



## 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**

ENGIE

**\* 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:**

The real issue linked to congestion is hoarding, and therefore cannot be assessed without looking at prices. Wherever a capacity is linking two reasonably liquid hubs, the key congestion indicator should be the percentage of time when net nominations are not reflecting spot geographical spreads, once day-ahead transportations costs are taken into account. Such an indicator shall just trigger further inquiry from authorities, as there may be valid reasons for such flows to occur (e.g. transaction costs, inefficiencies, capacity mismatches that require to buy twice the same capacity...), and as indexes are always imperfect (day-ahead is just an approximation, within-day is often not liquid enough...).

Current indicators should only be used for markets where no price reference could be identified, and should only be used as hints of possible congestion, that should be validated by a local inquiry looking for a real case of hoarding, not as an automatic definition of congestion.

**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:**

Secondary market is indeed key. But the issue is that secondary market is highly illiquid, and is neither anonymous nor with a proper credit risk management. Therefore no selling of capacity on a secondary market cannot be associated with hoarding.

If interruptible capacity cannot be sold till all firm is sold out, this will practically limit the use of these capacities to the very short term, and greatly limit optimization of the use of capacity thanks to interruptible offer. Relevance of interruptible as a powerful congestion management tool will therefore be limited, in contradiction with CMP objectives. It would disqualifies interruptible capacities to be an input for a “congestion indicator” save in case in the very specific cases all capacity is sold on a very long term basis, allowing shippers to be confident they will be able to structure a supply even using interruptible capacity.

**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:**

FDA UIOLI restricts the flexibility and makes the management of existing capacity more complex, while offering a too short term and too marginal additional capacity to be of any use. Where it has been used, we challenge it had any real efficiency. Network codes should limit or even forbid, and not promote, the possibility to use such a counterproductive mechanism.

OS&BB could have been a powerful solution, but NRAs has not been willing / able to really transfer a risk to the TSO, making impossible any real implementation.

The best solution would be an anonymous secondary market, with a proper credit risk management by the TSOs, no limitation on the products proposed by the shippers, and an visibility equal to primary capacity on allocation platform.

Interruptible over-nomination is also a simple solution, efficient for the short term needs.

Solving capacity mismatches issues linked to mandatory bundling may also help.

**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:**

As recalled in Question 1, congestion indicators should be focused on hoarding, and make the link with geographical spreads. Current indicators are irrelevant and create numbers of “false positive” indications of congestion. Proposed amendment would only increase these “false positive” indications of congestion and would therefore be a step in the wrong direction.

**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):**

Instead of publishing congestion reports based on irrelevant indicators, identifying flows that does not reflect spreads in the Market monitoring Report could be a more efficient alternative.

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

FDA UIOLI should not be implemented, but forbidden.

**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:**

Any limitation of the use of FDA UIOLI is welcome.

**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:**

Any measure that could result in more application of FDA UIOLI should be avoided.

**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:**

If the aim at looking at physical congestions is to trigger investments, NC CAM incremental capacity should already tackle the issue.

Though, there could be an interest at looking more closely how technical capacity are being set, especially when there is a dynamic calculation of capacity (e.g. Germany, NL), and if these modifications of technical capacity can trigger a physical congestion.

But rather than adding a further indicator on physical congestion, there should be a much greater transparency on the process of setting these capacities, as required under Annex 3.1.2 (m) of regulation 715/2009.

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

**Contact**

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