

## European Network of Transmission System Operators for Gas (ENTSOG) response to ACER Public Consultation on Incremental Proposal and further CAM amendments

Brussels, 31 August 2015

<b>1</b>	<p>Do you support the changes suggested by the Agency on Incremental Capacity (new chapter IVa and related articles)? If not, please list which new or amended articles you disagree with and explain why.</p>
<p>ENTSOG supports the majority of the proposed changes to the CAM NC related to incremental capacity as suggested by ACER. Despite this, ENTSOG would like to remind that the incremental capacity proposal consists of two inter-dependent parts and that the tariff-related part is still under the development in the TAR NC process. The response to this consultation is therefore based on the content of the TAR NC as re-submitted by ENTSOG to ACER on 31 July 2015. Any agreement and support of ENTSOG to ACER proposed changes to the CAM NC is dependent on the wording of the TAR NC version as re-submitted to ACER.</p> <p>In relation to the TAR NC, ENTSOG furthermore stresses that the references to the TAR NC in the proposed amendment to the CAM NC refer to the TAR NC version as submitted to ACER for Reasoned Opinion. In order to be ready for the comitology procedure, the references to the TAR NC have to be updated.</p> <p><b>1. The general remarks that ENTSOG would like to make are the following:</b></p> <p><b>Article 2(3):</b> In order to clarify: (1) that certain provisions of the CAM NC do not apply to incremental capacity; and (2) which joint booking platform is to be used for the publication of allocation results, ENTSOG proposes to modify Article 2(3) on the scope of the CAM NC as follows:</p> <p>3. Where an alternative allocation rule according to Article 20d is applied, Article 8(1) to (7), Articles 11 to 18, 19(2) and 27 shall not be applicable to the offer levels, unless decided otherwise by the relevant national regulatory</p>	

authorities. In any case, the allocation results shall be published on the respective joint booking platform established by the relevant transmission system operators as set out in Article 27.

**Article 3:**

ENTSOG notes that the order of definitions as proposed by ACER is confusing since it does not seem to follow a logical sequence. In line with the current CAM NC and the INT NC, the additional definitions should be listed in the alphabetic order.

**Article 3(20):**

The ACER wording suggests that there is no general obligation to offer non-market based incremental capacity as existing capacity once it has been commissioned. Furthermore, new capacity where none currently exists would necessarily be considered as technical capacity. For these reasons, ENTSOG proposes to modify the wording as follows:

20. 'incremental capacity' means a possible future increase in technical capacity or possible new technical capacity created where none currently exists that may be offered based on investment or long-term capacity optimisation and subsequently allocated subject to the positive outcome of an economic test, in the following cases:

- (a) at existing interconnection points,
- (b) by establishing a new interconnection point or points,
- (c) as physical reverse flow capacity at an interconnection point or points, which has not been offered before.

This shall be without prejudice to the obligation to offer available capacity created via non-market based procedures and for which the final investment decision has been taken without prior commitments from network users.

**Article 3(22):**

ENTSOG welcomes that ACER provides a definition of 'incremental process', however the term is not used consistently throughout the CAM NC. Also, the difference between references to 'incremental process' and 'incremental project' is not clear, since there is no definition of what characterises an 'incremental project' compared to the process in general. ENTSOG suggests that ACER includes a clear definition of what an 'incremental project' is (in particular, the start and the end of such a project) and then uses both terms consistently in the CAM NC.

**Article 3(23):**

In line with the remarks to Article 20d(2), ENTSOG proposes to reword Article 3(23) as follows:

23. 'alternative allocation procedure' means an allocation mechanism for incremental capacity designed on a case-by-case basis by transmission system operators and approved by national regulatory authorities to accommodate those capacity requests where it can be shown that the ascending clock auction is not suitable, such as conditional capacity requests.

