



**Publishing date:** 06/03/2019

**Document title:** Agency report - Analysis of the consultation document for Slovakia

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## Agency Report

# Analysis of the Consultation Document on the Gas Transmission Tariff Structure for Slovakia

NRA: Úrad Pre Reguláciu Sieťových  
Odvetví (URSO)  
TSO: Eustream A.S.

6 March 2019

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## 1. ACER conclusion

- (1) Eustream A.S. ('Eustream') proposes a postage stamp reference price methodology ('RPM') with a 50/50 entry-exit split and benchmarking as a secondary adjustment. There are no discounts proposed for exit points to and entry points from storage facilities. There are commodity-based transmission tariffs (both a flow-based charge and a complementary revenue recovery charge). The consultation document does not include any non-transmission services.
- (2) The Agency for the Cooperation of Energy Regulators ('the Agency') had difficulties performing an analysis comparable to the ones carried out for consultation documents from other Member States, where the implementation choices follow more closely the provisions of the Network Code on Harmonised Transmission Tariff Structures for Gas ('NC TAR') and where a clear link is preserved between the allowed or target revenue<sup>1</sup>, the RPM and the resulting reference prices.
- (3) The Agency considers that Eustream has not published the actual RPM in its public consultation, as the RPM described therein is not used to determine the charges that network users will have to pay on most parts of the transmission network. In fact, Eustream proposes to set tariffs at domestic points and at points with third countries using methodologies different from the proposed RPM<sup>2</sup>. In addition, approximately 75% of the capacity is booked on the basis of fixed payable price contracts. Therefore, the Agency considers that the requirements of Article 26(1) of the NC TAR for consulting on the proposed RPM that is applied to all entry-exit points are not fulfilled.
- (4) Further to the fact that the proposed postage stamp is not applied to all points of the network, the proposed RPM is not based on a target revenue established by the NRA, which should be the starting point for applying the RPM.
- (5) In addition, the resulting reference prices at all points of the network are benchmarked, following a procedure that is not compliant with the NC TAR and with Article 13 of Regulation (EC) No 715/2009<sup>3</sup>.
- (6) Therefore, the Agency finds that neither the public consultation document published by Eustream nor the proposed RPM are compliant with the NC TAR. The absence of consistent steps in building up the methodology from the target revenue to the derivation of tariffs by means of an RPM results in a marginalised and non-transparent methodology that cannot be considered as a reference for setting transmission tariffs. As a result of these elements, the Agency is not in a position to fulfil its obligation, pursuant to Article 27(2) of the NC TAR, of analysing the proposed RPM against the requirements of the Article 7 of the NC TAR.

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<sup>1</sup> The regulatory regime described in the consultation is a price cap regime.

<sup>2</sup> Eustream derives reference prices for all points of the network using the RPM. However, for domestic points and for interconnection points with third countries, these reference prices are not used for the capacity product for firm capacity with a duration of one year. The Agency notes that this is a requirement according to Articles 3(1) and 6(3) of the NC TAR. Instead, tariffs for domestic points and for interconnection points with third countries are set based on national law (see pages 21 and 24 of the final consultation document). As a result of this separate calculation, the Agency considers that the RPM is not applied to all points of the network.

<sup>3</sup> 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.

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- (7) The Agency, on the basis of the analysis of the consultation document, pursuant to Article 27(2) of the NC TAR, which was however severely limited by the specific conditions on which the RPM is calculated and applied to points of the network, concludes that:
- The consultation document does not contain the required information set out in Article 26(1) of the NC TAR, as further illustrated in Table 1 of this document;
  - In the absence of an appropriate description of the RPM and based on the elements mentioned above, the RPM is not compliant with Article 13 of Regulation (EC) No 715/2009 and with the requirements set out in Article 7 of the NC TAR. The main elements supporting this conclusion are the fact that the NRA has not established the target revenue or the methodology to determine it, the incompliant application of the benchmarking adjustment and the exclusion of domestic points and of points with third countries from the actual scope of the RPM;
  - The criteria for setting the commodity charge are not met;
  - The criteria for setting the non-transmission do not apply.
- (8) The Agency recommends that URSO review Eustream's costs and establish the target revenue, or the methodology to set it, based 'on efficiently incurred costs', as required by Article 13 of Regulation (EC) No 715/2009<sup>4</sup>. This decision should be adequately justified pursuant to Article 41(16) of Directive 2009/73/EC<sup>5</sup>, which states that '*decisions taken by regulatory authorities shall be fully reasoned and justified to allow for judicial review. The decisions shall be available to the public while preserving the confidentiality of commercially sensitive information*'. The information to be published before each tariff period, as provided by Article 30 of the NC TAR, shall be made public.
- (9) Following this step, the Agency recommends that URSO or Eustream, as decided by URSO, launch a new consultation process with the aim of setting tariffs for the tariff period 2022-2026. The incompliance of the currently proposed RPM extends over a large number of elements in a manner that a motivated decision on the terms specified in Article 27(4) of the NC TAR would differ significantly from the terms proposed in the consultation document.
- (10) In addition, the Agency provides the following recommendations on the order in which the steps for setting or approving terms and conditions shall be taken, based on the principles of Directive 2009/73/EC and the EC Staff Working Document on Tariffs for Access to the Natural Gas Transmission Networks<sup>6</sup>:
- Build up a methodology that provides for a systematic and cost-reflective tariff setting in line with the NC TAR, taking into consideration the impact that adjustments (e.g. benchmarking) can potentially have on reference prices. By doing so, the RPM should result in cost-based tariffs, and possible deviations should be compliant with the NC TAR;

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<sup>4</sup> Article 13 of Regulation (EC) No 715/2009 stipulates, *inter alia*, that tariffs of a TSO shall reflect the actual costs incurred, insofar as those costs correspond to those of an efficient and structurally comparable network operator.

<sup>5</sup> 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 repealing Directive 2003/55/EC.

