



## Ruling Chamber 7

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### Only via email

To

**Regulatory authorities  
of Member States bordering the Federal  
Republic of Germany**

Your reference, your letter of My reference, my letter of  
BK7-19-037

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Bonn  
13 Dec 2019

### **KAP+ procedure of Ruling Chamber 7 of the Bundesnetzagentur for additional capacity in the single German market area (BK7-19-037)**

**Consultation of the national regulatory authorities of adjacent Member States in accordance with point 2.2.2(1) of Annex I of Regulation (EC) No 715/2009: joint concept from German gas transmission system operators for an oversubscription and buy-back scheme**

Dear Sir/Madam,

Dear colleagues,

The Bundesnetzagentur's Ruling Chamber 7 is currently leading the procedure known as KAP+ (BK7-19-037). The aim of this procedure is to set the conditions under which German gas transmission system operators (TSOs) will be able to offer and market additional firm capacity in the future single German market area ("Trading Hub Europe"). The ruling chamber takes the view that an oversubscription and buy-back scheme in accordance with point 2.2.2(1) of Annex I of Regulation (EC) No 715/2009 in the version amended by Decision 2012/490/EU could be introduced.

As part of the KAP+ procedure, the German TSOs presented a joint concept for an oversubscription and buy-back scheme (Annex 1) for approval on 1 October 2019. They additionally supplied a more detailed process description for this concept on 27 November 2019 (Annex 2). Further information on the background to the procedure and the progress so far, as

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well as further deliberations of the ruling chamber regarding the concept content and the possible period of application for an oversubscription and buy-back scheme are attached to this email.

Point 2.2.2(1) of Annex I of Regulation (EC) No 715/2009 sets out that before implementation of an oversubscription and buy-back scheme, the national regulatory authority must consult with the national regulatory authorities of adjacent Member States and take account of their opinions.

The national regulatory authorities of adjacent Member States are hereby given the opportunity to state their views on the concept for an oversubscription and buy-back scheme presented by the German TSOs (Annex 1 and 2) and on the subsequent deliberations of the ruling chamber (attached to this letter). You are requested to submit your opinions

**by 24 January 2020**

in electronic format (eg data stick or email) to:

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Email: BK7.KAPplus@BNetzA.de

Responses received will be published on the Bundesnetzagentur's website. We would be grateful if responses could be provided in German where possible.

Yours faithfully

Annexes

- 1) Concept for an oversubscription and buy-back scheme
- 2) Process description MBI and capacity buy-back

Barbie Kornelia Haller  
Chair of Ruling Chamber 7



## - Ruling Chamber 7 -

File ref: BK7-19-037

13 December 2019

**KAP+ procedure of Ruling Chamber 7 of the Bundesnetzagentur for additional capacity in the single German market area (BK7-19-037)**

**Attachment: information on the KAP+ procedure and other deliberations of the Ruling Chamber on the TSOs' concept for an oversubscription and buy-back scheme**

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### 1. Background to KAP+ procedure and progress so far (BK7-19-037)

With the amendment of section 21(1) sentence 2 of the Gas Network Access Ordinance (GasNZV) in August 2017, the German gas transmission system operators were required to form a single market area from the two existing market areas, NetConnect Germany and GASPOOL, by 1 April 2022 at the latest. The TSOs plan to fulfil this requirement by 1 October 2021, ie at the start of the 2021/2022 gas year. Although the merger of the market areas will bring advantages – the simplification of gas trading and the further strengthening of the single European market – it also poses a challenge in terms of infrastructure, namely that the firm, freely allocable capacity product of the future single German market area offers far greater firm usage possibilities than the firm, freely allocable capacity products of the current two separate market areas. According to the TSOs, the capacity level of the two market areas cannot simply be transferred technically to the future single market area, in particular because of the limited exchange between the two separate areas. Contractual and physical congestion is expected to result.

