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## **Agency for the Cooperation of Energy Regulators**

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EFET Gas Committee

19 May 2013

### **EFET Response to the ACER public consultation**

#### **on potential “FG rules for trading related to technical and operational provisions of network access services and system balancing (FG RfT)”**

#### **Identified topics and the need for harmonisation**

The European Federation of Energy Traders (EFET)<sup>1</sup> supports the initiative of ACER to engage in further work on the five topics identified in the consultation document, i.e. i) capacity products and terms and conditions of capacity contracts (limitations to free allocability and standardisation); ii) secondary capacity markets; iii) virtual trading point (VTP) design/access, and hub issues; iv) transparency rules; v) licensing requirements for market participants other than TSOs, as these areas are of key importance for ensuring efficient and non-discriminatory network access for cross-border trading.

Action is needed now to resolve some serious deficiencies that are being exposed as the new rules are being implemented. The lengthy and resource intensive process of creating a new Framework Guideline (FG) and Network Code (NC) is not the most efficient way of achieving the desired result. Most of the issues related to these topics would be better addressed by means of coordinated implementation of the existing network codes and an acceleration of the ongoing work by regulators, TSOs, exchanges and other actors. Greater co-operation between TSOs encouraged by NRAs, as detailed in the NCs, would also ensure that TSOs, auction platforms,

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<sup>1</sup> The European Federation of Energy Traders (EFET) promotes and facilitates European energy trading in open, transparent, sustainable and liquid wholesale markets, unhindered by national borders or other undue obstacles. We currently represent more than 100 energy trading companies, active in over 27 European countries. For more information, visit our website at [www.efet.org](http://www.efet.org).

exchanges and market participants work effectively towards meeting our common goals.

Non-binding measures, like guidelines for good practices, may be quicker to establish and would avoid the need to introduce a complex dedicated Network Code. Some amendments might be added to the Capacity Allocation Management network code immediately, followed by further improvements. Regular assessment of the need for additional EU regulations should be carried out after the EU Guidelines on Congestion Management (CMP) and the Network Codes on Capacity Allocation Management (CAM), Balancing, Interoperability and Tariffs are implemented with a view to amend them, if necessary.

If capacity is to be a tradable right, then there need to be standard capacity products that can be traded. Ideally there would be a single set of x-border firm capacity products, corresponding to the durations set out in CAM NC, and a single type of interruptible contract. This vision is some way off but indicates the direction in which decisions on capacity at interconnection points must go if the intention is to enable secondary trading of bundled capacity at Interconnection Points.

As a starting point, the main areas that would benefit from harmonisation across EU Member States include:

- Standard elements of all Terms & Conditions (specify which chapters, which articles, and in which order) to ensure the coherence and consistency of bundled capacity products;
- Identify fixed elements that can and must be the same in all EU markets;
- Establish whether there are elements that are required to be different, due to existing national legislation or technical market characteristics, including a description of the effect of these changes on EU market integration and a plan to address these differences where possible. In the first place, this list will function as a transparency tool, allowing market parties to quickly see the differences between TSOs' Terms & Conditions;
- Best practice: setting out what should all markets work towards;
- Shared dynamic network models that ensure that capacity calculated at interconnection points can be done jointly by the TSOs and can be checked by NRAs,
- EU definitions of 'firm' and 'interruptible' capacity, ensuring that market participants know what they are buying (an EU definition of 'conditional' capacity might also be useful until these products are phased out or replaced by interruptible contracts) ;
- Enable secondary trading (e.g. assignment, subletting, etc.) of capacity with shippers taking the risk in the sale of such capacity (i.e. a shipper can sell it for more than face value if the market is prepared to pay, but may also have to sell at a loss);
- Notification of tariff changes well in advance of the relevant gas year auctions.

In particular, we would like to highlight the need for alignment of the Terms & Conditions of capacity contracts of the TSOs involved in bundled capacity product auctions. Lack of harmonisation of the terms has historically led to a wide variety of Terms & Conditions and the way they are formulated. Standardisation of contractual Terms & Conditions would provide a more efficient basis for all cross-border capacity bookings. As alignment of Terms & Conditions is an effort that should have followed from the implementation of the CAM NC. The development of a Guideline for Good Practice, or an amendment to the CAM NC would be more suitable and efficient means to achieve this.

