



- Ruling Chamber 7 -

File reference: BK7-19-037

23 May 2019

“KAP+” procedure for additional capacities in the single German market area

Introduction of a procedure to change the ruling of 20 September 2013 (BK7-13-019) and for a decision on the application of an overbooking system to be jointly proposed by the TSOs pursuant to point 2.2.2. of Annex I of Regulation (EC) No 715/2009

On 23 May 2019, based on sections 29(1),(2) and 56(1) Energy Industry Act (EnWG) in conjunction with point 2.2.2.(1) of Annex I of Regulation (EC) No 715/2009, the Ruling Chamber 7 launched the KAP+ procedure to change the ruling of 20 September 2013, file reference BK7-13-019 (referred to in the following as the *initial ruling*) and to reach a decision on the application of an overbooking system to be jointly proposed by the TSOs pursuant to point 2.2.2. of Annex I of Regulation (EC) No 715/2009. The purpose of the “KAP+” procedure is to create the conditions for an increase in the supply of firm capacities in the single German market area.

The reason for changing the initial ruling is to revive the obligation of transmission system operators under point 2.2.2.(1) of Annex I of Regulation (EC) No 715/2009 to propose and, in case of approval, implement an overbooking system. The transmission system operators are expected to produce and propose a joint concept for an overbooking system pursuant to point 2.2.2. (1) of Annex I of Regulation (EC) No 715/2009 which will then be approved or not in accordance with this procedure.

The procedure is aimed at all operators of gas transmission systems as defined under section 3(5) EnWG.

I. Procedure BK7-13-019

With its initial ruling adopted on the basis of point 2.2.3.(6) of Annex I of Regulation (EC) No 715/2009 the Ruling Chamber decided that the overbooking system previously proposed by the transmission system operators under point 2.2.2. of Annex I of Regulation (EC) No 715/2009 should not be used at interconnection points at which a “use-it-or-lose-it” mechanism is already in place for firm “day-ahead” capacity. At the time, such a mechanism in the form of the re-nomination restrictions had been implemented at all interconnection points on the basis of Annex 1 of the ruling of 24 February 2011 (file ref. BK7-10-001, section [5] (3) of the standard contract. Implementation is now based on Annex 1 of the ruling of 14 August 2015 (BK7-15-001, section [5](3) of the standard contract).

This decision was reached in spite of the majority view in the market that the possible introduction of an overbooking system would in principle be welcome and could possibly serve as a capacity management instrument.

The main reason for the Ruling Chamber’s decision was that, in combination with the re-nomination restriction procedure, the introduction of the overbooking system proposed by the transmission system operators would have increased the level of complexity for all market participants without any benefits for the gas market. There were no signs at the time that it might not be possible to cover transport capacity requirements and that another system in addition to the re-nomination restriction would be needed. In the Ruling Chamber’s view, a contractual congestion is not required to implement an overbooking system, as this instrument can also be used preemptively. Nonetheless, the amount of availability of capacities cannot be ignored when evaluating whether a further procedure is required in addition to the re-nomination restriction. At the time of the decision there was, however, both a sufficient supply of firm “day-ahead” capacities and of long-term transmission rights. The elements of capacity management in the “KARLA Gas” requirements, file reference BK7-10-001, provoked the termination of long-term capacity contracts. The firm capacities released in this way were thereafter offered again as long-term transmission rights.

II. Change in the factual and legal positions

The factual and legal positions have both changed since the initial ruling was issued and it would now be appropriate to reassess them.

The relevant changes identified by the Ruling Chamber include not only the development of the physical transmission infrastructure but also, in particular, the obligation on transmission system operators to create a single German market area by 1 April 2022 at the latest from the two existing market areas “NetConnect Germany” and “GASPOOL”, sentence 2, section 21(1) Gas

Network Access Ordinance (GasNZV, referred to in the following as the “merger of market areas”).

