



- Ruling Chamber 7 -

Decision

Ref: BK7-15-001

In the administrative proceedings

concerning Adjustment of capacity provisions in the gas sector (implementation of the Network Code on Capacity Allocation Mechanisms, KARLA Gas 1.1)

Ruling Chamber 7 of the Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway, Tulpenfeld 4, 53113 Bonn, legally represented by its President Jochen Homann,

by its Chair	Christian Mielke,
by its Vice Chair	Dr Stephanie Ruddies
and by its Vice Chair	Dr Antje Peters

issued the following Determination on 14 August 2015:

1. Operative provisions 1 to 6, operative provision 8 and Annex 1 of the Determination BK7-10-001 of 24 February 2011 as amended by Determination BK7-12-201 will be revoked with effect from 1 November 2015.
2. The gas transmission system operators (hereinafter the Gas TSOs) will be required with effect from 1 November 2015 to include the arrangements set out in the Annex ("Gas Standard Capacity Contract") in new capacity contracts to be concluded for interconnection points within the meaning of Article 3(10) of the Network Code on Capacity Allocation Mechanisms and to adjust any existing capacity contracts to reflect the arrangements set out in the Annex.
3. Should a Gas TSO intend to allocate capacity at one or more of its interconnection points from 1 November 2015 on a platform other than the one used until that date, the Gas TSO must inform the Ruling Chamber of this without delay. The Gas TSO must document the general conditions applicable to the auction process and to the access to the new platform appropriately and in the German language. Notification must be given no later than three months prior to the intended start of the first capacity auction on the new platform.
4. With effect from 1 November 2015 the Gas TSOs will be required to set aside 20% of the technical capacity at each interconnection point and to offer this in accordance with Article 8(7) of the Network Code on Capacity Allocation Mechanisms insofar as the available capacity at the time this Determination enters into force is equal to or greater than the amount of technical capacity that is set aside. The exact proportion of capacity to be set aside for the quarterly and

annual auctions in accordance with Article 8(9) of the Network Code on Capacity Allocation Mechanisms is hereby approved for all interconnection points.

5. The Network Code on Capacity Allocation Mechanisms arrangements shall also apply from 1 November 2015 to entry points from and exit points to third countries within the meaning of Article 2(1) of the Network Code on Capacity Allocation Mechanisms.
6. The right of revocation is herewith reserved.
7. The right is reserved to rule on costs.

Courtesy translation

Rationale

I.

The present administrative proceedings concern the integration of the Network Code on Capacity Allocation Mechanisms (Commission Regulation (EU) No 984/2013 of 14 October 2013 establishing a Network Code on Capacity Allocation Mechanisms in Gas Transmission Systems and supplementing Regulation (EC) No 715/2009 of the European Parliament and of the Council (OJ EU No L 273/5 of 15 October 2013, page 5ff, hereinafter the "CAM network code") in the German legislative framework. The addressees of the proceedings comprise all Gas TSOs and, in part, shippers with existing capacity agreements. The proceedings do not cover such capacity as is excluded from the access arrangement by official ruling in accordance with section 28a of the German Electricity and Gas Supply Act of 7 July 2005 (Gesetz über die Elektrizitäts- und Gasversorgung) (Federal Law Gazette I page 1970, 3621) as amended by Article 6 of the Act of 21 July 2014 (Energiewirtschaftsgesetz, hereinafter the "Energy Act").

Up to now the arrangements for capacity allocation procedures – and thus capacity auctions in particular – have complied primarily with national legal requirements. In Germany these are sections 11 to 13 of the Ordinance concerning Access to Gas Networks of 3 September 2010 (Federal Law Gazette I page 1261) as amended by Article 4 of the Energy Act of 21 July 2014 (Federal Gazette I p. 1066) (Gas NZV, hereinafter the "Gas Network Access Ordinance") and the Determination laid down by the Ruling Chamber on capacity arrangements and auctions in the gas sector (KARLA Gas 1.0) of 24 February 2011 (file ref. BK7-10-001). The CAM network code creates an integrated basis for a future uniform system throughout Europe for the allocation of transport capacity at interconnection points – that is, points where entry-exit systems connect or are connected by an interconnector – of European Gas TSOs. As of 1 November 2015, the Network Code on Capacity Allocation Mechanisms applies and, as an EU Regulation, will be directly binding on all market participants without the need for an implementing act. Many of the currently applicable national arrangements will therefore be superseded by the CAM network code and will become superfluous. For some regulatory areas, however, the CAM network code contains specific approval requirements and a certain leeway with regards to the content, and this is to be implemented by the national regulatory authorities. The present proceedings serve firstly to provide this content and to grant the necessary approvals. Secondly, all the provisions of the previous Determination BK7-10-001 that are expressly stated in the CAM network code are to be revoked in order to remove any contradictions that may arise between the provisions of European and national law.

To ensure timely inclusion of the CAM network code in the German legal framework, the Ruling Chamber opened the present administrative proceedings on 27 February 2015. The Ruling Chamber announced the opening of the proceedings in the Official Gazette (05/2015 of

18 March 2015, Order No 10, page 1182ff) and on the Bundesnetzagentur's website. Upon the opening of the proceedings the Ruling Chamber published a draft provision and a possible amendment to the Gas Standard Capacity Contract in German and English inviting all market participants to comment by 13 April 2015. The national regulatory authorities of adjacent Member States were informed via the Gas Working Group on 23 March 2015 of the initiation of proceedings and the consultation. In the consultation the Ruling Chamber received comments from eleven companies or groups of companies and associations. Comments were received from AGGM – Austrian Gas Grid Management AG (AGGM), EconGas GmbH (EconGas), E.ON SE (E.ON), GDF SUEZ Energie Deutschland AG (GDF SUEZ), RWE Gasspeicher GmbH (RWE Gasspeicher), RWE Supply & Trading GmbH (RWE S&T), Statoil ASA (Statoil), Vattenfall Energy Trading GmbH (Vattenfall), the German Association of Energy and Water Industries (BDEW), EFET Germany (the German branch of the European Federation of Energy Traders) and FNB Gas (the association of gas transmission system operators in Germany).

Pursuant to section 55(1) second sentence of the Energy Act, the Ruling Chamber informed the regulatory authorities of the federal states, the Committee of representatives of the federal state regulatory authorities and the Federal Cartel Office that it was initiating proceedings on 27 February 2015. The draft decision was sent on 4 August 2015 to the Committee of representatives of the federal state regulatory authorities and the Federal Cartel Office and on 5 August 2015 to the regulatory authorities of the federal states, inviting their comments. The Federal Cartel Office gave its comments on the draft of the present decision on 13 August 2015. With respect to the approval of the reservation quota at interconnection points in paragraph 4 of the operative provisions, the Federal Cartel Office pointed out that various future factors could cause a change in the booking behaviour of shippers. Therefore timely network development planning is of the utmost importance in order to avoid capacity bottlenecks and any subsequent concentration of power or dominance trends in the downstream markets. No other comments have been received.

For further details reference is made to the files.

II.

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1. Responsibility

The Bundesnetzagentur has competence for the following decision as per the second sentence of Article 2(1), the first sentence of Article 8(9) and recital 6 of the Network Code on Capacity Allocation Mechanisms in conjunction with Articles 6 and 24 of Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (OJ L 211/36 of 14 August 2009) (hereinafter the "Gas Regulation") in conjunction with section 56 of the Energy Act first sentence para 2, second and third sentences in conjunction with the first half sentence of section 54(1) of the Energy Act and as per section 29(2) in conjunction with the first half sentence of section 54(1) of the Energy Act. The Ruling Chamber has competence as per section 59(1) first sentence of the Energy Act.

2. Legal basis

The Determination is based on various standards set out in the Network Code on Capacity Allocation Mechanisms and on the Energy Act in conjunction with the Gas Network Access Ordinance.

(1) The arrangement in operative provision 1 is based on section 49(2) subpara 1, (4) and (5) in conjunction with section 36(2) subpara 3 of the Administrative Procedures Act (VwVfG) and on operative provision 8 of the Determination of capacity arrangements and auctions in the gas sector of 24 February 2011 (BK7-10-001, "KARLA Gas 1.0"). Accordingly, the Determination of 24 February 2011, which under the Ruling Chamber's discretionary powers was issued with the right of revocation, may be revoked by the Ruling Chamber, in whole or in part, with future effect, even after it has become final. Insofar as the Determination of 24 February 2011 is revoked, the initial determination shall become ineffective at the date specified by the Ruling Chamber.

(2) The determinations in operative provision 2 are based on section 29(1) of the Energy Act in conjunction with section 50(1) subparas 1 and 12 of the Gas Network Access Ordinance. In accordance with section 50(1) subpara 1 of the Gas Network Access Ordinance, the Ruling Chamber may issue decisions on the content of entry and exit contracts. This also covers standard contracts that govern the acquisition and use of entry and exit capacity in gas transmission systems. The contractual clauses set out in the Annex relate to the principles of use of contractually acquired capacity by shippers. They are therefore to be regarded as an integral part of a standard capacity contract. Furthermore, the clauses set out also include uniform general conditions for the nomination procedure in accordance with section 15 of the Gas Network Access Ordinance and are therefore based additionally on the power to issue determinations under section 50(1) subpara 12 of the Ordinance.

(3) The arrangement in paragraph 3 of the operative provisions is based on section 29(1) of the Energy Act in conjunction with section 50(1) subpara 6 of the Gas Network Access Ordinance. This allows the Ruling Chamber to specify arrangements on capacity platforms in accordance with section 12 of the Ordinance. The Ruling Chamber sets out requirements in its determination in the event that a Gas TSO wishes to change to a platform other than the platform used so far to market his capacity. To this effect, the Ruling Chamber sets conditions for the use of a specific capacity platform by a Gas TSO in accordance with section 12 of the Gas Network Access Ordinance.

(4) Paragraph 4 of the operative provisions is based on the first sentence of Article 8(9) of the CAM network code in conjunction with subpara 2 of the first sentence and the second sentence of section 56 of the Energy Act. This authorises the Ruling Chamber to approve the exact amount of capacity to be set aside for short term auctions at each interconnection point at country and market area entry and exit points. Through its arrangement in operative provision 4, the Ruling Chamber specifies standard capacity quotas to be set aside for annual and quarterly auctions for all interconnection points of German Gas TSOs and thus approves the amount of capacity to be set aside in each case by the Gas TSOs. In addition, the provision on the quotas for capacity set aside may also be based on section 29(1) of the Energy Act in conjunction with the first sentence of section 50(3) of the Gas Network Access Ordinance. This authorises the Ruling Chamber to determine the percentage of the technical annual capacity that different capacity products are to have at bookable interconnection points in derogation of section 14 of the Gas Network Access Ordinance.

