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10 February 2020

Dear Tom,

Consultation on the proposed change to Existing Arrangements for Accessing Licence Baseline Exit Capacity on the National Transmission System (NTS) at Bacton Interconnection Point

The present question is around the offering of obligated capacity by National Grid Gas (NG) at the NTS Bacton IP (BBL) exit point to further enable physical reverse flow on the BBL pipeline, and whether the existing arrangements on the NTS need modification.

Interconnector UK ("IUK" or "we") is of the view that the existing arrangements on the NTS do not require modification: BBL Company's desire for obligated capacity is specifically and explicitly covered by existing mechanisms and statutory processes. The NG Exit Capacity Methodology and the IP PARCA processes have been put in place, confirmed by Ofgem as recently as July 2019, precisely to create a demand led approach to capacity allocation that is objective, transparent and non-discriminatory. As such, regulatory intervention does not seem to be needed, proportionate or in line with regulatory practice. We remain puzzled why Ofgem considers these processes *"inapplicable and unsuitable on this occasion"*, that is, why Ofgem treats these as voluntary processes which can be chosen to apply or to be disregarded at any time.

Our key messages are:

1. Ofgem's minded to proposal Option 2 and option 3 are not compliant with the existing legal and regulatory frameworks. These options, and the bespoke process itself, afford preferential treatment to BBL and BBL users, discriminating against users seeking additional capacity at other NTS points;
2. Allocating capacity without any form of user commitment and without passing an economic test is inefficient and sets a precedent harming the interests of current and future consumers;

3. The current allocation of NTS capacity at the NTS Bacton (IUK) exit point meets legal obligations, meets peak demand requirements and is consistent with Bacton entry arrangements;
4. The analysis presented in the draft impact assessment (IA) is not robust. A full assessment needs to include quantitative analysis and consider the negative impact on the Belgian market and its consumers.
5. Alternative options do exist to make additional capacity available to the NTS Bacton (BBL) exit point and these options need to be assessed.

In our response we have also provided more evidence to the international dimension of this topic. IUK is a cross border infrastructure asset, providing Belgium and the United Kingdom with significant trade benefits and security of supply. One should therefore be attentive to economic and other consequences on the consumers and markets of neighbouring countries (Belgium) or the UK gas market in turn.

You will also appreciate that interventions such as Option 2 and Option 3 raise questions regarding investor protection and the investment climate of the United Kingdom more generally. When a national regulatory authority suggests sterilising the capacity offered by an existing strategic infrastructure asset, using bespoke consultations rather than applying the statutory processes, and without there being any demand signal or application for capacity in the first place, (foreign) investors and existing NTS users take note.

The GB gas market is governed by an established and comprehensive set of national and transposed European legislation. This rulebook provides the basis for protecting the consumer interest and for promoting competition – in a fair manner. To achieve these objectives, it is essential that market participants can rely on this regulatory framework and that it applies to all market parties in a non-discriminatory and consistent way, including new or prospective connectees.

Our concluding message is that there are options available to Ofgem and NG to (i) enable a capacity offering at the NTS Bacton (BBL) exit point, that (ii) are legally and regulatory compliant, and (iii) do not require the degradation or reduction of the capacity offering at other existing connections to the NTS. IUK has indicated several such alternatives in addition to Option 1.

You will find our response and all supporting evidence in the enclosed document. Annex 1 outlines our observations about the consultation and our answers to the specific questions in the consultation. Annex 2 outlines an additional economic review of Ofgem's options and accompanying IA by Cambridge Economic Policy Associates (CEPA).

Please do not hesitate to contact me or Pavanjit Dhesi, Regulatory Affairs Manager, in case of questions.

Yours sincerely,

Steven De Ranter
Managing Director

Annex 1: IUK's observations and answers to the specific consultation questions

In this annex, Interconnector UK Ltd (IUK) outlines some observations about the consultation proposals and then answers the specific consultation questions.