**Article 8(1) and (2):**

Article 8 describes the allocation methodology and specifically paragraph 2 sets out the general principles of it, namely the parallel offer and independent allocation of capacity through the auctions. For incremental capacity offered in parallel offer levels, these principles are not entirely valid since the allocation of capacity for a specific offer level is dependent on the outcome of other offer levels and the respective outcomes of the economic tests. For this reason, ENTSOG proposes to reword Articles 8(1) and (2) as follows:

1. Auctions shall be used for the allocation of capacity at interconnection points, unless provided otherwise in this Regulation.
2. At all interconnection points the same auction design shall apply. The relevant auction processes shall start simultaneously for all concerned interconnection points. Each auction process, relating to a single standard capacity product, shall allocate capacity independently of every other auction process except where, subject to the agreement of the directly involved transmission system operators and the approval of relevant national regulatory authorities, competing capacity is allocated. In case incremental capacity is offered, the independent allocation shall not apply to the simultaneous auction processes for the respective offer levels, since these are dependent on each other.

**Article 11(3):**

ENTSOG is of the opinion that allocating incremental capacity jointly with available existing capacity is one of the key principles of the incremental process. Since the amendment to the CAM NC foresees that incremental capacity can be offered for up to 15 years after the start of the operational use, existing capacity at the concerned IP(s) has to be offered for the same time frame. Since 'offer levels' are defined to combine incremental and available existing capacity, ENTSOG proposes to reword this Article as follows:

3. The auction process shall offer capacity for no longer than the upcoming 15 gas years for existing capacity. In case of incremental capacity, the offer levels may be offered in yearly capacity auctions for a maximum of 15 years after the start of operational use.

In relation to this proposal, please also take into account the feedback provided in this response to Article 20d(1).

***2. ENTSOG remarks related to Chapter IVa are the following:***

**Article 20a:**

To avoid confusion and for consistency reasons with the text in the article, it should be clearly stated in the title of the article that it refers to a "market demand assessment", instead of a

“demand assessment”.

**Article 20a(1):**

ENTSOG suggests reformulating this article in order to avoid a repetition in the last sentence:

1. Immediately after the start of the annual yearly capacity auction in even-numbered years transmission system operators shall co-operate in the processes of assessing market demand for incremental capacity and of conducting technical studies for incremental capacity projects for their joint interconnection points.

**Article 20a(2):**

ENTSOG agrees that joint demand assessments of neighbouring TSOs are a more efficient way of identifying demand for incremental capacity between entry-exit systems. What should be taken into account is that in case more than one TSO is active in one entry-exit system, it does not necessarily make sense to involve all TSOs of that entry-exit system in the demand assessment process. Only those TSOs within an entry-exit system that are actually bordering to the respective other entry-exit-system should be involved in the demand assessment. For this reason, ENTSOG suggests rewording the article as follows:

2. No later than 8 weeks after the start of the annual yearly capacity auction in even-numbered years, the transmission system operators active on an entry-exit system border shall in particular co-operate to produce the market demand assessment report. Such a report shall at least cover both sides of the border between the two entry-exit systems concerned.

**Article 20a(3):**

While ENTSOG is certainly able to co-ordinate and assist in the development of demand assessment reports where possible, it must be clear that ENTSOG has limited influence to ensure the completion of demand assessment reports by its members. For this reason, ENTSOG proposes to reword this article as follows:

3. The market demand assessment report shall be published no later than 16 weeks after the start of the annual yearly capacity auction in even-numbered years. The market assessment report shall evaluate the prospective demand for incremental capacity of all network users according to paragraph 8, confirm whether an incremental capacity project is initiated and be published at least in English. In addition ENTSOG shall coordinate the process by:

- (a) providing a harmonised structure or template for the market demand assessment reports that facilitates the timely completion of the reports; and
- (b) collecting and publishing the reports jointly on ENTSOG's website, in addition to the transmission system operators' individual publication of the reports on their websites.

**Article 20a(4):**

Whether the incremental process should be an annual process with overlapping projects or a two-year process in which one project is concluded before a potential new one starts was discussed extensively during the development phase of the Incremental Proposal by ENTSOG. ENTSOG understands the underlying idea of ACER for introducing a possibility of a yearly incremental process, namely to allow a quicker provision of incremental capacity where possible. Nonetheless, stakeholders preferred the two-year process (with the possibility of launching a separate project on request in the meantime) in order to avoid that projects are structurally overlapping. Such an overlapping can lead to a situation where a project is influenced on a very late stage by the developments in a new project that has just been started, potentially leading to delays. ENTSOG therefore suggests not foreseeing the possibility of an annual cycle.

