



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 2022 ("MARGIT 2022")

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 27 May 2021:

1. The following determinations in this decision are effective from 1 January 2022 to 31 December 2022.
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 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 is not applicable.
4. 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 BK9-19/612 ("REGENT 2021") by the difference between 100% and the level of an ex-ante percentage discount applicable at every interconnection point for the respective standard capacity product in accordance with Annex I.
5. The right to order payment of costs is reserved.

Rationale

I.

- 1 The ruling chamber opened own-initiative proceedings for the determination of the level of multipliers, the level of any discount at entry points from LNG facilities, and at entry points from and exit points to infrastructure developed with the purpose of ending the isolation of Member States in respect of their gas transmission systems, and the level of discounts for interruptible standard capacity products at all interconnection points.
- 2 Notification of the opening of proceedings was given in the Official Gazette 20/2020 of 28 October 2020 and simultaneously on the Bundesnetzagentur's website.
- 3 The draft decision in German and in English was published on the Bundesnetzagentur website on 20 January 2021 for consultation. The publication was accompanied by a brief statement that the consultation pursuant to Article 28(1) of Regulation (EU) 2017/460 would run until 26 February 2021. Legally binding, however, is solely the German version.
- 4 This publication and the consultation, 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. On 20 January 2021, the consultation documents were submitted to the Agency within the meaning of Article 1(1) of Regulation (EC) No 713/2009 (hereinafter "ACER"). The national regulatory authorities of the neighbouring Member States were informed of the start of the consultation in a letter dated 20 January 2021.
- 6 On 20 October 2020, 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 20 January 2021 it 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 20 January 2021 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 18 February 2021.
- 8 18 responses to the draft determination were received. They were published on the Bundesnetzagentur website in a version from which any business and trade secrets had been removed. The responses may be summarised as follows:

a. General

- 9 One market participant was of the opinion that MARGIT 2022 was subject to a court confirming the REGENT determinations and expressed doubt that the Bundesnetzagentur could make an appropriate decision on multipliers on this basis. As multipliers are based on the reference price of yearly capacity, the multipliers set out in MARGIT 2022 are closely linked to the reference price model in the REGENT determination, the respondent stated.

b. Multipliers

- 10 The majority of traders called for the within-day multiplier to be reduced to 1.5, arguing that the current level of 2.0 would inhibit trading.
- 11 Multipliers that were too high would make sources of flexibility such as gas power plants unnecessarily expensive, they maintained. This would not be compatible with, or would conflict with, the energy transition and the trend towards the increasingly short-term optimisation of the energy markets. It would disproportionately affect smaller and new market participants, as they do not make long-term bookings. Multipliers that were too high would ultimately lead to less cross-border trade, fewer bookings of short-term products and reduced income for transmission system operators (TSOs). This effect was also the result of a project that has been running since January 2020 to monitor the implicit trade of within-day and daily capacity on the Germany-Austria border. The inhibiting effect on liquidity caused by higher multipliers had already been discussed in EFET's statement of 11 December 2020 to ACER in the proceedings in accordance with Article 13(3) of Regulation (EU) 2017/460. The response thus opposed both the statement of the ruling chamber that multipliers did not affect cross-border gas flow and the statement that multipliers promoted short-term trading.
- 12 Vacancy costs would not be avoided in this way either, according to the response and contrary to the Bundesnetzagentur's opinion. While it was true that the trend towards daily bookings had led to lower revenues for TSOs in the past, this was not true for within-day capacity. It did not make economic sense to move from daily bookings to within-day bookings, because if the market conditions made booking the last hour of the current gas day attractive, this applied to all the other hours of the current gas day. Within-day bookings arose from, for example, within-day changes in demand from interval-metered customers or the market area manager. The resulting bookings led to additional revenue and reduced vacancy costs, according to the response.
- 13 The report produced in accordance with section 11(3) of the Gas Network Access Ordinance (GasNZV) and dated 14 November 2019 confirmed that the introduction of within-day booking options had no effect on the portfolio and balancing energy system and/or the level of specific transmission tariffs, it was stated. An up-to-date evaluation and analysis would be welcome.

