



Publishing date: 24/05/2019

Document title: Agency Report - analysis of the consultation document for BBL

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Agency Report

Analysis of the Consultation Document on the Gas Transmission Tariff Structure for BBL Company

NRA: Office of Gas and Electricity Markets
TSO: BBL Company

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22 May 2019

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1. ACER conclusion

- (1) The BBL Company ('BBL') is an interconnector between Great Britain and the Netherlands. The proposed reference price methodology ('RPM'), and more broadly the consultation carried out according to Article 26 of the Network Code on Harmonised Transmission Tariff Structures for Gas ('NC TAR') by BBL, is based on the derogation granted by the Office of Gas and Electricity Markets ('Ofgem') to BBL from certain articles of the NC TAR that are detailed in Chapter 3 of this Report. This derogation is based on the view provided by Ofgem according to which, BBL is a merchant asset that competes with alternative providers of flexible gas supply, and it exempts BBL from transparency and publication requirements, the calculation of the cost allocation assessment ('CAA'), information requirements related to the regulated asset base and the comparison of the proposed RPM with the capacity weighted distance methodology ('CWD'). Given that Gasunie Transport Services ('GTS') and BBL integrated their transport systems in one TTF Trading Zone as of 1 January 2018 removing the Julianadorp IP, BBL only has one interconnection point ('IP') on the border with UK. As a result, the derogation to BBL is only provided by Ofgem.
- (2) The proposed RPM is not based on the allocation of the allowed or target revenue on the basis of specific cost drivers (e.g. capacity and distance), as BBL has no allowed or target revenue. Instead, tariffs are derived using a number of factors which include investment costs, competitive market circumstances and discounts to encourage network users to book annual capacity products on a long-term basis. BBL proposed commodity-based tariffs, and no non-transmission tariffs.
- (3) The Agency, after having completed the analysis of the consultation document pursuant to Article 27(2) of the NC TAR, concludes that:
 - Overall, the information referred to in Article 26(1) of the NC TAR and not related to the aspects to which the derogation applies, has been published. The consultation document lists principles, but does not provide specific information on the tariff structure, nor the reference prices.
 - Based on the information provided in the consultation document the Agency cannot conclude that the proposed RPM is compliant with the requirements related to cost-reflectivity, cross-subsidisation, non-discrimination and cross-border trade set out in Article 7 of the NC TAR. On these points, BBL claims compliance, but does not provide evidence to demonstrate it. The proposed RPM is compliant with the principle related to volume risk laid out in Article 7(d) of the NC TAR. Finally, BBL is derogated from the implementation of Article 7(a) of the NC TAR referring to the principle of transparency.
 - The requirements laid out under Article 4(3) of the NC TAR for setting commodity-based tariffs are met.
 - The compliance analysis pursuant to Articles 27(2)(b)(3) of the NC TAR does not apply as no non-transmission charges are proposed.
- (4) The Agency recommends that Ofgem include the following elements in the motivated decision referred to in Article 27(4) of NC TAR:
 - Specify the time period for which the proposed RPM and parameters are set and the conditions under which firm payable prices are applicable to network users.
 - Assess the compliance of the discount applied to encourage network users to book annual capacity products on a long-term basis against the NC TAR and the derogation granted to BBL.

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- In particular, assess the compliance of the discount with the requirements to ensure non-discrimination and non-distortion of cross-border trade.
- Assess the compliance of the proposed fixed payable price approach against the requirements of the NC TAR and the derogation granted to BBL. In particular, assess the compliance of fixed payable prices with the requirements to ensure non-discrimination and non-distortion of cross-border trade.
 - Clarify that the proposed commodity-based tariff is a flow-based charge.
- (5) The Agency recommends that ACM provide information in English on the inter-TSO compensation mechanism ('ITC') between BBL and GTS, at the same level of detail as in Dutch. The ITC should clarify that it compensates for the allowed revenues associated with the elimination of the exit point at Julianadorp in the GTS network. The Agency remarks that, should the Julianadorp IP be reintroduced as a bookable point, an exemption for BBL from the application of the NC TAR would also require a derogation from ACM.
- (6) Finally, this Report on the compliance of the RPM consultation takes as a working assumption that the derogation granted by Ofgem to BBL is valid. At the same time, the Agency notes that the derogation itself is subject to a review by the Agency or the European Commission, based on Article 37(5) of the NC TAR. Such review will take into account the proposed RPM and could eventually impact the derogated articles on which the BBL consultation is based. This assessment will be completed together for the derogations applicable to Interconnector UK ('IUK') and BBL.

