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**ACER Public Consultation on the  
Incremental Capacity Proposal and  
further amendments to the Network  
Code on Capacity Allocation  
Mechanisms**

**PC\_2015\_G\_05**

**Evaluation of responses**

13 October 2015

## 1. Background

On 26 December 2014, the European Network of Transmission System Operators for Gas (“ENTSOG”) sent to the Agency for Cooperation of Energy Regulators (“ACER”) a draft amendment proposal to Regulation (EU) No. 984/2013 (the Network Code on Capacity Allocation Mechanisms, “NC CAM”). The proposal was prepared at the request of the European Commission of 19 December 2013 to include incremental and new capacity in the NC CAM’s scope.

ENTSOG’s proposal provides a new regulatory framework to assess demand beyond existing capacity, to offer and to allocate incremental capacity in a market-based manner. This is essential to enable efficient and financially viable investments in gas infrastructure.

ENTSOG prepared the draft amendment proposal with stakeholder involvement during 2014. The proposal is based on ACER’s Guidance paper<sup>1</sup> issued on 2 December 2013.

ACER ran a public consultation on the revised ENTSOG proposal for Incremental Capacity to amend NC CAM in accordance with Article 7 of Regulation (EC) No 715/2009 and Article 10 of Regulation (EC) No 713/2009 from 4 February to 4 March 2015<sup>2</sup>. The stakeholder feedback<sup>3</sup> received has led ACER to change and simplify the structure and content of the incremental capacity process.

## 2. State of play: the second consultation

From 17 July to 31 August 2015, ACER ran a second public consultation as it considered that the content changes triggered by the stakeholders required a final review. This consultation focussed on the suggested amendments to the incremental capacity process as well as on further technical changes to NC CAM. The latter includes for example changes to the default auction calendar, a request of alignment coming from the parallel codification work on the Tariff Network Code.

ACER published two documents: a track-changes version of the NC CAM text and a table listing all changes and the respective justification per article. Stakeholders were encouraged to express and justify their views on the envisaged changes by answering 4 questions covering 4 specific topics for amendment:

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<sup>1</sup><http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:273:0005:0017:EN:PDF>

<sup>2</sup>[http://www.acer.europa.eu/Gas/Framework%20guidelines\\_and\\_network%20codes/Documents/ACER%20Guidance%20on%20NC%20CAM%20Amendments%20%28final%29.pdf](http://www.acer.europa.eu/Gas/Framework%20guidelines_and_network%20codes/Documents/ACER%20Guidance%20on%20NC%20CAM%20Amendments%20%28final%29.pdf)

<sup>3</sup>[http://www.acer.europa.eu/Official\\_documents/Public\\_consultations/PC\\_2015\\_G\\_05\\_responses/20150713\\_EoR\\_PC\\_on\\_revised\\_ENTSOG\\_proposal\\_on\\_Incremental\\_Capacity.pdf](http://www.acer.europa.eu/Official_documents/Public_consultations/PC_2015_G_05_responses/20150713_EoR_PC_on_revised_ENTSOG_proposal_on_Incremental_Capacity.pdf)

- 1) the Incremental Capacity process,
- 2) the auction calendar change,
- 3) further technical changes (algorithms, bundling, interruptible capacity etc.),  
and
- 4) other comments.

ACER received a wide range of comments from 19 stakeholders and the Energy Community<sup>4</sup>. All of them were published on ACER's website<sup>5</sup>. Stakeholders generally supported the revised incremental capacity process. However, many respondents also provided specific comments and suggestions for improvement on certain elements of the code. Those comments have been reviewed and considered by ACER, as shown in chapter 4.

### **3. Next steps**

ACER plans to submit a finalised reasoned proposal for amendment of the NC CAM to the European Commission<sup>6</sup> in October 2015.

After a joint comitology procedure on the NC CAM changes and the new NC Tariffs, the Commission will publish its decision on amending NC CAM presumably in 2016. Following an implementation period, the application of the legal changes could start in 2017 at the earliest.

### **4. ACER's evaluation of stakeholder responses**

The following tables summarise the stakeholders' comments and concrete amendment proposals (2<sup>nd</sup> column) per topic and respective article (1<sup>st</sup> column). In the 3<sup>rd</sup> column of each table, ACER provides its evaluation of the stakeholder proposals and its conclusions.

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<sup>4</sup> See list of respondents in Annex II; The response from the Energy Community raised a specific issue, which was not subject of the public consultation and is therefore not discussed in this evaluation.

<sup>5</sup> [http://www.acer.europa.eu/Official\\_documents/Public\\_consultations/Pages/PC\\_2015\\_G\\_05.aspx](http://www.acer.europa.eu/Official_documents/Public_consultations/Pages/PC_2015_G_05.aspx)

<sup>6</sup> in accordance with Article 7(2) of Regulation (EC) No. 715/2009

## 4.1 Incremental Capacity

**Public consultation question 1:** Do you support the changes suggested by the Agency on **Incremental Capacity (new chapter IVa and related articles)**? If not, please list which new or amended articles you disagree with and explain why.

**Summary:**

Generally, responding stakeholders largely or at least partially support and appreciate the simplified process and the more precise timelines. Some stakeholders stress the interrelation and the importance of an alignment of the NC CAM changes with the ongoing work on the NC Tariffs (regarding for example the reference to the Economic Test or the preference for a fixed price option for tariffs for new capacity, etc.). Respondents focus most of their specific objections, comments and alternative proposals on

- the definitions,
- the (common) demand assessment,
- the duration and content of the public consultation in the design phase,
- the auction as the default CAM in case NRAs do not agree on an alternative CAM, and
- the limited flexibility of conditionality and applying alternative CAMs.

The detailed comments are summarised in the tables below, ordered by article.