<sup>6</sup> Commission staff working document on tariffs for access to the natural gas transmission networks regulated under Article 3 of Regulation 1775/2005, 20 April 2007; <http://ec.europa.eu/transparency/regdoc/rep/2/2007/EN/2-2007-535-EN-1-1.PDF>

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- The RPM should be applied to all points of the network, including domestic points and points with third countries;
- On the application of benchmarking,
  - Check whether there is effective pipeline-to-pipeline competition;
  - Identify the tariffs of such alternative routes;
  - Determine the level of cost-based tariffs in the Slovak system;
  - Apply benchmarking only to the points of the Slovak network that are effectively in competition;
- Clarify how the RPM is calculated to avoid that the risk associated with the fixed payable prices from existing long-term contracts is transferred to reference prices. The use of fixed payable prices should also be clarified with regard to the calculation of the cost allocation assessment index ('CAA'<sup>7</sup>) and in the comparison with the capacity weighted distance ('CWD') methodology;
- Calculate the CAA pre- and post- benchmarking, and provide clarity on how the fixed prices and the tariffs for domestic points are taken into account in this calculation;
- Clarify the share of forecasted bookings that fixed payable prices contracts make up for;
- Assess whether or not there is significant volume risk related particularly to transports across the entry-exit system;
- Assess the commodity-based transmission tariffs and determine if they meet the criteria set out in Article 4(3) of the NC TAR.
- Clarify if the service for title transfer will continue to be offered by the TSO. Should this be the case, it should be clarified how the service is paid for and whether the service qualifies as transmission service or non-transmission service. If the service qualifies as transmission service, include it in the RPM and avoid recovery of its costs via separate charges.

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<sup>7</sup> Throughout this document, 'CAA' is used to refer to the capacity cost allocation comparison index described in Article 5(3)(c) of the NC TAR.

## 2. Introduction

- (11) Commission Regulation (EU) 2017/460 of 16 March 2017 establishes a network code on harmonised transmission tariff structures for gas (NC TAR).
- (12) Article 27 of the NC TAR requires the Agency to analyse the consultation documents on the reference price methodologies for all entry-exit systems<sup>8</sup>. This Report presents the analysis of the Agency for the transmission system of Slovakia.
- (13) On 6 November 2018, the Slovakian transmission system operator ('TSO') Eustream, forwarded the consultation documents to the Agency. The consultation was launched on 6 November 2018 and remained open until 6 January 2019. On 6 February 2019, the consultation responses and their summary were published. The Agency has taken these into consideration for this analysis. Within five months following the end of the final consultation, and pursuant to Article 27(4) of the NC TAR, the Slovak national regulatory authority ('NRA') Úrad Pre Reguláciu Sieťových Odvetví ('URSO') shall take and publish a motivated decision on all the items set out in Article 26(1) of the NC TAR.
- (14) In the consultation document Eustream proposes to use a postage stamp methodology as the RPM, with a 50/50 entry-exit split and benchmarking applied to all entry and exit points as a secondary adjustment.
- (15) A number of bilateral exchanges to collect additional information took place between the Agency, the Slovak NRA and Eustream. Several clarifications were provided by Eustream. The Agency appreciates the exchange with Eustream during this process. The NRA limited its involvement to written exchanges.

### *Reading guide*

- (16) Chapter 3 presents the analysis on completeness, namely if all the information in Article 26(1) of the NC TAR was published. Chapter 4 focusses on compliance and it is introduced by an analysis of the various elements that make reference prices derived using the RPM a marginal instrument for setting tariffs for the Slovak network. The Chapter also looks at whether the RPM complies with the requirements set out in Article 7 of the NC TAR, if the criteria for setting commodity-based transmission tariffs as set out in Article 4(3) are met and if 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?

- (17) 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.

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<sup>8</sup> With the exception of Article 10(2)(b), when different RPMs may be applied by the TSOs within an entry-exit zone.

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- (18) Article 26(1) of the NC TAR requires that the consultation document be published in the English language, to the extent possible. The Agency remarks that the consultation document was published in English.
- (19) Overall, the consultation document does not include the information listed in Article 26(1) of the NC TAR since the proposed RPM is not used as the basis for the charges that network users will have to pay on significant parts of the transmission network.
- (20) According to Article 2 of the NC TAR, Chapter VI of the NC TAR ('Clearing price and payable price') does not apply to domestic points and applies to connections with third countries only where the NRA chooses to apply Regulation 2017/459 ('CAM NC') at those points. Eustream argues that the NC TAR offers no guidance regarding the actual payable price at domestic points and potentially at connections with third countries. The RPM proposed by Eustream provides a reference price for those points but these reference prices are not the "final tariffs"<sup>9</sup>. This interpretation contravenes the definition of reference price provided by Article 3 of NC TAR. As a result, the proposed RPM would be applied only to a share of the forecasted bookings which Eustream has estimated at around 10%, while the tariffs for the remaining bookings, for fixed payable price contracts, domestic exits and points with third countries, are calculated separately.
- (21) Moreover, the information on the adjustment through benchmarking is very limited, despite that this measure is playing a crucial role in setting the tariffs. The Agency recommends that the NRA elaborate on the way in which benchmarking is performed and also include this information in the simplified tariff model, pursuant to Article 6(4)(a) of NC TAR and the EC Staff Working Document on Tariffs for Access to the Natural Gas Transmission Networks. Also, the information on the commodity charges could be improved as detailed in Section 4.2 of this document.

Table 1 Checklist information Article 26(1)

Article	Information	Published: Y/N/NA
<b>26(1)(a)</b>	the description of the proposed reference price methodology	Incomplete. i. The scope of application of the RPM to network points is unclear and non-compliant with the NC TAR; ii. The description of benchmarking is insufficient; iii. The use of fixed prices renders the scope of application and the input parameters to the RPM unclear.
<b>26(1)(a)(i)</b> <b>26(1)(a)(i)(1)</b> <b>26(1)(a)(i)(2)</b>	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	Incomplete. i. The target revenue, or the methodology to set it, which is an input to the RPM, is not established by the NRA;

<sup>9</sup> Eustream's document "Methodology for setting the tariffs for the access to the gas transmission network and natural gas transmission", Chapter 5, page 11. See also pages 21 and 24 of the final consultation document.



