Bundesnetzagentur

Ruling Chamber 9

BK9-18/002

DECISION

In the administrative procedure pursuant to

section 29(1) of the Energy Industry Act (EnWG) in conjunction with section 56(1) first sentence para 2, second sentence EnWG in conjunction with Article 6(11) and Article 7(3) of Regulation (EC) No 715/2009 in conjunction with Article 25(1) and Article 28(1) and (2) of Regulation (EU) 2017/459

with respect to

the approval of a project proposal for an incremental gas transport capacity project concerning entry points from a third country, the Russian Federation, to the GASPOOL market area

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

represented by

the Chair	Helmut Fuß
the Vice Chair	Anne Zeidler and
the Vice Chair	Dr. Ulrike Schimmel

vis-à-vis Fluxys Deutschland GmbH, Elisabethstraße 11, 40217 Düsseldorf, legally represented by its management board,

- applicant 1 -

vis-à-vis Gasunie Deutschland Transportservices GmbH, Pasteurallee 1, 30655 Hannover, legally represented by its management board,

- applicant 2 -

vis-à-vis Gascade Gastransport GmbH, Kölnische Str. 108-112, 34119 Kassel, legally represented by its management board,

- applicant 3 -

vis-à-vis NEL Gastransport GmbH, Kölnische Str. 108-112, 34119 Kassel, legally represented by its management board,

- applicant 4 -

vis-à-vis ONTRAS Gastransport GmbH, Maximillianallee 4, 04129 Leipzig, legally represented by its management board,

- applicant 5 -

decided on 17 April 2019:

1. The project proposal (annex 1 to this decision) for a project for an incremental gas transport capacity project relating to entry points from a third country, the Russian Federation, to the GASPOOL market area (known as Greifswald and Lubmin II), is rejected.
2. The costs are reserved.

Rationale

I.

The process concerns the approval of a project proposal for incremental gas transport capacity within the meaning of Article 3(11) of Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013. The project proposal (annex 1 to this decision) relates to entry points from a third country, the Russian Federation, to the GASPOOL market area.

"Greifswald" and "Lubmin II" are entry points to the German market area GASPOOL into which natural gas from the Russian Federation is transported using the high-pressure pipeline Nord Stream and is planned to be transported using the high-pressure pipeline Nord Stream 2, which is under construction. Entry capacity is marketed independently by Lubmin-Brandov Gastransport GmbH, OPAL Transport GmbH and the five applicants.

(1) Non-binding market demand indication

From 6 April 2017 to 1 June 2017, the Vereinigung der Fernleitungsnetzbetreiber e.V. (association of transmission system operators – "FNB-Gas"), on behalf of the German transmission system operators (TSOs), gave all network users the opportunity, to submit non-binding capacity demand indications for the interconnection points at German market area borders. The aim of this was to analyse whether the capacity needs indicated by network users for a market area border could be covered by the existing transmission system infrastructure or whether additional gas transport capacity would need to be created for this purpose.

A non-binding demand indication of 13,191,273 kWh/h/a (given below as 13.2 GW) was submitted with regard to the relevant entry points "Greifswald" and "Lubmin II". The desired capacity product was given as firm capacity with restricted allocability (BZK) with allocation options to the market area NetConnect Germany (NCG) and to the Netherlands (TTF market area).

Entry capacity	Gas year	Amount (kWh/h)	Capacity product	Allocation option
to GASPOOL market area from the Russian Federation using the Nord Stream and Nord Stream 2 pipelines	2025/2026 - 2039/2040	13,191,273	Firm capacity with restricted allocability (BZK)	NetConnect Germany market area and/or Netherlands (TTF market area)

Table 1: Market demand entry points to GASPOOL from the Russian Federation

The non-binding demand indication included the information that the capacity of 13,191,273 kWh indicated at the entry point of the NEL pipeline system (GASPOOL) was in addition to both the existing NEL capacity and the planned capacity of the "more capacity" project (a process started in 2015 to expand the gas transmission infrastructure in line with requirements).

