ACER

European Union Agency for the Cooperation of Energy Regulators

Agency Report

Analysis of the Consultation Document on the Gas Transmission Tariff Structure for Interconnector Limited (INT)

NRA: Office of Gas and Electricity Markets and Commissie voor de Regulering van de Elektriciteit en het Gas/ Commission de Régulation de l'Électricité et du Gaz (CREG)

TSO: Interconnector Limited (INT)

22 April 2024

Contents

1. ACER conclusion

(1) Interconnector (UK) Limited ('INT') has consulted on the reference price methodology ('RPM'). to set tariffs. Contrary to most EU transmission networks, the national regulatory authority ('NRA'), the Belgian Federal Commission for Electricity and Gas Regulation ('CREG'), as communicated to ACER, does not set an allowed revenue for INT. As a result, the proposed reference price methodology is not based on the allowed revenue of the transmission system operator ('TSO'). Instead, INT proposes to calculate tariffs using several factors including costs and market trends. The details on the proposed reference price methodology provided in the consultation document are limited and do not allow understanding how tariffs are derived. INT additionally proposes to apply a commodity charge (flow-based charge) and a non-transmission service (monthly administrative charge).

(2) INT construction predates the enactment of Directive 2009/73/EC and it therefore does not hold an exemption within the meaning of the latter act. Its regime is based on a comfort letter issued by the European Commission in 1995[1] that exempted it from certain restrictions under Article 85(1) of the Treaty Establishing the European Community (now Article 101(1) TFEU).

(3) On the basis of the above, INT was granted a derogation by the Office of Gas and Electricity Markets ('Ofgem') and CREG from a number of provisions of the Commission Regulation (EU) 2017/460 of 16 March 2017 establishing a Network Code on Harmonised Transmission Tariff Structures for Gas ('NC TAR'), which are listed in Annex 1 of this report. The derogation is further discussed in section 3 of this report.

(4) ACER notes that the consultation document does not enable to conclude on the compliance with several provisions of the NC TAR which are not explicitly included in CREG's decision (B)1783 of 28 June 20182 ('the Derogation Decision'). These provisions are i) Article 7(e) of the NC TAR on the requirement of not distorting cross-border trade, ii) Article 7(c) on the requirement of preventing undue cross-subsidisation, iii) Articles 7(b), 4(3)(a) and 4(4)(a) of the NC TAR on the requirement on cost-reflectivity applicable to the proposed RPM, the proposed flow-based charge and the non-transmission tariffs respectively, as well as iv) Chapter IV of the NC TAR, and in particular Article 19(5) of the NC TAR on the use on the auction premia.

(5) After having completed the analysis of the consultation documents pursuant to Article 27(2) of the NC TAR, ACER concludes that:

- most of the information referred to in Article 26(1) of the NC TAR, not covered by the derogation, has been published. The consultation document does not include the parameters for the calculation the proposed non-transmission service;
- the proposed methodology is compliant with the requirement on volume risk;
- the proposed methodology does not lead to cross-subsidies between the intra-system and cross-system use of the network, as INT does not have end-users connected to its infrastructure. At the same time, based on the information provided in the consultation

[1] See European Commission, XXVth Report on Competition Policy, COM(96) 126 final, COM(96) 126 final, p. 28.

[2] https://www.creg.be/fr/publications/decision-b1783

document, the analysis on the compliance of the RPM with the requirements of cost-reflectivity, cross-subsidies, non-discrimination and cross-border trade could not be completed;

- it cannot determine the compliance of the proposed flow-based charge with the requirements in Article 4(3)(a) of the NC TAR;
- it cannot determine the compliance of the proposed non-transmission charges with the requirements in Article 4(4) of the NC TAR.

(6) ACER notes that the limited information that INT provides in the consultation document, compared to the applicable requirements of the NC TAR, might be consistent with the absence of an allowed revenue regime which might render impractical the application of certain provisions of the NC TAR.

(7) In order to ensure transparency of transmission tariff structures and procedures towards setting them, ACER is of the opinion that INT should provide all the information necessary to comply with Articles 7(b), 7(c), 7(e), 4(3)(a), 4(4)(a) and Chapter IV of the NC TAR as part of the procedure foreseen in Article 27(4) NC TAR, including any information that, due to the nature of the regime applicable to INT and the specificities of the interconnector itself, could explain any limitation to the application of the above mentioned-provisions, while complying with Article 13 of Regulation (EC) No 715/2019[3]. ACER notes that INT still has the possibility to propose amendments to the derogation providing the underlying rational thereafter under Article 37 of the NC TAR, to enable the adoption of the consequential acts by the relevant regulatory authority.

