

## **Summary of the public consultation on congestion management procedures in gas transmission**

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## INTRODUCTION

On the 26th January 2011 the European Commission launched a public consultation on "Congestion Management for Gas Transmission Networks". The goal of the associated consultation document was congestion management for interconnection points between adjacent networks (cross-border and within Member States), in order to initiate discussion on possible modifications to the existing Annex I of the Regulation (EC) 715/2009.

The questions were grouped into four categories: (A) – General questions on general application and capacity calculation and possible categorization of the nomination time; (B) – on transparency and trading, (C) on short – term day-ahead congestion management procedures and (D) on long-term congestion management procedures.

63 responses were filed to the Commission's questionnaire. The responses are published on the website of DG ENER.<sup>1</sup>

The Commission also held two workshops in Brussels on 18 April 2011 and 16 May 2011, where it presented the document to the stakeholders. More than 100 representatives of the European gas industry participated in those events where they had an opportunity to comment on the issue.<sup>2</sup> As the workshops have been documented separately, this summary will focus to a large extent on the replies to the questionnaire.

Responses were submitted by the following stakeholders:

- **6 from public authorities:** Ministerio de Industria, Turismo y Comercio of Spain, Ministry of the Economy –Directorate General for Energy of Slovenia, Ministry of Economics of Latvia, National Control Commission for Prices and Energy of Lithuania, Swedish Energy Markets Inspectorate, Spanish Energy Sector Regulatory Authority
- **12 from industry associations:** ENTSOG, EUROGAS, Eurelectric, Energie-Nederland, International Association of Oil and Gas Producers (OGP), European Chemical Industry Council (Cefic), European Federation of Energy Traders (EFET), International Federation of Industrial Energy Consumers (IFIIEC Europe), Fertilizers Europe, BDEW e.V., UPRIGAS, Association of European Energy Exchanges (EUROPEX).
- **10 from gas TSOs:** National Grid, Gaslink Independent System Operator, Interconnector (UK) Limited, ONTRAS-VNG Gastransport GmbH, Bayernets GmbH, Naturgas Energia Transporte, Open Grid Europe GmbH, ENAGAS S.A., EUstream, Gasunie Deutschland Transport Services GmbH.
- **33 from other energy companies:** Statoil ASA, Gazprom Marketing&Trading, RWE Supply&Trading GmbH, Gas Natural Fenosa, GDFSuez, VNG-Verbundnetz Gas Aktiengesellschaft, Naturgas Energia Comercializadora (EDP Group), Centrica Plc, WINGAS GmbH & Co.KG, DONG Energy A/S, E.On, GasTerra B.V., Galp, Gas

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<sup>1</sup> 5 entities were late in replying. Those replies have correspondingly not been included into the statistics of the online questionnaire nor have been published on the Commission's web site: [http://ec.europa.eu/energy/gas\\_electricity/consultations/20110412\\_gas\\_en.htm](http://ec.europa.eu/energy/gas_electricity/consultations/20110412_gas_en.htm). The qualitative comments have nevertheless been considered.

<sup>2</sup> The participants of those workshops have been included in the Annex 1 list of stakeholders consulted. The agenda, agreed minutes and presentations from those workshops can be found at [http://ec.europa.eu/energy/gas\\_electricity/consultations/20110412\\_gas\\_en.htm](http://ec.europa.eu/energy/gas_electricity/consultations/20110412_gas_en.htm).

Natural, ENI Gas and Power, CEPSA Gas Comercializadora, ExxonMobil, Shell Energy Europe Ltd., BP Gas Marketing, EDP Gás, Edison SpA, EDF Energy Plc, EDF SA & EDF Trading, Vattenfall/Nuon, EnBW AG, IBERDROLA, S.A., Endesa Ireland Limited, Verbund AG, Direct Energie, Sogentia Spa, POWEO SA., Storengy, ECONGAS, EONGAS

- **2 from other respondents:**, Università degli Studi dell'Aquila and Paul Hunt Energy Consulting.

## SYNTHESIS OF PUBLIC CONSULTATION

The main results of the public consultation are as follows:

- Stakeholders remain split on whether the same framework should apply in all cases irrespective of current congestion of interconnection points.
- Further specification of the current Art. 16 of the Gas Regulation 715/2009, governing principles of capacity-allocation mechanisms and congestion management procedures concerning transmission system operators is needed (61.3 %).
- *Nomination time needs to be harmonized (87.9 %), particularly day-ahead nomination time.* Nevertheless, the views differ on the desired extent of harmonization: 29 respondents consider that it should be limited to the regions or the interconnection points of certain Member States, 22 support across EU harmonization of this issue. In addition, some suggest applying a common re-nomination lead time. In general, the participants think that the timing should allow the market participants some time to process any trades after the closure of day-ahead markets, but before starting the capacity re-nomination period and before closure of the power markets. Another dominant note concerned the importance of harmonizing power markets with the gas markets.
- *Further transparency measures are not needed (75.9 %).* The participants emphasised the need to focus on the implementation of the transparency requirements under the Commission decision 2010/685/EU.
- *Further enhancement of the secondary market would not solve all capacity congestion issues* - specific measures needed to be put in place with respect to capacity utilization (70.7 %). Agreeing that the current long term UIOLI mechanisms are ineffective, the stakeholders consider that there is a need to improve the rules on allocation of primary capacity, the need to implement a single trading platform for primary and secondary markets, and the need to introduce incentive measures combined with a set of anti- hoarding measures. The participants agree that there is a need to implement additional measures addressing specifically congestion management, even though the views vary as to which measures are the most appropriate.
- However, the participants do not welcome the possibility to modify the current Use-it-or-lose-it system restricting the right to re-nominate to 50 percent of the initial nomination. Although half of respondents agree that the measure would increase day-ahead capacity offer, 60.3 % think that the suggested flexibility range of limitation upward and downward would not give capacity holders sufficient scope to re-nominate and at the same time allow binding capacity to be made available in case of

congestion. Majority of respondents (46 out of 58) either answered that the suggested prohibition of re-nomination downwards would not prevent blocking behaviours (26), or did not know (20). 58.6 % thought that NRAs should be allowed to grant exemptions in case the scheme were introduced, yet thought it was possible that the combination of nomination, re-nomination and exemptions were not sufficient to guarantee security of supply and integrity of the electricity markets. The results are inconclusive as to whether gas procurement on the intraday gas markets, employment of gas storages and TSO balancing actions could solve the issues of security of supply and integrity of the electricity markets: most of those who commented on this question, pointed to the current absence of the liquid markets, which would make this possible.

- Oversubscription and buy-back scheme was more welcomed, with 65.5 % considering it as potentially effective, and a possible alternative to the above discussed firm short term UIOLI scheme.
- Finally, the questionnaire suggested three policy options for long term congestion solution: a) force TSOs to accept capacity surrendered by the network users, entitling NRAs to approve the terms and conditions for surrendering capacity and the measures to reward the initial capacity holders; b) a system of strict long term use it or lose it (strict LT UIOLI), entitling the NRAs to monitor the individual capacity utilisation rates by each network user and take measures in case of capacity hoarding. The last suggestion was c) capacity reset.
- The participants were closely divided as to the possible effectiveness of the first two long-term policy options. However, over 60 % (35) of participants would not welcome withdrawal and reallocation of capacity as a possible measure of congestion management, as many as 37 considering that such a measure would dangerously undermine the rights and the business of existing network users.

## **SUMMARY OF THE ANSWERS TOPIC BY TOPIC**

### **A. GENERAL QUESTIONS**

#### *A.1. General application and Capacity Calculation*

##### **SUMMARY OF QUESTIONS AND STATISTICAL RESULTS**

This group of questions sought to obtain the views on the possible scope of application of the new guidelines on congestion management as well as the views on the sufficiency of current regulation of capacity calculation.

The respondents were evenly divided on whether the same framework should apply in all cases irrespective of current congestion of an interconnection point and whether it was up to National Regulatory Authorities ("NRAs") to continuously assess on the existence of congestion and apply EU – wide rules on a case by case basis in case of congestion.<sup>3</sup>

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<sup>3</sup> The third choice was 'I don't know', but no single respondent chose it.

The second question requested to assess the possible ways to assure that maximum capacity was made available by the TSOs. The majority of respondents (36, or 61.3 %) considered that further specification of the Art. 16 of the Gas Regulation (EC) 715/2009 was needed, whereas 17 thought that it was sufficient. Five respondents (8.6 percent) answered that the maximum amount of available capacity should be calculated according to specifically formulated, common standards across the EU and the TSOs should be compelled to calculate precisely according to those standards.

#### **OVERVIEW OF OPTIONAL COMMENTS ON THE SCOPE OF APPLICATION AND CAPACITY CALCULATION**

In this summary, the participants' comments to this question are classified into three categories. The first two categories are based on the answers to the multiple choice questions. The final part summarizes other issues which go beyond the first two categories.

##### **(a) The same legal framework of CMPs should apply irrespective of IP congestion**

The leading explanation behind the position that the same legal framework of CMPs should apply irrespective of IP congestion was that harmonization of rules at interconnectors was necessary in order to achieve a fully integrated and liberalised EU Energy market (EDF Energy plc, Edison, GDFSuez). Europex commented that harmonization of CMPs at EU-level was a requirement to support adoption of standardized capacity products and, consequently, their liquidity.

Another identified benefit of this option was that the same framework, applicable irrespective of current congestion of an interconnection point, would make the definition of "congestion" unnecessary and would avoid the need for a frequently updated regulatory assessment about the existence of congestion, as well as guarantee stable application of the rules over time thus benefiting shippers (e.g. OGP, ENTSOG).

However, a number of those who chose this option added that specific issues in the Member States should be taken into consideration. The concern for this was, *inter alia*, the need to avoid inefficient congestion management procedures being rolled out across the EU, since current congestion management rules, applied in some Member States, acted as a barrier to entry into those markets (Statoil ASA).

A number of the respondents commented that although minimum harmonization of CMPs was needed in order to avoid distortions between systems and to increase interoperability, these mechanisms should only be used when congestion existed or when its likelihood was high (EDP Gas).