In the yearly capacity auctions in 2019, TSOs were only able to offer the amount of firm capacity that could be secured by the physical network infrastructure (network capability). The consequence of this was that either no or only a very small amount of, in particular, firm, freely allocable entry capacity (FZK) was able to be offered for the period after the market area merger (ie gas year 2021/2022, according to current plans). The TSOs state that this identified firm, freely allocable entry capacity is in some cases not enough to meet existing long-term capacity bookings. According to the TSOs' deterministic calculations, it is only possible to reproduce about 22% of the network's capability with regard to firm, freely allocable capacity in the current two separate market areas in the future single market area. Although this reduced offer will have significantly

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greater usage possibilities, both TSOs and other market players see the need for additional firm capacity in the future single German market area. The ruling chamber considers that the introduction of an oversubscription and buy-back scheme in accordance with point 2.2.2(1) of Annex I of Regulation (EC) No 715/2009<sup>1</sup> in the version amended by Decision 2012/490/EU<sup>2</sup> will enable additional firm capacity to be offered in the single German market area ("Trading Hub Europe").

The ruling chamber therefore launched the procedure known as "KAP+" for additional capacity in the single German market area on 23 May 2019. It involved stakeholders by holding an initial consultation and called on TSOs to present a joint concept for an oversubscription and buy-back scheme. The initiation document and the statements made as part of the consultation process have been published on the website of the Bundesnetzagentur.

The TSOs presented the ruling chamber with their joint concept for an oversubscription and buy-back scheme on 1 October 2019. The ruling chamber published the TSOs' concept alongside an accompanying consultation document with its further deliberations and conducted a second consultation with the market. The TSOs' concept, the ruling chamber's accompanying consultation document and the responses received in the course of the second consultation are also available on the Bundesnetzagentur website.

On 27 November 2019, the TSOs submitted a more detailed process description focusing on the accessing of the market-based instruments in particular, which has also been published on the Bundesnetzagentur website.

All the documents and responses mentioned above may be found at:

[https://www.bundesnetzagentur.de/DE/Service-Funktionen/Beschlusskammern/1\\_GZ/BK7-GZ/2019/2019\\_0001bis0999/2019\\_0001bis0099/BK7-19-0037/BK7-19-0037\\_VerfEinleit.html?nn=361064](https://www.bundesnetzagentur.de/DE/Service-Funktionen/Beschlusskammern/1_GZ/BK7-GZ/2019/2019_0001bis0999/2019_0001bis0099/BK7-19-0037/BK7-19-0037_VerfEinleit.html?nn=361064)  
(German version)

[https://www.bundesnetzagentur.de/DE/Service-Funktionen/Beschlusskammern/1\\_GZ/BK7-GZ/2019/BK7-19-0037/BK7-19-0037\\_VerfEinleit\\_EN.html?nn=361360](https://www.bundesnetzagentur.de/DE/Service-Funktionen/Beschlusskammern/1_GZ/BK7-GZ/2019/BK7-19-0037/BK7-19-0037_VerfEinleit_EN.html?nn=361360)  
(English version)

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<sup>1</sup> 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 (Official Journal L 211 of 14 August 2009, p 36).

<sup>2</sup> 2012/490/EU: Commission Decision of 24 August 2012 on amending Annex I to Regulation (EC) No 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks (OJ L 231 of 28 August 2012, p 16).

The ruling chamber received 18 responses to each of the two consultations. Consultation participants were unanimous in seeing a need for firm entry capacity in the single German market area in addition to that offered by the current capability of the network. In the first consultation, there were differing opinions on the best way to achieve this additional offer (implementation of an oversubscription and buy-back scheme or the untested application of the planned market-based instruments within the framework of section 9(3) GasNZV). In the second, clear support for the proposed oversubscription and buy-back scheme emerged. Responses to both consultations were in favour of the introduction of market-based instruments but also called for standard rules for the cost-effective use of such instruments. Many respondents considered that the classification of the market-based instruments proposed by the TSOs represented a division into market-based measures (spread product) and network-based measures (third-party network use and "VIP wheeling"). Many responses expressed the view that third-party network use to remove congestion, in particular, would increase the risk of market distortion and should come below the other instruments in a merit order list (MOL) but above the buy-back that is planned as a measure of last resort.