Article	Respondents' feedback	ACER views
<b>Subject Matter &amp; Scope</b>		
<b>1</b>	One respondent proposes to mention that the CAM NC covers both existing and incremental capacity as well as auctions and potential alternative CAMs for incremental capacity.	The proposal is supported, and the wording is revised accordingly. → <b>ACER amends the text to cover both existing and incremental capacity as well as standard and alternative CAMs.</b>
<b>2 (3)</b>	Two stakeholders suggest to also exclude the application of Article 8(1) to (7) and Articles 11 to 18 in cases where an alternative capacity allocation mechanism (not 'rule') is applied. Furthermore, the allocation results for a capacity increase should be published on the booking platform used for auctioning existing capacity, while the results for new capacity should be published on a respective joint platform agreed by TSOs.	For consistency reasons ACER agrees to change 'rule' into 'mechanism', to be in line with the headline of Article 20d. For clarification, the mentioned articles on the auction mechanism should also be listed as not being applicable in case of an alternative capacity allocation procedure. In addition, the proposed specification of which booking platform to use for the publication of results is supported. → <b>ACER changes the wording of this Article to read:</b> Where an alternative <b>capacity</b> allocation <b>mechanism</b> according to Article 20d is applied, <b>Article 8(1) to (7), Articles 11 to 18, 19(2) and 27</b> shall not be applicable to the

Article	Respondents' feedback	ACER views
	Alternative proposal: "... results shall be published on the <u>respective joint</u> booking platform."	offer levels, unless decided otherwise by the relevant national regulatory authorities. In any case, the allocation results shall be published, <b>for increase in technical capacity, on the booking platform which is used for auctioning of existing capacity as set out in Article 27, and for new capacity created where none currently exists, on a respective joint booking platform agreed by the relevant transmission system operators as set out in Article 27.</b>
<b>2 (5)</b>	One responded suggests to define "Proportionate measures" in order to clarify how this interacts with Article 20d so that Article 2 (5) cannot be used as a means to undermine the intentions of Article 20d.	ACER believes that national regulatory authorities are aware of, and the right parties to judge, the (legal) options and constraints that NC CAM provides. As there is some regulatory leverage on a national level, 'proportionate measures' do not need to be defined in the network code itself. <b>→ No change to the text.</b>
<b>Definitions</b>		
<b>3 (20)</b>	<p>One respondent provided a proposal to refine the definition of "Incremental Capacity" to clarify that only capacity which was never available before and is a result of a significant investment falls in the scope.</p> <p>Another stakeholder requests to clarify the meaning of 'long-term capacity optimisation' to ensure that the firm capacity rights of both existing and new capacity holders after such an optimisation are not prejudiced by the optimisation.</p> <p>In addition, the definition should be extended to also cover capacity increases at the EU side of an IP with a third country to match it with the other side. This should help to secure gas supplies for the EU.</p>	<p>ACER is of the view that capacity offered also as a result from long-term capacity optimisation (e.g. long-term "shifting" of capacity from one IP to another) should qualify for the incremental capacity process. However, a clarification that investments refer to investments in physical infrastructure is added. A need to clarify the firmness of capacity rights after an optimisation process is not deemed necessary, as such optimisation processes cannot interfere with the content of the capacity contracts.</p> <p><b>→ A clarification is added on investments in physical infrastructure. No change on 'optimisation'.</b></p> <p>ACER is of the view that such an extension of scope should be left to the respective NRAs to decide, which is possible under the current wording of Art. 2 (1) of the NC CAM text. <b>→ No change.</b></p> <p>ACER is of the view that the current wording is more precise in determining what kind of capacity shall not to be counted as incremental capacity. <b>→ No change.</b></p>

Article	Respondents' feedback	ACER views
	<p>One stakeholder provides an alternative proposal for the last sentence of the definition for clarification: "This shall be without prejudice to the obligation to offer available capacity created via non-market based procedures and for which the final investment decision has been taken without prior commitments from network users."</p>	
<p><b>3 (22)</b></p>	<p>On the definition of the 'incremental process', one stakeholder suggests to amend its ending by "...after draft proposal of incremental capacity is made by relevant TSO based on non-binding phase results and following design phase". Another stakeholder notes the inconsistent use of "incremental process" and "incremental project". In addition, one stakeholder questions the meaning of "and a binding market test phase".</p>	<p>ACER is of the view that this addition is not essential for the definition. These additions are rather done in the respective articles on incremental capacity.</p> <p>→ <b>No change to the text.</b></p> <p>→ <b>Cf. 3(24)</b></p> <p>Indeed, only the non-binding phase is the "market test phase". In the binding phase, network users book capacity.</p> <p>→ <b>Definition clarified by deleting "market test" so as to read: "...and a binding phase, in which..."</b></p>
<p><b>3 (23)</b></p>	<p>One stakeholder suggests to move the last part ('where it can be shown that the ascending clock auction is not suitable') of the definition of 'alternative allocation procedure' into article 20d. This is to keep the definition factual. Two other stakeholders propose to delete the mentioned part, as there is no further reference in the text to this condition to be demonstrated. One could think that in order to adopt an alternative CAM, further evidence to those in Art. 20d should be provided.</p> <p>One stakeholder proposes to align 'capacity allocation procedure' to 'capacity allocation mechanism' as used in the text (in particular in Art. 20d).</p> <p>Another stakeholder proposes to clarify in the definition that auctions are not suitable where conditional capacity requests exist.</p>	<p>ACER agrees to the first proposal to simplify the definition and elaborate the conditions in the respective article. Indeed, the 'proof' of non-applicability has to be provided by TSOs. That is why this condition is kept in Art. 20d 2. The term 'procedure' in particular in relation with 'alternative CAM' is not used in the text, therefore it should be replaced by 'mechanism' to improve consistency.</p> <p>→ <b>Proposal accepted. The condition moves to Art. 20d 2 and 'procedure' is replaced by 'mechanism'.</b></p> <p>ACER considers that there should not be an automatic choice for the alternative CAM, when conditional capacity requests are given. Rather the TSOs have to show and prove that the auction will not work.</p> <p>→ <b>No change to the text.</b></p>

