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EFET Response to ENTSOG's consultation on Initial Draft Network Code on Harmonised Transmission Tariff Structures for Gas

The European Federation of Energy Traders (EFET)¹ welcomes the opportunity to respond to the above consultation.

The attached appendix contains answers and supporting comments to all of the questions raised in the consultation. We have also copied these in full into the online questionnaire, as requested. However, because you informed us there are character limits associated with the online text boxes and as they do not allow text formatting, we thought it prudent to send you a hard copy of our response as well, in case the online version is not clear or fully legible.

We trust you will take account of all of our comments when refining the draft Network Code.

¹ 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 27 European countries. For more information, visit our website at www.efet.org.

Chapter I. GENERAL PROVISIONS

1. Is the scope of the initial draft TAR NC as set out in Article 2 clear to you?

No

The TAR NC should be more specific about how interconnectors should be taken into account. Simply stating that it shall have particular regard to having an effective revenue reconciliation mechanism does not give network users sufficient clarity about the how the TAR NC will be applied in practice at these points.

Also, the extent to which NRAs may decide to apply Chapters IV, VI and VII of the TAR NC to non-IPs should be restricted solely to instances where the CAM NC (Regulation 984/2013) itself can be applied to non-IPs, and be subject to consultation.

2. Do you agree with the scope of the initial draft TAR NC?

Yes

3. Do you agree with ENTSOG's proposal for amendments to the definitions foreseen by the TAR FG, as set out in Article 3 of the initial draft TAR NC?

No

See our answer to Q5 below.

In addition, ENTSOG has deleted the definition of “costs” that was included in the Framework Guideline as it believes the concept is clear and a definition is not deemed to be necessary. Whilst this may be so, the definition of “costs” in the Framework Guideline referred to “operational expenditure, depreciation and the cost of capital (which includes the cost of debt and the cost of equity)”, and Article 2 of the Framework Guideline made it clear that network users should be “fully aware of the costs underlying the transmission services and obtain a reasonable degree of predictability”. If “costs” is to be excluded as a definition, ENTSOG should ensure that all the component elements referred to in the Framework Guideline are published under Article 6.1 of the TAR NC, which is currently not the case.

ENTSOG should also review the TAR NC to ensure that defined terms such as “allowed revenue” and “transmission services revenue” are used consistently.

4. Are there any other definitions that should be included in the TAR NC?

Yes

See our response to Q5 below

5. Do you agree with ENTSOG's proposal for the definition of transmission services as set out in Article 3.11 of the initial draft TAR NC?

No

We believe the definition is too open ended. Significant discretion to exclude transmission activities from the regulated revenue for transmission services could result in distorting variations across the EU of what is subjected to the cost allocation approach. In particular the reference in the definition to “excluding activities defined under applicable national rules” provides undue scope for national interpretation.

We suggest instead that the definition makes it clear that transmission services are those which are provided on behalf of all network users of a transmission system. With the exception of balancing and shorthaul services, we do not think it is necessary to refer specifically to any other excluded services in the definition, and so we suggest the following text be used:

“transmission services” means services related to the transmission of gas within a transmission system by a transmission system operator on behalf of all the network users of a transmission system, excluding balancing and shorthaul services.

In light of recent events in Germany and Italy, we also think it is necessary for the TAR NC to prevent Member States from applying the costs associated with non-transmission services to the tariffs or levies paid by network users at transmission entry and exit points.

In the case of Germany, the BNetzA proposes aggregating the costs of converting downstream distribution networks and household boiler stock from L-Gas to H-Gas into a single account. This would then be charged as a separate capacity-based levy (MRRU) applied to transmission entry and exit capacity from 1st January 2015. Not only does this amount to a blatant cross-subsidy of costs from distribution services to transmission and storage, it also means that Germany's nine interconnected neighbours will contribute towards the cost of German quality conversion, because the levy is being charged at German IP exit points

In the case of Italy, with effect from 1st January 2014, the AEEG has applied a commodity charge (CVOS) to gas flows at transmission entry points (excluding storage). This is to fund under recoveries of revenue from Italian storage capacity auctions held in 2013 and 2014, and is a clear cross subsidy between the regulated storage and transmission businesses of SNAM.

Continuing to give national regulators freedom to subsidise the costs of non-transmission activities through transmission tariffs makes a mockery of the benefits of having an EU wide TAR NC, and constitutes a serious potential distortion to cross-border trade.

To this extent, we think it necessary to add a definition of “dedicated services” so that provisions relating to the way they are charged can also be developed in the TAR NC (see our response to Q6 below). We suggest the following text be used:

“dedicated services” means services other than transmission services, which are provided by transmission system operators in relation to activities provided on behalf of specific network users or at specific locations, such as regional and local transmission activities, metering, depressurisation, ballasting, quality conversion, biogas related services, odourisation and services specific to any other dedicated infrastructure.

Chapter II. COST ALLOCATION APPROACH

6. Is it clear which portion of allowed or target revenue is used as input to the cost allocation approach as set out in Article 5.1 of the initial draft TAR NC?

No

We think there should be full transparency and stakeholder consultation over the proportion of allowed or target revenue which does not constitute transmission services revenue, including how this revenue is reconciled and how the charges for dedicated services are determined. The same is true for both commodity charges driven by gas flows and complementary revenue recovery charges, if used.

We therefore propose deleting the provisions on non-transmission services revenue in Article 4.6 and replacing them with the following new Article 4.a.

Article 4.a

Composition of dedicated services revenue

- 1. A part of the allowed or target revenue of the transmission system operator which is not related to the provision of transmission services shall be referred to as dedicated services revenue.**
- 2. Dedicated services revenue shall be outside of the application of the cost allocation approach set out in Article 5(1).**

3. Dedicated services revenue shall be subject to NRA approval and recovered through non-discriminatory charges applied to the beneficiary of the service. Such charges shall avoid any cross-subsidies between network users, or classes of network user, and be subject to stakeholder consultation.

4. Any over or under recovery related to a specific dedicated service shall typically be dealt with by means of the same charge in following tariff periods, except where approved otherwise by the NRA due to exceptional circumstances.

Also, Article 4.4.c should only allow for the commodity charges based on flows to be expressed in monetary terms. If they are applied in monetary terms one side of an IP and “in kind” on the other side, network users risk being exposed to small allocation mismatches and imbalances which they can do nothing about.

7. Is the difference between cost allocation approach and cost allocation methodology as set out in Article 5 of the initial draft TAR NC clear and understandable?

Yes

8. Are you satisfied with the two approaches for calculating distance as outlined in Article 7.6 of the initial draft TAR NC?