## **2. Other deliberations of the Ruling Chamber**

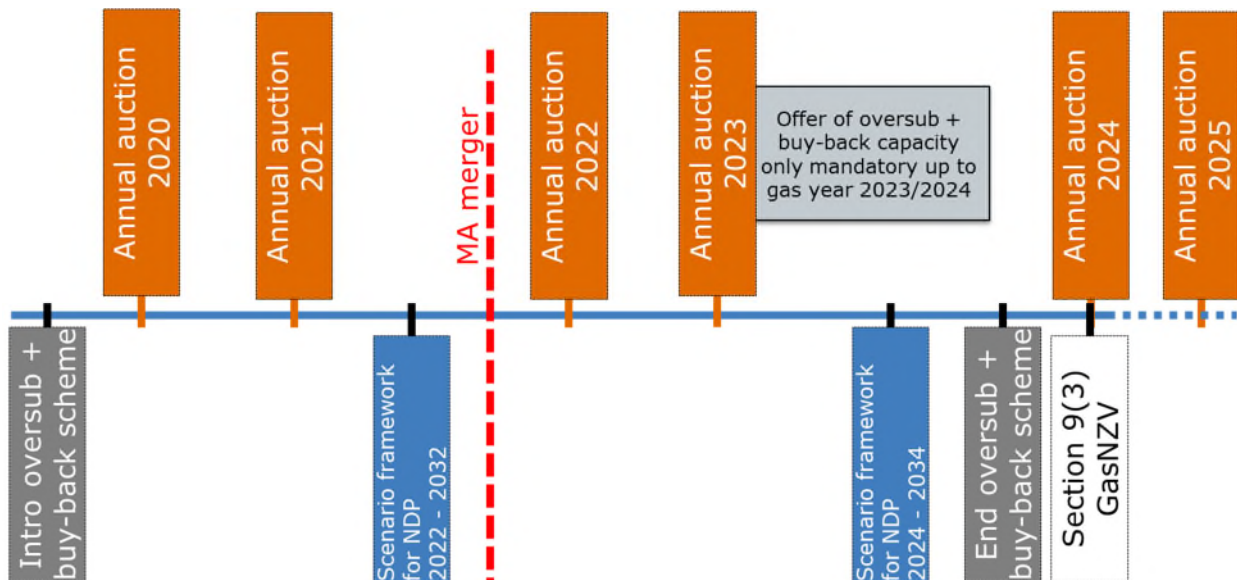
The ruling chamber would like to add the further deliberations below on the joint concept from TSOs for an oversubscription and buy-back scheme to its explanations in the initiation document of 23 May 2019 and the accompanying consultation document of 11 October 2019.

### **2.1. Restricted period of application**

The ruling chamber is of the opinion that the application of an oversubscription and buy-back scheme could be limited to a transition period, ie until

- (a) the "sufficient amount" of firm, freely allocable capacity in the single German market area for an application of section 9(3) GasNZV has been identified and
- (b) the market-based instruments proposed by the TSOs have been sufficiently tested for functionality and efficiency.

Firm capacity that cannot be provided via the capability of the network could be offered on the basis of section 9(3) GasNZV starting at the annual auction in 2024.



The market-based instruments forming part of an approved oversubscription and buy-back scheme could then be transferred to an application in accordance with section 9(3) GasNZV. However, in addition to the conditions mentioned above, it must also be ensured that

- (c) the use of the market-based instruments within the framework of section 9(3) GasNZV is shown in the process of network development planning to be efficient as compared to network expansion.

#### 2.1.1. Calculation of the sufficient amount within the meaning of section 9(3) sentence 1 GasNZV (first condition for transition to section 9(3) GasNZV)

The application of section 9(3) GasNZV assumes that the sufficient amount of firm, freely allocable capacity is known. Only then can it be ensured that the use of measures under section 9(3) GasNZV can be "kept to a minimum", ie is only as much as is necessary to be able to offer the sufficient amount of firm capacity. As long as the sufficient amount has not been calculated, the additional firm capacity should be supplied using an oversubscription and buy-back scheme.

The sufficient amount of firm, freely allocable capacity is based on the long-term capacity requirements confirmed in the scenario framework (section 17 GasNZV). These capacity requirements must be determined for the single German market area. The consultation document of the scenario framework for the gas network development plan (NDP) 2020-2030 contains details of planning capacity. The capacity from the current, split market areas were transferred to the single market area for planning purposes. These figures largely correspond to capacity from earlier planning processes, in particular the gas NDP 2018-2028. The figures were mostly just carried forward and in only a few cases specifically adjusted on the basis of other findings. The Bundesnetzagentur will decide on the scenario framework for the gas NDP 2020-2030 by the end of 2019.

