

## EFET<sup>1</sup> response to ENTSOG consultation on the Initial Draft Proposal for Incremental and New Capacity (INC Proposal)

30 July 2014

### CONSULTATION QUESTIONS

#### Articles 1 – 3 of CAM NC – Subject matter, Scope and Definitions

1. Do you agree with the additional definitions proposed in Article 3 (CAM NC)? If not, please elaborate.

- Yes
- No (please explain below)

**Comment:**

**Article 3 (19):**

The definition of a ‘bidding ladder’ remains very confusing and partly misleading. In our understanding, rather than a combination of capacity products, the ‘bidding ladder’ is the sequence of price steps relevant for each offer level, against which bids for quantities of capacity are submitted by network users. The number of products, i.e. the duration of the overall booking, is, de facto, irrelevant for the definition of a ‘bidding ladder’.

**Article 3 (20):**

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The definition of an 'economic test' could be improved by simply saying that it is the assessment of the economic viability of incremental and new capacity projects. The text of the Network Code would then clarify how the test actually works.

**Article 3 (24):**

The definition of an 'open season procedure' is probably unnecessary, as it is a way to market capacity that works as described in the text of the Network Code. Alternatively, it could be defined with reference to the relevant article.

## Articles 4 – 20 and 21 - 28 of CAM NC

**2. Do you agree with the proposed amendments and changes to Articles 4-20 and 21 to 28 (CAM NC)? If not, please elaborate.**

- Yes
- No (please explain below)

**Comment:**

We agree with the proposed amendments, except for the following:

**Article 8 (8):**

We do not think that it is necessary to have quotas of capacity set aside for the annual quarterly capacity auctions, given that the quantity of incremental or new capacity that is offered is variable and therefore, can meet the legitimate needs of shippers. All shippers are able to participate in the auctions and / or open seasons, and subject to the economic test being passed, capacity requested will be allocated. Furthermore, the implementation of Congestion Management Procedures prevents hoarding or market foreclosure as a result of long-term booking. The inclusion of such quotas also impacts directly the functioning of the economic test by effectively increasing the f-factor. Whilst this issue has been partially recognised by the drafting in Article 43 (2) of the proposed Tariff Network Code, it would be simpler to delete the requirement for quotas for new or incremental capacity.

**Article 11 (8):**

One month is a minimum advance notification period for shippers to be able to prepare their bidding strategies and gain the necessary internal approvals. The larger the potential commitments, the more time commercial companies will require to gain such approvals. Therefore, the text should state that one month is a minimum, and that TSOs should use at least reasonable endeavours to give more notice.

It is important to note that, based on the drafting of Article 27 of the Tariff Network Code, shippers will not know the applicable prices for capacity in the annual auctions until after the auction has taken place. This makes it highly unlikely that shippers will be able to make informed decisions about how much capacity to bid for, and thereby, will undermine the functioning of the economic test. Whilst Article 46 of the draft Tariff Network Code attempts to remedy this defect by requiring publication of prices for capacity based on 'relevant assumptions', it is highly questionable how reliable such published prices will be, as they rely on assumptions about capacity bookings and systems usage several years into the future. For example, the first year of capacity to be allocated will be at least 3 to 5 years after the date of the allocating capacity auction.

**Article 17 (20):**

The article states that 'successful network users shall pay the clearing price of the specific auction, which may be a fixed or variable price.' Whilst the drafting is correct within the context of the CAM Network Code and the proposed Tariff Network Code, the use of a variable price will undermine the functioning of the economic test. Shippers will be required to sign an open-ended financial commitment for capacity bookings over several years, a number of years in advance of the date when the payable price will become certain. This increases the commercial risk for shippers and therefore, will inhibit bidding for incremental or new capacity. The solution is to allow a greater degree of predictability for tariffs for new or incremental capacity, such as fixed, fixed with indexation, fixed within a certain band tariffs, etc. Such ideas have not been given sufficient consideration during the recent Stakeholder Workshops.

