



## ACER Call for Evidence

on the conditions for the application of FDA UIOLI pursuant to paragraph 2.2.3.1 a) - d) of the CMP Guidelines

**(“congestion indicators”)**

PC\_2016\_G\_01

Fields marked with \* are mandatory.

### Background & objective

According to paragraph 2.2.1.2 of the Commission Guidelines on Congestion Management Procedures[1] (hereafter, the ‘CMP GL’) the Agency for the Cooperation of Energy Regulators (‘the Agency’) has to publish a yearly monitoring report on contractual congestion[2] at interconnection points (‘IPs’), taking into consideration, to the extent possible, capacity trading on the secondary market and the use of interruptible capacity.

Paragraph 2.2.3.1 specifies the conditions[3] under which a specific CMP - i.e. the Firm day-ahead Use-It-Or-Lose-It mechanism (‘FDA UIOLI’) - is to be applied. The Agency has used each of these conditions as an indicator for contractual congestion (‘congestion indicators’). Accordingly, in the ACER Congestion Reports[4], the Agency had identified contractual congestion at those IP sides where at least one of the conditions of the ‘congestion indicators’ (conditions 2.2.3.1 a) – d)) was fulfilled.

Some stakeholders (including TSOs, NRAs and network users) have expressed doubts on whether the ‘congestion indicators’ are able to correctly identify actual situations of contractual congestion. Some stakeholders suggested also to include other elements or criteria in the

decision-making process on whether an IP side is to be considered “contractually congested” and therefore would require the application of the FDA UIOLI.

To investigate these issues, **the Agency is inviting stakeholders to formulate concrete suggestions to improve the “congestion indicators”**. The aim is to check if it is possible to improve the existing “congestion indicators” and/or define criteria to be used by the Agency in its congestion analysis. Such criteria would have to:

- appropriately reflect / describe circumstances that identify persistent existence of contractual congestions at IP sides,
- be objective and replicable,
- be based on data which is or will have to be made available at least to the Agency in a timely manner,
- and be applicable - with reasonable efforts - across the EU.

Please note that, by launching this exercise in the form of a survey, the Agency does not commit to propose amendments[5] to the existing provisions related to the “congestion indicators”. Whether the Agency will do so depends to a large extent on the proposals which will be received, the support these proposals enjoy among stakeholders, and the Agency’s assessment of whether such proposals would be an improvement compared to the current formulation.

Next to the above mentioned main topic, the questionnaire covers a number of additional issues which were raised in the recommendations section of the Agency’s latest Congestion Report.

[1] Commission Decision of 24 August 2012 on amending Annex I to Regulation (EC) No 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012D0490&from=EN>

[2] Article 2(1)(21) of Regulation 715/2009 (

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0036:0054:en:PDF>)

defines contractual congestion as a situation where the level of firm capacity demand exceeds the technical capacity

[3] i.e. points a) – d) of paragraph 2.2.3.1

[4] Latest Report: ACER annual report on contractual congestion at [interconnection points \(period covered 2015\)](#), 3rd edition, 31.05.2016:

[http://www.acer.europa.eu/Official\\_documents/Acts\\_of\\_the\\_Agency/Publication/ACER%202016%20Re](http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/ACER%202016%20Re)

[5] The CMP GL may be amended according to Article 23 of Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks (Gas Regulation):

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0036:0054:en:PDF>

## Respondent identification

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E-mail address

**Question 0 – Respondent identification: Please indicate your name, e-mail address, company/organisation, type of stakeholder (organisation) you are representing and whether or not you agree that your answer is published.**

**Name and Surname (not to be published)**

██████████

**\* Company/organisation**

Centrica

**\* Please let us know the type of stakeholder (organisation) you are representing**

- Network user
- TSO
- Producer
- NRA
- EU or international organisation
- National association
- Government
- Other (please specify)

**If you are a network user and you have booked capacity at IPs, where the FDA UIOLI mechanism is applied, to which extent does paragraph 2.2.3.5 of the CMP GL (i.e. the exception from the renomination restriction, if less than 10% of average technical capacity was booked by you in the preceding year) apply to you?**