**Article 20a(8)(c):**

Alternative (c) of this article suggests that the TSOs indicate to the network user in which demand assessment report a submitted non-binding demand indication will be taken into account. From ENTSOG's point of view, non-binding demand indications have to be justified and reasonable in order to be taken into account in a demand assessment. ENTSOG therefore suggests rewording this article as follows:

8. Transmission system operators shall respond to non-binding demand indications within 16 weeks after the start of the annual yearly auctions, or within 8 weeks of receipt of ad-hoc demand indications according to paragraph 6. The response shall provide at least the following:

- (a) whether the demand indicated can be considered by the transmission system operator in the context of an incremental capacity project in the ongoing process; or
- (b) whether in the case of ad-hoc demand indications they are sufficient to consider the initiation of an incremental capacity process according to paragraph 4; or
- (c) in which market demand assessment report, according to paragraph 3, the indicated demand will be assessed, provided that the demand indicated cannot be considered under point (a) or (b), which is to be justified.

Despite this remark, ENTSOG prefers to include a possibility to start incremental processes at any time in case submitted non-binding demand indications are deemed sufficient to justify such a dedicated project. Such a functionality was foreseen in Article 20c(1) of the CAM NC amendment proposal submitted by ENTSOG on 26 December 2014 and was supported by the majority of stakeholders in ENTSOG Stakeholder Support Process (SSP).

**Article 20a(10)(c):**

ENTSOG suggests adding to this article a reference to the due date for non-binding demand indications to be submitted in order to be included in a demand assessment as defined in article 20a(5). Such a reference clarifies that network users will have to meet a certain deadline in order to ensure a co-ordinated assessment by TSOs.

**Article 20a(11)(h):**

Point (h) of this article refers to conditional non-binding demand indications that have been received. ENTSOG would like to emphasize that point (b) already requires that the aggregated demand indicated via non-binding demand indications is published. Furthermore, it is not very relevant for network users to know what amount of capacity was requested in a conditional way but to have transparency on if conditions have been indicated in general and if yes, which nature such conditions have. For this reason, ENTSOG suggests rewording this article as follows:

(h) conditions related to commitments that have been expressed by network users via non-binding demand indications according to paragraph 7(e).

**Article 20b(1) and (3):**

Since the launching of technical studies for incremental capacity projects is an internal process step of the involved TSOs, it seems unreasonable and mechanistic to prescribe the exact moment in time at which the involved TSOs shall start their work. Furthermore, ENTSOG is of the opinion that it is not the start of the studies that matters for network users but the timely completion of the work. Despite this, a design phase for incremental capacity should only be started if the demand assessment report actually identifies the need for a specific incremental project. Based on these reasons, ENTSOG suggests rewording Articles 20b(1) and 20b(3) as follows:

1. Following the publication of the market demand assessment report, the relevant transmission system operators shall start the design phase for incremental capacity projects, if identified in the demand assessment report.

3. No later than 12 weeks after the publication of the demand assessment report, the relevant transmission system operators shall conduct a joint public consultation on the draft project proposal at least in English for a minimum of 1 month and no longer than 2 months. These operators shall take all reasonable steps to ensure cross-border co-ordination.

**Article 20b(3)(g):**

ENTSOG would like to highlight that setting the required level of network user commitment to pass the economic test (defined in the TAR NC as f-factor) is a task of the NRAs and not of the TSOs. While there might be interest from network users in this factor, it should not be the TSO to consult on a factor that has not been set at the relevant point of the process. ENTSOG stresses that either point (g) is deleted from the list of consultation parameters or ACER foresees a possibility for NRAs to conduct such a consultation.

**Article 20b(5):**

With regards to point (d) in the list, ENTSOG would like to highlight that the definition of economic test parameters, such as the assessment of future tariffs, revenues and 'f-factor', is a task clearly falling under NRA/NRAs responsibility. This point is already well reflected in the TAR NC text which is envisaging a publication of these parameters only after NRA/NRAs approval and not at the stage of proposal by TSOs.

Therefore, Article 20b(5)(d) should not be under the TSO publication requirements within the project proposal.

ENTSOG proposes to delete this point to keep consistency with Article 39(2) of the TAR NC re-submitted to ACER on 31 July 2015.

Besides this, point (e) foresees the possibility to offer an additional period of up to 5 years beyond the allocation of up to 15 years, however without referring to which 15 years are meant.

