DECISION

by the Executive Board

E-CONTROL

8 June 2015

GZ:	**V KOR G 16/14**
	Oversubscription and buy-back scheme at transmission level

1. Legal basis

Point 2.2.2 of Annex I to Regulation (EC) No 715/2009 on conditions for access to the natural gas transmission networks (CMP Guidelines) states that TSOs are to propose an incentive-based oversubscription and buy-back scheme to the regulatory authority and implement it after regulatory approval has been obtained. However, point 2.2.3(6) foresees that the regulatory authority carry out an evaluation of the relationship with the oversubscription and buy-back scheme pursuant to point 2.2.2 on interconnection points where a firm day-ahead use-it-or-lose-it mechanism (FDA UIOLI) in accordance with paragraph 3 is applied, which may result in a decision by the national regulatory authority not to apply the provisions of point 2.2.2 at those interconnection points. Such a decision shall be notified, without delay, to the Agency for the Cooperation of Energy Regulators (ACER) and the European Commission.

On 17 September 2013, the E-Control Executive Board decided to make use of the provisions in point 2.2.3(6) of the CMP Guidelines and refrain from introducing an oversubscription and buy-back scheme. This decision made reference to the statements by the TSOs, which considered introduction of an oversubscription and buy-back scheme not necessary given the existing FDA UIOLI mechanism pursuant to section 11 *Gas-Marktmodell-Verordnung* (Gas Market Model Ordinance) 2012. In addition, there had not been enough time to gather the requisite data for computing a solid risk profile for the TSOs offering additional capacity.

2. Evaluation

On 19 November 2014, the regulatory authority asked the TSOs (GCA and TAG) to evaluate the following aspects:

- the effects of the FDA UIOLI;

- the status of contractual congestion at cross-border interconnection points; and
- the additional capacity that could be offered as part of an oversubscription scheme and a calculation of the related risk profile.

The TSOs conducted such an evaluation.

In its statement of 5 December 2014, GCA explains that on average less than 10% of the additional capacity offered due to FDA UIOLI at relevant GCA points between 1 October 2013 and 1 December 2014 had in fact been booked. Of the 16 cross-border interconnection points in the GCA network, only the exit point Mosonmagyaróvár showed contractual congestion (until 1 October 2016). About 37% of the capacity surrendered pursuant to point 2.2.4 of the CMP Guidelines had been re-sold, mainly on a short-term basis. GCA also successfully offered interruptible capacity; 100% of this type of capacity had been marketed, but less than 10% on average had actually been booked between 1 October 2013 and 1 December 2014. For the exit point Mosonmagyaróvár, there had been demand during this time for about 1.5% of the long-term and 9% of the short-term capacity. GCA concluded that though they were in principle open to the introduction of an oversubscription and buy-back scheme, their current offer was able to fully serve demand on the market, which is why an oversubscription and buy-back scheme seemed unnecessary.

TAG, in its statement of 15 December 2014, referred to the short-term and long-term UIOLI mechanisms and capacity surrender pursuant to the CMP Guidelines which were already in place (and some of which had already been realised ahead of the given deadline as part of an early implementation initiative). During the period of observation, 0% of the capacity resulting from FDA UIOLI had been allocated at the Baumgarten entry point, and 4.95% had been allocated at the Arnoldstein exit point. Of the capacity surrendered, none had been re-marketed. There had been no contractual congestion at TAG's cross-border interconnection points during the period under observation. Given that there had been firm (freely allocable) capacity available at all points, that the existing congestion management procedures offered effective solutions to address potentially high capacity demand, and that additional capacity had not been allocated to a significant extent, TAG concluded that it would not be necessary to introduce an oversubscription and buy-back scheme. Even so, should this be considered further, TAG was available to discuss options.