##### **(b) EU-wide rules should apply on a case-by-case basis, in case of congestion, leaving it for the NRAs to assess whether congestion exists**

A number of similar concerns are observed also in the answers of those who preferred the option (b), i.e. that NRAs should continuously assess whether congestion existed and that EU rules could be applied only on a case by case basis.

One respondent (Eurogas) chose this option, even though it strongly disagreed that discretion should be left to NRAs to decide on when and which rules to apply in case of congestion. Instead, the TSO was thought to be in a better position to optimise the availability of firm capacity against the likely pattern of deliveries. The role of the regulators should be encouraging TSOs to seriously consider a dynamic approach to capacity calculation,

including the improvement of transparency of TSOs' calculation methods (also see Gazprom Marketing and Trading).

In the view of Interconnector (UK) Ltd. the enquiry was targeted on a question which wrongly identified the cause of the problem; thus, the suggested solutions were poorly targeted, over-reaching and disproportionate: the real current problem was not the management of contractual congestion, but the need to prevent it, which could be achieved through a functioning secondary market for capacity, and through transparent and non-discriminatory allocation of primary capacity. Thus CMPs should be applied only when and where necessary. Over-reaching CMPs would undermine the ability of shippers to utilise capacity as they wished and would result in degradation of the value of that capacity.

Another respondent commented that CMPs based on improved TSO modelling, overselling and capacity buybacks could be implemented at all points whether currently congested or not, however, it remained firm that restrictions on re-nomination rights could only be introduced at those points where other measures were shown to be ineffective (Centrica Plc.).

Quite a few respondents explained their answer on efficiency concerns: situations per transport systems differed, and one EU standard would not necessarily be effective or efficient (GasTerra B.V., Shell Energy Europe Ltd.). The Swedish Energy Markets Inspectorate suggested giving NRAs the discretionary power to apply the EU rules on a case by case basis. Similarly, another respondent argued that it would be counterproductive to apply restrictive policies onto uncongested network points or in regimes where effective congestion management solutions were already in place, especially when it comes to the proposed restrictions to re-nomination rights, which introduce untested operational market risks (Shell Energy Europe Ltd.). The Spanish NRA noted that applying CMPs in non-congested IPs could be economically inefficient, just as would removing capacity from primary capacity holders if there was no other user paying for this capacity.

Despite choosing the option (b), one respondent (Gaslink) recognized the potential benefits of the common rules. The apparent concern that led this respondent to choose option (b) was the worry over security of supply to the networks in view of the planned growing number of renewables on the grid and the ensuing difficulty for the gas powered stations to plan their need for gas. The biggest concern appears to be the possibility of restriction of re-nomination rights, which is viewed as likely to undermine the safety and integrity of the gas transportation system (Gaslink; also on concerns regarding security of supply see Storengy).

Bayernets GmbH commented that EU-wide calculating rules would hamper the idea of connecting entry and exit capacities in order to serve the customer interest, as it would preclude the possibility to apply different capacity calculation rules to forming market areas.

A number of respondents pointed out the close linkage between CAM and CMP and considered that effectively functioning CAMs could reduce the need of CMPs (GDFSuez, ExxonMobil, OGP). GDFSuez also observed that the legislative proposal should encompass the principles of contractual congestion and improve them, and should not be restricted to a particular case of contractual congestion. During subsequent consultations and in a separate written position ENTSOG further emphasised its position that CAM and CMPs should be regulated together.

A few respondents considered that a better alternative to defining common standards would be setting commercial incentives (ONTRAS-VNG Gastransport GmbH, Gasunie Deutschland Transport Services GmbH, Sorigenia SpA). Some thought that though common standards were desirable, they would be difficult to agree upon (RWE Supply & Trading GmbH).

### **(c) calculation of maximum available capacity**

Most of the respondents emphasised the interest to ensure transparency in the way TSOs calculate available capacity and their cooperation, especially at each side of the interconnection points. One observation was that formal mechanisms to exchange information (several years ahead: available capacity, booked capacity, nomination forecast...) were strongly lacking, which led to suboptimal capacity calculation (GDFSuez). Another respondent pointed out to the need to make the information, on the basis of which the TSO decides on congestion of an IP, available to the shippers. GasTerra BV noted lack of sufficient transparency of present TSO methodology to determine the amount of firm capacity technically available at entry and exit points.

A number of respondents identified a need to include clear definitions of the notions of congestion, and the common methodology for calculating the maximum available capacity. RWE Supply & Trading GmbH suggested the following definition of contractual congestion:

*“An interconnection point is contractually congested where, as a consequence of the TSO and/or the existing capacity holder(s) repeatedly failing to make available unused capacity to other users who have expressed a requirement (and a commitment to pay) for such capacity, other users are prevented from effectively:*

- *arbitraging day-ahead price differences that exist between traded markets either side of the interconnection point; or*
- *offering gas to end users on more competitive terms by exporting gas from one market to the other through that interconnection point”.*

RWE further suggested that guidelines on determining whether an IP was congested should be developed by ACER, on the basis of the following criteria:

- the amount of booked v allocated flow over a defined period;
- the demand and availability of short term firm capacity on primary and secondary markets;
- the extent to which interruptible capacity was used and interrupted;
- the degree of price correlation and convergence between adjacent markets;
- the availability and use of reverse flow (physical and virtual) between adjacent markets;
- the churn rates prevailing in each adjacent market;
- the number of suppliers operating in each adjacent market.

A completely opposite opinion was that standardized rules on calculating maximum capacity were unfeasible since it was a judgment call and the parameters were different in each country (Endesa Ireland, also Enagas, GasTerra BV).

## *A.2. Nomination time*

### **SUMMARY OF QUESTIONS AND STATISTICAL RESULTS**

This group of questions concerned the possibility to harmonize nomination time. The first question asked whether in view of the respondent it was necessary to harmonize nomination times in general between Member States, and which nomination times (i.e. Day-ahead; Day-ahead, but after auction to allocate non-nominated capacity; within-day, re-nomination) were necessary to be harmonized. An absolute majority of the respondents (87.9 %) were in support of a statement that nomination times needed to be harmonized; only 6.9 percent (or 4 respondents) stated that no harmonization was necessary, as the current system worked well.

Nevertheless, the stakeholders were relatively split on the extent of the desired harmonization: 29 (50 %) thought that harmonization should be limited to the regions or at interconnection points of certain Member States, and 22 (37.9 %) considered that full harmonization of nomination times across the EU was necessary.

Of those who thought that harmonization was needed, all but four respondents considered that it was necessary to harmonize day-ahead nomination time. 13 thought that it was necessary to harmonize within day nomination time, twelve for day-ahead after auction, 17 that harmonization was necessary for re-nomination.

The participants were then asked whether as regards initial day-ahead nomination, there was a particular time on any given day by which network users were able to fairly well predict their transmission capacity needs for the day-ahead (Question A.2.2), and whether the within-day (initial) nominations could always take place at one precise time of the day (Question A.2.5.) The questionnaire also requested to specify (a) when should the initial day-ahead nomination take place (Question A.2.3.) and (b) when should the initial day-ahead nomination of capacity that has been allocated possibly pursuant to an auction of non-nominated capacities take place (Question A.2.4.).

Although as many as 46.6 % of respondents considered that the network users could fairly well predict their transmission capacity needs for the day-ahead, only 11 (19 %) answered that nominations could always take place at one precise time of the day; twice as many (22) answered negatively, and the majority, 25 (43.1 %) did not know.

### **SUMMARY OF OPTIONAL COMMENTS: NOMINATION TIME FOR INITIAL DAY-AHEAD CAPACITY**

With regard to nomination time for initial day-ahead capacity, a number of respondents thought that common EU gas day was attractive in terms of reducing some operational complexity (Shell Energy Europe Ltd, Enel Spa), and useful to allow the TSO to understand the potential network flows for the day. Enel Spa considered that harmonization of nomination time could be useful if the definition of the gas day was the same across the EU. However, a number of respondents emphasised that the day-ahead nominations were often purely indicative, as the network users could fully understand their capacity needs for that day only within day (Gazprom Marketing and Trading, Interconnector UK). The suggestions for nomination time varied from 6:00 – 6:00 CET (Energie-Nederland) to 16:00 (Bayernets GmbH), in view of concerns over accuracy of predictions. In particular, emphasis was made on the need to maintain coherence and interoperability between natural gas and electricity markets, (EDP Gas, EDF-Energy Plc., ENAGAS SA, Energie-Nederland, EFET, Iberdrola, SP, Naturgas Energia Transporte, Naturgas Energia Comercializadora (EDP Group), Nuon-



Vattenfall, Statoil ASA, Verbund). One respondent viewed it as even more important than having compatibility between the interconnection points.

In view of the Spanish NRA, the nomination time should be set after shipper's reception of their balancing positions of the previous day, the nominations should be realized with time enough to integrate non-nominated capacities in the day-ahead capacity auction. The initial nomination time would depend on the restriction of nomination rights, on the gas day applied in each country, currently, and on the information received about their balancing position the previous day.

A significant part of participants (14) referred to 14:00 CET as a possible day-ahead nomination time (EFET; Iberdrola, Naturgas Energia Transporte, RWE Supply & Trading GmbH, EnBW, E.ON, Eustream, ExxonMobil, WINGAS GmbH & Co.KG, DONG Energy A/S, Vattenfall/Nuon, Statoil, EDF Energy Plc.) Gas Natural Fenosa suggested following the Easee-Gas common business practice "Harmonization of Nominations and Matching Process" 2003. Other suggestions included following Spanish (11 a.m. onwards) or Irish practice (no earlier than 31 days prior to the Day and not later than 10:00 hours on D-1, as the shippers have strong demand signals by 10.00 on D-1 (Gaslink).

Finally, ENTSOG suggested that in view of the anticipated sequence of codes it might be better leaving standardised nomination procedures to be defined in Interoperability, to the extent that they are not already defined in Balancing.

**(B) NOMINATION TIME FOR THE INITIAL DAY-AHEAD CAPACITY THAT HAS BEEN ALLOCATED POSSIBLY PURSUANT TO AN AUCTION OF NON-NOMINATED CAPACITIES**

Some participants thought the question was ambiguous since it did not explain how non-nominated capacity was understood (Statoil ASA, OGP; ExxonMobil, EuroGas, Energie-Nederland, EFET, Gazprom Marketing and Trading, ONTRAS-VNG Gastransport GmbH, Centrica Plc., Open Grid Europe GmbH, Gasunie Deutschland Transport Services GmbH).