2. Introduction

- (7) Commission Regulation (EU) 2017/460 of 16 March 2017 establishes a Network Code on Harmonised Transmission Tariff Structures for Gas ('NC TAR').
- (8) Article 27 of the NC TAR requires the Agency to analyse the consultation document on the reference price methodologies for all entry-exit systems¹. This Report presents the analysis of the Agency for the transmission system of BBL.
- (9) On 27 February 2019, the Agency received the consultation document submitted by BBL. The consultation was launched on 21 February 2019 and remained open until 25 March 2019.
- (10) Pursuant to Article 26 of the NC TAR, the initial public consultation must run for two months. Under a derogated framework, BBL ran the public consultation for one month. While under the general context of the NC TAR, the Agency has four months to assess the public consultation, in the context of the derogation granted to BBL, the Agency had only three months to complete its analysis.
- (11) On 3 April 2019, BBL notified the Agency that no responses were received during the consultation process. Within five months following the end of the final consultation, and pursuant to Article 27(4) of the NC TAR, Ofgem shall take and publish a motivated decision on all the items set out in Article 26(1).
- (12) The Agency remarks that, according to Article 27(5) of the NC TAR, the consultation process, including the publication of the motivated decision by Ofgem and the calculation and publication of tariffs on the basis of this decision, shall be concluded no later than 31 May 2019.

Reading guide

- (13) Chapter 3 describes the derogation from a number of articles of the NC TAR granted by Ofgem to BBL. Chapter 4 presents an analysis on completeness, namely whether all the information in Article 26(1) has been published. Chapter 5 focusses on compliance, namely whether the RPM complies with the requirements set out in Article 7, whether the criteria for setting commodity-based transmission tariffs as set out in Article 4(3) are met, and whether the criteria for setting non-transmission tariffs as set out in Article 4(4) are met. This document contains two annexes, respectively the legal framework and a list of abbreviations.

3. Derogation granted to BBL

- (14) Article 37 of the NC TAR allows NRAs to grant a derogation from Articles of the NC TAR to an interconnector that has benefited from an exemption from Articles 41(6), (8) and (10) of Directive 2009/73/EC² or from a similar exemption. BBL received an exemption from third party access under

¹ With the exception of Article 10(2)(b), when different RPMs may be applied by the TSOs within an entry-exit zone.

² Article 41(6) refers the NRA responsibility for fixing or approving the methodologies (or the terms and conditions) used to calculate tariffs. Article 41(8) refers the NRA responsibility to set tariffs that grant incentives efficiency, market integration and security of supply. Article 41(10) provides NRAs the authority to require transmission, storage, LNG and distribution operators to modify, if necessary, the terms and conditions, including tariffs and methodologies, to ensure that they are proportionate and applied in a non-discriminatory manner.

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Article 22 of Directive 2003/55/EC shortly after it was commissioned³. When Directive 2009/73/EC entered into force, it repealed Directive 2003/55/EC. Given that BBL came into operation prior to the Directive 2009/73/EC, Ofgem considers that the exemption BBL received is similar to the exemption set out in Articles 41(6), (8) and (10) of Directive 2009/73/EC and that BBL is therefore eligible to apply for a derogation under Article 37 of the NC TAR⁴.

- (15) On 4 October 2018, BBL submitted an application for derogation from a number of Articles of the NC TAR to Ofgem for decision, pursuant to Article 37 of the NC TAR.
- (16) On 18 January 2019, pursuant to Article 37(4) of the NC TAR, Ofgem published a Decision granting BBL a derogation from certain Articles of the NC TAR⁵. This decision is based on the view provided by Ofgem according to which BBL is a merchant asset that competes with alternative providers of flexible gas supply⁶. Given the competitive environment in which BBL operates, Ofgem considers that the application of some Articles of the NC TAR restricts BBL's tariff setting flexibility and would force BBL to reveal commercially sensitive information that would distort competition with other infrastructure operators that offer services of a similar nature. In addition, Ofgem argues that some Articles in NC TAR that relate to TSOs with a regulated asset base, captive customers and multiple network points are not implementable, given the specific nature of BBL, as a merchant interconnector.
- (17) Ofgem granted BBL a derogation from the following Articles:
- Articles that restrict tariff flexibility and BBL's ability to compete in the market: Articles 12(3), 13(1), 13(3), 15, 28, 29(a), 29(b)(i), 31(2)(a).
 - Articles that require the publication of information that is commercially sensitive for BBL as a merchant interconnector: Articles 7(a), 26(1)(a)(iii), 26(2), 30(1)(b)(ii), 30.1(b)(iii)(2)-(5).
 - Articles that relate to TSOs with a regulated asset base, captive customers and multiple network points and are therefore not relevant to BBL as a merchant interconnector: Articles 5, 26(1)(a)(vi), 30(1)(a)(ii)-(iii), 30(1)(b)(i)-(ii), 30(1)(b)(iii)(1), 30(1)(b)(iv)-(v) and 30(2).
- (18) Table 1 below provides a list of the Articles included in the derogation together with the reference to Article 37 of the NC TAR providing the basis on which the derogation is provided.

