BK9-22/612

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 2024 ("MARGIT 2024")

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

represented by

the Chair   Dr Christian Schütte,

the Vice Chair   Dr Ulrike Schimmel

and the Vice Chair   Dr Björn Heuser

decided on 26 May 2023:

1. The following determinations in this decision are effective from 1 January 2024 to 31 December 2024.

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 percentage ex-ante 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.

<center>**Rationale**</center>

<center>**I.**</center>

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 20/2022 of 19 October 2022 and simultaneously on the Bundesnetzagentur's website.

3   The draft decision in German and in English was published on the Bundesnetzagentur website on 15 February 2023 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 15 March 2023. Only the German version is legally binding.

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 23 February 2023. On 22 February 2023, 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 7 October 2022, 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 17 February 2023 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 on 17 February 2023 to state its views on the intended determination in accordance with section 58(1) sentence 2 EnWG.

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 20 April 2023.

8   Nine 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:

a. Multipliers

9   The association of gas transmission system operators (TSOs) FNB Gas welcomed the continuation of the rules on multipliers. It stated that this increased the planning certainty for all market participants and created suitable incentives for long-term capacity bookings. The gas network's vacancy costs could thus be distributed in as cost-reflective a manner as possible.

10 Traders repeated their call 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.

11 It argued 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, it 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 reduce revenue for transmission system operators. The traders' association EFET Deutschland, RWE Supply & Trading and Uniper stated that, contrary to the view of the Bundesnetzagentur, this would not avoid vacancy costs.

12 EFET Deutschland also put forward that competition in Europe should take place on the commodity side. Comparable conditions should apply to 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 sector.

13 Uniper again called into question the appropriateness of the within-day multiplier of 2.0 and, together with Equinor, repeated its criticism of the fact that no valid analysis of this had so far been carried out.

14 EFET Deutschland also repeated its call 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.

15 The association BDEW did not see that the transfer of capacity made economic sense in every case as the multiplier of the original booking was lost to the buyer of the capacity and a higher one applied for the shorter remaining duration. This applied particularly to monthly, daily and within-day bookings because they did not receive an LNG entry discount, the BDEW pointed out. In any

case, the original multiplier should be kept in the event of capacity leasing, it argued. The BDEW called for clarity on this point.

b. Discount at entry points from LNG facilities

Security of supply

16   FNB Gas stressed that diversifying the sources of supply with LNG terminals could have a positive effect on security of supply. The association largely shared the view of the ruling chamber on security of supply that the actual utilisation of terminals played a role as well as the existence of the infrastructure and that the current transport costs were of less significance than commodity prices.

Level of discount

17   EFET Deutschland and RWE Supply & Trading recommended that the markets in Poland and Belgium also be taken into account in the system of deriving the discount. Specifically, RWE Supply & Trading called for a discount of 100% largely on the basis that a higher discount would send the right signal to boost the LNG industry, which required significant investment, increasing the likelihood of a competitive offer and thus security of supply. HEH put forward that German terminals must not be disadvantaged compared to the discount systems in France, the Netherlands and Belgium. OMV Gas judged the continuation of the current LNG discount sensible and in line with the market.

18   The association INES, meanwhile, recommended equal treatment in principle for cross-border interconnection points and entry points from LNG terminals. Whether LNG or pipeline gas was imported did not depend on the discount on a network tariff at the LNG terminal, according to INES. In relation to the gas price, even a 100% discount would not essentially influence the decision on where LNG was exported to. The discounting was therefore not a question of security of supply. Discounting would ultimately lead to shifting from use of cross-border interconnection points to LNG terminals, which would distort competition between import infrastructures. In the interests of a level playing field between sources of flexibility, the association INES recommended designing the discount in such a way that it 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. INES also argued in favour of 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 of 90% of connection costs clearly allocated to LNG terminals to other market participants (as set out in section 39f of the Gas Network Access Ordinance, GasNZV) was already having a negative impact on the use of infrastructure and leading to additional costs in the development of this infrastructure. Equinor Deutschland pointed out that the LNG discount granted would lead to the network costs pool being

borne by the remaining entry and exit points and the tariff gap to the comparable markets would thus widen further.

19 FNB Gas advised looking again at the level of the discount when new findings became available.

Restriction to yearly and quarterly standard capacity products

20 FNB Gas considers it logical to restrict the discount to yearly and quarterly standard capacity products as this would make capacity bookings with longer durations more attractive and thus encourage constant levels of injection. It would thus not be suitable to extend the discount to shorter durations, especially as capacity leasing allowed multiple (smaller) shippers to benefit from these discounts. The BDEW considered long-term booking by the terminal operator ideal to make full use of the relevant discount.