In addition to the analyses of contractual congestion submitted by the TSOs, E-Control considers that there is a need for an assessment of the situation in line with point 2.2.3(1) of the CMP Guidelines. The provisions contained therein state that there is contractual congestion if demand at auctions exceeds offer,

a) for at least three firm capacity products with a duration of one month or
b) for at least two firm capacity products with a duration of one quarter or
c) for at least one firm capacity product with a duration of one year or more or
d) where no firm capacity product with a duration of one month or more has been offered.

Applying this definition, there was contractual congestion at the cross-border interconnection points with Germany (Oberkappel and Überackern) in 2014 (s. Annex 1).

At each of the cross-border interconnection points, at least one firm capacity product with a duration of one month or more was offered, so the criterion under point 2.2.3(1)(d) was not fulfilled at either interconnection point.

The existence of contractual congestion pursuant to point 2.2.3(1) entails a requirement to introduce FDA UIOLI from 1 July 2016. Given that FDA UIOLI has also been introduced in Germany and that there is contractual congestion pursuant to point 2.2.3(1) at the cross-border interconnection points with Germany, it is sensible to continue applying FDA UIOLI at these points.

E-Control shares the TSOs' view that FDA UIOLI has positively contributed to eliminating contractual congestion. This contribution has also been confirmed as part of the case studies[1] contained in ACER's Implementation Monitoring Report on Congestion Management Procedures in 2014.[2]

E-Control generally strives to secure smooth functioning of congestion management procedures with the adjacent regulatory authorities at all cross-border interconnection points. The coordinated implementation of congestion management procedures is based on the European Commission's guidance on the CMP Guidelines, issued last year.[3] The guidance provides for a pragmatic approach to enable compatibility between FDA UIOLI and oversubscription and buy-back schemes on the two sides of a cross-border interconnection point.

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[1] Case Studies: Oberkappel (DE -> AT), Arnoldstein/Tarvisio (AT -> IT) and Mosonmagyarovar (AT -> HU).

[2] S. the ACER Implementation Monitoring Report on Congestion Management Procedures in 2014, 13 January 2015, publicly available at http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/ACER%20CMP%20Implementation%20Monitoring%20Report%202014.pdf.

[3] Commission Staff Working Document on Guidance on best practices for congestion management procedures in natural gas transmission networks [SWD(2014) 250 of 11.7.2014].

If an oversubscription and buy-back scheme were to be introduced, low liquidity of capacity offers at many cross-border interconnection points and potential non-market behaviour of system users could incur higher costs for TSOs having to buy back capacity if the buy-back auction was not capped. To reduce the risk for TSOs, it is good practice to introduce caps on auction premiums, thereby limiting the potential costs for TSOs in buying back capacity. This could of course lead to a situation where the buy-back auction cap is reached while without prompting system users to offer sufficient capacity; the TSO would then need to apply pro rata cuts to firm capacity booked by system users. In effect, an oversubscription and buy-back scheme would in this scenario convert firm capacity into interruptible capacity.

3. Evaluation of comments

The draft decision not to introduce an oversubscription and buy-back scheme was sent to the regulators of all neighbouring member states and to the market participants. They had the opportunity to submit comments between 27 March 2015 and 24 April 2015. As part of this consultative process, EFET, E.ON Global Commodities SE and EconGas GmbH made use of this opportunity.

EFET, in their statement, underline the advantages of an oversubscription and buy-back scheme, which in their view ensures fair and efficient risk distribution. For this reason, they cricitise the decision not to introduce such a scheme in Austria. In addition, EFET point to the misleading definition of contractual congestion in Regulation (EC) No 715/2009. They hold that the congestion at the Austria-Germany cross-border interconnection points Oberkappel and Überackern could just as well be considered physical. There was, however, contractual congestion at the cross-border interconnection point Arnoldstein/Tarvisio, given that the day-ahead auctions of 4 and 5 February 2015 resulted in a premium even though only 69% of the technical capacity was nominated on 4 February, and 72% on 5 February.
In response to EFET's comments, the authority points out that the definition of contractual congestion is part of the body of law currently in force and, pursuant to point 2.2.3(1) of the CMP Guidelines, forms the basis for the compulsory introduction of FDA UIOLI from 1 July 2016. Even so, the authority agrees with EFET concerning the potential existence of physical congestion in addition to contractual congestion at the cross-border interconnection points with Germany. This issue is addressed in Austria's coordinated network development plan. Concerning EFET's point on contractual congestion at the Aroldstein/Tarvision cross-border interconnection point, the authority recalls that about half of the capacity offered in the day-ahead auction of 4 and 5 February 2015 resulted from the application of FDA UIOLI. We