Observation 1: Ofgem's proposals are not compliant with the existing legal and regulatory frameworks. The current market led arrangements for acquiring NTS exit capacity need to be considered

National Grid Gas (NG), IUK and Fluxys Belgium highlighted in their responses to the Ofgem Call for Evidence (CFE)[1] that the CFE did not mention the current arrangements for acquiring new baseline capacity. All 3 responses noted the need to consider and assess the current arrangements. NG, for example, said there needed to be "Further understanding on why the existing market led process for creating a firm release obligation for a point, as established by UNC modification 597[2], is not deemed appropriate"[3]. Unfortunately this has been missed, as neither Ofgem's consultation document or draft IA provide any description of current arrangements and consequently no economic or legal assessment against it. Ofgem's description in Section 2 of the consultation consequently provides a distorted impression of the current situation.

NG's release of NTS exit capacity is bound by the Exit Capacity Release Methodology Statement (ECRMS)[4]. This document is approved by Ofgem (most recently in July 2019[5]) as fulfilling NG's licence obligations to make capacity available in a non-discriminatory basis and conduct its business in an efficient, economic and co-ordinated manner. The methodology states that it relates to the "release of all Exit Capacity i.e. incremental and existing system Exit capacity"[6]. It includes a "level of financial commitment required by users to justify the release of the quantity of Obligated Exit Capacity" as part of the methodology. It furthermore defines "Incremental Exit Capacity" as the quantity in excess of the prevailing level of "Obligated Exit Capacity" and says it consists of new funded incremental exit capacity and/or non-obligated exit capacity.

NG has received no market signal for additional capacity at the Bacton NTS exit point from either NTS users or BBL as the developer[7]. There has been no market demand signalled in the 2017 market demand

[1] Ofgem call for evidence: Change to Existing Arrangements for Accessing Licence Baseline Exit Capacity on the National Transmission System at Bacton Interconnection Point published July 26th 2019: https://www.ofgem.gov.uk/publications-and-updates/call-evidence-change-existing-arrangements-accessing-licence-baseline-exit-capacity-national-transmission-system-bacton-interconnection-point

[2] Uniform Network Code modification 597: Rules for the release of incremental capacity at Interconnection Points: http://www.gasgovernance.co.uk/0597

[3] National Grid's response to the CFE: https://www.ofgem.gov.uk/system/files/docs/2019/12/national_grid_response.pdf

[4] See NG's Exit capacity release methodology statement effective 24th July 2019 https://www.nationalgridgas.com/document/128006/download

[5] Ofgem decision letter 22nd July 2019: https://www.ofgem.gov.uk/publications-and-updates/approval-modified-capacity-release-and-capacity-methodology-statements

[6] P9 of the ECRMS.

[7] No notifications indicated on NG's PARCA notification page https://www.nationalgridgas.com/connections/reserving-capacity-parca-and-cam as at 10th February 2020.

assessment[8] or the 2019 market demand assessment[9] which was jointly carried out by NG and BBL. The shipper responses to Ofgem's CFE[10] have again indicated no firm user commitments (other than a potential interest subject to market conditions) and in any event these sit outside the established NTS access regime.

Consistent with current arrangements, NG has released discretionary capacity to the NTS Bacton (BBL) exit point since 2018. The NTS Bacton (BBL) exit point has thus been in receipt of incremental exit capacity as defined by the NG ECRMS.

The ECRMS rules under chapter 8, clearly state that a user or reservation party can only apply for firm IP capacity above the prevailing level at an exit IP by entering into an IP PARCA[11]. The IP PARCA process includes the need for a positive market demand assessment and the requirement to pass an economic test before capacity is made available. This economic test ensures consumer interests are safeguarded. It does this by ensuring NG act efficiently by only allocating or investing in capacity where there is a proven need for it. Ofgem themselves note PARCA is designed to "provide a flexible, transparent mechanism to allocate additional capacity to network users"[12]. The IP PARCA in the ECRMS is reflective of directly applicable rules within the European CAM code, Articles 22 to 31[13] which apply directly to both NG and BBL.

Without a proven market demand signal and no IP PARCA application, Ofgem's options 2 and 3 outlined in its consultation do not comply with the existing arrangements and are non-compliant with EU law. Further, any changes made by Ofgem without proven market demand signal would be disproportionate.