Energie Nederland thought that well functioning secondary market should make such a system obsolete, yet if established, auctioning of non-nominated capacity could only take place fairly late and be offered as interruptible capacity.

Those who thought that full harmonization was necessary specified that they had in mind common nomination timescales and a common re-nomination lead time at cross border interconnection points (RWE Supply & Trading GmbH). With regard to re-nomination lead time, quite a few pointed out that it should be as short as possible, even less than an hour (GasTerra B.V., Energie Nederland). Another respondent in this category (IFIIEC) specified that it was necessary to have common EU rules on transparency and balancing, which would allow future harmonization of nomination times.

A number of respondents, who thought that common nomination timescales across the EU were possible, also suggested to apply a common re-nomination lead time at cross border interconnection points (Interconnector (UK) Limited), EnBW AG, ExxonMobil, Gaslink, VNG). RWE Supply & Trading GmbH suggested that it could be two hours after the next whole hour.

Generally, the view was that the timing should allow the market participants some time to process any trades after the closure of day-ahead markets, but before starting the capacity re-nomination period and before gate closure of the power markets; to be able to use the capacity they acquired to trade between hubs, take place fairly late in the day, be offered as

interruptible capacity. The respondents were cautious indicating the possible timing for that, though a couple of shippers suggested 17:00 CET or later. (See Table A).

**Table A**

**Suggested nomination time for the initial day-ahead capacity that has been allocated possibly pursuant to an auction of non-nominated capacities**

20 to 16 hours before gas day.

After the viability of the day-ahead nominations are given (15.00)

Anytime after 17:00 CET

At the end of the day ahead stage, between 5 and 6pm.

Before 2:00 D, subject to limited restriction of re-nomination rights due to contractual congestion.

6 p.m.

In order to be able to trade capacity according to the result of this auction the initial nomination of these capacities should not be done before 18h.

At 20 hrs D-1

**Respondent**

Ministry of the Economy -  
Directorate for Energy (SI)  
CEPSA

RWE Supply & Trading  
GmbH  
Eustream  
EDF Energy Plc;  
BDEW E.V.  
RWE Supply & Trading  
GmbH

WINGAS  
E.ON;  
EnBW

VNG, ONTRAS  
Bayernets GmbH;  
DONG Energy A/S  
Gasunie Deutschland  
Transport Services GmbH

This question also attracted some strong reactions, in particular as regards its connection with the possibility of restriction of re-nomination rights via a UIOLI/UIOSI. In the view of some respondents, non-nominated capacity in general should not be allocated pursuant to an auction, since this would imply restrictions of re-nomination rights, which would make day-ahead planning less accurate and increasingly difficult (BP Gas Marketing, ENTSOG, National Grid, Gaslink, Interconnector (UK) Ltd., GDFSuez, Gazprom Marketing and Trading). Some described the absence of the flexibility to respond to market signals or to physical changes in a transportation customer's portfolio as hampering the efficient operation of the market (Statoil ASA, OGP). Others simply emphasised that flexibility to re-nominate within day was essential to support within day continuous trading and balancing (RWE Supply & Trading GmbH). Bayernets GmbH commented that setting a proper time of initial nomination was key, since it would affect the cost of the system: setting the nomination to earlier than 4 pm would lower the accuracy of prediction thus increasing the likelihood of the need for re-nominations.

## B. TRANSPARENCY AND TRADING

### *Summary of questions and statistical results*

This group contained two questions, which sought to find out the stakeholders' views on the sufficiency of the transparency requirements under the Commission decision 2010/685/EU and on whether additional measures to encourage the functioning of the secondary market were needed.

The respondents gave a good indication that they did not think that further transparency measures were needed (75.9 %) and that while necessary in its own right, further enhancement of the secondary market would not solve all capacity congestion issues and therefore specific measures needed to be put in place with respect to capacity utilization (70.7 %).

#### *B.1. Enhancement of transparency measures in order to improve the value and predictability of interruptible capacities: Overview of optional comments*

The leading comment on this question was that an evaluation of the rules that have just been established by Regulation 715/2009 was required as a pre-condition before taking further steps regarding transparency; in addition, it was pointed out that focus should be on monitoring and enforcement of their timely implementation. However, some respondents from this group noted that information, presented in a clear and usable format, enhancing the clarity over the probability of interruption from TSOs would be helpful at the congested points (Statoil ASA, GasTerra and Gazprom Marketing and Trading).

As the optional comments indicate, those who thought that additional transparency measures were needed, mostly had in mind the need for availability of real time flow information at all relevant points (EFET, EDF Energy Plc, EDF SA & EDF TRADING) and the need for information which would reflect the operational requirements of the measures currently under consideration (Centrica Plc., EDP Gás, Naturgas Energia Transporte, Naturgas Energia Comercializadora (EDP Group)). Direct Energie thought that reliable statistical data on the availability of interruptible capacities was needed.

#### *B.2. Need of specific measures with respect to capacity utilization in addition to measures stimulating development of secondary market: overview of optional comments*

Over 70 % of respondents agreed with a statement that specific measures with respect to capacity utilization in addition to development of secondary market were needed.

Those who thought otherwise commented that a healthy secondary capacity market (i.e. liquid gas market, with effective capacity allocation mechanisms and a functioning secondary market with the right investment signals) would alleviate capacity congestion by preventing it (Interconnector Ltd., OGP). In any event, before trying out other, "more artificial" possibilities, it would be preferable to develop secondary capacity market (Galp Gas Natural). A similar view was expressed by Enel, who thought that any measure implying "administrative" interventions could potentially distort the market and result in inefficient outcomes.

Endesa Ireland's view was that further enhancement of the secondary market would solve some, but not all capacity congestion issues, however, this did not justify introduction of specific EU-wide measures in place on this issue.

Gas Natural Fenosa commented that enhancing secondary market would not solve all capacity congestion issues since it is more focused on short term capacity. In addition, there was a lack of incentive to trade capacity on the secondary markets, when a location swap could be bought on an increasingly liquid commodity market. The company thought, though, that if a well-functioning short/long term secondary markets were in place, most of the CMPs at issue might not be needed (also shared by Gasunie Deutschland Transport Services GmbH).

GDFSuez has argued that though CMP was an important issue to tackle, especially in Central and South-Eastern Europe, it has already been partially solved thanks to open season, secondary capacity market and interruptible UIOLI in the NWE region. The emphasis should shift to generalization of interruptible UIOLI, which should be applied on every IP on an interruptible and day-ahead basis, once the secondary market is closed, in order to maximize capacity usage and prevent its hoarding.

Shell Europe Energy Ltd. thought that the most important issue was to improve the primary allocation of capacity, so that shippers were able to signal demand for products meeting their requirements instead of being forced into current open season processes. Secondary market improvements could only partially solve the issue.

**Overview of the majority comments of the respondents who thought that apart from enhancing secondary market, additional measures were needed to release the spare capacity from the congested points**

The Ministry of the Economy-Directorate for Energy (SV) commented that the existing rules were useless in forcing anyone to offer non-used capacity at the secondary market.

ENTSOG considered that the secondary capacity market was a core element in an efficient CMP regime, therefore it advocated inclusion of secondary markets into the envisaged CMP Guidelines (also supported by Edison S.p.A., Eurogas and EURELECTRIC). This was contradicted by Enagas SA, who thought that secondary market was complementary to an efficient CMP regime, but was not a CMP itself.

ENTSOG, Gaslink also noted the need to ensure that development of secondary market was not undermined or hampered by introduction of other rules, like capacity surrender.

EFET noted that in the short term, congestion could occur disregarding a well-developed secondary market, if demand for capacity exceeded supply. As a result, it was necessary to have efficient procedures for capacity allocation and congestion management. The significance of capacity allocation mechanisms as a necessary precondition for the solution of congestions was also reiterated by ExxonMobil. Europex commented that apart from using the same processes and allocation methods, a well-functioning secondary market should be integrated with the primary market.

In the view of VNG all congestion issues would be solved by a liquid secondary market, but for this purpose the following measures were necessary: a) secondary markets needed to be combined with instruments of primary markets – single secondary trading platform; b) day-ahead nomination and limited re-nomination measures c) possibility to give back unused capacities to TSOs for it to be potentially sold on the primary market. The need for additional methods and rules to ensure liquidity was also emphasised by Verbund AG. Iberdrola commented that the main congestion problems came from the existence of long-term

contracted capacity that is not being used, as well as because long term UIOLI mechanisms are ineffective. In the company's view, the secondary market would not help to alleviate these problems since the capacity holders do not use the secondary market in order to avoid competitors entering the market. Spanish NRA also emphasised the necessity to prevent hoarding by specific measures, as in the absence of obligation, primary capacity holders would prefer to keep the capacity, even if they did not use it or if they could get immediate return, because in certain markets this could prevent competition.

Centrica Plc thought that the further measures should be based primarily on methods such as improved TSO modelling and capacity overselling/buyback, which would not harm shippers' access to flexibility.

### **Incentive measures**

Most stakeholders emphasised the need to create the currently absent incentives to shippers (Eurogas, EDP Group, Enagás, also EDF SA & EDF Trading) and the TSOs (Energie Nederland, Centrica Plc, BP Gas Marketing). The reason behind it was that, arguably, TSOs currently do not have an incentive to facilitate the development of the secondary market, since their revenues of selling interruptible capacity are higher than they would earn from secondary markets. Others added that incentivising measures should be complemented with a set of anti-hoarding measures as over-selling, interruptible capacity, short term UIOSI, long term UIOSI (Naturgas Energia Transporte, Naturgas Energia Comercializadora, EDP Gas, Vattenfall/Nuon, Europex).

BP Gas Marketing suggested splitting the revenues that TSOs receive into Capacity/commodity elements, i.e. make them dependent on capacity sales and the levels of throughput. In view of the company, this mechanism would encourage the TSO to ensure that capacity is made accessible to parties who will use it, and would reduce the inclination to build capacity that will not be used, encouraging an increase of throughput; this would be an incentive to install the necessary trading platforms and would encourage a greater liquidity on the market. A similar idea was raised by Gas Terra B.V, who suggested changing the system of pay for usage for certain (not all) non-flow controlled border points into "pay as used" instead of "pay as contracted". The company also suggested "compelling" the TSOs to organize and maintain secondary transport trade platforms, and charge their costs to the net users.