- 14 Moreover, Article 13 of Regulation (EU) 2017/460 set out that the multiplier for within-day capacity was to be restricted to no more than 1.5 by 1 April 2023, provided that aspects comparable to the report under section 11(3) GasNZV did not impede this.
- 15 Also, competition in Europe should occur on the commodity side and not on the infrastructure side. Belgium and the Netherlands did not distinguish between daily capacity and within-day capacity. The German market was therefore at a disadvantage in the short-term range.
- 16 One trader called into question the appropriateness of the within-day multiplier of 2.0 and criticised the fact that no valid analysis of this had so far been carried out. The participant also criticised the assumption of the ruling chamber that TSOs had an ongoing interest in setting the within-day multiplier at 3.0. No such demand had been made in the MARGIT 2021 consultation and it should therefore no longer be used as a justification.
- 17 One market participant stated that all the non-yearly multipliers were too high because non-yearly capacity products were not the cause of vacancies but a means to avoid them. Non-yearly capacity increased network utilisation to an extent that would not otherwise occur. Vacancies were caused not by demand peaks but rather by incorrect sizing or lower demand. It was not compatible with the principle of cost-reflectivity that these costs should be paid disproportionately via non-yearly capacity.
- 18 The traders' association also called for the multiplier to be passed on in cases of secondary marketing in the form of capacity transfers, ie the multiplier would remain at the level of the original contractual agreement (primary marketing). 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 new method meant that no vacancy costs would be incurred when capacity was transferred. Rather, the application of multipliers corresponding to the relevant duration would generate inappropriate additional revenue for the network operators. In this context, another market participant asked for clarification that the level of multipliers for secondary products would be based on the multiplier for the main product, ie the multiplier from the original contractual agreement (primary marketing) would be used for the secondary product as well. The application of multipliers corresponding to the duration relevant to the secondary marketing was not appropriate in such cases as, from the perspective of the TSOs, the capacity product originally sold (on the primary market) was still being used. Secondary trading would not affect this. The TSO did not provide any additional service in the event of secondary marketing, either. There was therefore no possibility of cross-subsidisation between network users, or, if there were cross-subsidisation effects, they would not reach a significant, impermissible level.

c. Seasonal factors

19 One market participant welcomed the fact that seasonal factors were not to be applied.

d. Discount at entry points from LNG facilities

20 Two market participants welcomed the lack of a discount at entry points from LNG terminals. A discount would unilaterally favour feed-in from LNG facilities and disadvantage other international transmission feeds, they argued. A discount would considerably distort the international trade in gas and would only be appropriate if other transmission feeds also had a discount. Another market participant pointed out that the last amendment to the GasNZV was supposed to make comparable conditions for LNG facilities and cross-border interconnection points. As LNG facilities had already been granted significant privileges in terms of connection costs, capacity reservations and bookings, more privileges over other sources of supply would lead to considerable market distortions. Competition should take place via the commodity price and not via a privileged network access.

21 The majority of respondents on this issue welcomed the planned market dialogue and suggested starting it as soon as possible to ensure the stability and predictability of the regulatory framework. A foreseeable regulatory framework, perhaps even just as an indication, could influence investment decisions being made now. Market players had to decide on the willingness to pay for LNG, bookings in the LNG facility, network connection requests, capacity bookings and gas supply contracts years before an LNG facility was completed. For similar reasons, one market participant was in favour of arranging discounts as soon as May 2021.

22 One market participant was in favour of discounting for the following reason: as Ruling Chamber 7 had already detailed extensively the advantages of the Brunsbüttel LNG facility because of its strategic significance in diversifying gas sources and transport routes in the decision on the exemption from regulation (BK7-18-063), it followed that this contribution to the security of supply should be acknowledged with a discount for entry capacity from LNG facilities.

23 Moreover, according to the same market participant, discounting would create equal competitive conditions for German and competing LNG facilities, as the latter benefited from much lower network tariffs and in some cases discounts of as much as 100%.