ENTSOG suggests rewording Article 20b(5) as follows:

5. Following the consultation and finalisation of the design phase for an incremental capacity project, the involved transmission system operators shall submit the project proposal for an incremental capacity project to the relevant national regulatory authorities for coordinated approvals. The project proposal shall be published at least in English and shall include at least the following information:

(a) all offer levels, reflecting the range of expected demand for incremental capacity at the relevant interconnection points as a result of the processes described in paragraph 3 and Article 20a.

(b) any general rules and conditions that a network user must accept to participate and access capacity in the binding capacity allocation phase of the incremental capacity project, including any collaterals to be provided by network users and how possible delays in the provision of capacity or the event of a disruption to the project are dealt with contractually.

(c) timelines of the incremental capacity project, including any changes since the consultation described in



paragraph 3, and measures to prevent delays and minimise the impact of delays;

(d) whether an exceptionally extended time horizon for collecting one-sided binding commitments of network users for contracting capacity for an additional period of up to 5 years beyond the allocation of up to 15 years after the start of the operational use may be required;

(e) whether criteria are met to warrant an alternative allocation rule according to Article 20d(2), including a justification and to what extent and which terms will be allowed for conditional bids in the binding phase according to Article 20d(3)

(f) where an alternative allocation mechanism is deemed necessary under paragraph 3b, a detailed description of the alternative allocation rule;

(g) where a fixed price approach is followed for the incremental capacity project, the elements described in Article 34(2) of Commission Regulation (EU) No XXX/201X.

#### **Article 20b(6):**

ENTSOG would like to highlight that effort from all sides is needed in order to ensure that the entire design of investment projects including consultations and all relevant approval processes fit into a two-year procedure. From that perspective, it seems unjustified to allow NRAs 6 months (meaning  $\frac{1}{4}$  of the entire process) just for the co-ordinated approval of the designed parameters. ENTSOG is of the opinion that NRAs should be able to agree on the parameters jointly proposed by the involved TSOs in a shorter timeframe, especially since a public consultation has already been conducted by the TSOs.

ENTSOG suggests foreseeing a period of 4 months for NRAs to issue co-ordinated decisions on the parameters of an incremental capacity project.

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

ENTSOG welcomes the possibility to offer an additional period of up to 5 years in case an alternative allocation mechanism is used since it would increase the share of the investment costs that could potentially be covered by upfront commitments of network users and thereby increase the chances of passing an economic test.

Despite this, ENTSOG is of the opinion that the concept of 'one-sided binding commitments of network users for contracting capacity' for those additional 5 years is confusing and not effective. The fact that there is no definition of this term creates a risk that it may be misunderstood and could e.g. be considered as one-sided in the sense of unbundled commitment. ENTSOG understanding of this term is that the commitments for contracting the incremental capacity would only be binding from the side of the network user, meaning that the network users e.g. commit to participate in the regular auction for the concerned capacity at



least at the reserve price once the incremental capacity is offered in the regular auction. This would imply that there is no commitment from the TSO to actually allocate this capacity to the concerned network user since such network user could be out-bid by other network users with a higher willingness to pay at the time when the capacity is offered in the auction. ENTSOG does not believe that any network user would be willing to provide such a one-sided commitment given that it does not imply any advantage for the network user. For this reason, the additional 5 years would most likely not be marketed and therefore could not contribute to passing the economic test.

Furthermore, ENTSOG does not see the benefit of one-sided commitments. If ACER reasoning for foreseeing them is to allow that incremental capacity beyond the regular 15 years is also offered jointly with existing capacity, it would make more sense to allow a joint offer of incremental and existing for the complete required booking horizon. As mentioned in ENTSOG remark to Article 11(3) above, it would anyway be necessary to extent the offer of existing capacity in cases where incremental capacity is offered at an IP. From ENTSOG point of view, the same mechanism should apply in case a decision is taken to offer an additional period of up to 5 years. Incremental and existing capacity should then be fully allocated to the successful network users.