**Q1. Are the topics identified above the most relevant ones when it comes to Rules for Trading at EU level? Please specify which issue - if any - would merit further elaboration and rank the three most important Rules for Trading aspects**

Capacity trading is particularly important for the development of a well-functioning gas market. Traders need to be able to transport gas between regions (or hubs) and if they do not have available firm capacity (either directly from the system/TSO or from the secondary market via capacity trading between its holders) the market becomes less liquid.

The issue of capacity products and inconsistencies in the **terms and conditions of capacity contracts** (including limitations to free allocability and standardisation) need to be addressed. Obviously, the topics identified by ACER are essential for capacity trading. It is of fundamental importance for the system users to have available different capacity products to optimise their commodity transactions and to contribute to a well-functioning market through proper secondary capacity trading.

To this end, the existence of a **virtual trading point (VTP)** without access restrictions is of particular importance. If a well-designed virtual trading point is established, the gas title transfer is facilitated and therefore, market trading is ensured. In view of the lack of an official EU definition of a VTP, a general description of the necessary steps to implement a VTP and the basic rules of its efficient operation would constitute an important roadmap for each entry-exit system, regardless whether it has already established a VTP or not. Of course, **transparency rules** (by making sufficient capacity-related information available and providing suitable trading platforms) and additional licensing requirements for market participation have major impact on capacity trading, as they facilitate it.

### Capacity products and terms and conditions of capacity contracts

**Q2: Do you agree that the key features of capacity products (besides its location, its direction and its duration) are as follows:**

- **Firmness: unconditional firm / conditional firm (e.g. depending on temperatures) / interruptible**
- **Allocability: free allocability / restricted allocability to designated points / restricted to designated points but combined with interruptible free allocability to all points including VTP**
- **Tariff relations between different capacity products Please rank the most important aspects of capacity products for your business. If there**

**are other aspects you find more important, please name them and explain why.**

The usability of capacity – firmness or alternatively reliable predictability of interruptions – ranks first among the features of capacity products to be taken account on equal footing with the tariff level itself and the predictability of the tariff level and the timing of its setting.

In a context of increased volatility, tariffs stability and relatively low entry tariffs remain essential to attract new volumes to the market.

Moving forward towards the offer of within day products on PRISMA could further contribute to improve the trading opportunities, as would avoiding unnecessary time constraints for capacity booking.

Finally, we note that the KEMA study on entry-exit systems has identified several best practices and barriers in the implementation of entry-exit systems. We suggest that ACER and ENTSOG undertake a coordinated effort, together with stakeholders, to remove these barriers and implement best practices across the EU with regard to the scope of EU codes implementation.

A provisional list of the material terms and conditions that could affect the value of ostensibly the same capacity products when they are bundled together was sent to ACER last year and is referenced below.<sup>2</sup>

**Q3: Do you think that certain user categories (e.g. power plants, household suppliers, traders, gas producers, storage users etc.) have specific requirements/needs regarding capacity products? If so, which?**

Certain user categories to some extent will always have specific requirements / needs, however, to ensure all network users are able to compete on a level playing field, there should be equal rights to capacity for all market participants.

The possibility to obtain short term capacity in order to better profile capacity booking and contribute to cross-border trading, hub liquidity and price convergence should all be given appropriate consideration. This should happen without jeopardizing access to long-term capacity if that is necessary to underpin specific new investment.

Equally, access to firm capacity without restrictions should be offered to the largest extent possible.

**Q4: Do you have experience with different levels of product firmness and allocation restrictions (i.e. different capacity designs<sup>10</sup>)? Please provide examples.**

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<sup>2</sup> EFET Reaction to ACER on the development of EU rules for capacity trading, EFET Gas Committee, 13 November 2013.

