ACER

European Union Agency for the Cooperation of Energy Regulators

Agency Report

Analysis of the Consultation Document on the Gas Transmission Tariff Structure for the SGT pipeline within Poland owned by EuRoPol GAZ S.A. and operated by GAZ-SYSTEM S.A

NRA: Urząd Regulacji Energetyki (URE)
TSO: GAZ-SYSTEM S.A.

21 December 2021

Contents

1. ACER conclusion

(1) The Transmission System Operator ('TSO') of the Polish national network, GAZ-SYSTEM, performing the duties of the operator on the Transit Gas Pipeline System - SGT pipeline (the Polish segment of the Yamal pipeline), has carried out the second consultation on the reference price methodology ('RPM')[1] since the entry into force of the Commission Regulation (EU) 2017/460 of 16 March 2017 establishing a Network Code on Harmonised Transmission Tariff Structures for Gas ('NC TAR'). The TSO proposes a capacity weighted distance ('CWD') methodology, with no commodity or non-transmission charges. The assessment of the methodology is in Section 4.2 to 4.4 of this document. The RPM uses a proxy capacity value, which is 50% of the capacity to be offered. This value is used in the absence of sufficient visibility to accurately forecast capacity, partially resulting from the current developments related to the Nord Stream 2 pipeline. The TSO additionally proposes to shorten the period for the next consultation on the RPM to two years, starting on 1 January 2023, in order to cope with this uncertainty.

(2) The Agency understands that the modifications to the RPM described in the previous Agency report[2] are no longer part of the RPM. The proposal made in 2018 consultation for the SGT pipeline lacked of sufficient clarity and did not demonstrate the compliance of the RPM with the NC TAR rules.

(3) The NC TAR foresees a cost allocation assessment ('CAA'[3]) to analyse the potential cross-subsidisation between the intra-system and cross-system use of the network. This calculation is not provided in the consultation document, on the argument that all the points of the pipeline are for cross-system use (meaning that the transport of gas within the entry-exit system always happens to customers connected to another entry-exit system and not to domestic exit points), according to the definition in Article 3(9) of the NC TAR. A CAA calculation was provided on the request of the Agency, which resulted in a value of 67%. The Agency does not consider the result an accurate indicator as it is based solely on the capacity cost driver, while the RPM is based both on capacity and distance. In addition, the capacity used for this calculation is a proxy value and not the actual forecast. The CAA should be calculated for the applicable tariffs to be applied for the use of the network.

(4) Since a CWD methodology is proposed, a comparison with the CWD is not required, based on Article 26(1)(a)(vi) of the NC TAR. The Agency nevertheless refers to the specific manner in which the proposed CWD methodology is calculated in Section 4.4 of this document.

(5) The Agency concludes, after having completed the analysis of the consultation document pursuant to Article 27(2) of the NC TAR, that:

---

[1] The link to the first consultation can be found in the Agency's website: http://www.acer.europa.eu/gas/network-codes/tariffs/acer-reports-national-tariff-consultations/acer-analysis-national-tariff-consultation-documents

[2] https://documents.acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/Agency%20Report%20-%20Analysis%20of%20the%20consultation%20document%20for%20Poland%20(SGT).pdf

[3] Throughout this document, 'CAA' is used to refer to the cost allocation assessment index described in Article 5(3)(c) of the NC TAR.

- The consultation document includes most of the information listed in Article 26(1) of the NC TAR. At the same time, the usefulness of part of this information is limited, mainly as a result of the provisional capacity values used to calculate tariffs. Reference prices cannot be taken as indicative and as a result a number of ratios and comparison are equally of limited use.
- The consultation is not fully compliant with the transparency requirement as a result of the capacity proxy values used to calculate tariffs. At the same time, the Agency understands that estimating an accurate capacity forecast within an uncertain economic setting might be outside the control of both the TSO and the national regulatory authority ('NRA').
- The compliance of the RPM with the requirements of cost reflectivity, cross-subsidisation and cross-border trade are subject to the NRA providing a justification for the capacity forecast used. Such justification should include an assessment of the capacity forecast and a calculation of the CAA, and may subsequently lead to reconsidering the choice of RPM. Absent this information, the RPM cannot be considered compliant.
- The proposed RPM is compliant with the requirements of non-discrimination and volume risk.
- The compliance analysis pursuant to Articles 27(2)(b)(2-3) of the NC TAR does not apply as neither commodity charges nor non-transmission charges are proposed.