The ruling chamber does not see any sound basis here to derive the "sufficient amount" of firm, freely allocable capacity for the single German market area. The scenario framework for the gas NDP 2022-2032, which is expected to be published in the second quarter of 2021 (ie before the

market area merger), can already reflect findings on the need for firm, freely allocable capacity in the single German market area. The possible criteria for establishing requirements will form part of future discussions with the TSOs and other market participants during the course of network development planning. By contrast, capacity requirements for non-yearly demand in the single German market area can only be taken into account starting in the scenario framework for the gas NDP 2024-2034, because the first non-yearly bookings in the single German market area will not be made until the gas year 2021/2022. The ruling chamber therefore considers that at the latest the scenario framework for the gas NDP 2024-2034 and subsequent scenario frameworks for the respective network development plans are suitable for calculating the "sufficient amount" of firm, freely allocable capacity in the single German market area. An offer of firm capacity based on these and applying section 9(3) GasNZV therefore comes into question as of the annual auction in 2024.

#### *2.1.2. Functionality and efficiency of market-based instruments (second condition for transition to section 9(3) GasNZV)*

Unlike the instruments specifically mentioned in section 9(3) GasNZV, the market-based instruments proposed by the TSOs are not used *ex ante* in order to offer and market additional capacity. Rather, the market-based instruments are employed, if necessary, *ex post* to secure already offered and marketed firm capacity. Applying these instruments within the framework of section 9(3) GasNZV for long-term capacity marketing (5 to 15 years) can therefore only be considered if they are shown to be sufficiently available and reliable, that is to say, comparable with the instruments explicitly mentioned in section 9(3) GasNZV, especially the flow commitment. The ruling chamber considers that a test phase for the market-based instruments would be needed before a decision could be made on transferring them to the regime of section 9(3) GasNZV. An oversubscription and buy-back scheme in which these instruments are used in the gas years 2021/2022, 2022/2023 and 2023/2024 to secure capacity with a marketing time frame of one to two years and in which their functionality can be monitored and assessed is a suitable option for such a test phase.

#### *2.1.3. Proof of efficiency compared to network expansion (third condition for transition to section 9(3) GasNZV)*

The use of market-based instruments within the framework of section 9(3) GasNZV must be shown to be preferable to network expansion in the course of network development planning. Possible restrictions for market participants (such as those caused by stricter re-nomination restrictions or any suspension of short-term marketing in the case of congestion) should be taken into account in addition to financial aspects.

## **2.2. Arrangements for the oversubscription and buy-back scheme**

The ruling chamber has made the following deliberations as regards the specific structure of the oversubscription and buy-back scheme.

### *2.2.1. Relevant network points*

In its publication for the initiation of proceedings on 23 May 2019, the ruling chamber proposed (point 2) that the oversubscription and buy-back scheme should be able to be used in principle at all bookable entry and exit points in the single German market area. It should not be restricted *a priori* to certain TSOs or certain points only, nor should application be solely at the discretion of the TSO.

The TSOs' concept envisages that the oversubscription and buy-back scheme will be able to be used in principle at all bookable points. However, according to the plan there will only be an offer of additional capacity at entry points where there would otherwise be reduced capacity on offer due to the merger of the market areas.

In accordance with Annex I of Regulation (EC) No 715/2009, an oversubscription and buy-back scheme is a congestion-management procedure in the event of contractual congestion. The TSOs state that the market area merger will lead to a significant reduction in the amount of firm, freely allocable entry capacity on offer. The resulting or potential contractual congestion will only occur at entry points to the single German market area. Restricting the oversubscription and buy-back scheme to these points is therefore likely to lead to only that contractual congestion being removed or prevented that is caused by the market area merger.

The initiation of the KAP+ procedure was the ruling chamber's response to the altered facts and legal situation brought about by the upcoming market area merger. Provided that the changed situation only affects firm entry capacity, it could be justifiable to restrict the oversubscription and buy-back system to entry points. Under point 2.2.1(1) of Annex I of Regulation (EC) No 715/2009, the provisions of point 2.2 apply to interconnection points between adjacent entry-exit systems and – subject to the decision of the relevant national regulatory authority – also to entry points from and exit points to third countries. Entry points from LNG terminals and from production facilities, as well as entry-exit points from and to storage facilities, are explicitly not subject to the provisions of point 2.2.