Nuon/Vattenfall made another specific incentivization idea to oblige the TSO to keep on selling capacity until the limit of the expected demand is reached. So instead of focusing on how much capacity is booked, the TSO should estimate demand and (keep on) sell(ing) capacity accordingly. If the TSO would have sold too much capacity and could not flow according to the market demand, it could either set up a capacity buy back scheme and/or contract an option on flexible capacity on both sides of the border.

## C. SHORT-TERM DAY-AHEAD CONGESTION MANAGEMENT PROCEDURES

### *Summary of questions and statistical results*

This part of the questionnaire focused on two congestion management mechanisms: first, the possibility to free up capacity on the day-ahead market by adjusting the currently applicable UIOLI scheme with a restriction of the shippers' re-nomination rights, and second – the possibility to introduce the overselling and buy-back scheme.

The participants were enquired on the possible amendment to UIOLI scheme, which would maintain the shippers' right to re-nominate 50 % of their initial nomination upwards, but would preclude re-nomination downwards when the initial nomination is 90 % or more of the booked capacity.

Half of respondents agreed that limited re-nomination rights would increase day-ahead capacity offer, however, almost as many (46.6 %) thought that it would be likely to induce counterproductive strategic bookings by users. There was a close split opinion (27 v. 21 respondents, or 46 % v. 32 %) as to whether limited flexibility resulting from limitation of re-nomination rights could be alleviated by trading on the within-day market, but 60.3 % thought that the suggested flexibility range of limitation upward and downward would not give capacity holders sufficient scope to re-nominate and at the same time allow binding capacity to be made available in case of congestion. Majority of respondents (46 out of 58) either thought that the suggested prohibition of re-nomination downwards would not prevent blocking behaviours (26), or did not know (20). 58.6 % thought that NRAs should be allowed to grant exemptions in case the scheme were introduced, yet agreed with a possibility that the combination of nomination, re-nomination and exemptions would not be sufficient to guarantee security of supply and integrity of the electricity markets. The results were inconclusive as to whether gas procurement on the intraday gas markets, employment of gas storages and TSO balancing actions could solve the issues of security of supply and integrity of the electricity markets: most of those who commented on this question pointed out to the current absence of the liquid markets, which would make this possible.

The participants were much more welcoming to the possibility to introduce an oversubscription and buy-back scheme: majority (65.5 %) viewed it as potentially effective, and a possible alternative to the above discussed amendment of an UIOLI scheme. It was also the majority view that the decision to introduce this scheme should be made on an IP or national level (25), compared with 16 who thought that it should be done on a regional or an EU level. Finally, participants were rather evenly divided as to whether the rights associated with the mechanism should be defined by NRAs or directly in the annex of the Gas regulation (29 v. 21).

### *C.1. Use it or sell it ("UIOSI")*

The first question sought to obtain the views of the participants on whether they thought that UIOSI would be a more effective alternative to the UIOLI. The question on the possibility to replace the currently applicable mechanism of "UIOLI" with "UIOSI" demonstrated a quite even division of the respondents on this issue. 44.8 % of the respondents (or 26) thought it would be an effective alternative, compared with 34.5 % (or 20) who disagreed. 12 respondents answered that they did not know.

Five out of twelve respondents who answered that they did not know the specifics and that in order to answer they needed a more clear definition of the mechanism (EFET, IFIEC Europe, Fertilizers Europe, Shell, Enagas). The comment specified that if the UIOSI would provide for high penalties, it would be inefficient since it would place too much risk on shippers to manage problems created by poor market design, and would alter the economics of flowing gas between markets (also see Gazprom Marketing and Trading). The need to define the two measures more clearly was pointed out also by a few others, who replied that the measure would be an effective (Centrica Plc.), or an ineffective alternative to UIOLI (Gaslink, EnBW).

ExxonMobil, Gas Natural Fenosa, ENEL Spa, EUROPEX expressed support to the UIOSI but disagreed with the possibility of introducing penalties in case of failure to sell. On the other hand, EDF SA & EDF Trading and Edison S.p.A. emphasised that availability of penalties would be an important factor determining the efficiency of UIOSI.

#### **Summary of comments supporting UIOSI as an efficient alternative to UIOLI**

Europex described UIOSI as superior, in terms of efficiency, to UIOLI since it was a sort of "automatic" secondary trading mechanism. EURELECTRIC, RWE Supply & Trading GmbH considered UIOSI as an essential means of providing users with commercial incentives to relinquish capacity they may no longer require. Eurogas, Vattenfall/Nuon, Energie Nederland commented that encouragement of UIOSI mechanisms along with improvements in the conditions of secondary capacity trading would facilitate most effectively the development of a liquid market while preserving market stability and shippers' flexibility needs. Edison S.p.A., EDF Energy Plc also thought that UIOSI would be a more commercially acceptable way of returning unused capacity to the market. EDF noted, however, that whether the incentives would be as sharp as UIOLI would depend on the increase in value from a higher commodity price (by keeping it from the market) and the price of selling it.

CEPSA Gas Comercializadora viewed both mechanisms as complementary: if the unused capacity was not sold on the market, it should be considered lost. The comment was shared also by Naturgas Energia Comercializadora (EDP Group), EDP Gas and Verbund, even though they opted for an answer that UIOSI would not be an effective alternative to UIOLI. A contrary opinion was expressed by GDFSuez suggesting that UIOSI should not be followed by UIOLI interruptible, as this combination would lead to a restriction of re-nomination rights, which would not be a good policy measure.

In view of Energie-Nederland and Vattenfall/Nuon the focus of both UIOSI and UIOLI was too much on freeing up Day Ahead capacity while what was needed for effective market access were capacity products with a much longer duration (months, quarters, years): "short term was nice for a trader, but unsuitable for the supply of customers".

## **Summary of comments considering that UIOSI would not be an efficient alternative to UIOLI**

The comments of this group of respondents raised various points which could hardly be synthesised into a common line of reasoning.

Spanish NRA commented that availability of capacity for day-ahead increases trading, but does not create long-term competition; UIOLI was preferable since it directly freed up unused capacity which could then be offered to the market.

EnBW saw UIOLI as the most efficient measure making unused capacities available to the market, as long as it is applied equally on both short and long-term capacity products.

ENTSOG supported UIOLI in the short term interruptible basis, and thought that if it were introduced, UIOSI would strengthen the use of secondary capacity market. However, any UIOLI mechanism should include incentive measures, which could be built upon a financial penalty, and could be developed if TSO neutrality in its application could be ensured. An additional prerequisite for its efficiency was a strict and unambiguous definition of systematically underutilised capacity, which should be developed by NRAs without the intervention of the TSOs.

Sorgenia commented that the key condition making UIOSI more efficient than UIOLI would be ensuring that operators are not allowed to fix a reserve price for the capacity, so that the rule could not be bypassed.

Statoil ASA thought that efficient utilization of capacity should be encouraged by establishing a liquid, open gas market.

BP Gas Marketing objected to UIOSI since it would undermine the value of primary capacity holdings.

Gas Terra B.V. added that at certain cross border interconnection points obligatory selling of capacity would be useless as it would only lead to uncontrollable risks for the shipper to get fined by the TSO for exceeding booked capacity; in order to avoid contractual congestion at these points, it would be more efficient to establish transparent and effective platforms, maintained by the TSOs, to trade firm and interruptible secondary capacity, and to introduce a pay as you use system.

### *C.2. Firm Day-ahead “UIOLI”: general questions*

#### **SUMMARY OF QUESTIONS AND STATISTICAL RESULTS**

This group contained five questions which sought to obtain stakeholders' views on the possibility of maintaining the currently applicable UIOLI mechanism, but making the initial day nomination partially binding by introducing some limitations on the network users' re-nomination rights, which would free up some firm capacity on the market for (new) network users.

Most participants (58.6 %) agreed that the rights to day-ahead firm capacity facilitate market entry and effective competition in a better way than rights to interruptible capacity (25.9 % did not know). 43.1 % agreed that the freeing up of and subsequent offering/allocation of day-ahead firm capacity (as opposed to interruptible) would lead to improved capacity utilization (32.8 % did not know). Half of the respondents thought that limited re-nomination rights



would increase day-ahead firm capacity offer (41.4 % did not know). 46.6 % thought that limited re-nomination rights were likely to induce counterproductive strategic bookings by network users in order to ensure sufficient re-nomination rights (43.1 % did not know). Similarly, 46.6 % agreed that the limited flexibility stemming from limited re-nomination rights could, if necessary, be alleviated by trading on the within day markets, compared with 36.2 %, who disagreed.

## **EXPLANATORY NOTES ON THE OVERVIEW OF PARTICIPANTS' COMMENTS ON FIRM DAY-AHEAD UIOLI**

In their optional comments most participants focused on the possible effect that restriction of re-nomination rights would have on the availability of firm day-ahead capacity offer and its effect on counterproductive strategic bookings. The summary first overviews the answers of the respondents who thought that restriction of re-nomination rights would increase day-ahead capacity offer, which was chosen by half of the respondents. However, one should bear in mind that the comments were provided to all five questions, to which answers differed significantly, making it impossible to identify a dominating view.

A number of participants complained about the drawbacks of the questionnaire in this part. E.g., with regard to the statement that the rights to day-ahead firm capacity facilitate market entry and effective competition in a better way than rights to interruptible capacity Eurogas, Centrica, Shell and ENTSOG observed that this depended on the situation and variable factors like the tariff model and the nature of the user, e.g. some market participants would find monthly or quarterly interruptible capacity more useful than firm day-ahead capacity, however, the questionnaire format did not allow for qualification of the response. Interconnector (UK) Ltd. pointed out that restriction of re-nomination rights does not necessarily lead to an increase in available capacity in a physically bi-directional pipeline, since a decrease through re-nominations in one direction actually increases the available capacity in the other direction.

BP Gas Marketing found the questions very leading; although the company did not consider the suggested policy as an answer to the problem, it felt forced to agree with the statements due to the lack of choice in the answers and the fact that answers were compulsory (also see Galp Gas Natural.)