(6) The Agency recommends that the NRA include the following information as part of the motivated decision pursuant to Article 27(4) of the NC TAR:

(7) First, consider the uncertainty related to the future use of the pipeline and how this uncertainty is translated into network tariffs by means of the capacity cost driver. The NRA should assess the impact of potential under- and over- recoveries in the regulatory account and consider an appropriate reconciliation mechanism. The NRA should revaluate whether the choice of the RPM could ease the problem, by assessing the performance of, for example, a postage stamp methodology as a tool to evenly allocate the uncertainty over the capacity forecast across points of the network.

(8) Second, explain the proposed CWD calculation which differs from the steps laid out in the Article 8 of the NC TAR. The NRA should assess how the weighted average distance ('WAD') parameter of the CWD methodology is calculated. It should explain why it is preferable to average the distance cost driver to the capacity of n-1 points (all point of the network minus one), instead of n points (all points of the network). The NRA should base its justification on a mathematical analysis explaining why the alternative calculation proposed for the WAD is preferable. The NRA should compare the tariffs derived using its own approach to the tariffs derived using NC TAR rules in addition to calculating the CAA for both options. Both sets of results should be compared. Should the CAA calculated for the methodology using capacity for n-1 points be outside the 10% threshold foreseen under Article 5(6) of the NC TAR, while the CAA calculated for the methodology using capacity for n points be within the 10%, the Agency recommends that the NRA apply the latter.

(9) Third, include the CAA calculation as recommended in paragraph (41), considering flows to the exit IP to Poland and intra-system flows. The Agency recommends that the NRA use capacity and distance as cost drivers for this calculation.

(10) Fourth, provide transparency on all the calculations and assumptions that are part of the CWD methodology, including the use of the distance cost driver and the calculation steps applied for the CWD. These elements should all be included in the simplified tariff model.

(11) Fifth, assess the impact of capacity bookings on network tariffs and on the recovery of TSO revenue. For this analysis, the NRA should refer to the depreciation periods and amounts of the SGT pipeline. This is a requirement of the NC TAR pursuant to Article 30(1)(b)(iii). The NRA should assess how costs are and will be recovered in the event of decreasing capacity bookings. This information should be accompanied by clarity on the reconciliation rules applicable for potential under-recoveries along the principles laid down for the regulatory account in Article 17 and Article 19(2) of the NC TAR:

(12) Finally, the Agency recommends that the NRA clarify whether the tariffs applicable to existing contracts for the SGT pipeline are based on the RPM consulted in 2018. The NRA should clarify whether these contracts are compliant with the requirement laid out under Article 35 of the NC TAR

2. Introduction

(14) Commission Regulation (EU) 2017/460 of 16 March 2017 establishes a network code on harmonised transmission tariff structures for gas (NC TAR).

(15) Article 27 of the NC TAR requires the Agency to analyse the consultation documents on the reference price methodologies for all entry-exit systems.[4] This Report presents the analysis of the Agency for the transmission system of Poland.

(16) On 31 August 2021, GAZ-SYSTEM S.A. forwarded the consultation documents to the Agency. The consultation was launched on the same date and remained open until 31 October 2021. On 19 November 2021, the consultation responses and their summary were published. The Agency has taken these into consideration for this analysis. Within five months following the end of the final consultation, and pursuant to Article 27(4) of the NC TAR, the NRA, Urząd Regulacji Energetyki ('URE') shall take and publish a motivated decision on all the items set out in Article 26(1).

(17) A number of bilateral exchanges to collect additional information took place between GAZ-SYSTEM and the Agency. GAZ-SYSTEM provided information in a timely and clear manner following the requests of the Agency.

(18) In parallel with this consultation on the Transit Gas Pipeline System, GAZ-SYSTEM also carried out a public consultation on the RPM to be applied to the Polish national transmission system (delivering gas to Polish consumers and connecting the Polish gas market to the European market). This other consultation is assessed in a separate report[5], published simultaneously by the Agency.

Reading guide

(19) In Chapter 3, this document first presents an analysis of the proposed RPM. Chapter 4 presents an analysis on the completeness, namely if all the information in Article 26(1) has been published. Chapter 5 focusses on the compliance, namely if the RPM complies with the requirements set out in Article 7 of the NC TAR. The criteria for setting commodity-based transmission tariffs as set out in Article 4(3) and the criteria for setting non-transmission tariffs as set out in Article 4(4) do not apply in this case, hence these analyses are omitted. Chapter 6 provides other comments This document contains two annexes, respectively the legal framework and a list of abbreviations.