(8) Based on the information provided, ACER cannot fully assess the compliance of the proposed methodology with the requirement of non-discrimination to the extent that it is possible in networks where an allowed revenue regime is applicable.

[3] OJ L 211, 14.8.2009, p. 36.

2. Introduction

(9) Commission Regulation (EU) 2017/460 of 16 March 2017 establishes the NC TAR[4].

(10) Article 27 of the NC TAR requires ACER to analyse the consultation documents on the reference price methodologies for all entry-exit systems.[5] This Report presents the analysis of ACER for the transmission system of INT in Belgium.

(11) On 17 November 2023, INT submitted the consultation documents to ACER. The consultation, launched on 16 November 2023, lasted until 16 December 2023. On 18 December 2023, INT submitted to the Agency the response to the consultation submitted by one stakeholder[6]. The analysis carried out in this report takes also stock of the Derogation Decision being an essential prelude to the proposed reference price methodology.[7]

(12) Within five months following the end of the final consultation, and pursuant to Article 27(4) of the NC TAR, CREG shall take and publish a motivated decision on all the items set out in Article 26(1).

Reading guide

(13) Section 3 presents the analysis of the derogation granted to INT. Section 4 presents an analysis on the completeness of the consultation documents, namely if all the information in Article 26(1) has been published. Section 5 assesses the proposed reference price methodology in addition to the regulatory regime applicable to INT and the use of the auction premia. Section 6 focusses on the compliance, namely if the RPM complies with the requirements set out in Article 7 of the code, if the criteria for setting commodity-based transmission tariffs as set out in Article 4(3) are met and if the criteria for setting non-transmission tariffs as set out in Article 4(4) are met. This report contains also three annexes, with the NC TAR articles derogated to INT, the legal framework and a list of abbreviations.

3. Derogations from the application of several articles of the NC TAR

(14) On 5 December 2017, INT submitted an application for derogation from a number of articles of the NC TAR to Ofgem and CREG for decision, pursuant to Article 37 of the NC TAR.

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[4] OJ L 72, 17.3.2017, p. 29.

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

[6] https://www.fluxys.com/en/natural-gas-and-biomethane/empowering-you/customer-interactions/consultations-in-the-uk/2023---annual-review-of-int-access-terms-and-charging-methodology

[7] The potential differences between the current report and the report issued by ACER in 2019 are due to fact that, in the current report, ACER has taken due consideration of the derogation decision of INT and its implications on the application of the NC TAR.

(15) On 13 July 2018, pursuant to Article 37(4) of the NC TAR, CREG notified ACER and the European Commission of its decisions granting INT derogation from the NC TAR[8]. In particular, INT was granted an explicit derogation from the application of Articles 5, 7(a), 12(3), 13, 26(1)(a)(iii)(vi), 26(2), 28, 29(a), 29(b)(i), 31(2)(a), 30(1)(a)(ii)(iii), 30(1)(b)(i)(ii), 30(1)(b)(iii)(1-2), 30(1)(b)(iii)(3)(b), 30(1)(b)(iii)(5), 30(1)(b)(iv)(v) and 30(2) NC TAR.

(16) CREG justified this derogation on the basis of the specific nature of the interconnector and the competition between infrastructure operators.

(17) The derogation was granted for an initial period until 31 December 2019 and it has been extended further for each subsequent year.

(18) Pursuant to the same Derogation Decision, before the end date of the initial period and at the end of each subsequent calendar year, INT shall review the scope of its derogation and inform CREG of any amendment of the request for derogation pursuant to Article 37 TAR NC. If amendments are requested, CREG shall take a decision on the proposed amendments. If no amendment is requested, the derogation is deemed to be approved for a subsequent calendar year, unless decided otherwise.

4. Completeness

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

(19) Article 27(2)(a) of the NC TAR requires ACER to analyse whether all the information items referred to in Article 26(1) of the NC TAR have been published.

(20) Article 26(1) of the NC TAR requires that the consultation document is published in English, to the extent possible. ACER confirms that the consultation document was published in English. Table 1 below summarises the information included in the consultation document taking into account the provisions that are derogated.

Table 1 Checklist information Article 26(1).

