



# **REASONING BEHIND THE OPINION ON THE NETWORK CODE ON CAPACITY ALLOCATION MECHANISMS FOR THE EUROPEAN GAS TRANSMISSION NETWORK**

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# Reasoning

## I. General considerations

ENTSOG officially submitted the Network Code on Capacity Allocation Mechanisms (NC CAM) to the Agency on 6 March 2012, with 3 accompanying documents:

- A letter from ENTSOG's President to the Agency's Director and to the Energy Commissioner, in which, notably, ENTSOG reiterates its advice to remove the so-called "sunset clause" from the Network Code;
- An "Analysis of ENTSOG Decisions for the CAM Network Code" which explains, where deemed necessary, the rationale for certain decisions made during the preparation of the Network Code on CAM, including where relevant a short analysis of the issue at stake;
- An "Explanatory Note", which seeks to clarify technical issues and to improve understanding of the Network Code on CAM.

According to article 6(7) of the Gas Regulation the Agency shall provide a reasoned opinion to ENTSOG on the Network Code. However, the accompanying documents to the Network Code were considered with attention and helped to understand the provisions of the Network Code at a technical level.

### ***A. Process of elaboration of the Framework Guidelines and Network Code***

As a preliminary remark it must be underlined that between January 2011, when the Commission invited ENTSOG to elaborate a Network Code on CAM (based on ERGEG's pilot Framework Guidelines), and August 2011 when the Commission reiterated its invitation based on the Agency's Framework Guidelines, ENTSOG has worked on the Network Code on CAM without having final views on some issues dealt with in the future Framework Guidelines.

Consequently this Network Code has been developed in parallel to the corresponding Framework Guidelines in line with the wishes of stakeholders, to facilitate the implementation of the 3<sup>rd</sup> package

The Agency congratulates ENTSOG for the efficiency of its work in this particular and unique context.

Four "Stakeholders Joint Working Sessions" (SJWS) were organized from April until May 2011, allowing ENTSOG to release a draft Network Code on CAM in June 2011 for public consultation.

From July to November 2011, additional workshops were organized on specific topics such as tariffs, auction design and bundling of existing capacity contracts.

A second public consultation was organized in October 2011, with the objective of refining some proposals in the draft Network Code.

In January 2012, a last workshop was held to present the final Network Code to stakeholders and a "Stakeholder Support Process" was launched to collect final views, and to assess the level of support for the Network Code.

The Agency takes note of the unanimous support from stakeholders of the process used by ENTSOG to develop the Network Code on CAM. The Agency encourages ENTSOG to continue running open and responsive processes, with the same high degree of stakeholder engagement when developing future Network Codes.

***B. Specificities of the review process carried out by the Agency***

During the three-month period referred to in Article 6(7) of the Gas Regulation, the Agency has been in constant and regular contact with ENTSOG to gain a common understanding of each provision of the Network Code. ENTSOG has been collaborative and has provided useful clarifications regarding the choices made.

The Agency has also worked with independent consultants who have carried out an analysis of the Network Code, focusing on the auction design and on capacity products. As well as a preliminary assessment of compliance of the draft Network Code with the Framework Guidelines and an analysis of currently implemented auctions, the consultants have provided useful recommendations for possible improvements of the Network Code in some technical areas. The consultant's report also includes an evaluation of an auction simulation exercise carried out with Agency participation, on a network model with three Interconnection Points.

The Gas Regulation offers the Agency the possibility to consult the relevant stakeholders during the three-month period referred in Article 6(7) of the Gas Regulation. However, the Agency decided not to carry out such a consultation, considering the extensiveness and frequency of previously performed consultations and workshops, the overall high degree of compliance of the Network Code with the Framework Guidelines, the explanations given by ENTSOG on the most critical provisions of the Network Code, and the additional detailed technical issues recently raised by some stakeholders which may require another stakeholder consultation.

## II. Compliance Check of the Network Code with the Framework Guidelines on Capacity Allocation Mechanisms

The detailed analysis of the compliance of the Network Code with the corresponding Framework Guidelines in this document is organised as follows: for each of the three chapters of the Framework Guidelines (general provisions, capacity services and capacity allocation), the compliance of each topic / subsection of the Framework Guidelines is assessed against the corresponding / related provision(s) of the Network Code, taking the general objectives as set out in the Framework Guidelines section 1.1 into account. This topic-wise evaluation is carried out and structured in the following manner:

- A) Extracts of the Framework Guidelines with corresponding provisions of the Network Code<sup>1</sup>;
- B) A summary of ENTSOG's analysis and reasoning for its decisions where necessary, using ENTSOG's public documentation and further feedback, explanations, and results of bilateral discussions and meetings between the Agency and ENTSOG;
- C) The Agency's position; and
- D) The Agency's conclusion and recommendations where necessary to ensure compliance.

### 1. General provisions

In this section, the provisions assessed concern the scope and the conditions of application of the Network Code. They also include the adaptation of existing contracts, communication procedures, and stakeholder involvement. Even if most of the Network Code provisions are compliant with the Framework Guidelines, other provisions may not be, for example the exemption on the application to new technical capacity which is foreseen in the Network Code.

#### *a) Application of the Network Code*

<b>Relevant part of the Framework Guidelines</b>	<b>Relevant articles of the Network Code</b>
[1.2] The rules in these Framework Guidelines apply to cross-border interconnection points, irrespective of whether they are physical or virtual, between two or more Member States as well as to interconnections between adjacent entry-exit-systems within the same Member State, insofar as the points are subject to booking procedures by users. Exit points to end	Article 2.1: The rules of this Network Code shall apply to cross-border Interconnection Points as well as interconnections between adjacent entry-exit systems within the same member state, insofar as the points are subject to booking procedures by Registered Network Users. The provisions of this Network Code shall not apply to the capacity allocation issues with

<sup>1</sup> Non-exhaustive, including only, as stated, the relevant or important parts of the Network Code corresponding to the extract from the Framework Guideline.

<p>consumers and distribution networks, entry points to supply-only networks, entry points from LNG terminals and production facilities, and entry/exit points to or from storage facilities are not subject to these Framework Guidelines.</p> <p>[1.2] These Framework Guidelines, and the Network Code(s) developed on their basis, shall apply to all existing capacity as calculated by Transmission System Operators, including capacity being made available by capacity increase via enhanced capacity calculation, oversubscription and capacity surrendered by shippers. It also applies to all capacity under existing capacity contracts after they expire or as provided in Section 2.4.2, as well as to capacity acquired by shippers and sold on booking platforms, as described in Section 3.3.</p> <p>[1.2] <u>Section 3</u> of these Framework Guidelines does not apply to new capacity allocated via open season procedures, apart from capacity which remains unsold after it has been initially offered via an open season procedure. It is recommended that processes for determining incremental capacity, i.e. capacity to be made available above the prevailing level of existing technical capacity, are consistent with the provisions of these Framework Guidelines.</p>	<p>regard to exit points to end consumers and distribution networks, entry points to supply-only networks, entry points from LNG terminals and production facilities, or entry/exit points to or from storage facilities.</p> <p>Article 2.2: This Network Code shall apply to all Technical Capacity at Interconnection Points. Where relevant it shall also apply to Additional Capacity.</p> <p>Article 1.2: ‘Additional Capacity’ means any capacity that transmission system operators may make available at their discretion in accordance with any relevant incentives to offer further capacity, including applicable overbooking procedures, beyond Technical Capacity.</p> <p>Article 2.1: [...] New infrastructure referred to in Article 36 of Directive 2009/73/EC is exempt from the provisions of this Network Code.</p> <p>Articles 2.3: Articles 4, 6, 7 and 8 of this Network Code shall not apply to new Technical Capacity allocated via open season procedures, or other procedures for allocating new Technical Capacity, apart from capacity which remains unsold after it has been initially offered via such processes.</p> <p>Article 5.1 (1): On both sides of an Interconnection Point all firm capacity shall be offered as Bundled Capacity, in so far as there is available firm capacity. New capacity as set out in article 2.3 is not covered by this article.</p>
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## **The Agency's Position**

The wording used in the Network Code is similar to that of the Framework Guidelines when referring to the interconnection points included in the scope of application.

The Network Code specifies that it applies to all Technical capacity, which is in line with the objectives of the Framework Guidelines. However, taking into account the definition of “additional capacity” in the recently amended annex I to Regulation (EC) No 715/2009, ENTSOG is recommended to ensure consistency with the definition contained in the Network Code.

The Network Code foresees that new capacity made available by Transmission System Operators is exempted from the application of the bundling requirement (article 5.1.1) and of the reservation of capacity (article 2.3) whereas the Framework Guidelines only states that new capacity is exempted from section 3 on capacity allocation, to allow for the allocation of new capacity possibly through a different mechanism than the auction for allocating existing capacity. Consequently, other sections of the Framework Guidelines apply to both existing and new capacity.

Considering that new capacity made available by Transmission System Operators ultimately becomes existing capacity, the Agency considers that the scope of exemption foreseen in the Network Code is too wide and should be restrained to the use of the allocation mechanism and other provisions mentioned in section 3 of the Framework Guidelines. More precisely, the Agency believes that new capacity made available by Transmission System Operators shall be offered as bundled products since this provision is necessary to achieve the objective of progressive bundling of all technical (existing) capacity set out in the Framework Guidelines. In addition, the breakdown of capacity products of different duration needs to be applied to new capacity as well, with the aim of avoiding long-term congestion and developing short-term cross-border trading. The Agency considers that such amendments to the Network Code would not pre-empt the result of the current work on the allocation of incremental capacity.

### **Conclusion:**

**The Network Code is compliant on this aspect, with the exception of the provisions dealing with its application to new capacity. The Agency recommends ENTSOG to amend the Articles 2(3) and 5.1(1) in the sense that the respective provisions shall also apply to new capacity in order to ensure compliance with the Framework Guidelines' Section 1.2, paragraph 3.**

***b) Adaptation and implementation***

<b>Relevant part of the Framework Guidelines</b>	<b>Relevant articles of the Network Code</b>
<p>[1.3] The Network Code(s) shall provide that Transmission System Operators amend all relevant clauses in capacity contracts and/or relevant clauses in general terms and conditions relating to the allocation of capacity at relevant interconnection points, as defined in Section 1.2, in accordance with the terms of the Network Code(s). The relevant clauses shall be amended within nine months after entry into force of the Network Code(s). This requirement shall apply regardless of whether the relevant contracts or general terms and conditions provide for such an amendment. This should be without prejudice to the provisions in Section 2.4.2.</p> <p>Upon expiry of transportation contracts the relevant capacity provisions shall not be subject to tacit extension.</p>	<p>Article 10.1: Transmission system operators shall adapt relevant national terms and conditions to the extent affected by this Network Code within nine months of this Network Code entering into force and be endorsed by the relevant national regulatory authority. The coming into effect of the rules shall comply with the Implementation Period set forth in article 10.2.</p> <p>Article 10.2: Subject to article 10.1, for the implementation of the systems stemming from the provisions set out in this Network Code, including but not limited to technical aspects, an additional transitory period of 18 months shall apply.</p>

**The Agency's position**

The Network Code provides the implementation procedure requested in the Framework Guidelines. Regarding the transitory period of 18 months, the Agency takes the view that a more ambitious period could be set, considering the existence of pilot projects and taking into account the nine months implementation time to amend all relevant clauses in capacity contracts and/or relevant clauses in general terms and conditions relating to the allocation of capacity at relevant interconnection points.

**Conclusion:**

**The Network Code is compliant on this aspect with the Framework Guidelines.**

**c) Standardised content of transmission contracts**

<b>Relevant part of the Framework Guidelines</b>	<b>Relevant article of the Network Code</b>
[1.4] The Network Code(s) shall define the standardised content of transmission capacity contracts and of general terms and conditions for capacity allocation and capacity services.	Article 2.4: This Network Code sets out the minimum requirements that shall be implemented by transmission system operators through their Capacity Contracts.

**Analysis and ENTSOG's argumentation**

Despite its article 2.4, the Network Code does not define the standardised content of transmission contracts. The Network Code is for example silent on credit status of network users and on liability rules. ENTSOG argues that differences in the national legal frameworks make it difficult to elaborate such standardised content of transmission contracts.

**The Agency's position**

The Agency considers this aspect does not affect the implementation of the capacity allocation mechanisms. The Network Code defines standardised capacity services and a standardised capacity allocation mechanism. However, the Network Code does not set out a fully standardised capacity contract. The Agency therefore asks ENTSOG to analyse whether a full standardisation can be implemented in the future.