A number of cases exist in Europe and the related inconsistencies cause problems in particular with respect to bundled capacity where lack of harmonisation in capacity calculation, level of firmness and nomination procedures ultimately results in a suboptimal outcome.<sup>3</sup> These problems would multiply if they were not resolved before capacity at all IPs is sold only as bundled products.

**Q5: Are different types of product features (in terms of firmness and freedom of allocation) barriers for cross-border trading? If yes, please provide an example of such a barrier. If yes, do you think that a set of “standard capacity products” in terms of quality (e.g. firmness rules, allocability) enshrined in a network code would provide a solution? Do you believe that the benefit of implementing such a solution outweighs the costs? Could you provide examples of such solutions?**

Yes, real problems do exist and increased difficulties are expected. Ideally the solutions to these problems should be found in appropriate and coordinated implementation of the CAM NC and the CMP Guidelines but currently there does not appear to be progress by TSOs to address this. Focus should be on ensuring good implementation. This might mean that an amendment is needed urgently to ensure that TSOs take early action to address the issues. This would be preferable to the lengthy process of delivering a new network code.

A set of ‘standard capacity products’ in terms of quality and all other terms that affect the degree of firmness might result in a reduction in the amount of available ‘firm’ capacity at some locations. The physical situation, however, will not have changed. If capacity is sold as a genuine firm product, this would be an overall improvement, particularly given the current and expected overcapacity in the market under the current arrangements. Firm capacity rights are essential for efficient access to VTPs.

**Q6: In your view, is the way capacity is allocated (primary market) or traded (secondary market) expected to create any problem or barrier to gas wholesale trading after the full implementation of the NC CAM? (Please differentiate in your answer between IPs covered by NC CAM11 and those outside its scope, e.g. LNG, storage)? If not, what outstanding barriers remain after NC CAM implementation? Please provide specific cases and examples, if possible.**

Problems remain with respect to the need to enter into two separate transportation agreements in the case of bundled products and to the actual use of bundled capacity, e.g. provisions on single nomination are vague and fail to identify and assign clear responsibilities for nominating and matching. Once longer-term capacity is sold as bundled products the different definitions of key terms and different approaches to dispute resolution increase risks and complexities in the event of a shortfall in capacity by either TSO.

Our members also report problems in accessing short term capacity, to be able to react to price changes, both in Italy and Spain.

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<sup>3</sup> EFET Capacity Group’s paper expected soon.

This said, we believe the guidelines and network codes on CMP, CAM, Gas Balancing, Interoperability and Tariffs ought to provide all the tools needed for removing any outstanding barriers. However the actual content of the tariff NC has yet to be agreed and the early implementation of CAM has not addressed some key issues. Better coordination by TSOs is needed to facilitate access to capacity and hence enable efficient wholesale trading across borders.

**Q7: Do non-harmonised contract definitions or terms between neighbouring entry-exit zones limit cross border trade? If yes, please provide examples. Do you think that equal contractual definitions of product characteristics (in terms of firmness or freedom of allocation) can be achieved by compatible contract terms alone (product description along certain parameters) or can this only be achieved by a single standard contract established at EU level?**

Yes, non-standard terms increase risk, add complexity and increase costs for secondary trading. Whilst moving quickly to a single standard contract might not necessarily be the most economically efficient path, a consistent approach to a suite of capacity products would provide the flexibility necessary to accommodate national specificities and ensure that shippers are able to trade capacity and to use what they have paid for. No situation should occur where the constraints on one TSO system undermine the features of the product that is made available by the adjacent TSO. Imposing a single standard contract as the worst of both TSO terms and conditions would be unacceptable and is not required or desirable. A consistent approach between TSOs to ensure that the best offer of firm x-border capacity is made to market participants using a suite of standardise products would be a good way forward.