Article	Respondents' feedback	ACER views
<b>3 (24) new</b>	Two respondents propose to define explicitly “Incremental Capacity Project”, in particular to define the start and end of a project.	Although the term is used throughout the text, ACER doesn't consider it necessary to explicitly define what an incremental capacity project is, as this should be clear from the context. <b>→ No change to the text.</b>
<b>Allocation methodology</b>		
<b>8 2.</b>	Two stakeholders suggest to clarify the factual dependency of parallel offer levels for incremental capacity and request consistency with Art. 20c 2. Although the auctions of different offer levels run in parallel and independently from each other, only the highest successful offer level will be binding after the auction, thereby reflecting ‘dependency.’ One of those respondents also notes that complexity will be higher in cases of competing capacity.	ACER acknowledges the potential inconsistency between Art. 8.2 and 20c 2., which could lead to different interpretations. Since the intention of the amendment was to clarify that only one offer level for the incremental capacity can be successful, the current text is improved. <b>→ Proposal accepted and text adapted,</b> but without specifying how auctions and offer levels for competing capacity shall be organised.
<b>11 3.</b>	Two respondents suggest to align the time horizon of existing capacity to be offered with the one for incremental capacity, since offer levels are defined to combine incremental and available existing capacity. “In case of incremental capacity, the offer levels may be offered in yearly capacity auctions for a maximum of 15 years after the start of operational use.”	In ACER's view, the time horizon for the offer of existing capacity should not be extended / aligned with the offer of incremental capacity to avoid selling off existing capacity far into the future (beyond 15 years). It is important, though, to take possible existing capacity (beyond 15 years) into account when deciding about investing in incremental capacity. <b>→ No change to the text.</b>
<b>11 10.</b>	According to one stakeholder, neither Art. 20c 3. nor Art. 11 10. describe criteria according to which auction(s) shall be repeated (‘bid revision’) in case of competing auctions. Further investigation (and a stakeholder meeting) on that issue is proposed, as complexity for network users and platform operators is increased significantly in case of competing auctions.	ACER agrees with the stakeholder's view and encourages to investigate solutions for the issue together with stakeholders. In order to mitigate some TSOs' concerns expressed after the consultation, a separate deadline for informing auction participants on the results of the economic test is added. <b>→ The new deadline for informing participants on the economic test results is “2 business days after the closing of the bidding round”.</b>

Article	Respondents' feedback	ACER views
<b>Demand assessment</b>		
<b>20a</b>	For consistency reasons and to avoid confusion, two respondents suggest to rename the title of the article to “market demand assessment”.	ACER agrees to adapt the title for consistency reasons. → <b>The title of this article is renamed to “Market Demand Assessment”</b>
<b>20a 1. to 4.</b>	One stakeholder proposes to organise the regular market demand assessment in <b>odd-numbered</b> years so that information and conclusions coming from the incremental process can inform the next TYNDP in due time for processing.  To avoid repetition, one stakeholder suggest to delete the 2 <sup>nd</sup> sentence on paragraph 1.	ACER considers to align the incremental process with the other European and national processes (TYNDP, PCI,...) so as to avoid undesired gaps in terms of timing and available information for the processes to inform each other. The “even numbered years” in the current text (paragraphs 1. – 3.) anticipated the time needed until the NC CAM amendments become legally applicable. The initial planning was to launch the first incremental auctions in 2017 (“odd-numbered” year). If this target cannot be upheld (due to delays in the legal proceedings), the first incremental process will be delayed to 2019. In 2017 a voluntary (early) implementation could still be envisaged. → <b>Proposal to change the biannual incremental processes to start in each odd-numbered years is supported by ACER and the redundant 2<sup>nd</sup> sentence in paragraph 1 is deleted. Paragraph 4. is consequently adapted to read “even-numbered years”, as it covers the potential annual process in between the odd-numbered years.</b> → <b>The last (redundant) sentence is deleted.</b>
<b>20a 2.</b>	Two respondents propose to only require those TSOs of neighboring entry-exit zones to cooperate which are ‘active’ on the respective entry-exit zone border, and not necessarily all TSOs of an entry-exit zone. In addition, the report shall cover at least ‘both sides’ of the concerned border.  Another stakeholder proposes to delete the reference to ‘border’, as there could be more than one entry-exit systems in one member state.	ACER is of the view that all TSOs within an entry-exit system shall collaborate to produce the common report, even if not active at the respective border. Gas is transported across several TSOs within a zone and that requires close coordination among those TSOs. The term ‘border’ does not refer to countries’ frontiers, but rather to a border of an entry-exit system (which can be located within one member state as well). → <b>Added clarification: ‘...each covering all IPs of at least one entry-exit system border’.</b>

Article	Respondents' feedback	ACER views
<b>20a</b> <b>3.</b>	One stakeholder remarks the limited influence to ensure the timely completion of demand assessment reports and suggest a slight revision specifying that the structure/template facilitates the timely completion and not ENTSOG itself.	ACER is of the view that ENTSOG itself should make best use of its influence on TSOs to indeed facilitate a timely completion. → <b>No change to the text.</b>
<b>20a</b> <b>4.</b>	One stakeholder does not support the possibility to launch an incremental process on a yearly basis, in order to avoid overlapping processes. Instead, it is proposed to reinsert the option to launch an 'ad hoc' process at any time, if sufficient demand is expressed. Another respondent supports the latter proposal, i.e. to allow for a "demand assessment reopener" ('ad-hoc' requests) in the event of non-anticipated significant demand indications triggered e.g. by new CCGT, LNG etc.	ACER's intention was to provide for the yearly process option under specific circumstances in order to structure and streamline the processes. The aim is to avoid overlapping procedures and that is why 'ad hoc' processes should not be launched if 'ad hoc' requests cannot be handled in an ongoing (yearly or biannual) process. Any significant 'ad hoc' demand should be assessed in a structured, foreseeable manner. → <b>No change to the text.</b>
<b>20a</b> <b>5.</b>	One respondent suggests to allow not only network users, but also TSOs or project promoters to express non-binding demand indications for incremental capacity, i.e. to trigger the process. This has already happened in practice.	ACER is of the view that only network users who will finally submit binding bids should participate in the non-binding phase. However, this does not prejudice any collaboration or information exchange between such parties and the actual network users (which is a different process). → <b>No change to the text.</b>
<b>20a</b> <b>7.(a)</b>	One respondent suggests to remove "requested direction", as a new bundling product connecting virtual trading points could be considered including both directions (i.e. automatic incorporation of physical reverse flow option).	Although ACER generally advocates a well-connected European gas transmission system, including physical reverse flows, it still finds it important to collect market demand indications including the information on which (physical) direction demand is prevalent. → <b>No change to the text.</b>
<b>20a</b> <b>8.(a)</b>	One stakeholder proposed the deletion of " <u>in the context of an incremental capacity project</u> " as the incremental capacity project may only be initiated based on the market demand assessment.	ACER acknowledges that in the early phase of the demand assessment, a TSO might not yet know whether a 'project' will be sufficiently underpinned by demand. Therefore, ACER agrees to just refer to the ongoing process ("whether the demand indicated can be considered by the TSO in the ongoing process") → <b>Proposal accepted to delete reference to an incremental project</b>