(a) Impact of the merger of market areas

The merger of market areas will have profound implications in determining and offering firm capacities and the associated access to the system. The merger of markets will enable network users to use the system in more and different ways, i.e. to combine entry and exit capacities. In contrast to the freely allocable firm capacities (or “FZK” in the following) in the present two separate market areas, the new usage options available in a single German market area would mean that FZK would be a quite different and substantially enhanced capacity product. This may result in a greater need for exchanges between the transmission systems in previously separate market areas, which would have implications for the amount of available firm capacity in a future single German market.

According to calculations made by German transmission system operators for a single German market area, this would result in a reduction of the freely allocable firm entry capacities which can be offered based on the present infrastructure. The low technical exchange capacity between the present market areas would, under the capacity calculations in section 9(2) GasNZV, have a limiting impact. Firm capacity that is subject to a temperature condition (or “bFZK” in the following) as well as firm, dynamically allocable capacity (or “DZK” in the following) could, however, be offered on the basis of the volumes currently marketed in the NetConnect Germany and GASPOOL market areas. In principle, this also applies to firm capacity with restricted allocability (or “BZK” in the following); however, the Ruling Chamber seeks the abolition of this capacity product and conversion to DZK (cf. consultation on current determination proceedings (“KASPAR”) on the standardisation of capacity products, file reference BK7-18-052).

Einspeisekapazität		
Summe getrennter Marktgebiete		Neuberechnung im deutschlandweiten Marktgebiet
bFZK _{temp}	bFZK _{temp} von Neuberechnung nicht tangiert	bFZK _{temp}
DZK & BZK	DZK & BZK von Neuberechnung nicht tangiert	DZK & BZK
FZK (nur NCG oder GP)	Neuberechnung führt zu weniger FZK	
		FZK (dt. Marktgebiet)

(Note: excluding bFZK with flow condition)

The exit capacities could also be offered in the single German market on the basis of the volumes marketed so far. Firm capacities for downstream distribution system operators could also be consolidated.

Ausspeisekapazität		
Summe getrennter Marktgebiete		Neuberechnung im deutschlandweiten Marktgebiet
bFZK	bFZK von Neuberechnung nicht tangiert	bFZK
DZK & BZK	DZK & BZK von Neuberechnung nicht tangiert	DZK & BZK
FZK (nur NCG oder GP)	FZK von Neuberechnung nicht tangiert	FZK (dt. Marktgebiet)

(b) Approach proposed by transmission system operators

With reference to the gas network development plan 2018-2028, the transmission system operators wish to transfer the amount of firm entry FZK currently offered in the existing market

areas to the single German market area. According to the transmission system operators, network expansion aimed at reducing congestion based on additional capacity requirements of 19 GWh/h for the year 2023 would require investment on a considerable scale and could not be implemented before 2026/2027. As the entry FZK envisaged by the transmission system operators cannot be secured for the merger of market areas by the physical network, they believe that market-based instruments should be used to permanently secure the amount of capacity they wish to transfer. In the view of the transmission system operators, such market-based instruments would include “wheeling” (a service offered by network operators in other countries at certain interconnection points that can be used to transfer gas from the network of one German transmission system operator to that of another German transmission system operator), the direct use of networks and capacities outside Germany for such gas transport (known as “third-party network use”) and, in particular, what transmission system operators refer to as an exchange-based spread product, which by means of merged and tradeable reductions and increases in nominations on the exchange is intended to allow the virtual transport of gas at different congested points,

cf. slides 16, 17 and 35 and following of the presentation given by transmission system operators on 6 February 2019, “Market dialogue about the capacity model”, available at: www.marktgebietszusammenlegung.de.

(c) Provisional assessments by the Ruling Chamber

The Ruling Chamber takes the view that it is not legally possible at present to resort to capacity increasing measures within the meaning of section 9(3) GasNZV. The transmission system operators have not sufficiently determined and demonstrated that the use of capacity increasing measures is necessary in order to ensure a “sufficient level” of FZK within the meaning of section 9(3) GasNZV in a single German market. A “sufficient level” cannot be determined by general reference to the (scenario framework for the) gas network development plan 2018-2028. These documents do not provide detailed projections of FZK requirements in a single German market area.