**Q7a: Considering the variety of private law regimes across EU, do you believe a single standard contract established at EU level is feasible? If yes, do you believe that the benefit of such standard contract established at EU level outweighs the costs of its implementation?**

The main difficulty with the practical implementation of a standard contract is not variations in national law, but the variations in the approach taken by the TSOs. A particular difficulty arises where certain terms and conditions are in network code rather than in a specific transportation contract. TSOs should identify what aspects of the contractual arrangements can be changed globally (e.g. in a Network Code) and what has to be addressed through changes to future contracts. If there were a single ISO for several TSO systems, they would offer one set of contractual arrangements to shippers, lowering their own costs and the costs of transactions. The incentives for multiple TSOs to do this when they are following their own separate objectives and P/L do not exist.

Whilst a single standard contract might not be immediately feasible, standardising the structure and main terms of a suite of firm (and possibly interruptible) capacity products would be a practical way forward.

**Q8: Have you experienced inefficiencies and risks which make it necessary to harmonise certain clauses in capacity contracts and/or contractual terms and conditions of different TSOs at EU level (given the variety of private law regimes applied across Europe)? If so, what are the inefficiencies and risks experienced that require harmonisation and why?**

In the old regime capacity was not bundled as it will be in future. Companies have been able to cope with the inefficiencies/risks that exist in the current system, particularly where there is an abundance of capacity. We do not believe that it is necessary to impose harmonised clauses and terms on existing contracts, but future bundled capacity will need to be sufficiently consistent in its terms and conditions if new entrants are not to be disadvantaged and secondary capacity trading is to be relatively free of systemic risk.

**Q9: Assuming everything else being equal (e.g. tariffs), do you prefer:**

- a) firm products with limited allocability/locational restrictions (ex-ante information on conditions of use) or**
- b) interruptible products (with ex-post information on actual occurrence of interruptions<sup>12</sup>)?**

Neither of these approaches should be encouraged. Firm capacity should be fully firm. If capacity is interruptible it should be sold as interruptible capacity. Ex-post charging for interruptible capacity is not acceptable.

**Q10: Given the Balancing NC implementation, which should foresee within-day obligations as an exception, do within-day standard capacity products (“rest-of-day capacity products”<sup>13</sup>) create any barrier to trade?**

No, as long as they are priced correctly, i.e. in a non-discriminatory manner, and, in case of within day obligations, they are made available in due time for their use. Within-day (WD) capacity products create a WD opportunity to fully optimize shipper’s portfolio. More in general, we believe within-day standard capacity products should not create a barrier to trade, provided the criteria for within-day-obligations as laid down in Article 26 (2) of the Balancing NC are met and the terms of the capacity contracts themselves are consistent.

**Q11: Are there any differences in the legal framework/capacity contracts that undermine the concept of a bundled capacity product (treatment after allocation)? If yes, please describe the differences as well as the risk for market participants resulting from those. Please provide specific examples.**

The concept of a bundled capacity product has its merits in the allocation phase and for enabling a single nomination. However, with the current approach by TSOs, after the allocation, the network user will receive two contracts, one for exit capacity with the ‘upstream’ TSO and a second one for entry capacity with the ‘downstream’ TSO.

These two contracts have different general terms and conditions due to differences in the legal/regulatory framework. This undermines the concept of bundling.

Furthermore, since the CAM Network Code applies to cross-border interconnection points with third countries subject to the decision of their regulatory authority, we see a potential undermining of the bundled capacity concept (and as a consequence a barrier to trading), if the third-country authorities do not accept the bundling concept.

**Q12: Are there any other obstacles that hamper the use of capacity contracts across borders in the EU?**

The fact that the same level of market maturity and liquidity does not exist across the EU as well as there isn't sufficient interconnectivity among Member States, hamper the use of capacity across borders in EU.

Also, the bundling concept is creating obstacles for parties that hold existing contracts for unbundled entry and or exit capacity, when they would like to increase capacity (either bundled or unbundled). The period until November 2015 should be fully utilised to phase-in the capacity bundling provisions of the CAM NC, taking into account market participants' concerns and ensuring smoother implementation.

Implementation of a capacity reset mechanism (as requested by Eurogas, Eurelectric, OGP and EFET at the 25<sup>th</sup> Madrid Gas Forum) would also help to mitigate these obstacles and allow smoother and more rapid progress to the new capacity regime.