Article	Respondents' feedback	ACER views
<b>20a 8.(c)</b>	As non-binding demand indications have to be justified and reasonable in order to be taken into account, one stakeholder suggests to replace “taken into account” by “assessed”.	ACER confirms that this was meant by the current text. To improve clarity, the proposal is accepted. → <b>Text changed to read “assessed” instead of “taken into account”.</b>
<b>20a 9.</b>	One stakeholder objects to the fee for respective network users for activities resulting from the submission of non-binding demand indication in order to encourage network users' participation. Proposal to delete Art. 20a (9) or apply fees to “all network users”.	ACER clarifies that such a fee is not obligatory, but optional, which has to be approved by the NRA. The option to apply a fee could prevent abusive or frivolous non-binding demand indications, and thereby facilitate an efficient design phase. → <b>Proposal rejected (text remains unchanged).</b>
<b>20a 10.(c)</b>	On respondent suggests to add a reference to the deadline specified in Art. 20a 5 in order to clarify that network users have to meet the deadline to ensure a coordinated assessment.	The respective deadline already mentioned in Art. 20a 5. is sufficient. → <b>No change to the text.</b>
<b>20a 11.(b) &amp; 11.(f)</b>	Two stakeholders suggest that both non-binding demand indications received within the deadline and those submitted afterwards should be reported in an aggregated way for consistency and to avoid disclosure of sensitive information.	ACER recognises that regardless of the date of submission, the demand indications should only be published in an aggregated way for the reasons outlined by the respondent. → <b>Proposal accepted (‘aggregated’ added to the beginning of Art. 20a 11.(f))</b>
<b>20a 11.(h)</b>	One stakeholder notes a potential overlap with Art. 20a 11.(b) and doubts that network users would be interested in knowing the amounts of capacity requested in a conditional way. The respondent considers that transparency on the existence and nature of expressed conditions is sufficient.	ACER is of the view that transparency on such important issues is essential and therefore considers not only the fact, nature (or type) of conditions to be published, but also the aggregated size of conditional demand indications, where available. → <b>New wording includes type and – if already expressed - aggregated size of conditional demand indications.</b>

Article	Respondents' feedback	ACER views
<b>Design phase</b>		
<b>20b</b>	One stakeholder believes that the public consultation is the right place to assess whether an alternative CAM is needed in a transparent way.	ACER agrees with that statement and notes that both during the demand assessment and during the consultation, stakeholders can express their needs for conditional bids, suggesting the use of an alternative CAM. However, eventually it should be left to the NRAs decide/approve the alternative CAM in order to ensure non-discrimination and fair competition. <b>→ No change to the text required.</b>
<b>20b 1. &amp; 3.</b>	One respondent proposed not to prescribe in detail at which exact "date" the TSOs shall become active (and start studies etc.) in the design phase. In addition, the design phase shall only start if the demand assessment report identifies the need for a specific incremental project	ACER agrees that TSOs shall not mechanistically start their work in the design phase on a certain date. They can start (launch studies for example) also before. Setting a date is rather meant to create a clear structure for the formal process. <b>→ The text is revised to specify that the design phase shall start (and not the work of TSOs), if demand and resulting projects can be identified from the demand assessment report.</b>
<b>20b 3.</b>	Three stakeholders claim that the consultation period of 1-2 months is too short and should be (at least or exactly) 2 months.	ACER finds the minimum of 1 month (and maximum of 2 months') consultation sufficient to enable a process that fits the one-year cycle. <b>→ No change of the text.</b>
<b>20b 3. (c)</b>	One respondent proposes to also include in the consultation 'the need for' next to the design of the alternative CAM (and not just "where relevant").	Indeed the design phase consultation is meant to explore the potential need (and subsequently, if such need is confirmed, to propose the design of) the alternative CAM. <b>→ Proposal accepted. The need for the alternative CAM is added to the consultation items.</b>
<b>20b 3. (e)</b>	Three stakeholders suggest to include information on how possible delays to the project are dealt with contractually not only in the project proposal (Art. 20b 5.(b), but also in the public consultation (Art. 20b 3.), as this is of high importance when entering into long term capacity contracts. One stakeholder argues the opposite (i.e. prefers to exclude collaterals in order to prevent possible discrimination between existing and incremental capacity).	ACER supports the (first) proposal to make such important information also available in (and subject to) the public consultation. <b>→ Inclusion of wording from Art. 20b 5.(b) on collaterals and delays into Art. 20b 3. (e).</b>

Article	Respondents' feedback	ACER views
<b>20b 3. (g)</b>	One respondent argues that the setting of the required level of user commitment (f-factor) is an NRA task, and not a TSO' one and should therefore be deleted from the consultation or be covered in a consultation by NRAs.	ACER agrees with the statement. NRAs should both provide a proposal (for the consultation) and should later approve it. → <b>Text amended to specify that an estimation of the f-factor by the NRAs is consulted upon, which later on is to be approved by the NRAs.</b>
<b>20b 4. &amp; 3.</b>	One stakeholder argues that TSO cooperation on designing the offer of incremental capacity shall also include the way incremental capacity to be offered is calculated. The capacity calculation methods (for incremental and existing capacity) should be similar on both sides of the IP, and be part of the joint consultation.	In ACER's view, the current text already implies the coordination between TSOs on the design of the offer level. To consult on calculation methodologies may not be productive, as network users are rather interested in the (coordinated) results (i.e. the actual offer levels) than the methodologies behind them. The offer levels are part of the public consultation. → <b>No change to the text required.</b>
<b>20b 5.</b>	One respondent suggests to specify that the publication of the project proposal sent to the NRAs is to be published by TSOs (and not NRAs themselves).	ACER confirms that this was the intention of the text and recognises the need for clarification. → <b>Clarification added in Art. 20b 5. that TSOs shall publish the project proposal.</b>
<b>20b 5. (d) (e)</b>	One stakeholder proposes to delete this point (economic test parameters, such as the assessment of future tariffs, revenues and 'f-factor') as this should fall under NRAs responsibility and it should be consistent with Art. 39(2) of NC Tariff. In addition, on point e) it should be clarified which 15 year period is referred to.	→ <b>ACER text is kept based on the arguments under 20b 3(g).</b>  → <b>Point e) is amended to clarify the period "of up to 15 years after the start of the operational use..."; "one-sided" is replaced by "unilaterally"</b>
<b>20b 6.</b>	Five stakeholders disagree with the auction as fallback (default) option in case NRAs cannot agree on the alternative CAM. Reasons: The 'reasonable' steps NRAs are supposed to take to reach a common agreement are not defined and can hardly be evaluated in a transparent way. The auction mechanism is deemed highly unlikely to work for conditional bids. Rather, in case NRAs cannot agree, the decision shall be passed to ACER to avoid that NRAs simply 'veto' or refuse to cooperate.	ACER understands the concerns raised, but notes that a default rule solution may be necessary to incentivise the cooperation for an alternative CAM, where that is needed. In certain cases (i.e. all demand can be fulfilled), the default (1-round auction) may still work and may allow the process to close. Ultimately, there is always the option for ACER to step in and decide on an alternative CAM, if so requested by the NRAs. → <b>No change to the text.</b>

