



# **Explanatory Notes on Article 5 (3-5) of Regulation (EC) 1775/2005**

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## **Distinction between contractual and physical congestion**

- **GEODE agrees with the Commissions' distinction between contractual and physical congestion**
- **GEODE also holds the view that capacity hoarding occurs in connection with contractual congestion**
- **GEODE agrees that all means available to the TSO to accommodate the submitted capacity requested should be employed**
- **GEODE coincides with the Commission on the definition of contractual congestion as a situation where the level of firm capacity demand exceeds the technical capacity and where in addition unused capacity exists**



# Tools and instruments for congestion management procedures

- **Common instruments of CMP**
  - Rucksack-principle
  - Firm use-it-or-loose-it
  - Interruptible use-it-or-loose-it (use-it-or-lend-it)
  - Installation of secondary markets
- **Additional instruments**
  - Buy-back principle
  - Firm reverse flow



## Concrete suggestions

- **GEODE holds the view that some CMP instruments need to be defined more detailed:**
  - „Rucksack-Principle“
    - Under German law it is not entirely clear how the network operator with whom the transport contract has to be concluded is involved
  - „Uioli-principle“
    - It is unclear who is holder of the rights and duties connected with the regiven capacity – in particular whether the TSO or the netuser bears the risk that the capacity cannot be reselled
    - It is necessary to define whether the „uioli-principle“ or the provisions concerning the secondary market have priority in case of a collision of both principles



## **Conclusion by GEODE**

- **Regulation 1775/2005 does also cover existing long-term contracts**
- **TSOs have to offer interruptible capacity at a price the probability of an interruption in advance**
- **The proposed CMPs must be explained and exemplified more detailed in order to avoid misuse**
- **Incentives for TSOs to create congestions must be avoided – therefore the spending of revenues should be dealt with as well**
- **In case of physical long-term congestions TSOs should be sanctioned**