(5) The arrangement in operative provision 5 is based on Article 2(1) second sentence of the Network Code on Capacity Allocation in conjunction with para 2 of the first sentence and the second sentence of section 56 of the Energy Act. The arrangement authorises the Ruling Chamber to resolve that the CAM network code provisions also apply to entry points from and exit points to third countries that do not belong to the European Union. The Ruling Chamber has exercised this authorisation in operative provision 5

(6) Operative provision 6 is based on section 36(2) para 3 of the Administrative Procedures Act.

3. Formal requirements

The formal requirements for the legality of the decision have been met. The decision is aimed at an admissible group of addressees (see next section 0.). The Ruling Chamber has carried out the necessary consultations and hearings (see next section 3.2.); the authorities concerned also participated (see next section 3.3.).

3.1. Admissible group of addressees

The Ruling Chamber's decision is aimed in full at all German Gas TSOs and thus at an admissible group of addressees in accordance with section 29(1) of the Energy Act, Article 2(1), Article 8(9) of the CAM network code in conjunction with section 56 of the Energy Act.

The arrangement in operative provision 5 to extend the scope of application of the CAM network code to interconnection points at the borders with non-EU countries is further targeted at shippers with supply contracts at these points. The legal obligation to combine existing capacity contracts pursuant to Article 20 of the CAM network code to booking points from and to third countries will be extended to these shippers. The present ruling is severable in this respect.

3.2. Hearing and consultation

Compliance has been observed with the prevailing hearing and participation rights. The Ruling Chamber gave the parties affected by the decision and representatives of other sectors of the economy affected by the proceedings an opportunity to state their views as provided for in section 67(1) and (2) of the Energy Act. To this effect the Ruling Chamber published information on the initiation of proceedings on its website on 27 February 2015 and in the Official Gazette of 18 March 2015. The information published included a full draft of the proposed decision. All market participants were given an opportunity to respond by 13 April 2015. Responses were received in the consultation from eleven companies and associations. All the responses received were published on the Internet and taken into account in the decision making. The hearing for market participants constituted at the same time the consultation of interested parties required for approval of the quotas set aside at the interconnection points of German Gas TSOs in operative provision 4 in accordance with Article 8(9) of the CAM network code.

3.3. Participation of competent authorities

The competent authorities and the Committee of representatives of the federal state regulatory authorities were informed of the opening of the determination proceedings by notice of initiation on 27 February 2015. The formal participation of the Committee of representatives of the federal state regulatory authorities in accordance with section 60a(2) of the Energy Act took place on 4 August 2015. The Federal Cartel Office and the competent authorities under federal state regulations received an invitation on 4 and 5 August 2015, respectively, to submit their comments pursuant to section 58(1) of the Energy Act. The national regulatory authorities of the European Member States were likewise informed that the proceedings would be initiated by email of 24 March 2015. They received an English translation of the initiation document with a draft decision, which was also published on the Bundesnetzagentur's website.

4. Material legality of the decision

The Ruling Chamber's decision is substantively lawful. The conditions for rendering the decision have been fulfilled. Insofar as it has been granted discretionary power, the Ruling Chamber has exercised due and proper discretion in addressing and resolving the matter. The partial revocation of Determination BK7-10-001 (see section 4.1. below), the redefinition of the standard contractual clauses for capacity agreements in the gas sector (see section 4.2. below) and of the set of requirements for the change of capacity platform used by a network operator (see section 4.3. below) are not objectionable. The structure of the legal framework for the capacity allocation will be supplemented in a legally compliant manner by the approval of reservation quotas for the interconnection points of German Gas TSOs (see section 4.4. below) and by the Determination on the validity of the requirements of the CAM network code at entry points from and exit points to third countries (see section 4.5. below). The rule on the right of revocation (see section 4.6. below) is likewise not open to objection.

4.1. Partial revocation of Determination BK7-10-001 (operative provision 1)

(1) As per paragraph 1 of these operative provisions, operative provisions 1 to 6 and operative provision 8 of the Determination on capacity arrangements and auctions in the gas sector of 24 February 2011 (BK10-10-001, "KARLA Gas 1.0") are revoked effective 1 November 2015. After the entry into force of the present Determination only the rule in operative provision 7 of BK7-10-001 will remain in effect for the time being. The Ruling Chamber does not see the need for the revocation of operative provision 7 as the rule on charges for capacity products of more than one day duration has already been revoked and replaced, effective 1 January 2016, by operative provision 3 of the Determination of 24 March 2015 (BK9-14-608, "BEATE") with respect to requirements for converting yearly capacity charges into charges for non-yearly capacity rights and requirements for appropriate arrangements for setting network charges in accordance with section 15(2) to (7) of the Gas Network Charges Ordinance (GasNEV) and by a new pricing rule. To avoid any gaps in the arrangements during the period November to December 2015, operative provision 7 shall remain in force until 31 December 2015. As of 1 January 2016 the arrangements in the "BEATE" Determination shall apply exclusively in this respect.

(2) The conditions for a partial revocation of Determination BK7-10-001 have been met. The partial revocation was necessary and expedient, and does not unduly burden those affected by the Determination.

In operative provision 8 of Determination BK7-10-001 of 24 February 2011, the Ruling Chamber reserved the right of revocation of the decision as per section 36(2) para 3 of the Administrative Procedures Act (VwVfG). The Ruling Chamber is now exercising this right of revocation with the

present decision. Furthermore, the partial revocation of Determination BK7-10-001 represents an ex post amendment to the initial decision and is consequently also covered by the first sentence of section 29(2) of the Energy Act.

With the entry into force of the Network Code on Capacity Allocation of 14 October 2013, the European Commission has established a new, and in many areas a final, regulatory framework for the allocation of capacity in gas transmission systems. The rules in the Network Code overlap with many areas of Determination BK7-10-001, with some parts being identical and others differing. Other parts of the arrangements set out in the Determination were affected by the amendment to the Gas Regulation in 2013. To avoid repetition or conflicting regulation and to establish legal clarity, the Ruling Chamber has decided to revoke the national legal regime for the allocation of capacity, which up to now has been set out in Determination BK7-010-001, insofar as the European legislation that is directly binding on all market participants offers a final and consistent regulatory framework. The new arrangements that are set out in the present proceedings refer exclusively to those areas where the CAM network code provides for official approval or allows the national regulatory authorities some leeway for decision-making. Uncertainty or conflicts between national and European regulations can thus be kept to a minimum. This has a twofold effect: on the one hand it removes a burden from the Gas TSOs who are the main addressees of the CAM network code; while on the other it gives shippers an increased level of transparency and uniformity in access to transport capacity in the European gas transmission systems.

The revocation of the Determination also renders the published notification devoid of purpose. For the sake of clarity, the Ruling Chamber points out that this does not alter the Gas TSOs' legal duty to report any access refusals, including any bids not accepted during capacity auctions, in compliance with the legal requirements of the Energy Act and of the Gas Network Access Ordinance.

4.1.1. Revocation of operative provision 1

Operative provision 1 of Determination BK7-10-001 is revoked effective 1 November 2015. The provision required the Gas TSOs to include the standard contractual clauses set out in the Annex to the Determination (hereinafter the "Gas Standard Capacity Contract") and effective as of 1 October 2011 and 1 April 2012, respectively, in any existing and future capacity agreements. The CAM network code now sets out conclusive arrangements for many areas of law that are addressed in the Gas Standard Capacity Contract. Therefore the German determination has become redundant (see the general considerations above). Moreover, in the interests of legal clarity, the Ruling Chamber has further decided to revoke those parts of the Gas Standard Capacity Contract of Determination BK7-10-001 that are not affected by the CAM

network code. Pursuant to paragraph 2 of the operative provisions of the present decision, these will be the object of a newly revised Gas Standard Capacity Contract (see the following section 4.2. for more details). The Ruling Chamber is of the view that this increases the transparency of its decision and of the future applicable regulatory framework for all those concerned.

4.1.2. Revocation of operative provision 2

The arrangements in operative provision 2 of Determination BK7-10-001 may also be dropped.

(1) The arrangement in operative provision 2(a) is no longer needed as the CAM network code applies. It justifies an exception to the duty of bundling capacity at cross-border points if certain conditions are met. The CAM network code contains a complete system in Chapter IV for bundling capacity at all interconnection points in its scope of validity and thus at all cross-border interconnection points, too. The extent of the bundling duties incumbent upon the Gas TSOs has thus been conclusively defined in European law.

(2) Operative provision 2(b) is likewise to be dropped. The arrangement includes an exception to the bundling duty pursuant to the provisions in the Gas Standard Capacity Contract for capacity agreements concluded up to 31 July 2011. Article 20 of the CAM network code stipulates in future whether and to what extent bundling is to take place for all capacity agreements concluded before 4 November 2013 and thus also for all existing old agreements within the meaning of operative provision 2(b) of Determination BK7-10-001. There is therefore no need for a national determination.

4.1.3. Revocation of operative provision 3

Operative provision 3 of Determination BK7-10-001 can likewise be dropped.

(1) The arrangements in (a), (b) and (c) of operative provision 3 include duties of notification and publication in the event that use is made of the above-referred exception in operative provision 2. As the exception has been dropped, there is no reason to retain the duties of notification and publication.

(2) Operative provision 3(d) can likewise be dropped. The arrangement requires the Gas TSOs to inform the Ruling Chamber, and to publish, any capacity agreements offered with coupling requirements or restrictions of use. In the Ruling Chamber's view, the Gas TSOs are already under sufficient obligation to publish this information under Part 3 of Annex I to the Gas Regulation. Annex I of the Gas Regulation contains guidelines adopted by the European Commission that are directly binding on all market participants in proceedings in accordance with Article 23 of the Gas Regulation. These contain, amongst others, a list of all the information that the network users need from the Gas TSOs to actually be able to access the system. As per

points 3.1.2(a) and (b) of Annex I, a detailed, comprehensive description of the various services offered and their corresponding charges also falls under these guidelines, as do the resulting various types of shipping agreement for the services. As of 1 October 2013, these must be made available on a central platform accessible throughout the European Union, see point 3.1.1(h) of Annex I. In the Ruling Chamber's view, this gives rise to a comprehensive duty of the Gas TSOs to describe the capacity products they offer. This also includes those products offered with limited allocability or restrictions of use. Given the main duty of publication on an EU-wide platform, the Ruling Chamber currently considers it unnecessary to retain a separate reporting requirement for the above-referred capacity agreements.

(3) Operative provision 3(e) can also be dropped due to a European special arrangement. Operative provision 3(e) includes the Gas TSOs' duty from 1 October 2011 to retain for a period of five years the customer-specific nominations and renominations for market area interconnection points and cross-border interconnection points, and to make these available to the Ruling Chamber, upon request, in a format suitable for electronic processing using standard software. Corresponding documentation requirements placed on the Gas TSOs, however, arise on the basis of European legislation in point 3.4.7 of Annex I to the Gas Regulation. Respective customer-specific nominations and renominations provide relevant data in connection with the calculation and provision of access to available capacity within the meaning of the Regulation. For this reason, a record must also be retained of individual nominations for each specific agreement. Individual nominations within the meaning of the Gas Regulation include both initial nominations and renominations by customer. This data is to be kept for a period of five years and to be made available upon request to national regulatory authorities.