Article	Respondents' feedback	ACER views
	Two stakeholders do not consider appropriate the 6 month period for NRAs to decide on the project proposal. One of those respondents suggests a 4 months period instead.	The 6 month period is a maximum limit, which may be required in specific cases by NRAs. As some national requirements might involve further consultation and coordination, the 6 months, as an upper limit, cannot be shortened. → <b>No change to the text.</b>
<b>Auctioning of incremental capacity</b>		
<b>20c</b>	One stakeholder proposes to clarify in Art. 20c or 20d that the joint offer of incremental and available capacity shall not be applicable in case of an alternative CAM.	ACER notes that the joint offer is not prescribed in the code in case an alternative CAM is applied. A decision to exceptionally allocate existing capacity jointly with incremental capacity through an alternative CAM is to be decided by NRAs. → <b>No change to the text.</b>
<b>Alternative CAM</b>		
<b>20d</b>	Three stakeholders are of the opinion that expressing market need for conditional bids should not only be limited to the demand assessment phase, but also allowed in the public consultation of the design phase, as a decision on an alternative CAM is prepared in that phase, a specific project may be on its way and a wider participation would be allowed.	ACER acknowledges the need for expressing conditional bids both in the demand assessment as well as in the design phase, where projects may become more concrete. → <b>The new text includes the possibility to express conditional demand indications also during the consultation (Art. 20b 3. (c) and in Art. 20d 2.</b>
<b>20d</b>	One respondent argues for wider possibilities to apply open seasons [alternative CAMs] as those are expected to result in economically more efficient outcomes. If a fixed payable price approach was possible in NC Tariffs, a more restricted use of alternative CAMs would be acceptable. Another stakeholder argues the opposite, being concerned about the application of an alternative CAM (and with it the non-application of auctions for bundled products on platforms), as there will be different capacity marking rules for shippers.	ACER does not support these proposals, as it finds the conditions to apply alternative CAMs already quite broad and flexible. The overall aim is to apply auctions, as transparent, market-based and non-discriminatory CAMs, in as many cases as possible, while recognising the need for exceptions in order not to hinder investments. → <b>No change to the text.</b>

Article	Respondents' feedback	ACER views
<p><b>20d</b> <b>1. &amp;</b> <b>20b</b> <b>5.e</b></p>	<p>Two respondents find the concept of “one-sided binding commitments ... for additional 5 years” confusing, imbalanced and not effective, as no network user would be willing to accept this.</p>	<p>ACER understands the possible confusion of the term “one-sided”, which does not refer to one side of an IP. Instead, unilaterally binding commitments refer to a network users’ (voluntarily signed) obligation to place a bid at the reserve price in each of the (up to) 5 following years in the respective annual yearly capacity auctions following the one-time application of the alternative CAM.</p> <p><b>→ The 2<sup>nd</sup> sentence is clarified; ‘one-sided’ is replaced by ‘unilaterally’. An explanation of the concept of a ‘unilaterally binding commitment’ is added.</b></p>
<p><b>20d</b> <b>2.</b></p>	<p>Four stakeholders believe the wording describing the types of conditionality is quite unclear and does not provide clear tools to assess when an alternative CAM can be applied. One stakeholder suggests to separate the second case under (b) as a new self-standing point (c).</p>	<p>ACER agrees and proposes a new formulation, except for the list of the cases of conditionality.</p> <p><b>→ ACER specified the text on when alternative CAM can be applied, and includes the possibility to indicate conditional demand also in the consultation.</b></p>
<p><b>20d</b> <b>3.</b></p>	<p>Three stakeholders advocate more flexibility regarding conditional bids, so that other (unforeseeable) conditions between commitments can be added, which are to be approved by the relevant NRAs.</p>	<p>ACER does not support this proposal, as it considers the flexibility already sufficient. The aim is to have a standard allocation (i.e. auctions) in as many cases as possible. There are currently no other conceivable circumstances other than those already covered by the mentioned conditions, which would justify to deviate from the default auctions.</p> <p><b>→ No change to the text.</b></p>
<p><b>20d</b> <b>4.</b></p>	<p>One stakeholder considers that for the alternative CAM, the following wording is sufficient: “The mechanism shall be transparent and non-discriminatory.”, as network users with different levels of financial commitments should not be treated equally. In addition, all expressed capacity demand shall be satisfied and allocation to network users booking long-term should not be arbitrarily cut.</p> <p>Two stakeholder prefer the wording of the previous consultation version, which was more explicit (i.e. ‘shall consider the higher contribution of long term capacity binding commitments’).</p>	<p>ACER is of the view that the current wording represents a good compromise for allowing capacity to be allocated through an alternative CAM, while still safeguarding non-discrimination and limiting potential market foreclosure.</p> <p><b>→ No change to the text.</b></p>

## 4.2 Auction Calendar change

**Public consultation question 2:** Do you support ENTSOG’s envisaged proposals to **change the default auction calendar** in relation to the discussions on the draft Network Code on Tariffs (‘NC TAR’), i.e. to move the annual yearly capacity auctions from March to July, the annual quarterly auctions from June to August and the rolling monthly auctions’ start from the third to the second Monday of each month? If not, please explain why.