Cf. https://www.more-capacity.eu/unser-vorhaben/
Link as at 24 January 2019

Together with the above-mentioned demand, additional capacity was also indicated at the following two market area borders. As the allocation options show, the capacity indicated here is intended to enable the further transport of gas feed-in to the entry points with which the project proposal is concerned.

Exit capacity	Entry capacity	Gas year	Amount (kWh/h)	Capacity product	Allocation option
GASPOOL	NetConnect Germany	2019/2020 - 2023/2024	200,000	GASPOOL exit capacity: firm capacity with restricted allocability (BZK)	Greifswald/Lubmin II
		2025/2026 - 2039/2040	7,793,333	NetConnect Germany entry capacity: firm, freely allocable capacity (FZK)	(none)
GASPOOL	TTF	2025/2026 - 2025/2026	2,638,255	GASPOOL exit capacity: firm capacity with restricted allocability (BZK)	Greifswald/Lubmin II
				TTF entry capacity: firm, freely allocable capacity (FZK)	(none)
		2026/2027 - 2029/2030	5,276,509	GASPOOL exit capacity: firm capacity with restricted allocability (BZK)	Greifswald/Lubmin II
				TTF entry capacity: firm, freely allocable capacity (FZK)	(none)
		2030/2031 - 2039/2040	11,872,146	GASPOOL exit capacity: firm capacity with restricted allocability (BZK)	Greifswald/Lubmin II
				TTF entry capacity: firm, freely allocable capacity (FZK)	(none)

Table 2: Further market demand from the 2017-2019 cycle

(2) Market area merger

On 7 July 2017, the German Bundesrat passed an amendment to the Gas Network Access Ordinance (GasNZV). The amended section 21(1) second sentence GasNZV places a requirement on TSOs to merge the two German market areas, GASPOOL and NCG, no later than 1 April 2022, to create a single, Germany-wide market area. The timing of these developments meant that the capacity demand indications were submitted in ignorance of this change, so they still referred to the two market areas, GASPOOL and NCG, for the period after 1 April 2022.

(3) Market demand assessment

The German TSOs, including the applicants, published market demand assessment reports on 27 July 2017.

https://www.fnb-gas-capacity.de/marktnachfrageberichte/

Link as at 9 January 2019

With regard to the border between the GASPOOL and NCG market areas, the relevant TSOs concluded that no project would be initiated due to the upcoming market area merger, regardless of the technical conditions. The corresponding interconnection points will no longer exist as of 1 April 2022 at the latest and no entry/exit contracts can be made based on these points, the TSOs stated.

https://www.fnb-gas-capacity.de/fileadmin/files/2017_07_27_MDAR_GASPOOL-NCG_DE.pdf
Link as at 17 January 2019

The initiation of a project relating to demand for the entry points that are directly relevant here, from the Russian Federation (a third country), was announced. However, the authors did note that the market area merger would impact demand and this should be taken into account in the rest of the process.

https://www.fnb-gas-capacity.de/fileadmin/files/Marktnachfrageberichte_auf_Basis_unverbindlicher_Marktnachfragen/2017_07_27_MDAR_GASPOOL_RU_DE.pdf

Link as at 17 January 2019

For further details, please refer to the relevant reports.

(4) Design phase and consultation

The applicants then entered the design phase and conducted technical studies to test technical feasibility and to design a network expansion plan to meet market demand.

They made the results available in a draft project proposal for consultation with a deadline of 19 December 2017.

https://www.fnb-gas-capacity.de/fileadmin/files/Konsultation/2017-10-19_Konsultation_RF-Gaspool_final_DE.pdf
Link as at 17 January 2019

The applicants confined the technical study to the modelling of entry capacity from the Russian Federation with an allocation option towards the TTF market area. They judged that it was not possible to take account of the demand relating to transport in the direction of the NCG market area. In the light of the merger of the market areas, they maintained that the demand for entry capacity at Greifswald/Lubmin II should be interpreted together with demand for capacity at the border between GASPOOL and NCG and should be interpreted as firm, freely allocable entry capacity to the Germany-wide market area with firm access to the virtual trading point. However, the relevant modelling is not possible without a completed capacity model for the new market area and it is not possible to determine efficient network expansion measures, according to the applicants. Moreover, this kind of modelling is not included in the process pursuant to Regulation

(EU) 2017/459. Only a capacity demand of 11.9 GWh, rather than the original capacity demand indication of 13.2 GW, was modelled.