Article	Information	Published: Y/N/NA
26(1)(a)	the description of the proposed reference price methodology	Yes. INT provides a description that is consistent with the derogation. ACER notes that the description does not allow understanding the exact steps and cost drivers used to calculate tariffs.
26(1)(a)(i) **26(1)(a)(i)(1)**	the indicative information set out in Article 30(1)(a), including:	Yes. INT provides technical information related to the system (technical capacity,

[8] See https://www.creg.be/fr/publications/decision-b1783. The derogation was also granted by the Office of Gas and Electricity Markets (Ofgem), the regulatory authority for the United Kingdom. Its decision is available at the following address: https://www.ofgem.gov.uk/publications-and-updates/decision-derogate-iuk-certain-articles-eu-network-code-tariffs

26(1)(a)(i)(2)	• the justification of the parameters used that are related to the technical characteristics of the system • the corresponding information on the respective values of such parameters and the assumptions applied	representation of the network, etc). INT is derogated from Article 30(1)(a)(ii) on the forecasted contracted capacity at entry and exit points and associated assumptions.
26(1)(a)(ii)	the value of the proposed adjustments for capacity-based transmission tariffs pursuant to Article 9	Not applicable. No storage or LNG infrastructure directly connected to INT.
26(1)(a)(iii)	the indicative reference prices subject to consultation	Derogation.
26(1)(a)(iv)	the results, the components and the details of these components for the cost allocation assessments set out in Article 5	Derogation.
26(1)(a)(v)	the assessment of the proposed reference price methodology in accordance with Article 7	Derogation from Article 7(a). INT includes an assessment in the consultation document, however based on the information provided, ACER cannot complete the analysis with the requirements in Articles 7(b)-(c)-(e) of the NC TAR.
26(1)(a)(vi)	where the proposed reference price methodology is other than the capacity weighted distance reference price methodology detailed in Article 8, its comparison against the latter accompanied by the information set out in point (iii)	Derogation.
26(1)(b)	the indicative information set out in Article 30(1)(b)(i), (iv), (v)	Derogation.
26(1)(c)(i) **26(1)(c)(i)(1)** **26(1)(c)(i)(2)** **26(1)(c)(i)(3)**	where commodity-based transmission tariffs referred to in Article 4(3) are proposed • the manner in which they are set • the share of the allowed or target revenue forecasted to be recovered from such tariffs • the indicative commodity-based transmission tariffs	INT is derogated from Articles 30(1)(a)(iii) of the NC TAR, which refers to the publication in the consultation document, of the quantity and the direction of the gas flow. In the absence of this information, the Agency cannot assess that the proposed flow-charge is levied for the purpose of covering the costs mainly driven by the quantity of the gas flow (Article 4(3)(a)(1) of the NC TAR) and that it is calculated based on forecasted or historical flows (Article 4(3)(a)(1) of the NC TAR).
26(1)(c)(ii) **26(1)(c)(ii(1)** **26(1)(c)(ii)(2)** **26(1)(c)(ii)(3)** **26(1)(c)(ii)(4)**	where non-transmission services provided to network users are proposed: • the non-transmission service tariff methodology therefor • the share of the allowed or target revenue forecasted to be recovered from such tariffs • the manner in which the associated non-transmission services revenue is reconciled as referred to in Article 17(3) • the indicative non-transmission tariffs for non-transmission services provided to network users	The consultation document does not assess how the costs of the non-transmission service are established. At the same time, the information provided is consistent with the non-application of an allowed revenue regime.
26(1)(d)	the indicative information set out in Article 30(2);	Derogation

26(1)(e) **26(1)(e)(i)** **26(1)(e)(ii)** **26(1)(e)(iii)** **26(1)(e)(iv)**	where the fixed payable price approach referred to in Article 24(b) is considered to be offered under a price cap regime for existing capacity: • the proposed index; • the proposed calculation and how the revenue derived from the risk premium is used • at which interconnection point(s) and for which tariff period(s) such approach is proposed • the process of offering capacity at an interconnection point where both fixed and floating payable price approaches referred to in Article 24 are proposed	Not applicable. INT does not operate under a price cap regime.

5. Regulatory regime applicable to INT and proposed reference price methodology

(21) The following section provides a description of the proposed tariff methodology in addition to describing the financial control regulation applicable to INT. The section additionally refers to the revenue recovered by INT in 2022 and the auction premium recovered in 2021 and 2022.

5.1 Description of the proposed RPM

(22) In the consultation document, INT provides the following description of the proposed RPM:

(23) "*INT is a merchant interconnector between markets. It is just one of a number of flexibility providers to the markets it connects. INT's customers are not captive. These customers can choose alternative routes to get gas to their customers. INT's tariffs are therefore constrained by the competitive flexibility market. This means flows and resultant bookings are difficult to predict and hence makes forecasting capacity bookings difficult. A target revenue divided by forecasted bookings approach cannot be used to determine the tariffs. As a merchant interconnector with full market exposure, INT needs the ability to respond to changing market conditions and compete fairly with other flexibility assets.*

(24) *Taking the above into account. the* [reference price methodology] *outlines that INT prices will be determined by a number of factors including costs, competitive forces and a range of market scenarios. Furthermore, whilst the CM provides INT with flexibility to adjust tariffs in order to compete in the flexibility market, it also contains safeguards. These safeguards include a tariff notification publication timetable. It also contains multiplier caps above which INT cannot price products to safeguard against excessive pricing. In addition, through a separate Belgian INT financial control, CREG monitors INT through regular financial reporting obligations. This provides an appropriate balance between enabling INT to compete effectively whilst ensuring appropriate transparency and protection for users*".

