

## ANNEX I

GUIDELINES ON THE MANAGEMENT AND ALLOCATION OF AVAILABLE  
TRANSFER CAPACITY OF INTERCONNECTIONS BETWEEN NATIONAL SYSTEMS

2. Congestion-management methods
  - 2.1. Congestion-management methods shall be market-based in order to facilitate efficient cross-border trade. For that purpose, capacity shall be allocated only by means of explicit (capacity) or implicit (capacity and energy) auctions. Both methods may coexist on the same interconnection. For intra-day trade continuous trading may be used.
  - 2.2. Depending on competition conditions, the congestion-management mechanisms may need to allow for both long and short-term transmission capacity allocation.
  - 2.3. Each capacity-allocation procedure shall allocate a prescribed fraction of the available interconnection capacity plus any remaining capacity not previously allocated and any capacity released by capacity holders from previous allocations.
  - 2.4. TSOs shall optimise the degree to which capacity is firm, taking into account the obligations and rights of the TSOs involved and the obligations and rights of market participants, in order to facilitate effective and efficient competition. A reasonable fraction of capacity may be offered to the market at a reduced degree of firmness, but the exact conditions for transport over cross-border lines shall, at all times, be made known to market participants.
  - 2.5. The access rights for long and medium-term allocations shall be firm transmission capacity rights. They shall be subject to the use-it-or-lose-it or use-it-or-sell-it principles at the time of nomination.
  - 2.6. TSOs shall define an appropriate structure for the allocation of capacity between different timeframes. This may include an option for reserving a minimum percentage of interconnection capacity for daily or intra-daily allocation. Such an allocation structure shall be subject to review by the respective regulatory authorities. In drawing up their proposals, the TSOs shall take into account:
    - (a) the characteristics of the markets;
    - (b) the operational conditions, such as the implications of netting firmly declared schedules;
    - (c) the level of harmonisation of the percentages and timeframes adopted for the different capacity-allocation mechanisms in place.
  - 2.7. Capacity allocation shall not discriminate between market participants that wish to use their rights to make use of bilateral supply contracts or to bid into power exchanges. The highest value bids, whether implicit or explicit in a given timeframe, shall be successful.
  - 2.8. In regions where forward financial electricity markets are well developed and have shown their efficiency, all interconnection capacity may be allocated through implicit auctioning.
  - 2.9. Other than in the case of new interconnectors which benefit from an exemption under Article 7 of Regulation (EC) No 1228/2003 or Article 17 of this Regulation, establishing reserve prices in capacity-allocation methods shall not be allowed.

- 2.10. In principle, all potential market participants shall be permitted to participate in the allocation process without restriction. To avoid creating or aggravating problems related to the potential use of dominant position of any market player, the relevant regulatory and/or competition authorities, where appropriate, may impose restrictions in general or on an individual company on account of market dominance.
- 2.11. Market participants shall firmly nominate their use of the capacity to the TSOs by a defined deadline for each timeframe. That deadline shall be such that TSOs are able to reassign unused capacity for reallocation in the next relevant timeframe — including intra-day sessions.
- 2.12. Capacity shall be freely tradable on a secondary basis, provided that the TSO is informed sufficiently in advance. Where a TSO refuses any secondary trade (transaction), this must be clearly and transparently communicated and explained to all the market participants by that TSO and notified to the regulatory authority.
- 2.13. The financial consequences of failure to honour obligations associated with the allocation of capacity shall be attributed to those who are responsible for such a failure. Where market participants fail to use the capacity that they have committed to use, or, in the case of explicitly auctioned capacity, fail to trade on a secondary basis or give the capacity back in due time, they shall lose the rights to such capacity and pay a cost-reflective charge. Any cost-reflective charges for the non-use of capacity shall be justified and proportionate. Likewise, if a TSO does not fulfil its obligation, it shall be liable to compensate the market participant for the loss of capacity rights. No consequential losses shall be taken into account for that purpose. The key concepts and methods for the determination of liabilities that accrue upon failure to honour obligations shall be set out in advance in respect of the financial consequences, and shall be subject to review by the relevant national regulatory authority or authorities.