The ruling chamber does not see that the oversubscription and buy-back scheme would necessarily have to be restricted to the abovementioned points. In its understanding, the purpose of this list is to distinguish the areas subject to regulation under the European legislation from those that remain within the responsibility of Member States. There is similar wording to point 2.2.1(1) in Article 2(1) of Regulation (EU) 2017/459.

The ruling chamber considers an application at all entry points, as shown in the concept, to be appropriate, because these are affected by the reduction in capacity. This should also apply explicitly to entry points from storage facilities.



In their responses to the second consultation, the TSOs specified that the oversubscription and buy-back scheme should also enable additional capacity at those points provided that firm, freely allocable capacity was offered as yearly capacity or as a seasonal product for times when the market areas are still separate. Entry points from storage facilities at which only other products, such as conditionally firm, freely allocable capacity (bFZK), are offered, should be specifically excluded from an additional offer of capacity.

### 2.2.2. *Capacity products*

In its publication for the initiation of proceedings on 23 May 2019, the ruling chamber proposed (point 4) that the oversubscription and buy-back scheme should not be limited *a priori* to certain standard capacity products. The wording here is based on Article 9 of Regulation (EU) 2017/459, ie referring to product durations and not specific capacity products.

According to the TSOs' concept, other capacity products could be offered in addition to firm, freely allocable entry capacity (FZK).

The ruling chamber therefore understands that other types of capacity affected by the market area merger could also be offered in the form of the previous product design, ie conditionally firm, freely allocable entry capacity (bFZK) that is not exclusively subject to a temperature condition (see the tables on page 4 of the initiation document, which explicitly do not include flow-dependent bFZK). The additional marketing of temperature-dependent firm capacity should also come under consideration, according to the concept.

It might be possible to significantly reduce the use of market-based instruments if conditionally firm, freely allocable entry capacity with a temperature condition (bFZK<sub>temp</sub> or TaK) were to be offered instead of the firm, freely allocable entry capacity (FZK) previously offered for the two separate market areas. The bFZK<sub>temp</sub> is divided into firm and interruptible elements for each gas day according to a previously defined temperature condition. The market-based instruments would only be used to secure the firm part.

As is normal for European legislation, point 2.2.2 of Annex I of Regulation (EC) No 715/2009 does not include more detailed information on specific capacity products. The change caused by the market area merger that is relevant here is that on the entry side, there will be a significant reduction in particular of the firm, freely allocable capacity (FZK) that can be offered, and also of the flow-dependent conditionally allocable capacity (bFZK<sub>last</sub>). The aim of the oversubscription and buy-back scheme should therefore be to fully or partially close the resulting gaps caused by the market area merger in an adequate manner. The responses to the first consultation made clear the market's need and desire for additional entry FZK, in particular. The ruling chamber therefore takes the view that at least a reasonable amount of the additional capacity offered via the oversubscription and buy-back scheme should be offered as firm, freely allocable capacity. The additional offer of flow-dependent or temperature-dependent bFZK should not be ruled out, provided that it is shown to be a suitable replacement.

Many responses to the consultation from the market maintained that, in particular at the cross-border interconnection points, only a seasonal firmness in the form of conditionally firm, freely allocable entry capacity with a temperature condition (bFZK<sub>temp</sub> or TaK) is not suitable to meet market requirements and the quality restriction would be out of all proportion to the current cost forecasts of the TSOs.

### 2.2.3. Marketing time frame

In its publication for the initiation of proceedings of 23 May 2019, the ruling chamber explained (point 5) that the additional capacity could be offered for longer periods than the next gas year. However, in contrast to the marketing time frame for technical capacity under Article 11(3) of Regulation (EU) 2017/459, the additional capacity should not be offered for longer than the next four gas years.

The TSOs' concept envisages that additional capacity could only be offered for the duration of one gas year.

Annual auction	Offer of additional capacity	Notes
2020	gas year 2020/2021: <u>no</u> additional capacity	period before market area merger
	gas year 2021/2022: additional capacity	expected to be first gas year of market area merger
2021	gas year 2021/2022: additional capacity	
2022	gas year 2022/2023: additional capacity	
2023	gas year 2023/2024: additional capacity	

If the period of application of the oversubscription and buy-back scheme is limited as described in section 3.1, the ruling chamber could envisage a longer marketing time frame of, for example, two gas years for additional capacity in the annual auctions in 2020, 2021 and 2022, but only for one year in the annual auction in 2023, because the scheme would come to an end after that.

