



**EFET Position Paper on the Implementation of the
European Guidelines on Congestion Management Procedures (CMP)
for Gas Transmission**

The European Federation of Energy Traders (EFET)¹ welcomes the continuous dialogue of the Agency for the Cooperation of Energy Regulators (ACER) and the Council of European Energy Regulators (CEER) with market participants in relation to the implementation of the Guidelines on Congestion Management Procedures (CMP). We also find the 'Issue paper' on the need for coordinated decisions at EU level for the implementation of the CMP Guidelines, published by ACER in August 2013, to be a helpful addition to this discussion, providing an impetus for greater cooperation in developing harmonised solutions for tackling contractual congestion at cross-border interconnection points across Europe. The implementation process, however, can benefit from more realistic timetables and more inclusive project planning. Moreover, some key issues remain unresolved and require further attention by Regulators. These issues are discussed further below.

Aim of CMP

The aim of CMP should be to maximise the amount of unused capacity available to the market. Unused capacity can be made available to the market via the following mechanism:

- Secondary trading by shippers – selling capacity they have booked but no longer need
- Oversubscription and Buy Back (OSBB)
- Short-term Use-it-or-Lose-it (UIoLI)
- Surrender of capacity
- Long-term Use-it-or-lose-it (UIoLI)

When deciding how mechanisms should be used and how they should be designed, regulators need to consider which approaches maximise the availability of capacity to the market.

Oversubscription and buy-back mechanisms

As required by the CMP Guidelines, Section 2.2.2, and reiterated in the ACER Guidance, Transmission System Operators shall propose and, after approval by the National Regulatory Authority (NRA), implement an incentive-based OSBB scheme to offer additional capacity on a firm basis. Considering that the implementation deadline for OSBB schemes is 1st October 2013, Regulators should take immediate steps towards the development and introduction of such mechanisms. Any delays risk adoption of a regime of restriction of re-nomination rights by default. Given that the CMP Guidelines were adopted a while ago, it is disappointing that some TSOs and NRAs have not made sufficient effort to develop OSBB schemes. Indeed, it is conceivable that they are using the lack of progress on the development of OSBB schemes as a reason to implement only short-term UIoLI mechanisms.

Moreover, the ACER monitoring report, which will determine whether short-term use-it-or-lose-it will be implemented in 2016, is due in March 2015. By then, some EU Member States (MSs) may not have had OSBB schemes in place for a period sufficiently long to counteract any contractual congestion. Thus, the findings of the report may be unfairly biased against the mechanism.

Furthermore, it is not clear how much consultation and communication has taken place between those NRAs (e.g. BNetzA and E-control) who have decided to implement only short-term UIoLI schemes, and neighbouring regulators. The CMP Guidelines explicitly require NRAs to consult with neighbouring regulators and to take the opinion of their counterparties into account. Such

¹ The European Federation of Energy Traders (EFET) promotes and facilitates European energy trading in open, transparent and liquid wholesale markets, unhindered by national borders or other undue obstacles. EFET currently represents more than 100 energy trading companies, active in over 27 European countries. For more information: www.efet.org.

consultation is essential, as mismatches between the CMP regimes on either side of an Interconnection Point (IP) would create barriers to cross-border trade.

Failure to implement OSBB mechanisms would be a missed opportunity for achieving greater efficiency, as by definition short-term UIoLI can only release capacity on a day-ahead basis. OSBB schemes facilitate the release of capacity further in advance of the day-ahead timeframe. The amount of capacity released by TSOs via OSBB mechanisms will, of course, depend on the incentives put in place and the way the baseline is set, e.g. a very high baseline may give TSOs less room to release additional capacity as capacity will already be released by the auctions. In that regard, EFET has developed an [Implementation Guide on an 'Appropriate design for an oversell and buy-back scheme'](#), which addresses all these issues in further detail.

Setting technical capacity levels (“baselines”) and the interaction with OSBB

Baselines are the quantities of capacity which TSOs have to offer to the market. TSOs should be required by NRAs to set the baseline as high as reasonably possible whilst still being able to honour firm capacity rights. As a result of the integrated nature of entry/exit systems, it is possible to set baselines in a variety of ways. From a CMP point of view, however, the baseline level will have a key impact on the risk that TSOs face when releasing additional firm capacity under OSBB. If the baseline is set too low, TSOs will receive considerable extra revenue through OSBB mechanisms with little or no risk. In such a case it is questionable whether TSOs should benefit from any OSBB incentives. On the other hand, a very high baseline limits the amount of OSBB capacity that TSOs can make available, as this capacity is already provided via the normal CAM procedures. Notwithstanding the above, it is important to note that, once OSBBs are in place, a prudent and efficient operator would be expected to maximise the quantity of capacity offered to the market.

Definition of ‘contractual congestion’ and implications for imposition of short-term UIoLI

The definition of ‘contractual congestion’ also requires further attention. Regulation (EC) 715/2009 defines ‘contractual congestion’ as ‘a situation where the level of firm capacity demand exceeds the technical capacity.’ However this definition does not distinguish between physical congestion where demand exceeds technical capacity, but all capacity is being used; and contractual congestion where demand exceeds technical capacity, but not all capacity is being used or being offered to the market. As written, the definition would mean that there was contractual congestion whenever there was an auction premium, which is not correct. Where supply is fixed, all capacity is being used, and there is still demand for more capacity, there will be an auction premium, but this does not mean that the market is not functioning properly.