The comments on disadvantages of the restrictions to re-nominations are discussed together with comments on part C.3.

### **OVERVIEW OF THE OPTIONAL COMMENTS**

RWE Supply & Trading GmbH commented that limited restriction of re-nomination rights at congested interconnection points could be an effective way of tackling contractual congestion but would be counter productive if applied too restrictively or where congestion did not exist.

EDF SA & EDF Trading expressed some support to the UIOLI mechanism with a possibility to restrict re-nomination rights to a certain extent, viewing it as a possible part of the regulatory toolbox of mechanisms that could be used to alleviate contractual congestion. However, the company thought, it was to be applied only to those points which actually experience contractual congestion, and should be used in conjunction with other mechanisms as overselling and buy back. Yet EDF again agreed with other respondents that it was necessary to ensure that restriction of re-nomination rights did not create undue risks for market participants by restricting flexibility.

Cefic, IFIEC Europe, and FERTILIZERS EUROPE commented that restriction of re-nomination rights might work for (transit) shippers, but not for industrial consumers in view of the possible technical problems, safety reasons and costs. They also did not think that restriction of flexibility could be alleviated by trading on the within day markets, since this required liquid hubs which were currently unavailable. The latter point was shared by Centrica Plc., Shell Energy Europe Ltd., ENTSOG, EFET, GDFSuez. Gas Natural Fenosa also was not reassured by the possibility to compensate for the lost flexibility by trading on the within day markets: if that was possible, the need to restrict re-nomination rights would be useless, as the traders without primary capacity could also solve their flow constraints through location swap.

Gas Natural Fenosa considered that the short-term capacities would be used only for arbitrage or optimization purposes, since sourcing of gas for end-consumers was not done day – ahead. The company also did not see a fair reason why short-term players should get the value of those arbitrage opportunities while primary holders of LT bookings support all the risks and trigger investment commitments through LT commitments.<sup>4</sup> Therefore if such a system were implemented, it should also include compensation measures to the primary capacity holder (also see Centrica Plc., ENI Gas & Power).

Endesa Ireland Ltd. thought that full flexibility for re-nomination should be maintained for the interest of maintaining the integrity of the electricity system, which faces challenges for possible unpredicted failures of generation stations and unpredictability of renewable day-ahead capacity. In view of Europe’s 20-20-20 targets, the role of renewables in Europe was likely to rise, raising the significance of flexibility in gas markets.

BP Gas Marketing suggested that a better alternative to restriction of re-nomination rights would be allowing the TSO to oversell the capacity where there was no physical congestion, incentivising the TSO to buy back the capacity in the event of constraints at IP.

A dominating sceptical opinion was that the measure would not affect the key issues behind the congestion problem, even if it was likely to increase day-ahead firm capacity offer (Edison S.p.A., Statoil ASA), since the rights to day-ahead capacity were insufficient to build a business model upon for new network users (ENTSOG, Iberdrola, ENAGAS SA, Gaslink, Interconnector Ltd., EnBW) As Edison explained, having access to short term capacity only on a day-ahead basis was unlikely to considerably increase new entrants’ competitiveness, as they would not be able to assure a steady and lasting supply to their final customers (also see EnBW).

EDF Energy Plc. considered that though restricting re-nomination rights could help release capacity in the short-term, it was not clear whether it would incentivise the right behaviour; however, it could have adverse consequences on the market through less flexibility, trading liquidity and even capacity being made available in the long-term. The company supported its position by the example of the UK, where restrictions on re-nominations were removed in 1999, resulting in dramatic (up to 24 churn) liquidity increase.<sup>5</sup>

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<sup>4</sup> A similar comment was made by NUON/Vattenfall, who claimed that restriction of re-nomination rights would damage the position of primary capacity holders who often contracted this capacity to physically supply their customers. Those parties cannot rely on D-1 capacities because of (public) service obligations to their customers. The primary capacity holders enabled the construction of the pipeline and hence should not be put in the position that they have to pay again (within day) if their capacity needs are higher than expected day ahead.

<sup>5</sup> The re-nomination rule at issue required that input re-nomination had to match the output re-nomination, and was originally thought necessary to allow the TSO to manage the system physically. It was

### C.3. Firm day-ahead "UIOLI": limitation of re-nomination

This group of questions concerned a possibility to introduce a restriction to re-nomination rights maintaining a possibility of a network user to re-nominate upwards 50 % of the remaining difference between booked and initially nominated capacity, and completely prohibiting re-nomination downwards when the initial nomination is 90 % or more of the booked capacity. The user could still re-nominate upwards over remaining capacity on an interruptible basis.

60.3 % of respondents did not think that the suggested flexibility range of the limitation of upward and downward re-nominations would give capacity holders sufficient scope to re-nominate and at the same time allow binding capacity to be made available in case of congestion.

45 % of respondents disagreed that in most cases prohibition of re-nomination downwards when initial nomination was equal or over 90 % would allow keeping a small band of day-ahead capacity available and would prevent abusive blocking behaviours, 34.5 % did not know and 20.7 % agreed.

#### OVERVIEW OF OPTIONAL COMMENTS

##### Acceptability of restrictions to re-nomination rights

Most of those who made optional comments argued that the very idea of restricting re-nomination rights was not an acceptable option as a measure to address contractual congestion, aside from the fact that, as Interconnector UK put it, the suggested limits on permissible re-nomination were arbitrary.<sup>6</sup> The purpose of re-nomination rights was to react to the unexpected events like weather changes or power plant failures; therefore, apart from having an adverse effect on security of supply, restriction of these rights would have negative general effects which were difficult to envisage. Thirteen respondents directly expressed their opposition to this measure.<sup>7</sup>

The following possible negative effects of the measure to restrict re-nomination rights could be distinguished in view of the participants' comments. Restriction of re-nomination rights:

- *would increase the role of TSOs*, which is inconsistent with the proposed framework guidelines for gas balancing, which seek to minimise the TSO's role in the balancing regime and increase that of market participants. If the transmission customer is unable to re-nominate, to respond to changes to supply / demand, the TSO will be forced to play a

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abandoned in 1999, in the context of implementation of the "on the day commodity market" (OCM). It was concluded that the rule a) constrained the manner in which shippers could trade (imposed a barrier to liquidity) b) artificially restricted the way in which shippers were able to inform Transco of changes to their flows during the day (degraded info provided to the TSO); c) contributed to operational and administration complexity through compliance with the matching re-nominations rule. After a trial period the study concluded that the removal of this rule from the system resulted in improvement of within-day liquidity. <http://www.ofgem.gov.uk/Markets/WhlMkts/CompanEff/Archive/2563-ngtaapp.pdf> , p. 11-25.

<sup>6</sup> Also see ONTRAS-VNG Gastransport GmbH and Open Grid Europe GmbH, who commented that it was unclear how to derive the data necessary for the estimation of the tolerable restrictions to re-nomination rights.

<sup>7</sup> Energy Nederland, Nuon/Vattenfall, Statoil, National Grid, ENTSOG, Eurogas, Interconnector UK, Iberdrola SA, Shell Energy, Endesa Ireland, Enagas SA, BP Gas Marketing, Gas Terra B.V.

more active role in balancing the system, potentially artificially pushing up prices (Statoil).

- *could send misleading signals to the TSO* as the TSO uses the supply demand information provided through nominations and re-nominations, to enable it to assess the current status on all parts of the network and to plan and operate the system accordingly (Statoil, Gaslink).
- *would increase the likelihood of strategic behaviour*, which could undermine the value of the information inherent to nominations for the operator, and lead to reduced flexibility (Energy Nederland, ENTSOG).
- *would reduce Shippers' ability to respond to physical and market events, and meet demand* (Interconnector (UK) Ltd., BP Gas Marketing)). Upwards and downwards limitation of re-nomination rights are symmetrically problematic when the exit portfolio of the shipper is composed of gas power plants, with start-ups and shutdowns often relating to electricity market conditions, which can not be considered as predictable day-ahead, or indeed supply losses that may occur at any time (ENTSOG). Interconnector (UK) Ltd. also pointed out that restriction of re-nomination rights provides a barrier for network users to respond to pricing signals in markets, the result of which will be reduced liquidity and divergence of prices between hubs.
- *would have negative impact on the possibility to balance shippers' portfolios* (Edison SpA), particularly on market entrants, with small consumer portfolios (Paul Hunt Energy Consulting, Centrica Plc).
- *would lead to price increase* in view of reduced possibilities, and possibly to decrease in flows (ENTSOG).
- *would increase flow uncertainty and reduce the availability of short term capacity* (ENTSOG).
- *would have a negative impact on investment climate*: a) for gas storage or LNG plants, because market parties no longer have certainty that all the gas can be transported, and b) could lead to a dysfunction of the current open season investment models for failure to deliver sufficient firm commitments for investment, since this would distort the economics of long term bookings (Shell Energy Europe).
- *would have a negative impact on the physical gas market*: day ahead capacity cannot be used for physical delivery. Physical gas for the intra-day market needs to come from a physical re-nomination, storage facilities may not be able to provide all the gas needed on the intra-day market, especially in countries with limited storage (Energie-Nederland, Vattenfall/Nuon, Gazprom Marketing and Trading).
- *could make the development of intra-day gas markets more difficult* (Gas Natural Fenosa, EURELECTRIC).

ENTSOG also noted that the implications that this mechanism would have for balancing costs and their treatment called for careful consideration, since limitation of re-nomination rights could hinder the procurement of residual (short-term) balancing energy by the TSO and may impact on balancing costs. This may therefore be counter-productive in a market-based balancing system.

GDFSuez concluded that such a measure seems to be "a disproportionate and risky means of preventing short-term capacity hoarding".<sup>8</sup>

Statoil commented that the measure would not necessarily impact physical changes to supply and demand, but it was certain that the inability for the transmission customer to re-nominate, to reflect the change in circumstances would not result in more firm capacity being available to the market.

Shell Energy Europe Ltd. pointed out that the proposed model was fundamentally opposed to a single market outcome and measures designed to improve security of supply. Paraphrased, the view of the company was that the measure was based on an erroneous assumption that shippers were responsible for contractual congestion. Instead, the core reasons behind contractual congestion were (a) capacity calculation which has led to inefficient investment decisions, (b) the system of allocation of primary capacity and (c) poor mechanisms of secondary capacity trading. The view was also shared by Gaslink.

