Agency Report

Analysis of the Consultation Document on the Gas Transmission Tariff Structure

for Belgium

NRA: CREG
TSO: FLUXYS BELGIUM

5 February 2019

Contents

1. ACER conclusion

(1) The Belgian TSO for gas, Fluxys Belgium (hereafter "Fluxys"), proposes a methodology based on capacity-weighted distances (CWD) with an entry-exit split of 33%/67% and a flow-based commodity charge. In addition, it proposes the following adjustments: equalisation of tariffs for all entry points and equalisation of tariffs for all domestic exit points. The tariffs are further adjusted to consider the difference in gas quality between the high-calorific zone and the low-calorific zone. There is a 50% discount at entry points from storage and a 100% discount at exit points to storage, but no discount for entry points from LNG facilities. Additionally, Fluxys proposes adjusted tariffs for non-standard transmission services and cost-based tariffs for non-transmission services.

(2) The consultation document published by Fluxys does not contain all the information items required by Article 26(1) of the Network Code on Harmonised Transmission Tariff Structure for Gas ("NC TAR")[1]. The Agency has requested the missing information and, in addition, the full calculation model from Fluxys to complete the assessment of the proposed RPM with respect to the criteria set by Article 7 of the NC TAR. Fluxys refused to make the full calculation model available to the Agency and did not provide all the missing information, which prevented the Agency from carrying out its assessment as required by Article 27(2) of the NC TAR to the same standard as for the other tariff consultation documents analysed so far[2].

(3) The Agency, after having completed the analysis of the consultation documents pursuant to Article 27(2) of the NC TAR, concludes that:

- The consultation document does not contain all the required information as listed in Article 26(1) of the NC TAR and therefore is not compliant with this provision. It notably misses: information and details on the components for the cost allocation assessments (CAA), as required by Article 26(1)(a)(iv); a complete assessment with respect to the criteria set out in Article 7 of the NC TAR, as required by Article 26(1)(a)(v); information needed for the assessment of non-transmission services, as required by Article 26(1)(c)(ii); and, the information on the difference in the level of transmission tariffs for the same type of transmission service applicable in the prevailing tariff period and in the tariff period for which the information is published, as required by Article 30(2)(a)(i) of the NC TAR;
- The proposed RPM does not fully meet the transparency requirements set out in Article 7(a) of the NC TAR, as network users cannot change, in the simplified model provided as part of the consultation, the forecasted capacities and the proposed revenue reconciliation. This limits the ability of network users to make their own accurate forecasts of the future tariffs. In addition, the circumstances determining the duration of the tariff period are not clear, adding uncertainty in the forecast of tariffs;
- The proposed RPM seems to meet the requirements of cost-reflectivity as laid out in Article 7(b) of the NC TAR, and of no undue cross-subsidies and no discrimination as laid out in Article 7(c) of the NC TAR. This tentative conclusion is based on the proposal for a CWD-based method and the reported CAA results that are below 10%. However, the Agency has not been

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0460&from=EN

[2] Fluxys claims that the full calculation model contains business related confidential information. Nevertheless, this did not prevent Fluxys from giving the NRA access to the full calculation model.

able to assess in full the compliance with the requirements set out in the NC TAR due to the refusal of Fluxys to make available the full calculation model;
- Compliance of the proposed RPM with the requirements with respect to volume risk, as laid out in Article 7(d) of the NC TAR, and with respect to the impact of the RPM on cross-border trade, as laid out in Article 7(e) of the NC TAR, could not be assessed, as the information required to assess these requirements is not included in the consultation document;
- The requirements for setting commodity-based charges, as stated in Article 4(3) of the NC TAR, are met;
- Compliance of the proposed RPM with the requirements for non-transmission services revenue, as set out in Article 4(4) of the NC TAR, could not be assessed, as the information required to assess these requirements is not included in the consultation document.

(4) In view of the Agency's assessment of the consultation document, and in light of the requirements of the NC TAR, the Agency recommends that:
- The Commission for Electricity and Gas Regulation ("CREG"), in its final motivated decision, classify all services appropriately as transmission services or non-transmission services, and propose tariffs that are in line with the requirements of Article 4 of the NC TAR;
- CREG publish the information and the details on the components for the cost allocation assessments (CAA), including how storage discounts, conditional products and other services are taken into account in the calculation, as required by Article 26(1)(a)(iv);
- CREG publish the missing information regarding non-transmission services, as specified in Article 26(1)(c)(ii) of the NC TAR;
- CREG publish the missing information regarding the differences between prevailing tariffs and the tariffs that are under consultation, as specified in Article 30(2)(a)(i) of the NC TAR;
- CREG publish the missing information and the assessment required by Article 7 of the NC TAR with respect to volume risk, as laid out in Article 26(1)(a)(v) of the NC TAR;
- CREG publish the missing information and the assessment required by Article 7 of the NC TAR with respect to the impact of the proposed RPM on cross-border trade, as laid out in Article 26(1)(a)(v) of the NC TAR;
- Fluxys publish the simplified tariff model with the forecasted contracted capacities and the annual reconciliation as changeable parameters to meet the requirements of Article 7(a) of the NC TAR.

(5) The Agency furthermore recommends that CREG include the following missing elements in its final decision referred to in Article 27(4) of NC TAR:
- An explanation of how the missing revenues resulting from the application of storage discounts are recovered, given that no application of rescaling is mentioned in the consultation document;
- A calculation of the tariffs resulting from the application of the proposed methodology without factoring in the reconciliation of the regulatory account;
- A description of the approach to construct tariffs for the low-calorific gas entry and exit points;
- A motivation for the choice of the entry/exit split;
- An explanation on the increase of the CAA from 2020 to 2021.