## Article 20a of CAM NC: Co-ordination requirements

**3. Do you agree with the level of co-ordination between TSOs and NRAs involved in an incremental or new capacity project as foreseen in Article 20a (CAM NC)? If not, please elaborate.**

- Yes
- No (please explain below)

**Comment:**

In principle, we agree with the level of co-ordination foreseen in Article 20a. In particular, we welcome Article 20a (4), as requiring TSOs to take into account comments of concerned network users would enhance the quality of the scoping phase.

**Article 20a (3):**

We suggest strengthening the language in Article 20a (3), in line with item 2c of the ACER Guidance on amendments to the CAM Network Code, which requires that '[I]n the course of this co-ordination, agreement should at least be reached on[...]'. We would recommend replacing '[...]transmission system operators shall aim at delivering offer levels[...]' with '[...]transmission system operators shall deliver offer levels [...]'.

Special attention should be granted to the definition of 'single offer timeframes' and 'commissioning timeframes'. This is particularly true in the case of projects triggered or linked to the development of an upstream field, where the identification of the start date should be managed with sufficient flexibility, and surely with the direct involvement of network users.

**4. Do you agree with the auction default and the alternative open season procedure as defined in Article 20a (5) (CAM NC)? If not, please elaborate.**

- Yes
- No (please explain below)

**Comment:**

#### 5. Do you have any additional remarks to the provisions in Article 20a (CAM NC)?

- Yes (please explain below)
- No

#### Comment:

#### Article 20a (6):

We support the drafting of this Article, but have reservations about the drafting of Article 44 of the Tariff Network Code. Article 44 allows for different TSOs to have a combined economic test, and for redistribution of revenues between TSOs in the event that the economic test is not passed for one TSO in an investment involving two or more TSOs. This is to be welcomed. However, the drafting only says that transmission system operators and national regulatory authorities or Member States 'may agree on mechanisms for redistribution'. This is potentially too weak, as it could enable national regulatory authorities or Member States to prevent investment that furthers the internal gas market. Therefore, we propose that Article 44 be strengthened to require the relevant parties to use 'best endeavours' to agree, with the possibility of adjudication by ACER or the EU Commission in the event of continued failure to agree.

#### Article 20b of CAM NC: Information provision

#### 6. Do you agree with ENTSOG's proposal of a demand assessment to be the basis for conducting technical studies and subsequently designing offer levels? If no, please elaborate.

- Yes
- No (please explain below)

#### Comment:

#### Article 20b (1):

The demand assessment is a reasonable starting point. However, there should be a requirement for such an assessment to be carried out on a yearly basis.

**7. Do you agree with the scope of information to be provided to the NRA and to be published by TSOs involved in an incremental or new capacity process as foreseen in article 20b(2) (CAM NC)? If not, please elaborate.**

- Yes
- No (please explain below)

**Comment:**

**Article 20b (2)(d):**

The wording of article 20b (2)(d) is imprecise. It should be made clear that TSOs have to provide a justification for choosing an auction or an open season on the basis of the relevant criteria, in consultation with the industry.

**8. Do you agree with the lead-time foreseen for the publication of information relevant to an incremental or new capacity project and especially the economic test as described in article 20b (3) (CAM NC)? If not, please elaborate.**

- Yes
- No (please explain below)

**Comment:**

**Article 20b (3):**

One month is a short notice period for shippers to be notified of the parameters of the auction or open season for incremental or new capacity. The wording of this Article should be strengthened, so that TSOs have a 'best endeavours' requirement to publish at least 2 months before the auction or the binding open season phase.

The processes do not seem to contemplate time for a public consultation, while the definition of the f element, at the very least, cannot be defined disregarding the views of market players, due to the broad implications it may have on all network users.

**9. Are there any other issues that you wish to address regarding information provision as foreseen in article 20b? If yes, please elaborate.**

- Yes (please explain below)
- No

**Comment:**

**Article 20b:**

Information on the timing of realisation of new infrastructure should include the possibility for coordination of commissioning dates of both the commissioned infrastructure and related downstream/ upstream infrastructure.

### Article 20c of CAM NC: When to offer

**10. Do you agree with the conditions that shall lead to the offer of incremental and new capacity as defined in Article 20c (1), (6), and (7) (CAM NC)? If not, please elaborate.**

- Yes
- No (please explain below)

**Comment:**

**Article 20c (6):**

This paragraph should be strengthened, so that TSOs are required to assess expected demand for incremental and new capacity more frequently than every other year on a reasonable endeavours basis.