21 EFET Deutschland, however, questioned the restriction of the discount to yearly and quarterly standard capacity products. In the interests of a continual use of the terminals, conditions in the LNG market, including offloading times of individual LNG cargoes, should be better taken into consideration in the marketing of capacity. Therefore, not just long-term terminal use but also short-term use should be attractive for terminal customers buying free slots on the secondary market from primary users or acquiring them directly from the terminal operator under the use-it-or-lose-it principle. Uniper called for the discount to be applied to all products, based on a similar line of argumentation. The effect of the discount would be reduced by restricting it to long-term capacity products. HEH wanted the discount to be extended to short-term standard capacity products as otherwise smaller market participants would be put at a disadvantage even though they also contributed to security of supply and liquidity. Moreover, the restriction on discounting made using the reserve quota for short-term bookings comparatively unattractive, it added.

22 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 would also have to be attractive to make it possible 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. As a result, RWE Supply & Trading proposed expanding the discount to all capacity products.

Other aspects

23 According to FNB Gas, when there is a sufficient data basis, it must be examined whether the discount granted was leading to market distortions. The aim should be for the same competitive conditions to be considered among all reliable sources of supply.

24 Given that the MARGIT proceedings are carried out every year, HEH and EFET Deutschland proposed setting out, at least in the rationale of the decision, under which conditions the discount

could be changed or removed. This would help to increase the desired security of supply, they argued.

25 RWE Supply & Trading was of the opinion that the need to renew the decision each year led to uncertainty that put in doubt and reduced the positive effect of the discount. It did not share the legal opinion that it was not possible to take a valid, 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.

c. Discounts for interruptible capacity

26 FNB Gas wrote that the majority of its members found maintaining the contingency mark-up for H-gas at 20% 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 concurred on both these points. It added that the ongoing market area conversion might increase the likelihood of interruption in the L-gas network and this could not be inferred from the three-year period measured.

27 On the other hand, OMV Gas thought it necessary and expedient to reduce the contingency mark-up of 20% for H-gas to the originally applied 10%. On the basis of the data published since the market merger, it saw no reason to expect an increased likelihood of interruption anymore. It had itself observed that transportation in the THE market area had adapted very well to the new market conditions, ie the loss of significant import volumes in the northern zone (formerly Gaspool). Owing to the changed conditions, unusually high volumes of interruptible entry capacity from Belgium, the Netherlands and Norway were being booked and used and, thanks to the forward network planning of the TSOs, largely fulfilled without restrictions.

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

29 Equinor Deutschland pointed out that the increased contingency mark-up of 20% for H-gas was also borne by firm capacity, leading to competitive and liquidity-related disadvantages for the German gas market compared to alternative markets. It called for a critical examination of the continuation of this contingency mark-up, because it did not only benefit 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 benefited, weakening its liquidity. This also pushed up entry tariffs at the trading hub as the increased contingency mark-up had to be compensated by the other tariffs.

30   For further details, reference is made to the content of the file.

31   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.

32   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.

33   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 (CAM NC) also applied to entry points from third countries and exit points to third countries within the meaning of Article 2(1) sentence 2 CAM NC 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

34   The requirements are to be implemented pursuant to operative part 1 as from 1 January 2024 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 2024.

2. General

35   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

36   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.

37   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.

38   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.

39   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 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.

40   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. Nevertheless, as several responses to the consultation, including that of the BDEW, requested further explanation of this aspect, it is provided here. In the event of trading on the secondary market in the form of leasing of usage, the primary capacity holder remains the owner of the capacity and thus the contractual partner of the network operator, as EFET noted in its statement. The original contract thus remains unchanged and the multiplier continues to be applied on the basis of the original booking product. 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.

41   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:

42   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 2023; 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.

43   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.

44   The determined multipliers improve the cost-reflectivity of reserve prices by reducing cross-subsidisation between user groups caused by duration. Cost-reflectivity in tarification 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.

45   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. 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.

46   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.

47   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.

48   The ruling chamber does not consider that the within-day multiplier of 2.0 is too high given the objectives explained in the paragraphs above. That a high multiplier (holding all else constant) would lead to less cross-border trade and the transactions not made could therefore not help to reduce vacancy costs corresponds to the intended interdependence of multipliers. This interdependence applies to any level of multiplier as, at a given commodity price, a transaction gets more attractive the lower a multiplier is. The intended effect of multipliers thus cannot be seen as a reason to reduce the within-day multiplier. 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.

49   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.

50   Regarding the calls for valid analyses of the within-day multiplier, it should be noted that ACER carried out a Europe-wide sector survey[1] of daily and within-day multipliers on the basis of the provisions of Article 13(3) of Regulation (EU) 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 June 2021[2] actually only envisages an increased need for justification for daily and within-day multipliers that are less than 1 or more than 3.