Entry capacity	Gas year	Amount (kWh/h)	Capacity product	Allocation option
to German market area from the Russian Federation using the Nord Stream and Nord Stream 2 pipelines	2025/2026 - 2039/2040	11,872,146	dynamically allocable capacity (DZK)	Netherlands (TTF market area)

Table 3: Aggregated offer of incremental capacity according to project draft

From the technical perspective, transport via the NEL route was recommended, because the alternative, using EUGAL, would be significantly more expensive. For the NEL route, it would be necessary for the Lubmin II receiving station to be expanded and for a compressor station to be installed near Schwerin, among other things. The costs of these measures were estimated at about €170m.

In its response to the consultation, Gazprom Export LLC (GPE) criticised the project draft.

> https://www.fnb-gas-capacity.de/fileadmin/files/Konsultation/2017-12-19_-_GPE_to_FNB_-_Statement.pdf
> Link as at 17 January 2019

It emphasised that its demand in relation to the market area merger would indeed only be met by firm access to the new German market area. GPE took the view that the draft project proposal fell short of this and did not correspond to its understanding of the incremental capacity process. Moreover, GPE called for its demand indications (cf. tables 1 and 2) to be brought together in one single project with a joint economic test.

(5) Further aspects of discussion

The applicants remained convinced that they could only take account of the demand indications to a limited extent. They subsequently discussed options to meet more of GPE's demand with the Bundesnetzagentur. The applicants believed that all options required a completed capacity model for the new market area, but that it would not be possible for the German TSOs to draw one up by the conclusion of the current process. Moreover, the applicants were opposed to merging the demand indications (tables 1 and 2) in one project.

The Bundesnetzagentur first suggested that the applicants initiate dialogue with GPE directly. In July 2018, the authority ultimately contacted GPE itself to provide information about the status of the project and mentioned the delays and changes to it. GPE then requested that its demand indication be adjusted to 5.4 GW entry capacity with allocation option in the direction of the TTF market area and a further 7.8 GW entry capacity with free allocability in the future German market area.

Entry capacity	Gas year	Amount (kWh/h)	Capacity product	Allocation option
to German market area from the Russian Federation using the Nord Stream and Nord Stream 2 pipelines	2025/2026 - 2039/2040	7,800,000	firm, freely allocable capacity (FZK)	(none)
		5,400,000	firm capacity with restricted allocability (BZK)	Netherlands (TTF market area)

Table 4: Option of adjusting GPE's demand indication in light of the market area merger

In August 2018, the applicants remained of the opinion that they could not make the requested adjustment in light of the lack of a capacity model. Moreover, they believed that a demand indication could not be significantly adjusted once the demand assessment had been carried out.

(6) Final project application

In a letter dated 20 December 2018, received by the Ruling Chamber on the same day, the applicants presented their project proposal with requests for approval. The submitted project proposal is different in some respects to the draft that was the subject of consultation in December 2017. The estimated costs have been reduced to about €151m because the pipeline link between the entry point Lubmin II in the EUGAL pipeline network and the NEL pipeline network, which was included in the draft, will be implemented separately to the project. The consultation document dated 19 October 2017 on the technical study submitted had contained some expansion measures that were intended to cover the requirements for the network development plan (NDP) 2018-2028 in the 2018 scenario framework. Because the technical study overlapped with the draft of the NDP 2018-28, which was presented by the TSOs on 1 April 2018, it had not been possible for the applicants to separate the expansion measures directly relevant to the incremental capacity process, so the measures detailed in the consultation document on the technical study had been estimated as requiring investments of about €170m.

