

Response to:
ACER Public Consultation on the preliminary scoping on potential Framework
Guidelines on
Rules for Trading

Deadline: **12.05.2014**

consultation2014G03@acer.europa.eu

Introduction

Contact details:

Name: Central European Gas Hub AG (CEGH)

Type of organization: CEGH Gas Exchange (Spot & Futures Market), Operator of the Austrian VTP, Hub Operator

Contact person: Frederick Bernthaler, Head of Legal

Phone: +46 664 856 747 0

Q1: Are the topics identified the most relevant ones when it comes to Rules for Trading ("RfT") at EU level? Please specify which issue - if any - would merit further elaboration and rank the three most important Rules for Trading aspects.

CEGH views that the below mentioned list of topics regarding RfT is sufficient to address the matter of capacity trading. The indicated order of priority reflects CEGH views on this matter whereby the design of capacity products and the bundling of capacity is the issue of highest importance.

Priority (1 highest – 4 lowest):

1. Capacity products and terms and conditions of capacity contracts (limitations to free allocability and standardization) / Secondary capacity markets
2. Transparency rules
3. Virtual trading point (VTP) design/access, and hub issues
4. Licensing requirements for market participants other than TSOs

Q2: Do you agree that the key features of capacity products (besides its location, its direction and its duration) are as follows:

- CEGH views that the quality of capacity e.g. firm / interruptible is of key importance for capacity products. Therefore, this is listed as no. 1 priority for product development / design.
- In entry / exit systems the feature (quality) of firm / interruptible capacity seems of greater significance than the allocability of capacity products, the latter being in the view of CEGH of minor importance for hub trading of gas, since the concentration of liquidity at VTP(s) is a key success factor and locational products are rather important for the TSO/DSO to stabilize the gas system and not so much for trading

Priority (1 highest – 2 lowest):

1. Firmness: unconditional firm / conditional firm (e.g. depending on temperatures) / interruptible
 2. Allocability: free allocability / restricted allocability to designated points / restricted to designated points but combined with interruptible free allocability to all points including VTP
- Tariff relations between different capacity products shall reflect a market based approach but ensuring that TSOs, network users and customers have sufficient allocable products at firm or interruptible capacity as required by the system / trading activity.

Q3: Do you think that certain user categories (e.g. power plants, household suppliers, traders, gas producers, storage users etc.) have specific requirements/needs regarding capacity products? If so, which?

- CEGH observes that different customer groups have different demand, resulting in differentiated trading patterns. Since gas that is traded on hub / exchanges and subject to consumption needs to be physically transported, corresponding transportation capacity is a prerequisite for functioning wholesale markets and also to satisfy needs of gas users.
- To accommodate differentiated requirements capacity products that take into consideration these requirements (e.g. of various kinds of industry, power plants, system operators) should be made available. With regard to the ongoing discussion on the review of the Gas Target Model - that includes the question of economic efficiency of gas fired power plants - the design of tailor-made rules for gas fired power plants could be envisaged. Such rules should take into account the specific needs since the gas to power option is vital factor of the current electricity and gas market design that is also important in terms of security of supply.
- For gas portfolios and sourcing activities that span over different entry / exit zones and gas-storage(s), assorted capacity products, enabling network users to shift / transport gas according to their specific demands, have to be made available. These capacity products shall reflect firm and interruptible capacity for the needs of the network users.

- For gas fired power plants, as for any other customer trading on a hub or exchange, the risk of imbalance and corresponding negative effects as penalty payments is decisive.
- Capacity products should therefore be available to avoid situations of imbalance as far as possible. In this regard bundled capacity products play a key role and intraday-day obligations should be avoided.

Q4: Do you have experience with different levels of product firmness and allocation restrictions (i.e. different capacity designs)? Please provide examples.

- CEGH offers trading services inter alia for gas / financial products. Since capacity products are not traded by CEGH we are not evaluating different levels of product firmness and allocation restrictions.

Q5: Are different types of product features (in terms of firmness and freedom of allocation) barriers for cross-border trading? If yes, please provide an example of such a barrier. If yes, do you think that a set of “standard capacity products” in terms of quality (e.g. firmness rules, allocability) enshrined in a network code would provide a solution? Do you believe that the benefit of implementing such a solution outweighs the costs? Could you provide examples of such solutions?