(6) The Agency finds that the proposed tariff for the "Injection Transmission Service" for the tariff period 2020-2023 is not compliant with Article 6(3) of the NC TAR. The Agency understands the aim of

the 100% discount and invites CREG to consider if the policy objective to support renewable gas could be met in a different way than a discount on the entry tariff.

(7) Regarding the duration of the tariff period, the Agency remarks that tariffs are calculated for year 1 although they are extended for 4 years, adjusted for inflation. At the same time, the simplified model reports separate forecasts of the contracted capacity for each year for each point. Given that the capacity forecasts vary, the RPM would result in different tariffs for each year. By fixing the tariffs for four years based on the forecasted capacities for the first year, there may be under- or over-recoveries as the actual revenue contributions of the points are likely to be different in the subsequent years from the forecasted capacities of the first year, and the forecast error for the subsequent years is likely to be positively correlated with the length of the tariff period. These differences would be socialised via the reconciliation of revenues. Such mechanism would lead to cross-subsidies between users. The Agency recommends CREG to assess this effect in the motivated decision and to clarify the parameters and the thresholds that would lead to a change in the duration of the tariff period.

2. Introduction

(8) Commission Regulation (EU) 2017/460 of 16 March 2017 establishes a network code on harmonised transmission tariff structures for gas (NC TAR).

(9) Article 27 of the NC TAR requires the Agency to analyse the consultation documents on the reference price methodologies for all entry-exit systems[3]. This Report presents the analysis of the Agency for the transmission system of Belgium.

(10) On 8 October 2018, Fluxys forwarded the consultation documents to the Agency. The consultation was launched on 8 October 2018 and remained open until 7 December 2018. On 7 January 2019, the consultation responses and their summary were published. The Agency has taken these into consideration for this analysis. Within five months following the end of the final consultation, and pursuant to Article 27(4) of the NC TAR, CREG shall take and publish a motivated decision on all the items set out in Article 26(1).

(11) To carry out its assessment, the Agency requires information that goes beyond the publication requirements in the NC TAR. A number of bilateral exchanges to collect additional information took place between Fluxys, CREG and the Agency. Despite these exchanges, the Agency was prevented from carrying out a complete analysis of the proposed RPM (Section 4.1), as Fluxys refused to make available the complete calculation used for the derivation of the tariffs, while CREG has access to the calculation model. In the closing stages of the Agency's analysis and after the Agency had made available a draft version of this Report to CREG and Fluxys, Fluxys, through CREG, offered to show the full model to the Agency, but not to share it. The Agency noted, but could not accept the offer for late and partial access to the requested information. This is the first time in the review of the national tariff analysis that the Agency is unable to assess this information. In the case of the non-transmission services, the information provided by Fluxys was insufficient for the Agency to carry out its assessment (Section 4.3).

[3] With the exception of Article 10(2)(b), when different RPMs may be applied by the TSOs within an entry-exit zone.

Reading guide

(12) Chapter 3 presents an analysis on completeness, namely whether all the information in Article 26(1) has been published. Chapter 4 focusses on compliance, namely whether the RPM complies with the requirements set out in Article 7 of the NC TAR, whether the criteria for setting commodity-based transmission tariffs as set out in Article 4(3) of the NC TAR are met and whether the criteria for setting non-transmission tariffs as set out in Article 4(4) of the NC TAR are met. Chapter 5 includes other comments. This document contains two annexes, respectively on the Legal framework and a List of abbreviations.

3. ACER analysis: completeness

3.1 Has all the information referred to in Article 26(1) been published?

(13) Article 27(2)(a) of the NC TAR requires the Agency to analyse whether all the information referred to in Article 26(1) of the NC TAR has been published.

(14) Article 26(1) of the NC TAR requires that the consultation document be published in the English language, to the extent possible. The Agency confirms that the consultation document was published in English.

(15) The majority of the information referred to in Article 26(1) of the NC TAR has been properly published with four notable exceptions.

(16) First, the information regarding the CAA that is required by Article 26(1)(a)(iv) is incomplete, as the components of the CAA calculation and the details of these components are not published.

(17) Second, the consultation document misses information required by Article 7 of the NC TAR with respect to volume risk and cross-border trade. This information should be published according to Article 26(1)(a)(v).

(18) Third, the information with respect to non-transmission tariffs is incomplete. The consultation document does not contain the assessment against the requirements listed in Article 26(1)(c)(ii) of the NC TAR.

(19) Fourth, an explanation is missing of the changes in the reference prices from the prevailing tariff period compared to the tariff period that is the subject of the consultation. This is a requirement of the NC TAR pursuant to its Article 30(2)(a)(i). Fluxys publishes the prevailing and the proposed tariffs, but does not provide an explanation of the changes, which are significant[4]. In addition, Fluxys does not provide the tariffs calculated with the proposed RPM prior to the reconciliation of revenues. This absence prevents the assessment of the RPM independently from the reconciliation of revenues, and leaves unexplained the connection between the reconciliation of the regulatory account and the change in tariffs between 2019 and 2020, which results in a decrease of tariffs mainly to Interconnector (UK) Limited ("IUK"). In the absence of the full calculation of the RPM, the Agency could not assess these variations.

[4] The tariffs at domestic exit points remain stable, the tariffs ate entry points go up modestly, whereas the tariffs exit points decrease significantly, up to minus 72.9% in the case of the exit to IUK.

(20) These four elements should have been subject to consultation according to the NC TAR. Therefore, the fact that they are not included in the consultation document makes it non-compliant with the provisions of the NC TAR. In any case, CREG should include them as part of its motivated decision.

(21) Table 1 gives an overview of how the consultation document complies with the publication requirements.

