



## **DECISION**

In the administrative proceedings pursuant to

section 29(1) of the Energy Industry Act (EnWG) in conjunction with section 56(1) sentence 1 para 2, sentences 2 and 3 EnWG in conjunction with Article 6(11) and Article 7(3) of Regulation (EC) No 715/2009 in conjunction with Article 41(6)(a) of Directive 2009/73/EC in conjunction with Article 28 of Regulation (EU) 2017/460

concerning the determination of the level of multipliers, the determination of a discount at entry points from LNG facilities and at entry points from and exit points to infrastructure developed with the purpose of ending the isolation of Member States in respect of their gas transmission systems and the determination of the level of discounts for interruptible standard capacity products at all interconnection points for the calendar year 2023 ("MARGIT 2023")

Ruling Chamber 9 of the Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen, Tulpenfeld 4, 53113 Bonn,

represented by

the Vice Chair acting as Chair                      Dr Ulrike Schimmel

the Vice Chair    Dr Björn Heuser

and the Vice Chair                                        Roland Naas

decided on 2 June 2022:

1. The following determinations in this decision are effective from 1 January 2023 to 31 December 2023.
2. For the conversion from yearly standard capacity products to non-yearly standard capacity products, a multiplier is to be applied at all interconnection points. The multiplier of a within-day standard capacity product is 2.0, the multiplier of a daily standard capacity product is 1.4, the multiplier of a monthly standard capacity product is 1.25 and the multiplier of a quarterly standard capacity product is 1.1.
3. A discount at entry points from and exit points to infrastructure developed with the purpose of ending the isolation of Member States in respect of their gas transmission systems is not applicable.
4. A discount of 40% at entry points from LNG facilities is applicable solely for yearly and quarterly capacity products.
5. Reserve prices for standard capacity products for interruptible capacity at interconnection points must be calculated by multiplying the reserve prices for the respective standard capacity products for firm capacity calculated as set out in Articles 14 and 15 of Regulation (EU) 2017/460 and Determination BK9-19/610 ("REGENT 2021") by the difference between 100% and the level of an ex-ante percentage discount applicable at every interconnection point for the respective standard capacity product in accordance with Annex I.
6. The right to order payment of costs is reserved.

## Rationale

### I.

- 1 The ruling chamber opened own-initiative proceedings for the determination of the level of multipliers, the level of any discount at entry points from LNG facilities and at entry points from and exit points to infrastructure developed with the purpose of ending the isolation of Member States in respect of their gas transmission systems, and the level of discounts for interruptible standard capacity products at all interconnection points.
- 2 Notification of the opening of proceedings was given in the Official Gazette 20/2021 of 27 October 2021 and simultaneously on the Bundesnetzagentur's website.
- 3 The draft decision in German and in English was published on the Bundesnetzagentur website on 16 December 2021 for consultation. The publication was accompanied by a brief statement that the consultation pursuant to Article 28(1) of Regulation (EU) 2017/460 would run until 31 January 2022. Only the German version is legally binding. On 15 March 2022, the ruling chamber launched a pre-consultation about a possible discount at entry points from LNG facilities. A dialogue with industry representatives was held as part of this pre-consultation phase. Market participants were able to submit initial responses until 12 April 2022. The draft decision on the introduction of a discount at entry points from LNG facilities was published on the Bundesnetzagentur website on 6 May 2022, along with the information that the consultation would run until 13 May 2022.
- 4 This publication and the consultations, by analogy with section 73(1a) sentence 1 EnWG and section 28(2) para 4 of the Administrative Procedure Act (VwVfG), took the place of the individual hearing required under section 67(1) EnWG for each party addressed.
- 5 Pursuant to Article 28(1) of Regulation (EU) 2017/460, the national regulatory authority must consider the positions of national regulatory authorities of directly connected Member States in its decision. The national regulatory authorities of the neighbouring Member States were informed of the start of the consultation in a letter dated 17 December 2021. On 18 January 2022 and for the possible discount at entry points from LNG facilities on 6 May 2022, the consultation documents were submitted to the Agency within the meaning of Article 1(1) of Regulation (EC) No 713/2009 (hereinafter "ACER").
- 6 On 11 October 2021, the Bundesnetzagentur notified the regulatory authorities of the federal states of the opening of proceedings in accordance with section 55(1) sentence 2 EnWG and on 16 December 2021 gave the authorities the opportunity to comment on the intended determination in accordance with section 58(1) sentence 2 EnWG. Likewise, the Bundeskartellamt was given the opportunity to state its views on the intended determination on 16 December 2021 in accordance with section 58(1) sentence 2 EnWG. On 6 May 2022, the regulatory authorities of

the federal states and the Bundeskartellamt were also given the opportunity to state their views on the possible discount at entry points from LNG facilities.

7 The Committee of representatives of the federal state regulatory authorities was given the opportunity to comment in accordance with section 60a(2) sentence 1 EnWG on 17 February 2022 and 6 May 2022.

8 Ten responses were received by 31 January 2022, another 21 by 12 April 2022 and a further 13 by 13 May 2022. They were published on the Bundesnetzagentur website in a version from which any trade and business secrets had been removed. The responses may be summarised as follows:

#### a. Multipliers

9 Traders called for a lowering of the within-day multiplier on the basis that its current level of 2.0 was inhibiting trading activity. Specifically, RWE Supply & Trading and Uniper wanted the figure to be reduced to 1.5,

10 arguing that the high within-day multiplier was making sources of flexibility, such as gas-fired power plants, unnecessarily expensive. This was not compatible with the energy transition and the trend towards the increasingly short-term optimisation of the energy markets, they maintained. It would disproportionately affect smaller and new market participants, as they do not make long-term bookings. The high within-day multiplier would ultimately lead to less cross-border trade, fewer bookings of within-day products and thus also reduced revenue for transmission system operators (TSOs). The traders' association EFET Deutschland – Verband Deutscher Energiehändler e.V., RWE Supply & Trading and Uniper stated that, contrary to the view of the Bundesnetzagentur, this would not avoid vacancy costs.

11 EFET Deutschland also put forward that competition in Europe should take place on the commodity side. Comparable conditions should apply for access to infrastructure. Belgium and the Netherlands did not distinguish between daily capacity and within-day capacity. The German market was therefore at a disadvantage in the short-term range.

12 Uniper called into question the appropriateness of the within-day multiplier of 2.0 and criticised the fact that no valid analysis of this had so far been carried out. EFET Deutschland proposed, in preparation for the upcoming draft determination of MARGIT 2024, an analysis of the additional revenue from within-day capacity and possibly the shifts from daily capacities to within-day capacities since the introduction of the multipliers under the network code on transmission tariff structures for gas (TAR NC) on 1 January 2020.

13 The traders' association also called for the multiplier to be passed on in cases of secondary marketing in the form of capacity transfers, ie the multiplier would remain at the level of the original contractual agreement (primary marketing). This arrangement for the secondary market should be

made as part of the MARGIT determination. In accordance with the Cooperation agreement KOV XII Annex 1 section 19(3), non-yearly capacity may only be transferred for the next calendar year as soon as the tariffs have been published pursuant to KOV XII Annex 1 section 25. This mechanism would not cause vacancy costs in the event of capacity transfers; rather, multipliers would only generate additional revenue for network operators and continue to restrict secondary trading.

b. Discount at entry points from LNG facilities

From the responses submitted by 31 January 2022:

- 14 INES would welcome the lack of a discount at entry points from LNG facilities. A discount would unilaterally favour feed-in from LNG facilities and disadvantage other international transmission feeds, it argued. It also recommended applying multipliers for entry points from LNG facilities, too. EFET Deutschland stressed that fair competition should take place on the commodity side and there should be no distortion of competition on access to infrastructure.
- 15 The industry association BDEW, RWE Supply & Trading and EFET Deutschland welcomed the planned market dialogue and suggested starting it as soon as possible to ensure the stability and predictability of the regulatory framework. A foreseeable regulatory framework, perhaps even just as an indication, could influence investment decisions being made now. Market players had to decide on the willingness to pay for LNG, bookings in the LNG facility, network connection requests, capacity bookings and gas supply contracts years before an LNG facility was completed.
- 16 Hanseatic Energy Hub (HEH) stated that the ruling chamber had to look at the question of discounting even before the final investment decision, since the discounting would form the basis for binding booking offers from terminal customers and thus also the basis of the investment decision. From the point of view of potential users of LNG facilities, Germany was not currently a competitive site, it wrote. Moreover, Germany was not even close to making full use of the regulatory framework it had set up with the deliberate aim of diversification. Specifically, the discounting should lead to LNG entry tariffs being based on the existing European entry charges. In addition, the annual MARGIT determination was not in alignment with the need of capacity users for planning certainty when making 10-20 year bookings. The payment of tariffs should also be based on the actual use of the entry point.
- 17 RWE Supply & Trading was in favour of discounting for the following reasons: as Ruling Chamber 7 had already detailed extensively the advantages of the Brunsbüttel LNG facility because of its strategic significance in diversifying gas sources and transport routes in the decision on the exemption from regulation (BK7-18-063), it followed that this contribution to the security of supply should be acknowledged with a discount for entry capacity from LNG facilities.

18 Moreover, according to RWE Supply & Trading, discounting would create equal competitive conditions for German and competing LNG facilities, as the latter benefited from much lower network tariffs and in some cases discounts of as much as 100%.

19 Uniper argued that discounting for entry from LNG facilities and other entry points could improve the competitiveness of the German gas market compared to the rest of Europe and increase its market liquidity. The BDEW put forward that LNG facilities could reveal additional import options.

#### c. Discounts for interruptible capacity

20 OMV Gas would welcome the level of discount being the same regardless of the product duration.

21 The association FNB Gas, writing on all behalf of all its members except the TSO bayernets, judged the maintenance of the contingency mark-up for H-gas at 20% to be appropriate, reasonable and comprehensible. For the creation of a level playing field in the L-gas sector and to minimise the risk of increased demand for conversion services, a contingency mark-up of 20% should be applied to L-gas as well. The BDEW and INES shared both these views.

22 OMV Gas welcomed the fact that the contingency mark-up would be unchanged at 20% but suggested an evaluation as soon as the first data from the merged market area were available.

23 Bayernets put forward that the contingency mark-up of 20% for H-gas would affect not just interruptible capacity but also dynamically allocable capacity (DZK) and conditionally firm capacity (bFZK) at cross-border interconnection points. Among the DZK products, in particular, only cross-border transports bypassing the German gas market would benefit. Moreover, the contingency mark-up of 20% for H-gas would further increase the cost burden of captive firm, freely allocable capacity (FZK) customers (distribution system operators and final consumers), a highly critical point. It would be more appropriate to have a lower discount for DZK and bFZK products because they are higher quality than interruptible products. Moreover, the favouring of the DZK transports would lead to unequal treatment of the DZK products used at the connection points for gas-fired power plants.

#### d. Discount at entry points from LNG facilities

##### From the responses submitted by 12 April and 13 May 2022:

24 A consultation on possible discounts at entry points from LNG facilities was launched on 15 March 2022. All stakeholders had until 12 April 2022 to state their views. In the course of the consultation, a hearing for TSOs directly addressed by the determination, potential LNG terminal operators and industry associations was also held on 5 April 2022. The presentations for

the hearing were published on 4 April 2022 on the Bundesnetzagentur's website and thus made accessible to all market participants.

25 A total of 21 responses to the consultation document were received. They were published on the Bundesnetzagentur website in a version from which any trade and business secrets had been removed. The responses may be summarised as follows:

26 Many market players were basically in favour of diversifying sources of supply by building one or more LNG terminals and thus increasing security of supply. However, Thyssengas, the association ARGE Umweltschutz, the citizens' initiative Bürgerinitiative gegen Gasbohren in Halfing, the environmental association Deutsche Umwelthilfe (DUH), INES and the initiative Abgefrackt Weidener Bündnis gegen Fracking ("Abgefrackt") saw the introduction of discounts at entry points from LNG facilities as unnecessary or counter-productive owing to the current and foreseeable conditions on the gas market. They called into question whether the requirements of Article (2) TAR NC were met given the fact that current and foreseeable developments in natural gas prices and political measures (involvement of the KfW development bank in terminals, see statement from EnBW) were providing sufficiently positive support for investment decisions for LNG terminals and the final investment decision to construct LNG terminals in Germany would be made by the relevant project promoters regardless of the granting of a discount on network tariffs. A possible network tariff discount would also be likely to have little to no effect on the later utilisation of the respective terminal, they maintained.

27 In addition, ARGE Umweltschutz, Bürgerinitiative gegen Gasbohren in Halfing, the DUH and Abgefrackt saw the introduction of discounting as counter-productive insofar as newly built (in particular stationary) LNG terminals would be in direct competition to the expansion of renewable energies and the application of existing concepts to improve energy efficiency. The expansion of energy from renewable sources and improvements in energy efficiency were, however, essential to meet Germany's commitments under the Paris Agreement as well as national climate targets and thus also to maintain security of supply in the medium to long-term, they argued. Therefore, the introduction of discounting would lead to a significant worsening of security of supply in Germany in the medium to long-term by (indirectly) supporting new, fossil-based LNG terminals. The criteria for the application of Article 9(2) TAR NC were thus not fulfilled.

28 RWE Supply & Trading, by contrast, was of the opinion that a discount would help the energy transition, in particular if it encouraged LNG terminals to be developed with the possibility of importing zero-carbon energy like green hydrogen or its derivatives. It also stated that the use of flexible gas-fired power plants was a necessary aspect alongside the rapid expansion of zero-carbon electricity sources.