Moreover, the applicants have tried to meet the request to bring all demand indications together in one project by combining the project under discussion here and the project relating to the border between the GASPOOL and TTF market areas in the economic test.

In the project proposal (page 6 of the proposal, annex 1 to this decision), the applicants highlighted that it was not possible to reflect the capacity for which demand had originally been indicated, but that at least the reduced demand should be offered in the 2019 annual auction. They also pointed out that there is still no coordinated plan for how the part of the demand not included could be met in the event that the project proposal were to be implemented.

The submitted project proposal includes in particular:

1. a list of the capacity products to be offered, broken down by entry point and TSO:

Existing capacity	Incremental capacity
Greifswald entry points	
NEL Gastransport GmbH DZK (inc with allocation to Bunde)	DZK (with allocation to Oude zone)
Gasunie Deutschland Transportservices GmbH FZK	DZK (with allocation to Oude zone)
Fluxys Deutschland GmbH DZK (inc with allocation to Bunde)	DZK (with allocation to Oude zone)
Lubmin II entry points	
GASCADE Gastransport GmbH DZK1 (inc with allocation to Bunde) DZK 2 (inc with allocation to Bunde or Oude)	DZK (with allocation to Oude zone)
Gasunie Deutschland Transportservices GmbH DZK1 (inc with allocation to Bunde) DZK 2 (inc with allocation to Bunde or Oude)	DZK (with allocation to Oude zone)
Fluxys Deutschland GmbH DZK1 (inc with allocation to Bunde) DZK 2 (inc with allocation to Bunde or Oude)	DZK (with allocation to Oude zone)
ONTRAS Gastransport GmbH DZK1 (inc with allocation to Bunde) DZK 2 (inc with allocation to Bunde or Oude)	DZK (with allocation to Oude zone)

Table 5: Overview of capacity to be offered according to the project proposal

2. a representation of the offer level, broken down by year and product (p26 of the annex to this decision);

3. information and parameters for the economic test, including an offer level with modified economic test (p27 et seq of the annex to this decision).

Annex 1 to this decision discusses the details of the project proposal, in particular the modification of the economic test.

(7) The Bundesnetzagentur informed the regulatory authority of the federal states of North Rhine-Westphalia, Lower Saxony, Hesse and Saxony, and the Bundeskartellamt, of the procedure on 11 March 2019. They were given an opportunity to respond.

The Ruling Chamber also gave the applicants the opportunity to submit comments in a letter dated 19 March 2019. The applicants made comments in a letter dated 1 April 2019 and responded to the criticisms made by the Bundesnetzagentur. However, they remained of the opinion that the implementation of their project proposal would represent a good solution in view of the obstacles posed by the amendment of the Gas Network Access Ordinance (GasNZV).

For further details, reference is made to annex 1 to this decision and the file.

II.

The application for approval of the project proposal had to be rejected. The substantive requirements for approval have not been met.

1. Legal basis

The decision is based on section 29(1) EnWG in conjunction with section 56(1) first sentence para 2, second sentence EnWG in conjunction with Article 6(11) and Article 7(3) of Regulation (EC) No 715/2009 in conjunction with Article 2(1) first sentence, Article 25(1), and Article 28(1) and (2) of Regulation (EU) 2017/459.

Pursuant to Article 28(1) and (2) of Regulation (EU) 2017/459, national regulatory authorities are responsible for deciding on the approval of project proposals for incremental capacity. The application of this provision to entry points from the Russian Federation, which is a third country, is based on the decision made by the Bundesnetzagentur Ruling Chamber 7 dated 14 August 2015 (BK7-15-001, "KARLA Gas 1.1").

Pursuant to section 56 EnWG, the Bundesnetzagentur is active in the enforcement of the above-mentioned European Regulations and has the authority it has been given from the application of the Energy Industry Act and applies the provisions of the procedure accordingly.