**Summary:**

*Generally, respondents support the auction calendar change, except for the rolling monthly auctions.*

Article	Respondents’ feedback	ACER views
<b>11 4.</b>	18 Stakeholders explicitly support the change of annual yearly auction timing from the first Monday of March to the first Monday of <b>July</b> in order to have certainty on the tariffs. No objection was raised, but any change in timing should be made known ideally 16 month before the annual yearly auction.	ACER acknowledges the overwhelming support for ENTSOG’s (informal) proposal in alignment with NC TAR. It may also increase visibility of shippers’ capacity requirements as the auction will take place close to the time of capacity use. <b>→ Amendment is kept.</b>
<b>12 5.</b>	16 Stakeholders explicitly support the change of the annual quarterly auction timing from the first Monday of June to the first Monday of <b>August</b> . No explicit objection to the change was raised, however one stakeholder found the annual auctioning processes generally not suitable, while 3 other stakeholders proposed to introduce rolling quarterly auctions.	ACER acknowledges the large support for ENTSOG’s proposal in alignment with NC TAR. <b>→ Amendment is kept.</b> The new proposal to introduce rolling quarterly auctions is not considered at this stage, as this would require further analyses, an impact assessment and a public consultation.
<b>13 4.</b>	10 stakeholders strongly oppose to the change of the timing for rolling monthly auctions from the third to the second Monday each month in order not to reduce shipper’s visibility on actual capacity needs and not to risk lower bookings. The disadvantages of an earlier auction are larger than the potential advantages of a fixed start date for interruptible monthly capacity. In addition, auctions for firm monthly capacity rarely run several days and can be avoided by re-calibrating the size of the price step for expected congested IPs. On top of that, the offer of interruptible monthly capacity is not obligatory after all. 7 stakeholders - most of them TSOs - support the proposed change towards an earlier auction date, while 2 market participants remain neutral.	ACER shares the concerns raised by the majority of stakeholders and notes that even when firm auctions run beyond the standardised start date for interruptible monthly auctions (where at all offered), a (delayed) start date can still be established (i.e. next business day) allowing interruptible monthly capacity to be allocated. <b>→ Stakeholders’ proposal is accepted to keep the original timing (third Monday)</b>

### 4.3 Further technical changes

**Public consultation question 3:** Do you support the **further technical changes introduced (e.g. on the auction algorithms (Art. 17 (16) and Art. 18 (3d) & (9)); on the bundling of existing capacity (Art. 20(1)); on the allocation of interruptible services (Art. 21(9)) etc.**? If not, please list which amended articles you disagree with and explain why.

**Summary:**

*Most responding stakeholders at least partially supported the technical changes proposed by ACER. Some more frequently raised comments include a missing dedicated workshop/process for the technical changes and objections to the extension of scope in Art. 20 (1.) on bundling arrangements. Further individual comments are summarised below.*

Article	Respondents' feedback	ACER views
	<p>Three stakeholders would have preferred a separate dedicated process and/or a public hearing / workshop on the further technical amendments. This is to better understand their rationale. In addition, the amendment on Incremental Capacity is not part of a (formal) NC CAM revision process. For a formal complete revision process of NC CAM, further discussions are needed to assess stakeholders' requests and priorities. For example, they consider that the opening time for bidding rounds for annual auctions (9:00 CET) is too early, and for day-ahead auctions (16:30) too late.</p>	<p>ACER covered technical changes resulting from work on NC Tariffs and those raised by NRAs. The latter are mainly meant to clarify or rectify minor imprecisions of the NC CAM. A complete revision process of the NC CAM may follow later. The last consultation was meant to inform and consult stakeholders. Therefore, a workshop on the (few) technical changes was not considered necessary.</p>
<p><b>17 16.</b></p>	<p>One respondent is not convinced of the need of the amendment, as it appears that the change creates the possibility that the total amount bid could still exceed the available capacity after 5 small price steps, which would prevent an auction to clear.</p>	<p>ACER appreciates the suggestion and recognizes an imprecision in the (amended) text. For better clarity, an insertion (on top of the change from "first" to "all" is necessary.  <b>→ ACER proposes the following insertion after the first sentence:</b>  <b>"The volume bid per network user for a specific small price step shall be equal to or smaller than the volume bid placed by this network user in the previous bidding round of small price steps. Additionally, the following rule shall apply:"</b></p>

Article	Respondents' feedback	ACER views
20 1.	<p>Three stakeholders do not agree with the increase of scope to bundle existing (post 2013) contracts. This is a voluntary effort and nothing prevents shippers to try to bundle. The proposed change is deficient, e.g. due to its retroactive effect, unclear application date, possible existence of unbundled contracts allocated based on Art. 19(5). One stakeholder could accept the change, but doesn't support an application for unbundled contracts entered into after 1 Nov. 2015. The issue of having to pay "twice" for the unbundled component in the absence of unbundled capacity on the other side (and if bundled capacity is contracted), is not resolved with the change to this article.</p>	<p>ACER understands the concerns on the deficiencies of the proposal. Therefore, a new wording is suggested, that covers all unbundled contracts, regardless of its date of conclusion. There is no change of purpose or meaning, but it clarifies that the voluntary efforts should cover all unbundled contracts, even future ones. This would also clarify the related reporting obligations in this paragraph.  <b>→ New proposal:</b>            "1. The network users who are parties to <del>existing</del> unbundled transport contracts <del>at the time this Regulation applies</del> at respective interconnection points, should aim to reach [...]"</p>
21 9.	<p>One respondent highlights that the amount of interruptible capacity offered may depend on the closing of the corresponding firm auction.            Proposal: <i>"If not possible to notify network users about the interruptible capacity to be offered one week before the auction starts, the publication will be done no later than the next business day after the closing of the respective firm auctions."</i></p>	<p>ACER recognises this consistency issue and proposes the following clarification to be added after the last sentence:  <b>→ "In such cases, any change in the offered amounts should then be notified at least 12 hours before the start of the respective interruptible capacity auction."</b></p>
21 9.	<p>One respondent prefers the amount of interruptible capacity offered to be unlimited. This could avoid capacity hoarding and support using firm capacity. (The price of interruptible capacity should be low enough to make the holders of unused firm capacity to sell it on the secondary market.)</p>	<p>ACER is of the view that the proposed option is possible in any national capacity regime. The method to determine the level of interruptible capacity offer is not prescribed in the code. Therefore, a quasi-unlimited offer (and its advantages) is already possible.  <b>→ No change to the text.</b></p>

## 4.4 Other comments

**Public consultation question 4:** Do you have any **other comments** related to the proposed NC CAM changes, and if so which?