5.2 Financial control regulation applied to INT by CREG

(25) The revenue that INT collects is subject to a financial control mechanism set by CREG which entered into force on 1 October 2019[9]. The mechanism sets a limit to the profit that INT can keep and it is based on two values of GBP 37.9 million and GBP 47.9 million[10].

(26) Within the four-year period, the profit above the limit can be used to compensate INT up to the limit of GBP 37.9 million in the years where the recovered revenue is below this levels[11].

(27) An amount equivalent to one third of the revenue above the limit that is not used to compensate earnings below the limit is transferred to the next four-year period. The remaining two thirds can be reconciled with the tariffs applicable for the next regulatory period or can be used to finance future investments[12].

(28) CREG has published the revenue collected by INT in 2022[13], which amounts to GBP 171 million, out of which GBP 53.8 million is the auction premia[14].

5.3 Regulatory account

(29) ACER notes that the derogation applicable to INT does not explicitly cover the Articles related to the reconciliation of the regulatory account under Chapter IV of the NC TAR.

(30) Article 17 of the NC TAR establishes that the reconciliation of under- and over- recoveries is applicable where the TSO functions under a non-price cap regime. The NC TAR further defines "non-price cap regimes" in Article 3(3) of the NC TAR as "*a regulatory regime, such as the revenue cap, rate of return and cost-plus regime, under which the allowed revenue for the TSO is set in accordance with Article 41(6)(a) of Directive 2009/73/EC*".

(31) Article 3(11) of the NC TAR further defines 'allowed revenue' as "*the sum of transmission services revenue and non-transmission services revenue for the provision of services by the TSO for a specific time period within a given regulatory period which such TSO is entitled to obtain under a non-price cap regime and which is set in accordance with Article 41(6)(a) of Directive 2009/73/EC*".

(32) ACER notes that the regime applicable to INT is an ex-post profit control regime that is applicable to the revenue collected by INT. According to the information provided by CREG, the latter does not set an allowed revenue for INT.

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[9] See CREG's decision 1654/1 on 21 December 2017:https://www.creg.be/nl/publicaties/andere-z16541.

[10] The values are updated based on an indexation. See page 13 of CREG's decision 1654/1 on 21 December 2017. Link in footnote 9. The initial values set for 2018 were respectively GBP 35 million and GBP 45 million.

[11] See Article 4 (page 13) of CREG's decision 1654/1 on 21 December 2017.

[12] See Article 10 of CREG's decision 1654/1 on 21 December 2017.

[13] See CREG's Decision (B)1442/12 on 10 August 2023.

[14] A total of GBP 53.8 million auction premia was accumulated between 2021 and 2022 (GBP 1.2 million in 2021 and GBP 52.6 million in 2022). See CREG's Decision (B)1442/12 10 August 2023, page 11.

(33) In light of the derogation currently in force and based on the ex-post profit control regime applicable to INT, the provisions on the reconciliation of the under- and over- recoveries, foreseen under Chapter IV of the NC TAR, do not apply to INT.

(34) In that regard, ACER invites INT to render transparent the detailed framework leading to the non-application of Chapter IV with regards to the provisions on the reconciliation of the under- and over-recoveries.

5.4 Auction premia

(35) ACER notes that the derogation applicable to INT does not explicitly apply to the Article 19(5) of the NC TAR on the use of the auction premia.

(36) Auction premia, although collected together with tariffs, have a different nature, as it reflects scarcity of capacity. Therefore, although collected together with tariffs, their use is defined separately. This is the reason for which Article 19(5) of the NC TAR is applicable irrespective of the applicable regime (whether price-cap and non-price cap for instance).

(37) ACER is of the view that the principle behind Article 19(5) of the NC TAR establishes only two options for NRAs to define the regime for the use of the auction premia, namely i) reducing physical congestion or ii), where the transmission system operator functions only under a non-price cap regime, decreasing the transmission tariffs for the next tariff period(s) as set out in Article 20 of the NC TAR. This is so as any alternative reading would otherwise render the principle behind Article 19(5) of the NC TAR devoid of purpose (i.e. avoiding that a TSO could derive an unregulated benefit from congestion and mitigating or removing the negative effects of congestion to/for network users).