4.1.4. Revocation of operative provision 4

Nothing needs to be retained in operative provision 4. The arrangement lays down the requirements for the primary capacity platforms to be operated by the Gas TSOs pursuant to section 12 of the Gas Network Access Ordinance.

(1) The arrangement in operative provision 4(a) that provides for the primary capacity platform to be set up as an independent platform on which shippers can book capacity directly can be dropped in view of Article 27 of the CAM network code. Article 27 of the CAM network code requires the Gas TSOs to offer capacity to shippers for acquisition on one or a limited number of joint booking platforms and in Article 27(2) sets out the rules that apply to the operation of the platform. The material requirements set out in operative provision 4(a) regarding the operation of the platform will continue to be adequately secured in future on the basis of European legislation.

(2) Sufficient account is also taken of the manifest requirement of bulk business capability and automated processes on the primary capacity platform in operative provision 4(b) by the CAM network code and by the German provisions in the Energy Act and Gas Network Access Ordinance. In this respect Article 5 of the CAM network code provides for standardisation of communication among Gas TSOs and among Gas TSOs and shippers. Pursuant to Article 5(2) of the CAM network code, the shippers' access to a standard booking platform within the meaning of Article 27 of the CAM network code must be offered using standardised communication procedures. In addition, section 20(1) sentence 5 of the Energy Act requires the Gas TSOs to guarantee bulk business network access when offering capacity. Pursuant to section 26(2) second sentence of the Gas Network Access Ordinance, this should take place on a fully automated electronic basis. This requirement also applies to Gas TSOs who use a booking platform to offer their capacity and which may also be operated by a third party.

(3) The Determination in operative provision 4(c) whereby all transactions carried out on the booking platform have to be documented can likewise be dropped. In this regard the Gas TSOs' duty falls under point 3.4.7 of Annex I of the Gas Regulation. The auction procedure, including the individual bidding steps of all participants, provides relevant information regarding the provision of access to capacity within the meaning of this provision and therefore a record of this must be kept for a period of five years and furnished to the Bundesnetzagentur upon request. When choosing which platform to use the Gas TSOs must ensure that they can guarantee compliance with this legal obligation. During the present proceedings the Ruling Chamber drew the platform operator PRISMA European Capacity Platform GmbH's (PRISMA) attention to this Gas Regulation requirement. PRISMA confirmed by letter of 1 April that it shared the Ruling Chamber's legal understanding and that it kept a record of the relevant documentation.

4.1.5. Revocation of operative provision 5

(1) There was likewise nothing that needed retaining in operative provision 5. Operative provision 5 covers the structure of auction processes for capacity at interconnection points. It supplements the arrangements in sections 11 to 13 of the Gas Network Access Ordinance which require the Gas TSOs to auction entry and exit capacity via a primary capacity platform from 1 October 2011. It further requires the Gas TSOs to agree the procedure for capacity auctions in advance with the Ruling Chamber. To this end the Gas TSOs have developed a primary capacity platform concept and, following agreement with the Ruling Chamber, have taken this as the basis for the operation of their primary capacity platform.

(2) In Chapter III (Articles 8 to 18), the CAM network code contains detailed requirements that regulate conclusively the content and procedure of capacity auctions. The Gas TSOs are required to implement the provisions of the CAM network code as directly applicable law.

Therefore there is no longer any need for prior agreement between the Gas TSOs and the Ruling Chamber on the auction process to be followed. The Gas TSOs have announced that they will continue to use the platform concept voluntarily and at their own responsibility for the time being. The Ruling Chamber welcomes this proposed course of action and views the future platform concept as a useful tool when modifying the capacity auctions to meet the requirements of the CAM network code. In addition, the concept presents an opportunity to make the future applicable legal framework more transparent for the shippers.

(3) To avoid duplication, the arrangements in operative provision 5 will be revoked as they are no longer necessary in light of the CAM network code. Hence in future Article 26(1) and (2) of the CAM network code will replace the arrangement in the first sentence of operative provision 5(a)(aa) with respect to the legal classification of the proceeds from auctions. The second sentence of the arrangement in operative provision 5(a)(aa) has already been revoked by Determination BK7-12-201 of 31 October 2012. The stipulation in operative provision 5(a)(bb) on entering and increasing the volume of capacity bids is also found in Article 17(5) and (8) of the CAM network code. The requirements in operative provision 5(a)(cc) on notifying the volume of capacity to be offered and on the interval between the quarterly and annual auctions may be dropped in future in view of the provisions in Articles 12(7), 13(6) and 14(8), and in Articles 11(4) and 12(5), respectively, of the CAM network code. The arrangement set out until now in operative provision 5(a)(dd) on the time frame during which shippers may enter their first bid will be replaced by the provisions in Articles 17(2) and 14(6) of the CAM network code.

(4) The Gas TSOs' obligation to evaluate the auction process in conjunction with the shippers every year and to report on the findings can be eliminated. Not only does the revocation of the duty of evaluation and reporting release the market participants from an encumbrance, it is not absolutely necessary at the current moment in time. Although the Network Code on Capacity Allocation Mechanisms itself does not provide for any obligation to evaluate the auctions on a regular basis, the Ruling Chamber is of the opinion that all those involved should be given sufficient time, under the same general conditions, to implement and test the changes to the system of capacity allocation made necessary by the application of the CAM network code. Thus further changes to the capacity allocation auctions that also include newly acquired findings and up-to-date developments are not excluded in principle within the framework of European regulations. As already indicated in the introduction to the present proceedings, the Ruling Chamber is considering issuing additional arrangements at a later date and in other proceedings with respect to access to transport capacity, especially the standardisation of capacity products. In this connection the Ruling Chamber has reserved the right within any such subsequent proceedings to check, if necessary, whether there is a need for a different evaluation mechanism for capacity allocation.

(5) Operative provision 5(c) regarding the use of auction proceeds can likewise be revoked. An identical arrangement can now be found in section 13(4) of the Gas Network Access Ordinance rendering a Ruling Chamber determination unnecessary.

4.1.6. Revocation of operative provision 6

Operative provision 6 of Determination BK7-10-001 can also be dropped in future. With the entry into force of the Network Code on Capacity Allocation Mechanisms there is no longer any scope for the exemption arrangement found therein, which provides for an exemption to provisions 4 and 5(a) whereby bundled capacity at cross-border interconnection points may be allocated in other allocation procedures and on a platform other than the general German primary capacity platform. The type of allocation procedure to be used in future – for both bundled and unbundled capacity – is conclusively stipulated in Articles 8 to 20 of the CAM network code. Any deviation from this is only permissible within the scope of possibilities offered by the Network Code on Capacity Allocation Mechanisms itself. In this respect provision can be made, for example, for deviations to standard auctions in accordance with Article 2(3) of the CAM network code for new technical capacity that is to be allocated through open allocation procedures (e.g. open season procedures). Other deviations are possible, for instance if implicit allocation methods are used for gas and transport capacity, see Article 2(4) of the CAM network code.

With respect to the choice of booking platform to be used for the capacity allocation, Article 27 of the CAM network code contains definitive rules. Any platform under consideration must meet the requirements of the Network Code on Capacity Allocation Mechanisms. Therefore there is no further scope for the exception in operative provision 6.

4.1.7. Revocation of operative provision 8

The right to revocation in operative provision 8 was likewise revoked effective 1 November 2015. The revocation of the substantive arrangement of Determination BK7-10-001 also rendered the right of revocation redundant.

4.2. Determination of standard contractual clauses for capacity agreements in the gas sector (operative provision 2)

The requirements have been met for issuing the Determination (see section 4.2.1. below). The Ruling Chamber has exercised the discretion conferred on it correctly (see section 4.2.2. below) and the specific form of the Determination is without any errors of legality or discretion (see section 4.2.3. below).

4.2.1. Preconditions for the Determination

In accordance with section 50(1) of the Gas Network Access Ordinance the regulatory authority may issue determinations if they serve to achieve efficient access to the network (see section 4.2.1.1. below) and the purposes set out in Section 1(1) of the Energy Act (see section 4.2.1.2. below) taking the requirements of a secure network operation into consideration (see section 4.2.1.3. below).

4.2.1.1. Achieving efficient network access

The present Determination serves to achieve efficient network access pursuant to section 50(1) of the Gas Network Access Ordinance. A network access system is efficient when those requesting access use the network infrastructure to the highest possible degree at the lowest possible cost and thus can operate in a competitively structured market on reasonable terms as a supplier. The arrangements for the Gas Standard Capacity Contract proposed by the Ruling Chamber are based on the fundamental decision of not duplicating those requirements at the national level that have been conclusively stipulated in the CAM network code. The arrangements stipulated have taken away any leeway. The Determination achieves efficient network access by standardising the requirements of use of the capacity that has been acquired in accordance with the CAM network code. Additionally, the right of return and the established day-ahead capacity market will continue under the Determination and will be developed further by making any necessary modifications.

4.2.1.2. Achieving the aims of section 1(1) of the Energy Act

The present decision also serves to implement the legislative purpose set out in section 1(1) of the Energy Act. In particular, the primary goals are a low-priced, consumer-friendly and efficient supply of gas for society as a whole. The Determination supports the efficient use of existing infrastructure and simple access to the network system upon the acquisition of transport capacity through a standardised and thus uniform process throughout Germany. Furthermore, avoiding the duplication of regulations at the German and European levels allows the requirements under national and European legislation to be harmonised while simultaneously achieving a reduction in transaction costs. The Determination is thus in line with section 1(1) of the Energy Act.

4.2.1.3. Due regard for the requirements of secure network operation

The Determination pays due regard – as demanded by section 50(1) of the Gas Network Access Ordinance – to the requirements of secure network operation. The auction of capacity rights fit for bulk business up to within the day of use poses a challenge to secure network operation. The

stipulated standardised requirements for use play an important role in ensuring that the requirements of secure network operation are complied with during the use of capacity rights in operational dealings.

4.2.2. Correct exercise of discretion

The Ruling Chamber correctly exercised its discretion when issuing the present Determination. The Determination is necessary and expedient. The former general conditions for the auction and management of capacity are to be regulated by the Network Code on Capacity Allocation Mechanisms. This demands a change to the nationally determined conditions of access. In redefining the Gas Standard Capacity Contract the Ruling Chamber is not only pursuing the goal of avoiding duplication of the Network Code on Capacity Allocation Mechanisms but also the principle of only amending those standard contractual clauses that have so far proven themselves in practice and only where this is necessary and expedient. The decision to set out a standard agreement on the requirements for use, return and use of capacity on the basis of Section 29(1) of the Energy Act in conjunction with section 50(1) subparas 1 and 12 of the Gas Network Access Ordinance serves to harmonise the network access regime.

4.2.3. The form of the Determination is without any errors of legality or of discretion

The actual form and content of the Determination is legally correct. Any discretion the Ruling Chamber may have had in the wording of the standard contractual clauses has been exercised correctly.

