



## - Ruling Chamber 7 -

File ref: BK7-19-037

11 October 2019

### **KAP+ procedure for additional capacity in the single German market area**

#### **Second consultation: joint concept from transmission system operators for an oversubscription and buy-back scheme**

The ruling chamber envisages that 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 give German transmission system operators (TSOs) the opportunity to offer additional firm capacity in the single German market area ("Trading Hub Europe").

The ruling chamber expects contractual and physical congestion to result from the merger of the market areas. 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.

The ruling chamber 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.

<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).

## **1. Results of the first consultation**

The ruling chamber received 18 responses, which may be viewed on the Bundesnetzagentur website.

[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](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)

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. However, they differed in their opinions as to the best way to achieve this additional supply. Some respondents supported the implementation of an oversubscription and buy-back scheme, but others considered that the application of section 9(3) of the Gas Network Access Ordinance (GasNZV) was already possible. The great majority of responses were in favour of the introduction of market-based instruments but also called for standard rules for the cost-effective use of such instruments.

## **2. TSOs' concept for an oversubscription and buy-back scheme**

The TSOs' concept was submitted to the ruling chamber on 1 October 2019 and is now also available on the Bundesnetzagentur's website.

[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](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)

This concept and the deliberations of the ruling chamber given under point **3** below will now be the subject of further consultation.

Both the market-based instruments and the "capacity buy-back product" are described in more detail in the annex to the concept. As well as providing a brief description of the instruments in graphic form, the TSOs have also submitted an overview table of the product characteristics. The ruling chamber considers that the concept should include a more comprehensive process description and more detailed information about the product characteristics in order to improve understanding of the functioning of the instruments and for reasons of transparency and acceptance. The information provided by the TSOs so far suggests that any congestion occurring in the future would not be resolved by one instrument alone, but by a combination of several. The ruling chamber considers that it would be useful to describe this process. The process description should provide detailed information on the necessary steps from the identification of network congestion to its correction, with particular emphasis on which decisions are made by which party and how the market-based instruments are accessed.

### 3. Other deliberations of the Ruling Chamber

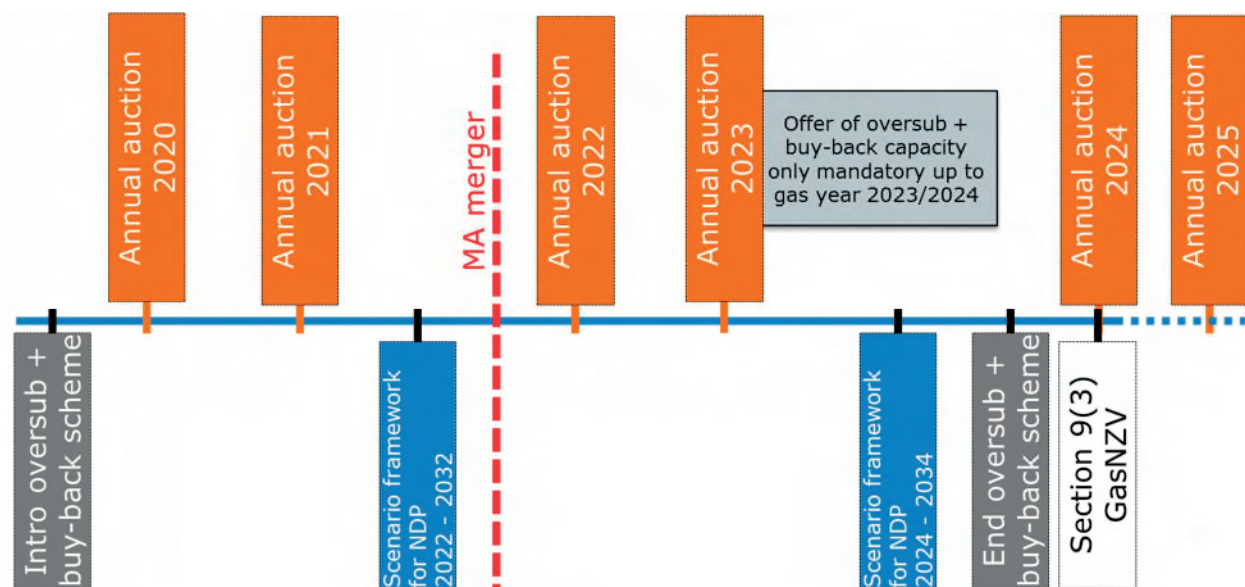
In addition to the explanations given in the launch document dated 23 May 2019, the ruling chamber puts forward the following deliberations for consultation:

#### 3.1. 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.

#### 3.1.1 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 from this 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.

### *3.1.2. 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.

### *3.1.3. 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 renomination restrictions or any suspension of short-term marketing in the case of congestion) should be taken into account in addition to financial aspects.

## **3.2. 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.

### *3.2.1. 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 schemes would 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. The intention of the GasNZV is to create an identical framework for the procurement of capacity at interconnection points and storage points (Bundesrat printed paper 419/17, page 14). This takes account of the fact that the injection of gas at an interconnection point and the use of a storage facility are interchangeable. This is why section 13(1) and (4) GasNZV lays down that capacity of entry points from or exit points to storage facilities must be allocated via an auction procedure in accordance with Regulation (EU) 2017/459, although the scope of the Regulation does not apply.

Market participants are invited to submit comments on this structure.

### 3.2.2. 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. No statements were made on 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 load-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 load-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 load-dependent or temperature-dependent bFZK should not be ruled out, provided that it is shown to be a suitable replacement.