**Possible answers:**

- The renomination restriction **DOES NOT APPLY** to me at **ALL** my booked IPs, where the FDA UIOLI is applied. (“small shipper”)
- The renomination restriction **APPLIES** to me for a **MINORITY** of all my booked IPs, where the FDA UIOLI is applied
- The renomination restriction **APPLIES** to me for a **MAJORITY** of all my booked IPs, where the FDA UIOLI is applied
- The renomination restriction **APPLIES** to me for **ALL** of my booked IPs, where the FDA UIOLI is applied. (“big shipper”)
- I don’t know / I don’t want to answer this question

**\* Do you agree that your answer will be published?**

- Yes
- No

**Survey questions**

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**Question 1: Do you consider the existing “congestion indicators” (conditions 2.2.3.1 a) – d) of CMP GL) appropriate and sufficient to determine the existence of contractual congestion (as defined in Regulation 715/2009) at IP sides? In case not, what alternative indicators would you suggest? Please be as concrete as possible with your proposal and provide a justification.**

- Yes  
 No  
 Neutral / I don't know

**Reasons and alternative formulation:**

No. More fundamentally, we do not believe that the definition of ‘contractual congestion’ gives an accurate representation of actual congestion at IPs. The definition implies that whenever a capacity auction clears at a higher price than the reserve price (i.e. whenever a premium is achieved) the level of firm capacity demand has exceeded the technical capacity and that it is congested. This definition, however, does not distinguish between:

- physical congestion where demand exceeds the technical capacity, but all capacity is being used; and
- contractual congestion where demand exceeds the technical capacity, but not all capacity is being used or being offered to the market.

In other words, no consideration is made in this process for other ways of acquiring the capacity, such as a functioning secondary market for capacity or the availability of interruptible capacity. The use of this imprecise definition has resulted in the identification of some Interconnectors as contractually congested when this is not the case (IUK being one prime example). This exposes shippers to an unnecessary risk, as it could lead to the imposition of restriction of re-nomination rights when no contractual congestion actually exists.

We therefore believe that the application of Firm Day-Ahead Use it or Lose it should not be automatic, triggered by a few narrow criteria, but be based on a more holistic test which considers a number of indicators such as the availability of a liquid secondary market for capacity, shippers’ utilisation of capacity, the availability of long-term interruptible capacity, the propensity of interruptible capacity to be curtailed, and wholesale gas price spreads. In markets that are not liquid, a better indicator of contractual congestion may be the volume of requests for capacity remaining unfulfilled.

**Question 2: Do you think that the “congestion indicators” should further specify how to take into consideration capacity trading on the secondary market and the use of interruptible capacity[6]? If so, please indicate how this should be done. Please give reasons for your answer.**

[6] In its past annual congestion reports, the Agency applied the current “congestion indicators”, but also reported on other elements, such as on the extent of secondary capacity trading, the application of CMPs,

the offer and bookings of interruptible capacities, actual interruptions of interruptible capacities, the occurrence of unsuccessful requests, a congestion comparison with previous years, and on further specific market conditions at IP sides found contractually congested by applying the “congestion indicators”.

- Yes
- No
- Neutral / I don't know

**Reasons and specification:**

Yes. As noted above, the existence of a secondary market should be taken into account given the significant role it can play in providing access to unwanted capacity. In relation to the IUK Interconnector, Acer's 2016 Report on congestion at IPs notes that it has a “vivid secondary trading market which has so far ensured demand is being met at IUK IPs” which we believe negates any rationale for applying FDA UIOLI at all of IUK entry and exit points identified by Acer as being contractually congested.

The availability of interruptible capacity should also be taken into account because it is another method of increasing the amount of capacity available to the market and helping to relieve congestion. The propensity of interruptible capacity to be curtailed is also a useful ‘market indicator’. If it is often interrupted, it suggests that there is physical congestion. If it is rarely or never interrupted, it may indicate (firm) contractual congestion, but this may not really matter as long as all shippers requiring access to the market can be accommodated.