Table 1: Articles of the NC TAR from which Ofgem provided a derogation to BBL. Source: Ofgem Authority decision to derogate BBL Company (BBL) from certain Article of Commission Regulation (EU) 2017/460

NC TAR Chapter	Article title	Article reference	Reference to Article 37
I - General Provisions	Cost Allocation Assessments	Article 5	Article 37(e)
II – Reference Price Methodologies	Choice of a reference Price Methodology	Article 7(a)	Article 37(d)
III – Reserve Prices	General Provisions	Article 12(3)	Article 37(d)

³ See: <https://www.ofgem.gov.uk/publications-and-updates/amendment-exemption-order-issued-bbl-company-under-condition-12-gas-interconnector-licence-granted-bbl-company-respect-balgzand-bacton-line>

⁴ Ofgem Authority decision to derogate BBL Company from certain Articles of the Commission Regulation (EU) 2017/460, page 4.

⁵ See https://www.ofgem.gov.uk/system/files/docs/2019/01/190118_ofgem_bbl_derogation_decision.pdf

⁶ Ofgem Authority decision to derogate BBL Company from certain Articles of the Commission Regulation (EU) 2017/460, page 7.

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	Level of Multipliers and Seasonality factors	Articles 13(1), 13(3) and 15	Article 37(d)
VII – Consultation Requirements	Periodic Consultation	Article 26(1)(a)(iii), Article 26(1)(a)(vi) Article 26(2)	Article 37(d) Article 37(e) Article 37(d)
	Consultation on discounts, multipliers and seasonal factors	Article 28	Article 37(d)
VIII – Publication Requirements	Information to be published before the annual yearly capacity auction	Articles 29(a) and (b)(i)	Article 37(d)
	Information to be published before the tariff period	Article 30.1(a)(ii)-(iii), Articles 30.1(b)(i), 30.1(b)(ii) Article 30.1(b)(iii)(1) Article 30.1(b)(iii)(2)-(5) Article 30.1(b)(iv)-(v) Article 30(2)	Article 37(e) Article 37(e) Article 37(e) Article 37(d) Article 37(e) Article 37(e)
	Form of Publication	Article 31(2)(a)	Article 37(d)

- (19) The Agency notes that the analysis contained in this Report refers to BBL’s consultation documents as they have been published. These are based on Article 26 of the NC TAR and take into account the derogation provided to BBL by Ofgem. This Report does not assess the justifications provided for the derogation granted to BBL. This derogation is subject to a review that the Agency or the European Commission can carry out pursuant to Article 37(5) of the NC TAR. The review could potentially impact the derogated Articles on which the BBL consultation is based. This assessment will be completed together for the derogations applicable to IUK and BBL.

4. Completeness

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

- (20) Article 27(2)(a) of the NC TAR requires the Agency to analyse whether all the information items referred to in Article 26(1) of the NC TAR have been published.
- (21) Article 26(1) of the NC TAR requires that the consultation document be published in English, to the extent possible. The Agency confirms that the consultation document was published in English.
- (22) The Agency notes that the consultation document refers to the ‘Charging Methodology’ document⁷ which contains the details of the RPM (referred to as ‘Charging Methodology’) and was part of an intermediate consultation in 2018. The Agency considers that both documents, the consultation document fulfilling the requirement under Article 26 of the NC TAR and the ‘Charging Methodology’ document are part of the final consultation that is analysed in this Report. In a bilateral contact with BBL⁸, the Agency understood that BBL intends to consult both documents together in future consultations pursuant to Article 26 of the NC TAR. In addition to these two documents, BBL provided a filled-in version of the tariff template⁹ elaborated by the Agency for the consultation under Article 26 of the NC TAR.