### **Summary:**

*A number of respondents had one or more objections and/or comments related to diverse articles of the text, mostly focusing on the general scope, uncertainty of future tariffs, clarity on application dates and capacity calculation. The detailed proposals are summarised below.*

Article	Respondents' feedback	ACER views
<b>2</b>	Two respondents propose to consider extending the scope of NC CAM to points of connection with storage and power plants enabling them to access within day capacity.	The decisions on applying NC CAM to other points should be left to national discretion. Considering the different maturities of markets, an EU-wide harmonised approach seems inappropriate at the moment (and would also require further analyses and consultations). <b>→ No change to the text.</b>
<b>5 1.</b>	One respondent suggests inserting a reference to the Interoperability Network Code.	Legal cross-references are not necessary and could add complexity when any of the referred codes are amended. In addition, each network code is applicable on the TSO networks which is why a cross-reference should not be of a concern. <b>→ No change to the text.</b>
<b>6 1.a) 1)</b>	According to one respondent, cross-border capacity at IPs should not compete with capacities at DSO, UGS, LNG connection points for reasons of EU market integration and security of supply. Proposal to add: <i>“This is without prejudice, where appropriate and necessary, to the obligations of transmission system operators as laid down in the Regulation (EU) No 994/2010 of the European Parliament and of the Council”.</i> and <i>“Any decrease of capacity offered on any side of the interconnection point as a result of such specific actions is subject to the agreement of the directly involved transmission system operators and the coordinated approvals of relevant national regulatory authorities.</i>	ACER does not consider it necessary to change the text on those aspects, since the first proposal is not sufficiently clear and the second one is not necessary. ACER is of the view that the in-depth analysis in itself cannot lead to a decrease of capacity offered. On the contrary, the aim of the analysis is to maximise the offer.  <b>→ No change to the text</b>

Article	Respondents' feedback	ACER views
6 1.& 2.	To remove the barrier of non-efficient bundling due to different technical capacities at both sides of an IP, one stakeholder proposes to “harmonise” technical capacities by mandating the same (coordinated) capacity calculation methodologies.	Although in principle ACER considers this proposal to be a desirable goal, it believes that such harmonisation is not (yet) feasible at this stage. The obligatory “optimisation” is a first step and its effects first have to be evaluated before any far-reaching and possibly costly changes are prescribed. This does not prejudice any future ambitions to reach the envisaged goal, which requires a separate process, involving stakeholders, impact assessments etc.. → <b>No change to the text.</b>
6 1. (a)	On capacity calculation and maximisation, one respondent suggests to clarify that the assumptions to be taken into account for the in-depth analysis shall include, ‘inter alia, expressed long-term market demand for capacity by network users’.	ACER is of the view that such long-term demand should either already be covered in the assumptions and projects outlined in the European TYNDP (and will therefore be taken into account), or – once the demand has materialised in bookings – in the ‘relevant contractual obligations.’ → <b>No change to the text.</b>
8 2.	On the issue of competing capacities, one TSO proposes to reinsert the <b>coordinated</b> approvals of relevant NRAs.	It appears that competing capacities only occur on one side of a border, for which only one NRA is responsible. A cross-border coordinated NRA approval is not necessary. → <b>No change to the text.</b>
12	One TSO proposes to introduce <b>rolling</b> quarterly capacity auctions in addition to the current quarterly auctions held only once per year. Such a preference was also expressed by stakeholders in that TSO’s region. An advantage would be to offer any additional capacity as quarterly product earlier at an IP.	ACER understands the value such a change may bring, however this proposal requires further investigation and stakeholder consultations, preferably in a future NC CAM revision process. As it is out of scope of the current amendment (and was not tested in the last consultation) it cannot be incorporated in the current text. → <b>No change to the text.</b>

Article	Respondents' feedback	ACER views
19	<p>One respondent would welcome clarification from ENTSOG on how many TSOs have implemented Art. 19 (5). Concerns are expressed in the current absence of a “conversion mechanism” on having to “pay twice” for one and the same product, when only bundled capacity can be bought, despite having already unbundled capacity contracted. The aim should be to come to a single “bundled contract”, also for efficiency reasons on the secondary market.</p>	<p>ACER is aware of the problem outlined also by other stakeholders outside this consultation. ENTSOG, NRAs and ACER have been working on possible solutions. The conclusion was that such issues should be handled by NRAs on a case-by-case basis, rather than on a European scale.  <b>→ No change to the text.</b></p>
24	<p>In case of total nominations exceeding the technically possible flow, one stakeholder proposes to change the sequence of interruptions. Instead of the contractual time stamp, the product's duration shall determine the sequence (i.e. shortest-term products being interrupted first). In case of products with the same duration, pro-rata interruptions shall apply.</p>	<p>ACER finds this proposal interesting, as it is currently also discussed among NRAs. However, it requires further investigation and stakeholder consultations, preferably in a future NC CAM revision process. As it is out of scope of the current amendment (and was not tested in the last consultation), it cannot be incorporated in the current text.  <b>→ No change to the text.</b></p>
26	<p>Three stakeholders note that uncertainty of future tariffs is likely to have an adverse effect on network users' willingness to book sufficient capacity to pass the economic test. The deletion of this Article should only happen if all provisions are covered in the NC Tariff and once it is applicable.</p>	<p><b>→ No change to the NC CAM text demanded or required. The legislative process should take care of this concern.</b></p>
27 3.	<p>As the provisions on ENTSOG's report on booking platforms have been exhausted, they can be deleted, one stakeholder noticed.</p>	<p>ACER agrees on substance. The decision on the amendment of NC CAM could include the deletion of the respective exhausted provisions.  <b>→ Deletion of exhausted provisions proposed by ACER to EC.</b></p>

Article	Respondents' feedback	ACER views
28	<p>Two respondents suggest keeping consistency with the other network codes and to list all articles with an application date different from 1 November 2015. All new and amended provisions on incremental capacity and the shift of auction dates shall have the same application date as the NC Tariffs. Another stakeholder notes that the amendments should not change the timing of provisions of the existing NC CAM for the period before the new regulation enters into force. A booking platform operator notes the importance of sufficient implementation lead time, in particular for the amendments on Art. 17(16) and Art. 18 3.(d) &amp; 9. The application dates should be clearly specified in Art. 28.</p>	<p>ACER agrees with the stakeholders' position and suggests to list all articles with an application date different from 1 November 2015. The start of application of the specific amendments (e.g. incremental capacity, auction calendar change etc.) <b>is to be precisely stated in the EC decision</b> to amend the NC CAM and shall be aligned with NC Tariffs.</p> <p><b>→ Listing of the NC CAM articles with a different application date is incorporated.</b></p>

## 5. Conclusions

Generally, stakeholders largely or at least partially support and appreciate the simplified overall process, and in particular the revised chapter IV and related articles with more precise timelines. Further, some stakeholders raise the importance to align NC CAM with the ongoing work on the NC Tariffs (for example regarding the reference to the Economic Test, the preference for a fixed price option for tariffs for new capacity). Respondents mainly objected, commented or provided alternative proposals on

- the definitions,
- the (common) demand assessment,
- the duration and content of the public consultation in the design phase,
- the auction as the default CAM in case NRAs do not agree on the alternative CAM, and
- the limited flexibility on the conditions and application of alternative CAMs.