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	<ul style="list-style-type: none"> <li>the corresponding information on the respective values of such parameters and the assumptions applied</li> </ul>	<ul style="list-style-type: none"> <li>ii. In the absence of the relevant information on the application of the RPM, the assessment of the cost drivers is not possible.</li> </ul>
<b>26(1)(a)(ii)</b>	the value of the proposed adjustments for capacity-based transmission tariffs pursuant to Article 9	Not applicable
<b>26(1)(a)(iii)</b>	the indicative reference prices subject to consultation	Incomplete. Eustream proposes alternative methodologies to set tariffs at domestic points and at points with third countries. This is non-compliant with the NC TAR. These tariffs are not made part of the consultation.
<b>26(1)(a)(iv)</b>	the results, the components and the details of these components for the cost allocation assessments set out in Article 5	Incomplete. The CAA calculation does not detail how tariffs for domestic points, points with third countries and fixed payable prices are taken into account. This renders the CAA result invalid.
<b>26(1)(a)(v)</b>	the assessment of the proposed reference price methodology in accordance with Article 7	Incomplete. The assessment cannot be completed in the absence of the information detailed in this table.
<b>26(1)(a)(vi)</b>	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)	Incomplete. The CWD methodology is subject to the same problems on the scope of application and on the calculations pointed out for the proposed postage stamp methodology. The comparison requires addressing these issues in order to be valid.
<b>26(1)(b)</b>	the indicative information set out in Article 30(1)(b)(i), (iv), (v)	<p style="text-align: center;">Incomplete.</p> <ul style="list-style-type: none"> <li>i. The target revenue, or the methodology to set it, is not established by the NRA.</li> <li>ii. No information is provided on how the entry-exit split, the capacity-commodity split and the intra-system/cross-system split are calculated based on the offering of fixed prices and on the non-application of the RPM to domestic points and to points with third countries.</li> </ul>
<p><b>26(1)(c)(i)</b> where commodity-based transmission tariffs referred to in Article 4(3) are proposed</p> <p><b>26(1)(c)(i)(1)</b></p> <p><b>26(1)(c)(i)(2)</b></p> <p><b>26(1)(c)(i)(3)</b></p>	<ul style="list-style-type: none"> <li>the manner in which they are set</li> <li>the share of the allowed or target revenue forecasted to be recovered from such tariffs</li> <li>the indicative commodity-based transmission tariffs</li> </ul>	<p style="text-align: center;">Incomplete.</p> <p>The manner in which commodity-based tariffs are set is not clear</p>

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<p><b>26(1)(c)(ii)</b>  <b>26(1)(c)(ii)(1)</b>  <b>26(1)(c)(ii)(2)</b>  <b>26(1)(c)(ii)(3)</b>  <b>26(1)(c)(ii)(4)</b></p>	<p>where non-transmission services provided to network users are proposed:</p> <ul style="list-style-type: none"> <li>• the non-transmission service tariff methodology therefor</li> <li>• the share of the allowed or target revenue forecasted to be recovered from such tariffs</li> <li>• the manner in which the associated non-transmission services revenue is reconciled as referred to in Article 17(3)</li> <li>• the indicative non-transmission tariffs for non-transmission services provided to network users</li> </ul>	<p>Not applicable</p>
<p><b>26(1)(d)</b></p>	<p>the indicative information set out in Article 30(2);</p>	<p style="text-align: center;">Incomplete.</p> <p>The model is based on an RPM that is not applied to all points of the network. The model is therefore not complete.</p>
<p><b>26(1)(e)</b>  <b>26(1)(e)(i)</b>  <b>26(1)(e)(ii)</b>  <b>26(1)(e)(iii)</b>  <b>26(1)(e)(iv)</b></p>	<p>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:</p> <ul style="list-style-type: none"> <li>• the proposed index;</li> <li>• the proposed calculation and how the revenue derived from the risk premium is used</li> <li>• at which interconnection point(s) and for which tariff period(s) such approach is proposed</li> <li>• the process of offering capacity at an interconnection point where both fixed and floating payable price approaches referred to in Article 24 are proposed</li> </ul>	<p>Yes</p>

## 4. Compliance

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

- (22) Article 27(2)(b)(1) of the NC TAR requires the Agency to analyse whether the proposed RPM complies with the requirements set out in Article 7 of the NC TAR. This article refers to Article 13 of Regulation (EC) No. 715/2009 and lists a number of requirements to take into account when setting the RPM.

#### 4.1.1 Preliminary assessment of the Slovak regulatory regime and the proposed RPM

- (23) The Agency notes that several elements, both internal and external to the RPM, impact the assessment of the proposed RPM with the requirements of Article 7 of the NC TAR. The Agency therefore introduces the analysis of these principles with a preliminary assessment of the following elements:
- The NRA has not established the target revenue of the TSO or the methodology to set it;
  - The existence and the offering of fixed payable prices;

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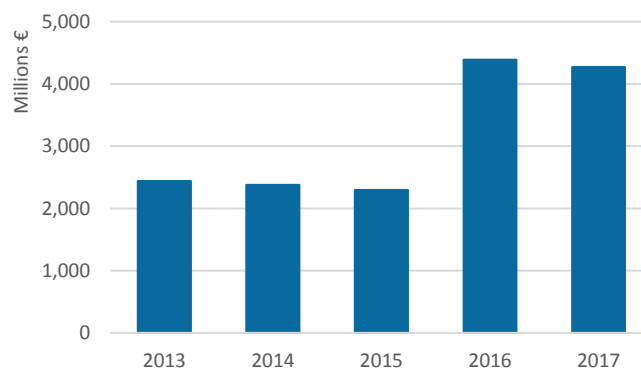
- The non-application of the RPM to domestic points and to points with third countries;
- The application of benchmarking.

### 4.1.1.1 Target revenue

- (24) The proposed methodology is based on the target revenue of the TSO used as an input to derive reference prices. The figure is proposed for the regulatory period extending from 2022 to 2026. The Agency notes that the target revenue figure that Eustream proposes for this calculation is not established by the NRA. The Agency has understood from a bilateral exchange with the NRA that there are no past NRA decisions on the target revenue of the TSO which were set in the past by the TSO itself.
- (25) The Agency notes that the target revenue used as an input to the RPM is central for the derivation of reference prices as it determines the overall levels of reference prices. In the absence of the NRA having established the target revenue of the TSO, or the methodology to set it, the Agency cannot complete its analysis of the proposed RPM. In particular, the Agency cannot assess the compliance with the following requirements:
- that the proposed RPM aims at taking into account the actual costs incurred for the provision of transmission services, as required by Article 7(c) of the NC TAR.
  - that the proposed RPM aims at ensuring that the resulting reference prices do not distort cross-border trade, as required by Article 7(e) of the NC TAR.
- (26) In addition, the application of benchmarking, as proposed in the consultation document, is required to depart from the cost-based levels of reference prices, as explained in Section 4.1.1.6 below.
- (27) The Agency has understood that a decision on the target revenues of Eustream for the period 2022-2026 will be provided by the NRA together with the motivated decision on the RPM. For this purpose, the Agency recommends the NRA to consider aligning the timelines for the decision on the target revenue of the TSO and the consultation on the RPM.
- (28) In order to establish the target revenue of the TSO, the Agency recommends the NRA to take appropriate time to complete the review and to include, as part of this task, an assessment of the value of assets. An evaluation in 2016 led to a 97% increase of the book value of the assets (from €2.2bn in 2015 to €4.3bn in 2015), as shown in Figure 1 below. Should the proposed level of target revenues extend the current revenue level, the Agency questions whether this level reflects the costs of Eustream. Compliance with the transparency requirements under Article 30 of the NC TAR, which include the publication of information on the revenue of the TSO, is a necessary first step to address these concerns.
- (29) The Agency notes that the publication of the information listed in Article 30 of the NC TAR must take place before the beginning of each tariff period. The Article 3 of the NC TAR provides that a tariff period is “*the time period during which a particular level of reference price is applicable, which minimum duration is one year and maximum duration is the duration of the regulatory period*”. Since reference prices are annually updated in Slovakia, and since Chapter 8 of the NC TAR, which includes Article 30, has been in force since 1 October 2017, the corresponding information should have been published for the tariff periods 2018 and 2019.