No

We see little benefit in using airline distance, bearing in mind it is less cost reflective. Gas travels through actual pipes in the ground not over the shortest geographic distance regardless of topography. So distances should logically be based on the physical network, or at least as represented by the model.

9. If you are not satisfied with the two approaches, could you suggest other approaches for calculating distance?

See our response to Question 8 above

10. Do you agree with the criteria for choosing the components of a primary cost allocation methodology as outlined in Article 8 of the initial draft TAR NC?

No

The absence of any attempt in the TAR NC to harmonise, or restrict, the cost allocation methodologies currently in use across the EU, or to harmonise the approach to costs within Article 8.2 itself, makes Article 8 superfluous, and so it should be deleted.

11. Do you agree with the inclusion of the asset allocation methodology as set out in Article 15 of the initial draft TAR NC?

Yes

As far as we are aware, all of the cost allocation methodologies currently in use throughout the EU have been included in the TAR NC with the exception of the asset allocation methodology, currently in use in the Czech Republic. As ACER has effectively decided not to harmonise or restrict the cost allocation methodologies that TSOs can use going forward, or conduct any meaningful analysis of the benefits that may arise from greater harmonisation, it seems unfair to exclude only the asset allocation approach from the TAR NC.

ACER has yet to provide a detailed explanation about why it opposes this methodology. But its objections seem to be based on the fact that it supposedly provides little in the way of added value compared to the matrix approach. However, by the same token, one could argue that the distance to virtual point variant A provides little added value compared to variant B (or vice versa). Yet ACER has accepted both these methodologies as valid.

On the face of it the asset allocation methodology is simpler to understand and appears more obviously cost reflective than some of the other more obscure methodologies ACER has deemed acceptable. The suggestion that by allocating assets to transit and domestic points separately, it somehow contradicts the requirements of the 3rd package not to calculate tariffs specifically on the basis of point to point transit routes appears wrong, as distance is not an input into the methodology.

12. Do you agree with the secondary adjustments as described in Articles 16 - 18 of the initial draft TAR NC?

No

It is not clear that the use of secondary adjustments, and the justification for their use, forms part of the consultation carried out under Article 20. Secondary adjustments are a fundamental part of the overall cost allocation approach, so must be consulted upon.

Whilst we accept benchmarking could be an appropriate form of secondary adjustment in a limited number of situations where alternative flow routes require TSOs tariffs to remain competitive with those of others, we are concerned about the possibility of TSOs and NRAs misusing this provision. To this extent, we believe it would be a sensible precaution for the

TAR NC to require all proposals from TSOs/NRAs to apply benchmarking to be referred to ACER for an opinion, and for the use of benchmarking to be reviewed annually.

13. Is it necessary to specify further criteria other than those outlined in Article 19 of the initial draft TAR NC?

No

That said, we fail to see any benefit in including the criteria referred to in Article 19.1(b). Also, as regards the criteria relating to rescaling (Article 16), if applied rescaling should only be on a percentage basis. This avoids the risk of undermining locational signals altogether when adjusting expected revenue to allowed transmission services revenue. Otherwise equalisation should be applied.

14. If it is necessary, could you suggest additional criteria to those outlined in Article 19 of the initial draft TAR NC?

Additional criteria are not necessary.

15. Is the content of the four year review and the requirement for a justification document or consultation (depending on the outcome of the review) clear, as set out in Article 20 of the initial draft TAR NC?

No

In our view, there would be considerable merit in requiring the postage stamp to be used as a harmonised cost allocation methodology counterfactual throughout the EU. This would provide stakeholders with a single holistic view of how EU transmission tariffs could be determined consistently across the EU. It would also serve to demonstrate the trade-offs between cost reflectivity and simplification in Member States not using the postage stamp methodology. Finally, it would provide stakeholders with a high level comparative view of relative TSO efficiency across the EU.

However, we do not agree that TSOs currently using the postage stamp methodology should be exempt from applying another one of the cost allocation methodologies as a counterfactual. This would highlight the benefits which may arise from using a more cost reflective methodology which generates locational signals. Bearing in mind TSOs will have simplified versions of their network models readily to hand, along with details of technical or booked capacity at each entry exit point, we do not see this being a major administrative burden, as has been claimed.

Rather than simply reviewing and justifying the cost allocation approach every four years, TSOs should undertake a full consultation in line with Article 20, regardless of whether they

intend to maintain the status quo. This will enable stakeholders to provide observations about the existing cost allocation approach and whether it is suitable for another four year period.

Finally, any parameters relevant to tariff setting and tariff evolution (e.g. RAB, transmission services revenue, under/over recovery) should be published at regular intervals during the regulatory period (e.g. quarterly), not just at least every 4 years when the cost allocation approach is reviewed under Article 21. If stakeholders are not able to see how these parameters change throughout the regulatory period, they have no chance of achieving a reasonable degree of tariff predictability, as required by the Framework Guidelines.

16. Are there any other means of distinguishing between domestic and cross border entry capacity, other than using cross-border exit capacity as a proxy for cross-border entry capacity when carrying out the cost allocation test as set out in Article 22 of the initial draft TAR NC?

No

TSOs/NRAs should, however, make clear the basis on which the cost drivers for domestic and cross border network users (CD_{DM} and CB_{CB}) have been determined when publishing the results of the cost allocation test and justify these to stakeholders and ACER.

17. Do you think the considerations outlined in Article 23 of the initial draft TAR NC with regard to tariff setting for storage are sufficient?

No

We believe the TAR NC should be more ambitious in its approach to harmonising tariff setting for storage facilities, and not simply adopt the considerations set out in the Framework Guideline. All of the gas that is injected into a storage facility will have already paid an entry capacity charge beforehand to enter the transmission system. Similarly, all of the gas that is withdrawn from a storage facility will ultimately pay an exit capacity when it exits the transmission system. When initially commissioned, existing storage facilities will also, typically, have helped to reduce TSOs' investments in the pipeline capacity required to match peak supply and demand, particularly in relation to the capacity at Interconnection Points.

In light of the above, we believe that that the TAR NC should, by default, exempt storage facilities from entry and exit capacity charges. This approach avoids double payment of capacity charges and recognises the benefits storage has typically made towards reduced transmission system investment.

This default approach is preferable to relying on subjective criteria which NRAs must consider when setting transmission charges for storage, and is more likely to result in storage facilities being treated fairly and consistently. If NRAs can demonstrate, following public consultation,

that a storage facility generates net costs to the transmission system, then appropriate entry and/or exit charges could be applied to ensure cost reflectivity. However, this assumes that the cost allocation methodology is able to generate cost reflective charges based on underlying capacity or distance drivers, which the postage stamp methodology is unable to do.