**Q13: Do you think that a) binding EU rules, b) non-binding guidance or c) no rules at all (awaiting the implementation of existing NCs) address the above issues best? If needed, you can differentiate between different topics.**

We strongly support the introduction of harmonised terms and conditions on issues like credit guarantees and termination rights, and we would prefer to enter into one single contract when booking bundled capacity. The already produced EU network codes have not yet delivered these requirements, while at the same time the market is already independently anticipating a number of novelties that were prescribed by the gas target model. Non-binding guidance could enhance the implementation of the binding Network Codes, already issued and under development, but we suspect that some amendments to the CAM NC will be required this year. The guidance or amendments to CAM should provide a framework for applying the Codes' provisions; specify the relevant requirements and help avoiding mismatches from different approaches.

### **Secondary capacity markets**

It is important to note that secondary trading of IP capacity is a relatively new area for market participants and would need some time to develop. Any assessment of the



functioning of the secondary capacity market should be carried out after it has had some time to evolve.

In our view, only the process between TSO and (buying or selling) market party could be part of the regulated capacity domain. Any regulation in this respect should focus on an efficient process for the effectuation of a realised capacity trade within the TSOs systems. In this respect, we would like to refer to the EASEEgas CBP on secondary capacity trading, which several years ago provided a best practice model for efficient processing of capacity trades.

EFET member companies are generally satisfied with the options available today for market participants to trade capacity on the secondary market (i.e. through joint platforms like PRISMA or bilaterally between shippers), and we do not see the need to set out binding rules. However, in order to stimulate secondary trading, non-binding measures could be envisaged: for example, offers placed on platforms could be better advertised. On the other hand, we do not see much value in the creation of exchanges or fully anonymous platforms, since capacity products are not yet homogenous enough for pure screen trading, although that may change once the issues highlighted in the section above are addressed.

Any measure to improve the secondary capacity market should not place unnecessary additional regulatory burden and reduce the optionality and flexibility currently available to market participants when trading capacity.

**Q14. Do you think that rules are needed in order to stimulate secondary trading in Europe (taking into account the facilitation of trading already in place nationally or at EU-level, including joint booking platforms as demanded by NC CAM)?**

Transparency of fundamental TSO data, in particular near real-time flow information as set out in EC/715/2009 helps enable efficient short-term trading in networked systems. Focus on full compliance, by TSOs, regarding existing EU requirements must be the first essential step.

Further transparency in relation to secondary capacity trading (e.g. through the reporting of the transaction on the common EU capacity platform, or the historic prices of recent trades) and the use of standardised contracts (e.g. harmonised key terms and conditions) are factors that facilitate secondary capacity trading.

The NC CAM rules on secondary capacity trading have not been sufficiently tested yet, which makes it difficult to answer this question. We believe that secondary capacity trading would be best stimulated by ensuring that there is proper consistency of primary capacity terms and conditions, fully implementing the existing rules on CAM, CMP and Transparency, supported by tariff rules which incentivise TSOs to offer firm OSBB capacity over interruptible capacity (e.g. zero reserve price for interruptible capacity).

Overall we do not see the need for further rules on secondary capacity trading at the moment. Some sort of guidance related to the conditions or certain circumstances under which the releasing shipper may “call back” the capacity may be useful. To this

end, harmonisation of the duration of the secondary capacity products (e.g. day-ahead or intraday ones) could be helpful.

**Q15. Do you see a need for a fully anonymised secondary capacity market (including third-party clearing) or is a bilateral capacity transfer (with consistent information to the TSO) sufficient?**

Bilateral trading facilitated by an electronic bulletin board (operated by the TSO) is a simple and appropriate method for the design of the capacity trading scheme, on condition that sufficient information on offers to trade etc. is provided.

Cleared trading through an exchange based on anonymity can be advantageous for traders that do not want others to know their exact position (e.g. long or short on capacity) in the market.

The choice between the two options depends to a large extent on the market maturity and the number of the traders/shippers (the fewer the market participants the simpler the design).