24 Another market participant recommended applying multipliers for entry points from LNG facilities, too.

e. Discounts for interruptible capacity

25 All those responding on the issue of the three Swiss cross-border interconnection points that were previously considered separately and are to be brought together in a single cross-border interconnection point, "Swiss Balancing Zone", requested that the points not be considered

together on the grounds that there would not be a joint balancing zone until 2025 at the earliest. While these interconnection points were connected with each other via the network, they had different balancing zones, it was noted. "RC Basel" only led to the "Mittelland" balancing zone and "RC Thayngen-Fallentor" only led to the "Ostschweiz" balancing zone. There were considerable, pressure-related usage restrictions at these two interconnection points. "RC Thayngen-Fallentor" only served the regional network connected there. "RC Basel" led to the local supply network of Basel and could only be used in the "Mittelland" balancing zone indirectly and to a very limited extent; there was no physical transport network connection. Only "Wallbach" connected with all four Swiss balancing zones.

- 26 One market participant criticised the fundamental procedure for determining the interruption discount. This participant contradicted the ruling chamber's rationale for bundling the entry and exit points at the comparable system (by gas quality), according to which the relevant points were interchangeable and a harmonisation was laid down in Article 21 of Regulation (EU) 2017/460. Entry and exit points were not always substitutable, particularly for interruptible capacity, the participant argued. The merger of the market area should provide a reason to examine whether the process was appropriate. The bundling created a uniformity that did not exist in the gas sector and led to a price being demanded at certain points that did not reflect the actual probability of interruption. Moreover, it was not appropriate to calculate the interruption discount by looking at the actual interruptions of the last three gas years because past values were not reliable and did not allow an objective determination of future interruption discounts. Moreover, the three gas years before MARGIT 2022 were characterised by events that could not be used as the basis for future interruption forecasts (including pandemic-related changes to gas flows in 2020 and changes caused by the market area merger on 1 October 2021). In addition, the calculation of interruption probabilities should factor in nominations of TSOs and shippers to benefit the network, which to a large extent prevented interruptions.
- 27 One trader would welcome the level of discount being the same regardless of the product duration.
- 28 The TSO association FNB Gas, writing on all behalf of all its members except one, judged the maintenance of the contingency mark-up at 20% ahead of the market area merger to be appropriate, reasonable and comprehensible. For the creation of a level playing field in the L-gas sector and to minimise the risk of increased demand for conversion services, a contingency mark-up of 20% should be applied to L-gas as well. Both these assessments were shared by other market participants.
- 29 One trader welcomed the fact that the contingency mark-up would be unchanged at 20% but suggested an evaluation as soon as the first data from the merged market area were available.
- 30 One market participant put forward that the doubled contingency mark-up of 20% would benefit not just interruptible capacity but also dynamically allocable capacity (DZK) and conditionally firm capacity (bFZK) at cross-border interconnection points. Among the DZK products, in particular,

only cross-border transports bypassing the German gas market would benefit, leading to the wrong kind of incentives. Entry tariffs to the hub would also get more expensive as the increased contingency mark-up would have to be compensated for by the other tariffs, weakening the trading point and leading to competitive and liquidity-related disadvantages for the German gas market. This market participant called for a critical review of the 20% contingency mark-up with regards to the effect on the competitiveness of the German hub. One TSO pointed out and was extremely critical of the fact that the increased contingency mark-up would further increase the cost burden of captive FZK customers (distribution system operators and final consumers) in its network area. It would be more appropriate to have a lower discount for DZK and bFZK products because they are higher quality than interruptible products. Moreover, the favouring of the DZK transports would lead to unequal treatment of the DZK products used at the connection points for gas-fired power plants.

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

II.

- 32 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.
- 33 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.
- 34 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 (BK9-15/001 – "KARLA Gas 1.1"), the Bundesnetzagentur's Ruling Chamber 7 ruled that the provisions of the Network Code on Capacity Allocation Mechanisms (NC CAM) also applied to entry points from third countries and exit points to third countries within the meaning of Article 2(1) sentence 2 NC CAM from 1 November 2015. The consultation and decision pursuant to Article 28 of Regulation (EU) 2017/460 therefore also refer to these points.

1. Period of application

- 35 The requirements are to be implemented pursuant to operative part 1 as from 1 January 2022 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 2022.

2. General

36 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

37 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.

38 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.

39 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.