To this extent we suggest the following revised drafting for Article 23:

Article 23

Storage

1. When the national regulatory authority sets or approves the transmission tariffs for the storage facilities, the following shall be taken into consideration:

- (a) the net benefits that the storage facilities may provide to the transmission system;**
- (b) the need to promote efficient investment in the transmission system;**
- (c) the need to minimise detrimental effects on cross-border trade;**
- (d) the need to avoid double charging of gas in store.**

2. There shall be a presumption that network users are exempt from paying entry and exit capacity tariffs at storage facilities unless the national regulatory authority is able to demonstrate, following consultation with stakeholders and neighbouring NRAs, that a storage facility generates net costs to the relevant transmission system.

3. Only costs related to the integration of storage facilities into the transmission system and the variable costs related to the transportation of gas to and from storage shall be taken into consideration by NRAs.

4. When assessing the benefits of storage facilities, NRAs shall take into consideration any reduced investment in the peak capacity of the transmission system or entry facilities as a result of storage facilities, along with any reduction in OPEX.

5. In the event the NRA is able to demonstrate that a storage facility generates net costs to the relevant transmission system, non-discriminatory tariffs may be applied at storage facilities specifically to recover this net cost. The value of these tariffs cannot be lower than zero.

Chapter III. PUBLICATION REQUIREMENTS

18. *Is the relationship between the regulatory period and tariff period, as defined in Article 3.7 and 3.10 clear to you?*

Yes

19. Do you agree with the standardised format as set out in Article 26.1 of the initial draft TAR NC?

No

It is vitally important that alongside information published in a standardised format, as set out in Article 26, TSOs publish a working tariff model of their cost allocation approach. This should make it clear how reference prices applicable at specific entry and exit points have been determined, including the assumptions that have been made about network user behaviours. It should be formatted in such a way to enable network users to replicate TSO reference prices and adjust the model's relevant parameters (e.g. allowed revenues, entry/exit split, projected capacity bookings) so as to reasonably project how reference prices may change in future. The model should integrate regulatory account under/over recovery and span 3-4 years ahead.

With the possible exception of the postage stamp cost allocation methodology, we do not think network users will be able to build their own tariff models to accurately replicate published TSO reference prices, based on the limited description of the methodologies described in Articles 10-15 of the TAR NC. As such, tariff setting for network users will continue to be opaque and subject to the TSO's "black box". This is totally unacceptable and contradicts the intentions expressed by ACER in its Framework Guideline, and the European Commission in its letter of 15th March 2013.

We find it disappointing that ENTSOG has failed to provide any credible explanation as to why it is unable to publish such a model, despite considerable support being expressed for such an approach from a diverse range of stakeholders. Any suggestion that this might not be possible on competition grounds is, in our opinion, completely spurious. TSOs are regulated monopoly entities and network users have no scope to negotiate the charges they pay for transmission services.

Having full visibility of how individual entry and exit tariffs are determined, and the ability to model how tariffs evolve, will make network users more inclined to book capacity longer term, which would help TSO revenue stability.

The standardised information to be published should also include all the relevant components of a TSO's price control formula which determine allowed/target revenues (e.g. RAB, WACC, escalator, depreciation period), not just the parameters of the primary cost allocation. The intention for such information to be published can be seen in the Framework Guideline and

the European Commission's letter of 15th March 2013 and, in reality, we suspect this information is already in the public domain in most countries. Providing it in a consistent and easily accessible form therefore, both in the national language and in English, should not represent much of a challenge to TSOs. However, it would significantly help shippers to understand tariff setting and accept the fairness of charges they are forced to pay. This in turn may foster greater trust of TSOs by shippers and end users, which the current opaqueness of tariff setting does little to promote.

TSOs should also provide accompanying information, clearly explaining the reasons and providing supporting financial information behind tariff changes, both in the national language and in English.

20. Do you agree with the separation of the information into two different parts as set out in Article 26.1(a) of the initial draft TAR NC?

Yes

21. Are you concerned by the fact that tariffs are set / applied at different times of the year?

Yes

Frequent and inconsistent timings of tariff changes undermine the efficiency of the capacity booking process and distort energy trading. Bundled capacity products exacerbate this situation if tariff periods either side of an IP differ.

Unpredictable and disjointed changes in tariffs can easily turn profitable transactions into loss making ones, as margins may be eaten away by tariff increases after the transaction has been executed. This is the main reason why it is so important for network users to be able to obtain a reasonable degree of tariff predictability.

22. If you are concerned, then do you think that the tariffs should be set / applied at the same time of the year by all TSOs?

Yes

Whilst we recognise there are administrative and regulatory burdens associated with harmonising the tariff year across the EU, such burdens are of a one-off nature. Harmonising the tariff year is also consistent with the approach taken in the Capacity Allocation (CAM NC) and Balancing (BAL NC) Network Codes to harmonising the capacity year and gas day, which also have administrative and operational burdens associated with them.

As a minimum, we think that all capacity which falls within the scope of the CAM NC should have the same tariff year. This should be consistent with the October – September yearly

standard capacity product described therein. Network users would then have assurance that reference prices for capacity at all EU IPs would apply for the same period, and be set and changed at the same time.

Multipliers and seasonal factors must also be set and apply consistently for each tariff year, and should not change throughout this period. Article 27.3 currently allows for this and must be amended.

23. Could you identify the benefits of the harmonisation of the tariff setting year, if any, for your business and could you quantify them?

As a trade association EFET is not able to identify, or quantify, the benefits of harmonising the tariff setting year from an individual company perspective. However, a harmonised tariff year provides more operational consistency and greater price certainty, which supports more frequent and efficient cross-border trading. Profits from arbitrage are less likely to be undermined by increases in tariffs at one side of the IP but not the other during the transaction period. We also think it would be easier to integrate markets if tariff periods and tariff setting processes are consistent throughout the EU, at least in respect of cross-border capacity.

24. Could you identify the costs of the harmonisation of the tariff setting year, if any, for your business and could you quantify them?

No

As a trade association EFET is not able to identify or quantify the costs of harmonising the tariff setting year from an individual company perspective. However, we expect these to be mainly procedural and/or IT related. Any costs faced by network users are likely to be one-off, whereas the benefits are continuous.

25. If applicable, do you think the benefits would outweigh the costs?

Yes

Greater consistency in tariff setting at IPs improves the business efficiency of shippers operating in multiple EU markets and improves the functioning of the internal market.

26. Is the issue of knowing the tariffs for the relevant gas year before the auctions start very important to you?

Yes

Knowing with certainty what the reserve prices, multipliers and seasonal factors are for the first capacity year before the CAM NC yearly capacity auction in March, is essential to enable shippers to develop commercial booking strategies. Providing forecasts of reserve prices for subsequent capacity years, based on the best information available to the TSO at the time, will also help shippers assess the implications of longer term capacity bookings, particularly if TSOs do not publish working tariff models of their cost allocation approaches. If shippers do not have certainty of each of these elements, they will essentially be bidding blind. So they will be far more inclined to leave their capacity bookings to monthly, daily or within day products, as these are the only products for which there will be price certainty in advance of their respective CAM NC auction dates.