(38) ACER notes that due to the regime applicable to INT, there might be no opportunity to require the auction premia to be used to decrease the transmission tariffs for the next tariff period(s) as set out in Article 20 of the NC TAR. The circumstances in which INT operates might render also undesirable the use of auction premia for reducing physical congestion. As a result, although Article 19(5) of the NC TAR has not been explicitly derogated, its application, according to the terms indicated in paragraph (37) above, might have been rendered unsuitable in the case of INT.

(39) In this context, the detailed circumstances explaining the use of auction premia against the direct objective of Article 19(5) of the NC TAR should be made transparent in the procedure foreseen in Article 27(4) NC TAR. In addition, INT has the opportunity to propose the relevant amendments[15] to extend the application of the derogation also to Article 19(5) of the NC TAR providing the underlying rationale thereafter under Article 37 of the NC TAR, so as to enable CREG, where relevant, to adopt the consequential acts.

[15] See paragraph (18).

6. Compliance

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

(40) Article 27(2)(b)(1) of the NC TAR requires ACER to analyse whether the proposed reference price methodology complies with the requirements set out in Article 7 of the NC TAR. This article refers to Article 13 of Regulation (EC) 715/2009 and lists a number of requirements to take into account when setting the RPM.

(41) For this analysis, ACER takes into account the derogation granted to INT, which applies to Article 7(a) of the NC TAR but not Article 7(b)-(e) of the NC TAR. ACER also takes into account the regime under which INT operates which is not based on allowed or target revenue set by CREG.

6.1.1 Transparency

(42) The derogation granted to INT includes Article 7(a) of the NC TAR. In addition, INT is not subject to the requirements enabling network users to reproduce the calculation of reference prices and their accurate forecast.

6.1.2 Cost-reflectivity

(43) Article 7(b) of the NC TAR requires that the RPM takes into account the actual costs incurred for the provision of transmission services, considering the level of complexity of the transmission network. Furthermore, Article 13 of Regulation (EC) No 715/2009 requires that: "*tariffs, or the methodologies used to calculate them […] reflect the actual costs incurred, insofar as such costs correspond to those of an efficient and structurally comparable network operator*".

(44) In the consultation document, INT argues that "*both, OPEX and CAPEX are key factors determining prices as well as competitive forces*". The consultation document further clarifies that reference prices cannot be based on the costs or the allowed revenue, as referred to in paragraph (25) above: "*a target revenue divided by forecasted bookings approach cannot be used to determine the tariffs*."

(45) Based on the information provided in the consultation document, the Agency cannot conclude that the proposed RPM is compliant with the requirement on cost-reflectivity.

(46) ACER is, therefore, of the opinion that INT should provide the information necessary to comply with Article 7(b) NC TAR as part of the procedure foreseen in Article 27(4) NC TAR, including any information that, due to the nature of the regime applicable to INT and the specificities of the interconnector itself, could explain any limitation to the application of the above mentioned-provision, while complying with Article 13 of Regulation (EC) No 715/2019.

6.1.3 Cross-subsidisation and non-discrimination

(47) Article 7(c) of the NC TAR requires that the RPM ensure non-discrimination and prevent undue cross-subsidisation. One instrument to evaluate this is the cost allocation assessment ('CAA') described under Article 5 of the NC TAR.

(48) Consistent with the derogation granted to INT, which includes Article 5 of the NC TAR, the consultation document does not detail the CAA. The consultation documents explains that the CAA is not relevant in the context of INT, given that INT has no intra-system network users.

(49) The proposed methodology appears not to lead to cross-subsidies between the intra-system and cross-system use of the network, as INT does not have end-users connected to its infrastructure. At the same time, ACER notes that a complete analysis of the requirement on preventing undue cross-subsidisation is not possible based on the information provided in the consultation document.

(50) ACER is, therefore, of the opinion that INT should provide the information necessary to comply with Article 7(c) NC TAR as part of the procedure foreseen in Article 27(4) NC TAR, including any information that, due to the nature of the regime applicable to INT and the specificities of the interconnector itself, could explain any limitation to the application of the above mentioned-provision, while complying with Article 13 of Regulation (EC) No 715/2019.

(51) On the requirement of non-discrimination, INT explains in the consultation document that the methodology "*allows prices to differ for different entry and exit points, types of capacity, durations of time and capacity periods to reflect the different underlying market and costs conditions*". ACER notes that the analysis on the compliance with the requirement of non-discrimination is regularly based on the application of the same RPM to all points of the network. Based on information provided in the consultation document, and although noting that there are no stakeholder responses in the consultation documents raise concern on the application of discriminatory practices related to the applicable tariffs, ACER cannot conclude that the proposed methodology is compliant with the requirement of non-discrimination

6.1.4 Volume risk

(52) Article 7(d) of the NC TAR requires that the RPM ensure that significant volume risk related particularly to transports across an entry-exit system is not assigned to final customers within that entry-exit system.