29 The BDEW and EFET Deutschland considered that a discount on network tariffs at LNG terminals could increase the number of hours these were used, which would make investment decisions easier and make it more likely that LNG terminals could be set up and long-term supply chains

established. The development and potential use of LNG terminals in Germany had to be seen in the context of security of supply, according to the BDEW. The diversification of gas sources and the reduced dependence on existing transport routes were important aspects that had become even more significant since the start of the war in Ukraine.

30 OGE and FNG Gas believed that the requirements of Article 9(2) TAR NC would be fulfilled if a network-side tariff discount had a decisive influence on the final investment decision (FID) to build an LNG facility. From the point of view of OGE and the association INES, to assess the economic incentive, all the cost components for the provision of LNG at the relevant virtual trading point THE had to be put in relation to the commodity prices at the trading point. With the currently valid transport tariff of €3.51/(kWh/h)/a in the THE market area, there were transport costs for entry of €0.40/MWh for annual bookings and €0.56/MWh for daily bookings. On the other side were the commodity prices achieved in the last winter period (October 2021 up to and including March 2022) of an average of €97.34/MWh and future achievable commodity prices of between €34.25/MWh (2026) and €89.01/MWh (2023) in the THE market area when looking at the Powernext forward prices for the calendar years 2023 to 2026. The proportion of the commodity price coming from transport was therefore very low at 0.4 to 1.2% and the connection of transport tariffs to the utilisation of the LNG terminal consequently low as well. OGE further argued that transport tariffs could not be classed as a crucial factor for the FID of an LNG facility owing to their marginal share in the commodity price. Moreover, the discount would have to be consulted on and determined every year and could not therefore make a reliable contribution to the FID of an LNG facility. Accordingly, a discount at entry points from LNG facilities would not be in direct relation to an improvement in security of supply and could therefore not be applied under Article 9(2) TAR NC.

31 The industry association Zukunft Gas regarded the requirements of Article 9(2) TAR NC as fulfilled because the granting of discounts on the transmission tariffs could improve the economic attractiveness of bringing LNG to Germany, which could also improve the security of supply in the German-European gas system in particular and in the German-European energy system as a whole. GUD and Zukunft Gas took the view that a discount on network tariffs would have a significant influence on the business case of those companies wanting to use LNG terminals. Lower network tariffs would have an essentially positive effect on the decision of terminal users for the planned use of the terminal and would thus increase long-term bookings of LNG terminal capacity. These long-term bookings would in turn strengthen the willingness of potential operators to invest in LNG terminals and thereby contribute to the improvement of security of supply. RWE Supply & Trading, Fluxys Germany Holding and the potential terminal operator HEH also argued that the costs for network access, as well as the costs and conditions of terminal use itself, had a major effect on the decision of terminal users to undertake long-term bookings at a terminal. These long-term bookings were needed to finance the terminal in the private sector and



consequently to make a positive investment decision, they maintained. To that extent, a network tariff discount would improve security of supply.

- 32 From the point of view of RWE Supply & Trading, the establishment of a long-term LNG supply chain would be the most meaningful contribution to security of supply and this would be provided via long-term supply agreements between gas traders and LNG producers. Indexing to the target market was not unusual for these long-term LNG supply chains, according to RWE Supply & Trading. A sum "x", which would make up for the costs of entry booking into the target country among other things, would have to be deducted from the pure index price. The pricing of long-term supply agreements according to an international LNG index is only partially applicable to the LNG spot market. LNG producers had a variety of destinations open to them when marketing their products. Assuming that any index had a large degree of uncertainty over a long contract period, the sum "x" mentioned above (ie, the costs to be deducted from the purchase price representing, among other things, the network entry tariffs) would play a key role for the seller when selecting a destination. RWE Supply & Trading considered that this aspect posed one of the greatest obstacles in the negotiations over long-term supply agreements that have so far taken place. Moreover, a discount would also enable short-term imports of LNG to Germany, especially during times when prices were high. This was justified by the significant increase in LNG deliveries to Europe last winter. Moreover, the storage that takes place in the LNG terminal would allow the gas to be injected into the German system in a way beneficial to it, which would also increase security of supply.
- 33 EnBW's response went into more detail about the perspective put forward by Zukunft Gas. Investment costs in LNG terminals and the running costs of these terminals had to be secured by long-term agreements with potential users, it wrote. Yet users would only enter into long-term agreements with potential LNG terminal operators if they were sure that the fixed terminal and entry charges could be covered by the contribution margins of all LNG tankers that arrive there (sale of gas at the German VTP minus the, usually indexed, gas reference price for the LNG producer and minus the transport, terminal and entry costs). In the view of EnBW, entry costs of about €1mn for each arriving LNG tanker based on current annual entry tariffs at a usual level of utilisation over the booking period were a relevant factor, as GUD had shown in the workshop. If this economic analysis were to reveal that bringing the LNG ashore at another European terminal would be cheaper, the German terminals would only be used if the alternative European terminals were fully in use. The German terminals would only be used at peak times and would therefore have a low level of utilisation, which would make it hard to cover their fixed costs and thus make the completion of planned German terminals unlikely. Yet only the realisation of such terminals would have a positive effect on Germany's security of supply.
- 34 ONTRAS saw a general justification for a discount, as it agreed there was a causal relationship between a tariff discount and an increase in the competitiveness of LNG, which would then be injected directly from terminals in Germany instead of LNG from competing foreign terminals or

natural gas from pipelines. The discount would probably create a greater incentive for potential terminal users to make long-term booking decisions at German LNG terminals and thus have a positive effect on the investment decision of potential German LNG terminal operators and consequently also the construction of terminals to improve security of supply in Germany. However, ONTRAS also saw other effects that argued against the introduction of a discount, such as the currently high spot prices and making the other booking points in the transmission system more expensive. Against the background of the war in Ukraine and the threat of the loss of Russian imports as well as the message that would be sent about Germany and its attractiveness for investments in LNG facilities, ONTRAS did not want to rule out the granting of a discount at this time.

- 35 In its response, GUD put the transport costs (based on the REGENT yearly rate of €3.51/(kWh/h)/a) at the potential entry point of the Stade LNG terminal (planned capacity 12 bcm/a) at €48mn to €57.6mn/a, if the terminal capacity were to be fully utilised. From this, GUD concluded that this sort of figure would have a strong influence on the willingness of LNG suppliers/traders to use and book the terminals and on the final investment decision of potential terminal operators. GUD considered that there was no doubt that a discount at entry points from LNG facilities would benefit security of supply. Moreover, GUD believed that even a small discount on transport costs would be enough to create an incentive for more ships to use German terminals, given the great similarity in prices between individual European trading points.
- 36 For OGE, Thyssengas and INES, a competitive situation between German and other European terminals for supply to the German market was at least questionable, since at other European terminals the transport costs incurred for access to the German market area (additional exit tariff for the foreign network operator and entry tariff for the domestic network operator) always had to be taken into account. OGE provided the example of the Netherlands (VTP TTF), where the forward prices on 31 March 2022 were €17/MWh (calendar year 2023) and €4.38/MWh (calendar year 2026) respectively below German ones (VTP THE). This price spread created an economic incentive to supply the German market directly from LNG facilities situated in Germany, because the alternative of going via a terminal in the Netherlands would make no economic sense, leading to additional transport tariffs at the cross-border interconnection points.
- 37 ARGE Umweltschutz, Bürgerinitiative gegen Gasbohren in Halfing, the DUH and Abgefrackt saw a discount on network tariffs as counter-productive because, at least in the period until 2026, it would do nothing to change the general shortage of LNG on the global market and in any case, the discounting would only have a marginal effect on overall costs and thus the utilisation of LNG terminals. Where limited amounts of additional LNG could still be procured on the world markets, the existing north-west European terminals could be used for the additional imports, they believed.

- 38 Zukunft Gas saw the lack of competitiveness of German LNG terminals proven by the fact that, unlike Germany, neighbouring EU countries had successfully built and operated LNG terminals. It believed that the reason for this was the much lower network tariffs in other EU countries.
- 39 The potential terminal operators German LNG and HEH also considered Germany as uncompetitive as an LNG site at the moment. RWE Supply & Trading judged LNG terminals in Germany to be in a much worse position than competing terminals in the single European market for natural gas. Both the terminal operators and RWE Supply & Trading saw the reason for this in the fact that network tariffs were higher in Germany than in other EU Member States. In its response, HEH compared the network tariffs of the European neighbours Belgium, France, Lithuania, the Netherlands and Poland with those of Germany (as at April 2022). Germany's network tariffs at entry points from LNG facilities were the highest, at €3.51/(kWh/h)/a. Lithuania and Poland made use of the possibility of a discount (75% and 100% respectively). In the view of German LNG, the high network tariffs would make it difficult to import LNG to Germany and inhibit the development of LNG supply chains. Both potential terminal operators considered a discount on network tariffs to be a suitable, necessary and appropriate means of mitigating the currently weak competitive position for LNG facilities situated in Germany and raising the liquidity on the German gas market in the interests of security of supply.
- 40 ONTRAS, too, included an overview of LNG discounts of other European countries in the calendar year 2021 in its response. It put the weighted average of discounts of all the EU27 plus the UK at 11%.
- 41 Equinor Deutschland was expressly in favour of treating tariffs for cross-border interconnection points and entry points from LNG terminals equally. Both network points fulfil the same task of supplying German and European consumers safely with gas, it wrote. INES also recommended equal treatment in principle for cross-border interconnection points and entry points from LNG terminals. Whether LNG or Russian pipeline gas was imported did not depend on the discount on a network tariff at the LNG terminal, according to INES. The discounting was therefore not a question of security of supply.
- 42 BP Europe SE and GUD maintained that the construction and use of LNG infrastructure was associated with higher costs than sourcing gas via existing pipelines. A discount on LNG entry tariffs into the gas system would at least reduce this cost disadvantage.
- 43 BP Europe SE, EnBW, RWE Supply & Trading, German LNG, HEH and Zukunft Gas called for a 100% discount. BP Europe SE and German LNG justified this figure by arguing that LNG would only be brought ashore in Germany if it was economically attractive to do so. Transport costs were variable costs, they wrote, and a (large) discount would increase attractiveness and thus the likelihood of the terminal being well used. EnBW and RWE Supply & Trading argued that the size of the discount should be based on the competing situation at other European terminals. As well as the fact that entry tariffs were higher in Germany than in neighbouring European countries, the

different terminal booking costs and additional transport costs of the LNG tankers to get to German terminals should be taken into account, they stated, and this justified a network tariff discount of 100%. Moreover, according to RWE Supply & Trading, the discount would encourage the building of LNG terminals and the establishment of long-term supply chains. It would be logical to translate this benefit for security of supply into a 100% network tariff discount in the MARGIT proceedings, it maintained. The industry association Zukunft Gas and HEH viewed the size of the discount as being justified because, for one thing, it should be ensured that network access to German terminals was not more expensive than at other, comparable European terminals. For another, older LNG terminals further into their depreciation period often had lower usage tariffs. The BDEW also took the view that the discount had to be set in such a way that it offered a firm economic basis for planning for LNG imports by LNG terminals in Germany, especially during the initial implementation phase. This would be the case if the total costs associated with imports to Germany were comparable to the total costs for LNG imports in neighbouring countries. The BDEW did not specify an exact size of discount.

44 Equinor Deutschland and EFET Deutschland considered that a discount for LNG facilities would be most effective if the total costs associated with the import of LNG to Germany were comparable to the total costs in neighbouring countries.

45 To GUD, it seemed that among neighbouring European countries, there was a correlation between the commissioning date of the terminal and the size of the discount on network tariffs. GUD gave the example of the terminal in Poland, where the discount on network tariffs was 100%, which had started operations later than in the Netherlands, where the discount was 0%.

46 OGE, ONTRAS, Thyssengas and INES, meanwhile, saw a risk that the market would be distorted by substitution with other, reliable sources of supply, in particular if the discounts were very high. EFET Deutschland considered this substitution effect possible and wrote that it must be taken into account when determining the level of a possible discount. Even if there were market intervention in the form of a discount, a level playing field for all reliable sources of supply must still be achieved, according to OGE, ONTRAS and FNB Gas. INES pointed out that the level playing field had to be considered between sources of flexibility as well so that any discounting did not distort the competition between gas storage facilities and LNG terminals. The value to the system of the use of gas storage facilities should continue to be taken into consideration.

47 ONTRAS proposed the following means of determining and calculating the exact level of a discount: it might be possible to derive the discount from a new, empirically determined security of supply quality factor. Alternatively, it would also be possible to take the economic viability tool used in incremental capacity projects as an example for calculating the level of discount by taking the costs for pipeline connection and comparing them to the potential revenue from a capacity booking forecast at the LNG entry point. The Bundesnetzagentur would have to determine an f-factor for the degree to which the entry bookings should recoup the connection costs. If the

revenue from the forecast entry bookings overcompensated for the costs of the connection line, a discount on tariffs would be justified and its level could be calculated. As a third option for determining a discount, ONTRAS suggested that the total costs for the connection line and the other network expansion costs to provide the additional firm entry capacity could be divided by the amount of total additional capacity created. This would result in an LNG entry "postage stamp" that could be put in relation to the REGENT postage stamp and thus be used to determine a level of discount.