3. Completeness

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

(20) Article 27(2)(a) of the NC TAR requires the Agency to analyse whether all the information referred to in Article 26(1) of the NC TAR has been published.

---

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

[5] Report on the national transmission system to be published in the following link: http://www.acer.europa.eu/gas/network-codes/tariffs/acer-reports-national-tariff-consultations/acer-analysis-national-tariff-consultation-documents

(21) Article 26(1) of the NC TAR requires that the consultation document should be published in the English language, to the extent possible. The Agency remarks that the consultation document has been published in English.

(22) Overall, most of the information in Article 26(1) of the NC TAR has been published. However, the usefulness of this information is limited, mainly as a result of the provisional capacity input that is used to calculate tariffs. Resulting from this decision, the indicative reference prices have limited value and the same applies to other aspects: the ratios for the revenue referred under Article 30(1)(b)(v) of the NC TAR, the comparison between prevailing and proposed tariffs based on Article 30(2)(a) and the estimated evolution of tariffs. In addition, the CAA is not included in the consultation as referred in Section 4.6 of this Report.

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
26(1)(a)(i) **26(1)(a)(i)(1)** **26(1)(a)(i)(2)**	the indicative information set out in Article 30(1)(a), including: • 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	Partially. The justification for the calculation of the CWD steps is not sufficient.
26(1)(a)(ii)	the value of the proposed adjustments for capacity-based transmission tariffs pursuant to Article 9	N.A.
26(1)(a)(iii)	the indicative reference prices subject to consultation	Partially. Reference prices are based on proxy capacity values.
26(1)(a)(iv)	the results, the components and the details of these components for the cost allocation assessments set out in Article 5	No.
26(1)(a)(v)	the assessment of the proposed reference price methodology in accordance with Article 7	Yes.
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)	N.A.
26(1)(b)	the indicative information set out in Article 30(1)(b)(i), (iv), (v)	Partially. Ratios are based on proxy capacity values
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	N.A.
26(1)(c)(ii) **26(1)(c)(ii(1)**	where non-transmission services provided to network users are proposed: • the non-transmission service tariff methodology therefor	N.A.

26(1)(c)(ii)(2) **26(1)(c)(ii)(3)** **26(1)(c)(ii)(4)**	• 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	
26(1)(d)	the indicative information set out in Article 30(2);	Partially. Reference prices are based on proxy capacity values.
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	N.A.

4. Assessment of the proposed reference price methodology

4.1 Description of the SGT pipeline

(23) The SGT pipeline crosses Poland form the border with Belarus (Kondratki IP) to the border with Germany (Mallnow IP). The pipeline has two exits to the Polish network (Włocławek and Lwówek) that are clustered in a virtual interconnection point (PWP IP) and no exits to domestic points

(24) The pipeline has a length of 683.90 km. The PWP cluster exiting to Poland is 412.94 km from the entry point from Belarus and 270.96 km from Germany.

4.2 Description of the RPM

(25) The TSO proposes to apply a CWD methodology that is based on the cost drivers of capacity and distance. The TSO proposes not to apply an ex-ante entry-exit split.

(26) The methodology is applicable to all points of the system, that is, the entries from Belarus (Kondratki IP) and Germany (Mallnow IP) and to the exits to Poland (PWP) and Germany (Mallnow IP).

(27) The TSO explained, during exchanges with the Agency, that there are currently two differentiated uses of the pipeline:

- Transport of gas from Belarus to Germany.
- Transport of gas from Germany to the exit point to the Polish national network.

4.3 Capacity forecast cost driver

(28) The TSO proposes to use capacity as a costs driver. However, the consultation document proposes to calculate tariffs on the basis of a proxy capacity value that is set to 50% of the capacity offered by the TSO at each point. As explained by the TSO in bilateral exchanges, this value is not intended as a forecast of contracted capacity but as a provisional capacity value. Long term contracts for the use of the pipeline are coming to an end by 2022 and it is not possible to accurately forecast capacity use beyond this date. In the view of the TSO, the political uncertainty over the use of the pipeline beyond 2022 is high as a result of the Nord Stream 2 pipeline. In this context, a final capacity forecast for the calculation of tariffs should be provided by the NRA in the motivated decision following the TSO consultation and pursuant to Article 27(4) of the NC TAR

(29) The Agency notes that one of the two stakeholder responses to the consultation on the SGT pipeline, in particular that of the European Federation of Energy Traders (EFET), also referred to this capacity input to the RPM stating that ‘no justification [is] offered for the expected booking levels’.