Operative provision 2 adapts the standard agreement of Determination KARLA Gas (file ref. BK7-10-001) to the CAM network code. The comments generally support the redefinition and revocation of standard contractual clauses and consider this appropriate (see BDEW, EFET, FNB Gas). One market participant (E.ON) requested the additional draft of a consolidated document to be included in the redefined operative provisions and to be annexed to the CAM network code and the standard agreement. In this context, the Ruling Chamber wishes to draw attention to the fact that any uncertainty with respect to the future applicable regulatory canon is to be prevented due to Determination BK7-10-001 having been revoked practically in its entirety. The standard general conditions for drafting capacity agreements are taken as of 1 November 2015 from the standard contractual clauses set out in the Annex, which will be supplemented by arrangements within the cooperation agreement. In addition, the general provisions of the CAM network code and of the Gas Regulation are binding on all Gas TSOs as directly applicable legislation. Accordingly, it is not necessary to draw up a consolidated document as part of the Determination as this would duplicate the directly applicable European regulations.

The arrangement is appropriate with respect to the new provisions of the Gas Standard Capacity Contract that apply as of 1 November 2015. The Ruling Chamber has deliberately decided on this fixed date when the arrangements stated in the Gas Standard Capacity Contract are to be adapted and included in existing and future capacity agreements. The Network Code on Capacity Allocation Mechanisms will apply in full as of 1 November 2015. This will ensure a practically seamless transition from the previously applicable standard contract under the Determination KARLA Gas 1.0 to the Gas Standard Capacity Contract newly arranged by this Determination, which supplements the CAM network code arrangements as necessary. With respect to the entry into force of the CAM network code arrangements, the BDEW points out that a final version of the Determination had to be available before the publication of the cooperation agreement on 30 June 2015. No reason was given for this. From the Ruling Chamber's point of view it was not necessary for the Determination to be available as of 30 June 2015. The KARLA Gas 1.0 Determination with its associated standard contractual clauses is valid until 1 November 2015. Upon the entry into force of this Determination, the new Gas Standard Capacity Contract will apply. Accordingly, the cooperation agreement arrangements are to be adapted to the new Determination and the new Gas Standard Capacity Contract. From the Ruling Chamber's point of view, presenting Annex 1 of the cooperation agreement in two versions, one valid until 31 October 2015 and one valid from 1 November 2015, does not give rise to any inordinate costs. This having been stated, the next sections contain more details of the structure of the standard contractual clauses.

4.2.3.1. Revocation of sections 1 and 2 of the Gas Standard Capacity Contract

Sections 1 and 2 of the Gas Standard Capacity Contract have been revoked. The Ruling Chamber does not intend to duplicate the requirements set out in the Network Code on Capacity Allocation Mechanisms insofar as these are conclusive. Therefore the redefined standard contractual clauses contain neither definitions (revocation of section 1 of the Gas Standard Capacity Contract) nor arrangements on bundled booking points and capacity products (revocation of section 2 of the Gas Standard Capacity Contract).

(1) The Ruling Chamber aimed at avoiding any discrepancies between the definitions and defined terms in the CAM network code and in the Gas Standard Capacity Contract. The definitions revoked in section 1 of the Gas Standard Capacity Contract are definitively contained in the CAM network code (see Article 3 i.a.). An additional stipulation in the Gas Standard Capacity Contract is no longer necessary.

(2) By revoking section 2(1) and (2) of the Gas Standard Capacity Contract the obligation to bundle interruptible capacity is dropped. In this way the Ruling Chamber is aiming to achieve equal treatment of cross-border and market area interconnection points as the CAM network

code merely provides for the bundling of firm capacity (see the definition "bundled capacity" in Article 3(4) of the CAM network code). Maintaining the Determination in force would not automatically lead to the bundling of interruptible capacity at the border through the necessary cooperation with a foreign Gas TSO, as the foreign Gas TSO is not obliged to bundle capacity on the basis of the CAM network code. Experience with the previous rule that existed on bundling interruptible capacity has shown that in general the bundling of interruptible capacity is not supported by the adjacent foreign Gas TSO. Revoking the rule, however, does not prohibit the Gas TSO from offering bundled interruptible capacity of his own free will. In this respect, the revocation creates on the one hand uniformity in network access conditions within the meaning of section 20 of the Energy Act and, on the other, flexibility insofar as any rules that differ do not run counter to the aims of section 1(1) and section 20 of the Energy Act.

(3) The harmonisation clause in section 2(2) fifth sentence of the Gas Standard Supply Contract is no longer required as, in the event that unequal amounts of capacity are available at either side of an interconnection point (mismatch), Article 19(5) of the CAM Network Code applies conclusively and comprehensively to the possibility of subordinate contracting of unbundled capacity. The section 2(2) fifth sentence of the Gas Standard Capacity Contract merely provides that, given a previously existing unbundled contract, unbundled capacity may be marketed on the other booking side until the end of this previously existing contract at the latest (also known as a contractual mismatch). Insofar as a Gas TSO can offer more capacity on one side of the booking point involved than a neighbouring Gas TSO, and thus there is no contractual mismatch but rather a technical one, pursuant to Article 19(5) of the CAM network code it is possible to offer this capacity on an unbundled basis for a maximum period of one year. The revocation serves additionally the equal treatment of border and market area interconnection points because this provides a clear rule for market area interconnection points as to how any (unbundled) capacity is to be offered in the event of a technical mismatch.

(4) Section 2(3) of the Gas Standard Capacity Contract, which provides the option of offering capacity with limited allocability and restrictions of use, is unnecessary due to the identical provision in section 9(3) subpara 2 of the Gas Network Access Ordinance.

(5) The determination in section 2(4) of the Gas Standard Capacity Contract on the starting times of the standardised capacity products is no longer required as the specific starting times are set out conclusively in Article 9(2) to (6) of the CAM network code.

(6) The comments received do not make any specific comments on the revoked sections 1 and 2. Generally, there is support for the changes to the Gas Standard Capacity Contract to avoid redundancies and for the equal treatment of German internal market area interconnection points and cross-border interconnection points (RWE S&T, E.ON, EconGas, BDEW, FNB Gas, EFET).

(7) The Ruling Chamber did not take up the proposals of RWE S&T or of RWE Gas Storage to determine the booking of within-day capacity at entry and exit points to gas storage under the Gas Standard Supply Contract clauses. The aforementioned consultation participants are of the view that market participants should also be given the possibility of booking within-day entry or exit capacity at entry and exit points to gas storage. Only in this way will storage customers be granted sufficient flexibility to respond quickly and cost-effectively to within-day gas price movements or changes in supply and demand on the gas market. The Ruling Chamber wishes to draw attention to the fact that the offer of within-day capacity at entry and exit points to gas storage is already possible as the legislation stands at present. However, the Ruling Chamber has decided against including within-day capacity at storage points among the standard capacity products within the framework of the present decision. The present proceedings are intended solely to serve the fast implementation of the CAM network code. The network code, however, only addresses the capacity allocation at interconnection points. Due to the object of the present proceedings, entry and exit points to storage are consequently not covered. Nevertheless, the Ruling Chamber does not exclude addressing issues relating to the standardisation of capacity products in subsequent proceedings and thus also examining the introduction of within-day standard capacity products at gas storage.

4.2.3.2. Precondition for use of booked capacity, section 3 Gas Standard Capacity Contract

Changes were carried out to section 3(1) of the Gas Standard Capacity Contract by the reference to the bundled booking point within the meaning of the CAM network code. Furthermore, section 3(5) has been amended to include "within-day capacity" as an exception to the possibility of splitting booked capacity into different balancing groups/sub-balancing accounts and section 3(7) has been amended to include the possibility of entering "within-day capacity".

(1) The addition to section 3(1) of the Gas Standard Capacity Contract serves to explain the term "bundled booking point". The provision refers in this respect to the understanding of the term in Article 19(3) of the CAM network code. This ensures that the terms used in the Gas Standard Capacity Contract are covered by those used in the CAM network code. The Ruling Chamber considers this clarification to be expedient in view of the revocation of the definitions in section 1 of the Gas Standard Capacity Contract.

(2) The amendment in section 3(5) is due to the fact that the Gas TSOs are required to auction within-day capacity as of 1 November 2015. Accordingly, it is necessary and expedient to extend the current preconditions for the use of booked capacity to include within-day capacity too. The BDEW proposal to use the English term "within-day capacity", amongst others in section 3(5) of the Gas Standard Capacity Contract, instead of the German term "untertätige Kapazität" could

not be accepted by the Ruling Chamber. The German version of the CAM Network Code expressly defines the term "untertätige Kapazität" as the capacity that is offered at the end of the day-ahead capacity auctions with respect to that day, see Article 3(18). To avoid legal uncertainty and different values, the legal definitions in the CAM network code have been transferred to the Gas Standard Capacity Contract without any changes.

(3) The amendment to section 3(7) of the Gas Standard Capacity Contract likewise serves to adapt the terminology to the CAM network code. The aim of the provision is to secure the usability of capacity obtained at short notice. As the short-term capacity products, which were defined as "rest of day" and "within-day", have now been dropped with the deletion of section 1 of the Gas Standard Capacity Contract, or have been replaced by the term "within-day" (German: "untertätige Kapazität"), section 3(7) of the Gas Standard Capacity Contract has been amended accordingly.

(4) The Ruling Chamber has not followed the BDEW proposal to delete the right of shippers to designate the balancing group manager to be responsible for bundled capacity nomination as set out in section 3(2) of the Gas Standard Capacity Contract. The BDEW proposed not to have the designation provision in the reference offer but to provide for it in the cooperation agreement Annex 1 terms and conditions for the entry and exit contract. This would give the network operators greater flexibility if another type of arrangement were set up, for example as part of the discussions of the European Network of Transmission System Operators for Gas within the meaning of Article 4 of the Gas Regulation (hereinafter ENTSG) on general conditions for bundled nomination in accordance with Article 19(7) of the CAM network code. In the Ruling Chamber's view, however, the provision in section 3(2) of the Gas Standard Capacity Contract is not in conflict with a uniform European structure of bundled nomination at the ENTSG level. It merely sets out that the shippers should designate a balancing group manager responsible for nomination and that this balancing group manager must designate the Gas TSOs affected. The clause does not contain any more specific arrangements on bundled nomination. Based on this, the Ruling Chamber is of the view that there is sufficient flexibility for arranging the process as part of the cooperation agreement and through ENTSG, respectively.

(5) Additionally, the Ruling Chamber could not agree to the proposed changes of the BDEW to the last sentence of section 3(3), or to subsections 3(4) and (7) of the Gas Standard Capacity Contract. Although the changes proposed by the BDEW appear to the Ruling Chamber to be substantively correct, they were not included in the consultation. The BDEW proposes, amongst others, a provision for the insertion of firm within-day capacity into the balancing group. In addition, the reference to the supplementary terms and conditions by a conclusive provision in section 13b of annex 1 to the draft cooperation agreement VIII is not considered necessary and correspondingly its deletion is requested. In this context, the Ruling Chamber draws attention to

the fact that the market participants are free to add clauses with the proposed specific details to the Gas Standard Capacity Contract within the cooperation agreement.