- (30) The Agency notes that fixing or approving the methodology for setting the tariffs is an obligation of the NRA following Article 41(6) of Directive 2009/73/EC, which states that *‘the NRAs shall be responsible for fixing or approving sufficiently in advance of their entry into force at least the methodologies used to calculate or establish the terms and conditions for (...) the connection and access to national networks, including transmission and distribution tariffs’*. Given the doubts expressed earlier on the level of the target revenue, the Agency recommends that the NRA be at least in charge of setting or approving the methodology and the underlying parameters, for establishing the target revenue of the TSO.
- (31) Lastly, the Agency recommends the NRA to review the TSO’s costs and set or approve the target revenue, before deciding on the RPM with a view to Article 41(16) of Directive 2009/73/EC: *‘Decision taken by the regulatory authorities shall be fully reasoned and justified [...]’*. The Agency observes that once the asset values reflect the underlying costs of the assets, it could be established whether the revenue recovery of the TSO is appropriate. Article 13 of Regulation (EC) No 715/2009 stresses that tariffs shall be cost based and this principle underpins the requirements of Article 7 of NC TAR, in particular that *‘tariffs [...] 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’*.

Figure 1: Eustream fixed assets 2013-2017. Source: Eustream annual reports. .



#### 4.1.1.2 Fixed prices

- (32) Eustream proposes to apply fixed payable prices under a price-cap regime, both as part of existing contracts concluded before 6 April 2017 (reference) and as part of fixed payable prices to be offered starting in 2022. The existence of fixed payable price contracts has three implications for the reference prices derived using the RPM:
- (33) First, the existence of fixed payable prices reduces the scope of application of the RPM. The Agency has understood from several exchanges with Eustream<sup>10</sup> that there are fixed-price long-term contracts in place that make up the majority of the current bookings (76% for entry and 73% for

<sup>10</sup> Following a bilateral telco with Eustream on 25 January 2019.

exits). This point is nevertheless not properly assessed in the consultation document and it does not allow defining the scope of application of the RPM. Eustream has clarified that the proposed reference prices will only be applicable at the IPs with Austria, Czech Republic, Hungary and Poland<sup>11</sup> and therefore to approximately 10% of the capacity bookings.

- (34) Second, depending on how fixed payable contracts are taken into account in the RPM calculation, the risk associated with these contracts can be transmitted to reference prices. Eustream clarified to the Agency that reference prices are derived using the target revenues and the associated forecasted capacity for both fixed payable prices. As a result of this approach, the risk of under- or over-recovery associated to fixed payable prices is, in theory, not transmitted to reference prices as it is borne by the TSO. While the Agency agrees with this approach, the details of this calculation are not provided in the consultation document, hence cannot be assessed. The Agency therefore recommends the NRA to provide an assessment of how fixed payable prices impact the cost reflectivity of reference prices.
- (35) Lastly, the offer of fixed payable prices can lead to discriminatory tariffs as later explained in this document in Section 4.1.4.1.
- (36) In addition to these points, the Agency notes that it is an obligation according to Article 35(3) of the NC TAR that the TSO send the existing contracts concluded before 6 April 2017 or the information on capacity bookings, if any, to the NRA. The additional information together with the NRA's assessment and approval of the target revenue, or the methodology to set it, would bring clarity about how far the fixed payable price contracts cover the target revenues and would enable the NRA to establish cost reflectivity of reference prices and to have an oversight concerning the under-recovery of the TSO.

### 4.1.1.3 Application of the RPM to domestic points

- (37) Eustream states in the consultation document that *'final reference prices for entry/exit domestic points will not serve as the reserve prices for the standard yearly capacity products. The reserve prices for entry/exit domestic points will be set according to methodology based on the national legislation, which will be valid and applicable in respect to this point'*<sup>12</sup>.
- (38) The Agency remarks that, although the requirements applicable to reserve prices (Chapter III of the NC TAR) indeed only apply to IPs<sup>13</sup>, the 'reference price' is defined in Article 3(1) of the NC TAR as *'the price for a capacity product for firm capacity with a duration of one year, which is applicable at entry and exit points and which is used to set capacity-based transmission tariffs'*.
- (39) Moreover, the Agency notes that, according to Article 2(1) and 6(3) of the NC TAR, the RPM *'shall be applied to all entry and exit points in the given entry-exit system'*. The application of a different

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<sup>11</sup> The Agency notes that the IP with Poland has a zero capacity forecast assigned in the final consultation document (see page 17).

<sup>12</sup> Page 24 of the final consultation document.

<sup>13</sup> See Article 2 of the NC TAR.

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methodology for setting tariffs at domestic points would result in a deviation from the principle of cost reflectivity and is non-compliant with the requirement of deriving reference prices for all points of the network using the same RPM<sup>14</sup>.

- (40) By applying a separate methodology to domestic points, the proposal made by Eustream further hampers the assessment of the cost reflectivity of reference prices and of cross-subsidisation between intra-system and cross-system users.
- (41) In addition, the Agency notes that Eustream does not include these tariffs as part of the consultation document, nor as part of the CAA. The latter renders the calculation of the CAA non-compliant with the NC TAR and meaningless.

### 4.1.1.4 Application of the RPM to points with third countries

- (42) Eustream states in the consultation document that *'final reference prices for the non-IPs (entry/exit Domestic point, entry/exit Veľké Kapušany and entry/exit Budince) would not serve as the reserve prices for the standard yearly capacity products. Derivation of the reserve prices for the non-IPs is not subject of the TAR NC and thus will be set according to methodology based on the national legislation, which would be valid in respect to these points'*<sup>15</sup>.
- (43) The Agency remarks that, as provided by the Article 2(1) of the NC TAR, although the requirements for reserve prices (Chapter III of the NC TAR) indeed apply to *'entry points from third countries or exit points to third countries, or both'* only if the NRA takes a decision to apply the CAM NC at those points, the RPM remains nonetheless applicable for the calculation of reference prices at these points. Article 6(3) of the NC TAR states that the RPM *'shall be applied to all entry and exit points in the given entry-exit system'*. In addition, the *'reference price'* is defined in Article 3(1) of the NC TAR as *'the price for a capacity product for firm capacity with a duration of one year, which is applicable at entry and exit points and which is used to set capacity-based transmission tariffs'*.
- (44) The same concerns expressed in paragraphs (40) and (41) related to the non-application of the RPM to domestic points, applies to the non-application of the RPM to entry and exit point from/to third countries.