It is not clear to stakeholders nor is it adequately explained why Ofgem describes the PARCA process to be "inapplicable" and "unsuitable on this occasion" in its consultation. It is also discriminatory to circumvent this process in this instance, in particular, given the costs incurred by Users who have appropriately followed the PARCA process. It is also not transparent why Ofgem assumes a PARCA process "would result in a technical increase at Bacton" when the current ECRMS arrangements indicate a technical increase is only one option and that NG is obliged to "confirm how the capacity request can be satisfied, which may be:

i. From any Unsold Technical Interconnection Point Capacity;
ii. From the use of existing infrastructure;
iii. By exit capacity substitution;
iv. Through investment and/or contractual alternatives; or
v. A combination of the above."[14]

[8] See: https://www.bblcompany.com/about-bbl/consultations-implementation-information. The market demand assessment report, published in July 2017 jointly with NG and said:
"The indicative demand is too low to pass even the most favorable economic test. Hence for the entry-exit systems addressed by this report, no incremental capacity project/process nor technical studies will be initiated based on this market demand assessment report. BBL Company will, however, continue to investigate the possibilities to install physical reverse capability on the BBL-interconnector at its own expense and risk".

[9] NG 2019 confirmation of no demand indication for incremental capacity at GB IPs

[10] The responses to Ofgem's CFE: https://www.ofgem.gov.uk/publications-and-updates/initial-impact-assessment-and-minded-position-arrangements-accessing-licence-baseline-exit-capacity-bacton-interconnection-point

[11] PARCA means Planning and Advanced Reservation of Capacity Agreement.

[12] https://gasgov-mst-files.s3.eu-west-1.amazonaws.com/s3fs-public/ggf/Ofgem%20Decision%20Letter%20UNC0597%20pdf.pdf

[13] CAM code: 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: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0459&from=EN

[14] Paragraph 225a of the ECRMS.

We see nothing in the current arrangements which suggest that the IP PARCA process is optional. On the contrary these are mandatory rules that must be followed when considering the allocation of exit capacity at Bacton.

Observation 2: Ofgem's proposed intervention affords preferential treatment to BBL and BBL users, discriminating against users at other NTS points seeking capacity within current arrangements

Ofgem's preferred option 2 solution is proposing to increase access to NTS Bacton (BBL) exit capacity for its users by 651.7 GWh/day from the current obligated baseline level of 0 GWh/day notwithstanding that there has been no economic signal. This contravenes the NG ECRMS and CAM code. It is also noted that BBL's own investment was a commercial decision made at "its own expense and risk" despite receiving no firm user commitments. In making this investment BBL could only reasonably expect non obligated/interruptible NTS capacity to be available and that any changes to this arrangement would be through the established access regime. The proposed reallocation of Bacton exit IP capacity under these circumstances would be unprecedented and inconsistent with the established approach for the GB transmission networks (electricity and gas) that network capacity is efficiently allocated through a market led process underpinned by user commitment.

Ofgem's intervention is therefore not justified and contravenes its duties to be proportionate and consistent. In particular it is noted that pursuant to section 4AA of the Gas Act 1986, when carrying out functions under the Gas Act 1986, Ofgem must have regard to the principles under which regulatory activities should be proportionate and consistent.

Ofgem's intervention furthermore discriminates against all other users who are using the PARCA process. We have counted over 20 PARCA applications by users since the summer of 2017[15] when BBL decided to commission its investment. It is unclear to us why the PARCA process, economic test and costs are applicable to these users and not applicable to BBL or those interested in NTS Bacton (BBL) exit capacity. We note, for example, that in 2019 a PARCA application was made for 163 GWh/d of capacity at the Milford Haven Aggregated System Entry Point[16]. This is of comparable size to the technical capacity of BBL export capacity (which is 168 GWh/d) and the amount of additional obligated capacity level Ofgem consider in its Option 3. This indicates there is no barrier to seeking additional NTS capacity through the PARCA process. Ofgem's proposed approach risks setting a precedent where users or developers simply build their power stations, LNG terminals etc and then come to Ofgem with a request for a similar bespoke process to get immediate access to obligated capacity. There is clearly not a consistent approach or level playing field for parties seeking additional NTS capacity if Ofgem concludes this BBL bespoke process with option 2 or 3.