**11. Do you agree that the due date approach is preferable to the time window approach as foreseen in article 20c (3) (CAM NC)? If not, please elaborate.**

- Yes
- No (please explain below)

**Comment:**

**Article 20c (3):**

Whilst we recognise the organisational challenges for TSOs associated with developing offers of new or incremental capacity, TSOs should endeavour to respond to any requests from shippers for capacity in a timely manner. Therefore, this article should be strengthened by requiring TSOs to consider all capacity requests in good faith on a reasonable endeavours basis, irrespective of due dates for non-binding indications.

**12. Are there any other issues that you wish to address regarding conditions of when to offer incremental and new capacity as foreseen in article 20c (CAM NC)? If so, please elaborate.**

- Yes (please explain below)
- No

**Comment:**

**Article 20c (4):**

Whilst we recognise the role that payments, such as Preliminary Works Agreements, can play in enabling TSOs to conduct project

scoping and planning work where the outcome of such work is uncertain, this paragraph is too loosely drafted. It must be made clear that such fees are subject to regulatory consultation and approval, and can only be charged for activities that are not already covered by a TSO's Allowed Revenue. Otherwise, there is a risk that TSOs will be able to charge shippers twice for the same activity.

## Article 20d of CAM NC: Auction mechanisms

**13. Do you agree with the concept of parallel bidding ladders to auction incremental and new capacity as foreseen in article 20d (CAM NC)? If not, please elaborate.**

- Yes
- No (please explain below)

### **Comment:**

#### **Article 20d:**

Further clarification is required. The definition of a 'bidding ladder' remains very confusing and partly misleading. In our understanding, rather than a combination of capacity products, the 'bidding ladder' is the sequence of price steps relevant for each offer level, against which bids for quantities of capacity are submitted by network users. The number of products, i.e. the duration of the overall booking, is, *de facto*, irrelevant for the definition of a 'bidding ladder'.

**14. Do you agree with ENTSOG's opinion that repeating the identified bidding ladder(s) represents the clearest way to allow for bid revision as foreseen in article 20d (3) (CAM NC)? If not, please elaborate.**

- Yes

- No (please explain below)

**Comment:**

**Article 20d (3):**

A more flexible approach to the use of the economic test would help to avoid suboptimal outcomes without the need to re-run identical auction rounds. The ceiling to be passed during an economic test is based on estimates of the costs and projections of future tariffs; too strict an observation of such a ceiling would be blind to the inherent contingencies and uncertainties that such estimates and projections may include. Therefore, the object of the Article should be a case where the economic test is not passed by a margin, rather than a case where bidding ladders close at a premium.

**15. Do you prefer option 1 or 2 as indicated below - Please elaborate.**

- 1) a continuous approach for bid revision as proposed by ENTSOG in article 20d (3) (4);
- 2) an approach according to which bid revision is only applied once?

**Comment:**

A continuous approach for bid revision offers much more flexibility in addressing cases of suboptimal auction outcomes.

**16. Are there any other issues that you wish to address regarding auction mechanisms as foreseen in article 20d? (CAM NC) If yes, please elaborate.**

- Yes (please explain below)
- No

**Comment:**

### **Article 20d (1):**

We do not think that it is necessary to have quotas of capacity set aside for the annual quarterly capacity auctions, given that the quantity of incremental or new capacity that is offered is variable, and therefore, can meet the legitimate needs of shippers. All shippers are able to participate in the auctions and / or open seasons, and subject to the economic test being passed, capacity requested will be allocated. Furthermore, the implementation of Congestion Management Procedures prevents hoarding or market foreclosure as a result of long-term booking. The inclusion of such quotas also impacts directly the functioning of the economic test by effectively increasing the f-factor. Whilst this issue has been partially recognised by the drafting in Article 43 (2) of the proposed Tariff Network Code, it would be simpler to delete the requirement for quotas for new or incremental capacity.