2. Formal requirements for approval and procedure

The decision is formally lawful. It is based on an application submitted in due form; all required information pursuant to Article 28(1) of Regulation (EU) 2017/459 was included in the project proposal submitted.

2.1. Competence

The Bundesnetzagentur is the competent regulatory authority to decide on the approval pursuant to Article 28(2) of Regulation (EU) 2017/459 and section 56(1) first sentence para 2 EnWG. The Ruling Chamber's competence is set out in section 59(1) first sentence EnWG.

2.2. Hearing

Pursuant to section 56(1) third sentence in conjunction with section 67(1) EnWG, the applicants were given an opportunity to comment from 19 March 2019 until 1 April 2019 before the decision was rendered.

In light of the extensive discussion that had taken place before the procedure, the Ruling Chamber decided not to conduct a further consultation of third parties pursuant to section 56(1) third sentence in conjunction with section 67(2) EnWG.

2.3. Involvement of other authorities

The Bundesnetzagentur involved other authorities to the extent laid down in law.
Pursuant to section 56(1) third sentence in conjunction with sections 55(1) and 58(1) second sentence EnWG, the regulatory authorities of the federal states of North Rhine-Westphalia, Lower Saxony, Hesse and Saxony – where the applicants have their headquarters – were informed of the start and completion of the procedure. They and the Bundeskartellamt were given an opportunity to comment.

3. Substantive requirements for approval

The application had to be rejected because the substantive requirements for approval were not met. The offer levels submitted could not be approved (see **3.1**). Moreover, there were obstacles to the project that the regulatory authority had to take account of in its decision (see **3.2**).

Pursuant to Article 28(2) of Regulation (EU) 2017/459, national regulatory authorities are responsible for deciding on the approval of project proposals. The information that must be included in the project proposal according to Article 28(1) of Regulation (EU) 2017/459 must be taken into account, including in particular the offer levels. In addition, the national regulatory authority must take account of the effects of the project, see Article 28(2) subpara 2 of Regulation (EU) 2017/459.

3.1. Inadequate reflection of expected demand

The offer levels submitted could not be approved. Pursuant to Article 28(1)(a) of Regulation (EU) 2017/459, the offer levels have to reflect the range of expected demand for incremental capacity as a result of the processes provided for in paragraph 3 of Article 27 and Article 26 of Regulation (EU) 2017/459. The offer levels for the entry points Greifswald and Lubmin II do not sufficiently meet this requirement. Implementing these offer levels would impact the part of demand that has so far not been taken into account.

(1) "Offer level" means the sum of the available existing capacity and the level of incremental capacity offered for a particular project at an entry or interconnection point (Article 3 para 5 of Regulation (EU) 2017/459). This capacity offer is made to shippers as an alternative to offering only the available existing capacity (Article 29(1) and (2) of Regulation (EU) 2017/459); auctions are held for all alternatives at the same time. In order to be able to provide transport services to the extent of an offer level, the transmission system would first need to be expanded by means of an expansion measure specified in the project proposal. The offer of the offer level is therefore made to shippers before the necessary expansion has been started. Pursuant to Article 22(3) of Regulation (EU) 2017/459, an offer level, and therefore the expansion measure, is only implemented if the auction results for the offer level lead to a positive outcome of the

economic test, ie economic viability has been proven. Only then will capacity be allocated in accordance with the auctions of the offer level (Article 8(2) second and fourth sentences, Article 17(20) in conjunction with Article 22(3) of Regulation (EU) 2017/459). Otherwise, only the available existing capacity will be allocated in accordance with the auction results, while the auctions of the offer level(s) will have no further relevance and there will be no network expansion.

(2) The Ruling Chamber is of the opinion that the relevant demand that is to be reflected here is not identical to that given in the market demand indication of 2017, but must be identified through interpretation in light of the merger of the market areas.