48 According to GUD, there would still be competitive advantages for pipeline gas even in the event of a discount at LNG entry points, owing to the far cheaper production and transport compared to LNG. Such a discount would therefore be necessary to create a level playing field with other reliable pipeline sources of supply. GUD added that the delivery pressure of LNG terminals, at around 80 barg, is considerably higher than the comparable delivery pressure of existing pipeline systems in the GUD network, with between 49 and 58 barg. This would lead to reduced compression requirements and consequently to lower costs in the transmission system.

49 OGE, ONTRAS and Thyssengas believed that the principle of cost reflexivity would be contravened if the discount was disproportionately high, or even 100%, to the benefit of LNG users, especially since the connection of potential LNG facilities was associated with considerable expansion measures and thus considerable costs for the transmission system that the users of LNG facilities would have to bear very little or not at all.

50 Equinor Deutschland judged that LNG connection points already enjoyed significant privileges regarding connection costs, capacity reservations and bookings. To further extend these privileges at the expense of other sources of supply would lead to major distortions in the market and competition. Pipeline transports would be made unnecessarily expensive by the expected shifting of the additional costs, which could lead to trading volumes moving abroad and, in the long term, to a weakening of Germany as a liquid trading place.

51 INES recommended making network tariffs as cost-reflective as possible so that decisions to use network infrastructure could be based on costs and the infrastructure could develop cost-effectively. The shifting (as set out in section 39f of the Gas Network Access Ordinance, GasNZV) of 90% of connection costs clearly allocated to LNG terminals to other market participants would already have a negative impact on the use of infrastructure and lead to additional costs in the development of this infrastructure.

52 In its response, GUD argued that LNG terminals still had to bear 10% of the connection costs including planning costs, despite the provisions of section 39a to g GasNZV, while pipelines were connected to the cross-border interconnection point without any involvement in the connection line.

53 RWE Supply & Trading doubted that a discount would cause additional costs for other entry and exit points. Whether an overall increase in costs at other points were to be expected would rather

be connected to the development of the booking situation in the transmission system as a whole. The collapse of entry bookings from Russia would certainly have an effect but this could not be attributed to the granting of an LNG discount. RWE Supply & Trading took the view that LNG bookings would first represent additional revenue for the TSOs.

54 To avoid the negative consequences of a network tariff discount at entry points from LNG facilities, ie the costs being borne at other booking points (cross-border interconnection points and points to final consumers), BP Europe SE and EFET Deutschland proposed covering the resulting revenue losses from public funds. Alternatively, EFET Deutschland also raised the possibility of adjusting the REGENT decision to reduce the burden on all entry points to the German gas transmission system with the aim of boosting security of supply of the German gas market.

55 Equinor Deutschland maintained that in general, competition should take price via the commodity price and not via privileged access to infrastructure.

56 Most market participants saw no need to have different tariffs for entry points from regulated LNG facilities and for those exempted from regulation. The other respondents made no comment on the issue.

57 Some participants called for the result of a discount at entry points from LNG facilities to be shown at the other booking points.

58 Zukunft Gas expressed the opinion that a one-off discount was insufficient and requested an analysis and rapid decision as to how the Bundesnetzagentur could create certainty via long-term discounts. RWE Supply & Trading, German LNG, the BDEW and EFET Deutschland would also welcome an outlook going beyond the next year. HEH would like at least a firm statement on future determinations. To give the sector longer-term planning ability and investment certainty, BP Europe SE proposed that the Bundesnetzagentur clearly describe in its reasoning to its determination the criteria under which a granted discount would not be extended. EnBW took the view that the discount, or at least the methodology for it, should be set as long term as possible to give all market participants a high level of planning certainty. GUD proposed holding the consultation on the discount for entry points from LNG facilities only every five years.

59 OMV Gas was also in favour of a discount and considered tariff stability necessary to achieve a certain level of certainty for possible bookings.

60 A draft determination for the possible discount at entry points from LNG facilities was drawn up on the basis of the responses received. The excerpt of the draft determination was published on 6 May 2022 on the Bundesnetzagentur website for consultation.

61 A total of 13 responses to the draft determination were received. They were published on the Bundesnetzagentur website in a version from which any trade and business secrets had been removed. The responses may be summarised as follows:

- 62 The Abgefrackt alliance, the citizens' initiative Bürgerinitiative gegen CO<sub>2</sub>-Endlager e.V., the DUH and the Hamburger Energietisch (HET) could not understand the Bundesnetzagentur's distinction between the interests of security of supply within the gas sector, ie the availability of gas, and security of supply in general on the whole energy market, partly for reasons of climate protection, given that Germany was currently not meeting its binding climate targets. Given this need for reduction, it was becoming increasingly difficult to distinguish between these two levels (security of supply within the natural gas sector and security of supply in general taking into account climate protection obligations), they maintained. Rather, there would arise a conflict of aims that would become more severe, the less successful Germany was in reducing its natural gas consumption. The planned discount would go against this reduction, however, since, as the ruling chamber pointed out repeatedly in its draft determination, it was especially designed to enable long-term deliveries of LNG to Germany. Moreover, there was criticism of the fact that the discount was not time-limited and that, in the view of Abgefrackt, the Bürgerinitiative gegen CO<sub>2</sub>-Endlager e.V., the DUH and the HET, the shifting of costs would place an additional burden on taxpayers and consumers, especially those on low incomes. The Bürgerinitiative gegen CO<sub>2</sub>-Endlager e.V. further believed that the discounting of LNG imports would create a massive distortion of the market to the disadvantage of municipal utility companies. These utilities would either end up in financial difficulties or be forced to instigate huge price rises, affecting in particular the sections of the population on low incomes as well as business and commerce. This would not only jeopardise social harmony but would damage the economy and lead to job losses as well.
- 63 Fluxys Germany Holding welcomed the provision on the introduction of a discount at entry points from LNG facilities that was the subject of the consultation. Such a provision was suitable to improve investment conditions for LNG terminals and thus to improve security of supply in Germany, it wrote. EnBW was also very positive about the proposed discount in the draft determination, which it saw as an acknowledgement of the important role of LNG terminals for security of supply.
- 64 RWE Supply & Trading also welcomed the intention to introduce a discount at entry points from LNG facilities, but it saw the proposal as insufficient to address the urgent interest in improving security of supply in the country. The proposed discount of 40% seemed too little, it stated. A discount of 100% would be needed to become attractive for LNG imports now and in the medium term.
- 65 OGE took the view that there was still no direct connection between a discount on capacity-based transmission tariffs at LNG facilities and improving security of supply. It pointed to the response it submitted on 12 April 2022 for more details. OGE shared the view that steady supplies of LNG would contribute to achieving the aim of supplying Germany with natural gas at a low price. Increasing the attractiveness of capacity bookings with longer durations thus seemed plausible in this context.

- 66 Equinor Deutschland pointed out that, when looking at the new supply chains, any negative side effects for the existing ones should not be ignored. The tariff level for pipeline transport to Germany was already significantly higher than that of the comparable markets used by the Bundesnetzagentur, France (41% higher for yearly capacity and 14% for quarterly capacity and the Netherlands (61% and 42% respectively). The envisaged discount of 40% for yearly and quarterly capacity products would lead to this cost pool being borne by the remaining entry and exit points and this tariff gap to the comparable markets would widen further. Given the current security of supply situation, it was important to find a balanced compromise between regulatory demands on existing supply relations and new, additional gas imports. In general, competition should take price via the commodity price and not via privileged access to infrastructure.
- 67 In view of the lack of data and information about the size of the discount to be determined, OGE considered the ruling chamber's suggested alternative of a decision balancing various aspects to be understandable. The comparison with adjacent markets seemed essentially logical, although the proportion of transport costs in the overall costs for LNG imports was very low, according to OGE. The selected comparable markets, France and the Netherlands, were acceptable, so that the derivation of the level of discount within the discretionary decision seemed reasonable.
- 68 RWE Supply & Trading, by contrast, considered it not particularly useful or informative to compare the German market with other European LNG markets. For one thing, such a comparison did not take account of the fact that Germany, unlike France and the Netherlands, did not currently have any LNG terminals. Rather, the idea was to actually get the LNG market underway quickly in Germany, for which major investments were necessary. RWE Supply & Trading considered that in this situation, a higher discount on network tariffs would send a crucial message precisely to the budding German LNG market and for the willingness to invest in it. Nevertheless, if a comparison with other markets were to be carried out, the LNG facilities in Poland and Belgium were also relevant alternatives for the offloading of LNG tankers. Under the system used, this would lead to a far higher discount, of 77% to reach the tariff level of Belgium and 100% to reach that of Poland.
- 69 Fluxys Germany Holding considered that there were various possible approaches to setting the discount. It did not understand why Belgium had not also been taken into account. In light of its geographical location, Belgium seemed well-suited as a comparison and this would lead to a higher discount and thus to a further improvement in investment conditions for LNG terminals. HEH also thought that Belgium should be included in the analysis. EFET Deutschland was of the opinion that Poland should be considered as well as Belgium. EnBW, too, thought Belgium was a representative comparable market since it acted as an important hub between the UK, France, the Netherlands, Norway and Germany. In future, it could even be worthwhile to look towards eastern Europe too, it suggested.
- 70 GUD viewed the total margin, which is partly calculated on the basis of the transport costs, as decisive for competition between LNG terminals. If the sites mentioned for possible LNG terminals



in Germany in the annex to the draft LNG Acceleration Act, Rostock and Lubmin, are taken as examples, Poland could also be used as a potential additional comparison country with regard to the transport costs of the LNG tankers and should be taken into account in the determination of the discount. Moreover, LNG mostly came from outside Europe, eg from Qatar, the USA and Africa, GUD pointed out. The transport route to Germany was thus one of the longest in Europe, so it did not seem appropriate to leave out this aspect due to a lack of data.

- 71 HEH explained in its response that the restriction of the discount to yearly and quarterly standard capacity products would put smaller market players in a worse position. Smaller participants did not have regasifying and exit rights from the terminal to the transmission system for every day in the year, it pointed out. The regasification took place on a small number of consecutive days and corresponded to one shipload. Nevertheless, these market participants could also make a significant contribution to security of supply, for example by regasifying LNG to fill German natural gas storage facilities or to inject into the gas system in the critical winter period. HEH therefore recommended that the discount be extended to short-term standard capacity products too.
- 72 EnBW and EFET Deutschland also called into question the restriction of the discount to yearly and quarterly standard capacity products. As a continual use of the terminals was desirable, not just long-term but also short-term use should be attractive for customers buying free slots on the secondary market from primary users or acquiring them directly from the operator under the use-it-or-lose-it principle. The effect of the discount would be reduced by restricting it to long-term capacity products. Moreover, according to EnBW, the discount is not the decisive factor for a level playing field between terminal users and pipeline injections from Norway, but rather whether the maximum feed-in capacity into the transmission system can be used for both Norway and the LNG terminals (no competing marketing) so that Russian gas can be fully replaced.
- 73 GUD wrote that the chance of leaving volumes that could be mobilised at short notice unused was, in its opinion, the wrong approach. It maintained that the aim should be to exploit the full potential of the terminals. To this end, discounting monthly and daily standard capacity products as well would be more useful.
- 74 RWE Supply & Trading declared it could not follow the argument for restricting the discount to yearly and quarterly standard capacity products. As LNG imports could react flexibly, they could also be used to cover short-term needs in a crisis, it argued. As suppliers generally took a purely commercial focus, short-term deliveries also had to be attractive to be able to acquire them. The restriction of the discount to quarterly and yearly products would not increase the utilisation of the LNG terminals. Rather, this restriction would only make the capacity booking more expensive and reduce the effect of the discount. It was anyway unclear what the legal basis for a level playing field was, since the TAR NC did allow entry points from LNG facilities to be treated differently. The only requirement of Article 9(2) TAR NC was an increase to security of supply. The legal basis did not allow for considerations of competition law.

- 75 The BDEW called for clarification on whether the discount on the two standard capacity booking products would remain if, for example, the yearly capacity was divided between multiple capacity users (capacity leasing).
- 76 HEH called again for a firm statement on future determinations, given the fact that the MARGIT determination is issued each year. EFET Deutschland made a similar request. For the very purpose of security of supply, it was important for market participants to know the conditions under which the discount could be changed or removed. The criteria according to which a discount, once granted, would be changed or not extended should at least be explained clearly in the reasoning.
- 77 RWE Supply & Trading was also of the opinion that the need to renew the decision each year would lead to uncertainty that would put in doubt and reduce the positive effect of the discount. It did not share the legal opinion that it was not possible to take a longer-term decision under Article 28(2) TAR NC. That article related to the tariff period defined in Article 3 TAR NC. That definition did mention the time period for the determination of a reference price but also mentioned the minimum duration of one year and maximum duration of the regulatory period. Therefore, in the view of RWE Supply & Trading, the legislature had given the authorities discretion as to the applicability of decisions under Article 28(2) TAR NC and this should be used so as not to shorten the applicability of the decision unnecessarily.
- 78 OGW pointed out that when there were sufficient data an analysis should be made of the extent to which the discount had led to market distortions by substitution of other reliable sources of supply. The ensuring of a level playing field should be constantly kept in mind.
- 79 For further details, reference is made to the content of the file.

## II.

80 In accordance with Article 41(6)(a) of Directive 2009/73/EC in conjunction with Article 28(1) of Regulation (EU) 2017/460, the Bundesnetzagentur is issuing a motivated decision on all points mentioned in Article 28(1) sentence 1 of Regulation (EU) 2017/460 by means of this determination.