**Q16. Do you see the need to harmonise the handling of secondary capacity transfers to the primary market with reference to e.g. contract durations, handling, deadlines etc.?**

Shippers should be left free to trade their capacity as they best wish. Provided that there is a well designed possibility to surrender capacity as per CMP code, the shippers have an alternative to try to dispose of capacity. The question arises whether or not a one-off reset mechanism would be a more efficient way to return capacity to the TSO as it involves no conditional payments by the TSO and no further payments by the shipper on the capacity that has been returned. Under the current scheme the shipper can always give capacity at congested points back to the TSO, which will then have the opportunity to regroup the capacity and sell it as CAM compliant standard product, but the obligations remain with the shipper unless and until the capacity is resold by the TSO. Therefore, we do not see any need for additional rules concerning the secondary capacity market, but the capacity reset mechanism deserves consideration as an improvement to the current rules on capacity return.

**Q17. Are there any rules hampering secondary trading of bundled capacity products? If yes, which ones and where? (Please provide specific cases, examples.)**

When the quality of capacity is not the same on the two side of an IP it is likely that the price received by a buyer will correspond to the features of the less attractive side of the bundled product, i.e. a product that bundles firm capacity subject sold under OSBB and interruptible capacity or capacity subject to restriction of nomination will only be bought as interruptible or subject to restriction of nomination. In our view the way to avoid this problem is not to allow such inconsistencies to occur in the first place.

TSOs need to ensure that their own processes (lead times for the transfer of capacity rights) are not compatible with secondary trading of short-term capacity products. The EASEE-gas standard set out a best practice that was applicable a few years ago. Further improvements will be required if shorter-term capacity products are to be traded.

**Q18. What would be, in your view, the most efficient way of secondary trading of capacity: a) mandatory trading on a limited number of liquid secondary platforms as for primary capacity or b) keep the current regime as is (e.g. many options, venues, etc.)?**

We believe that keeping the current regime, following the minimum requirements set by the EU regulation and reinforced with sufficient transparency rules, instead of providing for mandatory trading on a limited number of liquid platforms, will allow the development of efficient secondary capacity trading in less mature markets ensuring the proper functioning of the market and respecting the local specificities.

**Q19. Would you support additional transparency rules for secondary trading and what should, in your view, those rules focus on (e.g. reporting on transactions, potentially incl. price)?**

We support a sufficient level of transparency as a critical factor for an efficient secondary trading. Based on this principle we see as important ingredients information about capacity offers, executed transactions, price reporting (see also answer on Q.14). Reporting requirements are already set out under REMIT.

**Q20: Do you think that a) binding EU rules, b) non-binding guidance or c) no rules at all (awaiting the implementation of existing NCs) address the above issues best? If needed, you can differentiate between different topics.**

The main problems would not arise if the primary capacity products had consistent terms and conditions. That is the issue that needs to be addressed, not new legislation on secondary capacity markets. (see also our answer on Q13).

#### **Virtual trading point design/access and hub prices**

**Q21. Are there any design elements of hubs which provide a barrier to cross-border trade (e.g. independence of the hub operator from traders)? If yes, which ones? Please provide specific cases, examples.**

EFET has published on a series of criteria which would reduce barriers to trade if implemented in common across European hubs<sup>4</sup>. These range from ensuring publication of rules and consultation with market participants in English language as an internationally accessible language, ensuring that trading is accessible to “pure” traders who may not wish to take physical positions, and proper governance around independent hub operators to ensure that data may not be shared with market participants in a discriminatory fashion.

Measures that minimize the risk of inconsistent capacity products being bundled together (consistent contractual arrangements especially regarding capacity firmness) may facilitate hub-to-hub trading. In addition, a standardized data exchange format for trading of wholesale gas products with the inclusion of key inputs (as already defined in Balancing NC, art.13) should facilitate cross-border trading and promote liquidity in gas markets.

In a European gas market where the NC CAM is fully implemented access to hubs for market participants is key. This means that:

1. Full and timely implementation of the network codes currently in development is key.
2. Design elements that unduly raise barriers to entry for market participants automatically provide a unnecessary barrier to cross-border trade.