4.2.3.3. Surrender of capacity, section 4 Gas Standard Capacity Contract

The time has been changed for the return of surrendered capacity in subsection 4(8) of the Gas Standard Capacity Contract. Moreover the provisions in section 4 of the Gas Standard Capacity Contract were essentially to be redefined without change.

(1) The arrangements in section 4 of the Gas Standard Capacity Contract relating to the return of capacity were essentially to be redefined without change as the Network Code on Capacity Allocation Mechanisms contained no arrangements for this. Hence there is continued need for a national arrangement for the general conditions applicable to returned capacity. The Ruling Chamber has decided to revoke Determination BK7-10-001 in its entirety and to replace it with a uniform new determination merely on the grounds of legal clarity. For the reasoning behind the specific wording of section 4 of the Gas Standard Capacity, reference can be made for the entire contents to the recitals on page 45ff in Determination BK7-10-001.

(2) Following a proposal from RWE S&T, BDEW, EFET, FNB Gas, E.ON and Vattenfall, however, the Ruling Chamber has amended section 4(8) of the Gas Standard Capacity Contract with respect to the time for the return of surrendered capacity. The aforementioned consultation participants have suggested bringing forward the time at which the Gas TSOs make the returned capacity that could not be resold available for use to the returning shipper ("return of surrendered capacity") to no later than 18.00 instead of 20.00. The Ruling Chamber acknowledges that the earlier time has been standard practice in the market for some years and has been accepted and supported by the market participants. The cooperation agreement, amended and applicable as of 1 October 2013, also contains the earlier time. Furthermore, all shippers are either positively affected or not affected at all by the earlier return of surrendered capacity time. In the market participants' view, the earlier time is also a compromise between the Gas TSOs and the distributors, as the distributors had wanted an even earlier time.

(3) The Ruling Chamber cannot follow the BDEW suggestion of adding a reference to section 16(1) in section 4(1) of the Gas Standard Capacity Contract to the term "(primary capacity platform)". The term "primary capacity platform" within the meaning of section 12 of the Gas Network Access Ordinance is not in accordance with Article 27 of the CAM network code. Pursuant to the CAM network code, the Gas TSOs may offer capacity on "one or a limited number of joint web-based booking platforms". By adding the view of the joint booking platform as a primary capacity platform, this suggests that any surrender to a platform other than the previously used joint booking platform is not possible or only in accordance with other arrangements. From the Ruling Chamber's point of view, the return of capacity via the booking

platform forms a basic function. This is ultimately made clear by the wording in Articles 11(6), 12(6), 13(5) and 14(7) in conjunction with point 2.2.4 of Annex 1 of the Gas Regulation. The Ruling Chamber also refers in this connection to operative provision 3 (see section 4.3.).

(4) The Ruling Chamber has decided not to make any change for the time being to the surrender mechanism as set out in the GDF Suez comments. GDF Suez suggested a new arrangement for surrendered capacity with respect to bundling. GDF Suez does not consider making the capacity a day-ahead product in the event of it not being resold by 20.00 to be an attractive idea as the shipper would no longer be able to use the capacity appropriately. Referring to the arrangement in other countries (for example in the Netherlands), GDF Suez requested the complete return of surrendered capacity that could not be sold: A shipper that has booked capacity and surrendered a quarter of it, for example, should be able to use this capacity again according to GDF Suez insofar as this capacity has not been sold in part or in whole in the quarterly auction for which it was surrendered.

From the Ruling Chamber's point of view, the proposal presents a fundamental change to the current surrender mechanism. According to the current arrangement, a decision on the return of surrendered capacity is final. If a shipper surrenders a quarterly product, for example, the Gas TSO first of all offers this capacity in the next quarterly auction. Should this capacity only be requested in part or not at all, then the Gas TSO offers this capacity in the monthly auctions. If the surrendered capacity cannot then be completely sold, it will ultimately be offered by the Gas TSO in the day-ahead auctions. The shipper will only obtain his surrendered capacity if it cannot be successfully sold in the day-ahead auctions (the so-called "return of surrendered capacity"). In accordance with the system proposed by GDF Suez, in principle the shippers would no longer decide in favour of a surrender of capacity but instead for the surrender of a specific capacity product. In this connection capacity product is used to refer to the product's life cycle. This fundamental system changeover requires thorough consultation in the Bundesnetzagentur's view and therefore cannot be carried out as part of the proceedings initiated for the timely adjustment of the German capacity arrangements to the CAM network code. The Ruling Chamber reserves the right to discuss the issues, as necessary, with the market participants in subsequent proceedings.

4.2.3.4. Nomination and renomination, section 5 Gas Standard Capacity Contract

The ban on renomination of day-ahead capacity is revoked in section 5(10) of the Gas Standard Capacity Contract. Moreover, it is made clear that even within-day capacity will not be taken into account for setting the permissible renomination range in accordance with section 5(3) of the Gas Standard Capacity Contract.

(1) The ban on renomination of day-ahead capacity is revoked. This serves to simplify and standardise network access through non-discrimination of day-ahead and within-day capacity. The CAM network code requires the Gas TSOs to offer within-day capacity. The possible renomination of day-ahead and within-day capacity products is not specified in the CAM network code. The first within-day capacity product will be allocated at 2.30 and has a life cycle of 24 hours. Hence the period available for use by the shipper is identical to that of the day-ahead capacity product. Only the purchase of capacity takes place at a markedly later time.

From the Ruling Chamber's point of view, the different renomination arrangements for day-ahead and within-day capacity were not appropriate and, in the event of unilaterally retaining the ban on renomination solely for day-ahead capacity, would have placed the day-ahead capacity product in a worse position. Insofar as comparable products differ in their nomination flexibility – day-ahead and the first within-day capacity product each have a usable period of 24 hours – there is greater incentive to book the product with the greatest flexibility. Furthermore, different (re)nomination arrangements would apply to the otherwise extremely identical capacity products, which would not be in line with the simplification and standardisation of network access.

The Ruling Chamber further refrains from extending the ban on renomination to within-day capacity, too. This would not be in line with the simplification and standardisation of network access. Although extending the renomination ban would mean that, following the nomination, the Gas TSOs would be able to offer the non-nominated part of each within-day capacity in the following auctions for within-day capacity. Nevertheless, the Ruling Chamber has determined that, based on the cancellation of long-term capacity agreements and a discernible trend towards short-term acquisition of capacity in daily and monthly auctions, there is no discernible need for additional within-day products at the present time that would be made usable due to the non-use of booked capacity.

Moreover, the revocation of the ban on renomination and thus the unrestricted possibility of renomination for day-ahead and within-day capacity was welcomed by the consultation participants (GDF Suez, Vattenfall, EFET, EconGas, E.ON, BDEW, AGGM and Statoil). The Ruling Chamber, however, will continue to monitor further trends in demand and will react appropriately as necessary.

(2) In addition, the consultation participants put forward further proposed changes to section 5 Gas Standard Capacity Contract. In keeping with the requested deletion of section 3(2) Gas Standard Capacity Contract, the BDEW suggested deleting section 5(1) of the Gas Standard Capacity Contract. This is based in turn on reference to the unfinished discussion at ENTSOG with respect to nomination responsibility. The Ruling Chamber did not agree to this request in keeping with the reasoning set out for section 3(2) Gas Standard Capacity Contract (see section 4.2.5.).

(3) Furthermore, the BDEW proposed an addition to the arrangement on calculating the renomination restriction in section 5(3) Gas Standard Capacity Contract. According to this "the amount of booked capacity and the resulting renomination restriction to be charged after 14.00 pursuant to the entry and exit contract, on the basis of the capacity booked and the capacity brought into the balancing group, respectively, [,,]" is to be determined. Reference is made to the existing arrangement in section 12(11) Annex 1 to the cooperation agreement to justify this inclusion.

The Ruling Chamber has not accepted this proposal. In the Ruling Chamber's view, the arrangement in section 5(3) Gas Standard Capacity Contract on restricting renomination is sufficiently clear. An addition is therefore not required. Moreover, the Ruling Chamber considered the content of the BDEW's proposal either to miss the target or to be open to misinterpretation at least linguistically. As expressly set out in section 5 Gas Standard Capacity Contract, the renomination restriction amount refers exclusively to the capacity booked by the shippers, whereas the contribution of capacity to the balancing group following the booking is of no consequence. A difference between capacity booked and inserted and capacity booked but not inserted therefore appears superfluous if not ambiguous. Shippers should not be given an opportunity to circumvent the renomination restriction by not entering their booked capacity. Due to the linguistic ambiguity, however, the Ruling Chamber would welcome it if, when next amending the cooperation agreement, the associations would adapt the wording more clearly to the requirements of the present Determination.

(4) E.ON, RWE S&T and EFET additionally request a consultation process on the complete removal of the renomination restriction in section 5(3) of the Gas Standard Capacity Contract. This is proposed on the grounds that the change in the booking situation means that the mechanism is no longer necessary to make capacity available to the market. Moreover, the renomination restriction has only been implemented in Austria and Germany. This hinders the integration of adjacent markets that have introduced an overbooking and buy-back system pursuant to point 2.2.2 of Annex 1 of the Gas Regulation. The Ruling Chamber rejects the removal of the renomination restriction at the present time. Firstly, this is not an integral part of the present proceedings on the implementation of the Network Code on Capacity Allocation Mechanisms. And, secondly, the renomination restriction process has proven to be a fundamentally effective and efficient means of making capacity available at short notice. In this respect the Ruling Chamber also refers to the ruling in the administrative proceedings on the licensing and non-use, respectively, of an overbooking and buy-back system (file ref. BK7-13-019) in which it went into great detail about the relationship between a renomination restriction and the overbooking and buy-back system.

(5) EconGas suggested more precise details be given of the arrangements on the subject of interruptibility of capacity that is renomination restricted but nevertheless used. According to EconGas all capacity agreements otherwise booked on an interruptible basis should be interrupted subordinately. The Ruling Chamber does not see a need to amend the standard agreement. In its view the arrangement is clear. Pursuant to section 5(5) of the standard agreement, firm capacity nominations that exceed the permissible volume are to be treated as a nomination for interruptible capacity and are to be interrupted first. Accordingly, this capacity is to be interrupted before all other interruptible capacity. In this sense the life cycle of the interruptible capacity product is as equally irrelevant as over-nomination within the meaning of Article 21(5) of the CAM network code.

(6) AGGM is of the view that it only makes sense to have the renomination restriction apply at interconnection points where capacity would be booked by several shippers. Hence AGGM suggests to exclude the Lindau/Leiblach and Kiefersfelden/Pfronten points from this Determination.