81 The decision taken falls under the responsibility of the Bundesnetzagentur as provided for by section 29(1) EnWG in conjunction with section 56(1) sentence 1 para 2, sentences 2 and 3 in conjunction with Article 6(11) and Article 7(3) of Regulation (EC) No 715/2009 in conjunction with Article 41(6)(a) of Directive 2009/73/EC in conjunction with Article 28(1) of Regulation (EU) 2017/460. The responsibility of the ruling chamber ensues from section 59(1) sentence 1 EnWG.

82 Article 2(1) sentence 1 of Regulation (EU) 2017/460 shows that the consultation and decision pursuant to Article 28(1) of Regulation (EU) 2017/460 refer to interconnection points, ie to cross-border and market area interconnection points of transmission system operators (see Article 3 point 2 of Regulation (EU) 2017/459). Pursuant to Article 2(1) sentence 2 of Regulation (EU) 2017/460, the regulatory authority can take a decision that the provisions of Chapter III also apply to entry points from third countries or exit points to third countries, or both. In its determination of 14 August 2015 (BK7-15/001 – "KARLA Gas 1.1"), the Bundesnetzagentur's Ruling Chamber 7 ruled that the provisions of the Network Code on Capacity Allocation Mechanisms (NC CAM) also applied to entry points from third countries and exit points to third countries within the meaning of Article 2(1) sentence 2 NC CAM from 1 November 2015. The consultation and decision pursuant to Article 28 of Regulation (EU) 2017/460 therefore also refer to these points.

### 1. Period of application

83 The requirements are to be implemented pursuant to operative part 1 as from 1 January 2023 and hence included in the publication referred to in Article 29 of Regulation (EU) 2017/460. Under Article 38 of Regulation (EU) 2017/460, Chapters II, III and IV of the Regulation will apply as from 31 May 2019; thus Articles 13 to 16 of the Regulation are also covered, coming as they do under Chapter III and forming the basis of this decision. Accordingly, the TSOs had to apply the motivated decision pursuant to Article 28 of Regulation (EU) 2017/460 for the first time in respect of the tariff year 2020, ie from 1 January 2020. In accordance with Article 28(2) of Regulation (EU) 2017/460, the subsequent consultations will be conducted every tariff period as from the date of the decision. After each consultation and as set out in Article 32(a) of Regulation (EU) 2017/460, the national regulatory authority takes and publishes a motivated decision on the aspects referred to in Article 28(1)(a), (b) and (c) of Regulation (EU) 2017/460. Pursuant to Article 3 sentence 2 point 23 of Regulation (EU) 2017/460, "tariff period" means the time period during which a

particular level of reference price is applicable, which minimum duration is one year and maximum duration is the duration of the regulatory period. As a particular level of reference price applies for a calendar year, in this case the tariff period is also the calendar year. The ruling chamber thus takes and publishes a motivated decision on the aspects referred to in Article 28(1)(a), (b) and (c) each year and the decision is effective for a calendar year. The effectiveness of this decision thus ends at the end of the calendar year 2023.

## 2. General

84 In taking this decision, the ruling chamber has taken account of the fact that it is an administrative act that, in accordance with Article 28 of Regulation (EU) 2017/460, is to be consulted on and issued independently of other determinations issued or to be issued in accordance with this Regulation. This independence is shown partly by the fact that decisions in accordance with Article 26 in conjunction with Article 27 of Regulation (EU) 2017/460 have to be made every five years at the latest, while decisions in accordance with Article 28 have to be made in every tariff period.

## 3. Level of multipliers

85 The decision pursuant to operative part 1 on the level of multipliers is based on section 29(1) EnWG in conjunction with section 56(1) sentence 1 para 2, sentences 2 and 3 EnWG in conjunction with Article 6(11) and Article 7(3) of Regulation (EC) No 715/2009 in conjunction with Article 28(1) in conjunction with Article 13 of Regulation (EU) 2017/460.

86 Pursuant to Article 12(1) sentence 2 of Regulation (EU) 2017/460, for non-yearly standard capacity products, the reserve prices must be calculated as set out in Chapter III of Regulation (EU) 2017/460. With regard to the conversion of tariffs for yearly standard capacity products to tariffs for non-yearly standard capacity products, Article 13(1) of Regulation (EU) 2017/460 specifies ranges within which the multipliers must fall.

87 The multipliers determined by the Bundesnetzagentur fall within the specified ranges. For quarterly standard capacity products and monthly standard capacity products, the level of the respective multiplier must be no less than 1 and no more than 1.5, pursuant to Article 13(1)(a) of Regulation (EU) 2017/460. The multiplier of 1.1 determined for quarterly standard capacity products and the multiplier of 1.25 determined for monthly standard capacity products fall within this range. Pursuant to Article 13(1)(b) of Regulation (EU) 2017/460, for daily standard capacity products and for within-day standard capacity products, the level of the respective multiplier must be no less than 1 and no more than 3. This is the case for the multipliers chosen of 1.4 for daily standard capacity products and 2.0 for within-day standard capacity products.

88 In the event of a (contractual) change to already booked capacities or a withdrawal of capacity, the previously calculated multiplier remains unchanged, even if the original standard capacity product would fall into another category after the change or withdrawal, for example, if a previously yearly capacity product would become a quarterly or monthly capacity product. No recalculation takes place; the multiplier is applied according to which product was booked when the contract was concluded. This provision applies to all scenarios in which the original standard capacity product changes, in particular due to the return of capacity, the repeated trading on the primary market (by TSOs) of part of the capacity rights, the conversion and the (partial) termination of capacity. By contrast, for the capacity product that is re-offered or re-booked after the return, termination or withdrawal, the "new product", a multiplier corresponding to the duration of the new product must be applied. In this case, too, the multiplier is applied according to which product was booked when the contract was concluded. The arrangements for changes or the withdrawal of capacity also apply to new products.

89 For clarity, it is pointed out here that secondary marketing, ie the leasing or transfer of usage by shippers to third parties, is not covered by the provisions of the paragraph above and is also not the subject of regulation in this determination. However, if the capacity is returned to the TSO rather than being traded on the secondary market, the explanations under the previous margin number apply.

90 In its decision on the level of multipliers, pursuant to Article 28(3)(a) of Regulation (EU) 2017/460 the ruling chamber has taken into account the following aspects in particular:

91 The multipliers chosen serve to find a balance between promoting short-term trading and sending long-term signals for efficient investments in the transmission system. The ruling chamber introduced multipliers for all entry and exit points for which capacity tariffs are applied with effect from 1 January 2016 in its determination of 24 March 2015 (BK9-14/608, hereinafter referred to as BEATE). These were determined for interconnection points for the calendar year 2020 for the first time on the basis of Regulation (EU) 2017/460. The multipliers for daily, monthly and quarterly products determined in this decision correspond to the level of the multipliers determined for the years 2016 to 2022; a multiplier of 2.0 for within-day standard capacity products was determined for the first time in the decision BK9-18/612 ("MARGIT") for 2020 and has been the aforementioned level of 2.0 since then. Since the multipliers were introduced in 2016, it has become clear that they do not jeopardise liquidity in short-term trading, as it was neither the case that daily bookings were replaced by long-term bookings on a significant scale nor were they simply not made at all. The introduction of multipliers has thus not led to a reduction in trading activities in the past. There are no indications that this will change in the future. At the same time, the multipliers lead to a moderate price rise compared to the reference price so signals showing which point of the network it would be appropriate to invest in, for example because of congestion, are not distorted.

- 92 Moreover, the introduction of the chosen multipliers has no influence on the extent to which transmission services revenue is covered by the reference or reserve prices. In particular, in its "REGENT 2021" Determination (BK9-19/610), the ruling chamber has determined rescaling pursuant to Article 6(4)(c) of Regulation (EU) 2017/460 at all entry and exit points of TSOs with the aim of actually being able to recover the transmission services revenue.
- 93 The determined multipliers improve the cost-reflectivity of reserve prices by reducing cross-subsidisation between user groups caused by duration. Cost-reflectivity in tariffication means in this context that the level of tariffs for using a certain capacity must reflect the costs caused by using and providing this capacity. This in turn means that the level of network tariffs to be paid by a certain user group for capacity bookings should, as far as possible, reflect the costs caused by this user group through a specific contribution based on the corresponding costs. Put simply, the principle of causation means that whoever has caused certain costs should themselves, as far as possible, also pay these costs in the form of the network tariffs levied on them. These costs should not be subsidised by other user groups. A network user booking non-yearly capacity of different durations causes vacancy costs. The option of non-yearly booking allows network users to make structured bookings, ie they can book different amounts of capacity for different periods, whether within-day, daily, monthly or quarterly. If a network user books "x" amount of firm capacity in a particular hour or on a particular day, month or quarter of a year, the network operator will generally keep at least this amount of capacity available (for the whole year). This applies even if the network user only books smaller amounts of capacity than "x" on the other days of the year. Moreover, it is not just one network user that books "x" amount of capacity for a quarter, a month, a single day or within-day in the course of the year, but many other network users book a certain amount of non-yearly capacity during the year as well. The network operator therefore keeps capacity available for all non-yearly capacity bookings from all network users making such bookings. The network operator incurs vacancy costs from keeping available capacity for network users with non-yearly bookings. These costs should, in accordance with the principle of cost-reflectivity, also be borne by the network users responsible for the capacity being kept available.
- 94 The determined multipliers will ensure that the vacancy costs in the gas network will be distributed in a largely cost-reflective manner. Network users whose non-yearly capacity bookings cause the network operator to keep certain capacity available also contribute to covering the costs incurred through the increased network tariff calculated using the multiplier. However, in the view of the ruling chamber, the sum of the tariffs for non-yearly capacities should be prevented from corresponding to the tariff for the yearly capacity. This would lead to the vacancy costs of the network being borne by all network users and in particular by the group of users that does not cause such costs on account of long-term capacity bookings.
- 95 It is appropriate to specify different multiplier values because doing so differentiates between the non-yearly capacity products in a way that appropriately reflects the different effects that the individual products have on vacancy costs. The result that the "multiplier for the within-day

capacity product is higher than the multiplier for the daily capacity product is higher than the multiplier for the monthly capacity product is higher than the multiplier for the quarterly product" is due to the fact that the shorter the product duration, the greater the effects on the vacancy costs. The longer the period for which no capacity is booked, the higher the volume of vacant capacity based on a twelve-month period. The vacancy costs thus depend on the booking duration. Network users can make more structured capacity bookings if overall they book capacity for shorter periods. If, ultimately, they only book capacity specifically on a few days, they inevitably cause vacancy costs on more days. This must be taken into consideration appropriately in setting the multipliers, so that the multiplier is higher the shorter the capacity booking, in accordance with the ranking given in operative part 2.

- 96 The chosen multipliers ensure that the difference between the individual contributions to the costs is adequately expressed. This applies in particular also to the multiplier of 2.0 for within-day capacity products. The ruling chamber therefore takes the view that it is appropriate to determine a higher multiplier than for daily capacity products because, according to the principles stated, the vacancy costs rise further with the option of booking within-day capacity, ie as the day progresses. In setting a multiplier of 2.0, the ruling chamber has taken account of the fact that within-day capacity products do not often have a duration of a whole day or – as they are always booked for the rest of the gas day – nearly a whole day and the determined multiplier should therefore be clearly different to the daily multiplier. The ruling chamber takes the view that the determined multiplier of 2.0 appropriately reflects this fact. It is also necessary to make an adequate distinction from the daily multiplier due to the fact that the network tariff payable for within-day capacity products pursuant to Article 14(b) of Regulation (EU) 2017/460 is only determined pro rata, ie only for the remaining booked hours and therefore corresponds to only part of the daily tariff.
- 97 The majority of traders, however, wanted the within-day multiplier to be reduced. Their explanation that a high multiplier (holding all else constant) would lead to less cross-border trade and the transactions not made would therefore not help to reduce vacancy costs does generally seem understandable. However, this interdependence applies to any level of multiplier as, at a given commodity price, a transaction gets more attractive the lower a multiplier is. It would be just as applicable if the multiplier were, say, 3.0. Therefore, the traders' reasoning for reducing the within-day multiplier to 1.5 is insufficient and does not justify the conclusion that a value of 2.0 should be regarded as inappropriate. Nor can it be ruled out that a lower within-day multiplier would lead to a higher commodity price in the source market and these kinds of market adjustments would negate the reduction of the multiplier.
- 98 The main price effect of reducing a multiplier cannot be ignored either, the ruling chamber considers, as the reduction means that the contribution to lowering vacancy costs is (initially) smaller for transactions that are carried out with the applicable within-day multiplier (ie at the stated trading volume). By contrast, it is not possible to anticipate whether the price signal will spur

demand to such an extent that a contribution to covering vacancy costs that is greater overall will be made.