- The bundling of capacity products, i.e., combined entry and exit capacity, is a key feature that enables effective cross-zonal transportation / trading of gas. For network users that engage in trading activity involving a need for transportation of gas into a neighboring entry/exit system, the availability of suitable capacity products is vital. For day-ahead gas trading also the short-term offer of capacity is key factor.
- Since capacity is a key requirement for gas trading the required products should be made available to the market and such implementation will outweigh the costs.

Q6: In your view, is the way capacity is allocated (primary market) or traded (secondary market) expected to create any problem or barrier to gas wholesale trading after the full implementation of the NC CAM? (Please differentiate in your answer between IPs covered by NC CAM and those outside its scope, e.g. LNG, storage)? If not, what outstanding barriers remain after NC CAM implementation? Please provide specific cases and examples, if possible.

- CEGH recommends that the full implementation of all network codes in European member states is to be closely observed by stakeholders. The evaluation whether or not the given requirements are met by the new Network codes should be done after and not prior to implementation. If problems / barriers in gas wholesale trading due to the current network code design occur, a swift reaction needs to be taken on EU level.

Q7: Do non-harmonised contract definitions or terms between neighboring entry-exit zones limit cross border trade? If yes, please provide examples. Do you think that equal contractual definitions of product characteristics (in terms of firmness or freedom of allocation) can be achieved by compatible contract terms alone (product description along certain parameters) or can this only be achieved by a single standard contract established at EU level?

- CEGH identifies non-harmonized contract definitions as a potential obstacle for cross border trading.
- Standard contract terms that are based on guidance from EU level could facilitate cross border capacity and commodity trading (and would be a beneficial factor for the trading of primary and secondary capacity). In this regard, the creation of good practice guidelines or similar regulatory instrument that lay down key features of standardized capacity contracts would be a possible solution.

Q7a: Considering the variety of private law regimes across EU, do you believe a single standard contract established at EU level is feasible? If yes, do you believe that the benefit of such standard contract established at EU level outweighs the costs of its implementation?

- CEGH takes the opinion that there is already a variety of solutions available to create a standard capacity contract template that meets the legal requirements within the EU and member states. The range of measures includes European legal instruments and standard contracts used for energy trading (e.g. EFET Appendices).
- The mere existence of different jurisdictions and legal frameworks in member states is no obstacle for the creation and implementation of a set of “standard capacity contracts” that provide the required legal certainty and is enforceable throughout the member states.

Q8: Have you experienced inefficiencies and risks which make it necessary to harmonise certain clauses in capacity contracts and/or contractual terms and conditions of different TSOs at EU level (given the variety of private law regimes applied across Europe)? If so, what are the inefficiencies and risks experienced that require harmonization and why?

- CEGH as exchange and hub operator is not engaged in, or counterpart to capacity contracts, and has therefore no profound experience of inefficiencies and risks originating from capacity contracts.

Q9: Assuming everything else being equal (e.g. tariffs), do you prefer:

- a) firm products with limited allocability/locational restrictions (ex-ante information on conditions of use) or
- b) interruptible products (with ex-post information on actual occurrence of interruptions)?

Capacity products shall be suitable for customer requirements. In this regard, please refer to our answers to question 3.

Q10: Given the Balancing NC implementation, which should foresee within-day obligations as an exception, do within-day standard capacity products (“rest-of-day capacity products”) create any barrier to trade?

- CEGH views that within-day obligations can hamper trading activity, since it puts a greater burden on the customers to keep their portfolio balanced in the “within day horizon”. For network users like gas-fired power plants and heavy industry, who partially react on external signals, a within day obligation can create additional costs, management effort and consequently an obstacle for trading.

Example: Due to an unforeseen intraday need for balancing energy (electricity), a gas fired power plant starts its production and has to ad-hoc purchase additional gas products (e.g., rest of day products). The existence of within-day obligation makes it difficult for the power plant operator to keep its intraday balance since the load required by the power plant and its economies (merit-order list/price might also continuously change) both due to unpredictable demand and RES generation.

Q11: Are there any differences in the legal framework/capacity contracts that undermine the concept of a bundled capacity product (treatment after allocation)? If yes, please describe the differences as well as the risk for market participants resulting from those. Please provide specific examples.

--

Q12: Are there any other obstacles that hamper the use of capacity contracts across borders in the EU?

--

Q13: Do you think that a) binding EU rules, b) non-binding guidance or c) no rules at all (awaiting the implementation of existing NCs) address the above issues best? If needed, you can differentiate between different topics.