However, the ruling chamber does not exclude the possibility that the TSOs' more restrictive concept could also lead to appropriate results. In particular, it would reduce the risk that firm capacity secured by market-based instruments would be marketed for several years but the instruments would not prove to be functional, either because they were not sufficiently available or because they did not achieve the desired effect. On the other hand, limiting the marketing time frame to a year as part of a risk assessment could also provide leeway to offer a larger amount of additional capacity in the product quality of firm, freely allocable capacity (FZK).

In the second consultation, the ruling chamber called on TSOs to weigh up the risks and opportunities of the different marketing time frames, taking into account the responses to the consultations. The majority of respondents made clear that due to existing supply contracts that are generally usual in the market, there were supply obligations of at least two years and for that reason, many participants in the consultations called for a marketing time frame of at least two years.

#### *2.2.4. Market-based instruments and buy-back (structure and relation to each other)*

(1) According to the TSOs' concept, market-based instruments are to be used to secure additional capacity within the framework of an oversubscription and buy-back scheme. The instruments proposed by the TSOs are VIP wheeling, third-party network use and the spread product. They have included a more comprehensive process description and more detailed information on the product characteristics in their concept so that the functioning of the instruments is easier to understand (MBI process description and capacity buy-back).

(2) The TSOs plan for a buy-back of capacity to be implemented as a measure alongside market-based instruments. Regardless of the price, the use of the buy-back should be subordinate to all market-based instruments (measure of last resort), so the buy-back would not be part of the merit order list. Moreover, it should be possible to attach conditions to the buy-back, for example by restricting re-nomination possibilities in the zone with a surplus of gas. According to points 2.2.2(6) and (7) of Annex I of Regulation (EC) No 715/2009, transmission system operators must apply a market-based buy-back procedure where necessary to maintain system integrity and where alternative technical and commercial measures cannot maintain system integrity in a more cost-efficient manner. This provision is probably behind the TSOs' considerations about the relation between market-based instruments and the buy-back procedure.

(4) The TSOs believe that a price limit both for the use of the market-based instruments and for the capacity buy-back is appropriate to prevent potential misuse. They consider that measures under section 16(2) of the Energy Industry Act (EnWG) should be applied if congestion cannot be resolved at unit prices below fixed price caps.

The ruling chamber doubts whether it would be possible to set a price cap using objectively justified criteria within the prevailing legal framework. Point 2.2.2(5) of Annex I of Regulation (EC) No 715/2009 provides for a risk profile for offering additional capacity in an oversubscription and buy-back scheme that includes the costs of securing capacity, but this is intended as the basis for determining the amount of additional capacity to be offered. It is not intended to lead to the use of instruments securing this capacity being limited or to capacity reductions being allowed. Even if a price cap were to be allowed for the use of market-based instruments and the capacity buy-back in an oversubscription and buy-back scheme, the ruling chamber is of the opinion that the scheme to secure capacity would have to be viewed as a failure in a specific use case if firm capacity (base or additional capacity) had to be reduced in accordance with section 16(2) EnWG. Such a scenario

would also be likely to prove that the market-based instruments could not be regarded as adequate and effective alternatives to the physical expansion of the network.

As far the issue discussed above of whether the market-based instruments are suitable for transfer to the scheme under section 9(3) GasNZV, the fact that the use of the capacity buy-back product were necessary (even without a price cap) would be evidence that these instruments were not suitable for use under section 9(3) GasNZV. Obviously, in such a case the instruments could not secure firm capacity with the same level of reliability as the measures under section 9(3) GasNZV (especially flow commitments).

The introduction of a price cap was rejected by almost all participants in the second consultation.

#### *2.2.5. Suspension of short-term marketing*

(1) The TSOs' concept proposes that the short-term marketing of firm, freely allocable entry capacity (and presumably also any other capacity products) into the zone with a surplus of gas should be suspended during the period when market-based instruments are used and buy-back procedures are applied. The aim behind this is to prevent the marketing of further capacity that would worsen congestion in the event of a congestion situation requiring the use of market-based instruments or even the application of buy-back procedures.

The ruling chamber is aware that many market participants have an interest in short-term capacity bookings and that the reliability of the information published by the TSOs on available capacity is highly important to the market. However, the offer of capacity by TSOs is conditional on the secure and efficient operation of the system. TSOs should therefore not be categorically prevented from adjusting their offer of capacity appropriately to the actual circumstances.