Changing the reserve prices, multipliers and seasonal factors that apply in the first capacity year after the CAM NC yearly capacity auction has closed risks undermining shipper's booking strategies, as the assumptions made about the relative prices of annual capacity compared to quarterly, monthly, daily or within-day capacity would change.

Adopting a harmonised October – September tariff year for all capacity that falls within the scope of CAM will, we think, make it easier for TSOs and NRAs to consistently set the reserve prices, seasonal factor and multipliers applicable throughout the first capacity year. TSOs already assess actual and forecast revenue continually throughout the year and will not lose revenue as a result of a one-off shift to bring forward the tariff setting process. Whilst it is true that this will require TSOs to set tariffs based on a less complete picture of actual revenues received, we are not convinced this will result in any material inaccuracy or volatility in tariffs, bearing in mind tariffs will already be heavily influenced by forecasted capacity bookings, as opposed to actual capacity bookings.

27. Are there any other issues or aspects that are more important than the issue specified in the previous question?

No.

However, we should also point out that we see a number of inconsistencies and difficulties arising from applying different notice periods based on the magnitude of the tariff changes, so adopting a harmonised 60 day notice period would seem more logical.

Chapter IV. RESERVE PRICES

28. Do you agree with ENTSOG's proposal for the conditions for determining the allowed multiplier ranges, as set out in Article 29 of the initial draft TAR NC?

No

See our answer to Q29 below

29. Do you agree with Article 29.1(a) linking the applicable ranges of multipliers to the status of congestion according to the definition set out in point 2.2.3(1) of Annex I to Regulation (EC) No 715/2009?

No

Whilst congestion is one possible factor to use when considering what range of multipliers should be applied, we have always said it should not be the only consideration and we agree with those who have cautioned against its mechanistic use. As has been pointed out during the network code development process, there is some doubt about whether the criteria for implementing the day-ahead UIOLI mechanism in CMP are appropriate in the context of the TAR NC. So linking the two regulations together in this way may have unforeseen consequences.

Rather than trying to complement the definition of congestion by adding further criteria (e.g. ENTSOG's suggested < 10% technical capacity offered on a daily basis on average over the year), or redefining congestion based on capacity that has been allocated following an auction, we think it would be simpler just to remove the link between congestion and the range of allowed multipliers than can be applied.

As such, the TAR NC would allow multipliers for monthly and quarterly products to be set anywhere between 0.5 and 1.5 and multipliers for daily and within day products to be set anywhere between 0 and 1.5, subject to justification against the criteria included in Article 28.5 and following stakeholder consultation. This would allow TSOs/NRAs to take account of important factors other than congestion when setting multipliers, such as the impact on cross-border trade, price spreads, promoting flexibility, under recovery. It would also simplify the legal drafting of Articles 28 and 29 of the TAR NC.

30. Do you agree with ENTSOG's alternative proposal (not yet included in the initial draft TAR NC) to set the multiplier ranges on the basis of the percentage of technical capacity that was booked as outlined in Section 4.1(a) of the Supporting Document?

No

See our answer to Q29 above.

Also, ENTSOG's alternative proposal appears to rely on an ex-post assessment of congestion after the annual yearly and quarterly CAM auctions have taken place. As such, shippers would not know what the multipliers would be prior to these auctions, and so would not know the

commercial impact of booking long-term capacity as opposed to short-term capacity and the extent to which they should profile their capacity bookings.

31. Do you agree with ENTSOG's proposal for the possibility to set higher multipliers than those within the ranges set out in Article 29.2 of the initial draft TAR NC, as a safeguard, when it can be justified that the resulting levels better meet the requirements of Article 28.5?

No

We agree with ACER that the range of multipliers allowed in the Framework Guideline strikes an appropriate balance between future short-term and long-term capacity bookings. For efficient trade without market distortions it is important that the market is able to reveal the value of short term capacity. Giving more discretion to NRAs to extend the range of multipliers on a national basis risks undermining this objective. The criteria referred to in Article 28.5 may be evaluated differently either side of the border, and applied in such a way as to distort the applicable entry and exit capacity reserve prices making up a bundled product, or any locational signals inherent in the reference prices either side of an IP,

ENTSOG's supporting document (P51) gives a theoretical example of a situation where, based on the maximum combination of multipliers and seasonal factors allowed in the Framework Guideline, a TSO may still only recover 86% of its allowed revenue. However, the TAR NC also proposes allowing seasonal factors to be set up to the power of 2. If you apply this enhancement to ENTSOG's theoretical example, the level of revenue recovered increases to just below 100%. Clearly however, the extent of any actual under/over recovery will depend on actual bookings, the overall reference price, any auction premium and the relative price differentials between short term and long term capacity prices.

Whilst we recognise TSOs have legitimate concerns about the risk of under recovery, in a non-price cap regime TSOs should always be entitled to recover their allowed revenues from network users, and so ultimately they will not be financially disadvantaged. As CAM has introduced the possibility for shippers to book flexibly and CMP discourages booking or retaining capacity which is not needed, we think the TAR NC should recognise this reality.

If TSOs are able to provide evidence of where they have not been able to recover their allowed revenues due to an overly restrictive application of multipliers, we may be more sympathetic to their arguments. But until then we are not prepared to accept extending the range of multipliers based on supposition.

32. For those cases where it can be justified that higher levels better meet the requirements of Article 28.5, do you support ENTSOG's proposal to leave it up to the NRA to determine a higher level of multipliers (1st option), or do you support the inclusion of a cap higher than 1.5 in the refined draft TAR NC (2nd option)?

No, I don't agree with the suggested options

See our answer to Q31 above.

Option 1, leaving it up to NRA discretion, risks introducing significantly different multipliers either side of an IP, and questions the benefit of the TAR NC saying anything about multipliers. Both Option 1 and Option 2 should be deleted. If either Option 1 or Option 2 were to remain then at the very least the NRA must also be obliged to seek the opinion of ACER before being allowed to set or approve any multiplier >1.5.

33. Do you agree with ENTSOG's proposal for the criteria to be taken into account for setting the level of multipliers, as set out in Article 28.5 of the initial draft TAR NC?