## Articles 20e, 20f, 20g of CAM NC: Open season procedures

**17. Do you agree with the provisions that shall lead to conducting an Open Season Procedure instead of auctions for incremental and new capacity as foreseen in article 20e (2) (CAM NC)? If not, please elaborate.**

- Yes
- No (please explain below)

### **Comment:**

#### **Article 20e:**

It is clear that national regulators have a role in approving the use of an open season process in place of auctions for the allocation of incremental or new capacity. However, we are concerned that there is no mechanism to deal with the possible situation where the different regulators involved in a project which crosses a number of jurisdictions cannot agree on the use of an open season approach. This could enable one regulator or Member State to frustrate the integration of the internal energy market. We, therefore, believe this Article should be strengthened so that ACER or the EU Commission have a role in adjudicating where agreement cannot be reached between different regulators. The test should be whether a proposed approach (auctions or open seasons) is more likely to result in capacity being made available to the market. The economic test will ensure

that such investment is economically efficient.

Furthermore, it is not clear how and when TSOs will choose the open season procedure instead of auctions. The text does not make the use of open seasons automatic when the criteria are met, which is even more worrisome in view of the fact that such a choice is made without the involvement of network users.

**18. Do you see any other conditional capacity commitments in Open Season Procedures than the issues raised in the Draft Incremental Proposal article 20f (3) (CAM NC)? If yes, please elaborate.**

Yes (please explain below)

No

**Comment:**

**19. Do you agree that the proposed Open Season Procedures notice contains sufficient information as foreseen in 20f (8) (CAM NC)? If not, please elaborate.**

Yes

No (please explain below)

**Comment:**

The list should include the procedures and the timeframe for identifying the commissioning date of the new/incremental capacity. A closer look at the list set out in the Guidelines of Good Practice on Open Season Procedures (GGPOS), May 2007, pp. 11-14, would also be helpful.

**20. Do you agree with the default allocation rule foreseen for Open Season Procedures, being willingness to pay per unit and year as foreseen in article 20g (3) and the alternative allocation rule subject to NRA approval as foreseen in article 20g (4) (CAM NC)? If not, please elaborate.**

- Yes
- No (please explain below)

**Comment:**

**Article 20g (1)**

It is not clear why shippers would pay auction premia for new capacity, given that a properly functioning mechanism would ensure that supply and demand for new or incremental capacity match. The purpose of auction premia is to enable capacity to be allocated to those who value it the most in a situation where the quantity of capacity available is fixed. This is not the case where new or incremental capacity is being offered to the market as the quantity of capacity can be varied so long as shippers are prepared to pay the regulated cost of that capacity.

**Article 20g (3)**

We do not agree with the default rule and believe that this paragraph should be deleted. As we have demonstrated during the Stakeholder Workshops, the default rule raises the possibility that an investment project could fail as a result of one shipper paying more for capacity in one year and thereby, frustrating a shipper bidding for capacity over several years. If the shipper which books capacity for only one year does not book enough to meet the economic test, and the other shipper withdraws because he cannot secure capacity over the range of years that he needs, the risk is that no capacity will be built, due to a defective allocation mechanism. Article 20g (4) recognises this risk and goes some way to address the problem. However, it is a second best solution, because there is still the risk that regulators will authorise an open season based on the default rule, and then have to change the parameters of an open season *after* the binding phase and the first run of the economic test have taken place. This creates unnecessary uncertainty for shippers as it means changing the rules of the game mid-way through the open season process. Given that the weaknesses of the default rule have been clearly foreseen, it would be better to delete Article 20g (3). We note that ACER have not given a reasonable explanation of their insistence on the default rule, or of the reason why they have changed

their position compared to the wording of their original guidance.