- 40 In the event of a (contractual) change to already booked capacities or a withdrawal of capacity, the previously calculated multiplier remains unchanged, even if the original standard capacity product would fall into another category after the change or withdrawal, for example, if a previously yearly capacity product would become a quarterly or monthly capacity product. No recalculation takes place; the multiplier is applied according to which product was booked when the contract was concluded. This provision applies to all scenarios in which the original standard capacity product changes, in particular due to the return of capacity, the repeated trading on the primary market (by TSOs) of part of the capacity rights, the conversion and the (partial) termination of capacity. By contrast, for the capacity product that is re-offered or re-booked after the return, termination or withdrawal, the "new product", a multiplier corresponding to the duration of the new product must be applied. In this case, too, the multiplier is applied according to which product was booked when the contract was concluded. The arrangements for changes or the withdrawal of capacity also apply to new products.
- 41 For clarity, it is pointed out here that (true) secondary marketing, ie the leasing or transfer of usage by shippers to third parties, is not covered by the provisions of the paragraph above. Instead, it is covered by the provisions of KOV XII (esp Annex 1 section 19). However, if the capacity is returned to the TSO rather than being traded on the secondary market, the explanations under margin number 40 apply.
- 42 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:
- 43 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 (ref 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 2021; a multiplier of 2 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 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.

- 44 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 (BK9-19/612), 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.
- 45 The determined multipliers improve the cost-reflectivity of reserve prices by reducing cross-subsidisation between user groups caused by duration. Cost-reflectivity in tariffication means in this context that the level of tariffs for using a certain capacity must reflect the costs caused by using and providing this capacity. This in turn means that the level of network tariffs to be paid by a certain user group for capacity bookings should, as far as possible, reflect the costs caused by this user group through a specific contribution based on the corresponding costs. Put simply, the principle of causation means that whoever has caused certain costs should themselves, as far as possible, also pay these costs in the form of the network tariffs levied on them. These costs should not be subsidised by other user groups. A network user booking non-yearly capacity of different durations causes vacancy costs. The option of non-yearly booking allows network users to make structured bookings, ie they can book different amounts of capacity for different periods, whether within-day, daily, monthly or quarterly. If a network user books "x" amount of firm capacity in a particular hour or on a particular day, month or quarter of a year, the network operator will generally keep at least this amount of capacity available (for the whole year). This applies even if the network user only books smaller amounts of capacity than "x" on the other days of the year. Moreover, it is not just one network user that books "x" amount of capacity for a quarter, a month, a single day or within-day in the course of the year, but many other network users book a certain amount of non-yearly capacity during the year as well. The network operator therefore keeps capacity available for all non-yearly capacity bookings from all network users making such bookings. The network operator incurs vacancy costs from keeping available capacity for network users with non-yearly bookings. These costs should, in accordance with the principle of cost-reflectivity, also be borne by the network users responsible for the capacity being kept available.
- 46 The determined multipliers will ensure that the vacancy costs in the gas network will be distributed in a largely cost-reflective manner. Network users whose non-yearly capacity bookings cause the network operator to keep certain capacity available also contribute to covering the costs incurred through the increased network tariff calculated using the multiplier. However, in the view of the ruling chamber, the sum of the tariffs for non-yearly capacities should be prevented from corresponding to the tariff for the yearly capacity. This would lead to the vacancy costs of the network being borne by all network users and in particular by the group of users that does not cause such costs on account of long-term capacity bookings.
- 47 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.

- 48 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.
- 49 The majority of traders, however, wanted the within-day multiplier to be reduced to 1.5. Their explanation that a high multiplier (holding all else constant) would lead to less cross-border trade and the transactions not made would therefore not help to reduce vacancy costs is generally understandable to the ruling chamber. However, this interdependence applies to any level of multiplier as, at a given commodity price, a transaction gets more attractive the lower a multiplier is. It would be just as applicable if the multiplier were, say, 3.0. Therefore, the traders' reasoning for reducing the within-day multiplier to 1.5 is insufficient and does not justify the conclusion that a value of 2.0 should be regarded as inappropriate. Nor can it be ruled out that a lower within-day multiplier would lead to a higher commodity price in the source market and these kinds of market adjustments would negate the reduction of the multiplier.
- 50 The main price effect of reducing a multiplier cannot be ignored either, 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.