conclude that FDA UIOLI has greatly contributed to increasing the day-ahead capacity on offer, even though there is no contractual congestion in accordance with point 2.2.3(1) of the CMP Guidelines at this cross-border interconnection point. The authority cannot confirm EFET's assumption that application of an oversubscription and buy-back scheme in this situation would have resulted in an increased offer of day-ahead capacity.

In their statement, E.ON Global Commodities SE agree with E-Control in the assessment that, with the exception of the cross-border interconnection points to Germany, the capacity on offer was sufficient to meet demand at most auctions. Against this background, they propose that an oversubscription and buy-back scheme be substituted for FDA UIOLI. E.ON Global Commodities SE also point out that Austria and Germany are the only countries currently applying FDA UIOLI; this situation made it impossible to offer additional bundled monthly or quarterly capacity.

Concerning the comments brought by E.ON Global Commodities SE, the authority points to the ACER Congestion Monitoring Report 2014.[4] According to this report, only one TSO in the EU (GTS) actually offers monthly capacity at contractually congested cross-border interconnection points (on top of day-ahead capacity) due to application of an oversubscription and buy-back scheme. E.ON Global Commodities SE's complaint therefore lacks practical relevance: the Austrian cross-border interconnection points are either not contractually congested (i.e. the capacity currently on offer is sufficient) or the adjacent system operators do not offer additional monthly and quarterly capacities (beyond day-ahead) from the oversubscription and buy-back scheme.

EconGas in their statement generally agree with the decision not to introduce an oversubscription and buy-back scheme. To minimise the deployment of measures from the CMP Guidelines, they propose two things. First, interruptible capacity should in any case be offered once the auctions for firm capacity have been held, regardless of the latter's outcome. Second, non-bundled capacity should be offered even once the CAM NC has come into force.

In reaction to the EconGas statement, the authority finds that it goes beyond the scope of the present decision and should be handled elsewhere.

[4] ACER annual report on contractual congestion at interconnection points in 2014, 29 May 2015, http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/20150529_ACER%202015%20Report%20on%20Congestion%20at%20IPs%20in%202014.pdf

4. Decision

Based on the above considerations, the E-Control Executive Board decides not to introduce an oversubscription and buy-back scheme pursuant to point 2.2.2(6) of Annex I to Regulation (EC) No 715/2009 for the time being.

This decision will be notified to ACER and the European Commission and published.

Walter Boltz	Martin Graf
Executive Director	Executive Director

Annex1: Contractual congestion pursuant to point 2.3.3(a-c) at primary capacity auctions on PRISMA in 2014 [number of incidents]

IP name	TSO 1	Direction 1	TSO 2	Direction 2	Product			Product/s runtime	Unsuccessful requests (kWh/h)	Type of capacity
					Month	**Quarter**	**Year**			
Oberkappel	Open Grid Europe (DE)	Exit	Baumgarten Oberkappel Gasleitungsgesellschaft (AT)	Entry	**4**			05.14; 06.14; 07.14; 08.14	13,249,195	bundled freely allocable c.
Überackern SUDAL (AT)	Gas Connect Austria (AT)	Entry			**4 freely allocable (+3 interruptible)**			10.14 (x2); 11.14 (x2); 12.14; 01.15 (x2)	1,216,000 (freely allocable); 420,000 (interruptible)	non-bundled freely allocable; non-bundled interruptible