This lack of clarity exposes shippers to an unnecessary risk, as it could lead to the imposition of restriction of re-nomination rights when there is no contractual congestion. In the absence of an accurate definition in the Regulation, the simplest way to resolve this issue would be for any ACER Guidance to clarify the difference between contractual and physical congestion.

Treatment of OSBB capacity

Firm capacity sold via OSBB should be treated as firm capacity, i.e. there should not be any differentiation in terms of the way it is treated for purposes of buy-back or interruption. The latter should occur only if there is a danger to the system, not as a means to avoid paying for buy-back capacity.

Bundled capacity products and implications for CMP

It is important to recognise that capacity on either side of an IP will not necessarily match. Capacity on the 'exit' side of an IP is a function of flows and network design of the entry exit zone upstream of the IP. Similarly capacity on the 'entry' side of an IP is a function of flows and network design of the entry exit zone downstream of the IP. It is also the case that TSOs may change the amount of capacity available at one side of an IP as a result of changes in their network, whilst the capacity available on the other side of the IP remains unchanged.

The amount of bundled capacity that can be offered will be set by the lower of the two capacity values on either side of the IP. TSOs have a duty to maximise the quantity of bundled capacity; the purpose of OSBB should be to maximise the quantity of firm capacity available, irrespective of whether it is bundled or not, as the more capacity is available, the more gas can flow between markets. Shippers will then be in a position to decide how to flow gas between hubs, what types of capacity to use, and how to match capacity at an IP.

However, the requirement to offer only bundled capacity raises a number of issues of concern for the efficient functioning of gas markets and CMP.

- Bundled capacity cannot be sold on more than a day-ahead basis if on one side of the IP the rules are based on an OSBB scheme and on the other they follow the short-term UoLI principle. If one side offers OSBB capacity for more than day-ahead, but this is not matched on the other side where OSBB is not implemented, this could create lost opportunities to maximise the amount of capacity on offer. Therefore, the decision of some Regulators to implement short-term UoLI does not help the internal market.
- Bundling of capacity raises questions of how OSBB revenues and risks should be shared between TSOs at IPs where the amount of baseline capacity which a TSO can offer is different on one side of the border from the other. For example, TSO A has firm capacity of 100 units to offer, and TSO B has 50 units to offer. They can offer a bundle of 50 units, and offer a further 50 units bundle if TSO B offers 50 units as OSBB. Where this is the case, the need to buy back may only be triggered on one side of the border, but, because the capacity is bundled, capacity on both sides of the border has to be bought back. Either both TSOs are exposed to buy-back costs for the bundled capacity, even though it is only the conditions of one TSO that have caused the buyback, or the TSO which triggered the buy-back costs is exposed to all the buy-back costs for the bundled capacity. This may prevent TSOs from offering OSBB capacity, due to this asymmetric risk. To avoid problems of buy-back cost allocation, TSOs should be encouraged to offer as much capacity as they can under OSBB for up to one year ahead, on an unbundled basis, as allowed under the CAM Network Code.
- Due to the rule that TSOs must sell other capacity before they sell surrendered capacity, it is possible that a TSO may sell one part of the bundle, leaving the shipper to pay for the other half of the bundle. We, therefore, agree with the ACER issues paper that when selling bundled surrendered capacity, the TSO allocates this before it allocates unbundled capacity, which avoids the problem that shippers may find only half its bundle reallocated. TSOs should then offer any unbundled capacity that may be available.
- Terms and conditions for surrender of capacity and trading on the secondary market are not aligned. On the secondary market shippers can only sell bundled capacity, whereas TSOs are allowed to sell unbundled capacity. However, once capacity is surrendered,

the shipper has no control over when and how the capacity is sold, and surrendered capacity can only be sold once all other capacity has been sold. Shippers should be allowed to sell unbundled capacity if this enables shippers to match this capacity with unbundled capacity on the other side of an IP, where there are differences between the technical capacity available on each side of the IP.

Surrender of capacity

Shippers should be able to take back surrendered capacity if the capacity has not been sold in the auctions, i.e. prior to each auction, shippers would need to confirm that they still wish to surrender capacity which they had previously surrendered, but which had not been sold in the auctions. The rationale behind this is that circumstances may change between auctions and as shippers are still paying for the surrendered capacity that has not been sold to other shippers, they should have the certainty that they still have this capacity. OSBB, short-term UloLI, and long-term UloLI should be sufficient to prevent any gaming of this rule.

Shippers should receive all the premium that a TSO receives when it resells surrendered capacity, even if the premium is more than the initial amount that the shipper paid for this capacity. It should also be clear that the surrendering shippers are also relieved of their obligations once the capacity has been re-sold. As shippers have taken both the risk of buying the capacity in the first place and the risk that they cannot re-sell it or surrender it, they should enjoy any upside from capacity resale on the secondary market or from resale by the TSO after the capacity has been surrendered. As the amount of revenue that TSOs are allowed to earn is regulated, TSOs should not receive revenue from the sale of regulated capacity which is above the regulated price of that capacity. We, therefore, disagree with the statement in the ACER issues paper that shippers should make no profit from surrendered capacity.