**21. Are there any other issues that you wish to address regarding Open Season Procedures as foreseen in article 20e, article 20f and article 20g (CAM NC)? If yes, please elaborate.**

- Yes (please explain below)
- No

**Comment:**

**Article 20f (5)**

We do not think that it is necessary to have quotas of capacity set aside for the annual quarterly capacity auctions, given that the quantity of incremental or new capacity that is offered is variable, and therefore, can meet the legitimate needs of shippers. All shippers are able to participate in the auctions and / or open seasons, and subject to the economic test being passed, capacity requested will be allocated. Furthermore, the implementation of Congestion Management Procedures prevents hoarding or market foreclosure as a result of long-term booking. The inclusion of such quotas also impacts directly the functioning of the economic test by effectively increasing the f-factor. Whilst this issue has been partially recognised by the drafting in Article 43 (2) of the proposed Tariff Network Code, it would be simpler to delete the requirement for quotas for new or incremental capacity.

### Articles 42-45 of TAR NC: Economic test principles

**22. Do you agree with the structure of the economic test in the Incremental Proposal as foreseen in article 42 (TAR NC)? If not, please elaborate.**

- Yes

No (please explain below)

**Comment:**

**Article 42:**

Three main concerns exist with respect to the way the economic test is defined:

First, defining the f-factor as one figure entails giving the cost estimate underlying the economic test a significance that it does not have and it cannot have. Any credible cost estimate entails a contingency element that cannot be ignored. When complex projects are realised, normally part of this contingency turns into actual costs and more rarely in actual savings. For this reason, it would be wise to define the f-factor as a band, rather than as a single value. This would also help to avoid the need to run additional bidding rounds, as the band would allow a 'pass' in a broader range of booking combinations.

Second, defining the f-factor has implications on the tariff paid by the overall pool of network users of the relevant entry/exit system. Therefore, any decision in this regard shall not be taken without first running a public consultation. The risks of creating an unbalanced situation by setting the wrong f-factor is too high for such a decision to be taken without the market having a say.

Lastly, there is a lack of clarity regarding the economic test. The principle should be harmonised, while the parameters should be fixed on a case-by-case basis. The launch documentation contained formulae on how the economic test works, but they have not been included in this ENTSOG proposal. We propose to include them in the final version. Where the discount rate is different from the WACC (weighted average cost of capital), this has to be fully justified and approved by the regulator, subject to industry consultation.

**23. Do you agree with the factors that shall be taken into account when defining the f-factor as foreseen in article 43 (TAR NC)? If not, please elaborate.**

Yes

- No (please explain below)

**Comment:**

**Article 43:**

Defining the f-factor has implication on the tariff paid by the overall pool of network users of the relevant entry/exit system. Therefore, a balanced approach is needed and the f-factor should be set in full consultation with the industry. We would like to highlight that too low an f-factor creates the risk of stranded capacities that are to be paid by the community of shippers, and that may hamper cross-border trade by rising IP tariffs. We should also caution against setting too high an f-factor, because this may make it difficult to pass the economic test even when investment in new or incremental capacity is economically efficient.

**24. Do you agree with the structure of the recovery mechanisms for the share of 1-f as foreseen in article 43 (2) (TAR NC)?**

**If not, please elaborate.**

- Yes
- No (please explain below)

**Comment:**

**Article 43 (2) (b)**

Whilst we agree that it is important that externalities be taken into account when setting the f-factor (e.g. security of supply), it remains the case that shippers will be required, at some point, to pay the difference between revenues raised via capacity bookings and the allowed revenue associated with new or incremental capacity. For this reason, any externalities should be explained and justified. It is also important to explain how any shortfall in associated allowed revenues will be covered. This is particularly important, given the proposals for floating tariffs in the Tariff Network Code.

**Article 43 (3):**

Whilst we fully support the concept that TSOs should be able to recover their allowed revenues and earn the approved regulated return on their investments, this article appears redundant, given the other articles in the Tariff Network Code which enable the

TSOs to recover their revenue.

**Article 43 (4):**

Article 43 (4) puts all the risk on network users and removes all financial responsibility from TSOs regarding already engaged costs in case of a project failure. There should be a stronger financial incentive for TSOs to complete their project successfully. If not, this would be an incentive for TSOs to minimise the cost of projects that would be on the limit of the economic test, to get shippers involved, in order to get a chance to get additional revenues, as there is no risk for TSOs in case the budget is insufficient to complete the project.