**Conclusion:**

**The Network Code is non-compliant on this aspect. The Agency acknowledges that, at this stage, it is difficult to elaborate standardised contracts. ENTSOG is asked to provide to the Agency an assessment of whether a full standardisation can be implemented in the future, taking into account the current differences in the national legal frameworks and the development of Framework Guidelines and Network Codes in other areas. This assessment shall specify which elements of transmission contracts can or cannot be standardised and provide reasons for that when submitting the amended Network Code. ENTSOG is also asked to submit a timeline to the Agency on how they will proceed with the work.**



**d) Standard communication procedures**

Relevant part of the Framework Guidelines	Relevant article of the Network Code
<p>[1.4] The Network Code(s) shall define standard communication procedures that are applied by Transmission System Operators to exchange information with network users. Coordinated information systems and compatible electronic on-line communications shall be used particularly for capacity booking and transfers of capacity rights between network users.</p> <p>[1.5] The Network Code(s) shall define a timetable to implement common communication procedures between Transmission System Operators which are necessary to comply with the requirements of the Network Code(s).</p>	<p>Article 3.2: Standardisation of communication</p> <p>1) To ensure information exchange with network users, particularly for reservation of capacity, transfers of capacity rights, planning day-to-day network operation and information on potential congestion, transmission system operators shall coordinate the implementation of standard communication procedures, coordinated information systems and compatible electronic on-line communications such as shared data exchange formats and protocols, as well as agreed principles as to how this data is treated.</p> <p>2) Standard communication procedures shall include those particularly relating to Registered Network Users' access to the transmission system operator(s)' auction system or a relevant platform and the review of auction information provided. The timing and content of the data to be exchanged shall be compliant with the provisions set out in this Network Code, particularly article 4.</p> <p>3) The standard communication procedures adopted shall have an implementation plan and duration of applicability, which shall be in line with the development of booking platform(s) as set out in article 8 of this Network Code. The procedures shall ensure confidentiality, including of commercially sensitive information.</p>

**Analysis and ENTSOG's argumentation**

The Network Code does not specify technical aspects of communication, including e.g. data format and data exchange protocols. This is acknowledged in the document "Analysis of ENTSOG's choices". The main reason for this, as stated by ENTSOG, is that this would go beyond the level of detail appropriate for a Network Code.

**The Agency's position**

The Agency acknowledges the arguments provided by ENTSOG, and takes the view that the Network Code provision requires ENTSOG to develop detailed technical provisions on communication procedures. Considering the limited timeframe to elaborate the Network Code, the Agency takes the view that these detailed provisions can be elaborated by ENTSOG at a later stage, in order to meet

the objective of the Framework Guidelines. An amendment of the Network Code is therefore not necessary on this point.

**Conclusion:**  
  
**The Network Code is compliant on this aspect.**

***e) Transmission System Operator cooperation***

Relevant part of the Framework Guidelines	Relevant article of the Network Code
<p>[1.5] The Network Code(s) shall set out that Transmission System Operators cooperate with adjacent Transmission System Operators and shall specify the procedures to:</p> <ul style="list-style-type: none"> <li>• harmonise, coordinate and bundle capacity services and implement common service procedures;</li> <li>• establish virtual interconnection points and set up common capacity allocation procedures, including their timing;</li> <li>• coordinate their maintenance operations affecting interconnection points subject to these Framework Guidelines in order to optimise network access.</li> </ul>	<p>Article 5.1 : Adjacent transmission system operators shall jointly offer Bundled Capacity products (...) 8) Adjacent system operators shall establish a joint Nomination procedure for Bundled Capacity, providing Registered Network Users with the means to nominate the flows of their Bundled Capacity via a single Nomination</p> <p>Article 5.1 (10): Where two or more Interconnection Points connect to the same two adjacent transmission systems, the adjacent system operators concerned shall offer the available capacities at the Interconnection Points at one Virtual Interconnection Point</p> <p>Article 3.1 (1): Where maintenance of a pipeline or part of a transmission network has an impact on the amount of capacity which can be offered at Interconnection Points, the respective transmission system operators shall fully cooperate with their adjacent transmission system operator(s) regarding their respective maintenance plans to minimize the impact on potential gas flow and capacity at an Interconnection Point. The exchange of data between the respective transmission system operators shall be integrated in their respective Interconnection Agreement.</p>
<p>[1.5] In order to maximise available capacity, the Network Code(s) shall set out how adjacent Transmission System Operators exchange information when planning day-to-day network</p>	<p>Article 3.3 (3): Adjacent transmission system operators shall exchange relevant information with the aim of coordinating the results of their capacity calculations to maximise Technical</p>

<p>operation, including forecast entry and exit flows as well as the availability of network components and steering decisions for the technical use of physical interconnection points including those, which are combined in virtual interconnection points. They shall also exchange information on potential congestions on their respective networks and on the use of congestion management procedures.</p>	<p>Capacity.</p> <p>Article 3.2 (1): To ensure information exchange with network users, particularly for reservation of capacity, transfers of capacity rights, planning day-to-day network operation and information on potential congestion, transmission system operators shall coordinate the implementation of standard communication procedures, coordinated information systems and compatible electronic on-line communications such as shared data exchange formats and protocols, as well as agreed principles as to how this data is treated.</p>
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### The Agency's Position

The Network Code is non-compliant with the Framework Guidelines regarding the issue of what specific information has to be exchanged to ensure inter-TSO cooperation. The Framework Guidelines provides a list of specific elements to be shared between adjacent Transmission System Operators, e.g. entry and exit flow forecasts, availability of network components, and potential congestion. In the Network Code, these elements are only explicitly mentioned as to be shared with the network users. With respect to Transmission System Operators, the Network Code only addresses the principle of exchanging information without providing any detail.

The technical management of interconnections requires Transmission System Operators to exchange some technical information. This should generally be defined in an interconnection agreement. However, such agreements are not yet mandatory and may not include the specific details set out in the Framework Guidelines. Precisely in order to avoid possible discrepancies and regulatory gaps, the Framework Guidelines (Section 1.5) require that a minimum level of information to be exchanged between Transmission System Operators is defined in the Network Code, irrespective of and complementary to the interconnection agreements. As ENTSOG did not provide any further justification as to why it needed to deviate from this provision, and for the reasons stated above, the term "relevant" information in the Network Code should still be further specified in order to comply with the Framework Guidelines.

### Conclusion:

**The Network Code is non-compliant on this aspect. With respect to the information to be exchanged between Transmission System Operators, the Framework Guidelines are more specific than the Network Code. ENTSOG should amend the Network Code by elaborating the information to be exchanged between Transmission System Operators in order to comply with the Framework Guidelines (including at least the specific pieces of information listed in the Framework Guidelines' Section 1.5, last paragraph).**

**f) Capacity calculation**

<b>Relevant part of the Framework Guidelines</b>	<b>Relevant article of the Network Code</b>
[1.5] The Network Code(s) shall set out how Transmission System Operators cooperate with regard to capacity calculation and maximisation.	Article 3.3 (3): Adjacent transmission system operators shall exchange relevant information with the aim of coordinating the results of their capacity calculations to maximise Technical Capacity.

**Analysis and ENTSOG's argumentation**

Regarding capacity calculation, the Network Code reflects only partially the requirements of the Framework Guidelines. This is acknowledged in the document "Analysis of ENTSOG's choices". The main reason for this, as stated by ENTSOG, is that a single capacity calculation method would not be optimal since the structure and characteristics of the grids vary widely across the EU. ENTSOG considers that the overall target to the benefit of the network users should be a high level of transparency and appropriate incentives for the Transmission System Operators, rather than imposing a harmonised capacity calculation method equally over all European networks.

**The Agency's position**

The Agency takes the view that the Network Code sets out the minimum requirements regarding the requirement of Transmission System Operators cooperation on capacity calculation, assuming the relevant information is exchanged between the Transmission System Operators as set out above. However, for a deeper analysis see pages 16-18 on the determination of joint capacity to be offered by Transmission System Operators.

**Conclusion:**

**The Network Code is compliant with the Framework Guidelines.**

**g) Stakeholder involvement**

Relevant part of the Framework Guidelines	Relevant article of the Network Code
<p>[1.6] The Network Code(s) shall provide that stakeholders are consulted so that the market’s needs and conditions are considered before decisions are made. Where detailed decisions have to be taken, the Network Code(s) shall set out that stakeholder consultations are undertaken before decisions are made with regard, at least, to the following elements:</p> <ul style="list-style-type: none"> <li>• the breakdown of capacity services and the percentage of available capacity to be set aside for firm short-term services, in accordance with Section 2.3;</li> <li>• any detailed aspect of the capacity allocation methodology used at each interconnection point, which is not precisely defined in the harmonised design of the standard allocation mechanism, pursuant to Section 3.</li> </ul>	<p>Article 4.1 (7) : The exact proportion of capacity to be set aside in relation to article 4.1 (6) shall be subject to a stakeholder consultation, alignment between transmission system operators and approval by national regulatory authorities at each Interconnection Point in accordance with article 9.</p> <p>Article 9.1: This Network Code aims at the highest possible degree of harmonisation across Europe, especially with regard to the provisions of the Framework Guideline and the Regulation. However, in case essential elements for the purpose of a functioning capacity allocation mechanism are beyond the scope of this Network Code or in excess of the rules set out in, such elements shall be decided at a cross-border level. The respective decision making shall be carried out via a stakeholder consultation involving the respective parties at this Interconnection Point.</p> <p>Article 9.2: Decisions referred to in article 9.1 shall include the following, but are not limited to:</p> <ul style="list-style-type: none"> <li>(a) the exact level of capacity reserved for products with a duration of less than or equal to one quarter beyond the 10% requirement;</li> <li>(b) the applied time reference of the booking unit;</li> <li>(c) further detailed specifications of the auction design; and</li> <li>(d) introduction of an appropriate incentive regime with associated methodologies.</li> </ul>

### **The Agency's Position**

The Framework Guidelines requires stakeholder consultation for decisions regarding the breakdown of capacity services, as well as all detailed aspects of the capacity allocation methodology not defined in the harmonised design.

The Network Code provides for a high degree of harmonisation with regard to the auction design for the allocation of capacity and specifies that stakeholders should be consulted on the issues covered by the Framework Guidelines. However, it also specifies that there should be consultation to introduce an appropriate incentive regime (Article 9.2 (d)). This is not covered by the Framework Guidelines, but rather refers to the introduction of incentives regimes to introduce overbooking and buy-back procedures (as covered by the amended Annex I to Regulation (EC) No 715/2009), which are to be approved by the relevant National Regulatory Authorities. Although acknowledging that a consultation on the incentive regime - when it will have an effect on cross-border capacity offer - has merits, there is no reason to explicitly include this in the Network Code. Therefore the Network Code is not in line with the Framework Guideline on this aspect.

#### **Conclusion:**

**The Network Code is non-compliant on this aspect. The Framework Guidelines does not deal with incentives. Article 9.2 (d) shall be deleted.**

## 2. Capacity services

Section 2 of the Framework Guidelines sets out the conditions for capacity services, referring to a set of standardised firm and interruptible products, a common gas-day, a booking unit expressed in energy units per unit of time, cross-border capacity products, as well as the establishment of virtual interconnection points. The Network Code is in line with the Framework Guidelines on most of these aspects. However, some requirements that are set out below are not in line.