**Q22: Are the fees (if any), the methods to calculate these fees, the general terms and conditions and/or contracts for service providers/intermediaries for transferring gas via trade notifications according to article 5 of the Balancing NC discriminatory and do they constitute a barrier to trade? If so, please state which of the elements above are problematic and which entry-exit systems are affected. Are there any other issues that create barriers to trade?**

Every hub has his own fees and methods for calculation of these fees, but this does not necessary constitute a barrier to cross-border trade as long as they are:

1. Transparent/predictable and;
2. in accordance with the NC tariffs currently under development.

As such full and timely implementation of the NC TAR currently in development will remove the concerns raised in this question.

Where the role of hub operator is not open to competition (for example if the TSO or a local exchange is appointed as hub operator), then hub fees should be regulated to ensure they reflect efficiently incurred costs. Where a TSO provides a service such as Title Transfer, which is an ordinarily required service, then the costs of providing this can be absorbed into the general cost base and no incremental fee charged for the service.

Access fees to hubs, if any, should be cost reflective (not higher than operator’s efficiently incurred costs).

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<sup>4</sup> See *EFET Guide to the features of a successful virtual trading point*, and associated presentations, [www.efet.org](http://www.efet.org)

**Q23: Do non-standardised formats represent a barrier for cross-border trading? If yes, do you see a need to establish a standardised data exchange format for trading of wholesale gas products to be used as interface between all potential balancing and trading venues - including key inputs (e.g. trading parties, time, location of trade, trading volumes and price, etc.)?**

Standardised reporting formats would help to reduce transaction costs, particularly where trade reporting is expected to become standardised with full implementation of REMIT.

The NC on Interoperability and Data exchange is to establish a standardized data exchange format for communications between and with TSOs. Standardized data-exchange will always make life for operations/trading easier. With respect to the commodity market we don't believe additional rules are needed.

**Q24. How could the establishment of organised market places at hubs trading platform (via VTPs) be facilitated and should the Agency foresee rules to facilitate it?**

We consider that the Agency should proceed with a road map of creating functional and workable hubs, by giving an approach for their design and minimum requirements they have to satisfy.

Many of the underlying terms for a virtual trading point could be achieved by consistent implementation of entry-exit rules. Legislative change may additionally be required at a national level for governance of independent hub operators, where these are not covered by requirements for TSOs or exchanges.

However, we see particular difficulties in establishing European rules to facilitate hub trading, given that they may seek to place obligations on parties not covered by EC Regulation 715/2009, that they may retrospectively change already functioning hubs with a possible loss of liquidity, that they may conflict with other relevant national legislation, and local rules must be consistent with network access terms.

ACER should facilitate the NRAs to fully and timely implement the network codes currently in development through frequent and continuous consultation with hub operators, TSOs, exchanges, shippers and representative trading organisations. In addition, ACER should facilitate the sharing of best practices on hub development between TSO's/NRA's. In this regard we would like to refer to the "EFET Guide on the Features of a Successful Virtual Trading Point" for these best practices.

**Q25. Do you think that a) binding EU rules, b) non-binding guidance or c) no rules at all (awaiting the implementation of existing NCs) address the above issues best? If needed, you can differentiate between different topics.**

Based on our previous answer, we believe that, in general, the Balancing NC should be a sufficient EU instrument for the harmonization of VTPs provided that firm capacity rights give direct access from one VTP to the next and TSOs fully comply with the transparency requirements in EC715/2009. Regulatory issues such as defining the role of Hub Operators, resolving market structural issues and agreeing

on regulatory jurisdiction for cross-border trades, could be addressed through non-binding guidance for the coordination and harmonization of national NRAs rather than a common set of binding rules by the Agency.

### Transparency rules

**Q26. Do you think that contractual conditions of capacity services (incl. usage conditions) are transparent and clear enough and easy to access (taking into consideration the establishment of joint booking platforms such as PRISMA)? If not, please name the TSOs/platforms where this is not the case and evaluate it along any of these three parameters (i.e. non-transparent, unclear or difficult to access).**

Full compliance with the transparency requirements of the Gas Regulation EC/714/2009 should ensure that the conditions of transmission services are transparent, clear and easy to access. This is not always the case as demonstrated by ACER in its recent CMP monitoring report.