(53) ACER concludes that the proposed RPM appears to be compliant with the requirement on volume risk as INT explains in the consultation document that it currently does not have final consumers connected to its infrastructure.

6.1.5 Cross-border trade

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

(55) ACER notes that the compliance with the requirement of non-distorting cross-border trade cannot be based on the compliance with the requirement on cost-reflectivity, as the proposed RPM cannot comply with the latter. ACER considers that the compliance with the requirement of non-distorting cross-border trade is affected by the non-distortion of competition.

(56) ACER is, therefore, of the opinion that INT should provide the information necessary to comply with Article 7(e) NC TAR as part of the procedure foreseen in Article 27(4) NC TAR, including any information that, due to the nature of the regime applicable to INT and the specificities of the interconnector itself, could explain any limitation to the application of the above mentioned-provision, while complying with Article 13 of Regulation (EC) No 715/2019. Based on the information provided in the consultation document, ACER cannot assess the compliance with the requirement of not-distorting cross-border trade.

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

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

(58) INT proposes to apply commodity-based transmission tariffs. The use of commodity-based transmission tariffs is an exception and only a part of the transmission services revenue may be recovered by commodity-based transmission tariffs. INT provides the following information in its website related to the commodity charges applicable from 1 October 2023*:*

- Commodity Unit Cost (Bacton) (GB to BE flow) in p/kWh = 0.015778611 + [0.0001297 * ICIS Day-Ahead NBP Price Assessment (p/th)]
- Commodity Unit Cost (Zeebrugge) (BE to GB flow) in p/kWh = 0.0102364 + [0.0002252 * ICIS Day-Ahead NBP Price Assessment (p/th)]

(59) INT communicated to the Agency that the objective of the flow-based charge is to reflect the costs of energy used to compress gas. At the same time, INT noted that forecasting these costs is complex as there are no end-consumers connected to the pipeline and flows depend on spreads between markets.

(60) INT is derogated from Article 30(1)(a)(iii) of the NC TAR, which refers to the publication in the consultation document, of the quantity and the direction of the gas flow. In the absence of this information, the Agency cannot assess that the proposed flow-charge is levied for the purpose of covering the costs mainly driven by the quantity of the gas flow (as required by Article 4(3)(a)(i) of the NC TAR) and that it is calculated based on forecasted or historical flows (as required by Article 4(3)(a)(ii) of the NC TAR).

Table 2 Criteria Article 4(3a)

Criteria	Y/N?
levied for the purpose of covering the costs mainly driven by the quantity of the gas flow	Cannot be assessed
calculated on the basis of forecasted or historical flows, or both	Cannot be assessed
set in such a way that it is the same at all entry points and the same at all exit points	Yes
expressed in monetary terms or in kind	Yes

(61) ACER is of the opinion that INT should either provide the information necessary to comply with Article 4(3)(a)(i)-(ii) NC TAR as part of the procedure foreseen in Article 27(4) NC TAR, including any information that, due to the nature of the regime applicable to INT and the specificities of the interconnector itself, could explain any limitation to the application of the above mentioned-provision, while complying with Article 13 of Regulation (EC) No 715/2019.

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

(62) Article 27(2)(b)(3) of the NC TAR requires ACER to analyse whether the criteria for setting non-transmission tariffs as set out in Article 4(4) of the NC TAR are met. ACER notes that INT is not derogated from the application of the relevant NC TAR provisions applicable to non-transmission tariffs.

(63) INT proposes a non-transmission service for the monthly administrative charge. In the Charging Statement document, INT indicates that the monthly administration fee payable by each shipper is equal to GBP 712 for the year 2023-24. The formula is indexed based on a formula provided in Annex 1 of the same document. INT does not provide the revenue allocated using the non-transmission charges. INT further clarified to the Agency that the proposed intend to cover costs related to information technology, data provision and compliance reviews related to Shipper management.

(64) Based on the information provided, ACER cannot conclude that the proposed non-transmission tariffs are compliant with the requirements laid down in Article 4(4) of the NC TAR, as INT does not explain how the costs for this service are established.

(65) ACER is of the opinion that INT should provide the information necessary to comply with Article 4(4) NC TAR within the context of the procedure foreseen in Article 27 of the NC TAR, including any information that, due to the nature of the regime applicable to INT and the specificities of the interconnector itself, could explain any limitation to the application of the above mentioned-provision, while complying with Article 13 of Regulation (EC) No 715/2019.

Annex 1: Derogated NC TAR requirements applicable to the consultation

(67) CREG granted INT a derogation from the NC TAR articles that are listed in table below.