No

We think NRAs should assess and justify the use of multipliers, individually at IPs or in aggregate for all IPs, against each of the following criteria:

- **The extent of any congestion**
- **The extent of any cross subsidisation between network users**
- **Their impact on trade and flexibility between market areas**
- **The impact on under/over recovery of transmission services revenue**
- **The impact on the efficient use of and investment in transmission systems**

In addition, in order to ensure multipliers reflect the current market conditions, we think they should be reviewed annually and consulted upon every 2 years. Multipliers should also not be adjusted mid tariff period (see our answer to Q26 above).

34. Do you agree with ENTSOG's proposal for the formulas to calculate reserve prices for quarterly, monthly and daily standard capacity products in absence of seasonal factors as set out in Article 30.1(a) of the initial draft TAR NC?

Yes

35. Do you agree with ENTSOG's proposal for the two options for calculating reserve prices for within-day standard capacity products in absence of seasonal factors as set out in Article 30.1(b) of the initial draft TAR NC?

Yes

Ideally there should be one harmonised method for calculating within day reserve prices. TSOs should strive for consistency either side of an IP. But whilst capacity continues to be allocated both on a kWh/h and kWh/d basis, it seems appropriate to retain both options.

36. Do you agree with ENTSOG's proposal for the methodology to calculate seasonal factors, as set out in Article 31 of the initial draft TAR NC?

No

EFET is not generally supportive of elevating multipliers to the power of 2 as we believe this could excessively accentuate the differences in capacity prices throughout the year.

However, we are prepared to accept the possibility of TSOs setting seasonal factors up to a maximum power of two on condition that NRAs are not allowed to extend the range of multipliers beyond the 1.5 maximum set out in the Framework Guidelines. In the event NRAs are given discretion to set multipliers outside of the range in the Framework Guidelines, seasonal factors should not be allowed to accentuate peak prices still further. In fact we question whether seasonal factors should be allowed at all if NRAs have discretion to set multipliers which may be significantly higher than 1.5.

Seasonal factors, if used, should be calculated annually and not be reset mid tariff period, as currently allowed for in Article 31.5. This would undermine a shipper's booking strategy. Seasonal factors should also be subject to NRA approval at all times, which is not entirely clear from the current drafting of Article 28.3.

Finally, Article 29.5 of the TAR NC states that where seasonal factors are applied, the arithmetic mean over the gas year of the product of the multiplier applicable for the respective standard capacity product and the relevant seasonal factor shall be no less than 0.5 and no more than 1.5. This reflects the wording in the Framework Guideline. However, this cannot be the case, as it effectively prevents NRAs from setting multipliers of zero, which is permissible for daily and within day standard capacity products. This inconsistency needs to be corrected, and the TAR NC should simply apply a 1.5 upper limit to the arithmetic mean of the product of seasonal factors and multipliers, removing the lower limit.

37. Do you agree with ENTSOG's proposal for the calculation of reserve prices for capacity products for interruptible capacity with an ex-ante discount, an ex-post discount or a combination of both approaches as set out in Article 32.1 of the initial draft TAR NC?

No

We are fundamentally opposed to the use of ex-post discounts for interruptible capacity products. Regrettably, ex-post discounts are already applied in a number of EU Member

States, and could become more prevalent if the indicative BEATE tariff proposals in Germany are implemented in 2015. In our opinion ex-post discounts contravene Article 14.1.b of the Gas Regulation and the practice should be phased out. It would be deeply concerning if, instead, this unhelpful and distorting practice were to be legitimised through the TAR NC.

Clearly, firm and interruptible capacity products have different probabilities of interruption. So pricing them the same, and simply refunding the cost of interruptible capacity in the event of an interruption, is a blatant abrogation by the TSO of its responsibility to provide a best estimate of the probability of interruption, and to discount the interruptible product accordingly. If a TSO believes the risk of interruption is low, for example because they have chosen to sell interruptible capacity when firm capacity remains available, the discount offered should be low. But an interruptible price should never be the same as the firm price, because an interruptible product can ultimately be interrupted whereas a firm product cannot (emergency procedures aside).

Allowing TSOs to apply ex-post interruptible discounts incentivises TSOs to reduce the amount of firm capacity they make available, as it lessens their risk for the same reward. In contrast, the reward for shippers decreases, because they no longer receive an ex-ante discount when booking interruptible capacity, but they still face the same risk of having to cover a short position in the market if they are actually interrupted.

We are not convinced by the arguments put forward by ENTSOG in its supporting document about why ex-post discounts may be “advantageous” to shippers. Firstly, the argument that an ex-post discount better takes account of the risk of being interrupted because of the first booked last interrupted rule in the CAM NC, ignores the fact that any interruptible capacity offered for longer than day-ahead has to be auctioned. So if two shippers both acquire interruptible capacity in the same a quarterly auction, their probabilities of interruption (or rather the order in which they will be interrupted) will be the same, regardless of whether an ex-post or ex-ante discount is applied. Similarly their probability of interruption will be less than that of a shipper who books capacity in a monthly auction, irrespective of the discounting method.

Nor do we accept that ex-post discounts are any more likely to maintain the current offer of different interruptible products where there is no congestion, and we fear they are likely to increase the range and amount of interruptible products at the expense of firm products. If firm capacity is still available, or a point is not congested, TSOs can still offer interruptible capacity with a relatively low ex-ante discount. But in such circumstances they, or NRAs, should assess whether the level of firm technical capacity can be increased.

The supporting document also provides an example (page 68) which takes into account the short-term UIOLI provisions in CMP. Setting aside for one moment our opposition to the use

of short –term UIOLI, it fails to mention the fact that ex-post discounts effectively undermine the OSBB provisions in CMP, as TSOs will have no incentive to oversell firm capacity if they can offer interruptible capacity at the same price. We also struggle to follow the logic in the example. If firm capacity is still available after Slot 1, shippers are more likely to book it within day if they need it than buy interruptible capacity day-ahead at the same price as firm capacity. Also if shippers expect an auction premium in Slot 1, or one has occurred, their expectations about the probability of interruption is likely to be higher. So they will be less prepared to buy interruptible capacity at the same price as firm in such circumstances.

If ex-post discounts were to be included in the TAR NC we would expect that in a very short time all TSOs will offer interruptible capacity solely on this basis. This is a commercially logical step for regulated monopoly businesses to take. If a TSOs' allowed revenues are fixed but at the same time they are provided with an opportunity to reduce their risk of not being able to meet their capacity obligations, why wouldn't they jump at such an opportunity?

As regards ex-ante discounts, under the CAM NC interruptible capacity only has to be offered on a daily basis when firm capacity has been sold out day-ahead. TSOs are not required to offer interruptible capacity day-ahead if firm capacity is still available at that point, as firm capacity can continue to be sold within day. So logically, if interruptible capacity is offered day-ahead it should be because firm capacity has been sold out, in which case we think the default reserve price should be zero. This would enhance the efficiency of gas flows between market areas in response to price spreads. TSOs would not face any greater risk of under recovery from a zero default reserve prices as they would already be maximising their revenue entitlement from having sold out all firm capacity.