Centrica also believes that a forward-looking view must be taken to avoid implementing FDA UIOLI to solve a perceived issue that will not exist in the near future. The IUK interconnector, for example, has been defined as ‘contractually congested’ based on data from 2015. However, it is widely recognised that from 2018 all of the current contracts will expire and ample capacity will be available. The perceived need to implement FDA UIOLI on the IUK interconnector would therefore be redundant by the time it is introduced and would likely have the undesirable impact of deterring potential firm customers for IUK capacity post 2018.

**Question 3: In cases of contractual congestion, do you consider FDA UIOLI to be an appropriate mechanism to mitigate the effects of the identified contractual congestion? If not, what alternative or additional measure would you suggest to address the congestion and why?**

**Your view:**

We believe that FDA UIOLI is only acceptable as an absolute back-stop measure when oversubscription and buy-back (OSBB) is unable to be applied, there is significant physical congestion and there is evidence of capacity hoarding. OSBB is widely accepted as being more effective at reducing congestion than FDA UIOLI. For example, although not officially an OSBB scheme, National Grid in the UK follows the principles of OSBB at all of its entry points. National Grid can, on a discretionary basis, sell more than the baseline quantity of firm entry capacity and enter into contracts with shippers to buy back capacity for constraint management purposes. It is generally accepted that the arrangements work well and have contributed to the good functioning of the GB wholesale gas market.

The preference for OSBB was recognised by the European Commission in its 'Guidance on best practices for congestion management procedures in natural gas transmission networks' published in July 2014. The document rightly highlights the role of OSBB schemes as 'the basic instrument to prevent contractual congestion'. In observing that firm day-ahead use-it-or-lose-it (FDA UIOLI) is considerably more restrictive with respect to the use of capacity rights than OSBB, the Commission also points to the fact that FDA UIOLI 'was meant as a fall-back measure to oversubscription and buy back in case oversubscription and buy back could not deliver effectively in eliminating contractual congestion by 1 July 2016'. It has a further limiting effect. In the case of a bundled capacity IP product, the application of FDA UIOLI on one side of the IP will reduce the flexibility of the entire capacity product which is contrary to the principle of facilitating cross-border flows.

Although OSBB schemes should have been put in place across the EU as of 1st October 2013, they have not yet been applied at most interconnection points. It is imperative that implementation of OSBB takes place more broadly. The failure by TSOs to implement the preferred OSBB approach is now putting an unwarranted FDA UIOLI risk on shippers which does not seem equitable. As noted in our responses to earlier questions, a liquid secondary market for capacity, utilisation of capacity, price spreads, and the availability of interruptible capacity on a long term basis are also appropriate measures to identify and deal with contractual congestion.

**Question 4: In its latest congestion report[7], the Agency recommends clarifying the scope of criterion d) of paragraph 2.2.3.1 of the CMP GL to align it with the other congestion criteria. The current wording of criterion d) considers an IP side not congested, if capacity for at least one month was offered out of the 12 months in the preceding year's rolling monthly auction procedures. The Agency would propose amending the text so that all 12 monthly products should be offered at an IP in order for it not to be considered as contractually congested, as there is no way to test "demand exceeding offer" in auction regimes if no such product is offered. (Also, no quota applies for monthly products.)**

[7] Latest Report: ACER annual report on contractual congestion at interconnection points (period covered 2015), 3rd edition, 31.05.2016: [http://www.acer.europa.eu/Official\\_documents/Acts\\_of\\_the\\_Agency/Publication/ACER%202016%20Report%20on%20Congestion%20at%20IPs%20in%202015.pdf](http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/ACER%202016%20Report%20on%20Congestion%20at%20IPs%20in%202015.pdf)

**Do you support this recommendation? Please provide reasons.**

- Yes  
 No  
 Neutral / I don't know

**Reasons:**

No, we do not agree with this approach as it does not solve the problem. As discussed above, the definition of 'contractual congestion' needs to be rectified rather than the 'change indicators'. The definition of 'contractual congestion' aside, aligning paragraph 2.2.3.1 with the other congestion criteria as suggested would result in more IPs being defined as 'contractually congested' and potentially be obliged to implement FDA UIOLI. Given that we know congestion is often not a reality at Interconnector Points deemed to be contractually congested, this change is likely to result in an outcome that is neither accurate nor intuitive.