The Ruling Chamber does not agree to this proposal. The use of the renomination restriction at points where only one shipper books capacity does not lead de facto to a restriction of the shipper involved. In cases where the shipper wants to increase his use from his initial estimate at 14.00 on the previous day by way of renomination, this takes place for the most part on the basis of firm capacity and only partly on the basis of interruptible capacity. In the aforementioned case, the non-existent demand of other customers eliminates the already slight risk of interruption completely. Should the booking situation change in the future, however, the rule may demonstrate its reasonable effectiveness. For this reason, a revocation for specific cases does not make sense, particularly with respect to the standard conditions of access pursuant to section 20 of the Energy Act.

(7) In their opinions E.ON, RWE S&T and FNB Gas contest the obligation under section 5(9) of the standard agreement to provide a bundled nomination for bundled capacity. Rather they propose only an optional bundled nomination with reference to the wording of Article 19(7) of the CAM network code. This is substantiated by the non-necessity of an obligation and by inconsistency in the planned uniform treatment of market area and cross-border interconnection points.

All the same, the Ruling Chamber retained the mandatory bundled nomination for bundled capacity. In this connection the Ruling Chamber referred first of all to an identical obligation under section 5(9) of the Gas Standard Capacity Contract in the version of the BK7-10-001 Determination of 24 February 2011, which has formed part of standard market practice for nearly four years now.

Continuing this market practice of making it obligatory to also provide a bundled nomination for bundled capacity is an important means in the Ruling Chamber's view, and one that is also covered by Article 19(7) of the CAM network code, of most effectively achieving the goals statutorily pursued by bundling capacity. In this respect the Ruling Chamber does not share the stated interpretation of the aforementioned consultation participants that the bundled nomination was optional according to Article 19(7) CAM network code. According to the wording of Article 19(7) of the CAM network code, neighbouring Gas TSOs must offer a joint nomination procedure for bundled capacity. This procedure must be organised in such a way that network users are in a position to nominate the flows of their bundled capacity via a single nomination. The concept of providing network operators with the means therefore serves merely as a functional description of the statutorily required nomination procedure.

This arises from the substance and purpose of Article 19(7) CAM network code as well as other regulations on bundled capacity. The capacity bundling set out in Chapter IV of the CAM network code is a key instrument in the CAM network code to achieve the most unhindered flow of gas within the European Union and thus cross-border competition or rather ever closer market integration (in this respect see also Recital 3 et seq. of the CAM network code). These aims are supported by capacity bundling so that gas trading moves away from the various sidelines and towards the central, virtual trading points of the European Union countries. The virtual trading points thus gain in liquidity while the transaction costs decrease. These goals will only be achieved if the acquired bundled capacity is also then used as bundled capacity. If shippers were given the opportunity to nominate both parts of the bundled capacity product as unbundled, they would actually use them as unbundled capacity products. This would run counter, however, to the aforementioned goals of introducing bundled products.

On the basis of this interpretation of the CAM network code, the Ruling Chamber does not see any inconsistency with the planned uniform treatment of market area and cross-border interconnection points as argued by E.ON, RWE, S&T and FNB Gas.

4.3. Determination on the change of platform (operative provision 3)

(1) As per operative provision 3, the Ruling Chamber takes account of the fact that, in accordance with Article 27 of the CAM network code, Gas TSOs will be able to offer capacity in future not just on one single booking platform but rather on a limited number of joint, web-based booking platforms. At the present time there are two other platforms besides PRISMA (see ENTSOG report on booking platforms pursuant to Article 27(3) of the CAM network code). It is conceivable that a Gas TSO who has so far offered his capacity on a specific platform may change in future to a different platform. In the event of any such change, operative provision 3

sets out the Gas TSO's obligation to notify and present a statement of facts to the Ruling Chamber.

(2) Should Gas TSOs intend to allocate capacity on a platform other than the one used so far, they must notify the Ruling Chamber of this without delay and at the latest three months before the planned start of the first capacity auction on the new platform. The notification must contain the general conditions applicable to the auction process and to access to the new platform in the German language. The start of the auction within the meaning of operative provision 3 is the time at which the Gas TSO has informed the network users in accordance with the requirements of the CAM network code of the amount of capacity that is to be offered at the forthcoming auction on the new platform.

The notification requirement is intended to enable the Ruling Chamber to check the platform for compatibility with the applicable legal framework. This determination is necessary as the design of the capacity platforms is not conclusively stipulated in the CAM network code and therefore there is some leeway in the implementation. This may be made use of in different ways in the various member States of the European Union. Consequently the Ruling Chamber must ensure that the German Gas TSOs choose a platform that not only meets the requirements of the CAM network code but also the current requirements under German law for network access. Therefore the arrangement is necessary and expedient within the meaning of section 1(1) of the Energy Act. Notification must be given within the prescribed period and no later than three months prior to the intended start of the first capacity allocation. As the platforms are part of cross-border projects, the deadline has been set with a view to enabling consultation to take place with the relevant foreign partners, in particular with the neighbouring regulatory authorities.

(3) In its opinion Vattenfall pointed out that capacity platforms (especially PRISMA) will become more international in their focus. For this reason it is requested, with reference to operative provision 3, that the terms and conditions of access also be published in the English language. In this connection the Ruling Chamber wishes to point out that operative provision 3 merely refers to the duty of notification to the Ruling Chamber. Publication of the terms and conditions of access in English is not contrary to this requirement rather under section 40(1)(11) sentence six in conjunction with section 4(1) first sentence subpara 2 Gas Network Access Ordinance it has also already been made obligatory for those platform operators that are active in carrying out the duties of the Gas TSOs.

4.4. Approval of the reservation quota for short-term capacity sector (operative provision 4)

(1) The Ruling Chamber has approved in operative provision 4 the precise proportion of the capacity to be set aside for the quarterly and annual auctions for all interconnection points

pursuant to Article 8(9) of the CAM network code. According to this, the Gas TSOs are required to set aside 20% of the technical capacity at each interconnection point within the meaning of Article 3 second sentence subpara 10 of the CAM network code and offer this amount pursuant to Article 8(7) CAM network code insofar as the available capacity at the time this Determination enters into force is equal to or greater than the amount of technical capacity to be set aside. Article 8(7) CAM network code requires the Gas TSOs to offer ten percentage points of this 20% no earlier than the annual auctions held in accordance with the auction calendar during the fifth gas year preceding the start of the gas year in which the capacity is to be used. The remaining ten percentage points are to be offered for the first time during the auctions for quarterly products in each subsequent year. This ensures that from now on there is also a reserve capacity for intra-annual structured capacity booking requests. This was not always the case in the past. As the Ruling Chamber already set out in the KARLA Gas Determination of 24 February 2011 (file ref. BK7-10-001), the annex contains the German Gas TSOs' primary capacity platform concept. In this concept the auction calendar states that the capacity for the next two years is to be allocated solely on a quarterly basis. Together with the reservation quota set out in section 14(1) of the Gas Network Access Ordinance of 20% for the following two years, it was also ensured that capacity was set aside for intra-annual structured capacity booking requests. Through the change in the primary capacity platform concept, the booking of yearly capacity was given priority over the quarterly auction in the following two years on the basis of Article 11 of the CAM network code. As the changes were not made to the reservation requirement at the same time, this caused the reserve capacity for intra-annual structured capacity booking requests to be dispensed with.

(2) In the present ruling the Ruling Chamber has legitimately exercised the discretion conferred on it by Article 8(9) of the CAM network code as to whether or not to take action. The Ruling Chamber has said that it would decide on its own initiative as part of a uniform decision for all interconnection points on the approvals pursuant to Article 8(9) of the CAM network code to enable the nationwide implementation of the network code timely at all German Gas TSOs. Separate Gas TSO applications per interconnection point would therefore not be necessary. Moreover, the decision will ensure that the same reservation quota is applied throughout Germany. This fundamental decision plays a role in making network access simpler and transparent. The approval should ensure legal certainty in the market and especially for the Gas TSOs. It clarifies the exclusive nature of the reservation and its specific amount in percentage points. This gives the Gas TSOs the legal certainty to retain a specific amount of available capacity for bookings at short notice, or rather, not to make this amount available initially to market participants with longer term booking wishes.

Irrespective thereof, this decision does not expressly exclude any later assessment of any new or established circumstances surrounding individual interconnection points. On the basis of the CAM network code, the Ruling Chamber is in a position at all times to check most particularly the risk of foreclosure of downstream supply markets and to reassess the reservation quota. Additionally, it must be pointed out that the Ruling Chamber remains free to limit bookings for any single network user (see Article 2(5) CAM network code) to prevent foreclosure of downstream supply markets. The present Determination is without prejudice to any such decision.

(3) The formal requirements of the approval procedure have likewise been met. A stakeholder consultation as required pursuant to Article 8(9) of the CAM network code has taken place (see section 3.2.). As part of this consultation, the consultation documents were published in English in order to include the adjacent foreign regulatory authorities and Gas TSOs as effectively as possible in the procedure and, more especially, through this to work towards aligning the European arrangements for reservation quotas. No opinions were received from foreign regulatory authorities or Gas TSOs. The Ruling Chamber is likewise unaware of any reservation quotas that have been set by regulatory authorities of adjacent Member States that differ from the minimum requirements of the CAM network code.

(4) Moreover, the reservation quotas as approved in the decision are not open to objection either in geographical or in factual terms.

(a) The reservation quotas approved by the Ruling Chamber cover all interconnection points of German Gas TSOs. Interconnection points are defined in the CAM network code as points that connect adjacent entry-exit systems (market areas) and that are subject to booking procedures by network users.

Moreover, AGGM stated in the consultation that the German-Austrian cross-border interconnection points to Tirol and Vorarlberg were exit points to Austrian distribution networks which, according to Article 2(1) third sentence of the CAM network code, were to be explicitly excluded from the scope of application of the network code and hence did not fall under the reservation quota. Furthermore, an additional reason why this reservation quota arrangement would not make sense is that due to the Austrian COSIMA model, only AGGM books the cross-border interconnection points to Tirol and Vorarlberg. The Ruling Chamber does not agree with this view. With respect to the points mentioned by AGGM, these are not exit points to downstream distribution networks within the meaning of Article 2(1) third sentence of the CAM network code but instead points that connect adjacent market areas. Pursuant to Article 3(10) of the CAM network code, interconnection points are defined as physical (Vorarlberg) or virtual points (Tirol zone) that connect adjacent market areas. The network areas Tirol and Vorarlberg currently form a separate market area (COSIMA model). This becomes especially clear given

that the COSIMA market area has its own balancing system, which is clearly distinct from the German one. Consequently it is not part of the NetConnect Germany market area.