Nothing in the CAM NC prevents TSOs making interruptible capacity (or conditional capacity as applies extensively in Germany) available for periods longer than a day, regardless of whether firm capacity has sold out or not. But if they do, they should be required to make an ex-ante best estimate of the probability of interruption, not fall back on offering ex-post discounts to reduce their risk and potential revenue loss.

38. Do you agree with ENTSOG's proposal for the information to be included in the report on the probability of interruption and on the timing of its publication as set out in Article 32.3 of the initial draft TAR NC?

No

The explanation of how the probability of interruption is calculated for each type of interruptible product should include the flow scenarios and detailed network configurations on which the TSO's assumptions are based. This will allow network users to make their own assessment of interruption based on their perceived likelihood of such circumstances occurring.

39. Do you agree with ENTSOG's proposal for the application of the same methodology for the calculation of reserve prices for all interruptible products offered by a TSO, including non-physical backhaul capacity products, as set out in Article 32.2 of the initial draft TAR NC?

No

We do not agree that interruptible capacity which is derived from non-physical back haul should be subject to ex-post discounts for the same reasons explained in our answer to Q37.

There may be merit in harmonising the principle of setting reserve prices for all interruptible products consistently at both bi-directional and uni-directional IPs. In which case, these should be calculated using the same ex-ante discount methodology and the same zero default reserve price for day-ahead interruptible capacity (to reduce the likelihood of flows against price direction).

However, unlike at bi-directional IPs where day-ahead interruptible capacity is only required to be made available day-ahead if firm capacity is sold out, day-ahead interruptible capacity at uni-directional IPs always has to be made available. With this in mind applying the marginal cost methodology in the Framework Guideline may be more appropriate.

A possible exception to adopting a zero default reserve price or marginal cost approach for day-ahead interruptible backhaul capacity is where the level of uni-directional capacity at IPs between Member States exceeds the level of bi-directional capacity, as highlighted in Appendix 5 of ENTSOG's launch document.

40. Do you agree with ENTSOG's proposal for the calculation of an ex-ante discount for capacity products for interruptible capacity, as set out in Article 33 of the initial draft TAR NC?

Yes

As stated in our answer to Q37, we think that any interruptible capacity offered at the day-ahead stage should always have a zero default reserve price. However, for any interruptible capacity offered for a longer periods the formula is appropriate, and the A parameter should be set higher than one in circumstances where the potential cost of interruption far exceeds the interruptible discount based on the expected probability of interruption.

41. Do you agree with ENTSOG's proposal for the calculation of the probability of interruption, as set out in Article 33.2 of the initial draft TAR NC?

No

The probability of interruption formula seems overly complicated. We doubt whether TSOs really will be able to estimate the duration of interruptions and the proportion of capacity

that would be interrupted with any degree of certainty. It would be a travesty, which should not be allowed to occur, if this were to become a convenient excuse to apply ex-post discounts.

To this extent, it would be simpler and equally valid to base the probability of interruption solely on the expected number of days of interruption in the year.

42. Do you agree with ENTSOG's proposal that data for several interconnection points or all interconnection points could be gathered together to calculate the probability of interruption for an interruptible capacity product, as set out in Article 33.2 of the initial draft TAR NC?

Yes

43. Do you agree with ENTSOG's proposal for the calculation of the ex-post discount for interruptible capacity products, as set out in Article 34 of the initial draft TAR NC?

No

See our answer to Q37 above

Chapter V. REVENUE RECONCILIATION

44. Is the interaction between the one regulatory account, the sub-accounts for tracking and the revenue reconciliation, as set out in Article 37 of the initial draft TAR NC clear to you?

Yes

Whilst clear, details of the amount of any under/over recovery accrued in the regulatory account should be provided regularly within year (e.g. quarterly). This will allow shippers to anticipate allowed revenue variations in future years, and anticipate how this could affect future tariffs (assuming a tariff model is made available). Details of the sub-accounts should also be made available to NRAs and to shippers on a regular basis. This will help all parties to understand the degree of cross-subsidy that may be occurring between different classes of user as a result of having a single regulatory account. Finally, to the extent that allowed revenue is excluded from transmission services revenue, for the purposes of providing dedicated services or because of a complementary revenue recovery charge, TSOs should make clear how such revenues will be separately reconciled. They should also provide full transparency over the extent of any revenue reconciliation in relation to these charges.

Chapter VI. PRICING OF BUNDLED CAPACITY AND CAPACITY AT VIRTUAL INTERCONNECTION POINTS

45. Do you agree with ENTSOG's proposal with regard to the way in which a VIP tariff is calculated where the capacity is marketed by one TSO, as set out in Article 40.2 of the initial draft TAR NC?

Yes

However, basing the attribution of revenue or auction premiums resulting from bundled capacity on the reserve price could lead to TSOs getting disproportionate shares, as the reserve price incorporates any multipliers and seasonal factors. ENTSOG should consider whether the reference price would be a more appropriate basis for attribution.

46. Do you agree with ENTSOG's proposal with regard to the way in which a VIP tariff is calculated where the capacity is marketed by more than one TSO, as set out in Article 40.3 of the initial draft TAR NC?

Yes

Chapter VII. PAYABLE PRICE

47. Are the mechanisms for fixed capacity prices described clearly enough in Section 7.1 of the Supporting Document?

Yes

Whilst the explanation is clear, clarity and comfort should stem from the binding TAR NC text and not the supporting document. The issue of whether to offer available bundled capacity on a fixed price basis also needs to be considered in context of any existing floating price long-term capacity contracts and the need to prevent undue discrimination.

48. Do you agree with ENTSOG's proposal for the inclusion of different mechanisms for fixed capacity prices in the refined draft TAR NC, as outlined in the Supporting Document?

No

Our preference would be for the payable price for bundled capacity products at IPs to be set on a fixed price basis, but giving TSOs the option to offer fixed prices as an alternative to purely floating prices is welcome. However, we do not fully understand or agree with all of the options listed in Article 41.2 and described in the supporting document.

We are not sure exactly what ENTSOG envisage in Article 41.2.c, where the payable price is a combination of fixed and floating prices. If this means that TSOs can include the option to fix a floating payable price subject to a risk premium this would be acceptable, and we might support this being a mandatory requirement. However, as a number of the fixed price options

described in the supporting document involve elements of the price which float (due to indexation, after a period of time or subject to a variable charge), the TAR NC needs to be clearer about how fixed and floating reserve prices could be offered in combination.