**25. Do you agree with the way the single economic test is aggregated as foreseen in article 44 (TAR NC)?**

**If not please elaborate.**

- Yes
- No (please explain below)

**Comment:**

**Article 44:**

Whilst we support the concept, we have reservations about the drafting of Article 44 of the Tariff Network Code. Article 44 allows for different TSOs to have a combined economic test, and for redistribution of revenues between TSOs in the event that the economic test is not passed for one TSO in an investment involving two or more TSOs. This is to be welcomed. However, the drafting only says that transmission operators and national regulatory authorities or Member States ‘may agree on mechanisms for redistribution’. This is potentially too weak, as it could enable national regulatory authorities or Member States to prevent investment that furthers the internal gas market. Therefore we propose that Article 44 be strengthened to require the relevant parties to use “best endeavours” to agree, with the possibility of adjudication by ACER or the EU Commission in the event of continued failure to agree.

It is not clear how this mechanism would impact revenue recovery of each involved TSO. This mechanism should not lead to a

higher risk of tariff increases for shippers because of an investment project supported only by neighbouring TSOs.

**26. Do you agree with the three approaches for a potential redistribution of revenues as described in article 44 (4) (TAR NC)? If not, please elaborate.**

- Yes
- No (please explain below)

**Comment:**

**27. Are there any other issues that you wish to address regarding economic test as foreseen in articles 42-45 (TAR NC)? If yes, please elaborate.**

- Yes (please explain below)
- No

**Comment:**

**Article 45:**

We support the intention of this article, but we do not see how it will work in practice with regards to the estimated projection of indicative reference prices used in the economic test (Article 45 (1) (c)). It is highly questionable how reliable such projections will be as they rely on assumptions about capacity bookings and systems usage several years into the future. For example, the first year of capacity to be allocated will be at least 3 to 5 years after the date of the allocating capacity auction. Given uncertainties about future system usage and booking behaviour, the projections referred to in this article will be of little value.

In addition, TSOs should be required to publish details of their investment costs and the assumptions on which these are based,

and network users should be invited to comment on these estimates. Investment costs are of particular relevance for the outcome of the economic test, and if they are inefficient or kept artificially high, they could jeopardise the success of an open seasons, to the detriment of competition.

## Article 46 of TAR NC: Tariff principles

**28. Do you agree with the default mechanism foreseen to adjust tariffs if required as covered in article 46 (TAR NC)?**

**If not, please elaborate.**

- Yes
- No (please explain below)

**Comment:**

**Article 46:**

It is important to note that, based on the drafting of Article 27 of the Tariff Network Code, shippers will not know the applicable prices for capacity in the annual auctions until after the auction has taken place. This makes it highly unlikely that shippers will be able to make informed decisions about how much capacity to bid for, and thereby will undermine the functioning of the economic test. Whilst Article 46 of the draft Tariff Network Code attempts to remedy this defect by requiring publication of prices for capacity based on “relevant assumptions” it is highly questionable how reliable such published prices will be as they rely on assumptions about capacity bookings and systems usage several years into the future. For example, the first year of capacity to be allocated will be at least 3 to 5 years after the date of the allocating capacity auction. Given uncertainties about future system usage and booking behaviour the assumptions referred to in this article will be of little value.

**29. Do you agree that in order to raise the level of commitment a downward tariff adjustment rewarding long-term booking can be included as foreseen in article 46 (TAR NC)? If not, please elaborate.**

- Yes
- No (please explain below)

**Comment:**

**Article 46 (4):**

TSOs and NRAs need to consult on this approach, if they decide to adopt it. Some limits must be introduced, as this article opens the way for subsidisation of projects by other users, and its relation with the f-factor is not clear. This mechanism should not be another risk weighing on global tariff levels.

**Please read this in conjunction with our comment to question 28:**

It is important to note that, based on the drafting of Article 27 of the Tariff Network Code, shippers will not know the applicable prices for capacity in the annual auctions until after the auction has taken place. This makes it highly unlikely that shippers will be able to make informed decisions about how much capacity to bid for, and thereby will undermine the functioning of the economic test. Whilst Article 46 of the draft Tariff Network Code attempts to remedy this defect by requiring publication of prices for capacity based on “relevant assumptions” it is highly questionable how reliable such published prices will be as they rely on assumptions about capacity bookings and systems usage several years into the future. For example, the first year of capacity to be allocated will be at least 3 to 5 years after the date of the allocating capacity auction. Given uncertainties about future system usage and booking behaviour the assumptions referred to in this article will be of little value.