Table 1 Checklist information Article 26(1)

Article	Information	Published: Y/N/NA
26(1)(a)	the description of the proposed reference price methodology	Yes
26(1)(a)(i) **26(1)(a)(i)(1)** **26(1)(a)(i)(2)**	the indicative information set out in Article 30(1)(a), including: • the justification of the parameters used that are related to the technical characteristics of the system • the corresponding information on the respective values of such parameters and the assumptions applied	Yes
26(1)(a)(ii)	the value of the proposed adjustments for capacity-based transmission tariffs pursuant to Article 9	Yes
26(1)(a)(iii)	the indicative reference prices subject to consultation	Yes
26(1)(a)(iv)	the results, the components and the details of these components for the cost allocation assessments set out in Article 5	Incomplete
26(1)(a)(v)	the assessment of the proposed reference price methodology in accordance with Article 7	Incomplete
26(1)(a)(vi)	where the proposed reference price methodology is other than the capacity weighted distance reference price methodology detailed in Article 8, its comparison against the latter accompanied by the information set out in point (iii)	Yes
26(1)(b)	the indicative information set out in Article 30(1)(b)(i), (iv), (v)	Yes
26(1)(c)(i) **26(1)(c)(i)(1)** **26(1)(c)(i)(2)** **26(1)(c)(i)(3)**	where commodity-based transmission tariffs referred to in Article 4(3) are proposed • the manner in which they are set • the share of the allowed or target revenue forecasted to be recovered from such tariffs • the indicative commodity-based transmission tariffs	Yes
26(1)(c)(ii) **26(1)(c)(ii(1)** **26(1)(c)(ii)(2)** **26(1)(c)(ii)(3)** **26(1)(c)(ii)(4)**	where non-transmission services provided to network users are proposed: • the non-transmission service tariff methodology therefor • the share of the allowed or target revenue forecasted to be recovered from such tariffs • the manner in which the associated non-transmission services revenue is reconciled as referred to in Article 17(3) • the indicative non-transmission tariffs for non-transmission services provided to network users	Incomplete
26(1)(d)	the indicative information set out in Article 30(2);	Incomplete.
26(1)(e) **26(1)(e)(i)** **26(1)(e)(ii)**	where the fixed payable price approach referred to in Article 24(b) is considered to be offered under a price cap regime for existing capacity: • the proposed index;	Not applicable

26(1)(e)(iii) **26(1)(e)(iv)**	• the proposed calculation and how the revenue derived from the risk premium is used • at which interconnection point(s) and for which tariff period(s) such approach is proposed • the process of offering capacity at an interconnection point where both fixed and floating payable price approaches referred to in Article 24 are proposed	

4. ACER analysis: compliance

4.1 Does the RPM comply with the requirements set out in Article 7?

(22) Article 27(2)(b)(1) of the NC TAR requires the Agency to analyse whether the proposed RPM complies with the requirements set out in Article 7 of the NC TAR. This article refers to Article 13 of Regulation (EC) No 715/2009 and lists a number of requirements to be taken into account when setting the RPM. As these overlap, in the remainder of this chapter, the Agency will take a closer look at the five elements listed in Article 7 of the NC TAR.

(23) Since the concepts of transparency, cost-reflectivity, non-discrimination, cross-subsidisation and cross-border trade are closely related[5], the Agency concludes with an overall assessment.

4.1.1 Transparency

(24) **Article 7(a)** of the NC TAR requires that the RPM aim at ensuring that network users can reproduce the calculation of reference prices and their accurate forecast.

(25) Fluxys makes publicly available on its website a simplified tariff model (in spreadsheet format), as required by Article 30(2)(b) of the NC TAR. The spreadsheet allows the users to change values for several parameters that determine the reference prices. The changeable parameters are inflation, the allowed revenue (which implicitly[6] considers the reconciliation), the entry-exit split, the discounts for entry points from storage and exit points to storage, and the discounts for the non-standard transmission product Operational Capacity Usage Commitments ("OCUC"). Instead, the model considers as non-changeable parameters the forecasted contracted capacities for entries and for exits in high-calorific gas equivalent, the CWD weights of these capacities, and the ratio of gross calorific values ("GCV ratio") for high-calorific gas (H-gas) over low-calorific gas (L-gas). The outputs include the estimated tariffs for annual entry and exit capacities for the single tariff period of the four-year regulatory period.

(26) The Agency notes that the consultation document specifies a tariff period of 4 years. According to the consultation document (p. 9), "[w]*ithin the tariff period, the tariffs of years 2, 3 and 4 are the tariffs for year 1 indexed based on Belgian CPI evolution. […] Yearly indexation within the period*

[5] The principle of cost-reflectivity is related to the principles of cross-subsidisation and non-distortion of cross-border trade. Tariffs that are fully cost-reflective do not result in any form of cross-subsidisation (and hence they do not distort cross-border trade), as they charge users for the exact costs they cause to the system. Following this reasoning, tariffs that are less cost-reflective may result in cross-subsidisation between users.

[6] The published number in the simplified model is "Revenue to be covered by Transmission Services after utilisation of the Regulatory Account". There is no information about the size of the revenue reconciliation.

will be based on real index variations between May year N-1 and April year N so that the tariffs for the next (calendar) year will be known at the time of the annual yearly auctions (1st Monday of July of each year as per CAM NC). Note that the CREG Methodology foresees that if, during the period, there is a deviation (e.g. due to differences between budgeted parameters and real parameters) between the real level of the regulatory account at end of year and the regulatory account trajectory foreseen in the tariff proposal, tariffs will be automatically adjusted (downwards or upwards)(footnotes excluded)”[7].