Table 3 NC TAR articles from which INT has received a derogation.

Chapter	Description	Articles from which INT have been granted Derogation
I – General Provisions	Cost Allocation Assessment	5 (entire article)
	Choice of a reference Price Methodology	7 (a)
II – Reference Price Methodologies	General Provisions	12.3
III – Reserve Prices	Level of Multipliers and Seasonality factors	13 (entire article)
VII – Consultation Requirements	Periodic Consultation	26.1(a)(iii), 26.1(a)(vi) 26.2
	Consultation on discounts, multipliers and seasonal factors	28 (entire article)
VIII – Publication Requirements	Information to be published before the annual yearly capacity auction	29(a) and 29(b)(i)
	Information to be published before the tariff period	30.1(a)(ii) and (iii), 30.1(b)(i) and (ii), 30.1(b)(iii)(1) 30.1(b)(iii),(2),(3)(b),(5) 30.1(b)(iv) and (v) 30.2
	Form of Publication	31.2(a)

Annex 2: Legal framework

(68) Article 27 of the NC TAR reads:

1. Upon launching the final consultation pursuant to Article 26 prior to the decision referred to in Article 27(4), the national regulatory authority or the transmission system operator(s), as decided by the national regulatory authority, shall forward the consultation documents to the Agency.

2. The Agency shall analyse the following aspects of the consultation document:
(a) whether all the information referred to in Article 26(1) has been published;
(b) whether the elements consulted on in accordance with Article 26 comply with the following requirements:
(1) whether the proposed reference price methodology complies with the requirements set out in Article 7;
(2) whether the criteria for setting commodity-based transmission tariffs as set out in Article 4(3) are met;
(3) whether the criteria for setting non-transmission tariffs as set out in Article 4(4) are met.

3. Within two months following the end of the consultation referred to in paragraph 1, the Agency shall publish and send to the national regulatory authority or transmission system operator, depending on which entity published the consultation document, and the Commission the conclusion of its analysis in accordance with paragraph 2 in English.
The Agency shall preserve the confidentiality of any commercially sensitive information.

4. Within five months following the end of the final consultation, the national regulatory authority, acting in accordance with Article 41(6)(a) of Directive 2009/73/EC, shall take and publish a motivated decision on all items set out in Article 26(1). Upon publication, the national regulatory authority shall send to the Agency and the Commission its decision.

5. The procedure consisting of the final consultation on the reference price methodology in accordance with Article 26, the decision by the national regulatory authority in accordance with paragraph 4, the calculation of tariffs on the basis of this decision, and the publication of the tariffs in accordance with Chapter VIII may be initiated as from the entry into force of this Regulation and shall be concluded no later than 31 May 2019. The requirements set out in Chapters II, III and IV shall be taken into account in this procedure. The tariffs applicable for the prevailing tariff period at 31 May 2019 will be applicable until the end thereof. This procedure shall be repeated at least every five years starting from 31 May 2019.

(69) Article 26(1) of the NC TAR reads:

1. One or more consultations shall be carried out by the national regulatory authority or the transmission system operator(s), as decided by the national regulatory authority. To the extent possible and in order to render more effective the consultation process, the consultation document should be published in the English language. The final consultation prior to the decision referred to in Article 27(4) shall comply with the requirements set out in this Article and Article 27, and shall include the following information:
(a) the description of the proposed reference price methodology as well as the following items:
(i) the indicative information set out in Article 30(1)(a), including:

(1) the justification of the parameters used that are related to the technical characteristics of the system;

(2) the corresponding information on the respective values of such parameters and the assumptions applied.

(ii) the value of the proposed adjustments for capacity-based transmission tariffs pursuant to Article 9;

(iii) the indicative reference prices subject to consultation;

(iv) the results, the components and the details of these components for the cost allocation assessments set out in Article 5;

(v) the assessment of the proposed reference price methodology in accordance with Article 7;

(vi) where the proposed reference price methodology is other than the capacity weighted distance reference price methodology detailed in Article 8, its comparison against the latter accompanied by the information set out in point (iii);

(b) the indicative information set out in Article 30(1)(b)(i), (iv), (v);

(c) the following information on transmission and non-transmission tariffs:

(i) where commodity-based transmission tariffs referred to in Article 4(3) are proposed:

(1) the manner in which they are set;

(2) the share of the allowed or target revenue forecasted to be recovered from such tariffs;

(3) the indicative commodity-based transmission tariffs;

(ii) where non-transmission services provided to network users are proposed:

(1) the non-transmission service tariff methodology therefor;

(2) the share of the allowed or target revenue forecasted to be recovered from such tariffs;

(3) the manner in which the associated non-transmission services revenue is reconciled as referred to in Article 17(3);

(4) the indicative non-transmission tariffs for non-transmission services provided to network users;

(d) the indicative information set out in Article 30(2);

(e) where the fixed payable price approach referred to in Article 24(b) is considered to be offered under a price cap regime for existing capacity:

(i) the proposed index;

(ii) the proposed calculation and how the revenue derived from the risk premium is used;

(iii) at which interconnection point(s) and for which tariff period(s) such approach is proposed;

(iv) the process of offering capacity at an interconnection point where both fixed and floating payable price approaches referred to in Article 24 are proposed.