### 4.1.1.5 Proposed application of benchmarking

- (45) Following the application of the proposed postage stamp methodology, Eustream proposes to benchmark reference prices at all the points of the system. Eustream applies benchmarking based on the average tariffs of a selection of EU TSOs, without justifying whether these TSOs are in competition with Eustream.

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<sup>14</sup> As communicated to the Agency in a bilateral telco on 26 February 2019, Eustream sets the current tariffs for domestic points at variable values, €84.64 MWh/d/y being the highest of them. Eustream manifested the intent to maintain tariff stability with respect to these levels in the tariffs applicable for 2022 at domestic exits. The Agency notes that as a result of the application of a different methodology, such tariffs would result in a substantial difference to those derived using the proposed postage stamp methodology, which leads to tariffs of €175.3MWh/d/y (pre-adjustments) and €124.13MWh/d/y (post-adjustments) at exit points.

<sup>15</sup> Page 21 of the final consultation document. See also Eustream's document "Methodology for setting the tariffs for the access to the gas transmission network and natural gas transmission", Chapter 5, page 11.

- (46) The result of this approach is a decrease in reference prices at entries from €175.3MWh/d/y to €124.13MWh/d/y, and at exits from €168.4MWh/d/y to €164.3MWh/d/y.
- (47) Eustream highlights that, as a result of the application of benchmarking, the TSO faces an under-recovery. The Agency observes that the claimed under-recovery cannot be established in the absence of target revenues that have been set by the NRA.

#### 4.1.1.6 Assessment of the proposed application of benchmarking

- (48) The Agency considers that explanatory guidelines, such as the EC Staff Working Document on Tariffs for Access to the Natural Gas Transmission Networks<sup>16</sup>, provide guidance for the implementation of EU law. If these guidelines are not followed, it is up to the TSO or NRA to provide an appropriate justification for the alternative benchmarking approach proposed. In this section, the Agency proposes four consecutive steps for evaluating the benchmarking proposal provided by Eustream and recommends the NRA to follow these steps in its future review<sup>17</sup>.
- (49) First, the assessment should check whether there is effective pipeline-to-pipeline competition. According to Article 13(1) and Recital (8) of Regulation (EC) No 715/2009 and to Article 6(4) of the NC TAR, benchmarking is only to be considered in the case of effective pipeline-to-pipeline competition. The existence of pipeline-to-pipeline competition should be assessed at least by taking into account the expectation that competing systems provide a real choice for transmission users. While it could be argued that, for certain flows, the Slovak system is indeed in a situation of effective pipeline-to-pipeline competition, Eustream does not present any analysis in this respect. Therefore, the Agency recommends the NRA to provide, in its final decision, the evidence of effective pipeline-to-pipeline competition, and to which points this applies.
- (50) Second, the assessment should identify the tariffs of such alternative routes. This step implies identifying the competitive level of reference prices. The Agency notes that benchmarking, pursuant to Article 6(4)(a) of the NC TAR, shall be based on comparative values that can be soundly reasoned. The Agency notes that Eustream performs benchmarking by comparing entry and exit reference prices from a wide range of European TSOs, including those not necessarily competing with Eustream. Therefore, the Agency recommends the NRA to base the benchmarking adjustment on competing alternative routes only, by including the relevant competing pipelines in its analysis and excluding those that are not in scope, following the analysis as described in the previous step.
- (51) Third, the assessment should determine the level of cost-based tariffs in the Slovak system. This is a requirement according to Article 13(1) and Recital (8) of Regulation (EC) No 715/2009 and Article 6(4) of the NC TAR. The fact that benchmarking is applied as an adjustment to the reference prices resulting from the RPM, implies that the starting point for the application of benchmarking shall be the reference prices compliant with the requirement of cost reflectivity, pursuant to Article 7(b) of the NC TAR. The cost-based tariffs should therefore refer to efficiently incurred cost, and

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<sup>16</sup> In particular its Section 2.2.5.

<sup>17</sup> These steps are based on EC Staff Working Document on Tariffs for Access to the Natural Gas Transmission Networks.

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should be derived according to the proposed RPM. As stated above, Eustream applies benchmarking starting from a target revenue value that is not established by the NRA. For this reason, the Agency considers that the cost base used to derive tariffs is not sufficiently motivated.

- (52) Fourth, benchmarking should be applied to IPs only. According to Article 6(4)(a) of NC TAR, benchmarking shall consist in an adjustment applied at a *'given entry or exit point'*. The Agency notes that this has to be interpreted as applying benchmarking at cross-border points only (and possibly only at points related to a certain route), as pipeline-to-pipeline competition mostly affects the utilisation of a system for transit purposes. Instead, Eustream proposes to apply benchmarking to all entry and exit points of the system, including domestic points. The Agency notes that this application of benchmarking:
- effectively results in the replacement of the reference prices derived for all points using the proposed RPM by tariffs calculated on the basis of benchmarking. At the same time, some of these tariffs are substituted using different methodologies at domestic points and at points with third countries.
  - results in a decrease of entry tariffs which are also used for the purpose of supplying domestic users, where no competition exists.

### 4.1.1.7 Conclusion

- (53) As a result of these elements, the Agency is not in a position to fulfil its obligation, pursuant to Article 27(2), of analysing the proposed RPM against the requirements of Article 7 of the NC TAR. The approach proposed in the consultation document results in a RPM that is applied marginally, with little or limited visibility on the actual scope of application on the points or the network, nor on the revenues that should be allocated for this and on the resulting level of under- or over- recovery. Under such conditions, the Agency considers that it is not possible to perform a complete assessment of the compliance of the proposed RPM with the requirements in Article 7 of the NC TAR.
- (54) The analysis that follows in the next sections looks at these requirements and is based on the limited information and substantiation provided in the consultation document. The conclusion will be drawn at the end of Chapter 4.1 in Section 4.1.7:

### 4.1.2 Transparency

- (55) **Article 7(a)** of the NC TAR requires that the RPM aim at enabling network users to reproduce the calculation of reference prices and their accurate forecast.
- (56) Overall, the RPM is a simple postage stamp methodology which normally provides a high level of transparency and enables forecasting reference prices with accuracy. However the absence of regulatory setting or approval of the target revenues or of the methodology to set them, the extensive and incompliant application of benchmarking, the unknown share of bookings related to fixed prices, the different methodologies applied at domestic points and at points with third countries make the proposed RPM and overall, the consultation document, incompliant with the requirement of providing visibility over the principles for the calculation of reference prices, in particular to reproduce and forecast reference prices accurately.



