

## **AEEGSI consultation document n. 60/2016 on the implementation of the Congestion Management Procedures Regulation**

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### **EFET response – 29 March 2016**

#### **Introduction**

The European Federation of Energy Traders (EFET<sup>1</sup>) welcomes the opportunity to provide comments to AEEGSI consultation document n. 60/2016 on the implementation of the EU Regulation on Congestion Management Procedures Regulation (CMP). We support the on-going efforts of the Italian Regulator to ensure that the EU Network Codes for gas are effectively implemented in Italy.

EFET encourages the adoption of oversell and buy-back (OSBB) mechanisms in Italy as well as across Europe in the context of the implementation of the CMP Regulation. We see OSBB as an efficient mechanism for resolving contractual congestion without having to compromise the firm capacity rights of shippers. Moreover, OSBB can make additional capacity available on a long-term basis and this makes it a better mechanism than day-ahead use-it-or-lose-it (DA UIOLI) to solve contractual congestion and maximise cross-border trading opportunities. This is particularly relevant in a market like the Italian one where day ahead capacity is priced as a significant premium over annual capacity.

The Commission's guidance on best practices for CMP<sup>2</sup> makes it clear OSBB can be regarded as the basic instrument to prevent contractual congestion and that DA UIOLI was meant as a fall-back measure to OSBB in the event it could not effectively limit contractual congestion by 1 July 2016. Failure to implement OSBB mechanisms would be a missed opportunity for achieving greater efficiency, as by definition DA UIOLI can only release capacity on a day-ahead basis. For the optimal design of an OSBB we redirect to our [response to previous AEEGSI dco n. 270/2013](#) and to our [comments to SNAM's proposal](#) of implementation of an OSBB mechanism.

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<sup>1</sup> The European Federation of Energy Traders (EFET) promotes and facilitates European energy trading in open, transparent, sustainable and liquid wholesale markets, unhindered by national borders or other undue obstacles. We currently represent more than 100 energy trading companies, active in over 28 European countries. For more information, visit our website at [www.efet.org](http://www.efet.org).

<sup>2</sup> Commission Staff working document - Guidance on best practices for congestion management procedures in natural gas transmission networks – SWD(2014) 250 final dated 11/7/14

## **OSBB mechanism would ensure greater efficiency**

EFET considers oversell and buy-back as a mechanism for resolving contractual congestion which would ensure economic efficiency, without compromising the firm capacity rights of shippers. OSBB mechanisms are clearly the more efficient way of managing cross-border congestion, as they facilitate the release of capacity further in advance of the day-ahead timeframe. Although in principle and in case of bundled products we acknowledge the risks linked to an inconsistent implementation of CMP mechanisms, by applying OSBB on one side of an interconnection point and DA UIOLI on the other, we still believe that OSBB schemes are the basic instrument to prevent contractual congestion and that use-it-or-lose-it mechanisms are considerably more restrictive with respect to the use of capacity rights. The fact that Austria and Germany have decided against the implementation of OSBB, with limited consideration of the negative impact of this decision on the functioning of the wholesale European gas market, should not lead other National Regulatory Authorities simply to accept DA UIOLI as a *fait accompli* and renounce implementation of OSBB as the best solution. In fact, in our view, the decision of some Regulators to implement DA UIOLI does not help the internal market and should be reversed as soon as possible.

We also believe that AEEGSI concerns as expressed at par. 3.9 of the consultation may be a little overdone ('the application in Italy of the OSBB mechanism might present the risk of burdening the system with costs that cannot be determined ex ante, potentially very high, not necessarily offset by corresponding benefits'). The design of the mechanism is of great importance, especially when physical congestion is likely to occur, but we believe the above-mentioned concerns can be minimised. EFET is available to provide support to AEEGSI on the detailed design of an OSBB scheme, including setting the level above technical capacity to be offered, the interaction with DA UIOLI, the treatment of capacity sold above technical capacity, buyback procedures and the implications of bundled capacity products for CMP.

## **EFET further recommendations**

EFET calls AEEGSI to realise the benefits that the OSBB implementation would bring in terms of cost-efficiency and contextually invites to carefully take into account the constraints and costs that the DA UIOLI would instead impose on shippers.

Taking account of the views of stakeholders and the Commission's guidance on best practice for CMP, if the regulator decides to reject OSBB, EFET believes that, as a minimum, the shortcomings of DA UIOLI should be minimised. In fact, with this solution, re-nomination restrictions will create immediate costs because shippers will be restricted to how they use the capacity whether there is congestion or not. In particular EFET suggests that:

### **1. Original capacity holders should be compensated**

The use it or lose it mechanism should become a use it or sell it one whereby if a shipper's non-nominated capacity gets reallocated in the day ahead auction,

the shipper should receive a financial compensation. This should, at least, be equivalent to the cost of capacity reallocated but ideally should be based on the average pay-as-bid auction price or the spread between the two markets. This will ensure that shippers who do not nominate capacity 'in good faith' are not financially penalised in case of unexpected changes in the market that would have prompted them from reviewing their nominations upwards.

**2. Application of DA UIOLI should be restricted to requirements under Annex I to Regulation 715/2015 as amended on 24 August 2012**

Paragraph 2.2.3 of the Annex foresees that (i) DA UIOLI be applied only to shippers holding at least 10% of the average technical capacity in the preceding year at the interconnection point and that (ii) firm re-nomination is fully permitted up to 90% and down to 10% of the capacity contracted by each shippers. We believe that such limitations are adequate as they ensure additional capacity can be released without unduly reducing the flexibility of existing capacity rights – in particular, such a qualified implementation would protect shippers with smaller portfolios whose ability to balance their portfolio may be significantly impacted by re-nomination restrictions.

**3. Restrictions to re-nomination should be introduced only if there is a request for capacity by another shipper and no primary capacity is available**

Application of DA UIOLI in a situation where there is no demand for additional capacity will restrict shipper's ability to re-nominate without delivering any advantages to the market. We therefore suggest that, if DA UIOLI are implemented, this is done together with a mechanism allowing shippers to make capacity requests before re-nomination restrictions apply.

**4. The application of DA UIOLI should only concern the IP subject to contractual congestion**

The mechanism should not concern IPs where no congestion was identified.