(b) The amount of the approved reservation quota is also necessary and appropriate. The approved proportion of capacity set aside at 20% corresponds to the minimum required technical capacity set aside under the CAM network code (see Article 8(6) first sentence CAM network code). So far the Ruling Chamber is not aware of any circumstances that would justify increasing the minimum reservation quota pursuant to Article 8(7) of the CAM network code. Nor do the consultation participants EFET and EconGas see any need to increase the reservation quota beyond the minimum reservation quotas based on the growing booking behaviour trend of shippers to make bookings at short notice. It is only in Vattenfall's view that the reservation quota for capacity allocation at short notice should be raised to 35%. At the same time Vattenfall agrees that there is a clear trend towards short notice booking behaviour. In this respect, the Ruling Chamber does not agree with Vattenfall's argument. At present, free capacity regularly remains following the annual auctions, which is then offered in the quarterly and monthly auctions etc. in addition to the intra-annual reserve capacity. As such, there is no discernible need at present for an even higher reservation quota.

Notwithstanding, depending on market developments, the Ruling Chamber does not exclude a later reassessment and, if necessary, only of individual interconnection points. Based on the CAM network code, the Ruling Chamber is in a position of being able to check the risk of foreclosure of downstream supply markets and to reassess these in view of the reservation quotas, see Article 8(9) second sentence of the CAM network code. The Ruling Chamber expressly reserves this right.

(aa) The "technical capacity" referred to in the arrangement is the firm technical yearly capacity. In this case, firm technical capacity means the maximum capacity that can be used to transport gas within a market area securely at any time irrespective of other shipping nominations. Technical capacity that is only available intra-annual (the structured technical capacity) is offered exclusively in intra-annual auctions and accordingly does not fall under the reservation quota. As far as possible these intra-annual capacity rights are to be offered as quarterly capacity products in a quarterly auction. Otherwise this intra-annual capacity will be offered exclusively in monthly and daily auctions or in the auctions for within-day capacity. The additional technical capacity that is solely available for periods less than a year is always offered together with the capacity still available from the previous (annual) auctions.

(bb) Furthermore, the "technical capacity" usually referred to in the arrangement is the firm yearly capacity of each specific product. Different firm capacity products are offered at some interconnection points in Germany, for instance firm freely allocable capacity and firm dynamically allocable capacity. These products differ as to the extent to which it is possible to

securely transport the gas. Although the firm freely allocable capacity can securely reach each point in the market area (without the threat of interruption), the dynamically allocable capacity can only securely reach a select number of points. The approved reservation quotas must be applied to each of these product categories, that is, with respect to each single product type 20% of the technical capacity for the annual and quarterly auctions, respectively, must be reserved. This is the only way to ensure that an appropriate proportion is reserved in each product category.

(cc) Many of the consultation participants welcomed the proposal for uniform reservation quotas at all interconnection points. This was expressly stated by the BDEW and EFET associations as well as by the E.ON company. Moreover, BDEW and E.ON would like explicit clarification that the reservation quotas pursuant to Article 8(6) and (8) of the CAM network code will be set for both existing capacity and new capacity.

The Ruling Chamber is holding firm with the consulted arrangement of approving a uniform reservation quota of 20% at all interconnection points with respect to both paragraph 6 and paragraph 8 of Article 8 of the CAM network code. Hence new interconnection points or new capacity at existing interconnection points, as the case may be, are also covered within the meaning of Article 8(8) CAM network code. Uniformity of reservation quotas for all types of capacity and interconnection points increases the simplicity and transparency of the capacity allocation arrangements for all market participants.

If different booking quotas for existing capacity and newly-created capacity were set instead of a uniform booking quota, it would no longer be possible to guarantee the clarity and transparency of the reservation quota for individual interconnection points in certain cases. This can be explained better by way of the following example: Through technical expansion measures the capacity available for sale at an existing interconnection point is increased. Assuming that the minimum reservation quota of 10% provided for in Article 8(8) of the CAM network code applies to the new capacity, then 20% would be applied to determine the proportion of capacity to be reserved of the existing capacity and 10% would be applied for the new capacity proportion. In total this would result in a reservation quota of between 10% and 20% at this interconnection point that cannot be sold long-term. Whereas an approved 20% would apply at all other existing interconnection points. This would significantly reduce the clarity and transparency of the arrangements for capacity allocation both in determining the reservation quota at the individual points and in a uniform approach to reservation quotas throughout Germany. Notwithstanding, a reassessment on the basis of the CAM network code – even for individual interconnection points – is possible at any time.

(dd) In the consultation the FNB Gas association stated that the arrangement in Article 8(6) second sentence of the CAM network code was not in the draft version operative provisions. The

arrangement states that if the available capacity at the date the regulation applies is less than the yearly proportion of technical capacity to be set aside, the whole of any available capacity is to be set aside. The available capacity must be offered pursuant to Article 8(7)(b) of the CAM network code. Unlike the approval for the actual amount of the reservation quota, this arrangement is directly applicable under Article 8(6) second sentence of the CAM network code. Therefore in the Ruling Chamber's view, no further approval is necessary. The Ruling Chamber would like to point out, however, that the rationale behind this arrangement will also apply if, at a later date in time (for example due to long-term technical transport problems, compressor failure etc.), the available capacity is less than the proportion set aside.

(5) The determination of the reservation quotas is also in line with the Gas Network Access Ordinance. In accordance with section 50(3) of the Gas Network Access Ordinance, the Bundesnetzagentur may determine ex officio reservation quotas other than those set out in section 14 of the Gas Network Access Ordinance insofar as this is necessary to achieve the aims of section 1 of the Energy Act. Before any such determination, the Bundesnetzagentur must hear the associations of network operators and shippers. This hearing took place as stated in section 3.2 above.

Pursuant to section 1 of the Energy Act, the purpose of the Energy Act is the most secure, low-priced, consumer-friendly, efficient, and environmentally compatible line-bound supply of electricity and gas for society as a whole, which is increasingly based on renewable energy sources. The regulation of the electricity and gas supply systems additionally serves the goals of ensuring effective and genuine competition in the supply of electricity and gas and ensuring efficient and reliable operation of energy supply systems long-term. These requirements have been met. The newly-determined reservation quotas enable the network operators to sell more capacity for a longer period. Pursuant to section 14(1) second and third sentences of the Gas Network Access Ordinance, a mere 65% of the technical yearly capacity may be allocated with contract terms of more than four years. With the introduction of minimum reservation quotas pursuant to Article 8(7) of the CAM network code of 20% for medium- and short-term capacity marketing, in the future network operators will be able to allocate 80% of technical yearly capacity with contract terms of more than four years. This makes the secure supply of society with gas possible and also ensures the long-term efficient and reliable operation of energy supply networks. In addition, the gradual reduction in reserve capacity from 35% to 20% does not present a competitive disadvantage. As unanimously stated in the opinions, booking behaviour has increasingly moved towards shorter term booking to the detriment of more extensive long-term bookings. The 2014 Monitoring Report analysis also confirms that at present there is a persistent trend towards terminating long-term capacity contracts and the market is correspondingly booking structured according to intra-annual demand (see page 205 et seq. of

the 2014 Monitoring Report). In this respect, at present the gradual reduction in long-term reserve capacity does not run counter to the aim of effective and genuine competition in the supply of gas.

In its opinion, the Federal Cartel Authority has drawn attention to various factors, such as the phasing out of L-gas production that could lead to changes in shipper booking behaviour in future. Reaction to this must be timely and also by way of network development planning so as to avoid any capacity bottlenecks and the resulting dominant trends on the downstream markets. The Ruling Chamber likewise does not exclude any future changes in shipper booking behaviour and agrees with the Federal Cartel Authority that timely network development planning is an important tool in preventing capacity bottlenecks. Furthermore, in the event of corresponding market developments, the Ruling Chamber reserves the right as already stated above (see page 31) to carry out a reassessment of the reservation quotas pursuant to Article 8(9) of the CAM network code and, as the case may be, also in relation to individual interconnection points. The present ruling does not prejudice any such decisions.

4.5. Extension of the CAM network code to interconnection points with third countries (operative provision 5)

(1) The Chamber has ruled in operative provision 5 that the arrangements in the CAM network code shall also apply to entry points from and exit points to third countries within the meaning of Article 2(1) second sentence of the CAM network code. Article 2(1) second sentence of the CAM network code enables the regulatory authority by way of decision to extend the scope of application of the CAM network code to cover interconnection points from and to third countries, ie non-EU countries. In Germany's case, the CAM network code would therefore also apply to interconnection points from and to Norway, Russia and Switzerland. The Ruling Chamber is exercising this authorisation with this decision.

(2) The Ruling Chamber has legitimately exercised the discretionary powers conferred on it by Article 2(1) second sentence of the CAM network code in the present decision.

(a) Firstly, the Chamber has legitimately exercised the discretion conferred on it. The determination that the entire CAM network code shall also apply to interconnection points with third countries aims to ensure that uniform network access arrangements apply within Germany. These uniform, standardised conditions are efficient both for network operators and for shippers. Equal treatment of all interconnection points at the same time provides for simple, transparent and non-discriminatory network access.

As the Ruling Chamber already set out in the KARLA Gas Determination (file ref. BK7-10-001) of 24 February 2011, network access conditions within a given market area are to be harmonised

as far as possible. This also applies in particular to the arrangements for capacity allocation. The positive experience of the last few years confirms the Ruling Chamber's view that access conditions at all the interconnection points in a given market area should, as far as possible, be equal.

In material terms, there is no difference between German TSOs' interconnection points from and to third countries and other German interconnection points within the EU. To maintain the high degree of standardisation and thus simplification in the network access regime, it seemed expedient to the Ruling Chamber to extend the standardised arrangements laid down in the Regulation to cover interconnection points from and to third countries. In addition, there is no apparent need to introduce other arrangements for interconnection points with third countries than for interconnection points within the EU. In any case, ultimately the determination merely maintains the arrangements which have already been in place in Germany for years and which have also proved effective.

(b) Moreover, the scope of application of the CAM network code as determined in the decision is not open to objection either in geographical or in material terms.

(aa) The scope of application of the CAM network code is being extended to cover all entry and exit points of German TSOs which connect German market areas with pipeline networks in adjacent third countries. The arrangements of the CAM network code are not, however, applicable to entry points from production facilities, see Article 2(1) third sentence of the CAM network code. The production facilities for natural gas from the North Sea and from Russia are located a long distance from the interconnection points concerned here. A production facility ends at the latest at a point just behind the gas processing plant required for natural gas production. From that point onwards the natural gas is transported through a gas pipeline through the North Sea (in the case of Norway) or through the Baltic Sea (in the case of Russia) to the German interconnection points.

With respect to the interconnection points with pipelines from Russia, it should be noted as already said (see Rationale, I., page 3) that the present decision does not cover such capacity as is excluded from the network access arrangement in accordance with section 28a of the Energy Act.

(bb) The Ruling Chamber's decision to apply the network code in its entirety and not merely in part to interconnection points with third countries is likewise not open to objection. In the consultation process E.ON requested a differentiated approach and the associations BDEW and FNB Gas only partial application of the network code to third countries. It was suggested that the network code should be applied exclusively to the arrangements for capacity allocation (allocation of firm and interruptible capacity). Furthermore, E.ON and the associations BDEW,

EFET and FNB Gas pointed out that certain provisions of the network code could only be implemented if corresponding arrangements applied in an adjacent third country to the foreign network operator. As experience had shown, however, this was not the case specifically with the arrangements for bundling capacity and for bundled nomination.