Observation 3: Explanation needed for why the current arrangements do not work for BBL and parties interested in NTS Bacton (BBL) exit capacity

The consultation has not explained why BBL as the developer or relevant NTS users interested in NTS Bacton (BBL) exit capacity have not requested additional baseline capacity under the current arrangements. The consultation has not explained if and why the arrangements are a barrier that needs to be addressed. It has not explained why, on one hand, the arrangements have not prevented multiple PARCA applications being made since BBL's investment decision (e.g. Milford Haven) yet on the other hand PARCA is seemingly not

[15] https://www.nationalgridgas.com/connections/reserving-capacity-parca-and-cam

[16] See link in footnote 15.

appropriate, requiring Ofgem intervention for the NTS Bacton (BBL) exit point. Without such explanations, Ofgem would be in contravention of section 4AA of the Gas Act 1986, which states that Ofgem must have regard to the principles under which regulatory activities should be transparent and targeted only at cases in which action is needed.

There have been opportunities for parties like BBL to raise issues with the current arrangements for accessing capacity. NG's ECRMS as well as its other NG capacity methodologies were reviewed and consulted on very recently (in the first half of 2019) and approved by Ofgem in July 2019[17]. We note that for neither the ECRMS consultation nor the NG Exit capacity substitution and revision (ExCS) methodology[18] did BBL or users of NTS Bacton (BBL) exit) respond outlining concerns with the current arrangements. In contrast, other parties who made a large PARCA application in 2019, did respond to the suite of methodology change proposals and outlined challenges/ proposals to address their concerns. NG consequently made changes to its final proposals taking account of this stakeholder feedback. Ofgem's July 2019 decision concluded that the methodologies "better meet the capacity objectives set out in paragraph 5 of the Special Condition 9A. This includes the duty on NG 'to develop and maintain an efficient and economical pipeline system' ". It is not apparent therefore why in the same month as approving those arrangements, Ofgem deemed it necessary to publish its CFE to "assess the interest from all parties in enduring capacity products on exit at Bacton (BBL)" and made no reference to the current arrangements or recent review process.

It is also unclear why Ofgem seemingly dismisses the whole PARCA process in this consultation saying it considers a technical increase in baseline capacity as inappropriate "in a world of declining utilisation of the network". In particular, it is uncertain whether this statement is in relation to the whole network or just Bacton. Related to that, the question remains whether Ofgem would veto a technical increase even if an economic test was passed; and why Bacton is being treated differently to other points on the network. The market has a legitimate expectation that regulatory frameworks will be respected and be stable and such statements create confusion and uncertainty.

Observation 4: Allocating capacity without passing an economic test is inefficient and sets a precedent harming the interests of current and future consumers

The allocation of capacity by monopoly networks is bound by appropriate national and European regulatory frameworks to safeguard the interests of consumers. A fundamental principle of this safeguarding is to ensure the efficient allocation of capacity and, if necessary, efficient investment on the network. This is done by clear and transparent rules. It ensures that the allocation of capacity is only undertaken if there is a clear market signal to do so.

For stakeholders connecting to the network, the rules provide the assurance of a bilateral commitment from the TSO for the availability of capacity. The connected party can then invest and make ongoing business decisions under the legitimate expectation of a stable framework with the capacity commitment being honoured. Without such a framework and safeguarding, there is both a risk to new efficient investments not being realised and a risk to ongoing use of the network (why invest or maintain connected infrastructure if the NTS capacity could simply be reallocated by a sudden bespoke regulatory process outside the rules). It is clearly in the interest of consumers for the market to have confidence in the regulatory frameworks.

[17] See footnote 5 for link to Ofgem decision letter.