**Question 5: With respect to paragraph 2.2.1 of the CMP GL, the Agency recommends in its latest congestion report that the Commission clarifies**

- a) until when the Agency shall produce congestion reports (or under which conditions the reports are no longer required);**
- b) an implementation period for the FDA UIOLI mechanism, if congestion is identified at IP sides only after 1 July 2016.**

**Please provide your views on these 2 issues, including concrete suggestions and reasons.**

**Your view on a):**

Regarding the publication of congestion report, the CMP guidelines infer that these are ongoing and we believe that Acer should continue to do this based on a new definition of contractual congestion. Going forward, it may be more appropriate to include the report as a chapter within Acer's annual Market Monitoring Report rather than a stand-alone piece.

**What would be an appropriate implementation period for b):**

Regarding the implementation period, we do not believe the FDA UIOLI should be used for the reasons outlined above, and as such, do not believe an implementation period should be defined.

**Question 6: Do you think the CMP GL should set out an implementation process for the FDA UIOLI, specifying when (under which measurable conditions) to terminate the application of FDA UIOLI?**

- Yes  
 No  
 Neutral / I don't know

**Your view:**

We do not believe the FDA UIOLI should be used for the reasons outlined above. Where it has been implemented widely (e.g. Germany), there is a general consensus that it has not had a positive impact (e.g. has provided perverse incentives on shippers to submit inaccurate nominations, has been applied inconsistently at different IPs) and therefore we believe its use should be terminated wherever possible. Mainly thanks to the Third Package, liquidity of wholesale gas markets has generally seen significant improvements and competitive markets are now delivering clear benefits to consumers. Increasing the application of FDA UIOLI risks putting this success in danger - reducing re-nomination rights goes against the entire rationale of the Target Gas Model which is premised on cross-border flows

responding to real-time changes in price signals. As mentioned above it may also dis-incentivise the purchase of firm capacities and could ultimately put much-needed cross-border infrastructure at risk.

**Question 7: In its latest congestion report, the Agency also suggests to consider extending the scope of "contractual congestion" to the day-ahead timeframe between hubs (requiring the Agency to assess auction premia and the non-offer of firm DA products at a cross-zonal level), which could then also result in the mandatory application of the FDA UIOLI mechanism at IPs/VIPs/IP sides between the corresponding market areas, to promote a short-term gas market price convergence.**

**Do you support this suggestion? Please provide reasons.**

- Yes
- No
- Neutral / I don't know

**Reasons:**

We do not support this approach for the same reasons mentioned above. We would also note that rather than congestion at IPs, the main barrier to flows between hubs during this timeframe is often transportation tariffs being higher than the wholesale gas price spread which makes flowing gas economically unviable. In this respect, interruptible capacity offered at market prices (compatible with the price basis between hubs) is likely to be a good solution in such cases.

**Question 8: In your view, should the Agency assess in more depth[8] the possible existence of physical congestion at IPs? Please provide your view, reasons and concrete suggestions for further possible indicators.**

[8] To date, the Agency has used the occurrence of actual interruptions of nominated interruptible capacity as an indicator for the (temporary) existence of physical congestion.

- Yes
- No
- Neutral / I don't know
- I don't know

**Your view:**

There may be some benefit in the Agency assessing this in more detail; however, we believe that any physical congestion at IPs would be fairly easily observed, primarily through persistent price spreads between markets, a lack of available capacity / capacity achieving significant premiums at auctions and the routine curtailment of interruptible capacity. If congestion is apparent, despite the use of congestion management mechanisms (e.g. OSBB), it may be worthwhile assessing how the TSO has calculated its available capacity as some points may appear congested but are not. If investment in new physical capacity is required, it should follow the process set out in the 'incremental capacity' section of the upcoming amended CAM network code.



**Question 9: Do you have any other suggestions on how to improve the CMP GL?**

An additional way of mitigating contractual congestion would be the offer shippers a 'reset option' for stranded capacity. TSOs would enable 'stranded' capacity contracts to be returned/cancelled and made available to those Shippers seeking matching capacity. This would contribute significantly to relieving potential congestion as well as contributing to the overall functioning of the wholesale gas market.

