

## Opinion on the draft decision in the BK9-19/612 ("MARGIT 2021") decision chamber proceedings

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There is no reason to increase the contingency mark-up.

The justification of BK9 for the increase of the contingency mark-up for interruptible capacity products in the period from 01.10. from 10 percent to 20 percent by 31 December 2021 is based on *general uncertainties* arising from the merger of market areas and the resulting *risk of increased interruptions*.

Therefore, the Decision Chamber justifies its decision inter alia on the grounds that the evaluation of the probability of interruption<sup>2</sup> can be based on forecast assumptions at best. From my perspective, however, the *uncertainties* arising from the merger of market areas is speculative assumption. There is no reliable evidence that there will actually be more interruptions. In any case, the result - doubling the contingency mark-up from 10% to 20% - does not seem to be based on an analytical model.

In order to obtain at least an initial assessment as to whether the probability of interruptions will increase, the Decision Chamber could in any case project the cumulated interruption events at the MÜP between market areas Gaspool and NCG in the past to the boundaries of the market area THE.<sup>3</sup>

It may turn out that the assumption of a positive correlation ("the probability of interruption increases with the size of the market area") can be weakened or even revised. This is because the consolidation of cooperation obligations in one market area also enhances internal opportunities for optimising load flow. For this reason, before adjustments are made to the structure of charges on the basis of this premise, the relationship between the size of the market area and the probability of interruption should be verified.

It seems to be of central importance to the BK9 that the ex-ante acceptance/measure should ensure the protection of transport customers who have booked interruptible capacity. However, precisely those transport customers will also benefit from the merged market areas as there will be higher liquidity lowering transaction cost for procurement of interrupted volumes.

The merging of the market areas on 1 October 2021 also offers a suitable opportunity to measure these effects. It seems justifiable to base regulatory decisions upon it only after a reasonable observation period.

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<sup>2</sup> For the sake of simplification, in this opinion, a change in the probability of interruption is understood to mean a change in the frequency, duration and capacity of interruptions.

<sup>3</sup> See paragraph 36 of the draft decision

In this context, it is regrettable that the BNetzA itself deprives itself of any calibration of congestion management based on historical interruption probabilities. Not only the transmission system operators do not consider it necessary as part of the NEP process 2020-30,

*"to carry out the evaluation of historical interruptions in this year's process, as carried out in previous network development plan processes. They justify this by stating that, especially against the background of the introduction of VIPs and the upcoming merger of market areas, no valid conclusions can be drawn from a historical analysis with regard to developments of future interruptions and possible network expansion. "*

The BNetzA also confirms that it is "appropriate that the transmission system operators do not carry out an evaluation of historical interruptions in the context of the NEP Gas 2020-2030".<sup>4</sup>

In case the BK9 has obtained historical interruptions at GÜPs, however, an evaluation would be highly appropriate – especially to confirm the current level of contingency mark-up. This analysis should of course include interruption events of bFZK (if applicable) and the allocation events of DZK, as MARGIT also determines the range - unfortunately only the range - for these products.

The decision will therefore not only affect uFZK, but will also have an impact on the market by extending the range for bFZK and DZK. As the decision in recitals 39 and 40 states, the consulted amendment will also have an impact on the fee for standard capacity FZK. However, the increase of the contingency mark-up will put FZK shippers in a worse position relative to uFZK, bFZK and DZK shippers. Even if the increase of 3.8% appears to be only minor, the difference between fees is important. This alone puts FZK importers at a noticeable disadvantage in the price competition compared to DZK importers/transiters.

In addition, for a not inconsiderable part of the European transit capacities, a possibility for the adjustment of discounts is granted en passant, without the corresponding characteristics of the products bFZK and DZK even being subject of the MARGIT decision<sup>5</sup>. Thus, the decision will have an impact on competition in the European gas market, possibly even a considerable one.<sup>6</sup> Therefore, the scope of the present decision is likely to be much narrower than is apparent from the draft.

Notwithstanding the above, the NC TAR does not contain any authority to calculate charges for DZK (see Annex).

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<sup>4</sup> Scenario framework for the Gas 2020-2030 network development plan of 5 December 2019, p. 15 and p. 60 (reasons for decision). Translation by author.

<sup>5</sup> The extent to which REGENT addresses the actual characteristics should be clarified in any case.

<sup>6</sup> It should be assumed that the DZK product is used excessively in the German gas market and, in view of the efforts of Gazprom export LLC as well as Gas TSOs GASCADE, GRTGazD and Fluxys Deutschland in the REGENT 2021 procedure to extend the rebates for these products, it should also be assumed that any potential for tariff reductions is exhausted.

## Annex:

**Assessment of the current interpretation and approval practice of the BK9 regarding the prohibition of cross-subsidisation of special capacity ("conditional, firm capacity products may not be priced lower as a result of the rebate than the capacity charges for the lowest discounted interruptible standard capacity product at that point")**

The BK9 makes the following definition: "Conditional firm capacity products include all capacity products that are neither a firm capacity product without any conditions nor an interruptible capacity product. Capacity products with conditionally firm, freely allocable capacity (bFZK) or products with firm, dynamically allocable capacity (DZK) are therefore eligible.<sup>7</sup>

This definition is inadmissible from the author's point of view because it already opens a scope of definition of a capacity product that is far too broad (only the properties "binding capacity product without any condition" and "interruptible" are excluded).

Even in this definition, however, it is not free of error to classify the DZK, which is referred to as dynamically allocable capacities, in the category "conditionally firm capacities". This is because DZK are "neither interruptible (as defined by the uFZK) nor firm (as defined by the FZK)". Nevertheless, they are at the same time interruptible (towards the VTP). However, they are also firm, because they always allow transport.

Furthermore, they do not contain any conditions (as defined by the bFZK). For example, the definition is not compatible with the KASPAR decision (BK7-18-052), because even there DZK is not considered to be conditional capacity.<sup>8</sup> The important difference is that bFZK, depending on the occurrence of certain conditions, only becomes interruptible at first. This state is not necessarily followed by interruption. The allocation of DZK, on the other hand, takes place immediately and unconditionally, solely at the discretion of the MGV.

Furthermore, the NC TAR only contains rules in Chapter III for the establishment of the reference prices as reserve prices for firm and interruptible capacity. Subsequently, the calculation of multipliers for non-annual capacity is prescribed. The NC TAR consequently defines standard capacity products being reference to the multipliers. There is however no reference in the entire text of the ordinance that allows the use of conditional capacity products in the calculation of charges. While Article 4(2) NC TAR addresses the use of conditional capacity products, no concrete conditions or their design are mentioned in the text of the ordinance by the European legislative, which is always driven by the harmonisation postulate. And even if the sentence

"Transmission tariffs may be set in a manner as to take into account the conditions for firm capacity products. "

would allow the legally compliant consideration of a "conditional capacity product" to be subject to a rebate. DZK, as already explained, does not fall under this category.

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<sup>7</sup> See also Decision BK9-18-610, recital 400 (p. 107) and Decision BK9-18-611, recital 403.

<sup>8</sup> Tenor 1. a) (2) and (3), decision of the BNetzA BK7-18-052 of 10.10.2019 (KASPAR). Only bFZK (conditionally firm, freely allocable capacity) is therefore a capacity whose firmness depends on external, objectifiable factors such as load flows or temperatures, or a combination of both.