**Article 20d(2):**

ENTSOG is of the opinion that the formulation used to define the requirements for using an alternative allocation mechanism is unclear and misleading. The ACER proposal seems to limit the use of an alternative allocation mechanism to cases where at least conditions between commitments for different IPs are required while conditions between commitments for several yearly standard capacity products are not alone sufficient to lead to an alternative allocation mechanism. Additionally, by referring specifically and only to IPs, the CAM NC would not allow incremental capacity to be allocated via an alternative allocation procedure where non-IPs are part of the project and conditional commitments are required (e.g LNG, storage...). ENTSOG is of the opinion that the Incremental Proposal should allow a certain degree of flexibility for choosing an alternative allocation mechanism in order not to foreclose the possibility to apply the alternative allocation mechanism where it can be shown that the ascending clock algorithm is not suitable. This could e.g. be the case where offer levels cannot be efficiently derived from the demand assessment and a regular CAM auction risks that a project fails since the offer cannot be repeated.

ENTSOG suggests rewording this article as follows:

2. An alternative capacity allocation mechanism can be used, subject to national regulatory authorities' approvals, where market feedback during the demand assessment phase expressed a clear need for an alternative allocation procedure for those capacity requests where it can be shown that the ascending clock auction is not suitable, such as conditional capacity requests, in particular where:

- (a) the incremental capacity project involves more than two entry-exit systems and bids are requested along several interconnection points during the allocation procedure; or
- (b) bids spanning a number of different yearly capacity products at an interconnection point are requested.

**Article 20d(4):**

ENTSOG would like to point out that in the first consultation version of ACER of February 2015, the respective article clearly provided that a prioritisation of long-term commitments is a possible basis for the alternative allocation mechanism. This was consistent with the position of most stakeholders and ENTSOG during the drafting process which clearly pointed out that such a possibility is necessary in order to achieve especially large investments.

ENTSOG does not agree with the reformulation of this article in the current version since it does not clearly provide this possibility. Furthermore, the current text part relating to not giving priority to larger amounts of requested capacity could be misleading. ENTSOG therefore urges ACER to reinstate the formulation of the February 2015 version.

<b>2</b>	Do you support ENTSOG envisaged proposals to change the default auction calendar in relation to the discussions on the draft Network Code on Tariffs (i.e. to move the annual yearly capacity auctions from March to July, the annual quarterly auctions from June to August and the rolling monthly auctions' start from the third to the second Monday of each month)? If not, please explain why.
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ENTSOG supports the proposal to change the default auction calendar in relation to the discussions on the TAR NC.

<b>3</b>	Do you support the further technical changes introduced (e.g. on the auction algorithms (Art. 17 (16) and Art. 18 (3d) & (9)); on the bundling of existing capacity (Art. 20(1); on the allocation of interruptible services (Art. 21(9)) etc.? If not, please list which amended articles you disagree with and explain why.
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ENTSOG supports the further technical changes of the CAM NC as proposed by ACER.

<b>4</b>	Do you have any other comments related to the proposed NC CAM, changes, and if so which?
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**Article 26:**

ENTSOG in principle agrees that Article 26 can be deleted as soon as the TAR NC is applicable. This is however under the precondition that all provisions of Article 26 are covered in the TAR NC in a consistent manner. The TAR NC as re-submitted by ENTSOG after ACER Reasoned Opinion does cover all parts of Article 26.

**Article 28:**

Article 28 specifies that the CAM NC shall apply as from 1 November 2015 ‘unless otherwise specified’ in the CAM NC. However, due to the missing specification within the text, it is not clear to ENTSOG when certain provisions of the CAM NC are supposed to be applicable.

ENTSOG suggests keeping consistency with the previous version of the CAM NC, the BAL NC and the INT NC and enlisting the articles that are applicable earlier or later than 1 November 2015 by using the expression “without prejudice to Articles...”. All new and amended provisions related to incremental capacity and the shift of auction dates should be equivalent to the application date of the TAR NC as set out in the second subparagraph of Article 45 of the TAR NC re-submitted to ACER on 31 July 2015.

One of the examples where the application date is unclear relates to the amendment of Article 20(1) of the CAM NC. In the previous version, parties to the existing contracts were defined as the ones ‘at the time of the entry into force’, whereas the amendment defines such parties as the ones at the time of the application. Since this change is a part of the CAM amendment proposal, the application could be understood as the one as from the date of the application of such amendment. From ENTSOG’s understanding, the reference should however be changed to

the date of the application of the current CAM NC, namely 1 November 2015.