- 99 Regarding the calls from the traders' association and from Uniper for an analysis of the within-day multiplier, it should be noted that ACER carried out a Europe-wide sector survey<sup>1</sup> of daily and within-day multipliers on the basis of the provisions of Article 13(3) of Regulation (EC) No 2017/460 at the end of 2020. This survey and the resulting analysis have not led to the issuing of the recommendation envisaged for 1 April 2023 to reduce these multipliers to no more than 1.5. ACER's last recommendation of 19 July 2021<sup>2</sup> actually only envisages an increased need for justification for daily and within-day multipliers that are less than 1 or more than 3.
- 100 The range of within-day multipliers in other EU Member States in the gas year 2020/21 goes from 1.2 to 5.08. This comparison also shows that the within-day multiplier of 2.0 chosen for Germany is moderate.
- 101 In light of the above explanations, the ruling chamber does not consider it urgent to implement the specific proposal made by the traders' association to analyse the additional revenue from within-day capacity and possibly the shifts from daily capacities to within-day capacities since the introduction of the multipliers on 1 January 2020. Moreover, it seems that restricting the analysis to daily and within-day capacity would not provide sufficient information since it cannot be ruled out that longer-term capacity products would be substituted as well. Such an analysis would also have to look at how many hours a within-day capacity product was booked for in order to be able to determine in advance how high the average paid within-day multiplier actually was.
- 102 In sum, the arguments put forward by the traders for the multiplier to be reduced are not sufficient to justify a change from the current multiplier of 2.0 for within-day capacity products.
- 103 The ruling chamber does not expect the multipliers to cause or expand physical or contractual congestion. Booking behaviour does not provide any indication that multipliers affect congestion in long-term marketing, either. What is more, the reserve quota ensures that an adequate amount of non-yearly quarterly capacity will be offered. As far as the offer of daily capacity is concerned, the provisions of the re-nomination restriction will also have a positive effect, so no general shortage of capacity is to be expected.
- 104 The chosen multipliers will have no impermissible effect on cross-border gas flows. In particular, there is no excessive, and therefore discriminatory, participation of the network users that depend on cross-border gas flows (ie in particular those network users that execute cross-system bookings) in the addressed vacancy costs. With regard to requirements for converting yearly capacity prices into capacity prices for non-yearly capacity rights and requirements for appropriate

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<sup>1</sup> [https://documents.acer.europa.eu/Official\\_documents/Public\\_consultations/Pages/PC\\_2020\\_G\\_19\\_.aspx](https://documents.acer.europa.eu/Official_documents/Public_consultations/Pages/PC_2020_G_19_.aspx)

<sup>2</sup> [https://documents.acer.europa.eu/Official\\_documents/Acts\\_of\\_the\\_Agency/Recommendations/ACER%20Recommendation%2001-2021%20on%20Multipliers.pdf](https://documents.acer.europa.eu/Official_documents/Acts_of_the_Agency/Recommendations/ACER%20Recommendation%2001-2021%20on%20Multipliers.pdf)



arrangements for setting network tariffs pursuant to section 15(2) to (7) GasNEV, determination BK9-18/608 ("BEATE 2.0") introduced identical multipliers for corresponding non-yearly capacity products at points other than interconnection points. Regulation (EU) 2017/460 focuses on the avoidance of possibly differing (and therefore potentially discriminatory) treatment of cross-system and intra-system network use in several provisions, for example in Article 5 on the cost allocation assessments, in Article 7(c) and (e) on the assessment of the reference price methodology and in Article 28(3)(a)(v) on the assessment of multipliers. However, no such differing requirement is made with respect to multipliers, so that the approach taken does not indicate any unacceptable effects on cross-border gas flows. For reasons of cost-reflectivity and non-discrimination, the ruling chamber does not judge it to be appropriate to apply lower multipliers for cross-border gas flows.

4. Calculation of reserve prices for non-yearly standard capacity products for firm capacity (seasonal factors)

105 The ruling chamber has not made use of the option to determine the level of seasonal factors in accordance with Article 28(1)(c). Therefore, seasonal factors are not applied in the calculation of reserve prices for non-yearly standard capacity products for firm capacity.

106 In accordance with Article 14 of Regulation (EU) 2017/460, the following calculation of reserve prices for non-yearly standard capacity products for firm capacity ensues:

- The following formula is used for quarterly standard capacity products, monthly standard capacity products and daily standard capacity products:

$$P_{st} = (M \times T / 365) \times D$$

Where:

$P_{st}$  is the reserve price for the respective standard capacity product;

M is the value of the multiplier for the respective standard capacity product (quarterly standard capacity product: 1.1; monthly standard capacity product: 1.25, daily standard capacity product:1.4)

T is the reference price;

D is the duration of the respective standard capacity product, given in gas days.

In leap years, the number 365 in the formula is replaced by 366.

- The following formula is used for within-day standard capacity products:

$$P_{st} = (M \times T / 8760) \times H$$

Where:

$P_{st}$  is the reserve price for the within-day standard capacity product;

$M$  is the value of the multiplier, ie 2.0;

$T$  is the reference price;

$H$  is the duration of the within-day standard capacity product, given in hours.

In leap years, the number 8760 in the formula is replaced by 8784.

Thus a network user booking a within-day standard capacity product only has to pay for the hours booked for the rest of the gas day, including the multiplier.

##### 5. Discounts pursuant to Article 9(2) of Regulation (EU) 2017/460

- 107 At entry points from and exit points to infrastructure developed with the purpose of ending the isolation of Member States in respect of their gas transmission systems, pursuant to Article 9(2) of Regulation (EU) 2017/460 a discount may be applied to the respective capacity-based transmission tariffs for the purposes of increasing security of supply.
- 108 However, there is currently no reason to determine such discounts. There is currently no infrastructure in Germany developed with the purpose of ending the isolation of Member States in respect of their gas transmission systems. The ruling chamber is not aware of any such infrastructure likely to be put into operation in 2023, the year relevant for this determination. Given that the consultation pursuant to Article 28(1) of Regulation (EU) 2017/460 takes place annually, there is no need to explore further the advantages and disadvantages of introducing such discounts in this determination.
- 109 Pursuant to Article 9(2) of Regulation (EC) No 2017/460, at entry points from LNG facilities a discount may be applied to the respective capacity-based transmission tariffs for the purposes of increasing security of supply.
- 110 In the consultation on the first draft decision held from 16 December 2021 to 31 January 2022, individual respondents (terminal operator HEH and trader RWE Supply & Trading) and the associations BDEW and EFET Deutschland called for the ruling chamber to address the issue of discounts at entry points from possible LNG facilities into the natural gas network now, ahead of a final investment decision on the construction of such terminals in Germany.
- 111 Moreover, in light of ongoing geopolitical developments, the likelihood that LNG terminals will be built in Germany by 2023 is growing.
- 112 On the question of whether a discount on network tariffs at entry points from potential LNG facilities to the natural gas system should be set, the industry has split into two camps, for and against.
- 113 According to the consultation responses received by 12 April 2022, the introduction of a discount is supported by TSO GUD, trader OMV Gas, BP Europe SE, EnBW, RWE Supply & Trading, potential terminal operators German LNG and HEH, Fluxys Germany Holding and the industry

association Zukunft Gas. They justify their support with a causal relationship, by arguing that a discount on network tariffs would have a significant influence on the business case of those companies that would want to use LNG terminals. Lower network tariffs would have an essentially positive effect on the decision of terminal users for the planned use of the terminal and would thus increase the long-term booking of LNG terminal capacities. These long-term bookings would in turn strengthen the willingness of potential operators to invest in LNG terminals and implement these projects. The construction of LNG terminals in Germany would raise import capacities from their current level as well as opening up further (global) sources of supply for the import of natural gas to the country, both of which would help to improve security of supply.

- 114 The ruling chamber is essentially in agreement that additional connected sources – in this case, in the form of LNG regasification terminals – would increase the diversity of the existing sources of natural gas in Germany. Greater diversity is connected to improved security of supply. However, the wording of Article 9(2) of Regulation (EU) 2017/460 does not specify an actual or direct increase in security of supply. Rather, it states that a discount may be determined/applied "for the purposes of increasing security of supply".
- 115 When considering security of supply, the ruling chamber takes the view that, besides the construction of LNG regasification terminals, the actual utilisation of the terminals plays a decisive role. Only if the facilities are in continual use and the degree of utilisation is high, especially in the winter months, will there actually be an improvement in the security of supply in Germany and LNG will be able to contribute significantly to a reasonably priced energy supply. By contrast, if LNG terminals are only used at certain times this will not so much benefit security of supply as a whole but rather, and mainly, individual corporate interests at high market prices.
- 116 To be more specific, the argument put forward by RWE Supply & Trading in its statement of 12 April 2022 that the storage that would take place in the LNG terminal would allow the gas to be injected into the German natural gas system in a way beneficial to it is not convincing.
- 117 For one thing, the ability to store LNG in a terminal temporarily (time lag between the offloading of the tankers and the regasification of the LNG) is exclusively as necessary for the purpose of regasification and subsequent injection into the transmission system (section 3 para 26 EnWG). Permanent storage can only take place in LNG storage facilities that are separate under unbundling requirements and marketed separately. Moreover, the injection would only be generally beneficial to the system if it were not the LNG user but rather the TSOs that were allowed to decide when and how much regasified LNG should be injected into the natural gas system to benefit, also from the perspective of the network.
- 118 The point made by GUD in its statement of 12 April 2022 about the great similarity in prices between the individual European trading points, which was meant to justify a discount to reduce the transport costs in Germany, is contradicted by the statement of OGE, dated 12 April 2022, the ruling chamber considers. OGE presents in an understandable way the price difference between

the Netherlands market (TTF) and the German market THE of €17/MWh (calendar year 2023) and €4.38/MWh (calendar year 2026) for forward prices. These figures are many times higher than the current, undiscounted entry tariff in Germany (€0.40/MWh for the yearly tariff).

- 119 In addition, ARGE Umweltschutz, Bürgerinitiative gegen Gasbohren in Halfing, the DUH and Abgefrackt explained in their statements of 12 April that they saw the introduction of discounting as counter-productive insofar as newly built (in particular stationary) LNG terminals would be in direct competition to the expansion of renewable energies and the application of existing concepts to improve energy efficiency. The expansion of energy from renewable sources and improvements in energy efficiency were, however, essential to meet Germany's commitments under the Paris Agreement and national climate targets and thus also to maintain security of supply in the medium to long-term, they argued. Therefore, the introduction of discounting would lead to a significant worsening of security of supply in Germany in the medium to long-term by (indirectly) supporting new, fossil-based LNG terminals. The criteria for the application of Article 9(2) TAR NC were thus not fulfilled. The ruling chamber, however, does not consider this line of argument relevant as the applicability of Article 9(2) TAR NC is not based on the general security of energy supply but only on the security of supply situation within the network-side natural gas infrastructure. This reasoning does not therefore argue against the introduction of an entry discount for the calendar year that is the subject of this determination, 2023. Otherwise, it is also necessary to distinguish between the interests of security of supply within the gas sector, in the sense of the availability of gas, and general security of supply on the energy market as a whole, including aspects of climate protection.
- 120 The ruling chamber is convinced by the argument put forward in the statements of 12 April 2022 from OGE and INES that the current transport costs in the relevant THE market area of €0.40/MWh for annual bookings and €0.56/MWh for daily bookings would play a secondary, marginal role in relation to the future achievable commodity prices when looking at the Powernext forward prices for the calendar years 2023 to 2026 of between €34.25/MWh (2026) and €89.01/MWh (2023) in the THE market area. It is barely imaginable that the transport costs, at just 1% of the commodity price, would be the decisive factor for the long-term booking behaviour of potential users of an LNG terminal. RWE Supply & Trading's argument in its response of 12 April 2022, that indexing to the target market less an amount "x" is not unusual for long-term LNG supply agreements between gas traders and LNG producers, is not convincing either. Even the wording "not unusual" implies that other pricing mechanisms are also usual for long-term LNG supply agreements or that the indexing is not coupled to the target market price. Moreover, it is clear from the LNG spot market that auctions including or excluding ship transport costs are certainly commonly found. What is more, no market participant has stated in a comprehensible way that the sum "x" is not sufficient to bear a non-discounted network entry tariff. Ultimately, the sum "x" mentioned also has to cover the much higher costs for the potential use of the LNG terminal (in comparison to the entry tariffs to the transmission system) as well as a profit margin for the gas trader. It therefore

seems unlikely that the €0.40/MWh of injected natural gas that would be the maximum achievable from a full discount would be the decisive factor for or against a long-term LNG supply agreement or terminal use agreement.