We do not agree with the second variation of the fixed price + premium option described on page 74 of the supporting document. Whilst the fixed premium acts as a buffer such that the reserve price floats inside this fixed premium, the floating price could break out of the buffer. In which case you are back to a floating price and so the option doesn't offer sufficient price certainty. It may however, be appropriate to apply this option if the buffer used was any auction premium arising from capacity congestion.

Finally, we have concerns about including the option of a fixed price with an additional variable charge (Article 41.2.d) at IPs where commodity charges are used as the basis of managing any under recovery in capacity bookings, through a complementary revenue recovery charge. Commodity charges at IPs represent a barrier to efficient cross-border trade and the Framework Guideline specifically limits commodity based complementary revenue recovery charges to points other than IPs.

49. Do you have any further suggestions for calculating the fixed price premium referred to in Section 7.1 of the Supporting Document?

No

Chapter VIII. INCREMENTAL AND NEW CAPACITY

50. Do you consider the incremental and new capacity Chapter (Articles 42-46) to be consistent with the other Chapters of the initial draft TAR NC?

No

As we have already stated, our preference is for the payable price for bundled capacity products at IPs to be set on a fixed price basis, but giving TSOs the option to offer fixed prices as an alternative to purely floating prices is welcome. However, as regards new and incremental capacity, a harmonised fixed tariff approach should be mandatory so as to encourage longer term commitments by network users (see our response to Q31 of the ENTSOG consultation on INC Proposal).

Also, based on the current drafting of Article 27 of the TAR NC, shippers will not know the applicable prices for capacity in any annual auctions for new and incremental capacity 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 TAR NC 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.

Chapter IX. FINAL AND TRANSITIONAL PROVISIONS

51. Do you agree with ENTSOG's interpretation of the mitigating measures as set out in Article 47 of the initial draft TAR NC and the separation of mitigating measures and transitional provisions?

No

Whilst the mitigating measures described could be said to reflect the provisions of the Framework Guideline we do not think they are sufficient. They do not adequately address the significant changes in the gas market since the introduction of the 3rd package or the risks faced by shippers resulting from implementation of the TAR NC.

Rather than introduce mitigating measures for a time period which lasts a maximum of two years after the TAR NC applies (which could simply defer payment if the mitigating measures are generating under-recovery to year +3) we, along with a number of other associations, are convinced ENTSOG needs to be more ambitious and introduce a one-off Capacity Reset Mechanism on entry into force of the TAR NC. In our view a well-designed Capacity Reset Mechanism, implemented in advance of the first tariff changes, could resolve the need for other mitigating measures to be included in the TAR NC, at least at Interconnection Points. This would help to minimise the need for ongoing mitigation against material tariff variations as a consequence of new market rules brought about through the CAM NC, the TAR NC and CMP.

52. Do you agree with the inclusion of the mitigating measures as set out in Article 47.2(a) and (b)?

No

See our answers to Q51 above and Q57 below.

53. Do you agree that a minimum implementation period of 18 months after entry into force, as set out in Article 49 of the initial draft TAR NC, is necessary to ensure the proper implementation of the TAR NC?

No

A minimum implementation period of 24 months would allow more time for NRAs and TSOs to take the steps necessary to bring forward their tariff setting processes to accommodate a harmonised Oct-Sep tariff period for IPs (see our answer to Q26 above).

We also note that CMP, which should have been relatively straight forward to implement, had the same 18 month implementation period as proposed for the TAR NC. The TAR NC however, will be far more complicated for TSOs/NRAs to implement.

54. Do you agree with the text that ENTSOG has included in Article 49 on the timing of implementation?

No

See our answer to Q53 above

55. Do you agree with the structure of the initial draft TAR NC?

Yes

56. Do you consider that the level of detail in the initial draft TAR NC is appropriate for this EU legislation? If not, please explain why (with reference to specific topics or articles, where appropriate)?

No

We do not think the level of detail used in describing the primary cost allocation methodologies is sufficient to enable shippers to replicate the workings of a TSO's tariff model, or for NRAs, or the Commission, to confirm whether the TAR NC is being complied with. Rather than try and include the complicated formulae and data solving procedures in the TAR NC itself, if TSOs are required to publish working versions of their tariff models, including a description of how it complies with the high level descriptions contained in the TAR NC, parties would be sufficiently reassured.

If shippers had access to a TSO's working tariff model they would be able to raise any concerns they may have about its compliance with the descriptions in the TAR NC with the NRA, rather than being left completely in the dark unable to establish whether the tariffs that are published are valid or not.

57. After reviewing the initial draft TAR NC, do you find that there are other material issues that ENTSOG should consider for the purpose of the refined draft TAR NC?

Yes

As mentioned in our answer to Q51 above, we are convinced that the TAR NC should include a one-off capacity reset mechanism as the sole form of mitigating measure included in the TAR NC. We set out below in more detail why we think it is needed, what its benefits are and why some of the concerns that have been expressed by stakeholders about a reset mechanism may be overstated.

Why is it needed?

The EU gas market has changed significantly since the 3rd package, but large numbers of long-term and medium-term capacity and commodity contracts pre-date this. Network Codes intended to advance the single EU market for gas have been introduced, but risk being undermined by existing capacity contracts which are no longer fit for purpose.

The CAM NC reflects the new world of flexible capacity booking at IPs, but shippers with existing capacity commitments cannot take full advantage of profiled booking. Short term multipliers under the TAR NC could compound this disadvantage, because the TAR NC smears any under recovery back to existing IP capacity holders.

CMP is aimed at ridding Europe of contractual congestion and capacity hoarding. Through short-term and long-term UIOLI measures, it seeks to restrict the use of existing capacity to what has initially been nominated, and to withdraw capacity which is systematically under used. Existing capacity holders are therefore disproportionately affected compared to users who are able to profile their capacity bookings, and surrender only helps if there is congestion.

The TAR NC is expected to apply to tariffs in existing contracts as well as future contracts. As such, it could substantially increase the reference price on which tariffs are based if there are substantial changes to the tariff regime (e.g. through a change in cost allocation methodology, entry/exit split or introduction of a virtual interconnection point). Changes of such magnitude were probably not expected or predictable when the contracts initially entered into force and a previous tariff regime applied. Substantial changes in the tariffs of existing contracts, or perceived discrimination as a result of implementing the TAR NC, may well result in aggrieved capacity holders taking legal action against TSOs, thereby complicating and delaying the TAR NC implementation process. Such legal action is likely to have different results in different Member States, which would further fragment and distort the EU market unless there were an EU-wide capacity reset mechanism.

What are the benefits of the reset mechanism?

The reset mechanism will free up more capacity, both short term and long term, for use by the market and will substantially relieve contractual congestion in the EU. This will facilitate quicker and larger levels of capacity bundling. It could also facilitate creation of virtual

interconnection points and/or market integration, as how to deal with existing capacity contracts in the context of VIPs or market integration is often a major sticking point.