### a) Capacity Services

Relevant part of the Framework Guidelines	Relevant article of the Network Code
<p>[2] The Network Code(s) shall set out how Transmission System Operators determine the firm and interruptible capacity they jointly offer at each interconnection point.</p> <p>The Network Code(s) shall require that Transmission System Operators offer firm and interruptible capacity at any interconnection point in both directions;</p> <p>at unidirectional points, backhaul capacity shall be offered at least on an interruptible basis.</p> <p>The published available firm capacity shall be</p>	<p>The Network Code does not contain a section on how to determine capacity in the sense of how to calculate capacity.</p> <p>Article 3.3 (1): The maximum Technical Capacity at all relevant points referred to in article 18 (3) of the Regulation shall be made available to Registered Network Users, taking into account system integrity and efficient network operation.</p> <p>Article 4.1 (2): At all Interconnection Points the same auction design shall apply. The relevant auction processes shall be started simultaneously for all concerned Interconnection Points as far as reasonably possible. Each auction process, relating to a single Standard Capacity Product, shall allocate capacity independently of every other auction process.</p> <p>Article 4.1 (5): For a given auction, the availability of the relevant Standard Capacity Products shall be communicated in accordance with articles 4.4 to article 4.8 and according to the Auction Calendar.</p> <p>Articles 4.4(6), 4.5(6), 4.6(5) and 4.7(7) set out the capacity to be offered at interconnection points.</p> <p>Article 6.1 (3): At unidirectional Interconnection Points where Technical Capacity is offered only in one direction according to articles 4.4 to 4.8 of this Network Code, capacity shall be offered in the other direction at least on an interruptible basis</p>

<p>binding on the Transmission System Operators.</p> <p>The Network Code(s) shall ensure that the capacity offered is expressed in energy units per unit of time.</p> <p>The offer and use of separate capacity for transit purposes shall be forbidden. That means that capacity used for transit purposes by shippers shall not be treated differently than capacity used for domestic purposes.</p>	<p>Article 4.3: The capacity offered shall be expressed in energy units per unit of time. The following units shall be used: kWh/h or kWh/d. In case of kWh/d a flat flow rate over the Gas Day is assumed.</p> <p>Not directly mentioned in Network Code, but Article 4.1(2) At all Interconnection Points the same auction design shall apply. The relevant auction processes shall be started simultaneously for all concerned Interconnection Points as far as reasonably possible. Each auction process, relating to a single Standard Capacity Product, shall allocate capacity independently of every other auction process.</p>
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**Analysis and ENTSOG’s argumentation**

The Framework Guidelines requires the Network Code to set out how Transmission System Operators determine the capacity they jointly offer. An implied requirement of this section is a harmonised method of capacity calculation to be included in the Network Code.

According to ENTSOG’s “Analysis of ENTSOG’s choices” document, “A harmonised C[apacity]C[alculation] method would hamper possible evolutions in individual networks to the cost of the network users’ flexibility to obtain the maximum capacity each network could deliver under differentiated simulation approaches.” However, the Network Code sets out that each Transmission System Operator offer the maximum Technical Capacity at all relevant points referred to in article 18 (3) of the Regulation.

The Network Code states that firm and interruptible capacity services are offered at all Interconnection Points in both directions, as the same auction mechanism is used at all Interconnection Points, regardless of their direction. Furthermore, the Network Code clarifies that for unidirectional points, backhaul capacity (i.e. capacity in the other direction) is offered at least on an interruptible basis. The firm and interruptible products are offered either in kWh/h or kWh/d.

The published capacity as referred to in the respective formula in the Network Code is binding for the Transmission System Operators.



### **The Agency's position**

Although the Network Code does not describe a methodology for the definition of capacity jointly offered (in the sense of a calculation methodology), it is compliant with the Framework Guidelines as it ensures that Transmission System Operators offer the maximum capacity. In combination with the requirement to offer bundled capacity, the maximisation principle requires a close cooperation between Transmission System Operators to fulfil this requirement. ENTSOG's argument that individual networks provide the flexibility to deliver maximum capacity is not shared by the Agency. Nonetheless, the Network Code is in line with the aim of cooperating to offer the maximum amount of capacity.

The Network Code sets out that the same auction design shall be used at all Interconnection Points, starting simultaneously, and allocating capacity independently from other auction processes. This is in line with the Framework Guidelines demanding that capacity used for transit purposes by shippers shall not be treated differently than capacity used for domestic purposes.

The Network Code applies to all technical capacity at Interconnection Points. Furthermore, it specifies that "where relevant it shall also apply to Additional Capacity". It needs to be noted that the definition of "additional capacity" has to be consistent with the amended congestion management guidelines. The Network Code also states that "transmission system operators shall notify network users about the amount of Technical Capacity to be offered for each year for the upcoming annual yearly capacity auction. In addition the transmission system operators will notify network users whether any Additional Capacity may be made available". The second sentence is not needed since the Network Code applies to all technical capacity. Additional capacity going beyond the technical capacity can be offered by Transmission System Operators. In this sense the Network Code is consistent with the congestion management guidelines. However, it needs to be ensured that the offer of additional capacity and information on availability of additional capacity does on the one hand not upset the auction mechanism and, on the other, not hamper the offering of additional capacity by Transmission System Operators.

The Network Code is compliant with the Framework Guidelines as regards the offer of firm and interruptible products in both directions, the offer of backhaul capacity, and the applied booking unit in energy units per time. However, ENTSOG should consider offering backhaul capacity on a longer term according to market demand. Furthermore, the Network Code, also not directly mentioning the wording of the Framework Guidelines, ensures that there is no different treatment of capacity used for domestic or for transit purposes, as the same auction mechanism is applied independently at all Interconnection points.

<p><b><u>Conclusion:</u></b></p>
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<p><b>The Network Code is compliant with the Framework Guidelines.</b></p>
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**b) Firm capacity services**

Relevant part of the Framework Guidelines	Relevant article of the Network Code
<p>[2.1] The Network Code(s) shall define a small set of standardised firm capacity services of different durations and starting dates, which cover market needs. The determination of the set of standardised products shall be consulted on. The set of standardised firm capacity services which are proposed for consultation must include yearly, quarterly, monthly, daily and intraday products.</p> <p>The standardisation is based on a daily capacity product's duration from 5:00 to 5:00 UTC/GMT, or any other time period harmonised across the EU as defined by European Network of Transmission System Operators for Gas.</p> <p>The same set of services shall be offered at every interconnection point.</p> <p>The capacity services' design shall aim at developing competitive gas markets. It shall regularly be subject to proper consultation with network users.</p>	<p>Article 4.2:</p> <p>1) The following Standard Capacity Products shall be defined: yearly, quarterly, monthly, daily and Within-day.</p> <p>2) Yearly Standard Capacity Products shall be the capacity, which may be applied for, in a given amount, by a Registered Network User for all Gas Days in a particular gas year (starting on the 1<sup>st</sup> of October).</p> <p>3) Quarterly Standard Capacity Products shall be the capacity, which may be applied for, in a given amount, by a Registered Network User for all Gas Days in a particular quarter (starting on the 1<sup>st</sup> of October, 1<sup>st</sup> of January, 1<sup>st</sup> of April or the 1<sup>st</sup> of July respectively).</p> <p>4) Monthly Standard Capacity Products shall be the capacity, which may be applied for, in a given amount, by a Registered Network User for all Gas Days in a particular calendar month (starting on the 1<sup>st</sup> Gas Day of each month).</p> <p>5) Daily Standard Capacity Products shall be the capacity, which may be applied for, in a given amount, by a Registered Network User for a single Gas Day.</p> <p>6) Within-day Standard Capacity Products shall be the capacity, which may be applied for, in a given amount, by a Registered Network User from a start time within a particular Gas Day until the end of the same Gas Day.</p> <p>Article 1.2 (j): 'Gas Day' means the period from 5:00 to 5:00 UTC for winter time and from 4:00 to 4:00 UTC when daylight saving is applied.</p> <p>Article 4.1(2): At all Interconnection Points the same auction design shall apply. [...]</p> <p>Article 9.1: This Network Code aims at the highest possible degree of harmonisation across Europe, especially with regard to the provisions of the Framework Guidelines and the Regulation. [...] The respective decision making shall be carried out via a stakeholder consultation involving the respective parties at this Interconnection Point.</p>

### **Analysis and ENTSOG's argumentation**

ENTSOG consulted on the set of standardised firm capacity services during the drafting of the Network Code in two consultations, and presented different options during the Stakeholder Joint Working Sessions.

In the draft Network Code, ENTSOG proposed as the retained option for long term capacity allocation to use an annual process to auction quarterly products. This proposal was chosen from several options presented in the Launch Document due to preferences expressed by network users during the Stakeholder Joint Working Sessions held in April and May 2011. In the formal consultation, however, the majority of respondents requested the offer of annual capacity products for the long term. In response to the market's preferences, ENTSOG integrated a yearly product in the final Network Code.

ENTSOG evaluated the different policy options for the set of standard capacity products and decided to offer yearly products for up to 15 years ahead and quarterly products in the annual quarterly auction. The reason for this choice according to ENTSOGs "Analysis of ENTSOG decisions" document is that it "Meets demand of the market for a yearly product while maintaining the option to purchase quarterly products for profiling."

The definition of the gas day follows the Framework Guidelines. ENTSOG did not propose a different, but harmonised timing, which was also not demanded by stakeholders in the formal consultation, except for one that favoured the gas day to be aligned with the electricity day (i.e. calendar day)<sup>2</sup>.

Regular market consultation on the capacity services' design as required by the Framework Guidelines is not explicitly covered in the Network Code. However, the Network Code sets out stakeholder consultations are used for "decisions relating to provisions beyond minimum requirements of this Network Code".

### **The Agency's Position**

Although there is no explicit reference to the regularity of market consultations on the capacity services' design, the Network Code has been developed by using regular market consultations. In case of a change of the capacity services' the Network Code ensures that stakeholder consultations are used. Article 26 of ENTSOG's rules of procedure set out the procedure to follow for consultations. The Network Code is in line with the objectives of the Framework Guidelines on this aspect.

As regards the requirement to design the capacity services offered with the aim to develop competitive gas markets, the Agency follows ENTSOGs argumentation that the different capacity services chosen, including yearly, quarterly, monthly, daily and within-day capacity services, lead to the fulfilment of the requirement. Therefore, the product structure as defined in the Network Code is in line with 2.1 of the Framework Guidelines.

<b><u>Conclusion:</u></b>
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<b>The Network Code is compliant with the Framework Guidelines.</b>
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<sup>2</sup> Cf. CAM NC – report on analysis of consultation responses, p.28, Ref.: CAP0173-11

**c) Interruptible capacity services**

Relevant part of the Framework Guidelines	Relevant article of the Network Code
<p>[2.2] The Network Code(s) shall set out how Transmission System Operators align interruptible capacity services at every interconnection point in both directions.</p> <p>Adjacent Transmission System Operators shall implement standardised procedures, including the definition of interruption lead times, to ensure that interruptions take place in a coordinated and standardised manner.</p> <p>The Network Code(s) shall define the possible reasons for interruptions, classes of interruptibility and the procedures, including sequencing where appropriate, adopted in the case of interruptions.</p> <p>The Network Code(s) shall entitle registered network users to submit nominations on an interruptible basis at any time within day. This entitlement shall not restrict the allocation of firm capacity by Transmission System Operators.</p>	<p>Article 6 Interruptible Capacity, especially:</p> <p>Article 6.1. (5): To the extent offered, the same Standard Capacity Products for firm capacity shall also apply for interruptible capacity, in terms of duration of the products.</p> <p>Article 6.2:</p> <p>1) Interruptible capacities shall have minimum interruption lead times, on which adjacent transmission system operators shall decide jointly.</p> <p>2) The default minimum interruption lead time shall be two hours (next hour bar + 2 hours), unless the adjacent transmission system operators agree on a different lead time.</p> <p>Article 6.4 Defined sequence of interruptions Article 6.5 Reasons for interruptions Transmission system operators shall include reasons for interruptions either directly in their interruptible Capacity Contracts or in the general terms and conditions that govern these contracts. Reasons for interruptions can include but are not limited to pressure, temperature, flow patterns, use of firm contracts, maintenance, up- or downstream constraints, public service obligations and capacity management deriving from congestion management procedures.</p> <p>Article 6.1 (7): Within-day firm capacity shall be offered via the auction procedure described in article 4.8. Within-day interruptible capacity shall be allocated via an over-nomination procedure. Over-nomination means the entitlement of every Registered Network User, providing they fulfil minimum requirements for submitting Nominations, to request capacity on an interruptible basis at any time within day by submitting a Nomination such that the total of his Nominations is higher than his contracted capacity</p>

### **Analysis and ENTSOG's argumentation**

According to ENTSOG's "CAM NC – draft code supporting document" and feedback from users at the third Stakeholder Joint Working Session interruptible capacity remains a valuable product, but it is expected that its value and role are likely to decrease in future. This is due to the application of congestion management measures, which are likely to free up more firm capacity at short durations. By making greater amounts of short term firm capacity available, the probability of interruption is increased. According to ENTSOG the impact of these changes on existing long term interruptible contracts will need to be dealt with under national law and regulation, and is not covered in the Network Code. Therefore, the Network Code does not contain a provision on classes of interruptibility. Where it is offered, interruptible capacity (including firm within-day) will be sold by auctions, in line with users' preference for a consistent allocation methodology across different capacity products. For the requirement to submit nominations on an interruptible basis at any time, please refer to the analysis below on Capacity allocation point d), pages 45-46.