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- (57) The Agency found it difficult to perform an analysis comparable to the ones carried out on the consultation documents for the other Member States, where the implementation choices followed more closely the provisions of the NC TAR and where the RPM is applied *de facto* 'to all entry and exit points' with a clear link between the RPM and the reference prices derived from it.

### 4.1.2.1 Reproduction and forecast of reference prices

- (58) While the consultation document does not provide the basic requirements for understanding the calculation of the RPM, Eustream provides several elements required by the NC TAR to facilitate transparency. The Agency provides a further assessment of these elements in this section.
- (59) Eustream makes publicly available on its website a simplified tariff model (in spreadsheet format), as required by Article 30(2)(b) of the NC TAR. The spreadsheet allows users to change values for several parameters that determine the reference prices.
- (60) The changeable parameters are forecasted contracted capacity, forecasted inflation, capacity-based target revenues and the entry-exit split. The outputs include the reference price prior to benchmarking for entry and exit points for the first year of the regulatory period (2022), and the estimated final reference prices for entry and exit points for all tariff periods of the regulatory period after the application of benchmarking.
- (61) The NC TAR requires that information be also given for the prevailing period. As the model only shows the forecasted contracted capacity and (estimated) reference prices from 2022 onwards, the Agency requested Eustream to make the forecasted contracted capacities a variable that can be changed in the model, to allow network users to reproduce the calculation of the reference prices accurately. Eustream did update the model on 18 December 2018 and made it publicly available on its website for the consultation.
- (62) The Agency recommends to improve the tariff model and to provide as part of it additional explanations on how the benchmarking is carried out.

### 4.1.3 Cost-reflectivity

- (63) **Article 7(b)** of the NC TAR requires that the RPM take into account the actual costs incurred for the provision of transmission services, considering the level of complexity of the transmission network.
- (64) The transmission system in Slovakia can be considered a simple network, consisting of 'four or five parallel pipelines'<sup>18</sup> with a total length of 2.332km. Eustream proposes a postage stamp methodology with a 50/50 entry-exit split and benchmarking applied as an adjustment to reference prices at all points of the network. The input for both forecasted contracted capacity and for the target revenue is averaged for the 5 years for which the tariff period lasts.

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<sup>18</sup> The final consultation document refers to the system in this manner. See page 8 of the document.

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- (65) The Agency notes that the application of benchmarking to all points of the network, as described in paragraphs (45) to (52), ultimately replaces the reference prices derived using the RPM. The final reference prices are not an output of the RPM, but a result of the application of benchmarking. The final reference prices are therefore neither related to the *costs incurred* by Eustream, nor to the costs of '*an efficient and structurally comparable network operator*'.
- (66) Following the analysis in paragraphs (24) to (54), the Agency concludes that the proposed RPM, together with the benchmarking adjustment to reference prices, is not compliant with the principle of cost reflectivity as laid out in Article 7(b) of the NC TAR. This conclusion is based on the following arguments.
- (67) First, the Agency considers that the elements provided in the consultation document create serious doubt as to whether the tariffs and the proposed RPM are based on the actual costs for the provision of transmission services. The Agency is of the view that establishing the actual costs, and having them reflected in the target revenue established by the NRA or for which the NRA defines the methodology, is a pre-condition for the application of benchmarking as proposed by Eustream. These concerns are described in paragraphs (24) to (31) above.
- (68) Second, the application of benchmarking is not compliant with the NC TAR. The adjustment is not based on an assessment of effective pipeline-to-pipeline competition, it is not performed to cost-based tariffs and it is applied to all points of the network (and not only to points in competition). These concerns are described in paragraphs (48) to (52) above.
- (69) Third, the tariffs at IPs with third countries and to domestic points are set outside the RPM and are therefore related neither to the target revenue nor to the contracted capacity used as an input for the RPM. These concerns are described in paragraphs (37) to (44) above.
- (70) Forth, the proposed benchmarked reference prices, together with the lower tariffs set at domestic points and at points with third countries, result in an under-recovery of the target revenues that, according to the consultation document, is borne by the TSO. However, in the absence of the NRA establishing the target revenue or the methodology to set it, it is not possible to assess whether the proposed tariffs result in an under- or over- recovery. The Agency notes that the current tariff setting does not allow assessing whether tariffs reflect the efficient costs of the TSO as required by Article 13 of Regulation (EC) No 715/2009.
- (71) Fifth, the RPM is only applied to approximately 10% of the forecasted bookings. The fact that all the costs of the system are used as an input to the RPM, while the methodology is only applied to 10% of the bookings raises concerns about the cost reflectivity of tariffs. These concerns cannot be properly assessed in the absence of the NRA having established the target revenue (or the methodology to set it), of a compliant application of benchmarking and of accurate information on the under-recovery to which the proposed tariffs lead to.
- (72) Sixth, the information provided on the fixed payable price contracts is not sufficient to conclude that the risk associated to the fixed prices is not passed on to reference prices.

#### 4.1.4 Cross-subsidisation and non-discrimination

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

##### 4.1.4.1 Non-discrimination

- (74) The Agency notes that the applicable tariffs proposed in the consultation are not solely derived using the proposed RPM accompanied by the application of benchmarking. Eustream proposes to calculate tariffs for domestic points and for points with third countries outside the RPM. This option is incompliant with the NC TAR and it can lead to discrimination as the NC TAR rules (i.e. deriving tariffs for all entry/exit points using the same RPM) are therefore not applied.
- (75) In addition, Eustream proposes to apply fixed payable prices. Eustream clarified to the Agency that the fixed payable prices currently being offered include discounts based on the level of contracted capacity and on the duration of the contracts<sup>19</sup>. Should this approach continue to be used, it would result in discrimination.
- (76) Regardless of whether the same approach to fixed payable prices is used, further analysis is required on the impact of existing fixed payable price contracts. The existing contracts benefiting from a fixed price with discounts based on the level of contracted capacity and on the duration will last several years. This may significantly distort competition by unduly favouring incumbent stakeholders with such contracts.