Market participants are invited to submit their comments on this point.

### *3.2.3. 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 system 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).

The TSOs should weigh up the risks and opportunities of the different marketing time frames, taking into account the responses to the consultations.

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

(1) As explained above, the ruling chamber considers that a more detailed process description of the functioning of the market-based instruments and the capacity buy-back would be appropriate in addition to the information provided in the annex to the concept. The TSOs are requested to provide such a description, giving the typical use case of the instruments, starting with the identification of network congestion up to the removal of the congestion. The ruling chamber is of the opinion that the TSOs should in particular provide the following information in their detailed description:

- distinction between the market-based instrument of "wheeling" to secure additional capacity from currently available relocations within a virtual interconnection point (VIP),
- information on the specific design and level of the re-nomination restriction mentioned in the concept for the purpose of preventing misuse in the use of the spread product and the capacity buy-back,



- specific information on the local/geographic fulfilment border(s) for the spread product and the capacity buy-back (zones with a surplus or deficit of gas),
- decision-making process for the most cost-efficient way of accessing a particular market-based instrument, bearing in mind different lead times and likelihood of physical effect occurring,
- more detailed explanation of the merit order list (MOL).

(2) Regardless of this, all market participants have the opportunity to comment on the product characteristics of the market-based instruments and the capacity buy-back already given in the annex to the concept. They are also expressly invited to comment on the points left open in the concept, such as the question of whether third-party network use by the TSOs should be restricted to participation in the first round of bidding and the scope of the re-nomination restriction for the spread product and in the buy-back.

(3) 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).

### *3.2.5. 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 offered under the oversubscription and buy-back scheme. Rather, it is also to cover the technical capacity approved under section 9(4) GasNZV and 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 would not be sufficient.

### *3.2.6. 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 experience 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 make sense to have further requirements for information on all or individual market-based instruments to be published online in an electronically usable format on a daily basis.

The TSOs and other market players are invited to also comment on these proposals.

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

The ruling chamber will not approve specific amounts of additional capacity either in the decision concluding this procedure or in decisions taken under section 9(4) GasNZV. Neither point 2.2.2. of Annex I to Regulation (EC) No 715/2009 nor section 9(4) GasNZV empowers 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 measures 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.

### **3.4. 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. To this end, Ruling Chamber 9 will initiate the necessary administrative procedure pursuant to section 29(1) EnWG in conjunction with section 32(1) para 4a of the Incentive Regulation Ordinance (ARegV). A final decision on the regulatory treatment of the costs for the market-based instruments within the framework of section 9(3) GasNZV cannot be made until a reliable test phase for these instruments has proven their suitability for transfer to the area of application of section 9(3) GasNZV.

## **4. Second consultation**

The TSOs and other market participants are hereby given the opportunity to comment on the concept for an oversubscription and buy-back system presented by the TSOs and on the ruling chamber's above deliberations. Comments may be made jointly and should be submitted in electronic format (eg data stick or email)

**by 8 November 2019**

to:

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All submissions must be in German only. The responses are to be published on the Bundesnetzagentur's website.

In this connection, attention is drawn to the fact that consultation participants are required to indicate, upon submission, those parts of their responses that contain business and trade secrets or personal data (eg names, signatures, telephone numbers, email addresses containing names). Any business and trade secrets relating to third parties that are disclosed to the ruling chamber in the responses must also be indicated. If business and trade secrets are not indicated as such, the ruling chamber may assume, as provided for by section 71 sentence 3 EnWG, that consent is given to the information being made available to third parties. Attention is specifically drawn to the fact that if a response contains personal data, it is the responsibility of the participant submitting the response to obtain the data subject's consent to the personal data being published, or to black out the personal data in the version to be published as described below.

Further information about the protection of business and trade secrets is set out in the notice relating to Ruling Chamber 6 and 7 proceedings at:

[www.bundesnetzagentur.de/geheimnisschutz-enwg](http://www.bundesnetzagentur.de/geheimnisschutz-enwg)

The Bundesnetzagentur has also published a notice on when and how confidential information may be blacked out in the Bundesnetzagentur's decisions for the electricity and gas sectors; the notice published on 22 March 2019 is also available at the above internet address.

The reasons why information is being claimed as business and trade secrets must be specified in the confidential information template, together with the page, line and wording of the blacked-out information. The template is also available on the Bundesnetzagentur's website at:

[www.bundesnetzagentur.de/geheimnisschutz-enwg](http://www.bundesnetzagentur.de/geheimnisschutz-enwg)

It is not sufficient to state that there is a wish to keep the information confidential or that publication of the information would affect a company's economic position. Rather, further details must be provided on why, from the consultation participant's perspective, there is an interest in maintaining confidentiality. In particular, an explanation must be provided of why publication of the information is expected to entail competitive and/or economic disadvantages. The explanation must be sufficiently detailed to objectively demonstrate the interest in maintaining confidentiality. The template must be sent to the ruling chamber in an electronic format suitable for processing with standard software.

If the responses submitted contain any confidential information as described above, participants must, without delay, also submit two copies of an edited version (with the confidential information blacked out) that they consider can be made public without disclosing business and trade secrets or personal data. The methods used to black out the confidential information must be suitable to guarantee that the information is rendered unreadable and non-retrievable. It is not sufficient to mark the confidential information in a different colour in an electronic version. Nor is it permitted to leave a blank space in place of the information to be blacked out.