Interconnector (UK) Ltd. considered that the benefits and costs of this mechanism have yet to be sufficiently identified. ENTSOG suggested making this issue a part of a broader discussion with stakeholders related to the Gas target-model, since introduction of restriction of re-nomination rights would necessitate a complete reorganisation of the processes prior to and during the gas day for both shippers and TSOs, which cannot be envisaged without a broad consensus of all parties concerned on its relative benefit.

During the second workshop ENTSOG presented daily data of several months demonstrating the empirical data on nominations and re-nominations from one TSO over a period of 1/12/2009-28/2/2010. The white area in both below included charts indicates the acceptable range of re-nominations under the suggested scheme described in the public questionnaire. Generally, the chart indicates that the suggested scheme would affect a lot of shippers, as quite a few of their re-nominations would remain outside the suggested permissible limits.

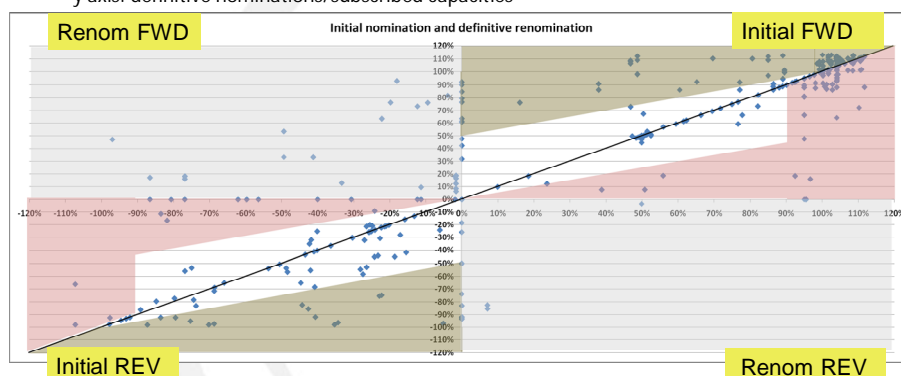
**Figure 1 – Representation of effect restriction of renomination rights on the basis of a 3 month period at 1 IP of a TSO**

### Data shows potential effect of restrictions: TSO 1

Scatter diagram<sup>1</sup>

x axis: initial nominations<sup>2</sup>/subscribed capacities<sup>3</sup>

y axis: definitive nominations/subscribed capacities



<sup>1</sup> period: 1/12/2009 -28/2/2010 – 1 point equals 1 observed day behavior of 1 shipper over 1 IP (undisclosed information)

<sup>2</sup> both domestic and border -to-border transmission

<sup>3</sup> firm capacities

Red = downwards restriction  
Green = upwards interruptible



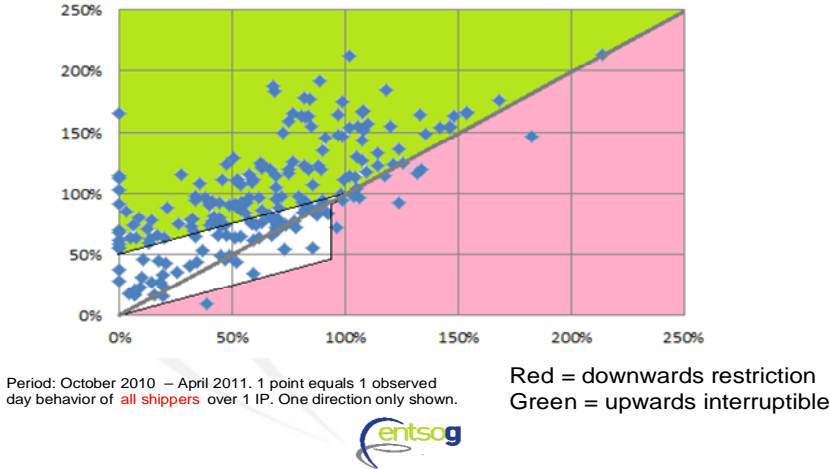
<sup>8</sup> The point that the system would not be proportional was also made by Gaslink and Shell.

The table indicates that most re-nominations were close to the original nomination, but a substantial proportion was beyond the proposed upward or downward limits. Many shippers that initially nominated zero later re-nominated in both directions. A similar picture applies for reverse nominations, with many re-nominations, of which a significant proportion was outside the proposed limits. The points in grey areas indicate the cases when shippers changed even the direction of their entire flow between nomination and re-nomination. In white is the area falling into a 50% renomination restriction band, but a lot of nominations are outside this area and would not be allowed anymore were a restriction of renomination rights to be implemented. ENTSOG concluded that day-ahead (DA) nomination does not provide sufficient flexibility to shippers, which need to be able to adapt their nomination later based on their needs for the balancing market.

**Figure 2 - Representation of effect restriction of renomination rights on the basis of a 6month period at 1 IP of a TSO**

Data shows potential effect of restrictions: TSO

x axis: initial nominations/subscribed capacities 2  
y axis: definitive nominations/subscribed capacities



The second figure above shown by ENTSOG during the second stakeholders' meeting, includes a graph, where each point represents all shippers on a single day at one IP. If a point in on the line, the shipper did not re-nominate. As the slide shows, most shippers re-nominated. And even though a lot of re-nominations were within the permissible range of re-nomination under the suggested scheme, most re-nominations fell outside this area. This chart shows average re-nominations across all shippers, thus it is likely that on an individual shipper level, the proportion of re-nominations falling outside the proposed limits is significantly higher than indicated by this slide.

In the final slide, below, ENTSOG demonstrated data from one interconnection point which demonstrates inter alia an individual behaviour during one day of a few shippers, who serve CCGT customers.

**Figure 3 - Representation of effect restriction of renomination rights for a given day at 1 IP of a TSO**

## Data shows potential effect of restrictions: TSO 3

Date: 15 February 2011. Table shows nomination/re-nomination behaviour for individual shippers at one IP.

Shipper	Time	Nomination/re-nomination (% of booked capacity)	Downward restriction
1	DA 2pm	0%	
	DA 11pm	45%	
	WD 6pm	47%	
2	DA 2pm	0%	
	DA 10pm	14%	
	WD 5pm	53%	
3	DA 2pm	31%	
	DA 10pm	0%	99%
	DA 11pm	0%	99%
	DA 3pm	0%	99%
	WD 2pm	0%	99%
	WD 5pm	5%	84%
	WD 8pm	5%	84%
4	DA 2pm	73%	
	DA 10pm	72%	
	WD 10am	72%	
	WD 12am	72%	
	WD 1pm	72%	
	WD 5pm	72%	
5	DA 6pm	0%	
	DA 6pm	14%	
	DA 6pm	41%	
	DA 10pm	32%	
6	DA 2pm	62%	
	DA 10pm	59%	
	WD 8pm	55%	
7	DA 2pm	99%	
	DA 10pm	21%	79%

Shipper with CCGT customer

Small shipper with single large industrial customer



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The chart shows that nomination and re-nomination vary during the whole day, depending on the shipper, and that the need of the client can change and evolve during the day. E.g. shipper's 3 initial nomination was first reduced to zero, then re-nominated upwards within-day to meet an unanticipated need for gas-fired power. Shipper 7, a small shipper with a single large industrial customer, had to re-nominate downwards by substantially more than the proposed limit of 50 %, since his final demand on the day was not as big as anticipated. ENTSOG concluded that this demonstrated a danger that restricting renomination rights would disproportionately affect small shippers and gas-fired generators.

There are similar problems in Ireland where the proportion of power provided by wind generation is considerable. Within-day re-nomination is frequently needed in order to allow CCGT operators to respond to fluctuations in wind generation, and thus maintain power supplies.

In reaction to this presentation, Statkraft pointed out that the restriction of renomination rights did not pose problems to them, since their nominations would generally be within a certain scope.

In view of the above, ENTSOG suggested that market-based measures, which can address congestion issues without distorting shipper behaviour, are a better alternative to restricting re-nomination rights. These measures include reservation of a proportion of capacity for short-term sale (this measure is included in the CAM framework guideline and network code), complementary market-based CMPs such as voluntary overbooking by TSOs, measures to develop the secondary market, and potentially a well-designed oversubscription and buy-back scheme.

EDF also supported the possibility to introduce partial restriction of re-nominations that the suggested instrument could be a part of the regulatory toolbox of mechanisms that could be used to alleviate contractual congestion by a NRA, even though it could be applied only in some particular cases and under precise conditions, on the points which actually experience significant contractual congestion.

## **Comments on appropriate flexibility range on re-nominations upwards and downwards**

A few comments pointed out that it was hardly possible to suggest a precise figure for an appropriate flexibility range, since for that it was necessary to take into account the specificities of the systems (Spanish NRA), individual markets', shippers' circumstances (EFET; Galp Gas Natural), perhaps making possible exceptions for countries with a big share of gas demand for electricity generation. Vattenfall/Nuon noted that the need of downward flexibility was a case by case issue – a party that only supplies household customers will not need an extreme re-nomination, whereas a party that supplies industry or power stations might need 100 % downward re-nomination to avoid extreme balancing costs.

ExxonMobil and RWE Supply & Trading GmbH considered that the proposed 50 % restriction was far too high. A number of respondents suggested starting with low restrictions on re-nomination rights and then assessing the need to restrict downwards accordingly (ExxonMobil, Ministry of the Economy – Directorate for Energy, Slovenia).

Dong Energy A/S, BDEW and RWE Supply & Trading GmbH suggested following a German 90/10 rule. RWE also pointed out that limiting re-nominations based on a percentage difference could increase the likelihood of artificial nominations being submitted, whereas the banded approach would ensure a more consistent and predictable range throughout the year.

Only Verbund thought that all capacity users have to use the within-day market, therefore there should be no possibility of re-nominations whatsoever. Eustream SK agreed that the upwards restriction was adequate, but suggested applying a 95 % restriction on downwards, VNG – 80 % upwards and 80 % downwards.

Shell thought that downward nominations could be a legitimate market response to an oversupply of gas into a market, therefore restricting them would be a bad policy.