(27) In the view of the Agency it is unclear from the consultation document which are the parameters and threshold levels that would trigger the early end of one tariff period, and the start of a new tariff period. The start of a new tariff period opens up the possibility of changes to the tariffs that are beyond the annual indexation of tariffs that happens within a tariff period[8]. Such uncertainty regarding the effective duration of the Belgian tariff period, and thus the uncertainty regarding which parameters are considered to calculate the future tariffs, undermines the possibility for network users accurately to forecast reference prices in future years. The Agency recommends CREG to include in its final decision the conditions that would trigger a shortening of the tariff period.

(28) While network users would be able to reproduce the calculation of reference prices based on the simplified model provided and with the assumptions of Fluxys, they would not be able to forecast tariffs accurately, as required by Article 7(a), because the simplified model does not allow changing the capacity forecast input or properly to consider the revenue reconciliation. In addition, the ability to forecast tariffs is negatively affected by the uncertainty about the duration of the tariff period and the uncertainty about the set of parameters that affect future tariffs.

(29) The Agency recommends Fluxys to make the forecasted contracted capacities a changeable parameter in the simplified model and to make revenue reconciliation an explicit parameter to allow network users to input their own estimates in the model, thus allowing network users to make their own forecasts of the reference prices pursuant to Article 7(a) of the NC TAR.

(30) On the basis of the above considerations, the Agency considers that the consultation document does not meet in full the requirements of the NC TAR with respect to transparency.

4.1.2 Cost-reflectivity

(31) **Article 7(b)** of the NC TAR requires the RPM to take into account the actual costs incurred for the provision of transmission services, considering the level of complexity of the transmission network.

4.1.2.1 The proposal for a RPM based on a CWD methodology with entry-exit split of 33%/67%

(32) Fluxys proposes to use a CWD methodology with an *ex ante* entry-exit split of 33%/67% and equalisation of all entry points and of all domestic exit points. As Belgium has two separate, but connected networks to transport L-gas and H-gas, respectively, reference prices for L-gas points are first calculated for the equivalent H-gas capacity. Clustering is applied to the points

[7] The CREG methodology is available (in French and Dutch) at: https://www.creg.be/fr/publications/decision-z111011.

[8] The tariff period in Belgium covers four calendar years. Within the tariff period, the tariffs are only adjusted for inflation, whereas all the other parameters of the RPM are fixed at the forecasted levels of the first year of the tariff period.

geographically located in Zeebrugge (including the points IZT, ZPT, LNG terminal), to those located in Eynatten (Eynatten 1 and 2) and to those located in Zelzate (Zelzate 1 and 2)[9].

(33) Fluxys points out that a distance-based method satisfies the requirements of cost-reflectivity, non-discrimination and avoiding undue cross-subsidisation.

(34) Fluxys furthermore highlights that the 33%/67% entry-exit split, which is a slight change of the currently applied 30%/70%, is motivated to avoid tariff fluctuations and increases of entry tariffs that potentially could impact hub prices[10].

(35) In line with Article 9(1) of the NC TAR, Fluxys offers a 50% discount at entry points from storage and a 100% discount at exit points to storage. The consultation document does not mention rescaling, which is a way to re-allocate the lost revenues at the discounts points to the other points. Fluxys clarified that no rescaling is applied as the discount is already considered at the level of the expected revenue contribution of storage that is captured in the CWD weight[11].

(36) In line with Article 4(2) of the NC TAR, Fluxys sets separate reference prices for non-standard conditional products, such as “OCUC” or “Fix/Flex”[12]. For OCUC, it applies a discount of at least 25% to the reference price that would be obtained through the proposed RPM for standard products. For Fix/Flex the tariff is a mix of capacity-based and commodity-based fees. The treatment of non-standard products is not straightforward and therefore the Agency reflects further on these product in Section 5 at the end of this Report.

4.1.2.2 Agency conclusion on cost-reflectivity

(37) The Agency is of the view that the choice for a distance-based method is appropriate for gas systems where distance is a cost driver. Nevertheless, the Agency has not been able to complete a full assessment of the proposed RPM in relation to the requirements laid out in Article 7 of the NC TAR. This is due to the aforementioned refusal of Fluxys to provide the CWD calculation details, to the missing explanations referred to above on the significant changes in tariffs from 2019 to 2020, in particular for exit IPs, and to the missing information regarding the details of the CAA calculations.

(38) The Agency regrets the lack of cooperation by Fluxys and the fact that CREG was unable to facilitate the Agency with access to information that the Agency deemed relevant to complete its assessment of the proposed RPM. The non-compliance with the consultation requirements cannot be remedied by the missing information being published in the motivated decision to be adopted by CREG. Nonetheless, in relation to the impossibility to assess the complete tariff calculation, the Agency points out the following:

---

[9] Clustering is applied to a homogeneous group of points –either entry or exit - located within the vicinity of each other. (NC TAR, Article 3(19))

[10] The mandatory comparison pursuant to Article 8(1)(e) of the NC TAR of the proposed RPM with entry-exit split of 33%/67% vis-à-vis an RPM with 50%/50% entry-exit split only shows that in the latter case entry tariffs would be higher and exit tariffs lower, which is a trivial outcome.

[11] Bilateral meeting with CREG and Fluxys of 16 January 2019.

[12] The definition of this product is missing in the consultation document. In bilateral exchanges between Fluxys, CREG and the Agency on 4 December 2018, and 16 and 18 January 2019, Fluxys clarified that the Fix/Flex option is made for end users that have a very low utilisation of the capacity (break even at 2000h of utilisation) and can be subscribed for by all end users on the domestic market and that the price is a combination of capacity-based fees and commodity-based fees.