### **The Agency's position**

The Network Code does not define "classes of interruptibility". The Agency takes into account the arguments provided by ENTSOG and notes that classes of interruptibility are closely related to the respective transmission systems as well as to the implementation and use of congestion management procedures.

On the other aspects required by the Framework Guidelines, the Network Code is compliant. However, as regards the interruption lead time, although being compliant, the Agency takes the view that any deviation from the default lead time as defined in the Network Code should be duly justified and subject to National Regulatory Authorities' approval.

### **Conclusion:**

**The Network Code is compliant with the Framework Guidelines. However, Article 6.2(2) of the Network Code sets out the minimum interruption lead times for interruptible capacity, while, at the same time, giving adjacent Transmission System Operators the possibility to agree on a different lead time. This Article should be amended to include the requirement for a duly justification and approval by the relevant National Regulatory Authorities for any downward deviation from the default minimum interruption lead time, as such a deviation would negatively influence shipper's flexibility and is strongly related to nominations/re-nominations timing.**

**d) Breakdown and offer of capacity services**

Relevant part of the Framework Guidelines	Relevant article of the Network Code
<p>[2.3] The Network Code(s) shall set out the way in which the breakdown of available firm capacity between the different long- and short-term capacity services is determined.</p> <p>At least 10 per cent of the available firm capacity at each interconnection point shall be set aside for firm capacity services with a duration of less than one quarter. The amount of capacity for each capacity service shall be aligned between adjacent Transmission System Operators and be subject to review by National Regulatory Authorities.</p> <p>The Network Code(s) shall set out the procedures followed by Transmission System Operators to offer all available capacity in a transparent and non-discriminatory manner as long- and short-term firm capacity services and as interruptible capacity services. The Transmission System Operators shall offer the firm capacity available which includes:</p> <ul style="list-style-type: none"> <li>• any remaining firm capacity not previously allocated;</li> <li>• any capacity from previous allocations surrendered by capacity holders; and</li> <li>• any unused capacity released through congestion management procedures.</li> </ul>	<p>Article 4.1 (6): An amount at least equal to 10% of the Technical Capacity at each Interconnection Point shall be set aside for firm capacity services with a duration of less than or equal to one quarter, provided that the available capacity, at the time this Network Code comes into force, is equal to or greater than the proportion of Technical Capacity to be set aside. If the available capacity, at the time this Network Code comes into force, is less than the proportion of Technical Capacity to be set aside, the whole of any available capacity shall be set aside for firm capacity services with a duration of less than or equal to one quarter. [...]</p> <p>Article 4.1(7): The exact proportion of capacity to be set aside in relation to article 4.1 (6) shall be subject to a stakeholder consultation, alignment between transmission system operators and approval by national regulatory authorities at each Interconnection Point in accordance with article 9.</p> <p><i>In conjunction with the Formulae to calculate capacity to be offered as provided in articles 4.4 6) + 4.5 6) + 4.6 5) + 4.7 7) + 4.8 8)</i></p> <p>Article 4.4(3): The auction process shall offer capacity for the upcoming 15 years, that is, each yearly Standard Capacity Product from one up to 15 years.</p>

**Analysis and ENTSOG’s argumentation**

The Network Code deviates from the Framework Guidelines on two points:

- The Network Code considers a proportion of the technical capacity (subject to availability) to be set aside while the Framework Guidelines considers a proportion of the available capacity. ENTSOG justified this choice<sup>3</sup> arguing that setting aside a proportion of the available capacity would result in very low levels of capacity being offered in shorter duration auctions at some Interconnection Points especially in the early years of the new regime and that it would be

<sup>3</sup> Cf. p.9 “CAM NC – decision analysis”, Ref. CAP0216-11

unclear at what point in time the level of available capacity is assessed creating an implementation problem.

- The Network Code considers setting aside capacity for firm capacity services with a duration of less than or equal to one quarter, while the Framework Guidelines refers to firm capacity services with a duration of less than one quarter. ENTSOG made this choice to ensure that capacity will be available in the form of a quarterly product, which stakeholders have indicated they would find valuable, and that capacity is released sufficiently far ahead of flow to enable new entrants to gain and use capacity and existing network users to balance their portfolios. ENTSOG is aware of the deviation from the text of the Framework Guidelines but considers being in line with its spirit, because of the “exceptional circumstances under which the CAM Framework Guidelines was produced (the Agency was created and the Framework Guidelines produced once work on the Network Code had started) and the effect that these circumstances had on the precise drafting of the Framework Guidelines”<sup>4</sup>.

Next to these literal deviations, the Framework Guidelines do not set a specific period for which capacity can be offered. ENTSOG proposed to offer capacity up to 15 years ahead in the “Launch Documentation for the CAM NC process”. The period proposed was argued to strike a balance between the needs of users needing long-term capacity bookings and those concerned about the implications of long term contracts with respect to capacity hoarding and market entry. ENTSOG’s consultation showed that 4 respondents requested an even longer period, while 8 were supportive of 15 years and 4 felt that it was too long.

Furthermore, ENTSOG notes in its “Launch Document” that the adoption of a consistent application of long term and short term definition will be necessary when specifying the availability of capacity for each auction. According to Regulation (EC) No 715/2009, Art. 2 defines “long term” as a service with a duration longer or equal to 1 year. “Short term” is defined as a service with a duration of (strictly) less than 1 year.

ENTSOG concluded that the definition is difficult to apply when using standard products, as the Network Code defines, in line with 2.1 of the Framework Guidelines, standard capacity products that can be combined at booking time to shape different possible durations up to 15 years. ENTSOG therefore assumed that any combination of products with a total duration of up to 12 months will be considered as short-term. Any combinations of products at booking time leading to a possible total duration of more than 1 year are considered as long-term by ENTSOG<sup>5</sup>.

### **The Agency’s position**

The Agency’s Framework Guidelines differ from the revised ERGEG pilot Framework Guidelines, which stated that “At least 10 percent of the available firm capacity at interconnection points shall be set aside for firm short term capacity services”, without distinguishing between different durations of capacity products. Conversely, the Agency Framework Guidelines provides that “At least 10 percent of the available firm capacity at each interconnection point shall be set aside for firm capacity services with a duration of less than one quarter.” The reason why the wording has changed was due to the parallel development of the Agency’s Framework Guidelines and the Network Code. A unique

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<sup>4</sup> See CAM NC – decision analysis, p. 14, Ref. CAP0216-11

<sup>5</sup> See p. 15 of the “CAM network code launch documentation”, Ref. CAP0112-11

situation which appeared as result of the invitation of the European Commission to develop the Network Code<sup>6</sup> on the basis of the ERGEG pilot Framework Guidelines and to transfer the pilot project into the formal procedure once the Agency published the final Framework Guidelines. The first draft Network Code based on the ERGEG pilot Framework Guidelines specified that the longest product offered would be quarterly, via annual auctions for the next 60 quarters.

The deviation from “less than one quarter” (Framework Guidelines) to “less than or equal to one quarter” (Network Code) as related to the set of standardised products (which has changed during the Network Code development process) is acceptable, since the effects for the network users are similar. Only the “profiling resolution” for their portfolio has changed, but not the availability of products on short term (i.e. “less than one quarter” translates into monthly products, which were originally planned to be auctioned once a year for the next 12 months, whereas “less than or equal to one quarter” translates (at first) into quarterly products, which are to be auctioned also once a year for the next 4 quarters). The original wording from the ERGEG Framework Guidelines on which ENTSOG developed the draft Network Code required to set aside capacity for firm short term capacity services referring to the Definition of Art. 2(15) of Reg. (EC) 715/2009. Since the definition refers to “capacity services with a duration of less than a year”, the Framework Guidelines required to set aside capacity that would never been offered to the market as the longest product duration contained in the Network Code was a quarterly product. The deviation is therefore in line with the Framework Guidelines but the Agency also takes the view the reservation of 10% for products with a duration of less or equal to one quarter may not allow for sufficient capacity to be offered for shorter duration, for instance at the day-ahead stage, which could hamper the introduction of potential market coupling projects. In this perspective, the Agency recommends ENTSOG to clarify that the Network Code allows for further breakdown on an Interconnection Point level for shorter term products, subject to stakeholder consultation as referred to in article 4.1(7) and review by relevant National Regulatory Authorities.

The deviation from “available” to “technical” capacity to be set aside is considered to be in line with the Framework Guidelines. Although obviously deviating on a literal level, it reflects the policy aim to ensure that there is sufficient capacity set aside for short term capacity to facilitate the general objectives of the Framework Guidelines to support an effective functioning of the internal market in gas and cross-border trade. If technical capacity had not been used as the basis to set aside a proportion of capacity, capacity available in the shorter term auction would depend on the allocation of longer term capacity, thereby undermining the policy aim to set aside some capacity for short term independently from the result of longer term auctions.

With regards to the allocation of long-term products, the Network Code foresees that the yearly products on offer are sold up to 15 years ahead. Auctioning up to 90% of the capacity in just one instance for a period of 15 years raises serious concerns, also voiced by some stakeholders during the public consultation run by ENTSOG, as it carries the risk of long-term contractual congestion and/or of creating barriers for potential new entrants over a significant (15-year) period. Auctioning up to 90% of the capacity in one instance will also run the risk of leaving no room for learning lessons between auctions. If a problem occurred, it could lead to undesirable results potentially impacting

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<sup>6</sup> Cf. Commission invitation to draft a network code on gas capacity allocation rules, Ref. Ares(2011)93995 - 27/01/2011



the market for the upcoming 15 years. In this respect, the provisions in the Network Code may be detrimental to the completion and well-functioning of the internal market in gas and cross-border trade.

Furthermore, the Framework Guidelines require that “the Network Code(s) shall set out the way in which the breakdown of available firm capacity between the different long- and short-term capacity services is determined” and that National Regulatory Authorities are responsible for reviewing “the amount of capacity for each capacity service” (Section 2.3, own underlining). The Network Code does not comply with the Framework Guidelines in this respect, as Article 4.1(6) in conjunction with Article 4.4(3) imply only one long term and one short term capacity service to which the quota is applied, without any further breakdown.

The current provisions in the Network Code may disallow more stringent national provisions that require minimum capacity levels to be reserved for different time horizons. Such provisions, used today in several countries, may not be possible anymore. The Network Code, hence, runs counter the Framework Guidelines in the sense that:

- ENTSOG did not meet the formal obligation of the framework guideline to provide a breakdown for “... the different capacity services... “as there is only one long term and one short term capacity service for which the quota is applied, but no further breakdown.
- There is no room for reviewing the amount of capacity for each capacity service by the National Regulatory Authorities, which is not in line with the provision that “The amount of capacity for each capacity service [...] be subject to review by National Regulatory Authorities”.

The Network Code is in line with the Framework Guidelines regarding the offer of any remaining capacity not previously allocated, any capacity surrendered by capacity holders, and any unused capacity released through congestion management procedures as reflected in the formulae of the auctions for different capacity services.