51   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.

52   In conclusion, the ruling chamber does not see sufficient grounds to reduce the previous applied multiplier of 2.0 for within-day capacity products.

53   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.

54   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 arrangements for setting network tariffs pursuant to section 15(2) to (7) of the Gas Network Tariffs Ordinance (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

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[1] https://documents.acer.europa.eu/Official_documents/Public_consultations/Pages/PC_2020_G_19_.aspx

[2] https://documents.acer.europa.eu/Official_documents/Acts_of_the_Agency/Recommendations/ACER%20Recommendation%2001-2021%20on%20Multipliers.pdf

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. <u>Calculation of reserve prices for non-yearly standard capacity products for firm capacity</u> (seasonal factors)

55 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.

56 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

57   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.

58   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 2024, 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.

59   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.

60   Germany's first LNG terminals, in Brunsbüttel, Lubmin and Wilhelmshaven, were put into operation in 2023. The ruling chamber assumes that these, along with the other planned LNG regasification terminals, will provide a link to additional sources of supply and thus improve the diversity of gas sources in the country. 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".

61   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.

62   Looking at the current transport costs for the relevant market area, THE, which are €0.69/MWh (annual booking) or €0.96/MWh (daily booking), compared to the future achievable commodity prices of €45/MWh to €65/MWh for the calendar years 2024 and 2025 and €35/MWh to €40/MWh

for 2026 in the THE market area (source: GANEXO, OTC prices), the actual transport costs play a secondary, marginal role. It is barely imaginable that the transport costs, at such a low proportion of the commodity price, would be the decisive factor for the long-term booking behaviour of potential users of an LNG terminal. The majority of FNB Gas members share this view.

63   In considering 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. Equinor pointed out that the LNG discount granted would lead to the network costs pool being borne by the remaining booking points. It must be noted that the construction of LNG connection lines causes additional costs and 90% of these are borne by the TSOs as per section 39f GasNZV. If 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 lines and the fact that bookings at LNG entry points would not bear any costs. Besides the costs for the connection lines, 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.

64   Apart from that, it is not possible to answer the question about the specific effects of a discount on the other booking points 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 in 2024, depends heavily on the estimate of the future booking volume. The calculation of the REGENT tariff for 2023 showed the size of this influence on the final tariff. The difficulty of estimating booking behaviour does not occur only at existing, pipelined booking points, but at the new LNG entry points as well. As a result, the ruling chamber does not assume 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 alone. Finally, it must also be noted that a partial discount from long-term bookings or non-discounted short-term bookings at entry points from LNG facilities lead to additional cost attribution.

65   The aim and purpose of Regulation (EU) 2017/460 is 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 LNG terminals economically viable, this must be made possible another

way, such as from state support or financing by means of taxation. This argument is thus in opposition to the viewpoint of RWE Supply & Trading and its call for a 100% discount.

66   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 at any time, even at very short notice. Therefore, unlike with traditional pipeline systems, there is a risk that physically, little or no LNG will be 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. In the second half of 2021, for example, 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. RWE Supply & Trading confirmed in its response that suppliers' primary focus was generally commercial considerations when deciding where the LNG deliveries were to be brought. The LNG imports made a smaller contribution to the reduction of the wholesale prices in north-west Europe than they potentially could have done, whereas the high wholesale prices over a period of several months formed an indication of the security of supply situation. The ruling chamber, unlike RWE Supply & Trading, is therefore not convinced that expanding the discount to capacity products with shorter durations would further increase security of supply. Rather, on the basis of commercial considerations, the deadweight effects of LNG suppliers would probably increase if the discount were to be expanded to all capacity products by, for example, leading to less long-term capacity products being booked. The consequently lower tariff income at entry points from LNG terminals would then have to be borne by the remaining entry points, including pipeline ones. The ruling chamber does not consider this further discounting proportionate or expedient when the effect on all booking points is taken into account.

67   As well as the existence of terminals, the actual physical utilisation of the terminals plays a decisive role in the improvement of security of supply. The ruling chamber considers 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 is thus creating 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 does not, by contrast, assume that by not discounting capacity bookings with shorter durations the continual LNG injection into the German transmission system would be reduced. In

the view of the ruling chamber, this also applies to 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 discount for capacity bookings with shorter duration would mean 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. The ruling chamber is not convinced by this. It also seems unlikely, for reasons including the higher multipliers, that significant additional volumes of LNG would be continually fed into the German gas network on the basis of successive capacity bookings with shorter durations rather than one capacity booking with a longer duration, assuming otherwise the same market conditions. 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.