⁷ See: [https://www.bblcompany.com/about-bbl/consultations-implementation-information/\\$1433/\\$1438](https://www.bblcompany.com/about-bbl/consultations-implementation-information/$1433/$1438)

⁸ Bilateral call on 14 May 2018.

⁹ The tariff template elaborated by the Agency for the consultation on Article 26 can be found here: [http://www.acer.europa.eu/Official_documents/Public_consultations/Pages/ACER-Consultation-Template.-Tariff-NC-Article-26\(5\).aspx](http://www.acer.europa.eu/Official_documents/Public_consultations/Pages/ACER-Consultation-Template.-Tariff-NC-Article-26(5).aspx)

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- (23) Overall, the information referred to in Article 26(1) of the NC TAR which was not subject to derogation has been published, as detailed in Table 2 below. Consistent with the derogation, the information required under the derogated Articles is not made part of the consultation. BBL was granted a derogation from Articles 26(1)(a)(iii), 26(1)(a)(vi), as well as from the following Articles over which Article 26(1) sets a publication requirement: Article 5, 7a, 26(2), 30(1)(a)(ii), 30(1)(a)(iii), and 30(1)(b)(i), 30(1)(b)(i)(iv)-(v) and 30(2).

Table 2: 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: <ul style="list-style-type: none"> 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 Derogation from Article 30(1)(a)(ii) on forecasted technical capacity, and Article 30(1)(a)(iii) on the quantity and the direction of gas flows
26(1)(a)(ii)	the value of the proposed adjustments for capacity-based transmission tariffs pursuant to Article 9	Not applicable (discounts are not proposed)
26(1)(a)(iii)	the indicative reference prices subject to consultation	Derogation from Article 26(1)(a)(iii)
26(1)(a)(iv)	the results, the components and the details of these components for the cost allocation assessments set out in Article 5	Derogation from Article 5
26(1)(a)(v)	the assessment of the proposed reference price methodology in accordance with Article 7	Partial. The description is not sufficient for the Agency to provide a complete assessment on Articles that are not derogated: Articles 7(b), 7(c), 7(e). Derogation from Article 7(a)
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)	Derogation from Article 26(1)(a)(vi)
26(1)(b)	the indicative information set out in Article 30(1)(b)(i), (iv), (v)	Derogation from Article 30(1)(b)(i) (iv-v)
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 <ul style="list-style-type: none"> 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. Article 26(i)(c)(i)(2) is not applicable as BBL has no allowed or target revenue.
26(1)(c)(ii) 26(1)(c)(ii)(1) 26(1)(c)(ii)(2) 26(1)(c)(ii)(3) 26(1)(c)(ii)(4)	where non-transmission services provided to network users are proposed: <ul style="list-style-type: none"> the non-transmission service tariff methodology the share of the allowed or target revenue forecasted to be recovered from such tariffs 	Not applicable (non-transmission tariffs are not proposed)

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	<ul style="list-style-type: none"> 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);	Derogation from Article 30(2)
26(1)(e) 26(1)(e)(i) 26(1)(e)(ii) 26(1)(e)(iii) 26(1)(e)(iv)	<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"> the proposed index; the proposed calculation and how the revenue derived from the risk premium is used at which interconnection point(s) and for which tariff period(s) such approach is proposed the process of offering capacity at an interconnection point where both fixed and floating payable price approaches referred to in Article 24 are proposed 	Yes

5. Compliance

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

- (24) 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 TAR¹⁰: transparency, cost-reflectivity, non-discrimination, cross-subsidisation and cross-border trade. This article refers to Article 13 of Regulation (EC) No 715/2009 and lists a number of requirements to be taken into account when setting the RPM. As these overlap, in the remainder of this Chapter, the Agency will take a closer look at the five elements listed in Article 7 of the NC TAR.
- (25) The Agency notes that the description of the methodology refers to the basic components and to the overarching principles used for the calculation of reference prices. BBL claims compliance with the requirements in Article 7 of the NC TAR, but does not provide evidence to demonstrate such compliance. Given the limited information provided in the consultation, the Agency cannot conclude on the compliance of the proposed RPM with these requirements. This approach is consistent with the derogation from the application of various Articles of the NC TAR. At the same time, the Agency notes that the compliance with certain Articles of the NC TAR, which are not derogated, is not fully assessed. This is particularly relevant for Article 7(b) on cost-reflectivity, Article 7(c) on cross-subsidisation and discrimination, and Article 7(e) on cross-border trade.