**Conclusion:**

**The Network Code does not comply with the Framework Guidelines.**

**The concerns about any potential anti-competitive effects of the provisions contained in the Network Code would be appeased if the Network Code were to envisage that, besides the at least 10% share of the technical capacity set aside for short-term products, a significant proportion (e.g. another 10%) of the capacity allocated through Standard Capacity Products as specified in the Network Code is allocated only over a shorter time horizon (e.g. for the upcoming 4-5 years).**

**Additionally, quarterly capacity products could also be offered for more than one year (e.g. for the upcoming 16-20 quarters) alongside the yearly products. This solution would allow for capacity being offered on more than just one instance, giving shippers a second chance to acquire the capacity that they need without altering the auction calendar / design or the product setup. As the network configuration may in some instances make successful bidding in independent, concurrent auctions challenging, such an offer of additional quarterly products for a longer time horizon (than just for the upcoming four quarters) would also provide sufficient time (i.e. 3 months, according to the auction calendar) for analysis and learning from the once-per-year auctions for yearly products before the (“second chance”) once-per-year auctions for quarterly products are held.**

**Finally, the Network Code should provide flexibility to implement a further breakdown at Interconnection Point level for monthly or shorter term products subject to stakeholder consultations, agreement between the concerned Transmission System Operators and review by the relevant National Regulatory Authorities, as otherwise the Network Code may not allow for sufficient capacity to be offered for shorter durations, for instance at the day-ahead stage, which could hamper the introduction of potential market coupling projects. Moreover, the application at individual Interconnection Points of more stringent national provisions requiring higher minimum capacity levels to be reserved for different short- and medium term time horizons shall be aligned between the concerned Transmission System Operators and be subject to approval by the concerned National Regulatory Authorities. The provisions in Article 7(4) of Regulation (EC) No 713/2009 apply. In any case, the majority of the capacity at each Interconnection Point shall be allocated using the breakdown of available capacity defined in the Network Code.**

**e) Bundled Capacity Services**

Relevant part of the Framework Guidelines	Relevant article of the Network Code
<p>[2.4.1] The Network Code(s) shall set out that Transmission System Operators jointly offer bundled firm capacity services. The corresponding exit and entry capacity available at both sides of every point connecting adjacent entry-exit systems shall be integrated in such a way that the transport of gas from one system to an adjacent system is provided on the basis of a single allocation procedure and a single nomination.</p> <p>In order to progressively bundle the entire technical capacity at a given interconnection point, capacity becoming available on one side of an interconnection point exceeding the available capacity on the other side of the same interconnection point shall be allocated for a duration not exceeding the expiration date of the contracts for the corresponding capacity on the other side of the border. Transmission System Operators shall seek to maximise the bundled capacity and to accelerate the bundling of capacity at interconnection points by encouraging their network users to free up their capacity booked on one side of interconnection points before the expiration date of the capacity contracts.</p> <p>These rules on mandatory bundling also apply, to the extent that they are relevant, to secondary capacity markets.</p>	<p>Article 5.1(1): On both sides of an Interconnection Point all firm capacity shall be offered as Bundled Capacity, in so far as there is available firm capacity. New capacity as set out in article 2.3 is not covered by this article.</p> <p>Article 5.1 (8): Adjacent transmission system operators shall establish a joint Nomination procedure for Bundled Capacity, providing Registered Network Users with the means to nominate the flows of their Bundled Capacity via a single Nomination.</p> <p>Article 5.1(5) &amp; 5.1(6): Where there is more available firm capacity on one side of an Interconnection Point than on the other side for any period considered, the transmission system operator with the most available firm capacity shall offer the mismatched capacity to the Registered Network Users as an unbundled firm product in accordance with the Auction Calendar.</p> <p>Technical Capacity becoming available on one side of an Interconnection Point exceeding the available Technical Capacity on the other side of the same Interconnection Point shall be allocated for a duration not exceeding the expiration date of the corresponding Capacity Contract on the other side of the same Interconnection Point. Adjacent transmission system operators shall monitor and plan this process.</p> <p>Article 5.1 (9): The obligations to offer Bundled Capacity also apply, to the extent that they are relevant, to secondary capacity markets. Capacity originally allocated as Bundled Capacity can only be resold as Bundled Capacity.</p>

**Analysis and ENTSOG’s argumentation**

Bundling firm entry and exit capacity at a specific Interconnection Point and auctioning it as one bundled product avoids two separate allocations on each side of the country/market area border, thus removing the risk of different capacities being allocated. Despite stakeholders’ strong preference for bundling to be voluntary, the Network Code implements the provisions set out in the

Framework Guidelines for the cross-border bundling of available capacities at Interconnection Points. Bundled firm capacity will be offered wherever possible according to the auction sequence and unbundled firm capacity will be auctioned concurrently with the auctions for bundled products when there is an excess of available capacity on one side of an Interconnection Point compared to the other side. Interruptible capacity may be bundled and will be offered via separate auctions of equal design after the firm capacity of equal duration has been allocated.

### **The Agency's position**

The Network Code is compliant with the Framework Guidelines as regards the offer of bundled capacity products, the single allocation procedure and the single nomination. Although the Network Code does not specify the details for the single nomination procedure, it sets out the principle that the bundled products can be used via a single nomination. Moreover, the detailed procedure has to comply with the objective to deliver/receive the nominated gas at hubs and/or exchanges. Therefore, on this aspect the Network Code is in line with the Framework Guidelines<sup>7</sup>.

Article 5.1(5) of the Network Code provides for the possibility to offer unbundled firm capacity in case of a (technical) mismatch. Article 5.1(1) of the Network Code explicitly exempts new capacity from the bundling requirement. The Framework Guidelines set out the objective of progressively bundling the entire technical capacity, including new capacity.

This objective cannot be achieved if the Network Code provides for the possibility to offer and allocate available excess firm capacity resulting from a technical mismatch as an unbundled capacity product for, potentially, up to 15 years ahead. The implementation of this provision would maintain the current situation and slow down the bundling capacity on one side of an Interconnection Point with any capacity that can or will be provided at the other side of the same Interconnection Point.

To achieve the objective to maximise the offer of bundled capacity and to progressively bundle all the capacity at an Interconnection Point, close coordination and cooperation of adjacent Transmission System Operators is necessary in the areas of capacity calculation (to determine the “technical” capacity that can be commercialised) and in the field of investments, where the previous approach is already exhausted. A “technical mismatch” of technical capacity between both sides of an Interconnection Point can be the result of, for example, different or differently applied (technical) capacity calculation methods or different approaches to assign entry or exist capacities to certain Interconnection Points when optimising each single entry-exist system (which is also dependent on the size and complexity of the connected entry-exit systems, which are often different). Next to insufficient coordination of Transmission System Operators in the latter areas, also differently applied (or not applied) congestion management procedures, may lead to a “technical mismatch” as well as of course real technical or physical differences of the infrastructures connected at an Interconnection Point.

The possibility envisaged in the Network Code to allocate the exceeding capacity, resulting from a “technical mismatch” of firm capacity, as unbundled firm capacity for a long period of time (up to 15 years) prevents the bundling of capacities whenever additional technical capacity (be it from re-

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<sup>7</sup> The detailed single nomination procedure, when being elaborated, has to fulfil this objective.

calculation / re-assignment / optimisation or investments) becomes available (at the side of the lower technical capacity level), which can also happen on a short-term basis, and therefore contrast with one of the explicit objectives stated in the Framework Guidelines.

**Conclusion:**

**The Network Code is not compliant with the Framework Guidelines.**

**The Agency recommends ENTSOG to amend the Network Code in a way that it does not obstruct the goal of progressive bundling within a reasonable time horizon. This could be achieved by limiting the duration of the offer of firm unbundled capacity, for instance, up to the rolling monthly auction. Additionally, in order to also reflect the requirement of bundling any new capacity, the second sentence of Art. 5.1(1) of the Network Code shall be deleted.**

***f) Amendment of existing capacity contracts***

Relevant part of the Framework Guidelines	Relevant article of the Network Code
<p>[2.4.2] The Network Code(s) shall ensure that existing capacity contracted before the entry into force of the same Network Code(s) shall be bundled no later than five years thereafter.</p> <p>To this end, parties to existing capacity contracts shall aim to reach an agreement on the split of the bundled capacity at the interconnection points defined in Section 1.2. National Regulatory Authorities may mediate between the parties to promote such agreements.</p> <p>If no agreement on the split of the bundled capacity is reached, the Network Code(s) shall provide that the bundled capacity shall be considered split between the original capacity holders proportionally to their capacity rights.</p> <p>The parties to an existing capacity contract shall adjust the original capacity contracts with their respective Transmission System Operators according to the agreed split of the bundled capacity or, if no agreement is reached, to the above proportionality rule, as further detailed in the Network Code(s). The duration of the amended capacity contracts with bundled services shall not exceed the duration of the original capacity contracts. Any further details of this procedure shall be set out in the Network Code(s).</p> <p>Transmission System Operators shall cooperate amongst themselves throughout the process to ensure that the bundled allocation is achieved.</p> <p>All relevant information that is necessary to</p>	<p>Article 5.2:</p> <p>1) At each Interconnection Point, the existing contracted capacity before the coming into force of this Network Code shall be bundled no later than 5 years thereafter to the extent that previously contracted capacity on each side of the Interconnection Point can be matched for any period considered.</p> <p>2) To that purpose, within the 5 year period referred to above, the capacity holders who are parties to the existing Capacity Contracts at the time of the coming into force of the Network Code at the respective Interconnection Point shall aim to reach an agreement on the bundling of the capacity required by this article to be bundled via any suitable contractual arrangements. The transmission system operators who are parties to the existing Capacity Contracts may participate at any time in the discussions regarding the bundling arrangement.</p> <p>3) The transmission system operators involved at an Interconnection Point shall jointly identify the capacity to be bundled and related existing contracts. Transmission system operators shall monitor proposed arrangements in order to ensure the bundling of such contracts is achieved.</p> <p>4) The bundling arrangement shall take into consideration the contracted capacity at each</p>

<p>achieve an agreement between the parties shall be provided by any of the above-mentioned parties. However, the confidentiality of commercially sensitive information shall be maintained throughout the negotiation process. According to Article 41(1) b) of the Gas Directive, each National Regulatory Authority shall ensure that the Transmission System Operator(s) and other parties in its jurisdiction comply with the obligations of the Network Code(s) in the area of capacity bundling and may impose appropriate sanctions on non-complying parties. ACER may be called to exercise its powers pursuant to Articles 7 and 8 of Regulation (EC) No 713/2009. The provisions contained in these Framework Guidelines and in the Network Code(s) adopted on their basis are not meant and do not regulate supply contracts, only capacity contracts. Insofar as these provisions could have an effect on supply contracts, their implementation shall not entitle contracting parties to a supply contract to terminate or cancel supply contracts unilaterally. They could only result in the separation and amendment of the capacity contract, if this is included in the supply contract.</p>	<p>side of an Interconnection Point and the duration of commitments for the contracted capacity under the existing contracts.</p> <p>5) Where there is a mismatch between existing levels of contracted capacity at an Interconnection Point the portion that cannot be bundled may continue to be used as an unbundled firm product.</p> <p>6) All relevant information that is necessary to achieve an agreement between the parties involved shall be provided by any of such parties to the extent needed subject to confidentiality obligations binding the parties in particular but not limited to the confidentiality of commercially sensitive information.</p> <p>7) The capacity holder that is party to an existing Capacity Contract shall keep the transmission system operator that is also party in such contract informed as to the on-going discussions regarding the bundling in a timely manner if the latter is not involved in the discussion.</p> <p>8) Where a bundling arrangement is agreed upon between respective capacity holders, the transmission system operators involved at the Interconnection Point shall be informed by the parties of such bundling arrangement without undue delay and shall modify the relevant Capacity Contracts accordingly. In case of inconsistency between the notified bundling arrangement and the provisions of this Network Code or the provisions of the Capacity Contract(s), the parties to the bundling arrangement shall upon request of the transmission system operators concerned adjust the bundling arrangement accordingly.</p> <p>9) The relevant national regulatory authorities shall mediate between the parties affected by this article to promote such agreement upon request by any party concerned.</p> <p>Default rules and amendment is covered by Article 5.1. (10)-(16) of the Network Code</p>
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### **Analysis and ENTSOG’s argumentation**

Although incorporated in the current Network Code, ENTSOG (supported by stakeholders) strongly advises to remove the “Sunset Clause” (with its respective default rule) on allocation of bundled capacities in existing contracts for the following reasons<sup>8</sup>:

A possible simultaneous reopening or termination of capacity is argued to lead to risks for Transmission System Operators if shippers successfully get rid of no longer needed capacity. This would increase tariffs and results in a socialization of losses or stranded investments.

As regards commodity contracts, the sunset clause and default rule affects the point of delivery, leading to:

- a) an alteration of negotiations to change existing commodity contracts ahead of the application of a default rule
- b) large suppliers (usually not bound to EU law) potentially having an advantage in contract re-negotiations due to a stronger negotiation position

Intensive discussions within ENTSOG and with stakeholders have not been able to resolve all of the possible issues that might arise as result of the application of the sunset clause. For example, if there is a price difference between the capacities to be bundled as a result of the default rule, there is no clear way forward on how this should be dealt with.

### **The Agency’s position**

The Agency takes note of ENTSOG’s arguments, but upholds its previous position on this issue following the legal and economic impact assessments. ENTSOG has not brought forward any new aspects on this issue that would require a revision of the Agency’s position. The Network Code is, however, not in line with the Framework Guidelines as regards the mediation role of the National Regulatory Authorities. Article 5.2(9) of the Network Code specifies that NRAs “shall” mediate between the parties affected by that article, whereas the Framework Guidelines (Section 2.4.2) explicitly refer to “may” mediate. Except for this literal deviation, the Network Code is in line with the Framework Guidelines.