This applies despite the deadlines laid down in Article 26(6) and (7) of Regulation (EU) 2017/459, which restrict the ability to make subsequent changes to the market demand indication. The TSOs' requirement to merge the two German market areas had a negative effect on the "2017-2019 cycle" for incremental capacity processes. This occurred after the conclusion of the non-binding market demand indication in accordance with Article 26 of Regulation (EU) 2017/459. Therefore, some demand indications lost their reference point (the border between GASPOOL and NCG), apart from that, they referred to the current market area borders, which will in future form the borders of the merged market area. In other words, the entry points from the Russian Federation into the GASPOOL market area will in future be entry points into the merged market area.

Despite these changes, GPE's transport request can still be specifically quantified by interpretation, as shown in the diagrams below. They are only based on the firm network access provided, not interruptible elements of capacity products. The capacity amounts are the maximum values in addition to the existing capacity for any gas year from 2025-2026 to 2039-2040.

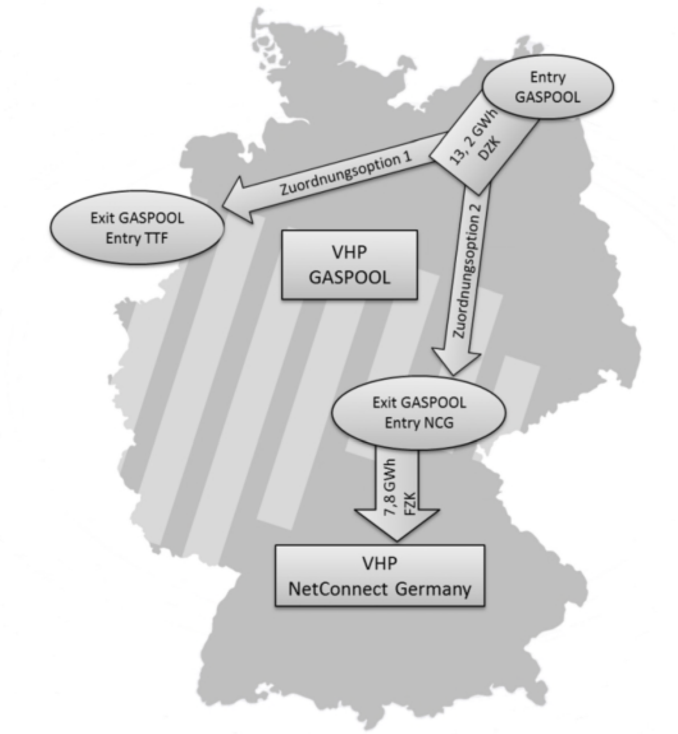

Figure 1: Original demand indications based on the German market areas

Figure 1 shows GPE's original demand of 13.2 GW (see **table 1**) into the GASPOOL market area with allocation options into both the NCG market area and the Dutch market. However, in the project planning the offer levels submitted use up the part of the demand referring to exit points into the TTF market area (see **table 2** and **figure 2** below).

Figure 2: Firm network access in accordance with offer levels in the project proposal

The applicants (draft project dated 19 October 2017, p5) and GPE (response dated 19 December 2017) are in agreement about how the original demand indications are to be interpreted, taking account of the merger of the market areas. The demand for 7,793,333 kWh/h/a of firm, freely allocable entry capacity to the NCG market area together with the demand indications relating to the GASPOOL market area should now be understood as firm, freely allocable entry capacity to the future German market area (**figure 3** below). This FZK entry capacity could also be used flexibly for exit to the TTF market area.

Figure 3: Interpretation of GPE's demand indication taking account of the merger of the market areas

The Ruling Chamber is therefore inclined to view the transport request shown in **figure 3** as expected demand within the meaning of Article 28(1)(a) of Regulation (EU) 2017/459.

(3) A significant amount of this demand is not reflected in the offer level. This also applies when taking account of the interruptible access to the virtual trading point, which would allow the dynamically allocable entry capacity (DZK) provided for here, as opposed to the capacity with restricted allocability (BZK) that had been requested. During the consultation of the design phase, GPE stressed that only firm access would meet its transport request. In addition, given the lack of historical data for the new market area, it is not currently possible to draw conclusions about the likelihood of interruptions in the event that dynamically allocable entry capacity is used outside the allocation options.