- 121 In the consideration of whether and at what level a network tariff discount should be applied to entry points from LNG facilities, the effects on other booking points in the transmission system also had to be taken into account. In its statement of 12 April 2022, RWE Supply & Trading doubted that a discount would cause additional costs for other entry and exit points. RWE Supply & Trading took the view that LNG bookings would first represent additional revenue for the TSOs. The ruling chamber is not convinced by this argument. This highly oversimplified analysis completely ignores the fact that the construction of LNG connection lines causes additional costs and 90% of these are borne by the TSOs as per section 39f GasNZV. As it is not yet known how many LNG terminals will actually be built, there are currently only rough estimates of the actual extent of these potential costs, which suggest they could run to hundreds of millions of euros. If, in line with the repeated calls of RWE Supply & Trading from 12 April and 13 May 2022, a discount of 100% were to be determined, the other booking points would have to bear the additional costs purely because of the extra costs for the connection line and the fact that bookings at LNG entry points would not bear any costs. Besides the costs for the connection line, there are other costs for the expansion of the network needed so that the potential new volumes of LNG can be transported from the entry to the final consumer on a firm (non-interruptible) basis.
- 122 Apart from that, it is not possible to answer the question about the specific effects of a discount on the other booking factors with sufficient certainty owing to the many unknown factors. The booking forecast, as well as the total achievable revenues of all TSOs, is the decisive factor in the determination of the REGENT postage stamp. This booking forecast, and thus also the size of the REGENT tariff, depends heavily on the estimate of the coming booking volume and the consideration of possible lost entry bookings from Russia. Moreover, at the moment there are no reliable cost estimates for the unknown number of new connection lines for potential LNG terminals nor cost estimates for new infrastructure so that these terminals can – as often called for in the consultation responses – get additional firm capacity, and not, as was originally envisaged in the scenario framework for the network development plan (NDP), competing capacity. As well as the actual size of the discount, the additional bookings to be forecast at the new LNG entry points are also unknown. As a result, the ruling chamber does not share the view of Equinor Deutschland in its statement of 13 May 2022 that a discount at entry points from LNG facilities would automatically lead to the cost pool being borne by the remaining entry and exit points. Finally, it must also be noted that a partial discount could lead to additional cost attribution compared to the status quo due to potential future bookings at entry points from LNG facilities.
- 123 In their responses of 12 April 2022, BP Europe SE, EnBW, RWE Supply & Trading, German LNG, HEH and Zukunft Gas argued that only by creating incentives in the form of discounts of up to 100% on network tariffs at entry points from LNG facilities would it be sufficiently likely that

terminals would be well-used and there would be a long-term willingness to book terminal capacity, which was necessary to give operators in Germany the necessary security to invest in new LNG terminals. Otherwise, such projects would not become a reality, they put forward. It may be basically true that such incentives in the form of large network tariff discounts indirectly support the decision to invest in new LNG terminals. However, the ruling chamber is of the view that this supporting of positive investment decisions for LNG terminals is not a particular objective set out in Article 9(2) of Regulation (EU) 2017/460. The aim and purpose of Regulation (EU) 2017&460 is certainly security of supply, as well as the creation of harmonised natural gas transmission tariff structures (recital 1). But that does not mean general security of supply throughout the entire value-added chain, because that would mean that economically uncompetitive new LNG terminals could only be implemented by (indirect) subsidisation from another sector (natural gas transport), which would have to be separated from it under unbundling requirements. This is not the regulatory aim. If there is an actual need for subsidisation to make new LNG terminals economically viable, this must be made possible another way, such as from state support or financing by means of taxation (see also the presentation by EFET from the hearing on 5 April 2022). To that extent, the ruling chamber agrees with the perspective expressed in the responses of 12 April 2022 by Thyssengas, EnBW, INES, ARGE Umweltschutz, Bürgerinitiative gegen Gasbohren in Halfing, the DUH and Abgefrackt.

124 The upstream value-added chain is different for LNG terminals than for pipelines. Those involved in transporting LNG are not bound to a fixed route to move natural gas from A to B. LNG tankers can change the port they are heading for, even at very short notice, as confirmed by RWE Supply & Trading in its statement of 13 May 2022 about flexibly designed LNG imports and the fact that suppliers generally take a purely commercial view of their decision-making processes. Therefore, unlike with traditional pipeline systems, there is a risk that physically, no or little LNG is brought to a terminal in Germany even if little natural gas is being injected into the pipeline systems and market prices are therefore rising. If, despite rising prices in Germany or Europe, somewhere else on the world market is even more attractive, the LNG will be taken there. The presentation of German LNG GmbH (slide 2) given in the hearing of 5 April 2022 shows that this is not just a theoretical risk. In the second half of 2021 the average market price in Germany was over €90 daily, more than four times higher than in 2019, for example. It was a similar situation in north-west Europe. Nevertheless, the LNG terminals in north-west Europe were on average only half physically utilised in the second half of 2021. That means that over a period of several months, despite the prices having risen fourfold, LNG was supplied not to Europe but to other regions. The LNG imports therefore made a smaller contribution to the reduction of the wholesale prices in north-west Europe than they potentially could have done, whereby the high wholesale prices over a period of several months formed an indication of the security of supply situation.

125 As well as building terminals, the actual physical utilisation of the terminals plays a decisive role in the improvement of security of supply. The ruling chamber agrees with BDEW and EFET

Deutschland that a discount on network tariffs at LNG terminals could increase the number of hours these were used. The ruling chamber is convinced that continual LNG deliveries to Germany would have a positive effect on the aim of a reasonably priced natural gas supply to Germany. Moreover, continuous, large injections of LNG into the German transmission system would increase security of supply, especially in the winter months. The ruling chamber therefore intends to make a rule for entry points from LNG terminals to the transmission system that will make capacity bookings with longer durations more attractive and thus create an incentive to continually transport LNG to Germany. The ruling chamber was not convinced by the arguments put forward by EnBW, EFET Deutschland and HEH in their statements of 13 May 2022 that by not discounting capacity bookings with shorter durations the continual LNG injection into the German transmission system would be reduced. The respondents pointed to the scenario of the booking by third parties of terminal capacity coming free at short notice and being offered due to non-use by the primary capacity holders on the secondary market or owing to the UIOLI principle. The argument made here in favour of a discount for capacity bookings with shorter duration assumes that the discount on capacity bookings with longer durations determined here would not create a sufficient incentive for the continual injection of LNG on the basis of long-term bookings. In this hypothetical case, however, it would be even more unlikely that the lack of injection of LNG (despite discounting) by long-term booking customers in the terminal – because it was supposedly unattractive at market prices – would lead to other market participants bringing significant amounts of alternative LNG volumes/ships to the terminal under the same unattractive market conditions, regasifying it and injecting it into the system. By this argument, other sources would only be opened up on a lasting basis by incentives for the capacity bookings with longer durations and the security of supply thus actually raised in Germany and also for the European market (Germany as transit country) and a contribution made to keeping energy supply prices low.

- 126 The argument of HEH that smaller market participants would be disadvantaged by the restriction of the discount to capacity bookings with longer durations is not convincing either. For one thing, it is usual at LNG terminals for users to make agreements between themselves to lend each other volumes of LNG with the purpose of a steadier rate of regasification and this is often set out in the terminal operator's terms and conditions (borrowing and lending principles). What is more, long-term terminal capacity is not only marketed on the basis of short-term slots, but there are also marketing concepts for the booking of a proportion of terminal capacity over the full year. These allow both larger and smaller customers to regasify a proportion of LNG continually over the whole year and inject it into the network. There is also the option of the terminal operator booking the network-side capacity long-term, at a discount, and making it available for the use of its customers.
- 127 The ruling chamber wishes to respond to the request of BDEW in its statement of 13 May 2022 for clarification about whether the discount would also apply to capacity leasing. The explanation of the effects of capacity changes on multipliers given in margin number 88f applies accordingly to the change of a yearly or quarterly standard capacity product booked at a discount at entry

points from LNG facilities. In this case, too, the possible application of the discount depends on the circumstances at the time the capacity contract was concluded. In the event of a subsequent (contractual) change, already discounted booked capacity (eg capacity leasing on the secondary market, in some cases surrendered capacity, etc) does not then lose its discount (neither for already used capacity nor for the remaining duration of the non-returned capacity). This remains the case. For any capacity products newly booked from the TSOs, however, the network user has to pay the tariff for the capacity product, whether discounted (yearly or quarterly product) or undiscounted (monthly, daily or within-day product) according to its duration, where applicable plus a multiplier or other discount.

128 For the reasons given above, the ruling chamber has determined a discount of 40% on the standard capacity tariff at entry points from LNG facilities for the purposes of increasing security of supply. This discount applies exclusively to yearly and quarterly standard capacity products.

129 On the calculation of the size of a possible discount, German LNG, HEH, RWE Supply & Trading and Zukunft Gas maintain in their responses of 12 April 2022 that Germany is uncompetitive as an LNG site at the moment owing to its high network tariffs in comparison to other European countries. EnBW, Equinor Deutschland, RWE Supply & Trading, the BDEW and EFET Deutschland argue that the size of the discount should be based on the competing situation at other European terminals. The total costs for LNG imports to Germany should therefore be compared to the costs in other European countries, they wrote. As well as the higher entry tariffs to the system, the different terminal booking costs (at the regasification terminal) and additional transport costs of the LNG carriers to get to German terminals should be taken into account. The ruling chamber generally agrees that it can be useful to look at the overall costs of LNG imports when deriving an entry discount in Germany in the interests of creating a level playing field between all European terminals. It judges the derivation of a discount from the weighted average of all discounts applied in the EU27 plus the UK, as put forward by ONTRAS in its response of 12 April 2022, to be less suitable. However, it is not possible to compare the total costs for LNG imports to Europe owing to a lack of data on the respective terminal costs. No market participant provided any sort of specific figures in their responses of 12 April or 13 May 2022, neither on the German nor European terminal costs. Yet some called for the total costs of LNG imports to Europe to be taken into account in determining the size of the discount, but then based their arguments only on the additional transport costs and ignored the terminal costs. Moreover, with regard to the additional transport costs of LNG vessels to arrive at the terminals, it would be necessary to develop scenarios including from where the LNG is transported. If the LNG comes, for example, from Norway, the potential LNG terminals in Germany would be nearer than those in southern Europe (France, Spain, Italy). But the LNG came from countries like Nigeria or Qatar, it would be the other way around. In any case, it can be stated that the transport costs of LNG carriers to Poland or Lithuania are likely to be higher than to potential sites in Germany.



- 130 It seems to the ruling chamber, as stated in the responses of OGE, Thyssengas and INES of 12 April 2022, that when considering the supply of LNG to the German market a competitive situation between German and other European terminals is questionable. If LNG ultimately destined for the German market was sent to another European terminal that might have lower entry tariffs to its LNG facility, it would also be necessary to pay the exit tariffs on the foreign market and the undiscounted entry tariffs to the German market at cross-border interconnection points. The total network tariffs are always more expensive than the maximum discounted entry tariff to the system at a potential LNG terminal in Germany.
- 131 The correlation between a late commissioning date of a terminal and a higher network tariff discount in Europe put forward by GUD in its statement of 12 April 2022 is contradicted by the table of European entry discounts in 2021 provided by ONTRAS in its response of 12 April 2022. It is correct that the LNG terminals in Poland (100% discount) and Lithuania (75% discount) were only put into operation recently, in 2016 and 2014 respectively. But so were the terminals in Croatia (2021), France (2016) and Italy (2013). Croatia has set a much lower discount of 15%. France and Italy do not currently have any discount (France had a 10% one up to and including 2021).
- 132 The ruling chamber does not currently consider the possible approaches to deriving and determining a specific size of discount proposed by ONTRAS in its statement of 12 April 2022 applicable either. Among other things, ONTRAS suggested deriving the discount from a new, empirically determined security of supply quality factor. However, such a factor could not be calculated in the short time available and its derivation could not be determined at all.
- 133 ONTRAS further suggested taking the economic viability tool used in incremental capacity projects as an example for calculating the level of discount. This would involve taking the costs for the pipeline connection of LNG terminals and comparing them to the potential revenue from a capacity booking forecast at the LNG entry point. The ruling chamber would also have to determine an f-factor for the degree to which the entry bookings should recoup the connection costs. If the revenue from the forecast entry bookings overcompensated for the costs of pipeline connection, a discount on tariffs would be justified and its level could be calculated. However, there is currently no firm information on which LNG facilities will be built in Germany in the future or how high the costs of the individual connection lines will be. There are not yet any forecasts as to the potential revenue from a capacity booking forecast at potential new LNG entry points either.
- 134 As a further variant of determining the discount, ONTRAS proposed taking the relation between the REGENT postage stamp and a LNG entry postage stamp to be calculated. The LNG entry postage stamp would be the total costs for connection and the other network expansion costs to provide the additional firm entry capacity divided by the amount of total additional capacity created. Here, too, the necessary data are not yet available. Neither the costs for the connection line nor the costs for the other necessary network expansion are certain at this time. The amount of the additional firm entry capacity to be created is unknown too.

- 135 It may be seen, as confirmed by individual market participants in their responses of 13 May 2022, that there are many theoretically possible approaches to calculating an entry discount, but the data and information for their practical application are not available. On the other hand, a discount does not necessarily have to be calculated according to a mathematical formula. Rather, it can also result from a decision weighing up the various factors and taking into account the potential improvement to security of supply as well as other aspects such as the comparison with the discounts of other European countries and the ultimate size of tariffs for network use in other European countries. In making such a balanced decision, the ruling chamber takes the effects on the entire tariff system and in particular imports via pipeline routes into consideration as far as possible.
- 136 A 40% discount would create a comparable tariff level at entry points from LNG facilities in Germany as in France and the Netherlands. The tariff in Germany for 2022 would have been €2.10/(kWh/h)/a with a discount of 40%. As shown in HEH's response of 12 April 2022, the payable yearly tariff for 2022 at entry points from LNG facilities in France is €2.24/(kWh/h)/a and in the Netherlands it is €2.18/(kWh/h)/a. The ruling chamber is aware that the tariffs for standard capacity products in all European countries change each year. The possible entry discount can change too, as shown by the example of France. In 2021 it granted a 10% discount, in 2022 it did not determine any discount. The ruling chamber considers France, in light of the size of its gas sales, and the Netherlands, owing to its trading activity, to be representative, comparable markets for Germany. This analysis of individual past examples is not to be equated with a mechanism that would lead to a dynamic adjustment of the discount in order to reach the indicative tariff calculated as an example above.
- 137 In their responses of 13 May 2022, EFET Deutschland, EnBW, Fluxys Germany Holding, GUD, HEH and RWE Supply & Trading objected that the consideration of the comparable tariff levels did not take account of Belgium and Poland as well. As shown in HEH's response of 12 April 2022, the payable yearly tariff for 2022 at entry points from LNG facilities in Belgium is € 0.79/(kWh/h)/a and in Poland it is € 0.00/(kWh/h)/a (100% discount). The ruling chamber does not dispute the fact that the Belgian gas market is an important hub between the UK, France, the Netherlands, Norway and Germany, as EnBW states in its response of 13 May 2022. However, Belgium and Poland were not included in the ruling chamber's considerations of a comparable tariff level at entry points from LNG facilities because the aim is not necessarily to set lower entry tariffs from LNG facilities than other, comparable European countries. In setting the discount, the ruling chamber does not wish to engage in a "race to the bottom" with other countries like France and the Netherlands. Its objective is to determine a competitive entry tariff from LNG facilities in Germany, which can, in principle, be achieved by approaching the tariff level of France and the Netherlands, as HEH points out in its response of 12 April 2022. The low level of absolute costs in Belgium, where the network infrastructure is not widespread, means that the entry tariffs there are so low that they are not comparable with those of larger European market areas such as France or Germany. As far as

Poland is concerned, it has a particularly high proportion of direct LNG injections compared to its domestic consumption, which could justify the far lower entry tariff. With a view to national consumption and the considerable transit of natural gas in Germany, it must be ensured that the pipeline injections from other reliable sources that are essential to security of supply are not disproportionately burdened by the discount granted here.