- In CEGH's view option a) or b) should be considered as possible remedy regarding implementation of standard capacity contracts. In our view, a non-binding guidance that will be adopted by the capacity market stakeholders as "best practice" and that is endorsed and supported by TSOs and TSO Capacity Platforms) would be the most suitable solution to reach standardization of the European capacity markets.

Secondary capacity markets

Q14: Do you think that rules are needed in order to stimulate secondary trading in Europe (taking into account the facilitation of trading already in place nationally or at EU-level, including joint booking platforms as demanded by NC CAM)?

- Trading of secondary capacity should be harmonized and concentrated on regulated platforms to stimulate secondary trading activity. CEGH views that trading of secondary capacity should be an important source for capacity and that a functioning capacity market including secondary capacity will bring about further benefits to the integration of the European gas wholesale market. Secondary trading shall be made possible on a click and buy bases as far as possible minimizing administrative hurdles.
- In this regards, the full implementation of the gas NC should be taken into account when establishing the need for further action.

Q15: Do you see a need for a fully anonymized secondary capacity market (including third-party clearing) or is a bilateral capacity transfer (with consistent information to the TSO) sufficient?

- In CEGH's view, both the anonymized trading of capacity via platforms and the bilateral capacity trading have its merits. However, for the creation of liquid secondary capacity markets trading platforms have an advantage over bilateral transactions.

The merits are: increase of liquidity, one-stop shop, standard procedures, clearing possibility. Whereas, in bilateral transactions the trading of capacity is not comparably transparent and standardized. Additionally, the clearing of capacity transactions that are executed via platforms significantly increase the attractiveness of secondary trading.

Q16: Do you see the need to harmonise the handling of secondary capacity transfers to the primary market with reference to e.g. contract durations, handling, deadlines etc.?

- Capacity products should meet the network users' requirements and therefore the market should be monitored constantly to identify corresponding needs.

Q17: Are there any rules hampering secondary trading of bundled capacity products? If yes, which ones and where? (Please provide specific cases, examples.)

Q18: What would be, in your view, the most efficient way of secondary trading of capacity: a) mandatory trading on a limited number of liquid secondary platforms as for primary capacity or b) keep the current regime as is (e.g. many options, venues, etc.)?

- CEGH view that option a) is the best solution, suitable to create secondary trading of capacity products. Since a standardized, anonymous and non-discriminatory trading (and possible clearing) can be offered only via trading platforms. The creation of such platforms should be envisaged, thus taking into account experiences of recent market developments (CO2 trading, certificate trading).

Q19: Would you support additional transparency rules for secondary trading and what should, in your view, those rules focus on (e.g. reporting on transactions, potentially incl. price)?

- In CEGH view, REMIT introduces an advanced reporting regime for transactions in energy wholesale products. The application of REMIT reporting requirements to transporting capacity actions should lead to sufficient transparency in the capacity trading market.

Q20: Do you think that a) binding EU rules, b) non-binding guidance or c) no rules at all (awaiting the implementation of existing NCs) address the above issues best? If needed, you can differentiate between different topics.

- In CEGH's view, transparency requirements should be identical throughout Europe to ensure a level playing field. Therefore, the implementation of transparency requirements should be done within / mirrored to the REMIT reporting requirements.

Virtual trading point design/access and hub issues

Q21: Are there any design elements of hubs which provide a barrier to cross-border trade (e.g. independence of the hub operator from traders)? If yes, which ones? Please provide specific cases, examples.

- CEGH view that hubs should be designed to facilitate / interact with exchanged based gas trading. Therefore it is of key importance that the hub and the exchange interface without restrictions. Since the key feature of exchanged based trading is that a counterparty risk is taken over by a central counterparty (clearing house) the

interaction from the hub on the one side to the exchange / clearing house should be harmonized. Therefore the hub and the TSO should accept single sided nominations from the clearing house to fulfil transactions done on the exchange. If the single sided nomination system is not supported there is a risk of operational problems / imbalances.

- Default process: hubs shall support default processes as implemented by exchanges / clearing houses. In case of a customer default (e.g. non-payment of margins) or default of delivery (e.g. supply crisis), the close-out netting process by the clearing houses and its implementation by the hub should be supported by the hub operator.
- Statistics: within the European hubs and exchanges, the harmonization of statistical measurements should be envisaged since certain key factors amongst European hubs can hardly be compared as different statistical types of statistical measurements are used (counting, churn rate, title transfer volumes).
- Terms and conditions of hub operators shall fit to the requirements of the respective entry/exit zone (gas market model), whereby in general, terms of hub operators shall meet certain minimum requirements to safeguard customers' interests (liability, damages, arbitration). Balancing and firmness of hubs shall be based on market requirements, whereby a primary option for the balancing / firmness of a hub should be the access to the gas exchange market.
- Hubs should furthermore feature possibilities to remedy imbalances with minimum lead time and intraday obligations should only be implemented where absolutely necessary.