(4) Taking this expected market demand into account, the Ruling Chamber does not see a possibility of approving the submitted offer levels. It sees Article 28(1)(a) and (2) of Regulation

(EU) 2017/459 as placing a duty of assessment on the regulatory authority. Thus, in the decision about the approval of offer levels – especially if they largely do not cover the expected market demand – the effects on network access need to be taken into consideration.
An argument against approval here is that it could be more difficult or impossible to implement the part of the demand not covered at a later date. The implementation could therefore impact the part of demand not so far taken into account.
The applicants' efforts to meet the relevant expected demand to the best of their abilities is not in dispute. The applicants have argued convincingly that it is not possible to plan for the total demand in time because of the necessary network calculations.
Specifically, there is uncertainty regarding a qualitative assessment of capacity that has already been allocated. In the event that the submitted project proposal were to be implemented, the technical transport limits of the Nord Stream and Nord Stream 2 pipelines would nearly be reached. Then already contracted conditionally firm entry capacity would have to be replaced to be able to subsequently satisfy demand for 7.8 GWh7h/a of firm, freely allocable entry capacity. This would, therefore, not be a "quality upgrade" pursuant to section 13(2) GasNZV, for which contracted capacity products with an interruptible element are converted into already existing and available capacity products with a smaller interruptible element.

At the time of issuing the decision, the Ruling Chamber does not have access to any specific implementation drafts for such a capacity allocation process. However, it would have to be ensured that the offer and the allocation of this firm, freely allocable entry capacity were compatible with the binding capacity allocation method laid down in Regulation (EU) 2017/459 and were conducted in a non-discriminatory manner. In the course of discussions on the project proposal, the applicants were not yet able to present concepts for such a process or a coordinated process. Rather, the Ruling Chamber understands that the project proposal (p6) points to the as yet unsolved problem: it states that the outcome of the project could affect future cycles of incremental capacity.

The Ruling Chamber takes the view that, despite the information provided in the project proposal (p6), ultimately it cannot be ruled out that network users would book the capacity projected here in the expectation that it would not have an impact on the subsequent consideration of the total demand. Page 3 of the European Network of Transmission System Operators for Gas (ENTSOG)'s form for non-binding demand indications mentions the option of requesting the removal of existing restrictions. Network users could understand this to mean that a "quality upgrade" is possible.

https://www.entsog.eu/sites/default/files/entsog-migration/publications/ CAM%20Network%20Code/2017/CAP0693-16_DI%20Template%20 for%20Incremental%20capacity.pdf Link as at 11 February 2019

3.2. Consideration requirements

Further, the Ruling Chamber took the view that it could not issue an approval because of consideration requirements. The project proposal does not ensure an efficient expansion of the network and could lead to detrimental effects on the internal gas market in contrast to taking account of the entire demand.

(1) Pursuant to Article 28(2) subpara 2 of Regulation (EU) 2017/459, the regulatory authority must in any case take into account "any detrimental effects on competition or the effective functioning of the internal gas market". The Ruling Chamber has given due consideration to the leeway for decision-making afforded to it in this regard. However, the Ruling Chamber takes the view that the above-mentioned concerns are not exhaustive. Rather, in accordance with Article 40(d) of Directive 2009/73/EC and section 1(1) EnWG, the cost-effective and efficient operation and expansion of the network, as overarching goals and purposes of regulation, must be borne in mind.

This applies not least because of the scope in which dynamically allocable entry capacity is to be offered. Pursuant to section 20(1b) tenth sentence EnWG, the rights to booked capacity must generally be organised in such a way that they entitle the shipper to provide gas at each entry point for offtake at each exit point in its network (network access in the entry-exit system regardless of transport path; free allocability). Notwithstanding the offer of capacity products with conditional firmness on the basis of the existing gas infrastructure, an offer of incremental capacity with allocation options comes into question, in the view of the Ruling Chamber, provided that the limits of technical feasibility (see Article 27(2) of Regulation (EU) 2017/459) or economic reasonableness (section 20(1b) fifth sentence EnWG) have been reached or a restriction on the firm access regardless of transport path has to be reconciled with the goals and purposes of regulation.