**30. Do you agree with including a possibility to adjust depreciation rates as a mechanism to avoid socialisation of costs as foreseen in article 46 (TAR NC)? If not, please elaborate.**

- Yes
- No (please explain below)

**Comment:**

Please read this in conjunction with our comment to question 28:

It is important to note that, based on the drafting of Article 27 of the Tariff Network Code, shippers will not know the applicable prices for capacity in the annual auctions until after the auction has taken place. This makes it highly unlikely that shippers will be able to make informed decisions about how much capacity to bid for, and thereby will undermine the functioning of the economic test. Whilst Article 46 of the draft Tariff Network Code attempts to remedy this defect by requiring publication of prices for capacity based on “relevant assumptions” it is highly questionable how reliable such published prices will be as they rely on assumptions about capacity bookings and systems usage several years into the future. For example, the first year of capacity to be allocated will be at least 3 to 5 years after the date of the allocating capacity auction. Given uncertainties about future system usage and booking behaviour the assumptions referred to in this article will be of little value.

### **31. How do different tariff options impact on the markets’ willingness to commit long term in order to pass the economic test? Please elaborate.**

#### **Comment:**

We would encourage the adopting of a harmonised fixed tariff approach for incremental and new capacity, as opposed to floating tariffs, as fixed tariffs could encourage longer-term commitments by network users. The use of floating tariffs will undermine the functioning of the economic test. Shippers will be required to sign an open-ended financial commitment for capacity bookings over several years, a number of years in advance of the date when the payable price will become certain. This increases the commercial risk for shippers and therefore, will inhibit bidding for incremental or new capacity. The solution is to allow a greater degree of predictability for tariffs for new or incremental capacity, such as fixed, fixed with indexation, fixed within a certain band tariffs, etc. Such ideas have not been given sufficient consideration during the recent Stakeholder Workshops and have (so far) resulted in only an ‘option’ for TSOs to provide network users with the choice for a fixed tariff. The draft NC TAR should, therefore, create the obligation on TSOs to provide for an option to fix the payable price for the duration of the (existing/incremental/new) capacity booking.

An additional and related obstacle to making long-term commitments is the anticipation of stranded new or incremental capacities, which may result from an f-factor that is set too low, or from other mechanisms to socialise the costs of investment.

**32. Are there any other issues that you wish to address regarding tariff related issues as foreseen in article 46 (TAR NC)?**

**If yes, please elaborate.**

Yes (please explain below)

No

**Comment:**

## General questions

**33. Do you consider that the level of detail in the Draft Incremental Proposal is appropriate for EU legislation?**

**If not, please elaborate.**

Yes

No (please explain below)

**Comment:**

**34. After reviewing and/or replying to the topic-related questions in Chapter 5 of this supporting document, do you find that there are other material issues that ENTSOG should consider as it develops the Incremental Proposal?**

**If so please elaborate.**

Yes (please explain below)

No

**Comment:**

We would like to use this opportunity to draw attention to another critical issue, which should be addressed in the context of the EU rules on capacity allocation: the consistency of capacity products. As we have elaborated on a number of occasions, the consistency of capacity products is a pre-requisite for the effective bundling of cross-border capacity and for efficient secondary capacity trading. To avoid the potential locking-in of a wide range of contractual differences or inconsistencies for bundled products, we would encourage Regulators, TSOs and the Commission to cooperate in addressing this issue through a respective amendment to the CAM NC.

**35. Do you find that this supporting document for the public consultation was ‘respondent-friendly’ in terms of its readability, style, etc.? If not, please explain how ENTSOG could improve future consultation documents.**

Yes

No (please explain below)

**Comment:**

We appreciate the efforts of ENTSOG to involve stakeholders on a continuous basis and to produce high quality supporting documents. However, the use of closed questions and avoiding questions on certain contentious issues (such as question 43 (4)), risk undermining the effectiveness of the consultation process.