#### **Conclusion:**

**The Network Code is in line with the Framework Guidelines, except for Art. 5.2 (9), which, in order to ensure full compliance, needs to be modified to reflect the wording of the Framework Guidelines.**

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<sup>8</sup> Cf. “CAM NC – decision analysis”, pp. 23-30, Ref. CAP0216-11 for the comprehensive argumentation

**g) Virtual interconnection point (VIP)**

Relevant part of the Framework Guidelines	Relevant article of the Network Code
<p>[2.4.3] The Network Code(s) shall set out that capacity at two or more points connecting the same <i>two adjacent entry-exit systems</i> is integrated into one single capacity service representing one virtual interconnection point. Transmission System Operators shall calculate the entire technical capacity of the integrated service.</p> <p>Virtual interconnection points have to be established no later than five years after the entry into force of the Network Code(s), insofar as the technical capacity resulting for the integrated service and at any virtual interconnection point shall not be lower than the sum of the previously separate bundled capacity products.</p>	<p>Article 1.2 (y): ‘Virtual Interconnection Point’ means the aggregation of two or more Interconnection Points between two <i>adjacent transmission networks</i> into one commercial point.</p> <p>Article 5.1. (10): Where two or more Interconnection Points connect the same <i>two adjacent transmission systems</i>, the adjacent transmission system operators concerned shall offer the available capacities at the Interconnection Points at one Virtual Interconnection Point according to the following conditions:</p> <p>a) the total Technical Capacity at the Virtual Interconnection Points shall be equal to or higher than the sum of the Technical Capacities at each of the Interconnection Points contributing to the Virtual Interconnection Points;</p> <p>b) to the reasonable judgement of each transmission system operator concerned regarding its own transmission network, the characteristics of the transmission systems involved shall allow the establishment of Virtual Interconnection Points;</p> <p>c) Virtual Interconnection Points shall only be established, if they facilitate the economic and efficient use of the system including but not limited to rules set out in article 16 of the Regulation; and</p> <p>d) Adjacent transmission system operators shall start the necessary analysis and, if the above conditions are met, shall establish functional Virtual Interconnection Points no later than 5 years after the entering into force of this Network Code.</p>



### Analysis and ENTSOG's argumentation

The Network Code is not in line with the Framework Guidelines in terms of the definition of a Virtual Interconnection Point. The argument brought forward to justify this discrepancy is that certain transmission systems are connected to several other transmission systems which are located in different entry-exit zones. The text intends to clarify that virtual interconnection points (VIPs) do not have to be established between more than two adjacent entry-exit systems.

However, where two Interconnection Points connect the same two entry-exit zones **and** the same two Transmission System Operators, the VIP is mandatory if it is technically feasible. In case more Transmission System Operators are involved, because the entry-exit system is a conglomerate of Transmission System Operators, the VIP should be extended including these Transmission System Operators if possible. The wording in the Network Code could be understood as saying that the second possibility would be not possible.

### The Agency's position

The Agency recommends changing the wording of the Network Code to ensure compliance with the Framework Guidelines e.g. as follows:

1.2(y) "Virtual Interconnection Point' means the aggregation of two or more Interconnection Points between two adjacent ~~transmission networks~~ *entry exit systems* into one commercial point."

5.1. (10) "Where two or more Interconnection Points, which all connect the same two adjacent ~~transmission systems~~ *entry-exit systems*, connect the same two adjacent transmission systems, the pair or a larger multitude of adjacent transmission system operators concerned shall offer the available capacities at the Interconnection Points at one Virtual Interconnection Point according to the following conditions:[...]"

This wording takes into account that there can be more than one Transmission System Operator on one side of the adjacent entry-exit system, i.e. more than two adjacent transmission systems, but clarifies that a virtual interconnection point connects only two adjacent entry-exit systems.

### Conclusion:

**The Network Code is not compliant with the Framework Guidelines.**

**In Article 1.2(y) of the Network Code, the definition of "virtual interconnection point" does not reflect the wording of the Framework Guidelines (Section 2.4.3), as the Network Code refers to "transmission network" instead of "entry-exit system". The wording of the Framework Guidelines takes into account that there can be more than one Transmission System Operator within an entry-exit system, i.e. more than two adjacent transmission networks/systems, but clarifies as well that a virtual interconnection point connects only two adjacent entry-exit systems. Article 1.2(y) of the Network Code and the related Article 5.1(10) should be amended in accordance with the Framework Guidelines.**

### **3. Capacity allocation**

#### ***a) General features of capacity allocation***

In the beginning of section 3, the Framework Guidelines sets out some general principles on capacity allocation. In particular, the Network Code shall set out how Transmission System Operators offer capacity on a regular basis in a harmonised manner using an appropriate timing for the respective products. Those general principles have been incorporated in the Network Code by ENTSOG via the establishment of an auction procedure with a respective auction calendar / timing for both firm and interruptible standardised products (cf. individual sections of topic-wise compliance check in this reasoned opinion).

The only general principle not explicitly tackled in the Network Code is the one about the requirement to regularly review the CAM procedures, which shall be designed with regard to market conditions. Whereas such a measure is not provided in the current Network Code, it can still potentially be dealt with in the legally foreseen Framework Guidelines / Network Code amendment procedures. As those reviews might even influence the fundamentals of the current Network Code, it seems appropriate to not include such reviews and subsequent amendments in the Network Code itself.

**b) Standard allocation mechanism / selection of auction algorithm**

Relevant part of the Framework Guidelines	Relevant articles of the Network Code
<p>[3.1.1] The Network Code(s) shall set out that all firm and interruptible capacity services for each time interval, with the possible exception of within-day (intraday) capacity services, are allocated via auctions. The Network Code(s) shall set out the principles of anonymous, transparent online-based auction procedures, which should avoid any abuse of a dominant market position. The Network Code(s) shall set out a harmonised auction design, which is applicable at every interconnection point within the EU. In particular, the Network Code(s) shall set out a fully harmonised auction design for firm day-ahead capacity.</p> <p>This design does not aim to prevent Transmission System Operators from already implementing day-ahead implicit auctions. [...]</p>	<p>Article 4.1:            (1) Auctions shall be used for the allocation of capacity at Interconnection Points.            (2) At all Interconnection Points the same auction design shall apply. [...] ... auction processes shall be started simultaneously .... Each auction process shall allocate capacity independently....            (3) ...Products [...] shall follow a logical order by which products covering yearly capacity shall be offered first...</p> <p>Article 4.7: sets out the design of rolling day ahead capacity auctions</p> <p>Article 4.9: sets out which auction algorithm is to be applied for which product</p> <p>Article 4.10: describes the “ascending clock algorithm” to be applied for yearly/quarterly/monthly products</p> <p>Article 4.11: describes the “uniform-price auction algorithm” to be used for DA &amp; WD capacity</p> <p>Article 2.8: ...NC describes the methods for explicit auctions without prejudice to the application of implicit auctions ... if an implicit auction is applies the provisions in articles 4 to 8 of this Network Code shall not apply.</p>

**Analysis and ENTSOG’s argumentation**

According to section F.4 of the “CAM Network Code – decision analysis by ENTSOG”, there was no preference from the Transmission System Operators’ perspective for a certain auction design. A close cooperation with stakeholders was therefore necessary to decide upon the policy options analysed. Although there was a general preference for a simple auction design, the possibility to have a separate design for longer and shorter duration products was considered, as their characteristics and requirements (e.g. as regards timing) are different.

The options analysed for longer duration products<sup>9</sup> included:

- “Pure” single round (no bid adjustments)
- Single round volume based auction with bid adjustment, no price discovery measures
- Single round volume based auction with bid adjustment and price discovery measures
- Multiple round ascending clock (MRAC)

Grounded in economic theory and based on market participant support (via workshops, dedicated interactive sessions, consultations), the option adopted was a cleared-price auction model with unlimited number of price steps, in line with the overwhelming preference of stakeholders (26 in favour of MRAC vs. 6 in favour of a single round design). The logic of the auction sequence and timing for the different capacity products was set out in a way, that long-term products (years) are auctioned first, followed by quarterly, monthly, day-ahead and within-day products in accordance with a specific auction schedule.

Further, to minimise unsold capacity, a pro-rata approach, a “roll-forward” option of unsold capacity to the next auction for products of less duration and a “small price steps” option have been analysed. The “small price steps” approach was ultimately supported by stakeholders. It includes a roll-forward as a second step for any small amounts of unsold capacity (because of its minimisation via the “small price steps” approach) to the next auction of products with a shorter duration in line with the auction calendar. The pro-rata approach was rejected because it was seen as undermining the market-based nature of auctions leaving no bidder with exactly the capacity amount he wanted. The (immediate) “roll-forward option” for unsold capacity was neither chosen, as it does not allow for a capacity sale at the earliest possible stage (and for the longest possible duration of the given standard products).

### **The Agency’s position**

In accordance with the Framework Guidelines and its objectives set out therein, ENTSOG established a fully harmonised auction design (including in particular a harmonised design for firm day-ahead capacity), which is to be implemented at all Interconnection Points at the same time. The auctions are to be anonymous, transparent and online. Implicit auctions (i.e. market coupling) are not impeded.

The argumentation provided by ENTSOG to support the choices made on the selection of the auction design is comprehensible and supported by market participants and the Agency, as the chosen design clearly satisfies the following Framework Guidelines principles and provisions

- Efficiency, due to its simplicity, compatibility with future systems for incremental capacity release, practicability and flexibility for shippers to adjust bids or step out in response to auction progress at other Interconnection Points;
- Non-discrimination, due to the chosen cleared-price auction model, in which all successful bidders pay the same price per capacity unit obtained showing lower vulnerability to strategic bidding, as price discovery mechanisms are embedded;

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<sup>9</sup> The auction design chosen for the DA / WD auctions was not further justified in „Analysis of ENTSOG decisions“

- Anonymous, transparent and online based auction procedures for both firm and interruptible capacities (including a fully harmonised system for day-ahead firm capacity), not hampering the development of implicit auctions (as the respective provisions of the Framework Guidelines were mirrored and incorporated in the Network Code).

The reflection of those principles in the Network Code and the subsequent implementation of the resulting provisions should facilitate the development of competition and functioning of the internal market. As regards the scope for exercising market power under the ascending clock auction methodology, there is – due to the publication of information on aggregated demand at the end of each bidding round - a potential opportunity for large shippers / bidders to “clinch”; that is to reduce demand faster than their own valuations would suggest leading the auction to close at a lower price. As a result, overall auction revenues could be reduced (which does not constitute a serious problem, as Transmission System Operators do not generally depend on auction premiums) and allocation to large bidders relative to small bidders will be lower leading to an economically less efficient allocation than implied by bidder valuations, but are for the benefit of small bidders. Therefore, on balance, “clinching” should not constitute a serious problem.

**Conclusion:**

**The Network Code is compliant with the Framework Guidelines regarding the general aspects of the standard allocation mechanism and the selection of the specific auction algorithms.**

**c) Allocation of firm within-day (WD) capacity**

Relevant part of the Framework Guidelines	Relevant articles of the Network Code
<p>[3.1.1] The Network Code(s) shall set out that all firm and interruptible capacity services for each time interval, with the possible exception of within-day (intraday) capacity services, are allocated via auctions.</p> <p><i>In relation with [3.1.5]:</i> The Network Code(s) shall allow Transmission System Operators to allocate within-day capacity, i.e. capacity not allocated after the day-ahead auction, via first-come-first-served or auctions. Interruptible within-day capacity services are allocated according to Section 2.2. Adjacent Transmission System Operators shall implement the same allocation mechanism (either first-come-first-served or auctions) at each interconnection point.</p>	<p>4.8 1) Subject to capacity being made available, a Within-day capacity auction shall be held every hour during a relevant Gas Day [...] using a Uniform Price auction algorithm according to article 4.11.</p> <p>6.1 7) Within-day firm capacity shall be offered via the auction procedure describes in article 4.8. Within-day interruptible capacity shall be allocated via an over-nomination procedure [...]</p>

**Analysis and ENTSOG’s argumentation**

According to ENTOG’s decision analysis (F.3), four policy options had been considered:

- Sell both WD firm and interruptible capacity via auctions
- Sell both WD firm and interruptible capacity via non-auction method
- Allow WD firm capacity to be sold either via auctions or non-auction method, sell interruptible capacity via non-auction
- Sell WD firm capacity via auctions, and WD interruptible via non-auction method

The last option was adopted, because it allows a consistent methodology to be applied across all capacity products other than interruptible WD as preferred by market participants.

The technical deviation from the Framework Guidelines in respect of firm capacity to be allocated via auctions everywhere is considered to be fully in the interests of network users and end users for the Network Code, as it specifies a single allocation method for the same product at all Interconnection Points, rather than leaving the choice to individual Transmission System Operators.