### *C.4. Firm day-ahead "UIOLI": Exceptional circumstances*

This group of questions sought to obtain participants' views on the possible application of exceptions to the system of firm day-ahead UIOLI. Under this proposal, the NRAs would be allowed to give more extensive re-nomination rights to a network user upon his request, if limitation of re-nomination rights could interfere negatively with the electricity market, or could undermine network stability or security of supply. The exceptions would be revised annually.

In reply to the first question, 58.6 % of respondents agreed that NRA should be entitled to grant exemptions in exceptional circumstances and within the limits of an annual revision, 29.3 % disagreed.

Half of the respondents agreed with a statement that there were scenarios where the interaction of nomination, re-nomination and possible exemption would not be sufficient to guarantee the security of supply or the integrity of the electricity market, 46.6 % did not know. Those, who agreed, were then asked to assess whether gas procurement on intra-day gas markets, employment of gas storages, or TSO balancing actions could solve these issues. 11 out of 29 thought that it would, 9 thought that it would not, and 9 did not know.

The confusing statistics of this question could be explained by the fact that a large part of respondents thought that the very policy choice of introducing restrictions to re-nomination



rights was not appropriate. As Interconnector UK put it, "introducing new rules that then require further contingency rules for 'exceptional circumstances' is inefficient and demonstrates regulatory over reach and over engineering. It is not efficient to impose cumbersome rules which themselves create problems that require even more cumbersome solutions."

Similarly, Shell commented that first the policy restricts the operation of the market, and then it wants to hedge the proposed policy approach with undefined special circumstances, making the NRA responsible for identifying events and players that will be able to avoid restrictions.

Thus, the leading comment was that the heavy regulation of nomination and re-nomination rules would lead to a very complex system and will cause an unacceptable lack of certainty to market players (Vattenfall/Nuon, Energie-Nederland, GDFSuez), including a negative effect on network stability and security of supply in the electricity market (Bayernets GmbH, Energie Nederland) and perhaps other consumer groups. In this respect, the respondents representing fertilizers industry (IFIEC Europe, Fertilizers Europe, CEFIC (BE)) commented that apart from power generation companies, exemptions should be granted also to industrial consumers (chemical industry).

Other companies added that the system of granting exemptions could turn out to be potentially discriminatory (Storengy, Centrica Plc., BP Gas Marketing, EURELECTRIC).

A number of companies objected to the idea of leaving the issue of exemptions to be decided by the NRAs. BDEW, also OGP, Statoil, EnBW noted that this endangered the aim to set up harmonized rules that ensure emergence of a seamless market design in the whole EU, and could be potentially discriminatory, particularly if only applied to one side of an interconnection (EnBW).

The majority of shippers therefore expressed their preference to the development of a true competitive and fair market, ("a level playing field"), as the best guarantee for security of supply (EnBW).

A few companies thought that allowing NRAs to grant exemptions was likely to be unduly discriminatory, since they did not think that limiting re-nomination rights at interconnection points would disproportionately affect one class of user (e.g. power generator) over another (e.g. storage user or trader) (RWE Supply & Trading GmbH). Similarly, Eustream thought that the principle "Everybody or nobody" must be strictly applied ensuring equal treatment, and that integrity of the electrical network was not justification for exemption, as the problem could be solved by a shift from hourly to daily balancing.

### *C.5. Capacity oversubscription and buy-back incentive scheme*

#### **A SUMMARY AND STATISTICAL RESULTS**

This category sought to obtain the stakeholders' views on the possibility to introduce an oversubscription scheme, which would allow TSOs to make available on the market an extra amount of capacity in addition to the existing physical capacity, and, in case of actual or potential physical congestion, entitle the TSO to buy that capacity back. The proportion of additional capacity to be made available to the market, as well as the financial incentive scheme allowing the TSO to optimise capacity oversubscription would be set by a NRA.

65.5 % of the respondents considered this scheme to be potentially effective, 46.6 % viewed it as an alternative to partially binding day-ahead nominations (29.3 % viewed it as a possible add-on, 15.5 % as neither). 32.8 % thought that such a scheme should be introduced on a level of interconnection points, 29.3 % did not know, and 24.1 % thought this should be done on EU level. Finally, 50 % of participants thought that the rights associated with the buy-back mechanism should be defined by NRAs, compared with 36.2 % who thought that this should be done directly in an annex of Regulation EC 715/2009.

## OVERVIEW OF OPTIONAL COMMENTS

As the statistical results and the comments reveal, the respondents viewed the measure as a much better policy option to an UIOLI with a possibility of restriction to re-nomination rights. EFET even complained about the absence of option in the questionnaire that overselling and buy back scheme could be both an alternative and a possible add on to other suggested congestion management procedures.

GasTerra welcomed this measure as possibly facilitating a solution to a current problem where TSOs determine the available firm capacity on the basis of their yearly plans, failing to distinguish between seasons or shorter periods of time. As a result of this measure, the TSOs would be encouraged to differentiate available capacities in time and per border point, opening to the market additional capacities. The importance of offering a larger variety of durations of capacity was also emphasised by Vattenfall/Nuon.

A few companies pointed out that it should be used as a complimentary measure to secondary capacity market development (e.g. Gaslink) and that its efficiency would be subject to an efficient TSO incentive scheme (RWE Supply & Trading GmbH). ENTSOG viewed this measure as appropriate if the rate of oversubscribed capacity was not prescribed as mandatory or a fixed quantity.

A number of respondents expressed support to the measure in principle, yet stayed reserved on the issue whether it would be suitable for everyone (Eurogas). Some agreed that it could be introduced at the congested interconnection points and be applied on the decision of a TSO (ENTSOG, BDEW, also Storengy), or where the NRAs know that the measure can be efficient (Spanish NRA (CNE)). In this respect, quite a few respondents pointed out that since the measure so far has only been applied in the UK, there was a need for its further investigation in consultation with the stakeholders, and possibly a study on the issue, e.g. on the measure's cost-benefit analysis (Edison Sp.A., Eurogas, Endesa Ireland). Others suggested introducing it on experimental basis at the congested interconnection points (GDFSuez).

On the opposite note, much fewer respondents provided additional comments on why they thought the measure at issue was not appropriate. In this respect, EDF thought that it would be a marginal incentive, which could be efficient only where congestion was limited. Enel SpA considered that the measure provided no real benefits in comparison to enhancement of the secondary market, but caused a sure increase of the costs for all market participants (e.g. transaction costs for organizing the tenders, costs to be borne by the system for buying-back capacity). Europex thought it would not be as efficient as restriction of re-nomination rights, and that its possible efficiency would be difficult to assess. Gaslink and Sorgenia thought this measure was not needed, as it would merely duplicate the function of secondary markets, although Gaslink would have not dismissed the possibility to apply it as an optional measure, to be decided on at each IP. Sorgenia was also concerned that it could impede on security of supply obligations and electricity market integrity. ENI Gas & Power expressed strong concerns over it for the following reasons: a) overselling of capacity implies the degradation of firm capacity to interruptible, which undermines the shippers' possibility to coherently

organize supply and sales contracts on the basis of availability of such firm capacity; b) the auction may not receive sufficient bids, which would lead to a pro-quota cut of the users' firm capacity rights, which would elevate the costs; it is unclear how the users would be refunded for them, and it is impossible to calculate them, since they depend on the supply and sales portfolio of each shipper. Nevertheless, they would include take or pay costs and specific penalty clauses of supply contracts, commercial and image damages and costs and penalties from sales contracts and from balancing rules. In view of these arguments the company considered that a better option would be to leave the issue of firm capacity release and trade to the initial holder in the secondary market.

#### D. LONG TERM CONGESTION MANAGEMENT PROCEDURES

##### *Brief summary of the measure*

This, final group of questions, focused on three policy options with regard to long term congestion management procedures.

The first measure was to force TSOs to accept capacity surrendered by network users insofar as contractual congestion existed, entitling the NRAs to approve the terms and conditions for surrendering capacity and the methods of rewarding initial capacity holders for the sold capacity.

The second measure concerned a strict long term use it or lose it system, whereby the NRAs could strictly monitor the individual capacity utilisation rates by each network user over a long period of time. Where utilisation patterns would reveal a case of capacity hoarding, the NRAs could take the necessary steps and withdraw all or part of the unused capacity from the network user and the TSO would reallocate it to the market.

The powers of the NRA would be subject to strict preconditions. Capacity could be withdrawn only when systematically underutilised, i.e. when:

- Network users request capacity bookings at the particular interconnection point and are unable to obtain this capacity on the primary or secondary market, and
- The capacity holder systematically underutilized at least part of its allocated capacity with a contract duration of more than one year during a specific period covering at least one winter month
- The capacity holder has not sold or offered in due time and at a reasonable price its unused capacity and
- The capacity holder is unable to satisfactorily justify its behaviour. The application of a short-term use-it or lose it mechanism shall not be regarded as justification for the purpose of long- term use it or lose it.

Finally, the third measure was to withdraw capacity from dominant players, or "reset" capacity. According to this measure, all capacities booked by dominant players could be withdrawn and reallocated on the market.

## *Summary of statistical results*

Participants were rather evenly divided on the issue whether the mechanism of surrender would be an efficient way to make more capacity available on the market for new network users: 46.6 % (27) thought that it would, 41.4 % (24) thought that it would not. 55.2 % considered that this decision should be taken on the EU level, and 37.9 % thought that this should be left for NRAs.

With regard to strict long term UIOLI, 34.5 % (20) respondents thought that it could only serve as a potential sanction and would probably never be used, compared with 25.9 % (15) who agreed that this measure would solve most contractual congestion problems and 25 % (14), who considered that this mechanism undermines the position of the network users.

Finally, with regard to the capacity reset mechanism, as many as 60.3 % (35) participants disagreed that the measure would be an adequate solution to remedy contractual congestion, although 27.6 % thought that it would. 20.7 % of respondents considered it to be a short term solution to congestion management, compared with 46.6 % (27) who did not know and 32.8 % (19) who thought that it would not. Even 63.8 % (37) respondents thought that such a measure would dangerously undermine the rights and the business of existing network users.