Q22: Are the fees (if any), the methods to calculate these fees, the general terms and conditions and/or contracts for service providers/intermediaries for transferring gas via trade notifications according to article 5 of the Balancing NC discriminatory and do they constitute a barrier to trade? If so, please state which of the elements above are problematic and which entry-exit systems are affected. Are there any other issues that create barriers to trade?

- For the time being we do not see a discriminatory behavior. The implementation deadline for the Balancing NC is October 2015. By this deadline, the NC has to be integrated into the entry / exit system of the member states. Whether or not the requirements of Art. 5 of the Balancing NC are an obstacle shall be subject to a review after the implementation by the relevant stakeholder on EU level. For the time being, the focus should be on supporting the timely implementation in all member states.

Q23: Do non-standardised formats represent a barrier for cross-border trading? If yes, do you see a need to establish a standardised data exchange format for trading of wholesale gas products to be used as interface between all potential balancing and trading venues - including key inputs¹⁴ (e.g. trading parties, time, location of trade, trading volumes and price, etc.)?

- In CEGH's view, from an operational perspective non-standardized formats can represent an obstacle to cross-border trade. The harmonization of data formats used for capacity and commodity trading should have utmost priority, taking into account

established market practices and state-of-the art development. The standardization should be based on a broad stakeholder involvement and sufficient lead time.

Q24: How could the establishment of organised market places at hubs trading platform (via VTPs) be facilitated and should the Agency foresee rules to facilitate it?

- CEGH holds the opinion that the development of organized markets is subject to the existence of sufficient offer and demand, whereby stable and predictable regulatory requirements are of key importance. Any over-regulation can be seen as an entry barrier for new trading venues and market places to emerge, since for new market participants the fulfillment of high regulatory demands is difficult in a competitive surrounding.
- The implementation of new market rules (meant to facilitate the market entry) could lead to the contrary, since energy and capacity trading is already a highly regulated environment.

Q25: Do you think that a) binding EU rules, b) non-binding guidance or c) no rules at all (awaiting the implementation of existing NCs) address the above issues best? If needed, you can differentiate between different topics.

- Please refer to Q24. In CEGH's view, option c) no rules at all (awaiting the implementation of existing NCs) address the above issues best.

Transparency rules

Q26: Do you think that contractual conditions of capacity services (incl. usage conditions) are transparent and clear enough and easy to access (taking into consideration the establishment of joint booking platforms such as PRISMA)? If not, please name the TSOs/platforms where this is not the case and evaluate it along any of these three parameters (i.e. non-transparent, unclear or difficult to access).

--

Q27: Do you consider that the contractual conditions of capacity products with limited allocability (e.g. interruptible hub access, but firm cross-border flow) are transparent and clear enough? If non-transparent and clear enough, what should be improved? (Please provide specific cases, examples.)

--

Q28: Do you have access to sufficient information on the condition(s) for interruption of a capacity service and/or its probability? If not, please specify where this is not the case.

--

Q29: Do you have sufficient information on the occurrence of the condition(s) for interruption and/or its probability? If not, please specify, where this is not the case.

--

Q30: Do you think that a) binding EU rules, b) non-binding guidance or c) no rules at all (awaiting the implementation of existing NCs) address the above issues best? If needed, you can differentiate between different topics.

--

Licensing requirements for market participants other than TSOs

Q31: Do you see a problem with regard to different licensing requirements in the EU? If yes, please name the Member State, explain the main issues and propose solutions (such as minimum requirements for licenses at EU level, etc.)

- Licensing requirements should be harmonized in all member states, since this would facilitate the Europe-wide trading activities of companies. On the contrary, if this is not the case, energy network users have to cope with considerable costs in fulfilling the various different licensing requirements. In CEGH's view, this situation should be avoided.

Q32: Do you think that a) binding EU rules, b) non-binding guidance or c) no rules at all (awaiting the implementation of existing NCs) address the above issues best

- In CEGH's view, the harmonization can only be achieved by binding EU-rules. Only such EU-regulation can ensure that market participants can rely on the legal certainty that licensing requirements are identical all over the European market and leave no room for deviating interpretation and implementation by the national regulatory authorities.