### **The Agency's position**

Adjacent Transmission System Operators have been given the option in section 3.1.5 of the Framework Guidelines to choose either First Come First Served (FCFS) or auctions for each Interconnection Point. As all adjacent Transmission System Operators shall implement the same allocation mechanism at each Interconnection Point, ENTSOG decided (on behalf of Transmission System Operators) that auctions will be used, rather than FCFS. For reasons of consistency, ENTSOG made use of its choice (as also set out in section 3.1.1 of the Framework Guidelines “possible exception of WD capacities”).

Even though the Network Code's provisions could be considered a literal technical deviation from the Framework Guidelines in respect to firm capacity, ENTSOG decided in the interests of network users and end users for the Network Code to specify a single CAM for the same product at all Interconnection Points, indeed leading to a higher degree of harmonisation of WD capacity allocation. Recognising ENTSOG's view, the Agency therefore considers the current interpretation and implementation of the Framework Guidelines provisions in the Network Code as compliant. Furthermore, a technical implementation detail - the proposed schedule / timing of the WD and day-ahead firm capacity auction – though principally in line with the Framework Guidelines - was to some extent commented and questioned by a few stakeholders during and after the latest “stakeholder support process” carried out by ENTSOG. As current work on the Balancing Network Code additionally brought up some concerns, ENTSOG may reconsider the timing of the WD auctions.

#### **Conclusion:**

**The Network Code is compliant with the Framework Guidelines.**

**With respect to slight changes of technical details (i.e. WD auction timing) in the Network Code resulting from more recent discussions in the Balancing Network Code drafting process, those changes – if sufficiently reasoned by ENTSOG and in majority supported by stakeholders via consultation – are not expected to negatively affect the abovementioned acknowledgement of compliance.**

**d) Allocation of interruptible within-day capacity**

Relevant part of the Framework Guidelines	Relevant articles of the Network Code
<p>[3.1.1] The Network Code(s) shall set out that all firm and interruptible capacity services for each time interval, with the possible exception of within-day (intraday) capacity services, are allocated via auctions.</p> <p><i>In relation with [3.1.5]:</i> [...] Interruptible within-day capacity services are allocated according to Section 2.2. [...]</p> <p>[2.2] [...] The Network Code(s) shall entitle registered network users to submit nominations on an interruptible basis at any time within day. This entitlement shall not restrict the allocation of firm capacity by Transmission System Operators.</p>	<p>Article 6.1 (7): [...] Within-day interruptible capacity shall be allocated via an over-nomination procedure [...] shall only be allocated when firm capacity [...] is sold out.</p>

**Analysis and ENTSOG’s argumentation**

From ENTSOG’s common analysis on WD firm and interruptible capacity allocation options (cf. previous chapter c) above), the fourth option was chosen and adopted in the Network Code in order to be in line with the Framework Guidelines.

ENTSOG notes that for interruptible capacity an over-nomination is not a true “first come first served” methodology due to the way in which nominations are accepted and the sequence of interruptions are determined. While over-nominations may be made at any time, Transmission System Operator’s systems are not able to accept nominations continuously, but instead they will do so hourly. That means that two over-nominations in the same hour will bear the same time stamp. If interruption is necessary, those two shippers will be interrupted pro-rata, regardless which (over)nomination was submitted first.

ENTSOG proposes that within-day interruptible capacity shall be allocated via auctions rather than via overnomination for the following reasons:

- Within-day auctions offer network users clarity in terms of knowing at all times what allocation mechanism they are to use.
- Within-day auctions are more market based than overnominations.
- A single allocation methodology for all standard capacity products benefits network users and creates a more level playing field between all shippers, as a single interface can be used to book any product.
- No significant disadvantage of an auction system, but lower implementation costs (as with two different systems, while being just as fast as overnominations).



### **The Agency's position**

According to the current Network Code, interruptible within-day capacity is to be sold via over-nominations, which may be submitted at any time within day without restricting allocation of firm capacity. The nominations will be accepted on each hour bar on an interruptible basis, once firm within-day capacity is sold out, providing the Transmission System Operator can offer interruptible capacity corresponding to the amount nominated.

This is compliant with the provisions of the Framework Guidelines.

With respect to ENTSOG's proposal to deviate from the current Network Code by implementing auctions for WD interruptible as well, the justification provided is - in the Agency's view - insufficient, also because previous feedback from stakeholder consultations so far does not give a clear support for such a change, as there was no distinction made in the consultation questions between firm and interruptible WD.

The Framework Guidelines' intention was to allow for a less complicated, complex and costly CAM for both WD firm and interruptible capacity in order to allow easy access to and maximisation of capacity utilisation on the very short-term. For that reason the Framework Guidelines did not suggest hourly auctions, but left the choice for FCFS (for firm WD capacity). Overnominations (for interruptible capacity) are seen as a simple and straightforward method without additional implementation costs (as those systems are already implemented). Particularly for interruptible WD (=rest of the day) capacity – though recognising the argument of consistent allocation mechanisms – the idea behind was to actually not have a (lengthy, repeatedly and therefore costly) real booking procedure, but rather an instant nomination (for registered users) for which the fulfilment would have to be executed by Transmission System Operators on “best-effort” basis, at a low charge or even without a “tariff”. In order to realise auctions for interruptible WD, Transmission System Operators would also need to set an amount of interruptible capacity to be offered in those. It remains unclear at this stage, how this would be achieved.

The Agency considers that the allocation results are similar both when using an hourly auction of the “rest of the day” capacity or a FCFS overnomination procedure, but would assume the pure processing / handling costs on Transmission System Operator and shipper's side to be lower when using overnominations (as systems to process nominations are already there). Nevertheless, ENTSOG's suggestion to also sell WD interruptible via auctions – contrary to explicit provisions of the Framework Guidelines on that matter - should be further analysed and stakeholders preference be inquired, as current reasoning / stakeholder support seems insufficient to justify an amendment of the Network Code.

### **Conclusion:**

**The Network Code is compliant with the Framework Guidelines.**

**e) Reserve price & auction revenues**

Relevant part of the Framework Guidelines	Relevant articles of the Network Code
<p>[3.1.2] Regulated tariffs shall be used as reserve price in auctions for firm and interruptible capacity, if not otherwise specified in Commission Guidelines for tariff methodologies related to cross-border trade of natural gas or in the Framework Guidelines for Network Codes on rules regarding harmonised transmission tariff structures.</p> <p>[3.1.3] Auction revenues exceeding the allowed revenue, or values determined by the National Regulatory Authority, if not otherwise specified in Commission Guidelines for tariff methodologies related to cross-border trade of natural gas or in the Framework Guidelines on rules regarding harmonised transmission tariff structures, shall be used for different aims subject to the approval by the National Regulatory Authority, such as lowering network tariffs, removing congestion by investments or providing incentives to the Transmission System Operators to offer maximum capacity.</p>	<p>Article 7.1: The regulated Tariff shall be used as the Reserve Price in all auctions for all Standard Capacity Products for firm and interruptible capacity.</p> <p>Article 7.2: Payable price can be fixed (regulated tariff + auction premium) or variable (reg. tariff at the time of use + auction premium) or be subject to other arrangements [...]</p> <p>Article 7.3: The Reserve Price for firm Standard Capacity Products shall be set such that, at an Interconnection Point, contracted capacity as a profiled set of products to meet the actual flow requirements throughout the year yields revenues which are, on aggregate, equivalent to the revenues from non-profiled contracted capacity to meet annual peak flow requirements. Revenue equivalence can be achieved by applying multipliers, per Interconnection Point and per direction, to a tariff derived from an annual accounting basis, in order to determine Reserve Prices for products with a duration of less than one year.</p> <p>Article 7.4: Auction revenues from Bundled Capacity need to be split between the Transmission System Operators placing capacities in Bundled Capacity. The Reserve Price of the Bundled Capacity shall be the sum of Reserve Prices of the capacities in the Bundled Capacity. All revenues from sales of Bundled Capacity shall be attributes to the contributing Transmission System Operators after each capacity transaction. The revenues from the Reserve Price of Bundled Capacity shall be attributed to the Transmission System Operators proportionally to the Reserve Prices of their capacities in the Bundled Capacity.</p> <p>Article 7.5: The revenues from the auction premium from Bundled Capacity above the Reserve Price shall be split according to agreement between Transmission System Operators, approved by the relevant National Regulatory Authorities, where appropriate. In the case that no agreement is concluded before the auction, the revenues from the auction premium from Bundled Capacity shall be attributed to the Transmission System Operators proportionally to the Reserve Prices at the time of the auction for their capacities in the Bundled Capacity set according to article 7.3.</p> <p>Article 7.6: National Regulatory Authorities shall approve over and under recovery mechanisms. Under a price cap regime, the National Regulatory Authorities shall approve the usage of revenues from the capacity prices exceeding the respective Regulated Tariff. National Regulatory Authorities shall recognize Transmission System Operators collecting revenue shortfalls, where allowed revenues are set, by adjusting tariffs accordingly.</p> <p>Article 4.10 &amp; 4.11: Application of reserve prices in auction designs</p>

## **Analysis and ENTSOG's argumentation**

Besides Article 7.1 stating that the regulated tariff shall be used as Reserve Price (as provided in section 3.1.2 of the Framework Guidelines) ENTSOG included in the Network Code additional (interim) tariff provisions, which are not based on the Framework Guidelines. ENTSOG argues that those provisions are essential for the implementation of the Network Code and the functioning of the CAM. Although some stakeholders suggested not including such tariff provisions, ENTSOG still received substantial support from market participants.

Article 7.2 is required to reflect differences in cost recovery mechanisms of regulatory regimes across the EU, but does not aim at harmonising them. It rather clarifies that no decision has been taken on whether the payable price determined in auctions shall be fixed, variable ("floating") or other. Hence, the current approaches or arrangements in place according to regulatory rules in each Member State shall continue to be possible under the CAM Network Code.

Article 7.3 is necessary as a general rule to define how Regulated Tariffs shall be used as Reserve Prices, as there is not yet a common definition of the "regulated tariff" for each of the new Standard Capacity Products. ENTSOG analysed the following three policy options:

- Same unit price (on average) for different capacity durations
- Marginal or no reserve prices for short term capacities
- Revenue Equivalence Principle

ENTSOG decided on the last option, as only the Revenue Equivalence Principle sufficiently allows for identification of physical congestion (investment signals), contribution to cost-reflectivity and avoiding cross-subsidies between network users by profile. If the revenue equivalence principle (7.3) were not introduced, ENTSOG argues, current tariffs would be used by the Transmission System Operators. Due to the offering of bundled products, the pricing of one Transmission System Operator has an effect on the other. In case one Transmission System Operator uses a high multiplier, the overall price for the product would increase and make it less attractive. Hence, the revenue equivalence principle does not increase prices for short term products that have been priced with a discount, but also reduces the price for products for which a high multiplier is used. This creates a barrier to entry as identified by the KEMA study (2009). ENTSOG also refers to article 14(2) of the Gas Regulation demanding "Transport contracts signed [...] with a shorter duration than a standard annual transport contract shall not result in arbitrarily higher or lower tariffs that do not reflect the market value of the service". Therefore, the revenue equivalence principle is argued to be needed to get the Network Code operational and to be in line with the general legal provisions.

In ENTSOG's view, the proposal does not go beyond ENTSOG's competence as in the end the Member States will decide on the proposal. Furthermore, ENTSOG was responsive to the Agency's Tariff Task Force input on the wording of the tariff sections.

Article 7.4 and 7.5 are required to provide clarity on the respective receivables of Transmission System Operators contributing to bundled capacity sold in auctions. ENTSOG argued that a default rule on the split of the auction premium is needed as without a rule it may take substantial time to come to an agreement between Transmission System Operators.

For 7.6, ENTSOG argues that in the majority of cases there are over and under recovery mechanisms already implemented. The section is however needed to ensure Transmission System Operators that they will receive their revenue and is designed in a way that does not prescribe any concrete methodology. Therefore, it is rather declaratory in nature.

ENTSOGs general view on tariffs is that even if the additional provisions go beyond the Framework Guidelines, those default rules in the code are interim ones; they shall not pre-empt the work on tariffs, but only ensure that the Network Code is implementable in the interim period.

### **The Agency's position**

The Framework Guidelines (Article 3.1.2) states that regulated tariffs shall be used as reserve price in all auctions, unless otherwise specified in the Framework Guidelines on Tariffs. In its Article 7.1, the Network Code follows the Framework Guidelines regarding this requirement. Article 7.2 is a further description of options for cost recovery, but does not prescribe the use of any of them in particular and is therefore only declaratory in its nature.