Respondents broadly support the auction calendar change, except for rolling monthly auctions, where the original schedule was kept.

Most responding stakeholders at least partially support the ‘further technical changes’. Most objections raised relate to the extension of scope in Art. 20 (1.) on bundling arrangements.

About half of all respondents further commented on other elements of the code, mostly on the general scope, uncertainty of future tariffs, clarity on application dates and capacity calculation.

In total, nearly half of the proposals from responding stakeholders have been – at least partially – reflected in the amended NC CAM text. Any further proposed changes consulted by ACER, which are not explicitly raised or opposed by stakeholders, are considered supported by the market and therefore remain in the final amendment proposal to be sent to the European Commission.

## ANNEX I: Summary of changes made to the NC CAM after the 2nd Public Consultation (compared to the consultation document of 17.7.2015)

### Incremental Capacity

Article	Changes introduced after consultation
Article 1 – Subject matter	The article covers now both existing and incremental capacity as well as standard and alternative CAMs.
Article 2(3) – Scope	The article now clarifies where allocation results are published in case of alternative CAMs.
Article 3(20) - Definitions	A clarification is added on investments in ‘physical’ infrastructure.
Article 3(22) - Definitions	Definition clarified: “market test” in binding phase deleted
Article 3(23) - Definitions	The condition in the last part of the sentence moved to Art. 20d 2. ‘Procedure’ changed into ‘mechanism’.
Article 8(2) – Allocation methodology	Clarified that incremental offer levels are dependent on each other.
Article 11 (10) – Annual yearly capacity auctions	Added a new deadline (‘within two business days’) for informing participants on the results of the economic test.
Article 20a – Demand assessment	The title changed to “Market Demand Assessment”
Article 20a. 1. – Demand assessment	The last (redundant) sentence is deleted.
Article 20a. 2. – Demand assessment	Added clarification on coverage of common demand assessment report.
Article 20a. 1-3 – Demand assessment	Even-years changed to odd-years.
Article 20a. 4 – Demand assessment	Odd-years changed to even-years.
Article 20a. 8(a) – Demand assessment	Phrase ‘in the context of an incremental capacity project’ has been deleted.
Article 20a. 8(c) – Demand assessment	Text changed to read “assessed” instead of “taken into account”.
Article 20a 11.(f) – Demand assessment	Term ‘aggregated’ has been included.
Article 20a 11.(h) – Demand assessment	‘ <u>Type and – if already expressed - aggregated size of conditional demand indications</u> ’ was added.
Articles 20b 1. - Design phase	The general start of the design phase, only if demand was identified, was clarified.
Article 20b 3. (c) - Design phase	Introduced the possibility of providing conditional demand indications also during the consultation. Consultation to also cover the “prosed need for” an alternative CAM.
Article 20b 3. (e) - Design phase	‘Collaterals’ and ‘delays’ issues included (as in Art. 20b 5.(b)).

Article 20b 3. (g) - Design phase	Clarified that estimated 'f factor' is to be proposed and approved by NRAs.
Article 20b 5. - Design phase	Clarified that TSOs shall publish the project proposal.
Article 20b 5. (e) - Design phase	Replaced "one-sided" by "unilaterally"; clarified '15 years <u>after the start of the operational use</u> '
Article 20d 1. - Principles for alternative capacity allocation mechanisms	The second sentence is clarified; 'one-sided' is replaced by 'unilaterally'. An explanation of the concept of a 'unilaterally binding commitment' is added.
Article 20d 2. - Principles for alternative capacity allocation mechanisms	Revised wording on when alternative CAM can be applied.

### **Auction Calendar change**

Article 11.4. - Annual yearly capacity auctions	The annual yearly auction timing has been changed to July.
Article 12.5. - Annual quarterly capacity auctions	The annual quarterly auction timing has been changed to August.
Article 13.4. - Rolling monthly capacity auctions	The initial timing (third Monday) has been kept.

### **Further technical changes**

Article 17.16. – Ascending Clock auction algorithm	The text has been clarified with an additional specification on the limits within the bidding rounds of small price steps.
Article 20.1. – Bundling in case of existing transport contracts	Scope of article extended to cover all unbundled transport contracts (without reference to any date).
Article 21.9. – Allocation of interruptible services	Sentence added: 'In such cases, any change in the offered amounts should then be notified at least 12 hours before the start of the respective interruptible capacity auction.'

### **Other Comments**

Article 27.3 – Capacity booking platforms	The exhausted provision has been deleted.
Article 28 – Entry into force	The list of the application dates was incorporated.

## ANNEX II: List of responding stakeholders

Name	Type of organisation	Segment	Country of Origin
ČEZ	Company	Network User	Czech Republic
EDF GROUP	Company	Network User	France, UK
EDISON SPA	Company	Producer, Network User	Italy
EFET	Association	Network User / Trader	Europe
ENAGAS	Company	TSO	Spain
ENERGY COMMUNITY	Association	International Organisation	SE Europe
ENTSOG	Association	TSO	Europe
ESB	Company	Network User	Ireland
EURELECTRIC	Association	Network User	Europe
Gas Terra	Company	Network User	Netherlands
GAZ-SYSTEM	Company	TSO	Poland
GAZPROM M&T / Export	Company	Network User	United Kingdom
IOGP	Association	Producer	Europe
PGNiG	Company	TSO	Poland
PP a.s.	Company	Trader, Network User	Czech Republic
PRISMA	Company	Booking Platform by TSOs	Europe
Reganosa	Company	TSO & LSO	Spain
RWE	Company	Network User	Germany
UPRIGAZ	Professional Union	Network User	France
VNG	Company	Network User	Germany



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