- 138 The ruling chamber does not see the risk raised by OGE, ONTRAS, Thyssengas and INES in their responses of 12 April 2022 that the market would be distorted by substitution with other, reliable sources of pipeline supply in the event of a 40% discount. In this context, it should be noted that the construction and use of LNG infrastructure are associated with higher costs than sourcing gas from existing pipelines, as BP Europe SE and GUD pointed out in their responses of 12 April 2022.
- 139 By applying the entry discount exclusively to yearly and quarterly standard capacity products, the ruling chamber considers that there continues to be a level playing field for all reliable sources of supply and thus a significant incentive to increase the security of supply in Germany.

#### 6. Level of discounts for standard capacity products for interruptible capacity

- 140 The decision pursuant to operative part 5 on the level of discounts for standard capacity products for interruptible capacity is based on section 29(1) EnWG in conjunction with section 56(1) sentence 1 para 2, sentences 2 and 3 EnWG in conjunction with Article 6(11) and Article 7(3) of Regulation (EC) No 715/2009 in conjunction with Article 28(1) in conjunction with Article 16 of Regulation (EU) 2017/460.
- 141 Pursuant to Article 12(1) sentence 2 of Regulation (EU) 2017/460, for both yearly and non-yearly standard capacity products for interruptible capacity, the reserve prices must be calculated as set out in Chapter III of Regulation (EU) 2017/460.
- 142 Article 16(1) of Regulation (EU) 2017/460 lays down that the reserve prices for standard capacity products for interruptible capacity must be calculated by multiplying the reserve prices for the respective standard capacity products for firm capacity calculated as set out in Articles 14 or 15, as relevant, by the difference between 100% and the level of an ex-ante percentage discount. As an alternative to this, in accordance with Article 16(1) of Regulation (EU) 2017/460, the national regulatory authority may decide to apply an ex-post discount. The ruling chamber has not made use of this option.
- 143 The ex-ante discount determined as per operative part 5 ( $D_{\text{ex-ante}}$ ) was calculated in accordance with Article 16(1) of Regulation (EU) 2017/460 separately for each standard capacity product using the following formula:

$$D_{\text{ex-ante}} = Pro \times A \times 100 \%$$

a. Pro factor

- 144 *Pro* is the factor for the probability of interruption which is set or approved in accordance with Article 41(6)(a) of Directive 2009/73/EC and in line with Article 28, and which refers to the type of standard capacity product for interruptible capacity.
- 145 The *Pro* factor is calculated for each, some or all interconnection points per type of standard capacity product for interruptible capacity offered in accordance with Article 16(3) of Regulation (EU) 2017/460. The ruling chamber has decided in a first step to calculate the *Pro* factor separately for each interconnection point using the prescribed formula. This approach ensures to the greatest extent possible that the probability of interruption, which can vary from point to point, is specifically reflected in the level of *Pro*. In a second step, the *Pro* calculated for each point will be standardised per standard capacity product at all entry and all exit points to the same entry-exit system or comparable systems for each gas quality (L-gas and H-gas). To do this, the weighted average of the *Pro* factors calculated per standard capacity product for all interconnection points in the respective entry-exit system is calculated. The standardisation of the *Pro* factor per standard capacity product at all entry and all exit points of the same entry-exit system or comparable systems is based on the fact that within each gas quality the affected entry and exit points are interchangeable for the network user. Moreover, Article 21 of Regulation (EU) 2017/460 provides for a standardisation of the tariffs there. This standardisation is applied in principle at all interconnection points connecting the same foreign entry-exit system or the same third country with the German market area. However, a distinction is made between H-gas and L-gas interconnection points. The ruling chamber also considers it appropriate to look at the interconnection points "Zone Kiefersfelden-Pfronten" and "RC Lindau" (previously known as "Voralberg") to Austrian networks separately, in addition to the Austrian balancing zone. These interconnection points connect the German market area with physical "network islands" on the Austrian side, so they are not substitutable with the other interconnection points for shippers on the German side. In addition, the interconnection points to the market areas E-Gas Transmission System (GCP) (formerly known as "Polish E-Gas Balancing Zone") and Transit Gas Pipeline System (TGPS) (formerly known as "YAMAL (TGPS) Pipeline") are also considered separately because two separate market areas are operated on the Polish side.
- 146 For the interconnection points between Switzerland and Germany, the three interconnection points (RC Thayngen-Fallentor, RC Basel, Wallbach) were considered together only for the determination of the interruption discount and are put down in Annex I as "Switzerland". To clarify, it is emphasised here that the joint consideration only applies to this Determination. It is therefore only determined that a uniform discount is to be applied for interruptible standard capacity products at the three Swiss interconnection points. Only the tariffication for interruptible capacity products is thus regulated. Other aspects, in particular the ability to book these individual points, are unaffected by these provisions.

- 147 The calculation of the *Pro* factor for the individual interconnection points, broken down by standard capacity product, is carried out in accordance with Article 16(3) on the basis of forecast information related to the individual components of the formula below:

$$Pro = \frac{N \times D_{int}}{D} \times \frac{CAP_{av.int}}{CAP}$$

Where:

*N* is the expectation of the number of interruptions over *D*.

*D<sub>int</sub>* is the average duration of the expected interruptions expressed in hours.

*D* is the total duration of the respective type of standard capacity product for interruptible capacity expressed in hours.

*CAP<sub>av.int</sub>* is the expected average amount of interrupted capacity for each interruption where such amount is related to the respective type of standard capacity product for interruptible capacity. In determining this value, the fact is taken into account that within-day capacity will be interrupted before daily capacity, daily capacity before monthly capacity, monthly capacity before quarterly capacity, and quarterly capacity before yearly capacity. This is because, in accordance with Article 35(1) of Regulation (EU) 2017/459, the order in which interruptions are performed is determined on the basis of the contractual time stamp of the relevant transport contracts for interruptible capacity. It follows from Article 9 in conjunction with Articles 11 to 15 and Article 32 of Regulation (EU) 2017/459 that yearly capacity will be auctioned or over-nominated before quarterly capacity, quarterly capacity before monthly capacity, monthly capacity before daily capacity, and daily capacity before within-day capacity; given that the order of interruptions is based on the time stamp, it can therefore be assumed that capacity will be interrupted in the reverse order to which contracts were concluded.

*CAP* is the total amount of interruptible capacity for the respective type of standard capacity product for interruptible capacity.

The discount calculated using the above formula is rounded up to the full percent.

- 148 Expected values from *N*, *D<sub>int</sub>* and *CAP<sub>av.int</sub>* contribute to the calculation of the *Pro* factor. The ruling chamber takes the view that sufficiently reliable forecast figures can only be derived from examining a period in the past. The past values can be used as the basis to indicate the probability of a future interruption. However, it is not appropriate to use a reference period that goes back too far. That could lead to distortions, for example if changes to the actual conditions at a connection point that occurred long ago (eg due to network expansion) affect the probability of interruption in the present. In addition, for reasons of practicability a reference period that is too long should not be used, because network operators cannot easily identify interruptions from the distant past. On the other hand, a reference period that is too short is not appropriate either, because of the possibility of distortions and special circumstances that occur in the short term and are not

representative of the general probability of interruption. The ruling chamber takes the view that a reference period of three years is appropriate. The variables  $N$ ,  $D_{int}$  and  $CAP_{av.int}$  must therefore be calculated on the basis of interruptions in interruptible capacity over a period of three years. This reference period is expected to minimise the risk of, on the one hand, taking account of conditions that no longer correspond to the actual circumstances and, on the other, distortions caused by an insufficient and unrepresentative data basis. A reference period of three years therefore provides an appropriate balance. The last three complete gas years will be used.

149 Since the values for  $N$ ,  $D_{int}$  and  $CAP_{av.int}$  are based on data referring to the past, the ruling chamber has included a contingency mark-up of 10 percentage points (in the L-gas network) and 20 percentage points (in the H-gas network) in the calculation of the *Pro* factor. This ensures that the provisions of Article 16(3) of Regulation (EU) 2017/460 are applied with regard to the use of forecast values. The contingency mark-up is necessary because a period in the past is used to calculate the probability and it cannot be guaranteed that the probability of interruption in the present can be calculated with absolute accuracy by looking at the previous year. The framework conditions could have changed, affecting the actual probability of interruption. In any case, it cannot be ruled out that the calculation would not fully correspond to the real conditions. Moreover, the values calculated for  $N$ ,  $D_{int}$  and  $CAP_{av.int}$  are only forecast values, indicated by past experience. The contingency mark-up thus covers any differences between the calculation based on historical data and the current situation. The wording of Article 29(b)(ii) point 3 of Regulation (EU) 2017/460 ("historical or forecasted data, or both, used for the estimation of the probability of interruption referred to in point (2)") also indicates that it is appropriate to combine past and forecast values to calculate the probability of interruption appropriately.

150 The background to the contingency mark-up of 20 percentage points for the H-gas network is the market area merger planned for 1 October 2021, which is a significant event on the gas market in the H-gas network. It will change the configuration of the market areas considerably and expand the allocability, and thus the possible use, of capacity products due to the many new combinations of entry and exit points. The great expansion of free allocation options will, if no further measures are taken, lead to a reduction in the amount of firm, freely allocable capacity (FZK) compared to the amount in the separate (smaller) market areas. According to calculations by the TSOs, only about 22% of the total entry-side FZK currently offered in the two German market areas will be able to be provided on the basis of the physical infrastructure following the market area merger. These practical changes are accompanied by regulatory processes. In one of these, the Bundesnetzagentur's Ruling Chamber 7 approved the oversubscription and buy-back scheme developed by the TSOs for the offer of additional capacity in the single German market area ("KAP+") in the H-gas network in a ruling dated 25 March 2020 (BK7-19-037). This scheme allows additional firm capacity to be offered on the entry side that could not be provided in the single market area with the current physical infrastructure.

- 151 The TSOs need a securing mechanism in order to offer additional firm capacity to the market without upgrading the congestion-prone, physical infrastructure. The existing congestion could cause the actual use of additional firm capacity – that cannot be provided physically – to lead to transportation congestion. To solve this problem, the KAP+ procedure has given the TSOs the ability to resolve congestion by making use of market-based instruments (MBIs). However, the use of MBIs in this context should be kept to a minimum. The approved concept thus also envisages that the TSOs must exhaust all other system-related and market-related measures within the meaning of section 16(1) para 2 EnWG to combat the transportation congestion first, before using MBIs. These measures include interrupting interruptible capacity. In the event of transportation congestion, (where effective) the used interruptible capacity must be interrupted first (with the exception of interruptible capacity for internal bookings) before other MBIs are used to the extent necessary. An effective removal of transportation congestion by the interruption of interruptible capacity may therefore also occur with the use of interruptible exit capacity, even though the KAP+ determination only envisages an increase in the offer of firm entry capacity.
- 152 Applying the KAP+ determination, the TSOs plan to offer the market additional FZK at the entry points for the period from 1 October 2022 to 1 October 2023 in addition to that which can be provided by the network infrastructure. This additional FZK is no longer secured by the physical infrastructure alone but with market-based instruments (MBIs), so, if it is used, transportation congestion could occur. In that event interruptible capacity would first be interrupted as a priority, provided this would have an effect on the congestion, and then the MBIs would be used if necessary. In the gas year 2021/22, the ratio of FZK provided by the network infrastructure to the additional FZK secured by MBIs was one third to two thirds. The ratio is also one third to two thirds for the gas year 2022/23.
- 153 These circumstances make it impossible to rule out a greater probability of interruptions in the single market area in the H-gas network. Ruling Chamber 9 has responded to these developments by determining a higher contingency mark-up for interconnection points in the H-gas network to take account of the uncertainties posed by the market area merger and the offer of additional firm capacity that cannot be provided by the network infrastructure alone. There are as yet no firm findings on the likely interruptions. Unlike in the determination proceedings BEATE (BK9-14/608), BEATE 2.0 (BK9-18/608), MARGIT 2020 (BK9-18/612), MARGIT 2021 (BK9-19/612) and MARGIT 2022 (BK9-20/612), there are no past values for the single market area upon which to make a representative assessment. These findings will only become available gradually once the market area merger has taken place. These uncertainties provide an argument in favour of increasing the contingency mark-up.
- 154 The ruling chamber took into consideration that it makes sense to have certain harmonisations in a dual-gas-quality market area, as these contribute to increased liquidity. On the other hand, Article 16 of Regulation (EU) 2017/460 sets out differentiation according to different points or types

of points, so a distinction between L-gas and H-gas network infrastructure is not ruled out and is appropriate here because of the mechanisms in the single market area.