##### 4.1.4.2 Cross-subsidisation

- (77) The Agency notes that the consultation document does not provide sufficient information supporting the compliance of the proposed RPM with the requirement of ensuring non-discrimination. In particular, it does not assess the potential cross-subsidisation between different user types, which include at least, although not only, users of:
- Fixed payable prices
  - Benchmarked tariffs
  - Domestic points
  - Points with third countries.
- (78) The Agency notes that reference prices are reduced by the application of benchmarking. These tariffs are further lowered at domestic points and at points with third countries. Given that these reductions are not followed by a rescaling of revenues to meet the target revenues, it seems that the missing revenues are borne by the TSO and not by other users of the system. This conclusion, however cannot be verified with the provided information and in the absence of the NRA having established the target revenue of Eustream, or the methodology to set it.
- (79) One instrument to evaluate cross-subsidisation between cross-system and intra-system users is the CAA, established in Article 5 of the NC TAR. In the consultations documents submitted by Eustream, the result for the CAA is 0.30%. The Agency remarks that while the CAA result is below

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<sup>19</sup> Bilateral telco with Eustream on 19 February 2019.

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the 10% threshold, as defined in Article 5(6) of the NC TAR, Eustream does not provide any details on how the fixed payable prices are factored in the CAA. In the absence of this information, the Agency cannot conclude on the validity of the CAA. The Agency recommends the NRA to clarify this aspect in order to assess the potential cross-subsidisation effect between intra-system and cross-system users and also resulting from the offering of fixed payable prices. In addition, the Agency recommends the NRA to calculate the CAA pre- and post- benchmarking. This would allow assessing the impact of benchmarking on cross-subsidisation.

- (80) Following these remarks, and on the basis of the conclusion on cost-reflectivity, the Agency concludes that the proposed RPM is not compliant with the requirement of ensuring non-discrimination.

### 4.1.5 Volume risk

- (81) **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. Slovakia transports 12 to 14 times more gas than it uses for internal consumption.
- (82) In the consultation document, Eustream notes that the *'final reference prices for entry/exit Domestic point will not serve as the reserve prices for the standard yearly capacity products. The reserve prices for entry/exit Domestic point will be set according to methodology based on the national legislation [...]. As the reserve prices for entry/exit Domestic point will be under the approval of ÚRSO [---], it can be stated that by applying the mechanism containing process of control and approval of ÚRSO as the national regulatory authority, the protection of the final customers will be sufficiently ensured in a way that the significant volume risk related particularly to transports across an entry-exit system is not assigned to final customers within that entry-exit system.'*
- (83) As discussed above in Section 4.1.3.4., Eustream intends to apply reference prices at domestic points that are lower than those derived using the proposed RPM. The description of how the prices at domestic points are derived is not provided in the consultation document, where it is only stated that tariffs for domestic exits will be set according to national legislation. The Agency considers that such an approach is not compliant with the NC TAR and that it is therefore not a valid instrument to protect final customers against volume risk.
- (84) Following this reasoning, the Agency recommends the NRA to assess in its final decision whether or not there is significant volume risk related particularly to transport across the entry-exit system. In this respect, the Agency finds it relevant whether the transit pipelines are still booked, and if not, to which extent the assets are depreciated.

### 4.1.6 Cross-border trade

- (85) **Article 7(e)** of the NC TAR requires that the RPM ensure that the resulting reference prices do not distort cross-border trade.
- (86) The Agency considers that tariffs set at cost-reflective levels do not distort cross-border trade. Given the incompliance with the principle of cost reflectivity and the lack of transparency in the calculation

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and on the scope of application of the proposed tariffs, the Agency concludes that Eustream does not provide a sufficient justification supporting the non-distortion of cross-border trade.

- (87) On the use of benchmarking, the Agency notes that the use of this adjustment implies that the final tariffs are not cost reflective, since they are lower than the tariffs derived from a methodology which should be based on the *actual costs incurred*. Since benchmarking is allowed according to Article 6(4)(a) of the TAR NC, what is essential to assess is how the benchmarking is done and whether it fulfils the requirements mentioned in paragraphs Section 4.1.1.6. of this Report. Particularly, the application of benchmarking requires to compare alternative routes that are in competition. In the absence of such an analysis, the resulting tariffs are not compliant with the requirement of ensuring the non-distortion of cross-border trade. As the Agency already pointed out above, the application of benchmarking lacks essential requirements and is inconsistent with NC TAR and the broader EU regulatory framework.
- (88) Following these remarks, and on the basis of the conclusion on cost-reflectivity, the Agency concludes that the proposed RPM is not compliant with the requirement of non-distorting cross-border trade.

### 4.1.7 Conclusion

- (89) The consultation document does not allow considering the fundamental aspects required to assess the RPM against the requirements in Article 7 of the NC TAR.
- The application of the RPM does not depart from a level of target revenues which has been established by the NRA or for which the NRA has established the methodology.
  - Eustream proposes at least three different methodologies to set the tariffs for *i)* IPs with Austria, Czech Republic, Hungary and Poland, *ii)* domestic points and *iii)* IPs with third countries (i.e. Ukraine). In addition, these methodologies run in parallel with fixed payable price contracts which cover more than 70% of the bookings and for which no information is provided by Eustream.
  - Regarding the proposed postage stamp methodology, reference prices are adjusted using benchmarking. The Agency is not able to assess the starting cost-based level of tariffs to which benchmarking is applied and the points of the Slovak network which are in competition with other routes. Instead Eustream proposes to benchmark all points of the network.
  - As a result of the application of the proposed sets of tariffs, Eustream does not recover the proposed target revenues. This aspect cannot be further assessed in the absence of clarity on the initial level of target revenues.
- (90) The Agency concludes that the proposed RPM is not compliant with the requirements of transparency, cost-reflectivity, ensuring non-discrimination, preventing cross-subsidisation, volume risk and non-distortion of cross-border trade.
- (91) The Agency recommends the NRA to:
- Establish and publish the target revenue of Eustream, or the methodology to set it, and re-launch the consultation on the RPM

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- Follow the EC Staff Working Document on Tariffs for Access to the Natural Gas Transmission Networks or provide an alternative justification for the application of benchmarking, which is compliant with the NC TAR;
- Apply the RPM to all points of the network, including domestic points and points with third countries;
- Clarify how the risk associated to fixed payable prices is dealt with when applying the RPM, and whether the risk associated to these contracts is passed through to reference prices;
- Clarify the scope of the application of the RPM and the level of revenues recovered using fixed payable prices and the corresponding capacity.
- Clarify the level of under-over recovery related to the proposed reference prices, if any;