(2) On this basis, the Ruling Chamber takes the view that the arguments against approval prevail.

(a) The project proposal does not ensure an efficient expansion of the network.

The Ruling Chamber believes that the submitted project proposal is a project that needs to be expanded. GPE has explicitly stated the importance to it of firm access to the virtual trading point. The Ruling Chamber does not see that booking dynamically allocable entry capacity would be a departure from the previous transport request, particularly as the market is not being offered any other booking options.

There are currently no indications of a lack of technical feasibility with regard to the part of demand not taken into account. Therefore, the projected plan cannot be assumed to be conclusive in this respect either. The applicants have not so far been able to make an assessment due to the lack of a capacity model for a single German market area and have not carried out any conclusive studies. The considerations so far (project proposal p6) do not lead to such a conclusion either. Ultimately, applicant 1 has already offered firm, freely allocable capacity at one of the relevant entry points (see **table 5**) for a period after the merger of the market areas.

https://platform.prisma-capacity.eu/#/reporting/auction/details/20546654?reverse=false https://platform.prisma-capacity.eu/#/reporting/auction/details/20546727?reverse=false Link as at 20 February 2019

Implementing the project would run the risk that some of the projected measures would subsequently turn out not to be necessary. In other words, offering firm, freely allocable entry capacity into the single German market area could require not just additional expansion measures, but expansion measures different to the ones planned here. This could result in inefficiencies, as the applicants also acknowledge, in the Ruling Chamber's view: on page 6 of their project proposal, they explain that – if flexibility between TTF and the single German market area is the long-term goal of the shipper – the proposed project could affect future incremental capacity cycles. Modelling total demand would only be possible in the 2019-2021 cycle, according to the applicants, and could lead to "other solutions" presenting themselves.

Of course, it can never be ruled out that planned expansion might turn out to be inefficient with hindsight, but in this case, a possible inefficiency would be inherent even before the investment decision and with knowledge of the full transport request.

This situation is also not fully taken into consideration in the economic test. The economic test pursuant to Article 22 of Regulation (EU) 2017/459 merely ensures the economic viability of a project (see also recital 1) by putting the revenue gained with the incremental capacity in relation to the increase of the allowed (target) revenue of the TSOs.

This has the primary result of ensuring that the shipper has to bear these additional costs, but it also cannot be ruled out that an inefficient network expansion would ultimately have an overall negative effect on the aim of providing a reasonably priced supply for final consumers.

(b) It is ultimately not possible to rule out detrimental effects on the internal gas market if the project proposal were to be implemented.

If shippers were to refrain from implementing their original transport request for the above-mentioned reasons, there would be negative consequences for the liquidity of the gas market in the German market area. While firm, freely allocable entry capacity can increase liquidity in the German market area and adjacent market areas, this only applies to a lesser extent for dynamically allocable entry capacity.

(c) The Ruling Chamber does not believe that these negative consequences are adequately offset. The only benefit of approval would be that transport capacity with allocation option in the direction of the TTF market area might be available an earlier stage, but given the timeframe that the non-binding market demand indication relates to (20 years), this seems a very slight benefit.

4. Side agreements (operative provision 2)

A separate notice will be issued regarding costs as provided for by section 91 EnWG.

Notification of appellate remedies

An appeal may be filed against this decision within one month of service of the decision. Appeals should be filed with the Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen (address: Tulpenfeld 4, 53113 Bonn). It is sufficient if the complaint 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 of filing the appeal. The period begins with the lodging of the appeal and 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 has no suspensory effect (section 76(1) EnWG).

Bonn, 17 April 2019

Chair	Vice Chair	Vice Chair
Helmut Fuß	Anne Zeidler	Dr. Ulrike Schimmel