- The Agency recommends that CREG, in its motivated decision, explain how the missing revenues resulting from the application of storage discounts are recovered since the consultation document does not include this information. Additionally, the Agency considers that rescaling is an appropriate and transparent way of dealing with the missing revenues resulting from discounts[13].
- Tariffs resulting from the application of the proposed methodology without factoring in the reconciliation of the regulatory account are not provided as part of the consultation. This data is key to understand the proposed RPM independently of the reconciliation of historical over-recoveries. The Agency recommends CREG to include this calculation as part of the motivated decision.
- The approach to construct tariffs for the L-gas entry and exit points is not clearly explained in the consultation document. The Agency recommends CREG to clarify in its final decision the adjustments in the RPM to construct tariffs for L-gas points.

(39) In addition, in relation to the aspects that are included as part of the consultation, the Agency takes note of the principle of tariff stability that motivates Fluxys' choice of an entry-exit split of 33%/67% and recommends that CREG further motivate this element in its final decision, taking into account the impact on both domestic and cross-border points.

(40) Regarding the duration of the tariff period, the Agency remarks that tariffs are calculated for year 1 although they are extended for 4 years, adjusted for inflation. Given that the capacity forecasts vary, the RPM would result in different tariffs for each year. By fixing the tariffs for four years based on the forecasted capacities of the first year, there may be under- or over-recoveries as the actual revenue contributions of the points are likely to be different in the subsequent years from the forecasted capacities of the first year and the forecast error for the subsequent years is likely to be positively correlated with the length of the tariff period. These differences would be socialised via the reconciliation of revenues. Such mechanism would lead to cross-subsidies between users. The Agency recommends CREG to assess this effect in the motivated decision.

(41) Even though the choice of RPM seems to be in line with the principles underlying the CWD methodology as laid out in Article 8 of the NC TAR, the Agency cannot conclude that the resulting tariffs are compliant with the principle of cost reflectivity since, as indicated above, a number of key aspect are still unclear. Compliance with this requirement could therefore only be assessed once the clarifications listed above are provided. Such clarification should be included in CREG's motivated decision.

4.1.3 Cross-subsidisation

(42) **Article 7(c)** of the NC TAR requires the RPM to ensure non-discrimination and prevent undue cross-subsidisation.

[13] In a bilateral meeting with CREG and Fluxys on 16 January 2019, Fluxys explained that the RPM is built to take into account from the beginning the impact of such discounts by reducing the forecasted contracted capacities when computing the tariffs by the same ratio hence getting the right final price in one round instead of calculating an initial tariff and correcting it in a second step by rescaling. This was done to be able to provide the market with a simplified model.

4.1.3.1 Non-discrimination

(43) The Agency finds that the proposed RPM seems to meet the requirements of non-discrimination because all network users in the same circumstances pay the same tariffs stemming from the RPM for the network services.

(44) However, due to missing information on the non-standard products, such as Fix/Flex, and the refusal by Fluxys to submit the full calculation model, the Agency has been unable to complete its assessment of this requirement.

4.1.3.2 Cross-subsidisation between intra-system and cross-system users

(45) One instrument to evaluate cross-subsidisation between intra-system users and cross-system users is the cost allocation assessment (CAA, Article 5 of the NC TAR). The results for the capacity cost allocation comparison index amount to a level of 0.12% for 2020, and levels around 3% for the years 2021, 2022 and 2023. All results are well below the 10% that is stated in Article 5(6) of the NC TAR and do not need further justification.

(46) The Agency notes that Fluxys does not explain in the consultation document how conditional products and storage discounts are taken into account when conducting the CAA. Given that these products introduce a discount on tariffs, they could impact the outcome of the CAA.

(47) In addition, the Agency remarks that the CAA index levels do increase significantly from 2020 to 2021, the reasons for which are not explained in the consultation document.

(48) The Agency recommends that CREG assess the variability observed in the CAA results and provide the details of the calculation, including the manner in which conditional products and other services are taken into account.

4.1.3.3 Agency conclusion on non-discrimination and cross-subsidisation

(49) The consultation document seems to meet the requirements with respect to non-discrimination and no undue cross-subsidisation. However, the Agency has not been able to asses all aspects of compliance for the same reasons of incomplete and missing information as explained in Section 4.1.2.

(50) The Agency recommends that CREG include, in its final decision, the information related to the calculation of the CAA and an explanation of the increase of the CAA levels between 2020 and 2021, to improve the network users' understanding of the results.

4.1.4 Volume risk

(51) **Article 7(d)** of the NC TAR requires that the RPM ensure that significant volume risk related particularly to transports across an entry-exit system is not assigned to final customers within that entry-exit system.

(52) Fluxys estimates that, for the period 2020-2023, the Belgian gas system will accommodate flows of about 170-190 TWh/y for domestic consumption (approximately 40% of the total flows) and an average of about 260 TWh/y for export (60%).

(53) The consultation document does not discuss volume risk. Fluxys explained to the Agency that it mitigates volume risk by actively pursuing efficiency gains in operations and it applies a commercial policy to attract flows and to avoid shippers stepping out of their contracts[14].

(54) The Agency notes that the consultation document is missing the information to assess the legal requirements with respect to volume risk and recommends that CREG publish this information in its motivated decision.

4.1.5 Cross-border trade

(55) **Article 7(e)** of the NC TAR requires that the RPM ensure that the resulting reference prices do not distort cross-border trade.

(56) The consultation document does not discuss this criterion. Fluxys clarified to the Agency that it believes that the application of a distance-based RPM is cost-reflective and, as such, ensures that cross-border trade is not distorted[15].

(57) The Agency notes that the consultation document is missing the information to assess the requirements with respect to cross-border trade and recommends that CREG include this information in its final decision.

