidisation' as a deviation from cost-reflectivity whereby users of the entry-exit system are charged tariffs that differ from the costs they cause to the system. One instrument to evaluate cross-subsidisation is the cost allocation assessment ('CAA', Article 5 of the NC TAR).

(59) CNMC shows the results of the CAA for the capacity tariffs in tables 18 and 19 of the consultation document. In both cases, i.e. before and after the application of adjustments, the results are very low: 0.42% and 0.59%. CNMC therefore concludes that there is no cross-subsidisation between intra-system use and cross-system use.

(60) The Agency acknowledges that the results of the CAA formula do not show cross-subsidisation between intra-system use and cross-system use. Since the values are below 10%, they do not require additional justification.

4.1.4.2 Cross-subsidisation among intra-system users

(61) The CAA only assesses cross-subsidisation between intra-system and cross-system network use. The Agency has also assessed if there is undue cross-subsidisation between groups of intra-system users.

(62) CNMC states that the proposed CWD RPM must allocate costs avoiding cross-subsidies between tariff groups. Beyond that, CNMC does not explicitly address the cross-subsidisation among intra-system users.

(63) The Agency assesses that the proposed adjustments, described in Section 4.1.3.2 of this Report, decrease the cost-reflectivity of the RPM and thus create cross-subsidisation. That said, the Agency considers the resulting cross-subsidisation not undue. At the same time, the Agency recommends CNMC better to highlight the cross-subsidies caused by the proposed adjustment to the RPM in its final decision.

4.1.4.3 Discrimination

(64) For this analysis, the Agency defines 'discrimination' as 'applying different rules to comparable situations or the same rule to different situations'.

(65) CNMC lists non-discrimination among the general principles that the proposed RPM should follow. CNMC specifies, in its consultation document, that non-discrimination is deemed to be respected among infrastructure users with the same characteristics, regardless of whether they are located

within or outside the national territory. Beyond this, CNMC does not present a detailed analysis of the possible sources of discrimination of the proposed RPM.

(66) Based on the information available, the Agency finds the proposed RPM compliant with the principle of non-discrimination.

4.1.5 Volume risk

(67) **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.

(68) In the consultation document, CNMC does not openly address volume risk. Yet it shows that cross-system use of the transmission network accounts for 9.9% of the total revenue.

(69) Based on the above, the Agency concludes that there is no relevant volume risk.

4.1.6 Cross-border trade

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

(71) CNMC does not openly assess the effects of the RPM on cross-border trade: the reference that CNMC provides to section 2 and 4.7.1 of the consultation document are not detailed enough. However, CNMC provides explanations on cost-reflectivity[30] that support the suggested non-distortion of cross-border trade of the proposed RPM.

(72) The Agency has added to CNMC's reasoning to deepen the analysis on the effects on cross-border trade and notes that:

- The proposed RPM results in entry IPs tariffs that are relatively high[31], especially for the VIP Iberico, but cost-reflective;
- No transport route is unduly favoured, even though for some routes the tariffs would increase more than for others, compared to the prevailing tariffs;
- The Agency considers that the CAA is low and there are no cross-subsidies between cross-system and domestic users.

(73) At the same time, the Agency notes that:

- The high increase of the VIP entry tariffs may hinder cross-border trade since reaching the Spanish gas market (MIBGAS) becomes more expensive;
- A postage stamp RPM or a different entry-exit split would lead to lower entry tariffs and therefore potentially higher liquidity on MIBGAS[32], but at the expense of cost-reflectivity.

[30] See Section 4.1.3.4.

[31] The comparison with prevailing tariffs was carried out directly by the Agency, following the methodology applied by some of the respondents to the consultation document.

[32] *Ceteris paribus*.

(74) To conclude, the Agency considers that the proposed RPM does not distort cross-border trade as it primarily complies with the principle of cost-reflectivity.

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

(75) Article 27(2)(b)(2) of the NC TAR requires the Agency to analyse whether the criteria for setting commodity-based transmission tariffs as set out in Article 4(3) of the NC TAR are met.

(76) The NC TAR allows for two types of commodity-based transmission tariffs: a flow-based charge and a complementary revenue recovery charge. CNMC proposes to apply a flow-based charge.

(77) CNMC proposes to apply a flow-based charge that would collect 3.3% of the transmission services revenue. The Agency considers this an appropriate use of the commodity charge.

(78) The proposed flow-based charge meets the criteria set in Article 4(3)(a) of the NC TAR. The flow-based charge is levied to recover the variable costs of operational gas. The costs have been allocated to each user proportionately to the gas injected into and withdrawn from the transmission network. The charge has the same value at all entry and exit points: in the tariff period from January 2020 to September 2020, it would be 0.0266 €/MWh.

Table 2 Criteria Article 4(3a)

Criteria	Y/N?
levied for the purpose of covering the costs mainly driven by the quantity of the gas flow	Yes
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	Yes
expressed in monetary terms or in kind	Yes

(79) The result of the commodity CAA[33] is equal to 0%, therefore below the threshold of 10% above which the NRA would need to provide a justification to the Agency.

(80) From the information CNMC provides in the consultation document, the Agency considers the proposed application of commodity charges compliant with the requirements of the NC TAR.

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

(81) Article 27(2)(b)(3) of the NC TAR requires the Agency to analyse whether the criteria for setting non-transmission tariffs as set out in Article 4(4) of the NC TAR are met.

(82) CNMC considers that the transmission network only provides services related to transmission, therefore it has proposed not to set any non-transmission services tariffs.

(83) As a result, Article 4(4) does not apply to the proposed methodology.

[33] Presented at page 49 of the English versions of the consultation document.

5. Other comments

(84) The Agency has understood from CNMC that the Spanish Government has retained the power to collect charges to cover an amount equal to 4.9% of the allowed revenue of all gas sector regulated activities[34]. This charge is meant to compensate for the under-recovery in the years 2014-2017 and other costs[35]. Since the charge is going to be applied by the Government, CNMC has no additional information about it and is not consulting on it.

(85) The Agency notes that some items of the charge the Government will raise relate to access to the gas network. Therefore, the Agency considers that the underlying costs should be included, to the extent possible, in the allowed revenue and that they should be recovered by either transmission or non-transmission tariffs set by CNMC.

[34] This amount is outside the allowed revenue.

[35] The Agency has understood from CNMC that the under-recovery was mostly created by the LNG activity. The Agency acknowledges that the past under-recovery stems from a methodology which was not set by CNMC; at the same time, the Agency considers that the under-recovery relating to the transmission network should be addressed within the transmission RPM.

The other costs relate to: the remuneration of the GTS, the CNMC, and the market operator, and the acquisition and supply of LPG for isolated territories.

Annex 1: Legal framework

(86) 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.

(87) 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.

(88) 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.

(89) 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.

(90) 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.

(91) 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	Agency for the Cooperation of Energy Regulators
CAA	Cost Allocation Assessment
CRU	Commission for Regulation of Utilities
CWD	Capacity Weighted Distance
EC	European Commission
EU	European Union
GNI	Gas Networks Ireland
IP	Interconnection Point
MS	Member State
NC TAR	Network code on harmonised transmission tariff structures for gas
NRA	National Regulatory Authority
RPM	Reference Price Methodology
TSO	Transmission System Operator

ACER

Agency for the Cooperation of Energy Regulators

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