51 The traders stated that Article 13 of Regulation (EU) 2017/460 sets out that the multiplier for within-day capacity is to be restricted to no more than 1.5 by 1 April 2023, but it must be noted that this restriction, firstly, only applies from 1 April 2023 and, secondly, only if ACER recommends the reduction. As of 1 April 2021, ACER had not issued any such recommendation in accordance with Article 13(3) of Regulation (EU) 2017/460.

52 In sum, the arguments put forward by the traders for the multiplier to be reduced to 1.5 are not sufficient to justify a change from the current 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) GasNEV, determination BK9-18/608 ("BEATE 2.0") introduced identical multipliers for corresponding non-yearly capacity products at points other than interconnection points. Regulation (EU) 2017/460 focuses on the avoidance of possibly differing (and therefore potentially discriminatory) treatment of cross-system and intra-system network use in several provisions, for example in Article 5 on the cost allocation assessments, in Article 7(c) and (e) on the assessment of the reference price methodology and in Article 28(3)(a)(v) on the assessment of multipliers. However, no such differing requirement is made with respect to multipliers, so that the approach taken does not indicate any unacceptable effects on cross-border gas flows. For reasons of cost-reflectivity and non-discrimination, the ruling chamber does not judge it to be appropriate to apply lower multipliers for cross-border gas flows.

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

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. Level of discounts according to Article 9(2) of Regulation (EU) 2017/460

- 57 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, 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 The ruling chamber has used its discretion to decide that such a discount will not be determined at this time. The responses to the consultation show that there are reasons for and against the introduction of an entry discount. There are currently no LNG facilities or infrastructure developed with the purpose of ending the isolation of Member States in respect of their gas transmission

systems in Germany, so there is no experience in them among relevant stakeholders. The ruling chamber is not aware of any such facility or infrastructure likely to be put into operation in 2022, the year for which this Determination is issued. In the awareness that the consultation pursuant to Article 28(1) of Regulation (EU) 2017/460 will take place each year, the ruling chamber has refrained from determining any discount. Nevertheless, the ruling chamber intends to enter into dialogue with the market on the issue in good time before any such facility or infrastructure is taken into operation.

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

59 The decision pursuant to operative part 4 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.

60 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.

61 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.

62 The ex-ante discount determined as per operative part 3 ($D_{\text{ex-ante}}$) was calculated in accordance with Article 16(1) of Regulation (EU) 2017/460 separately for each standard capacity product using the following formula:

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

a. Pro factor

63 *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.

64 The *Pro* factor is calculated for each, some or all interconnection points per type of standard capacity product for interruptible capacity offered in accordance with Article 16(3) of Regulation

(EU) 2017/460. The ruling chamber has decided in a first step to calculate the *Pro* factor separately for each interconnection point using the prescribed formula. This approach ensures to the greatest extent possible that the probability of interruption, which can vary from point to point, is specifically reflected in the level of *Pro*. In a second step, the *Pro* calculated for each point will be standardised per standard capacity product at all entry and all exit points to the same entry-exit system or comparable systems for each gas quality (L-gas and H-gas). To do this, the weighted average of the *Pro* factors calculated per standard capacity product for all interconnection points in the respective entry-exit system is calculated. The standardisation of the *Pro* factor per standard capacity product at all entry and all exit points of the same entry-exit system or comparable systems is based on the fact that within each gas quality the affected entry and exit points are interchangeable for the network user. Moreover, Article 21 of Regulation (EU) 2017/460 provides for a standardisation of the tariffs there. This standardisation is applied in principle at all interconnection points connecting the same foreign entry-exit system or the same third country with the German market area. However, a distinction is made between H-gas and L-gas interconnection points. The ruling chamber also considers it appropriate to look at the interconnection points "Zone Kiefersfelden-Pfronten" and "RC Lindau" (previously known as "Voralberg") to Austrian networks separately, in addition to the Austrian balancing zone. These interconnection points connect the German market area with physical "network islands" on the Austrian side, so they are not substitutable with the other interconnection points for shippers on the German side. Moreover, the interconnection point "Mallnow" (previously known as "YAMAL (TGPS) Pipeline") is also considered separately because, though it is also a cross-border interconnection point between Poland and Germany, the interconnection point on the Polish side is not currently integrated into the "Polish E-gas Balancing Zone" market area.