The reset mechanism will create a level playing field ensuring all users are able to utilise short term capacity thereby ensuring capacity prices are properly reflected in hub prices.

Addressing the concerns raised by stakeholders

- *The reset mechanism is a 'free option' which shippers will exercise or not depending on whether it is commercially beneficial*

The reset mechanism could potentially be designed in such a way that shippers would not know what the actual tariff changes from implementing the TAR NC would be before being required to indicate the capacity they wish to reset. Alternatively, assuming there is a net economic adverse change caused by the implementation of the TAR NC, existing contracts could sustain modification by way of adjustment to the booking quantities or price, so a network user is neither better nor worse off. Offering network users the same fixed price options for existing capacity as apply to available capacity should also be considered. However, to the extent the network user can demonstrate that the booking quantities or price cannot be adjusted (due to justifiable reasons), it should then have recourse to the reset mechanism. Whatever capacity the shipper retains becomes subject to the TAR NC along with any future capacity they book, so following the reset all capacity is priced the same.

- *Termination of capacity contracts relates to contract law in Member States (ACER)*

EFET has commissioned a legal opinion on the relevance and application of a reset mechanism throughout the EU. Amongst its conclusions are:

- there are no legal barriers to the inclusion of a reset mechanism in EU legislation although an enforced reset of all capacity is unlikely to be compatible with EU law or as a general measure will be difficult to justify;
- the history of development of the EU energy law indicates that, where there were significant changes to the EU legal framework that materially affect existing contracts, there has been the practice of addressing impacts of such changes;
- in certain cases a tariff increase resulting from the NC-TAR can conflict with the EU general legal principles of proportionality and legal certainty;
- there appear to be a sufficient number of EU jurisdictions which recognise remedies in the case of a tariff increase to derive a general principle and practice in the Community;
- when assessing the principles of legitimate expectation and proportionality, it is quite conceivable that in an individual case, the severity of a tariff increase, perhaps seen in conjunction with other measures introduced by the Gas Regulations and notably NC-

CAM (which may have negatively affected the usability and therefore the economic value of the contracted transportation capacity) could tip the balance;

- the 2 year delayed implementation derogation currently provided for under Article 47 1(b) NC-TAR for tariff increases exceeding 20% appears more restrictive than derogation or transition regimes elsewhere in the energy market.

- *A reset mechanism increases the risk of revenue under recovery and tariff instability*

If the amount of reset capacity is known after the TAR NC takes effect but before it applies, TSOs will have time to adapt, and potentially smooth tariffs increases resulting from reset, thereby preventing instability. Under recovery might be a problem initially. But reset will not fundamentally change flow patterns or gas demand. So TSOs can still recover their allowed revenues from capacity they expect to be used, in combination with multipliers and seasonal factors. At the end of the day, TSOs will still be able to recover their allowed revenues and the community of network users will collectively pay the same amount.

EFET members recognise and accept the potential consequences arising from reset. But without a reset mechanism tariff instability is likely to persist for many years as existing long-term contracts run their course and whilst the problem of asset stranding caused by modified and increasingly volatile cross-border flow patterns persists.

In our opinion it is better to draw a line under these issues now and face the consequences head-on, rather than let them drag on impeding competition and the implementation of a single EU market for gas.

- *A reset mechanism will cause cross-subsidies between classes of users*

Cross-subsidisation between classes of network user, for example between network users who are principally reliant on entry or exit capacity, is just one of the sometimes conflicting objectives which tariffs are meant to fulfil. Cross-subsidy between the same class of network user, for example between new and existing holders of IP capacity, also needs to be taken account of. Avoiding discrimination and promoting competition are equally, or more, important in our opinion.

The reset mechanism will ultimately improve the functioning and efficiency of EU gas markets. This will create more competition and liquidity which benefits all stakeholders.

- *A reset mechanism could adversely impact future investments along with the structure and application of rules for new and incremental capacity*

The reset mechanism is a one-off and it is not unusual for new legislative measures to include arrangements to protect existing contracts from discrimination and retroactive effect.

Incremental, new and past investment ultimately feeds into a TSO's RAB, which determines allowed revenue irrespective of the level of capacity bookings.

Incremental and new capacity will be allocated in accordance with the CAM NC amendment and participating shippers can take account of the potential impact of the TAR NC in any future commitments for this capacity. In future incremental and new capacity will be expected to pass an economic test, in which a proportion of a TSOs investment costs are expected to be underpinned by shipper commitments. If shippers fail to meet this commitment, the investment will not go ahead. But once the test is passed the cost of the investment will feed into the TSO's RAB and be fully funded going forward, even if the shipper making the initial commitment defaults on its capacity commitments or goes bankrupt.

- *A reset mechanism poses a risk for TSOs financing their investment and could adversely impact their market value*

TSOs are monopolies whose revenues are typically guaranteed through complex regulatory price control regimes. Their ability to finance investment and their market value is ultimately driven by investors' perceptions of the reasonableness of these price control price control regimes and the quality of a TSO's management, not on future capacity bookings.

- *Issues concerning capacity contracting more appropriately reside in the CAM NC*

The reset mechanism could be incorporated into the current CAM NC amendment being drafted in relation to new and incremental capacity if this is considered a more suitable legislative arrangement.

- *The reset mechanism will disproportionately impact transit countries*

EFET recognises that a reset mechanism may pose greater risks for transit countries because of the relatively small indigenous off-take relative to their overall flows. However, rather than simply "burying our heads in the sand" and allowing the problem of stranded assets to overhang and distort the internal energy market for many years to come, we believe action needs to be taken now to address this issue.

Concerns over the impact on transit countries should not be seen as a barrier, in principle, to the introduction of a reset mechanism, as specific measures could be considered to restrict how the mechanism could be applied in transit countries. However, the ultimate solution to addressing the problems caused by stranded assets in the internal energy market, particularly in transit countries, is likely to require some form of fundamental re-appraisal of the existing balance between entry and exit charges and the introduction of a tariff "solidarity mechanism" across the EU, which are beyond the current scope of the TAR NC.

- *The reset mechanism is not a balanced or proportionate measure*

EFET is prepared to work with ENTSOG and/or ACER to consider ways of making the reset mechanism more balanced or proportionate and to develop a more complete solution to dealing with the problems caused by stranded assets. However, until there is acceptance, in principle, that a reset mechanism may be necessary, it is hard to think this will be time well spent.

58. Do you find the Supporting Document for consultation to be 'respondent-friendly' in terms of its readability, style, etc.? Please outline how ENTSOG could improve future consultation documents.

Yes

The supporting document has been helpful in understanding ENTSOG's arguments.