4.1.6 Conclusion on the compliance of the proposed RPM with the requirements of Article 7

(58) The Agency was prevented fully to assess the compliance of the proposed RPM with the requirements of Article 7 of the NC TAR due to the incomplete information in the consultation document and the refusal of Fluxys to make the full calculation model available to the Agency.

(59) The Agency finds that the RPM proposed by Fluxys in its consultation document does not meet in full the requirements of transparency.

(60) The Agency finds that the RPM seems to meet the requirements of cost-reflectivity, non-discrimination and no undue cross-subsidies, but cannot conclude on compliance with respect to these criteria.

(61) The Agency could not assess the compliance of the proposed RPM with the requirements with respect to volume risk and cross-border trade.

4.2 Are the criteria for setting commodity-based transmission tariffs as set out in Article 4(3) met?

(62) Article 27(2)(b)(2) of the NC TAR requires the Agency to analyse whether the criteria for setting commodity-based transmission tariffs as set out in Article 4(3) are met.

(63) The use of commodity-based transmission tariffs is an exception. Only part of the transmission services revenue may be recovered by commodity-based transmission tariffs. Fluxys proposes to continue the application, at all entry and exit points, of commodity-based transmission tariffs set at

[14] Bilateral meeting of 30 November 2018 with CREG and Fluxys.

[15] Bilateral meeting of 30 November 2018 with CREG and Fluxys.

0.08% of the allocated gas volumes settled at the daily Gas Price Reference that is published on the Fluxys website.

(64) Fluxys explains that these charges correspond to the variable costs of gas-powered and electric compressors for using the gas system.

(65) The required budget for transport costs is based on historic and forecasted flow costs and volumes and represent around 5%-8% of total costs to be recovered.

(66) Fluxys proposes to apply a flow-based charge to collect the commodity part of the allowed revenues. The proposed flow-based charge meets the criteria set in Article 4(3) of the NC TAR.

(67) The Agency considers the consultation document compliant in this respect.

Table 4 Criteria Article 4(3a)

Criteria	Yes/No?
levied for the purpose of covering the costs mainly driven by the quantity of the gas flow	Yes, fuel costs
calculated on the basis of forecasted or historical flows, or both, and set in such a way that it is the same at all entry points and the same at all exit points	Yes, historical and forecasted flows Yes, the same for all E/E points
expressed in monetary terms or in kind	Yes, in monetary terms

4.3 Are the criteria for setting non-transmission tariffs as set out in Article 4(4) met?

(68) Article 27(2)(b)(3) of the NC TAR requires the Agency to analyse whether the criteria for setting non-transmission tariffs as set out in Article 4(4) of the NC TAR are met.

4.3.1 Non-transmission services in the consultation

(69) Fluxys foresees to offer as main non-transmission services: the reduced pressure service, odorisation, quality conversion, Zeeplatform service, wheeling and hub services.

(70) Fluxys explains in the consultation document (p. 22) that these non-transmission services are charged following a separate pricing methodology that allocates "*to each service the relevant part of each type of the regulated costs"*. The non-transmission revenue is estimated at 21%-22% of the allowed revenue.

(71) The non-transmission revenue is reconciled as set out in Article 17(3) of the NC TAR. The over- and under-recovery of non-transmission revenue goes into the regulatory account together with the over- and under-recovery of the transmission revenue.

4.3.2 Agency conclusion on non-transmission services

(72) The Agency notes that the consultation document gives only a high-level and partial view of the non-transmission tariffs in Belgium that does not allow the Agency to assess compliance with the criteria referred to in Article 4(4) of the NC TAR.

(73) First, the consultation document includes an incomplete list of non-transmission services. Fluxys later provided the Agency with the tariff list for 2018, and a consultation document on the Fluxys Transmission Programme. Both documents did not allow to come to a complete list of services and to classify services as either transmission or non-transmission services[16].

(74) Second, neither the consultation document (see paragraph (70)), nor the documents provided subsequently and mentioned in the above paragraph, give appropriate information about the separate methodologies to derive the tariffs of the different non-transmission services.

(75) For these reasons, the Agency cannot conclude on the compliance with respect to Article 4(4) of the NC TAR. This Article sets out requirements that should be assessed for each non-transmission service separately. This assessment should be part of the final decision. An appropriate assessment is important given the large proportion of non-transmission services in the allowed revenue.

Table 5 Criteria Article 4(4) – criteria for non-transmission tariffs

Criteria	Yes/No?
(a) cost-reflective, non-discriminatory, objective and transparent	Not able to asses
(b) charged to the beneficiaries of a given non-transmission service with the aim of minimising cross-subsidisation between network users within or outside a Member State, or both	Not able to asses

5. Other remarks

5.1 Non-standard services

(76) As discussed in Section 4.1.2, Fluxys offers the non-standard services OCUC and Fix/Flex. There are two ways of dealing with a non-standard service that does not meet both criteria (a) and (b) of Article 4(1) of the NC TAR, depending on whether or not capacity and distance are cost drivers of that service.

(77) In case capacity and/or distance are cost drivers, the service should be treated as transmission service and the tariffs should be set in line with Article 6 and Article 7 of the NC TAR.

(78) In case neither capacity nor distance is a cost driver, the service should be treated as transmission service, pursuant to Article 4(1) of the NC TAR, or as non-transmission service. In the case of the latter, tariffs should be set in line with Article 4(4) of the NC TAR.

