



Regulation 1775/2005 – Draft explanatory notes on Capacity Allocation Mechanisms

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General – 1

- **ERGEG welcomes** DG TREN's draft explanatory notes as a useful clarification of legal provisions for capacity allocation
- Availability of transport capacities remains a **key requirement for the development of a competitive internal market** in natural gas
 - A significant share of transport pipelines is currently contractually congested – DG COMP's Energy Sector Inquiry Report identifies congestion as a significant barrier for competition and liquid trade
 - effective gas-to-gas competition is hindered, where competitors and new market entrants lack appropriate third party access (TPA) on a non-discriminatory basis
 - This is likewise the case if TPA is refused or transport capacities are not made available to a sufficient extent in order to allow for reasonable supply of customers
- Availability of transport capacities remains a **key requirement for security of supply**

General – 2

- **ERGEG therefore strongly supports the key messages of the explanatory notes**
 - Existing capacities have to be allocated in a non-discriminatory way
 - Existing capacities have to be used efficiently up
 - Capacity offer has to meet market demands
 - Physical congestion suggests inadequate investment policy
 - Obligation of TSOs to invest to meet reasonable market demand
- **ERGEG has provided detailed comments to the EC**
 - comments have been published

Selected Details – 1

- **Regulation has to be applicable to all capacity contracts**
 - Art 5 clearly states that CAM are applicable to existing contracts unless they would infringe existing provisions
 - Existing provisions that infringe the application of non discriminatory CAM should be reviewed in the light of their compatibility with competition law
 - Regulation does not repeat the “exemption” of article 32.1 of Directive 2003/55/EC
 - The regulatory framework should generally leave no room for by-passing rTPA rules

Selected Details – 2

- **Common Capacity Calculation Principles necessary**
 - Allocating capacity in networks between users is an important aspect of a transparent and non-discriminatory access regime
 - CAM and CMP may only provide optimal results if the system is applying appropriate capacity concepts in the day-to-day practice
 - Consistent capacity calculation both over time and across networks is not guaranteed at the moment
 - CEER's task force on capacity is working in this area

Selected Details – 3

- **Role of NRs:** NRs clearly have a role in facilitating investments
 - stable regulatory framework
 - incentives
- Securing new investments through **binding transportation contracts** is however too much emphasised in the notes
 - Such binding commitments may e.g. not be required for investments for the national market if costs are anyway covered through tariffs
- **Necessity for TSOs to coordinate** operations with upstream TSOs deserves appropriate attention in the notes
 - In the light of both security of supply and competition
 - an example of possible regulatory gap

Concept for Implementation

- In order to allow for efficient application there is a clear **need for consistent implementation** of the requirements on CAM across all Member States including for pipes that cross borders
- This calls for effective **inter-TSO and inter-regulators cooperation**

Short term

- Calculation of available capacities on a cross-border basis rather than for single pipelines and based on Common Capacity Calculation Principles
- Verification of available capacities on a cross-border basis rather than for single pipelines → optimised use of existing capacities by taking into account alternative transport routes and upstream capacities

Long term

- Long term capacity planning on a cross-border basis rather than for single pipelines → efficient assessment of need for capacity expansion has to take into account the demand of up- and downstream supply markets
- Full compliance with **transparency** provisions of the Gas Regulation is a key requirement for non-discriminatory capacity allocation mechanisms