65 For the interconnection points between Switzerland and Germany, the three interconnection points (RC Thayngen-Fallentor, RC Basel, Wallbach) were considered together for the first time and only for the determination of the interruption discount. In response to the statements received on this issue, it should first be understood that the joint consideration only applies to this determination. It is therefore only determined that a uniform discount is to be applied for interruptible standard capacity products at the three Swiss interconnection points. Only the tariffication for interruptible capacity products is thus regulated. Other aspects, such as the ability to book these individual points or the possible formation of a joint balancing zone, are unaffected by these provisions. The three interconnection points have now been designated "Switzerland" in Annex I to avoid any confusion with a potential, future Swiss balancing zone. Some responses also criticised the joint consideration of the three interconnection points to calculate the interruption discount on the basis that these are not fully substitutable and, in addition, two of the three interconnection points are connected to different Swiss balancing zones. However, there are no fully isolated "network islands" on the Swiss side as there are, for example, with the two interconnection points to Austria, "Zone Kiefersfelden-Pfronten" and "RC Lindau". The respondents themselves acknowledge that

transport to the same Swiss balancing zone can actually take place via a pair of interconnection points, first RC Thayngen-Fallentor or Wallbach and then RC Basel or Wallbach and they are therefore essentially interchangeable. The fact that the large-capacity Wallbach interconnection point is only interchangeable to a very limited extent with the far smaller interconnection points RC Thayngen-Fallentor and RC Basel does not contradict this. The continued existence of separate balancing zones on the Swiss side does not prevent the interconnection points from being considered together for the sole purpose of determining a uniform interruption discount either. Consequently, it is not necessary for there to be a countrywide balancing zone on the Swiss side. These interconnection points connect the same third country with the German market area, so it is certainly possible to compare them with the interconnection points at the border with Norway or Russia. The ruling chamber therefore takes the view that it is appropriate to consider the interconnection points together when determining the uniform interruption discount, despite the responses received.

66 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.

67 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.

68 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.

69 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.

- 70 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.
- 71 Applying the KAP+ determination, the TSOs are offering to the market approximately 113m kWh/h of FZK at the entry points for the period from 1 October 2021 to 1 October 2022 in addition to the approximately 58m kWh/h that can be provided by the network infrastructure. As a result, about two thirds of the FZK on offer as of 1 October 2021 will no longer be secured by the physical infrastructure alone. If it were to be 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.
- 72 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) and MARGIT 2021 (BK9-19/612), 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.

- 73 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 infrastructure is not ruled out and is appropriate here because of the mechanisms in the single market area.
- 74 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.
- 75 The absolute size of a contingency mark-up cannot be calculated with complete certainty and is always the result of a process of weighing up the facts. The increase in general uncertainty caused by the merger of the market areas along with the possibly greater probability of an interruption in the H-gas network are factors that already point towards a higher contingency mark-up. As the proceedings are to be carried out annually in accordance with Article 28 of Regulation (EU) 2017/460, such issues can always be re-examined on the basis of new findings. As such, the calls from two market participants for the increase of the contingency mark-up to be evaluated and more closely based on actual interruptions can already be met under existing procedural law.
- 76 The increase also takes account of the fact that, as of 1 October 2021, the implementation of the KAP+ procedure will mean that about two thirds of the firm FZK offered by the TSOs on the H-gas entry side will no longer be provided by the physical network infrastructure alone.
- 77 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 will be broader as of 1 October 2021 because of the higher uFZK discount at H-gas points.

- 78 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.
- 79 Having taken into consideration the responses received, the ruling chamber still views these effects as 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, in practice the maximum discount range is not currently used by all TSOs.
- 80 There is no indication that the relative change in the reference price would be different due to the level of the contingency mark-up for the calendar year 2022.
- 81 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.
- 82 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

83 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*.

84 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.

- 85 The explanation of the effects of capacity changes on multipliers given in margin number 40 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. It remains unchanged for the period that has already expired. However, for the firm capacity product that is then booked, 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 where applicable.

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

6. Order for payment of costs

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

7. Public notification

- 87 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.

8. 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, 27 May 2021

Chair

Vice Chair

Vice Chair

Dr Christian Schütte

Dr Ulrike Schimmel

Dr Björn Heuser

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