[16] In addition to the main services listed in paragraph (69), a number of other (non-transmission) services is offered based on the Transmission Tariff Overview 2018, which is available at: https://www.fluxys.com/belgium/en/Services/Transmission/TransmissionTariffs/TransmissionTariffs. Fluxys also provided the consultation document on the Transmission Programme, which is available at: https://www.fluxys.com/belgium/en/Services/Transmission/MarketConsultations/~/media/Files/Services/Transmission/ConsultationPlatform/Consultation%2031/TP%20-%20Plan%20A%20-%20EN%20-%20Ready%20for%20consultation%2031.ashx.

(79) In the case of OCUC, distance seems to be the main cost-driver. This service is thus correctly classified as transmission service and the tariffs are set in accordance with Article 4(2) of the NC TAR, which allows to consider specific conditions.

(80) In the case of the Fix/Flex service, the service is a transmission service and the proposed tariff is not compliant with the requirements of Article 7 of the NC TAR with respect to non-discrimination and undue cross-subsidies, as it offers a discounted access to the network for consumers that are directly connected to the transmission network.

(81) The Agency recommends that CREG classifies all services appropriately as transmission services or (where relevant) non-transmission services, and proposes tariffs that are in line with the requirements of the Article 4 of the NC TAR.

5.2 The alignment of the requirements of the NC TAR and other policy goals

(82) Fluxys proposes a new “Injection Transmission Service” on domestic points for injection of bio-methane into the transmission network, with a tariff that is the same as the entry tariff for IPs. To support the development of renewable gas, Fluxys proposes not to apply the tariff, which is equivalent to granting a 100% discount, during the 2020-2023 tariff period.

(83) The Agency notes that the proposed discount for the Injection Transmission Service is not compliant with Article 6(3) of the NC TAR.

(84) The Agency understands that the proposed discount intends to support a national policy objective in a transparent way and for a limited time, and invites CREG to consider other instruments that achieve the same goal and that are compliant with the NC TAR.

5.3 Regulatory account

(85) The Agency notes the intention of Fluxys and CREG to reduce the regulatory account of approximately 350 million euro to a targeted maximum of 100 million euro by the end of the tariff period 2020-2023.

(86) There is a considerable impact of this significant reconciliation on the cost-reflectivity of the tariffs and therefore on cross-subsidies between past and current or future network users.

(87) The Agency highlights that according to Article 17 of the NC TAR, under- and over-recoveries should be minimised and significant differences between the tariffs of two consecutive tariff periods should be avoided. Additionally, Article 20(3) of the NC TAR requires that the reconciliation aims at reimbursing to the transmission system operator the under-recovered amount and at returning to the network users the over-recovered amount.

Annex 1: Legal framework

(88) Article 27 of the NC TAR reads:

1. Upon launching the final consultation pursuant to Article 26 prior to the decision referred to in Article 27(4), the national regulatory authority or the transmission system operator(s), as decided by the national regulatory authority, shall forward the consultation documents to the Agency.

2. The Agency shall analyse the following aspects of the consultation document:
(a) whether all the information referred to in Article 26(1) has been published;
(b) whether the elements consulted on in accordance with Article 26 comply with the following requirements:

(1) whether the proposed reference price methodology complies with the requirements set out in Article 7;
(2) whether the criteria for setting commodity-based transmission tariffs as set out in Article 4(3) are met;
(3) whether the criteria for setting non-transmission tariffs as set out in Article 4(4) are met.

3. Within two months following the end of the consultation referred to in paragraph 1, the Agency shall publish and send to the national regulatory authority or transmission system operator, depending on which entity published the consultation document, and the Commission the conclusion of its analysis in accordance with paragraph 2 in English.
The Agency shall preserve the confidentiality of any commercially sensitive information.

4. Within five months following the end of the final consultation, the national regulatory authority, acting in accordance with Article 41(6)(a) of Directive 2009/73/EC, shall take and publish a motivated decision on all items set out in Article 26(1). Upon publication, the national regulatory authority shall send to the Agency and the Commission its decision.

5. The procedure consisting of the final consultation on the reference price methodology in accordance with Article 26, the decision by the national regulatory authority in accordance with paragraph 4, the calculation of tariffs on the basis of this decision, and the publication of the tariffs in accordance with Chapter VIII may be initiated as from the entry into force of this Regulation and shall be concluded no later than 31 May 2019. The requirements set out in Chapters II, III and IV shall be taken into account in this procedure. The tariffs applicable for the prevailing tariff period at 31 May 2019 will be applicable until the end thereof. This procedure shall be repeated at least every five years starting from 31 May 2019.

(89) Article 26(1) of the NC TAR reads:

1. One or more consultations shall be carried out by the national regulatory authority or the transmission system operator(s), as decided by the national regulatory authority. To the extent possible and in order to render more effective the consultation process, the consultation document should be published in the English language. The final consultation prior to the decision referred to in Article 27(4) shall comply with the requirements set out in this Article and Article 27, and shall include the following information:
(a) the description of the proposed reference price methodology as well as the following items:

(i) the indicative information set out in Article 30(1)(a), including:

(1) the justification of the parameters used that are related to the technical characteristics of the system;

(2) the corresponding information on the respective values of such parameters and the assumptions applied.