(30) The Agency notes that the proposed proxy value does not allow stakeholders to estimate the tariffs that would be applicable based on the current RPM. For this reason, the Agency considers that the transparency provided in the consultation is insufficient and does not fulfil the requirement under Article 26(1)(a)(iii) and Article 30(2) of the NC TAR.

(31) The uncertainty over the capacity cost driver that is an input to the RPM is relevant too for the choice of the RPM. The proposed CWD methodology requires accurate forecasts for every point of the network. This condition might not be met if greater visibility on the use of the network is not possible. In this context, the Agency notes that the forecast used as an input to the RPM could result in different degrees of uncertainty being transferred to tariffs. As a result, tariffs for different users could have a varying degree of cost reflectivity given that they are derived using capacity forecasts per point.

(32) The Agency recommends that the NRA evaluate the possible error in the forecasting of tariffs and assess how this uncertainty is transferred to tariffs and consequentially to the different users of the pipeline. For this purpose, the NRA should reconsider the choice of RPM in view of the existing uncertainty on the future use of the pipeline, including by assessing a postage stamp methodology as an instrument to evenly allocate this uncertainty across all points of the network. In addition, the NRA should assess the impact of potential under- and over- recoveries in the regulatory account and consider an appropriate reconciliation mechanism.

4.4 Details of the CWD calculation

(33) The proposed CWD methodology contains a calculation that does not strictly follow the CWD methodology steps laid out under Article 8 of the NC TAR. The NC TAR foresees the calculation of the weighted average distance (WAD) for each entry point and for each exit point, as laid out under Article 8(2)(a)(i-ii).

(34) The Agency here provides a technical description of both calculations mainly for readers familiar with the calculation steps of the CWD methodology:

- The calculation of the WAD requires that the distance for each entry and exit point is averaged to (that is, divided by) the capacity at all entry or exit points of the network (this Report refers to this as the capacity for 'n' points). This is laid out in Article 8(2)(a)(i-ii) of the NC TAR.
- The calculation proposed by the TSO uses a capacity average calculated for n-1 points. The WAD calculation for each point excludes in the denominator the capacity of that same point, to reflect that a given point cannot be simultaneously an entry and an exit.
- The Agency notes that the NC TAR requires that the weighted distance for each entry point shall be '*divided by the sum of capacities at each exit point or cluster of points*'. Symmetrically, the weighted distance for each exit point shall be '*divided by the sum of capacities at each entry point or cluster of points*'. This implies that the capacity in the denominator should calculated for n points and not for n-1 points as the TSO proposes.
- The proposed calculation results in 15% lower tariffs for transporting gas from Germany to Poland, and a 3% increase for transporting gas from Belarus to Germany when compared to the calculation using capacity for n points. This is shown in Figure 1 and Figure 2 below. The Agency notes that the proposed methodology can have an impact on tariffs in networks where large differences exist between the capacities booked at IPs.
- The TSO justifies the exclusion of the capacity from the WAD average by referring to the application of a flow scenario, whereby gas cannot be transported from one point to the same point. The Agency understands that the alternative calculation proposal made by the TSO is not justifiable on the basis of a flow scenario. The TSO proposes a calculation that is applicable for the WAD calculation of each and every point of the network, making this calculation applicable to all points of the network and not only exceptionally, as a flow scenario would entail. The issue at stake is whether the calculation of the WAD should be made on the basis of the capacity at n points or n-1 points.
- The Agency remarks that the NC TAR already provides a clear rule for this calculation in Article 8(2)(a)(i-ii) of the NC TAR. This rule leads to WAD values that are comparable across points by being based on the same capacity denominator. This is not necessarily the case in the calculation proposed by the TSO as each WAD value is based on a different capacity denominator.

Figure 1: Difference in tariffs per point calculated using TSO proposed calculation and the NC TAR CWD steps as laid out in Article 8(2)(a)(i-ii) of the NC TAR .

[PLN/MWh/year]	TSO alternative calculation	NC TAR calculation	Difference (%)
Entry Points			
Kondratki	3.023116437	2.681575326	0.112976499
Mallnow Entry	0.407231775	1.20555821	-1.96037363
Exit Points			
PWP	1.857863555	1.405908545	0.243265987
Mallnow Exit	2.402505157	2.59586117	-0.080481

Figure 2: Impact of the proposed CWD calculation on possible utilisation routes of the SGT pipeline.