### *D.1. Surrender of booked capacity: Overview of optional comments*

The comments to this part of the questionnaire largely focused on three issues:

1. the measure's relationship with the secondary markets,
2. financial implications on the TSOs (see inter alia comments by ENTSOG, GasTerra, OGP, Gaslink, BP Gas Marketing, Gazprom Marketing and Trading, Iberdrola, Centrica, Enagas, ENI Gas & Trading) and
3. who should define the terms and conditions of surrendering capacity to the TSOs.

In addition, Eurogas made a comment that in view of its complexity and delicate bordering with the domain of competition law, long-term firm UIOLI should only be considered as a last resort, with an EU wide approach modelled on best practice existing approaches. Shell Energy Europe Ltd. drew attention to the point that placing the TSO in the role of a capacity broker would not appear to be the best use of resources and would be a reflection of barriers to the development of a shipper driven secondary market.

With regard to the secondary markets, most comments emphasised that capacity surrender was complementary/ was an add on to the secondary market (CEPSA Gas Comercializadora, Sorgenia S.p.A., EnBW, GasTerra B.V., EDF SA & EDF TRADING, Shell Energy Europe, others). In view of Interconnector UK, as a market based solution, an appropriately structured mechanism of capacity surrender with a good incentivisation scheme might be of benefit to network users, new entrants and TSOs. EnBW, however, thought that measures to ensure cross-border secondary capacity markets to develop were more important than the implementation of surrender of capacity mechanisms.

Edison thought that this mechanism could contribute to address major shortcomings like lack of transparency on available capacities, prices and capacity products, the lack of anonymity in trading, coordination between markets on the same IPs, irregular trade, lack of standardized contracts and a relatively long ratification time of a transaction by the TSO. ExxonMobil

thought that in order to avoid the need to surrender booked capacity TSOs should facilitate efficient and transparent secondary markets. Similarly, GDFSuez thought that it was unclear how this mechanism would be applied, and how to distinguish it from a secondary market promoted by the TSO by means of user friendly IT tools. Vattenfall/Nuon observed that in markets where competition was still under development it happened that though the incumbent was willing to sell capacity, it could not do so because of lack of cooperation by the TSOs.

On the other hand, Eustream and VNG considered this mechanism would be hardly needed in case of efficient secondary market with efficient capacity trading platform. In Gaslink's view, this mechanism would be of no use in the absence of the mechanism of over-subscription. Sorgenia was concerned that it could pose a risk of reducing the secondary markets' liquidity, whereas ENI Gas & Power viewed it as weakening the potential development of secondary capacity trading and therefore suggested considering it as an optional tool.

With regard to the issue of who should define the modalities of surrendering capacity to the TSOs, in addition to the two options provided by the questionnaire, a number of commentators apparently lacked a more complex option in the closed choice questionnaire, and specified that the general principles of the mechanism should be set on an EU basis by the Guidelines, leaving the details to be defined by NRAs on a national level (Edison, EnBW, Naturgas Energia Transporte Naturgas Energia Comercializadora EDP Gás (EDP Group)) RWE Supply & Trading GmbH.) ENTSOG and Storengy suggested that the issue should be left to be decided for the TSOs.

As an alternative to the suggested mechanism of capacity surrender, Eni Gas & Power suggested exploring a mechanism where:

- A. Any capacity surrendered to the TSOs is agreed by the initial capacity holder;
- B. A rewarding scheme for network users is provided if the capacity surrendered to the TSO is sold;
- C. The capacity surrendered is given back to the network users who offered it initially, if it remains unsold.

#### *D.2. Strict long-term UIOLI: Overview of optional comments*

ENTSOG agreed with a general principle that measures were necessary to incentivise shippers to avoid the hoarding of capacity and to firstly offer it onto the secondary market for other network users. An alternative for that would be a surrender of capacity back to the TSO on a short term basis. However, the commercial arrangements should be designed so that the selling the capacity on the secondary market would be the preferred option, and the mechanism would at least be cost neutral for the TSO, transparent and non-discriminatory. In ENTSOG's view, any withdrawal mechanism should be clearly defined together with the appropriate methodology to calculate the amount of underutilised capacity to withdraw. Furthermore, it should be carefully considered whether other methods could be introduced which would lead to the increased use of underutilised capacity.

Enagas SA commented that it was extremely difficult to design effective long-term UIOLI mechanisms, since sanctions could generally be avoided by nominating 100% of capacity just for one day during the winter season. BP Gas Marketing noted that it remained unclear how the mechanism would be implemented.

Quite a few commentators pointed out to the need to ensure that the strict UIOLI is applied only as a measure of last resort (Gas Natural Fenosa, GDFSuez, EDF SA & EDF TRADING, Edison, VNG, Sorigenia). Eurogas commented that it hoped that the measure would probably never be used in view of its potential to undermine the position of network users. Energie-Nederland thought that taking away all capacity of a shipper was excessive; Gas Terra described it as superfluous.

Some commentators thought that the need to adopt measures of similar nature would be avoided, if a functioning secondary market were in place (transparency of flows, availability of capacity, combined with sufficient interruptible capacity): it would ensure correct economic incentives, leading in turn to "fair" market behaviour (Europex, VNG, Vattenfall/Nuon, Energie-Nederland, also see Poweo and Interconnector). In the words of Dong Energy A/S: *"Shippers will not hold on to capacity, which they do not expect to use - provided that the secondary platform is working properly and/or capacity can be returned to the TSO."*

A large part of comments focused on the difficulties inherent in the suggested mechanism, in particular the difficulty defining the notions of "systematic underutilization" and "reasonable price" (ENTSOG, Statoil, Shell Europe, Storengy, BDEW, Enagas SA). Although RWE Supply & Trading GmbH agreed that strong UIOLI would solve most contractual congestion, it could not fully agree with the measure as described, in particular the term of the contract duration and inclusion only one winter month for the purposes of deciding on its application. GDFSuez commented that one winter of underutilization should not be considered as hoarding, since booking may have been made for security of supply purpose. Storengy and Centrica Plc drew attention towards public service obligations, which require some shippers to reserve additional capacity corresponding to the risk scenario assumed.

Another group of comments, made by Gaslink, OGP, Edison, EDF Energy Plc., focused on the effect on contractual rights that the measure would have. In this respect, ENTSOG commented that the mechanism should not create a situation where contracts that a TSO had duly obtained would be legally challenged – such contracts have an important role in investment financing. This comment was also reflected in the views of OGP, ExxonMobil, EDF SA & EDF TRADING. ENI Gas & Power observed that this mechanism might imply a disconnection between long-term supply contracts and the corresponding capacity contracts and thus could undermine the possibility to use the flexibility of long term contracts as a key provider of security of supply at reasonable prices.

### *D.3. capacity withdrawal from dominant players or capacity "reset": Overview of optional comments*

Since the majority (60.3 % (35)) opinion was that the capacity reset would not be an adequate solution to remedy contractual congestion, the overview first addresses the arguments of this group.

Most comments opposing the suggested measure were critical of its discriminatory nature (Gazprom Marketing and Trading, RWE Supply & Trading GmbH, Iberdrola, EURELECTRIC) and unacceptable restriction of contractual rights (ENTSOG, Vattenfall/Nuon, Eon, GasTerra). GasTerra described it as tantamount to theft. An all encompassing comment was made by GDFSuez, who suggested avoiding this measure since it was extreme, unrealistic, and capable of strongly weakening the market, as it:

- led to the cancellation of all the existing contracts thus undermining undertakings;

- was arbitrary and against freedom of trade (What is a dominant player? What is the meaning of a contract that can vanish because of this clause? Who would benefit from the freed capacity? How to know in advance the capacity could be withdrawn?);
- hampered security of supply;
- was completely disproportionate.

ENTSOG commented that termination of contracts would lead to stranded assets for the TSOs, create undue financial risks and have substantial impacts on transmission tariffs. Therefore, the CMP Guideline should provide a provision ensuring that the TSOs' revenue streams remain protected (also see Open Grid Europe GmbH, Centrica plc.).

Some companies thought that this measure was not needed, as unused capacities could be successfully freed up and sufficient level of competition could be ensured by a fully functioning secondary market, transparency, and incentive measures to sell unused capacity (Vattenfall/Nuon, VNG).

On the other hand, Europex agreed that capacity reset could be an effective remedy and avoid market closure, provided that this remedy was applied only when NRAs have the evidence that other economic incentives and market-based methods have failed. In view of Centrica Plc., capacity withdrawal from dominant players could be considered on a case-by-case basis by national competition authorities, including detailed consultation with market participants and the exploration of alternative options with the dominant player concerned. Shell Energy Europe thought that this suggestion could be an adequate solution to the problem of contractual congestion in theory, but at some risk to supply contracts that have been matched to capacity. Furthermore, the company was not sure that this would be an enduring solution in the absence of other policy measures, e.g. it was not clear how such capacity would be offered back to the market.

The measure was quite strongly supported by EnBW, who saw capacity reset of pre-market based allocated capacity as a chance to guarantee a true level playing field in the European gas market. The company thought that there was significant friction if not multiple discrimination because of an unlevel playing field. In its view, the proposed model of CMP guidelines – market-based CAM for new shippers and a rather weak LT UIOLI for existing capacity owners – bore significant inconsistencies and hence posed the risk of not delivering the intended goals. Although the company was against imposing sanctions on "dominant players", and considered that cancellation of capacities disregarding contractual rights should be "ultima ratio", it suggested introducing an "incentivised type of reset", which would apply only to capacity contracts (i.e. not supply contracts). The capacity reset methodology should incorporate the need of existing contract holders to keep the most of the value of the legacy contracts and ensure that all market participants get access to all capacity products allocated market-based ("one produce, one price for every market participant"). The incentive would be allocating most of the auction premium from capacity auction to the former owner of the capacity. In view of the company, this could be acceptable for all market participants.

BDEW also noted that some of its members stressed the need of incentivised capacity reset, arguing that there was an unlevel playing field between pre-market-based allocated and market based allocated capacity contracts, which resulted in multiple discrimination of those without legacy contracts: they were unable to access longer-term capacity products, and market-based products were potentially more expensive than the same products booked in a legacy contract.

In view of ENAGAS SA, these measures should only be applied to incumbents where an abuse of dominant position has been detected or where a dominant position would be created by a merger. Endesa Ireland considered that it was more appropriate to withdraw and resell to the market the capacity which was systematically unused.