With respect to the proposed suspension of short-term marketing, clear-cut groups of cases must in any case be defined in order to balance these aspects. In addition, it must be clear to the market which specific restrictions are associated with each group of cases. It must therefore be explained in advance which network points could be affected by restrictions, which capacity products would be affected and the extent of the restrictions.

(2) In the TSOs' view, the suspension of short-term marketing is not to be limited to the additional capacity for individual points offered under the oversubscription and buy-back scheme. Rather, it is also to cover the technical capacity not yet allocated. Even if this could avoid a worsening of congestion, the ruling chamber questions whether suspending the short-term marketing of additional capacity at individual points would not be sufficient.

(3) The suspension of short-term marketing was a contentious issue raised by various respondents in the second consultation as well.

#### *2.2.6. Monitoring*

The ruling chamber is looking to attach broader monitoring and publication requirements to the possible approval of the concept for an oversubscription and buy-back scheme. As part of an annual monitoring process at the end of each gas year, the TSOs would need to submit to the

ruling chamber a joint report on their experiences with the scheme and publish the report on their websites. In particular, the report would need to include an evaluation of the use of the market-based instruments during the last gas year. The ruling chamber considers this necessary in particular in order to be able to decide in due course whether the market-based instruments are suitable for transfer to the scheme under section 9(3) GasNZV. Specifically, the monitoring process should cover at least the following aspects:

- the extent of the use of market-based instruments to secure marketed additional capacity (number and duration of instances, breakdown of the instruments used, how long capacity was secured, breakdown of the costs of securing capacity);
- the extent to which marketed additional capacity could not be secured through the use of market-based instruments (number and duration of instances, reasons why capacity could not be secured);
- the extent to which it was necessary to buy back capacity or make reductions to marketed additional capacity (number and duration of instances, breakdown of the costs of buying back capacity).

Moreover, the ruling chamber believes it would be useful to have further requirements for information on all or individual market-based instruments published online in an electronically usable format on a daily basis.

### **2.3. No approval of specific amounts of additional capacity**

The ruling chamber will not approve specific amounts of additional capacity in the decision concluding this procedure. Point 2.2.2. of Annex I to Regulation (EC) No 715/2009 does not empower the ruling chamber to do so. Approval under point 2.2.2.(1) of Annex I to Regulation (EC) No 715/2009 only covers the scope and period of application of an oversubscription and buy-back scheme and the individual elements of the concept. Relevant for a decision are the market-based instruments that can be used to secure additional firm capacity, how they function, the order in which they are used, their relation to the buy-back procedure and the marketing time frame for additional capacity. Whether and how much additional capacity is offered at the individual points is to be decided first and foremost by the TSO concerned.

The proposed concept leaves the decision to the TSO's discretion, but the capacity specified in the gas NDP 2018-2028 is to serve as an upper limit.

The ruling chamber believes that the TSOs should, however, take sufficient account of the following aspects:

- the first consultation in this procedure indicated a strong need in the market for additional firm capacity, and in particular firm, freely allocable capacity, in the single German market area;
- the supply and demand of additional capacity under an oversubscription and buy-back scheme can provide valuable information with respect to identifying long-term capacity requirements in the single German market area for future scenario frameworks;

- the amount of additional capacity offered should make it possible to sufficiently test and evaluate the functioning, the capacity-securing effect and the efficiency of the market-based instruments used under the oversubscription and buy-back scheme; this is also relevant with a view to being able to secure the sufficient amount in accordance with section 9(3) GasNZV in the future.

The ruling chamber believes it would make sense for the TSOs to state how much additional capacity they would offer and market at individual points and the quality of the product in advance of the annual auctions at which the oversubscription and buy-back scheme could be applied. The TSOs should also state which objective criteria they applied when determining their offer of additional capacity.

#### **2.4. Costs under the oversubscription and buy-back scheme**

Ruling Chamber 9 at the Bundesnetzagentur will decide on the treatment of the costs for the use of market-based instruments and the application of the buy-back procedure under an oversubscription and buy-back scheme. It initiated proceedings regarding the recognition of costs for market-based instruments and for capacity buy-backs in the single German market area as volatile costs within the meaning of section 11(5) ARegV (BK9-19/606 – KOMBI) on 16 October 2019.