[PLN/MWh/year]	TSO alternative calculation	NC TAR calculation	Difference (%)
Entry Kondratki - Exit Mallnow (Belarus to Germany)	5.425621594	5.277436496	3%

Entry Mallnow - Exit PWP (Germany to Poland)	2.26509533	2.611466755	-15%

(35) The Agency recommends that the NRA explain the rationale for deviating from the NC TAR rule, in particular, by explaining why averaging distances to capacity for n-1 points is preferable to using all points of the network ('n'). The NRA should provide a mathematical justification of its proposed approach. The NRA should compare the tariffs derived with each approach and calculate the CAA for each option. Should the CAA of the methodology calculated using capacity for n-1 points be outside the 10% threshold foreseen under Article 5(6) of the NC TAR, while the CAA for the methodology calculated using capacity for n points be within the 10%, the Agency recommends that the NRA apply the latter methodology.

(36) The Agency considers that any flow scenarios to be applied to the final methodology should be subject to consultation, given the key impact on tariffs that they can have on this simple network.

4.5 Duration of the regulatory period.

(37) The TSO proposes that the methodology described in this document should be valid for a period of 2 years, i.e. from 1 January 2023, to 1 January 2025. The Agency remarks that this period has a lower duration compared to most consultations carried out so far in the EU. However, the Agency acknowledges the existing uncertainty over the future use of the network and considers a short period appropriate to adjust the methodology when needed.

4.6 Cost allocation assessment

(38) The TSO did not include the CAA as part of the consultation document based on the argument that all points of the pipeline are IPs. In the absence of domestic exit points, the TSO argues, there is no intra-system use for this network.

(39) The Agency already reflected on this point in its previous Report published for the SGT pipeline[6]. The Agency already recommended to calculate the CAA considering the transport of gas to the exit point to Poland as intra-system use. Such interpretation allows using the CAA to compare the two differentiated uses of the pipeline referred to in paragraph (27) above.

(40) Upon The Agency's request, the TSO provided the Agency with a CAA calculation, which was based on the capacity cost driver. The CAA result is 67%. The Agency does not consider the result an accurate indicator of undue cross-subsidisation as it is based solely on the capacity cost driver, while the RPM is based on two cost drivers: capacity and distance. In addition, the capacity values used for both the RPM and the CAA are proxy values, so the CAA result is not necessarily related to the capacity values that would be applicable for the final tariffs to be applied for the use of the pipeline.

(41) The Agency remarks that the CAA should be included in the NRA motivated decision. The Agency recommends that this calculation is improved and performed as discussed in paragraph (39) above

---

[6] https://documents.acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/Agency%20Report%20-%20Analysis%20of%20the%20consultation%20document%20for%20Poland%20(SGT).pdf

and using the same cost drivers as the proposed RPM. The NRA should reflect on the impact of the proposed approach to the CWD calculation when calculating the CAA.

5. Compliance

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

(42) Article 27(2)(b)(1) of the NC TAR requires the Agency 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. As these overlap, in the remainder of this chapter, the Agency will take a closer look at the five elements listed in Article 7 of the NC TAR.

(43) As the concepts of transparency, cost reflectivity, non-discrimination, cross-subsidisation and cross border trade are closely related the Agency concludes with an overall assessment. Special attention is paid to the allocation of revenues between domestic and transit routes.

5.1.1 Transparency

(44) **Article 7(a)** of the NC TAR requires that the RPM aims at ensuring that network users can reproduce the calculation of reference prices and their accurate forecast. The Agency finds the simplified tariff model, as required by Article 30(2)(b) of the NC TAR, is useful although it does not provide a full overview of all the assumptions that are relevant for the derivation of tariffs. In a simple network where a standard methodology is proposed, providing such degree of transparency is not technically demanding. The simplified model does not provide the assumptions and details used for the calculation of tariffs such as the details of the CWD calculation, the distances between network points and possible clustering of points. This information is partially included in the consultation document. The Agency recommends that it is all made part of the simplified tariff model.

(45) In addition, the Agency remarks, as explained under Section 4.3 above, that the capacity input used is not a forecast but rather a proxy value for the actual bookings and has a limited value as an indicator of future capacity use. Such approach severely limits the possibility of users to reproduce and forecast reference prices.

(46) The Agency considers that network users would not be able to fully reproduce the calculation of reference prices. The Agency further considers that network users would neither be able to accurately forecast the reference prices. The proposed RPM is therefore not fully compliant with the requirement on transparency.

(47) The Agency recommends that the NRA include in its motivated decision all assumptions, parameters and details used for the calculation of tariffs that are part of the CWD calculation, as required by Article 26(1)(a)(i) of the NC TAR.