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

- (92) 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) are met.
- (93) The NC TAR allows for two types of commodity-based transmission tariffs: a flow-based charge and a complementary revenue charge ('CRRC'). Eustream proposes to apply both the flow based charge and the CRRC.
- (94) The use of commodity-based transmission tariffs shall be an exception. Only part of the transmission services revenue may be recovered by commodity-based transmission tariffs. Eustream proposes to apply commodity-based transmission tariffs. The commodity-based transmission tariffs form on average 25.7% of the transmission services revenue, the flow based charge constitutes 25.2% and the CRRC 0.5%. The flow-based charge is proposed to be set at the level of 1.7% of transmitted volume (expressed in kind). Using the default 50/50 entry/exit split, the indicative flow-based charge would be 0.85% for both entries and exits.
- (95) According to the consultation document, the flow-based charge covers variable costs, such as consumption of natural gas, gas losses, gas balance differences (e.g. in measurement) and costs associated with CO<sub>2</sub> emissions. As long as these costs are reasonable and accurately calculated, the Agency does not consider the charge to be excessive.
- (96) However, the proposed flow-based charge does not meet the criteria set in Article 4(3) of the NC TAR. The consultation document show that historical data of variable costs as well as the ranges of specific consumption of all possible settings of compressor units are used to set the flow-based charge. The Agency recommends to base the calculation on forecasted or historical flows, or both, to allow network users to predict the possible evolution of the commodity-based charge. The Agency notes that the consultation document is incompliant due to the non-inclusion of this calculation.
- (97) The Agency further notices that Eustream intends to propose a discount mechanism that would decrease the flow-based charge for transmission to the domestic market. This is not in line with Article 4(3) of the NC TAR which states that the commodity-based transmission tariff should be set in such a way that it is the same for all entry points and the same for all exit points.

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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	No, they also include ranges of specific consumption of all possible settings of compressor units as a parameter. Also, before the start of the next tariff period Eustream will propose a discount mechanism that would decrease the flow-based charge for transmission to domestic market (domestic entry/exit points)
expressed in monetary terms or in kind	Yes, in kind

- (98) The CRRC has been set, based on the decision of ÚRSO No. 0001/2016/P-ST of 7 November 2016, for the provision of regulatory incentives for the project of the Polish-Slovak Interconnection. According to the approved methodology and based on the price decision of ÚRSO No. 0100/2017/P of 17 August 2017, the CRRC is used as a fee at the level of 0.08 EUR/MWh for increasing the level of security of supply. The fee is set in the price of the year 2016 and is escalated, using the HICP inflation index of EU countries published by Eurostat.
- (99) Although not included in the consultation documents, English translations of the two ÚRSO decisions mentioned in the consultation document were later provided to the Agency by Eustream, which enabled the Agency's assessment of the CRRC.
- (100) The yearly amount of the provided incentives is determined as the difference between the average of total yearly planned revenues of the project and the actual yearly incomes coming from transmission capacities sale at the planned IP Vyrava at the Polish-Slovak border.
- (101) The proposed CRRC does not meet the criteria set in Article 4(3) of the NC TAR. The Agency understands that the CRRC is to be applied at domestic points if capacity bookings at the Vyrava IP (the one related to the Polish-Slovak interconnector) and the associated revenue fall below a certain threshold<sup>20</sup>. The TSO is concerned, as it will not recover the cost of this pipeline if insufficient capacity is booked. The Agency understands Eustream's concerns and does not question the importance of the project nor the need for incentives, but points out that this is not in line with the objective of the CRRC based on the NC TAR and that Eustream needs to show how the criteria in Article 4(3) of the NC TAR are met in order to justify the use of the CRRC in this way.
- (102) The Agency recommends that the NRA include an assessment of the commodity-based transmission tariffs in its final decision and determines if they meet the criteria set out in Article 4(3) of the NC TAR. If the criteria are not met, the commodity-based transmission tariffs should be considered invalid or the NRA should propose changes that will lead to the tariffs meeting the criteria set out in Article 4(3) of the NC TAR in a clear and transparent manner.

<sup>20</sup> Decision of ÚRSO No. 0001/2016/P-ST from 7th November 2016.

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Table 3 Criteria Article 4(3b)

Criteria	Y/N?
Levied for the purpose of managing revenue under- and over-recovery	No, it is stated that the revenue recovery charge is used as the fee for increasing security of supply
Calculated on the basis of forecasted or historical capacity allocations and flows, or both	No, based on the methodology and price decision of URSO
Applied at points other than interconnection points	Yes
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	Unable to assess based on the URSO decision, which is unclear.

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

- (103) 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) are met.
- (104) As the consultation document does not propose to make use of non-transmission tariffs, this analysis is not relevant.

## 5. Other comments

- (105) Although the consultation document states that there are no non-transmission services offered, in the consultation responses two of the responders question the Slovak VTP title transfer service and its pricing. Eustream clarified to the Agency during bilateral exchanges that this service would no longer be offered by the TSO in the 2022-2026 regulatory period.
- (106) Should the service be offered by the TSO, the NRA should assess if the service qualifies as transmission service or non-transmission service following Article 4(1) of the NC TAR. If the service qualifies as transmission service:
- The revenue from this service shall be included in the transmission services revenue (Article 3(6) and 3(7)).
  - The (single) same RPM shall be applied to the transmission services revenue (Article 3(2)).
  - The application of the RPM shall provide a reference price (Article 6(2)).
  - The Agency stresses that the RPM showed important deficiencies, as outlined in Chapter 4. Given that the VTP title transfer fee plays an important role in capacity trading, the Agency recommends that improvements to the RPM take place in order to include the VTP fee in it.
- (107) If the NRA decided to consider this service as non-transmission service, the revenue would have to be recovered according to Article 4(4) of the NC TAR.



## Annex 1: Legal framework

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.*

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:*

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- (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.*

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;*

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- (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.*

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.*

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;*

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*(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.*

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
<b>ACER</b>	Agency for the Cooperation of Energy Regulators
<b>ENTSOG</b>	European Network of Transmission System Operators for Gas
<b>NRA</b>	National Regulatory Authority
<b>TSO</b>	Transmission System Operator
<b>EC</b>	European Commission
<b>EU</b>	European Union
<b>MS</b>	Member State
<b>NC TAR</b>	Network code on harmonised transmission tariff structures for gas
<b>IP</b>	Interconnection Point
<b>VIP</b>	Virtual Interconnection Point
<b>RPM</b>	Reference Price Methodology
<b>CWD</b>	Capacity Weighted Distance
<b>CAA</b>	Cost Allocation Assessment
<b>RAB</b>	Regulated Asset Base
<b>OPEX</b>	Operational Expenditures
<b>CAPEX</b>	Capital Expenditures



**Publishing date:** 06/03/2019

**Document title:** Agency report - Analysis of the consultation document for Slovakia

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