5.1.1 Proposed RPM

- (26) The BBL is an interconnector between Great Britain and the Netherlands. The IP connecting the BBL to the Netherlands (Julianadorp IP) was eliminated in 2018 as a result of the market integration

¹⁰ The principle of cost-reflectivity is related to the principles of cross-subsidisation and non-distortion of cross-border trade. Tariffs that are fully cost-reflective do not result in any form of cross-subsidisation (and hence they do not distort cross-border trade), as they charge users for the exact costs they cause to the system. Following this reasoning, tariffs that are less cost-reflective may result in cross-subsidisation between users.

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between BBL and GTS. Based on information provided by BBL in a bilateral call, the Agency has understood that an ITC is planned to compensate the revenues associated to the exit point in the Netherlands' network at Julianadorp IP, with revenues collected by BBL at the Bacton IP. This is confirmed in the Decision of 10 December 2018 (reference ACM/UIT/5035770)¹¹ of Authority for Consumers and Markets ('ACM'), which states that: *'the Julianadorp entry and exit point will not be returning for the time being. In the agreement reached on 10 December 2018, commitments were made about an ITC payable by BBL to the gas transmission system operator to compensate network users'*. The Agency notes that the consultation document does not provide any information on this aspect, therefore the Agency recommends ACM to provide this information. As a result of the elimination of the Julianadorp IP, the BBL interconnector has only one IP from which revenues are collected, the Bacton IP on the UK border. The Agency remarks that, should the Julianadorp IP be reintroduced, an exemption for BBL from the application the NC TAR at this point would require a derogation by ACM similar to the current derogation granted by Ofgem.

- (27) The BBL interconnector provides services to flow gas physically from the Netherlands to Great Britain. From 1 July 2019 onwards, the interconnector will allow flowing gas in the reverse direction as well. The proposed RPM is applicable to both forward flow and reverse flow capacity products. For each of these products, the tariffs and underlying values are calculated separately.
- (28) The proposed RPM is not based on the allocation of allowed or target revenue on the basis of specific cost drivers (e.g. capacity and distance), as BBL has no allowed or target revenue¹². Instead, tariffs are calculated using a number of factors¹³. Based on the proposed RPM, BBL is able to derive charges for the various products sold and is able to adjust tariffs as appropriate to reflect the competitive situation in the market. The factors used are discussed separately below.
- (29) First, the RPM is based on a fixed fee. This fee is composed of four factors calculated separately for both forward and reverse flow capacity products. These factors are:
- A base price, which is based on the original fixed fee derived using the underlying business case. It is expressed at 2006 price levels and is subject to annual indexation per gas year.
 - A factor used to reflect competitive market circumstances.
 - A discount that can be applied to capacity contracted in years beyond the year for which tariffs are offered (Y+2 to Y+15). This discount is used to encourage network users to book longer-term annual capacity products.
 - A risk premium related to the offering of fixed payable prices.
- (30) Second, the RPM includes an indexation to inflation (referred to in the previous paragraph). The reserve price for available capacity is subject to annual indexation, which is calculated based on the consumer price index published by the Dutch statistics office CBS (Centraal Bureau voor de Statistiek). The applicable annual indexation to the reserve price is 25% of the CBS indexation.

¹¹ See: <https://www.acm.nl/sites/default/files/documents/2019-02/code-amendment-decision-for-implementation-of-nc-tar.pdf>.

Additional information from ACM can be found in the following link (see page 4), stating that the ITC will be implemented in 2020 while for 2021 the IP Julianadorp will be reinstalled as a bookable point: <https://www.acm.nl/sites/default/files/documents/2018-12/overeenkomst-nc-tar-besluit.pdf>

¹² Ofgem Authority decision to derogate BBL Company from certain Articles of the Commission Regulation (EU) 2017/460, page 7.

¹³ See the 'Charging Methodology' document.

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- (31) Third, the resulting calculation is adjusted using seasonal factors and multipliers. These factors fall outside the scope of the RPM and of the consultation under Article 26 of the NC TAR.
- (32) Forth, a commodity-based tariff, which is analysed in Section 5.2 of this Report.
- (33) The Agency notes that, based on the information provided in the consultation document, the Agency cannot fully assess the compliance of these elements with the requirements laid out in Article 7 of the NC TAR.