Recourse to the market-based instruments specifically referred to by the transmission system operators under section 9(3) GasNZV also appears questionable. While the enumeration in section 9(3) GasNZV is not exhaustive (“in particular”), the stipulations are however based on a principle of rules/exceptions. It is the case that the capacity increasing measures under section 9(3) GasNZV are only intended to be used – in both financial and time respects – as little as possible. They are only intended to be used to the extent necessary to ensure a “sufficient level” of FZK. Another common feature of the measures referred to in the regulations is that an increase in the calculated capacity can only then be assumed after the measures required for this purpose have in fact been taken. The market-based instruments proposed by the

transmission system operators do not comply with this statutory method as they are intended to be used on a permanent basis and thereby consistently breach the rules/exceptions principle set down in the regulations. The financial scope of their use, including in particular the exchange-based spread product, cannot be limited as, in the view of the transmission system operators, the instruments are intended to provide and secure structural capacities as an alternative to the permanent expansion of the existing network.

Given that substantiated findings concerning the capacity model were still not available for the single German market area, the supply of capacity in the last annual auction on 2 July 2018 was based on the supply calculated separately for the two market areas NetConnect Germany and GASPOOL prior to the merger of market areas. These firm capacities were also offered by the transmission system operators for the period following the merger of market areas, albeit with a disclaimer. While the auction revealed that there was very little demand for long-term annual capacities beyond the gas year 2020/2021, historical bookings nonetheless present a more nuanced picture of potential market demand for firm capacities with shorter durations. Various market participants have therefore – including in the framework of a “gas workshop” held by the “EFET Deutschland - Verband Deutscher Energiehändler e.V.” on 21 November 2018 – advocated creating firm short-term capacities. The idea here is to guarantee high supply capacity while avoiding the expansion of the physical network, which this would actually entail.

To this extent, and in contrast to its evaluation of the overbooking system concept presented by the transmission system operators in 2013, the Ruling Chamber cannot at present exclude the eventuality that the gas capacity requirements that may arise from the gas year 2021/2022 may not be met by the physical network in a single German market area. In fact, this eventuality must be regarded as probable. Bearing this in mind, the Ruling Chamber believes there is now sufficient reason to give consideration to the introduction of an overbooking system as detailed in point 2.2.2. of Annex I of Regulation (EC) No 715/2009 to enable additional capacity to be offered on a firm basis. Provisionally the Ruling Chamber takes the view that such a system could be used on a preventive basis and is therefore fundamentally suitable to facilitate a sufficient and efficient supply of capacity in a single German market area by supplying additional capacity which exceeds that provided by the existing network and which thereby meets the wishes of market participants.

The assumptions which led to the non-application of the joint concept submitted by the transmission system operators on 17 June 2013 for increasing capacity by means of an overbooking system have therefore changed. At that time no doubts existed about a sufficient supply of firm “day-ahead” capacities or regarding the reasonable assumption that there would be a sufficient level of more long-term transmission rights available. Owing to the implications outlined above of the merger of market areas, after its implementation only a lower supply of

entry FZK will be available. In this respect, a fundamental assumption upon which the Ruling Chamber had based its initial ruling has changed.

III. Initial deliberations of the Ruling Chamber on the design of an overbooking system in the context of the merger of market areas

A change in the initial ruling would revive the legal obligation of transmission system operators under point 2.2.2. of Annex I of Regulation (EC) No 715/2009 to propose and, after approval by the national regulatory authority, implement an overbooking system. Initially, the design of the system would be the responsibility of the transmission system operators, who would submit a joint concept for an overbooking system to the Ruling Chamber. This concept would then be the subject of consultation and evaluation by the Ruling Chamber with the market participants.