Article 7.3 of the Network Code specifies that reserves prices (which are regulated tariffs) are set according to a revenue equivalence principle, although fixing or approving tariffs is a task of the National Regulatory Authorities<sup>10</sup>. This provision goes beyond the requirements of the Framework Guideline, as the latter is silent on how the regulated tariff/reserve price should be determined.

The revenue equivalence principle is not the only way to ensure revenue recovery. ENTSOG argues that, without this provision, there is a risk of having “unattractive” reserve prices for bundled capacity due to (higher) multipliers applied on only one side of the Interconnection Point. The introduction of bundling does not create any difference compared to today’s situation where the corresponding exit and entry capacity are booked separately at different prices. Additionally, since Article 7.4 of the Network Code specifies that the total reserve price of bundled capacity is the sum of the reserve price for the capacities in the bundled capacity and the reserve prices themselves are determined at national level, the Network Code can be implemented without the need to describe further principles on how the different products are to be priced. Therefore, Article 7.3 of the Network Code is not required to implement the Network Code.

Furthermore, there is a balanced to be struck between the level of long-term and short-term reserve prices, in order to create sufficient signals for long-term investment while promoting short-term trade. This issue has not been addressed in the Framework Guidelines on CAM, nor fully explored in the CAM Network Code; it will be considered in the Framework Guidelines on rules regarding harmonised transmission tariff structure.

Therefore the reference to the revenue equivalence principle should be removed from Article 7.3 of the Network Code. This does not preclude the possible application of multipliers or any other mechanism per Interconnection Point and per direction, subject to agreement and approval by the concerned National Regulatory Authorities.

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<sup>10</sup> cf. Art 41(1)(a) Dir. 2009/73/EC.

Article 7.5 of the Network Code provides for a default rule for the attribution to the Transmission System Operators of the revenues from the auction premia from bundled capacity. This rule envisages that, if no agreement between the Transmissions System Operators is concluded before the auction and approved by the relevant National Regulatory Authorities, the revenues from the auction premia are attributed proportionally to the reserve prices. In order to avoid any possible strategic behaviour when setting the tariffs (reserve prices) for the individual Interconnection Points (potentially leading to distortions), a simpler default mechanism is recommended. This mechanism should stipulate an attribution of the auction premium revenues independently of the individual reserve prices of the bundled capacity product, i.e. an equal split of the auction premium revenues between the concerned Transmission System Operators.

Article 7.6 of the Network Code includes a provision specifying that National Regulatory Authorities shall recognise revenue shortfalls, where allowed revenues are set, by adjusting tariffs accordingly. This sentence however seems inappropriate, as typically in tariff regimes where allowed revenues are set, National Regulatory Authorities would not set or adjust the actual tariff, but only the allowed revenues. Therefore, as this provision is not covered by the Framework Guidelines and seems out of the scope of the Network Code, the last sentence from Article 7.6 of the Network Code shall be removed.

Finally, Article 7 of the Network Code deals with “Tariffs” issues which are not covered in the Framework Guidelines and which will be addressed in future Framework Guidelines on rules regarding harmonised transmission tariff structures, as indicated in Section 3.1.2 of the Framework Guidelines.

**Conclusion:**

**The Network Code is not compliant with the Framework Guidelines regarding the additional tariff provisions added by ENTSOG, as they go beyond Framework Guidelines content. In order not to prejudice decisions to be taken within the Framework Guidelines / Network Code process on rules regarding harmonised transmission tariff structures the application of Articles 7.3, 7.5 and 7.6 of the Network Code must be regarded as temporary. They will be repealed with the entry into force of the relevant provisions of the rules regarding harmonised transmission tariff structures. Therefore the Network Code should specify that market participants may not invoke frustration of legitimate expectation following the (possible) revision of Article 7 of the Network Code by the Network Code developed on the basis of Framework Guidelines on rules regarding harmonised transmission tariff structures or another Annex to the Regulation on this topic.**

**To ensure compliance with the Framework Guidelines and for the reasons set out above, the Agency further recommends the following:**

- 1) The reference to the revenue equivalence principle should be removed from Article 7.3 of the Network Code.**
- 2) Article 7.5 should be modified to reflect an equal split of the auction premium allocated between Transmission System Operators.**
- 3) The last sentence from Article 7.6 of the Network Code shall be removed.**

**f) Allocation of interruptible capacity services**

<b>Relevant part of the Framework Guidelines</b>	<b>Relevant articles of the Network Code</b>
[3.1.4] The allocation of interruptible capacity shall not restrict the allocation and use of firm capacity, meaning that the offer of interruptible capacity cannot be detrimental to the offer of firm capacity.	Article 6.1. (4): If interruptible capacity is offered, this shall not be detrimental to the amount of firm capacity on offer.

**Analysis and ENTSOG's argumentation**

If Transmission System Operators would offer interruptible capacity at a lower price than firm capacity, network users would be incentivised to buy interruptible rather than firm products, knowing that the chance of interruption is extremely low while firm capacity is still available. This would clearly restrict the sale of firm capacity.

**The Agency's position**

The compliance of the Network Code is ensured through the incorporation of a similar wording used in the Framework Guidelines. The reasoning provided by ENTSOG follows clearly the intention of the Framework Guidelines.

**Conclusion:**

**The Network Code is compliant on this aspect.**

***g) Interim period***

<b>Relevant part of the Framework Guidelines</b>	<b>Relevant articles of the Network Code</b>
[3.1.6] If, after the comitology procedure, as referred to in Art. 28 (2) of R715, an interim period is allowed before the implementation of auctions, the Network Code shall set out that during this period, adjacent Transmission System Operators apply harmonised allocation mechanisms at each Interconnection Point.	Article 10.3: In case the characteristics of a national or regional market are not considered appropriate for the purpose of applying auctions on a national level at the time of the coming into force of the corresponding provisions an interim period may be adopted for this market upon approval by the relevant National Regulatory Authority. During such interim period, adjacent Transmission System Operators shall apply a compatible allocation mechanism at each Interconnection Point.

**The Agency's position**

Article 10.3 provides for a general interim period for applying auctions subject to approval by the relevant National Regulatory Authority, whereas Section 3.1.6 of the Framework Guidelines leaves the decision on interim measures to the Comitology process. Therefore, this section seems redundant.

Moreover, the text is also ambiguous with respect to the "characteristics" of any interim arrangement and resulting processes. The term "compatible" might be interpreted in a very broad sense allowing to maintain current practices without any further efforts to achieve alignment and harmonisation of the allocation mechanisms in a possible interim period, as it leaves too much room for individual interim decisions that might circumvent or postpone the achievement of harmonisation of capacity allocation.

Therefore, the provisions in Article 10.3 of the Network Code on the interim period are non-compliant with the Framework Guidelines and should be removed from the Network Code.

**Conclusion:**

**The Network Code is not compliant on the aspects of the interim period. The Agency recommends deleting Article 10.3 from the Network Code to ensure compliance with the Framework Guidelines.**

#### ***h) Unsold capacity after the standard allocation mechanism***

<b>Relevant part of the Framework Guidelines</b>	<b>Relevant articles of the Network Code</b>
[3.2] The Network Code shall provide that capacity which remains unallocated after the allocation window is assigned to subsequent allocation windows for capacity services of equal or shorter duration.	Article 4.1 (3): [...] auction shall follow a logical order by which products covering yearly capacity shall be offered first, followed by the next shortest capacity duration [...] <i>In conjunction with the formulas to calculate capacity to be offered as provided in articles 4.4 6) + 4.5 6) + 4.6 5) + 4.7 7) + 4.8 8)</i> Article 4.10 (22): If an ascending clock auction has not ended by the scheduled starting point of the next auction for capacity covering the same period [...] The capacity shall be offered in the next relevant auction.

#### **The Agency's position**

The requirement of the Framework Guidelines refers to the principle of “cascading”, where capacity is offered for the longest duration product first (also valid for the capacity set aside for short-term products, starting with quarters), and unsold capacity “automatically” is being re-offered at the subsequent auctions of the next shorter duration product.

This principle has been taken over in the Network Code. Though it has not explicitly been mentioned in a literal sense, it has been described (indirectly) via a number of provisions as set out above and which are to be seen in conjunction. The application of the formulae determining the capacity to be offered (as stated in the abovementioned articles) effectively leads to unsold capacity being offered again in subsequent auction of shorter duration capacity products. Therefore the Network Code is compliant with this Framework Guidelines.

The flexibility left in the Framework Guidelines to also allow for subsequent allocation windows for services of equal duration, suggests the possibility to have auctions for the same product in “tranches” (as proposed by the consultant as well in order to e.g. avoid potentially quick contractual congestion, if capacity is being sold for the next 15 years at the first auction already). Even though such an option is currently not foreseen on the Network Code, this fact cannot be regarded as an actual incompliance of the Network Code with the Framework Guidelines, as ENTSOG made a reasoned choice from the flexibility provided by the Framework Guidelines (“services of equal or shorter duration”).

#### **Conclusion:**

**The Network Code is compliant on this aspect.**



***i) Booking platforms***

Relevant part of the Framework Guidelines	Relevant articles of the Network Code
<p>[3.3] The Network Code shall set out that adjacent Transmission System Operators establish a joint, anonymous, web-based platform for primary capacity allocation and secondary capacity trading. All capacity connecting their systems is to be allocated via this platform, unless allocated by means of implicit auctions. Primary and secondary capacity services shall be offered and allocated jointly on this platform.</p> <p>The Network Code shall lay down an action plan to reduce the number of platforms and eventually establish a single EU-wide platform. This plan shall define interim steps and shall include a timetable for implementation.</p>	<p>Article 5.1 (2): Transmission System Operators shall offer capacity [...] in a booking platform for the network users registered at such platform in accordance with article 8 [...]</p> <p>Article 8.1: Booking platform(s) shall be established [...]</p> <p>Article 8.2: sets a priority on offering firm bundled capacity</p> <p>Article 8.3: sets out that booking platforms shall provide functionalities to offer and obtain secondary capacity</p> <p>Article 8.4: outlines exemplary necessary steps to apply Network Code</p> <p>Article 8.5: outlines the action plan to eventually establish a single EU-wide platform</p>

**Analysis and ENTSOG’s argumentation**

To enable auctions to start as soon as possible using existing systems, the Network Code offers flexibility in the approaches towards utilisation of platforms (existing, new, other formats). ENTSOG recognises the need for an action plan for reducing the number of platforms. The following options were analysed:

- Specify a detailed action plan and timetable within the Network Code;
- Include next steps and timings in the Network Code, but not a full action plan;
- Do not include commitments on steps towards a single EU platform in the Network Code.

The second option was adopted, as Transmission System Operators would not be bound to a timetable and action plan which could be inappropriately long or short, depending on the final form of the Network Code. Instead a process towards the single platform, with associated timescales is set out, including an examination of existing platforms, consultation of network user requirements and the production of a detailed action plan. The option chosen requires Transmission System Operators to make significant progress in relatively short timescales, but does not legally commit them to finish within a certain period. The option nevertheless involves a technical deviation from the wording of the Framework Guidelines, which requires that the Network Code includes an action plan and timetable for achieving a single EU platform.

### **The Agency's position**

Article 8 of the Network Code provides for joint platforms to realise the allocation processes for primary and secondary capacity, with a priority for bundled firm capacity. The flexibility of the approach is allowed by the Framework Guidelines, as it does not prescribe a certain approach. The Network Code further provides a process to determine a plan for establishing a single EU platform. Though this is literally not compliant with the Framework Guidelines, which requires the plan itself to be laid down in the Network Code, the sufficiently detailed process set out to fulfil that requirement (establishment of an action plan/timetable towards the EU platform) in the Network Code could be considered as “interim steps” towards that goal. As the further analysis of costs and development (incl. report and market consultation) proposed by ENTSOG seems sensible to do, and as long as a multitude of platforms may also facilitate a sufficient support of the overall goals of the Framework Guidelines in the interim period, this technical incompliance is not to be considered a crucial issue, that could seriously hamper the development of the internal market. In addition, recent developments propelled by voluntary Transmission System Operator cooperation on (regional) booking platforms show that the goal of reducing the number of platforms to eventually only one single platform might be achievable even faster.

The Network Code is therefore considered to be sufficiently compliant with the Framework Guidelines.

#### **Conclusion:**

**The Network Code is compliant on the aspects related to booking platforms.**