The Ruling Chamber does not agree to partial application of the network code to interconnection points with third countries. In this context, the Ruling Chamber wishes to draw attention in the first instance to the wording of Article 2(1) third sentence of the CAM network code, which does not formulate any substantive restrictions even where interconnection points with third countries are covered and hence evidently assumes the possibility of applying the network code in its entirety to these interconnection points. At the same time, the Ruling Chamber agrees with the aforementioned consultation participants that the CAM network code is not binding for TSOs in third countries. It does, however, consider it expedient to require the German TSOs in principle to aim at consistent application of the CAM network code at all their interconnection points. Should this not be possible in individual cases owing to a lack of cooperation on the part of the adjacent TSO in a third country, then such lack of cooperation would constitute a substantive obstacle to implementation for which the German TSO is not responsible. The Ruling Chamber will take due account of this in executing this determination and the other supervisory duties assigned to it. Conversely, the decision to apply the CAM network code in its entirety ensures that the provisions automatically have effect when TSOs in third countries voluntarily apply the arrangements in the CAM network code. Hence the Ruling Chamber does not consider it expedient to generally exempt the TSOs from applying some of the provisions of the CAM network code to interconnection points with third countries because of the possibility of cooperation problems in some cases. In this respect, it is not possible to meet the request from FNB Gas for a differentiated approach. In addition, both EconGas and FNB Gas agree with the Ruling Chamber that with consistent equal treatment of cross-market area interconnection points in Germany and cross-border interconnection points the Ruling Chamber is increasing the clarity and transparency of the capacity allocation arrangements for all market participants and thus making a positive contribution to the European internal market in natural gas.

(3) Moreover, in respect of the application of the network code to third countries AGGM stated in the consultation that the cross-border interconnection points to Tirol and Vorarlberg were exit points to Austrian distribution networks which according to Article 2(1) third sentence of the CAM network code were also to be excluded from the scope of the network code. This would apply especially to the points connecting transmission and distribution networks Lindau/Leiblach (Vorarlberg) and Zone Kiefersfelden-Pfronten (Tirol). The Ruling Chamber does not agree with this view. Article 3 point 10 of the CAM network code defines interconnection points as physical (Lindau/Leiblach) or virtual (Zone Kiefersfelden-Pfronten) points connecting adjacent entry-exit

systems (market areas). The network areas Tirol and Vorarlberg currently form a separate market area (COSIMA model). It is not part of the upstream market area (NetConnect Germany). The fact that the market areas are separate is made particularly clear by the different balancing systems in place in the two entry-exit systems.

AGGM also stated that the cross-border interconnection points between distribution system operators in different countries were likewise not subject to the CAM network code. AGGM cited in particular the points Freilassing, Laufen, Ach, Schärding and Simbach. At this point the Ruling Chamber wishes to make it clear that also these cross-border interconnection points are not directly covered by the scope of the CAM network code. However, this does not mean conversely that the network code cannot be applied by analogy should no other statutory provisions for capacity allocation apply. Cross-border interconnection points between distribution system operators in different countries are not covered by this decision. The marketing regulations to be applied to these specific cross-border interconnection points would need to be assessed and formulated taking particular account of the individual circumstances.

4.6. Right of revocation (operative provision 6)

The Ruling Chamber reserves the right to revoke the present decision as per section 36(2) para 3 of the Administrative Procedures Act. This above all aims to ensure that new findings can be taken into consideration where necessary. Only in this way can it be guaranteed that the decision is open to development in light of future experience in implementing the CAM network code and any subsequent need for modification. At the same time, the Ruling Chamber is taking into account the companies' need for planning certainty since such considerations in a possible amendment procedure are to be made on the basis of proportionality.

4.7. Ruling on costs (operative provision 7)

A separate notice of the costs will be issued in accordance with section 91 of the Energy Act.

Information on rights of appeal

An appeal may be filed against this decision within one month of service of the decision. The appeal must be lodged in writing with the Bundesnetzagentur, Tulpenfeld 4, 53113 Bonn. It is sufficient when the appeal is received by the Higher Regional Court of Düsseldorf, Cecilienallee 3, 40474 Düsseldorf, within the specified period.

The appeal must be accompanied by a written statement setting out the grounds of appeal. The written statement must be provided within one month of filing the appeal; this deadline may be

extended by the court of appeal's presiding judge upon request. The statement of grounds must state the extent to which the decision is being appealed and its modification or revocation sought and must indicate the facts and evidence on which the appeal is based. The appeal and the written statement of grounds must be signed by a lawyer.

The appeal has suspensory effect (section 76(1) of the Energy Act).

Christian Mielke
Chair

Dr Stephanie Ruddies
Vice Chair

Dr Antje Peters
Vice Chair

Courtesy translation



- Ruling Chamber 7 -

Reference: BK7-15-001

14 August 2015

Determination in the matter of capacity management and auction proceedings in the gas sector

Here: Annex: Gas standard capacity contract

Section [3] Precondition for use of booked capacity

1. A precondition for use of bundled capacity is entering, in the particular balancing groups, the bundled booking point within the meaning of Article 19(3) of Commission Regulation (EU) No 984/2013 as the exit point in the donor market area and as the entry point in the recipient market area.
2. The shipper designates a balancing group manager to be responsible for bundled nomination at a bundled booking point and informs the transmission system operators accordingly.
3. A precondition for use of capacity is the prior conclusion of a balancing group contract or, in the case of bundled capacity, the prior conclusion of balancing group contracts and the prior fulfilment of the technical requirements (most notably the communication test) for use of the capacity.
4. Shippers must enter the bundled or non-bundled booking point at which they have acquired bundled or unbundled day-ahead capacity without delay, not later than 18:00 hours on the day before supply, in the balancing groups. To this end, as part of day-ahead booking, they must inform the transmission system operators of the balancing group codes. Entry within the prescribed period likewise requires a communication test to have been successfully carried out beforehand between the transmission system operator and the designated balancing group manager in accordance with the transmission system operators' access conditions and one-off presentation of authorisation as referred to in section [5] subsection 2.

5. A bundled booking point can be entered in more than one balancing group. Shippers wanting the bundled capacity they have booked at this point to be split between different balancing groups/sub-balancing accounts must inform the transmission system operators concerned of the split per bundled booking point. Subsections 2 to 3 apply accordingly. Subsection 5 first and second sentences do not apply in respect of day-ahead and within-day capacity.
6. Use of booked capacity must be in compliance with any capacity constraints and restrictions of use.
7. The possibility of entering within-day capacities will be given.

Section [4] Capacity return

1. Shippers can return booked firm capacity in full or in part, related to the booking period and volume, to the transmission system operators concerned via the joint booking platform at any time until 14:00 hours on the day before supply. Any subsequent primary use or secondary selling of the returned capacities by the shippers is ruled out, except as provided in subsection 8.
2. Bundled firm capacity can be returned in bundled form only.
3. Confirmation of capacity returned is given via the joint booking platform with a timestamp for the shipper. This confirmation does not release the shipper from its obligation to pay.
4. Return is possible for any day or days in the future and for any proportion of the originally booked capacity.
5. The transmission system operators sell returned capacities as primary capacity under the applicable rules. They can combine returned capacities and any primary capacity that is still available to offer products of longer duration. Returned capacity will be sold after other primary capacity available for the period in question.
6. If the transmission system operator sells some or all of the returned capacity, the shipper will be released accordingly from its obligation to pay. The extent of release from the obligation to pay depends on the proceeds obtained; however, the maximum extent of release will depend on the regulated network tariff for the period of primary selling and the volume of resold capacity. If the capacity returned by the shipper was obtained at auction, the obligation to pay the auction markup on the regulated tariff remains unaffected.

7. If several shippers return capacities for a particular day, the capacities will, in the case of oversupply, be resold by the transmission system operators in the order in which they were returned (timestamp).
8. Returned capacity that could not be resold will be made available again to the shipper daily, for the following day, after completion of day-ahead selling but not later than 18:30 hours, for use in the balancing group in which it was entered prior to return.
9. The transmission system operator gives the shipper a credit note for the tariff referred to in subsection 6. The credit is paid monthly and set off against any outstanding transportation charges.

Section [5] Nomination and renomination

1. Responsible for nomination and renomination is the balancing group manager designated by the shipper for this purpose.
2. The balancing group manager nominates the volumes of gas for transportation under the arrangements for the use of firm capacity at a particular booking point by 14:00 hours of the day before supply. This initial nomination is accepted if it is received by the transmission system operator by 14:00 hours. In other cases, zero will be considered the nominated volume unless the contracting parties have agreed otherwise. In respect of bundled nomination, the nominating balancing group manager must have been authorised accordingly, in writing, by the other balancing group manager whose balancing group is affected by the nomination, in relation to the transmission system operators concerned. Authorisation need be given once only.
3. The nominating balancing group manager can replace its initial nomination with a renomination made with a two-hour lead time, at least, to the full hour. Renomination is permitted if it does not exceed 90% of the total capacity booked by the shipper at the booking point and is not less than 10% of the booked capacity. With initial nominations of at least 80% of the booked capacity, half of the non-nominated volume can be used for renomination upwards. With initial nominations of, at most, 20% of the booked capacity, half of the nominated volume can be used for renomination downwards. Permissible renomination will be rounded up commercially to whole kilowatt-hours per hour.
4. Nominations will be assigned first to firm capacity and then to interruptible capacity.
5. Renominations for firm capacity that exceed the volume permitted under subsection 3 will not be accepted for more than the total volume of booked capacity. The part of the nomination that exceeds the volume permitted will be treated as a nomination for interruptible capacity and interrupted first.

6. Renominations for firm capacity below the volume permitted under subsection 3 will be accepted. Should an interruption in the reverse flow direction become necessary, the renomination will be raised to the minimum permissible renomination level.
7. The restriction on renomination does not apply to shippers with firm bookings of less than 10% of the annual technical capacity offered at the booking point.
8. If more than one shipper enters a booking point in the same balancing group, a sub-balancing account can be set up by the balancing group manager for each shipper in this particular balancing group. In this case the nomination of gas volumes will be made by the balancing group manager for each shipper separately in its sub-balancing account. In this case the renomination limits referred to in subsections 3 and 7 apply to the shipper's total capacity entered in the sub-balancing accounts for the particular booking point. In the absence of sub-balancing accounts, the total capacity at the booking point in a balancing group serves as the basis for applying the renomination restriction.
9. Nominations must be made separately for each flow direction. Nomination of bundled capacity is made by means of a single nomination.
10. Day-ahead capacity can be nominated until 20:00 hours. No day-ahead and within-day capacity is included in determining the renomination volume permitted as set out in subsection 3.

[Further general provisions]