While point 2.2.2. of Annex I of Regulation (EC) No 715/2009 gives the transmission system operators considerable leeway in their initial design of the system, the provisional view of the Ruling Chamber is nonetheless that the design would have to take several issues into account to ensure that the concept is able to meet the requirements of the market in the framework of the merger of market areas. Specifically:

1. Bearing in mind the impact of the merger of market areas on the determination of firm capacities, the supply of additional capacity should be great enough to be able to meet the requirements of the market.
2. In the interests of non-discriminatory uniform network access and subject to the determination of additionally supplied overbooking capacity at each specific network point, the overbooking system should be used at all bookable entry and exit points in the single German market area. It should not be restricted a priori to certain transmission system operators or certain points only, nor should application be solely at the discretion of the transmission system operator.
3. Point 2.2.1.(3) of Annex 1 of Regulation (EC) No 715/2009 requires that the additional capacity made available by the use of an overbooking system is offered within the framework of the regular allocation procedure. Capacity that is offered additionally as a result of the overbooking may not therefore be offered as a separate capacity product, but with all other capacities in the framework of the usual capacity allocation procedure.
4. Point 2.2.2. of Annex I of Regulation (EC) No 715/2009 allows additional capacity for any standard capacity products to be offered, in other words yearly, quarterly, monthly, daily and within-day standard capacity products. Against the background of the merger of market areas and subject to the determination of additionally supplied overbooking capacity at each specific network point on the basis of local demand, the provisional

view taken by the Ruling Chamber is that the supply of additional capacity should not be limited a priori to certain standard capacity products only.

5. Point 2.2.2. of Annex I of Regulation (EC) No 715/2009 does not define the marketing period in any detail either. Article 11(3) sentence 1 of Regulation (EU) 2017/459 requires yearly existing capacity to be offered at least for the upcoming 5 gas years and for no longer than the upcoming 15 gas years. In contrast to this provision, additional overbooking capacity should in any case be offered for less than five gas years in the future. However, as long as the other statutory requirements can be met, it is conceivable that overbooking capacity may not only be offered for each following gas year.
6. The Ruling Chamber recognises the risks associated with a long-term offer of additional overbooking capacity combined with the security provided by a repurchase system, which were also addressed in the concept presented at the time by the transmission system operators. Unforeseeable changes in gas flows may occur as a result of changes in the gas price, particularly at the turn of the month, gas year or calendar year. The Ruling Chamber can well imagine that these risks could be reduced to an acceptable level by means of the (additional) application of the market-based measures previously presented by the transmission system operators in another context or by other market-based instruments – assuming that these are effective and legally permissible. As an alternative to network expansion, however, these costs may at best be recognisable as volatile costs and subject to efficiency benchmarking.
7. Point 2.2.2. of Annex I of Regulation (EC) No 715/2009 requires that the volume of additional overbooking capacity is defined for specific points. It is in principle conceivable that, as marketing periods change, the volume of overbooking capacity may fluctuate as a result of factual considerations at the time of its determination. In terms of market confidence in the availability of additional capacity, the supply of overbooking capacity should, from the provisional viewpoint of the Ruling Chamber, in any event also be measured against the signals emitted by the market as a result of prior bookings of additional capacity (as well).
8. With regard to a low-cost and efficient pipeline gas supply, it must be ensured that in cases in which network congestion results in permanently high costs within the framework of the overbooking system, the use of the overbooking system can be turned into a physical expansion of the network if this would make more economic sense.

IV. Consultation

In the light of these considerations, the Ruling Chamber presents the following procedure for consultation:

1. The ruling of 20 September 2013, BK7-13-091 shall be changed to revive the legal obligation of transmission system operators to propose, and after approval by the national regulatory authority, to use an overbooking system pursuant to point 2.2.2. of Annex I of Regulation (EC) No 715/2009.
2. The transmission system operators shall present a joint concept for an overbooking system to the Ruling Chamber by 16 September 2019.
3. This concept would then be the subject of consultation and evaluation with the market participants. The outcome of this evaluation may either be that the proposed concept is fully approved, approved subject to conditions or that a decision is taken not to use an overbooking system on a permanent basis.

The transmission system operators and other market players will in this way be given the opportunity to submit detailed responses to these issues, in particular with reference to the comments made in **III**. They will be asked to submit their responses, which can also be provided jointly, **by 5 July 2019** in a format suitable for further electronic processing on a data stick or by email to:

Bundesnetzagentur
Ruling chamber 7
Postfach 8001
53105 Bonn
e-mail: BK7.KAPplus@BNetzA.de

The responses will 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

The Bundesnetzagentur has also published a notice on when and how confidential information is to 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 at the Bundesnetzagentur's website at:

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.