5.1.2 Cost-reflectivity

(48) **Article 7(b)** of the NC TAR requires the RPM to take into account the actual costs incurred for the provision of transmission services, considering the level of complexity of the transmission network. The SGT pipeline is a linear network.

(49) The Agency considers that choice of a CWD methodology suits the characteristics of the SGT pipeline. Yet, the justification of the proposed RPM misses the following elements:

- A review of the choice of the RPM in view of the uncertainty of a capacity forecast as referred in paragraph (32).
- Clarity on the degree of certainty concerning the capacity cost driver used for the RPM as referred in paragraph (32).
- Details on the calculation of the CWD methodology, including a justification of the proposed calculation of the weighted average distance, as referred in paragraph (35).
- The review of the CAA calculation providing more options as proposed in paragraph (41).

5.1.3 Cross-subsidisation and non-discrimination

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

(51) Concerning non-discrimination, the Agency has not identified discrimination resulting from the correct application of the NC TAR, nor from practices not allowed by the NC TAR. For this analysis, the Agency defines 'discrimination' as 'charging different prices to different network users for the identical gas transmission service'. The allocation of all transmission costs via a single RPM to all entry-exit points minimises the possibility of forms of discrimination not allowed by the NC TAR.

(52) Concerning cross-subsidisation, the Agency considers the results of the CAA. The CAA was not provided in the consultation document, as mentioned earlier in the Report.

(53) The Agency believes that, even though cross-subsidisation between cross-system network use and intra-system network use is not a concern, a degree of cross-subsidisation between the two uses of the pipeline identified under paragraph (27) might arise. For this reason, the Agency recommends and reiterates its opinion from its previous Report that the CAA shall be calculated considering the transport of gas to the PWP exit as the intra-system use of the network.

(54) The Agency remarks that a calculation of the CAA on these terms was submitted to the Agency, as explained in the Report and in particular under Section 4.6.

(55) The Agency concludes that the compliance of the proposed RPM with the requirement of preventing undue cross-subsidisation is subject to a justification to be provided for the compliance with the principle on cost reflectivity on the items that are listed under paragraph (49) including on the CAA.

5.1.4 Volume risk

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

entry-exit system. In SGT pipeline does not connect final customers, hence the Agency considers that the RPM fulfils this requirement.

(57) During exchanges with the TSO, the Agency understood that existing capacity contracts for the SGT pipeline will expire by the end of 2022. This date happens earlier than the full depreciation of the SGT pipeline. In the absence of a sufficient level of capacity bookings, the tariffs of the SGT pipeline can potentially increase beyond levels that are affordable for the potential users of the pipeline.

(58) The Agency recommends the NRA to explain in the motivated decision the degree of depreciation of the current assets of the SGT pipeline and the remaining timeline up to the full depreciation of these assets. This is a requirement under Article 30(1)(b)(iii) of the NC TAR. In addition, the Agency recommends that the NRA assess the impact of potentially decreasing capacity bookings on network tariffs. The NRA should also provide clarity on the reconciliation principles to be applied to potential under-recoveries in relation to the requirements laid out in Article 17 and Article 19(2) of the NC TAR applicable to the regulatory account.

5.1.5 Cross-border trade

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

(60) The Agency considers the proposed methodology compliant with the requirement of not distorting cross-border trade subject to a justification on the items listed under par (49), which relate to the compliance of the RPM with the requirement of cost reflectivity.

5.2 Criteria for setting commodity-based transmission tariffs as set out in Article 4(3) and criteria for setting non-transmission tariffs as set out in Article 4(4) are met

(61) The TSO does not propose commodity-based transmission tariffs and does not set non-transmission tariffs.

6. Other comments

6.1 Application of the current RPM to existing capacity contracts

(62) The Agency notes that during bilateral discussion with both the NRA and the TSO, it was not clear whether the tariffs applicable to existing contracts for the SGT pipeline are based on the RPM consulted in 2018.

(63) The Agency recommends that the NRA clarify this point as part of the motivated decision laid out in Article 27(4) of the NC TAR. The NRA should clarify whether these contracts are compliant with the requirement under Article 35 of the NC TAR. Should the contracts be based on tariffs that are not calculated using the RPM, the NRA should explain how such approach impacts the calculation of tariffs using the RPM:

Annex 1: Legal framework

(65) 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.

(66) 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.

(67) 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.

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

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

(69) 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.

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

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

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

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

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

Annex 2: List of abbreviations

Acronym	Definition
ACER	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