68   The ruling chamber does not see that smaller market participants would be disadvantaged by the restriction of the discount to capacity bookings with longer durations. 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. FNB Gas supports the view of the ruling chamber that, with the help of capacity leasing, (smaller) shippers can also benefit from the discount and does not consider it appropriate to expand the discount to products with shorter durations.

69   The explanation of the effects of capacity changes on multipliers given in margin number 39f 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, 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.

70   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.

71   As shown in the determination MARGIT 2023 (BK9-21/612), there are many theoretically possible approaches to calculating an entry discount, but sufficient data and information for their practical application are generally not available. A discount does not necessarily have to be calculated according to a mathematical formula either. Rather, it can also result from a decision weighing up the various factors. In doing so, the ruling chamber takes the effects on the entire tariff system and in particular imports via pipeline routes into consideration as far as possible.

72   The analysis of individual past examples is not to be equated with a mechanism that would lead to a dynamic adjustment of the discount, as explained in the determination MARGIT 2023 (BK9-21/612). The intention is not to permanently prescribe the mechanism originally used.

73   Rather, 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.

74   The ruling chamber does not see a risk that the market would be distorted by substitution with other, reliable sources of pipeline supply in the event of a 40% discount on yearly and quarterly standard capacity products. In this context, it must also be noted that the construction and use of LNG infrastructure is associated with higher costs than sourcing gas via existing pipeline infrastructure. At the same time, the stable discount makes a positive contribution to a reliable and continuous regulatory regime.

75   By applying the entry discount exclusively to yearly and quarterly standard capacity products, the ruling chamber considers – unlike INES in its response – 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. As the ruling chamber is not expanding the application of the discount to standard capacity products with shorter durations, it does not consider that the possible competition between gas storage facilities and LNG terminals in the sense of the level playing field, as put forward by INES, is jeopardised by this rule.

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

76   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.

77   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.

78   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.

79   The ex-ante discount determined as per operative part 5 ($Di_{ex-ante}$) was calculated in accordance with Article 16(1) of Regulation (EU) 2017/460 separately for each standard capacity product using the following formula:

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

a. *Pro* factor

80   *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.

81   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 "Vorarlberg") 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.

82   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 tarification for interruptible capacity products is thus regulated. Other aspects, in particular the ability to book these individual points, are unaffected by these provisions.

83   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_{int} 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.

$CAP_{av.int}$ 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.

84   Expected values from N, D_{int} and $CAP_{av.int}$ 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.

85   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.

86   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.

87   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.

88   Applying the KAP+ determination, the TSOs plan to offer the market additional FZK at the entry points for the period from 1 October 2023 to 1 October 2024 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 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.

89   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), MARGIT 2022 (BK9-20/612) and MARGIT 2022 2023 (BK9-2021/612), 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.

90   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.

91   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.

92   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, it is already envisaged under existing procedural law that the contingency mark-up can be re-evaluated in future proceedings.

93   It was also noted that it is planned to offer additional FZK with the help of MBIs for the period from 1 October 2023 to 1 October 2024. This additional FZK can no longer be provided using the physical network infrastructure alone.

94　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.

95　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.

96　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.

97　There is no indication that the relative change in the reference price will be different due to the level of the contingency mark-up for the calendar year 2024.

98　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.

99   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*

100   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*.

101 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.

102 The explanation of the effects of capacity changes on multipliers given in margin number 39f 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 ($Di_{ex-ante}$) may be found in Annex I.

7. Order for payment of costs

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

8. Public notification

104 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, 26 May 2023

Chair   Vice Chair   Vice Chair

Dr Christian Schütte   Dr Ulrike Schimmel   Dr Björn Heuser

Flussrichtung am Netzkopplungspunkt Name of adjacent market area Flow direction at connection point	Name des angrenzenden Marktgebietes Name of adjacent market area	Gasqualität Gas quality	Di ex-ante				
			untertägige Kapazität within-day capacity	Tageskapazität daily capacity	Monatskapazität monthly capacity	Quartalskapazität quarterly capacity	Jahreskapazität 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%	20%	20%	20%
Exit	Austrian Balancing Zone	H-Gas	22%	22%	22%	22%	20%
Entry	RC Lindau (ehem. Vorarlberg; Österreich)	H-Gas	20%	20%	20%	20%	20%
Exit	RC Lindau (ehem. Vorarlberg; 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%	21%	20%	20%	20%
Exit	Belgian and Luxembourg Balancing Zone	H-Gas	21%	21%	20%	20%	20%
Entry	Dutch Balancing Zone	H-Gas	21%	21%	20%	20%	20%
Exit	Dutch Balancing Zone	H-Gas	21%	21%	20%	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%	21%	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%

Trading Hub Europe (THE)