We stress the importance of TSOs keeping both the English and national language versions of their T&Cs, Network Codes and operational procedures up dated, and of TSOs providing easy to understand summaries of each of these.

**Q27. Do you consider that the contractual conditions of capacity products with limited allocability (e.g. interruptible hub access, but firm cross-border flow) are transparent and clear enough? If non-transparent and clear enough, what should be improved? (Please provide specific cases, examples.)**

Limited allocability products have been useful in specific circumstances in the past, but should be phased out in the future as they are not compatible with a full entry/exit system. We are not aware of any successful bundling of limited allocability capacity products so there is likely to be a nil response to this question. A nil response, or even satisfaction with the status quo does not mean that the contractual conditions or clarity are OK or fit for purpose in the future, just that the market has not yet experienced the real problems that could arise from limited allocability, particularly in bundled products.

Please see also 26.

**Q28. Do you have access to sufficient information on the condition(s) for interruption of a capacity service and/or its probability? If not, please specify where this is not the case. / Q29. Do you have sufficient information on the occurrence of the condition(s) for interruption and/or its probability? If not, please specify, where this is not the case.**

Please see 26.

**Q30. Do you think that a) binding EU rules, b) non-binding guidance or c) no rules at all (awaiting the implementation of existing NCs) address the above issues best? If needed, you can differentiate between different topics.**

Based on the fact that there are binding provisions about transparency obligations according to EC/715/2009, we consider this would be sufficient for the facilitation of cross-border capacity trading provided there is full compliance. A non-binding guidance on transparency, clarity and equal access to information for all the parties involved might be useful, but priority should be given to full TSO implementation of EC/715/2009.

### **Licensing requirements for market participants other than TSOs**

**Q31. Do you see a problem with regard to different licensing requirements in the EU? If yes, please name the Member State, explain the main issues and propose solutions (such as minimum requirements for licenses at EU level, etc.)**

Different licensing requirements across the EU – as well as different and overlapping reporting obligations – constitute an unnecessary burden to network users. We would welcome a situation where licenses granted in one Member State are mutually acceptable in all EU Member States.

This would be much more efficient and effective versus trying to agree on standard licensing conditions or minimum requirements. It should be possible to try and achieve this when implementing the CAM network code, which requires TSOs to deal with network users across borders.

Such a system would be helped by introducing an ex-post verification of potential necessary national requirements.

We highlight the importance of ensuring that the licensing process is not unduly bureaucratic, slow or disadvantageous for market participant from outside (particularly in relation to tax, company structure and reporting requirements).

Licensing can cover several different activities. It is very important that any licence conditions are appropriate for the type of activity being licenced. In particular, wholesale energy market trading activities are very different from retail sales to final energy consumers; whilst the latter may well warrant special conditions because of the relationship with residential consumers, wholesale energy trading already needs to be registered as specified under REMIT and should not normally require any further special obligations. A special trading licence from an energy regulator is unnecessary and should be avoided.

To the extent that any trader is contracted with a TSO to 'ship' gas on their transmission system, the trader will be agreeing to comply with the relevant parts of the Network Code of that TSO. As capacity becomes bundled, it will be essential for a market participant who previously obtained capacity only on one side of an Interconnection Point to be accepted as a shipper by the other TSO on the other side of the IP. The simplest non-discriminatory way to achieve this would be for

any company that is licenced or otherwise authorised to be a shipper on one side of an IP to be automatically accepted as a licenced or authorised shipper on any contiguous TSO system.

**Q32. Do you think that a) binding EU rules, b) non-binding guidance or c) no rules at all (awaiting the implementation of existing NCs) address the above issues best?**

Non-binding guidance on harmonization of licensing requirements, particularly in terms of reporting obligations, should be sufficient for the facilitation of cross-border capacity trading.