5.1.2 Transparency

- (34) The derogation granted to BBL includes Article 7(a). Article 7(a) of the NC TAR requires that the RPM aims at enabling network users to reproduce the calculation of reference prices and their accurate forecast.
- (35) BBL provides on its website the parameters to reproduce the calculation of reference prices¹⁴. At the same time, BBL states in the tariff template submitted to the Agency that an accurate forecast of tariffs is not possible. This is consistent with the derogation provided to BBL.
- (36) The Agency notes that the period for which the proposed tariff conditions are applicable, including the commodity-based tariff, is not detailed in the consultation document, in the 'Charging Methodology' document or in the consultation template submitted by BBL¹⁵. In the view of the Agency, such uncertainty undermines the possibility for network users accurately to forecast the reference prices that will apply to the available capacities. The Agency recommends Ofgem to specify, in its motivated decision, the time period for which the proposed RPM and parameters are set and the conditions under which firm payable prices are applicable to network users.

5.1.3 Cost-reflectivity

- (37) 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.
- (38) In the consultation document, BBL states that reference prices are calculated based on a base price component¹⁶. According to BBL, this component would *take into account* the investment costs and actual costs incurred as required by Article 7(b) of the NC TAR¹⁷. On top of this base component, a factor is applied to adjust tariffs to market changes.
- (39) The interactions between these two components is not clearly explained in the consultation document. The Agency notes that the application of the cost base component factor can be compliant with the requirement of cost-reflectivity, but that the addition of the market premium is not

¹⁴ See: <https://www.bblcompany.com/services/tariffs>

¹⁵ The only reference provided refers to the application of the commodity-based tariff between 1 December 2017 to 30 September 2019.

¹⁶ See paragraph (29) of this Report.

¹⁷ Page 4 of the consultation document.

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justified on the basis of the provisions of the NC TAR, nor described with sufficient detail in the consultation document for the Agency to assess it against the requirement laid out in of Article 7(b) of the NC TAR. At the same time, the Agency notes that the application of a market premium is consistent with the logic expressed in the derogation, according to which the interconnector has no regulatory asset base and operates in a market environment.

- (40) Based on this reasoning, and with the information provided in the consultation document, the Agency cannot conclude that the RPM is compliant with the principle of cost-reflectivity as required by Article 7(b) of the NC TAR. The Agency notes that Article 7(b) of the NC TAR is not part of the derogation granted to BBL.

5.1.4 Cross-subsidisation and non-discrimination

- (41) Article 7(c) of the NC TAR requires that the RPM ensure non-discrimination and prevent undue cross-subsidisation. One instrument to evaluate this is the CAA (Article 5 of the NC TAR).
- (42) Consistent with the derogation granted to BBL, which includes Article 5 of the NC TAR, the consultation document does not provide the result and the components of the CAA. At the same time, the Agency notes that Article 7(c) of the NC TAR is not part of the derogation granted to BBL.
- (43) The consultation document states, but does not demonstrate, that the RPM ensures non-discrimination and prevents undue cross-subsidisation. For this reason, the Agency cannot reach a conclusion regarding the compliance of the RPM with these aspects.
- (44) At the same time, on the basis of the information provided in the consultation document, the Agency remarks that:
- The consultation document proposes a discount to encourage network users to book annual capacity products on a long-term basis¹⁸. Such instrument is not foreseen in the NC TAR. The Agency recommends that, in its motivated decision pursuant to Article 27(4), Ofgem assess this factor against the requirement laid out in Article 7(c) of the NC TAR of ensuring non-discrimination and against the criteria laid down in the derogation granted to BBL.
 - BBL proposes to apply fixed payable prices¹⁹. The Agency remarks that this approach can lead to multiple tariffs being applied for the same capacity product without any clear criteria being defined in the consultation document as to how such optionality impacts the requirements set in Article 7 of the NC TAR. The Agency recommends Ofgem to clarify in the motivated decision how the proposed approach is applied and how it is compliant with the requirement laid out in Article 7(c) of the NC TAR of ensuring non-discrimination and with the criteria laid down in the derogation granted to BBL.

5.1.5 Volume risk

- (45) 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

¹⁸ See paragraph (29) of this Report. BBL clarified in a bilateral call on 14 May 2018 that this discount, although offered, was currently not being used. Its application therefore seems to be marginal or inexistent at the time of publishing this Report.