(ii) the value of the proposed adjustments for capacity-based transmission tariffs pursuant to Article 9;

(iii) the indicative reference prices subject to consultation;

(iv) the results, the components and the details of these components for the cost allocation assessments set out in Article 5;

(v) the assessment of the proposed reference price methodology in accordance with Article 7;

(vi) where the proposed reference price methodology is other than the capacity weighted distance reference price methodology detailed in Article 8, its comparison against the latter accompanied by the information set out in point (iii);

(b) the indicative information set out in Article 30(1)(b)(i), (iv), (v);

(c) the following information on transmission and non-transmission tariffs:

(i) where commodity-based transmission tariffs referred to in Article 4(3) are proposed:

(1) the manner in which they are set;

(2) the share of the allowed or target revenue forecasted to be recovered from such tariffs;

(3) the indicative commodity-based transmission tariffs;

(ii) where non-transmission services provided to network users are proposed:

(1) the non-transmission service tariff methodology therefor;

(2) the share of the allowed or target revenue forecasted to be recovered from such tariffs;

(3) the manner in which the associated non-transmission services revenue is reconciled as referred to in Article 17(3);

(4) the indicative non-transmission tariffs for non-transmission services provided to network users;

(d) the indicative information set out in Article 30(2);

(e) where the fixed payable price approach referred to in Article 24(b) is considered to be offered under a price cap regime for existing capacity:

(i) the proposed index;

(ii) the proposed calculation and how the revenue derived from the risk premium is used;

(iii) at which interconnection point(s) and for which tariff period(s) such approach is proposed;

(iv) the process of offering capacity at an interconnection point where both fixed and floating payable price approaches referred to in Article 24 are proposed.

(90) Article 7 of the NC TAR reads:

The reference price methodology shall comply with Article 13 of Regulation (EC) No 715/2009 and with the following requirements. It shall aim at:

a) enabling network users to reproduce the calculation of reference prices and their accurate forecast;

(b) taking into account the actual costs incurred for the provision of transmission services considering the level of complexity of the transmission network;

(c) ensuring non-discrimination and prevent undue cross-subsidisation including by taking into account the cost allocation assessments set out in Article 5;

(d) ensuring that significant volume risk related particularly to transports across an entry-exit system is not assigned to final customers within that entry-exit system;
(e) ensuring that the resulting reference prices do not distort cross-border trade.

(91) Article 13 of Regulation (EC) No 715/2009 reads:
1. Tariffs, or the methodologies used to calculate them, applied by the transmission system operators and approved by the regulatory authorities pursuant to Article 41(6) of Directive 2009/73/EC, as well as tariffs published pursuant to Article 32(1) of that Directive, shall be transparent, take into account the need for system integrity and its improvement and reflect the actual costs incurred, insofar as such costs correspond to those of an efficient and structurally comparable network operator and are transparent, whilst including an appropriate return on investments, and, where appropriate, taking account of the benchmarking of tariffs by the regulatory authorities. Tariffs, or the methodologies used to calculate them, shall be applied in a nondiscriminatory manner.
Member States may decide that tariffs may also be determined through market-based arrangements, such as auctions, provided that such arrangements and the revenues arising therefrom are approved by the regulatory authority.
Tariffs, or the methodologies used to calculate them, shall facilitate efficient gas trade and competition, while at the same time avoiding cross-subsidies between network users and providing incentives for investment and maintaining or creating interoperability for transmission networks.
Tariffs for network users shall be non-discriminatory and set separately for every entry point into or exit point out of the transmission system. Cost-allocation mechanisms and rate setting methodology regarding entry points and exit points shall be approved by the national regulatory authorities. By 3 September 2011, the Member States shall ensure that, after a transitional period, network charges shall not be calculated on the basis of contract paths.

2. Tariffs for network access shall neither restrict market liquidity nor distort trade across borders of different transmission systems. Where differences in tariff structures or balancing mechanisms would hamper trade across transmission systems, and notwithstanding Article 41(6) of Directive 2009/73/EC, transmission system operators shall, in close cooperation with the relevant national authorities, actively pursue convergence of tariff structures and charging principles, including in relation to balancing.

(92) Article 4(3) of the NC TAR reads:
3. The transmission services revenue shall be recovered by capacity-based transmission tariffs.
As an exception, subject to the approval of the national regulatory authority, a part of the transmission services revenue may be recovered only by the following commodity-based transmission tariffs which are set separately from each other:
(a) a flow-based charge, which shall comply with all of the following criteria:
(i) levied for the purpose of covering the costs mainly driven by the quantity of the gas flow;
(ii) calculated on the basis of forecasted or historical flows, or both, and set in such a way that it is the same at all entry points and the same at all exit points;
(iii) expressed in monetary terms or in kind.
(b) a complementary revenue recovery charge, which shall comply with all of the following criteria:
(i) levied for the purpose of managing revenue under- and over-recovery;
(ii) calculated on the basis of forecasted or historical capacity allocations and flows, or both;

(iii) applied at points other than interconnection points;

(iv) applied after the national regulatory authority has made an assessment of its cost-reflectivity and its impact on cross-subsidisation between interconnection points and points other than interconnection points.

(93) Article 4(4) of the NC TAR reads:

4. The non-transmission services revenue shall be recovered by non-transmission tariffs applicable for a given nontransmission service. Such tariffs shall be as follows:

(a) cost-reflective, non-discriminatory, objective and transparent;

(b) charged to the beneficiaries of a given non-transmission service with the aim of minimising cross-subsidisation between network users within or outside a Member State, or both.

Where according to the national regulatory authority a given non-transmission service benefits all network users, the costs for such service shall be recovered from all network users.

Annex 2: List of abbreviations

Acronym	Definition
ACER	Agency for the Cooperation of Energy Regulators
NRA	National Regulatory Authority
TSO	Transmission System Operator
EC	European Commission
EU	European Union
NC TAR	Network code on harmonised transmission tariff structures for gas
IP	Interconnection Point
RPM	Reference Price Methodology
CWD	Capacity Weighted Distance
CAA	Cost Allocation Assessment
RAB	Regulated Asset Base
CREG	Commission for Electricity and Gas Regulation
H-gas	High-calorific gas
L-gas	Low-calorific gas
IUK	Interconnector (UK) Limited
OCUC	Operational Capacity Usage Commitments
GCV	Gross calorific value