- 155 A contingency mark-up of 20 percentage points in the L-gas network is not appropriate in substance either, because the risk of increased probability of interruption, which is the main argument for the increased contingency mark-up in the H-gas network, is not to be expected in the same way in the L-gas network. There is therefore no justification for having a higher contingency mark-up than 10 percentage points for the L-gas network. The interruption risk there is, in the view of the ruling chamber, sufficiently reflected in a contingency mark-up of 10 percentage points.
- 156 The absolute size of a contingency mark-up cannot be calculated with complete certainty and is always the result of a process of weighing up the facts. The increase in general uncertainty caused by the merger of the market areas along with the possibly greater probability of an interruption in the H-gas network are factors that already point towards a higher contingency mark-up. As the proceedings are to be carried out annually in accordance with Article 28 of Regulation (EU) 2017/460, such issues can always be re-examined on the basis of new findings. As such, the call from OMV Gas for the increase of the contingency mark-up to be evaluated can already be met under existing procedural law.
- 157 It was also noted that it is planned to offer additional FZK with the help of BMIs for the period from 1 October 2022 to 1 October 2023. This additional FZK can no longer be provided using the physical network infrastructure alone.
- 158 The ruling chamber further considered the fact that any increase in the contingency mark-up results in a rising reference price for FZK that has to be borne by all network users. It must also be taken into account mathematically and practically that the increased contingency mark-up leads to an increase in the permissible leeway for tariffs of conditional, firm capacity products at interconnection points due to the arrangement in the REGENT 2021 determination (BK9-19/610), which sets out that discounting must not reduce capacity tariffs for conditionally firm, freely allocable capacity (bFZK) and firm, dynamically allocable capacity (DZK) to below the capacity tariff for the completely interruptible standard capacity product with the lowest discount at this point. The range for the conditional, firm capacity products is still to be limited at the upper end by the FZK and at the lower end by the interruptible, freely allocable capacity (uFZK) product. However, this range has been broader since 1 October 2021 because of the higher uFZK discount at H-gas points.
- 159 Due to the increase in the contingency mark-up, the ruling chamber assumed an indicative tariff increase of 3.9% for the tariff period from 1 October 2021 to 31 December 2021 if this range were to be fully made use of (see the explanations in margin number 59 of Determination MARGIT 2021 of 11 September 2020, BK9-19/612). However, this tariff increase is still within a range that is not so extreme that issues of falling liquidity would provide a conclusive argument against a



corresponding increase in the contingency mark-up, particularly as it would be accompanied by expanded discounting leeway for conditional, firm capacity products that should reduce the much-discussed volume risk (see Article 7(d) of Regulation (EU) 2017/460), if this were to occur in the future. Moreover, if the increased contingency mark-up should turn out not to be appropriate, it could be adjusted in the course of the annual decisions in accordance with Article 28 of Regulation (EU) 2017/460.

160 The ruling chamber views these effects as still moderate, particularly as the indicative tariff increase calculated in the preceding paragraph is based on the assumption that full use will be made of the discount range for all capacity products at interconnection points (including bFZK and DZK). However, past experience has shown that the maximum discount range was not used by all TSOs.

161 There is no indication that the relative change in the reference price would be different due to the level of the contingency mark-up for the calendar year 2023.

162 In determining the contingency mark-up of 10 percentage points (in the L-gas network) and 20 percentage points (in the H-gas network), the ruling chamber has also taken into account that, even if a discount of 10 or 20 percentage points, respectively, were not sufficient in individual cases to cover the costs of an interruption completely, it would still be more than sufficient especially considering the entire trading portfolio. The level of the relevant safety margin is a multiple of the *Pro* factor calculated using the formula in Article 16(3) of Regulation (EU) 2017/460, so any inaccuracies in the determining of this factor for storage facilities used only seasonally or exclusively by network users would be adequately compensated for. The legislature has accepted these potential inaccuracies. This is shown in particular in Article 16(3) in conjunction with Article 21 of Regulation (EU) 2017/460, which permit the *Pro* factor to be standardised for each standard capacity product at all entry and all exit points to the same entry-exit system or to comparable systems.

163 In the view of the ruling chamber, the contingency mark-up of 10 percentage points (in the L-gas network) and 20 percentage points (in the H-gas network) is also an adequate means of taking into account any inaccuracies arising from not assessing re-nominations as interruptions for the calculation of the probability of interruption. It is true that it might be possible to assume that such re-nominations, which are undertaken by the network user at the request of the TSO for the very purpose of not being interrupted, do at least partially correspond to actual interruptions in terms of their effect from the perspective of the TSO. However, the ruling chamber is of the opinion that it would be disproportionate to make a general requirement of every TSO to factor the "involuntary" re-nominations into the calculation of the probability of interruption of the respective entry and exit points. The practice of carrying out interruptions and re-nominations is not dealt with in the same way by all market participants. Owing to the way they process data, some market participants cannot class re-nominations as interruptions following the announcement of an interruption but

can only distinguish between an actual interruption and a re-nomination, whether voluntary or not. A determination requiring network operators to record "involuntary" re-nominations only, and not voluntary ones, would cause great difficulties for some network operators and their electronic data-processing systems. Any effects resulting from this non-consideration in the form of "too low probabilities of interruption" will in fact be absorbed as a precaution by the contingency mark-up of 10 percentage points for the L-gas network or 20 percentage points for the H-gas network.

b. Adjustment factor A

164 As well as *Pro*, *A* is the other factor in the calculation of the ex-ante discount. *A* is the adjustment factor which is set or approved by the regulatory authority in accordance with Article 41(6)(a) of Directive 2009/73/EC and pursuant to Article 28 and that reflects the estimated economic value of the type of standard capacity product for interruptible capacity. The ruling chamber sets the value of *A* for all standard capacity products at 1. This complies with Article 16(2) of Regulation (EU) 2017/460, pursuant to which *A* must be calculated for each, some or all interconnection points and must be no less than 1. While Article 16(2) of Regulation (EU) 2017/460 provides for the possibility of estimating the economic value of each standard capacity product to calculate *A*, the ruling chamber takes the view that this estimation is neither necessary nor appropriate. An estimate relating to standard capacity products would not take into account the fact that the adjustment factor would have to have very different economic values depending on the type of network user and the purpose of the booking. In this case, differentiating purely by standard capacity product would not be an appropriate way of forming an average. There is no indication that applying the *Pro* factor in conjunction with the contingency mark-up of 10 percentage points (in the L-gas network) or 20 percentage points (in the H-gas network) would lead to the calculation of inappropriate discounts, which would require adjustment using the adjustment factor *A*.

165 As explained above, the ruling chamber assumes that a discount of at least 10 percentage points (in the L-gas network) or 20 percentage points (in the H-gas network) is more than sufficient, especially when taking into account the whole portfolio. Also given the fact that the calculation formula used in the past worked well for the majority of market participants, the ruling chamber does not currently see any need for an adjustment.

166 The explanation of the effects of capacity changes on multipliers given in margin number 88f applies accordingly to the change of an interruptible standard capacity product. In this case, too, the calculation of a discount (including its level) depends on the facts at the time the contract was concluded. The discount is not subsequently lost if an interruptible standard capacity product is converted into a firm one. This remains unchanged for the period already passed and for the remaining duration of the non-converted capacity. However, for the firm capacity product that is booked during the conversion, the network user must pay the tariff for a firm standard capacity

product without the discount that results from the probability of interruption, plus a multiplier or other discounts where applicable.

The discounts calculated in line with these explanations ( $D_{\text{ex-ante}}$ ) may be found in Annex I.

#### 7. Order for payment of costs

167 Regarding costs, a separate notice will be issued as provided for by section 91 EnWG.

#### 8. Public notification

168 Since the determination is issued in relation to all German TSOs within the meaning of section 3 para 5 EnWG, the ruling chamber is giving public notification of the determination in place of service pursuant to section 73(1) sentence 1 EnWG in accordance with section 73(1a) sentence 1 EnWG. According to section 73(1a) sentence 2 EnWG this public notification is effected by publication of the operative part of the determination, the notification of appellate remedies and a brief statement that the decision in full has been published on the regulatory authority's website in the Bundesnetzagentur's Official Gazette. In accordance with section 73(1a) sentence 3 EnWG the determination is considered to have been served on the day on which two weeks have elapsed since the date of public notification in the regulatory authority's Official Gazette.

#### 9. Annex

Annex I forms part of this decision.

## Notification of appellate remedies

Appeals against this decision may be brought within one month of its service. Appeals should be filed with the Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen, Tulpenfeld 4, 53113 Bonn. It is sufficient if the appeal is received by the Higher Regional Court of Düsseldorf within the time limit specified (address: Cecilienallee 3, 40474 Düsseldorf).

The appeal must be accompanied by a written statement setting out the grounds for appeal. The written statement must be provided within one month. The one-month period begins with the filing of the appeal; this deadline may be extended by the court of appeal's presiding judge upon request. The statement of grounds must state the extent to which the decision is being contested and its modification or revocation sought and must indicate the facts and evidence on which the appeal is based. The appeal and the grounds for appeal must be signed by a lawyer.

The appeal does not have suspensory effect (section 76(1) EnWG).

Bonn, 2 June 2022

Vice Chair acting as Chair

Vice Chair

Vice Chair

Dr Ulrike Schimmel

Dr Björn Heuser

Roland Naas

Trading Hub Europe (THE)							
			Di <sub>lex</sub> -ante				
Flussrichtung am Netzkopplungspunkt	Name des angrenzenden Marktgebietes	Gasqualität	untertägige Kapazität	Tageskapazität	Monatskapazität	Quartalskapazität	Jahreskapazität
Flow direction at connection point	Name of adjacent market area	Gas quality	within-day capacity	daily capacity	monthly capacity	quarterly capacity	yearly capacity
Entry	Czech Balancing Zone	H-Gas	21%	21%	21%	21%	21%
Exit	Czech Balancing Zone	H-Gas	21%	21%	21%	21%	21%
Entry	Austrian Balancing Zone	H-Gas	21%	21%	21%	21%	20%
Exit	Austrian Balancing Zone	H-Gas	23%	22%	22%	22%	21%
Entry	RC Lindau (ehem. Voralberg; Österreich)	H-Gas	20%	20%	20%	20%	20%
Exit	RC Lindau (ehem. Voralberg; Österreich)	H-Gas	20%	20%	20%	20%	20%
Entry	Zone Kiefersfelden-Pfronten (Österreich)	H-Gas	20%	20%	20%	20%	20%
Exit	Zone Kiefersfelden-Pfronten (Österreich)	H-Gas	20%	20%	20%	20%	20%
Entry	Belgian and Luxembourg Balancing Zone	H-Gas	21%	20%	20%	20%	20%
Exit	Belgian and Luxembourg Balancing Zone	H-Gas	21%	21%	21%	21%	20%
Entry	Dutch Balancing Zone	H-Gas	21%	20%	20%	20%	20%
Exit	Dutch Balancing Zone	H-Gas	21%	21%	21%	20%	20%
Entry	Dutch Balancing Zone	L-Gas	11%	11%	11%	11%	11%
Exit	Dutch Balancing Zone	L-Gas	11%	11%	11%	11%	11%
Entry	Danish Balancing Zone	H-Gas	21%	21%	21%	20%	20%
Exit	Danish Balancing Zone	H-Gas	21%	20%	20%	20%	20%
Entry	Norwegen	H-Gas	21%	21%	21%	21%	20%
Exit	Norwegen	H-Gas	20%	20%	20%	20%	20%
Entry	Schweiz (ehem. RC Thayngen-Fallentor, RC Basel, Wallbach)	H-Gas	20%	20%	20%	20%	20%
Exit	Schweiz (ehem. RC Thayngen-Fallentor, RC Basel, Wallbach)	H-Gas	21%	21%	21%	21%	21%
Entry	Trading Region France (ehem. PEG North)	H-Gas	20%	20%	20%	20%	20%
Exit	Trading Region France (ehem. PEG North)	H-Gas	20%	20%	20%	20%	20%
Entry	E-Gas Transmission System (GCP) (ehem. Polish E-gas Balancing Zone)	H-Gas	20%	20%	20%	20%	20%
Exit	E-Gas Transmission System (GCP) (ehem. Polish E-gas Balancing Zone)	H-Gas	20%	20%	20%	20%	20%
Entry	Transit Gas Pipeline System (TGPS) (ehem. YAMAL (TGPS) Pipeline; Polen)	H-Gas	20%	20%	20%	20%	20%
Exit	Transit Gas Pipeline System (TGPS) (ehem. YAMAL (TGPS) Pipeline; Polen)	H-Gas	21%	21%	20%	20%	20%
Entry	Russland	H-Gas	21%	21%	20%	20%	20%
Exit	Russland	H-Gas	20%	20%	20%	20%	20%