(70) Article 7 of the NC TAR reads:

The reference price methodology shall comply with Article 13 of Regulation (EC) No 715/2009 and with the following requirements. It shall aim at:

a) enabling network users to reproduce the calculation of reference prices and their accurate forecast;

(b) taking into account the actual costs incurred for the provision of transmission services considering the level of complexity of the transmission network;

(c) ensuring non-discrimination and prevent undue cross-subsidisation including by taking into account the cost allocation assessments set out in Article 5;

(d) ensuring that significant volume risk related particularly to transports across an entry-exit system is not assigned to final customers within that entry-exit system;
(e) ensuring that the resulting reference prices do not distort cross-border trade.

(71) Article 13 of Regulation (EC) No 715/2009 reads:
1. Tariffs, or the methodologies used to calculate them, applied by the transmission system operators and approved by the regulatory authorities pursuant to Article 41(6) of Directive 2009/73/EC, as well as tariffs published pursuant to Article 32(1) of that Directive, shall be transparent, take into account the need for system integrity and its improvement and reflect the actual costs incurred, insofar as such costs correspond to those of an efficient and structurally comparable network operator and are transparent, whilst including an appropriate return on investments, and, where appropriate, taking account of the benchmarking of tariffs by the regulatory authorities. Tariffs, or the methodologies used to calculate them, shall be applied in a non-discriminatory manner.
Member States may decide that tariffs may also be determined through market-based arrangements, such as auctions, provided that such arrangements and the revenues arising therefrom are approved by the regulatory authority.
Tariffs, or the methodologies used to calculate them, shall facilitate efficient gas trade and competition, while at the same time avoiding cross-subsidies between network users and providing incentives for investment and maintaining or creating interoperability for transmission networks.
Tariffs for network users shall be non-discriminatory and set separately for every entry point into or exit point out of the transmission system. Cost-allocation mechanisms and rate setting methodology regarding entry points and exit points shall be approved by the national regulatory authorities. By 3 September 2011, the Member States shall ensure that, after a transitional period, network charges shall not be calculated on the basis of contract paths.

2. Tariffs for network access shall neither restrict market liquidity nor distort trade across borders of different transmission systems. Where differences in tariff structures or balancing mechanisms would hamper trade across transmission systems, and notwithstanding Article 41(6) of Directive 2009/73/EC, transmission system operators shall, in close cooperation with the relevant national authorities, actively pursue convergence of tariff structures and charging principles, including in relation to balancing.

(72) Article 4(3) of the NC TAR reads:
3. The transmission services revenue shall be recovered by capacity-based transmission tariffs.
As an exception, subject to the approval of the national regulatory authority, a part of the transmission services revenue may be recovered only by the following commodity-based transmission tariffs which are set separately from each other:
(a) a flow-based charge, which shall comply with all of the following criteria:
(i) levied for the purpose of covering the costs mainly driven by the quantity of the gas flow;
(ii) calculated on the basis of forecasted or historical flows, or both, and set in such a way that it is the same at all entry points and the same at all exit points;
(iii) expressed in monetary terms or in kind.
(b) a complementary revenue recovery charge, which shall comply with all of the following criteria:
(i) levied for the purpose of managing revenue under- and over-recovery;
(ii) calculated on the basis of forecasted or historical capacity allocations and flows, or both;

(iii) applied at points other than interconnection points;

(iv) applied after the national regulatory authority has made an assessment of its cost-reflectivity and its impact on cross-subsidisation between interconnection points and points other than interconnection points.

(73) Article 4(4) of the NC TAR reads:

4. The non-transmission services revenue shall be recovered by non-transmission tariffs applicable for a given non-transmission service. Such tariffs shall be as follows:

(a) cost-reflective, non-discriminatory, objective and transparent;

(b) charged to the beneficiaries of a given non-transmission service with the aim of minimising cross-subsidisation between network users within or outside a Member State, or both.

Where according to the national regulatory authority a given non-transmission service benefits all network users, the costs for such service shall be recovered from all network users.

Annex 3: List of abbreviations

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