¹⁹ Page 9 of the consultation document

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entry-exit system. The consultation document explains that this aspect is not relevant in the context of BBL, as BBL has no captive network users²⁰.

5.1.6 Cross-border trade

- (46) Article 7(e) of the NC TAR requires that the RPM ensure that the resulting reference prices do not distort cross-border trade, hence that the RPM complies with the principles of cost-reflectivity, non-discrimination and preventing undue cross-subsidisation²¹.
- (47) BBL argues that the fact that BBL has no captive users and is operating in a competitive environment is *per se* a guarantee that BBL does not distort cross-border flows²². In view of the Agency, this argument could be convincing only in the case of near perfect competition between BBL and competing market players. However, as it is presented, the reasoning is neither conclusive nor based on factual evidence. The Agency also cannot conclude that reference prices are compliant with the principle of non-distortion of cross-border trade.
- (48) At the same time, the Agency notes that, following paragraph (44) above, the discounts to encourage network users to book annual capacity products on a long-term basis and the proposed fixed payable price approach, could potentially distort cross-border trade. The Agency recommends Ofgem to assess in the motivated decision the impact on cross-border trade of both adjustments, following the requirement laid out in Article 7(e) of the NC TAR.

5.1.7 Conclusion

- (49) Following the derogation granted by Ofgem, BBL is derogated from the application of Article 7(a) of the NC TAR.
- (50) Regarding Articles 7(b), 7(c) and 7(e) of the NC TAR, the consultation document claims compliance, but does not demonstrate it. Based on this, the Agency cannot reach a conclusion regarding these aspects of the RPM.
- (51) Regarding Article 7(d) of the NC TAR on the requirement related to volume risk, the proposed RPM is compliant with the NC TAR.
- (52) The Agency notes that the aspects relative to the RPM referred to in this analysis will be taken into account in the reasoned recommendation that the Agency can provide, on the basis of Article 37(5) of the NC TAR, on the derogation granted to BBL.

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

- (53) BBL proposes to apply commodity-based transmission tariffs. While the NC TAR foresees two different commodity-based tariffs, a flow-based charge and a complementary revenue recovery charge, the BBL consultation document does not clarify which of these two charges is proposed.

²⁰ Page 6 of the consultation document.

²¹ See footnote 6 above.

²² Page 6 of the consultation document.

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Nevertheless, given the description of the fee provided in the consultation document, covering the costs of flowing gas, the Agency assumes that this tariff is a flow-based charge.

- (54) The ‘Charging Methodology’ document describes that the fee is intended to recover ‘the energy costs relates to the electricity required to drive the compressors at Anna Paulowna and fuel gas to heat the gas at Bacton and is invoiced to shippers separately from the capacity invoice’²³. It is based on the electricity and gas prices (both expressed in €/MWh), and is applied at a single point of the network. The consultation document does not clarify whether the same fee is applied for forward flows (entry) and for physical reverse flows (exit). This aspect should be included in the motivated decision to be published by Ofgem pursuant to Article 27(4) of the NC TAR.
- (55) The Agency concludes that the criteria for setting commodity-based transmission tariffs as set out in Article 4(3) are met. These criteria are laid out in Table 3 below.

Table 3 Criteria for setting a flow-based charge pursuant to Article 4(3)(a)

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	Yes
set in such a way that it is the same at all entry points and the same at all exit points	Yes. A clarification is required explaining whether the same fee applied to entry and exit flows.
expressed in monetary terms or in kind	Yes

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

- (56) BBL proposes not to apply non-transmission tariffs. The criteria for setting non-transmission tariffs as set out in Article 4(4) of the NC TAR are therefore not applicable.

²³ Page 8 of the consultation document.

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
ACER, the Agency	Agency for the Cooperation of Energy Regulators
ACM	Autoriteit Consument & Markt
CAA	Cost Allocation Assessment
CWD	Capacity weighted distance methodology
ENTSOG	European Network of Transmission System Operators for Gas
EU	European Union
GTS	Gasunie Transport Services
IP	Interconnection point
ITC	Inter-TSO compensation mechanism
IUK	Interconnector (UK) Limited
NC TAR	Network code on harmonised transmission tariff structures for gas
NRA	National Regulatory Authority
Ofgem	Office of Gas and Electricity Markets
RPM	Reference Price Methodology
TSO	Transmission System Operator



Publishing date: 24/05/2019

Document title: Agency Report - analysis of the consultation document for BBL

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