[18] NG Exit Capacity Substitution and Revision Methodology Statement

Allocating capacity on networks, whether new investment or reconfiguring existing capacity, must be done efficiently. This is why there are clear and objective economic tests. Without appropriately using these tests as a basis to make any changes would amount to irrational decision-making. The need for positive economic tests as noted in the CAM code are necessary to ensure "network users demanding capacity assume the corresponding risks associated with their demand to avoid captive customers from being exposed to the risk of such investment"[19]. Capacity is therefore not allocated just relying on non-binding commitments in surveys as proposed by Ofgem's bespoke BBL process. This risks creating inefficient allocations, investment and configuration of the network by NG. Ultimately such intervention risks undermining confidence in market stability and hence driving up costs for consumers.

Observation 5: The current allocation of NTS capacity at the Bacton (IUK) exit point meets legal obligations and is consistent with Bacton entry arrangements

The NTS Bacton (IUK) exit point is physically separate from the NTS Bacton (BBL) exit point and holds 651.67694 GWh/day of Baseline Exit Capacity as stipulated in the NTS Licence[20]. The exit capacity fully matches IUK's entry capacity at its Bacton terminal. The associated 651.67694 GWh/day of IUK's exit capacity at the Zeebrugge IP is furthermore matched with Fluxys Belgium's entry capacity. Likewise, in the other direction, from the continent to GB, the technical capacity is fully matched at either side of the Bacton and Zeebrugge IPs.

These current arrangements are consistent and fully compliant with the obligations outlined in the CAM code (Article 6) and the EC Security of Supply Regulation (SoS Reg)[21]. The arrangements ensure a harmonised and coordinated maximisation of technical capacity. Consistent with these obligations, the technical capacities at both the Moffat and Bacton (IUK) exit points are ring fenced from substitution in NG's ExCS[22]. The reason for this ring fencing is compliance with European obligations. Ofgem's option 2 and 3 would not comply with the CAM code, ECRMS and ExCS. Proceeding with these options therefore would be *ultra vires*. These options would also be inconsistent and discriminatory compared to how the NTS Moffat exit point is treated.

The current exit arrangements are also consistent with the arrangements for Bacton entry. The key reason for keeping the 2 IPs together in a Bacton IP ASEP when the NC CAM was implemented was due to historical NG unbundled capacity contracts. Whilst splitting the Bacton ASEP was needed for NC CAM compliance, historical capacity contracts could no longer be used flexibly with any of the 5 entry points at Bacton. Creating a Bacton IP ASEP at least allowed historical NG contract users to use this capacity flexibility with either IUK or BBL. At the time BBL did not support creating the Bacton IP ASEP arguing individual points were better and raised concerns about competing auctions[23]. IUK also preferred individual entry points but recognised the challenge for NG shippers with historical contracts. There was no such issue on the exit side, as contracts were linked to individual offtakes consistent with the exit regime as a whole, therefore there

[19] Recital 11 of the CAM code.

[20] 623.58 GWh/day as outlined in Table 8 plus 28.096940 GWh/day at outlined in Table 10 (Legacy TO Exit Capacity) of NG's Gas Transporter Licence Part C equals 651.67694 GWh/day.

[21] Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R1938&from=EN

[22] See footnote 18 for link to ExCS.

[23] BBL response to Ofgem consultation "Facilitating the implementation of aspects of the CAM NC in GB

was no reason to create an aggregated exit point. At the time of implementing CAM Ofgem said "The baseline capacity for the Bacton IP entry point should be set at the sum of the maximum technical capacities of the two interconnectors. We considered this would achieve compliance with Article 6 of the CAM Regulation to make the maximum technical capacity available. It also furthers the interests of consumers by promoting competition and eliminating restrictions on trade in natural gas between Member States through making the maximum capacity at interconnectors available[24]". Ofgem's final decision again noted "The baseline capacity for the Bacton IP ASEP will provide the maximum technical capacity to network users and so we consider that it is compliant with Article 6(1) of CAM[25]." What Ofgem has proposed in option 2 of this consultation is not a consistent approach with the 2015 CAM implementation decision. Option 2 does not match the technical capacity of the interconnectors and, logically noting Ofgem's decision is 2015, option 2 is not compliant with Article 6 of the CAM code. NG would need to increase the obligated exit capacity by 168 GWh/d to match the new BBL exit capacity.

Observation 6: The current allocation of NTS capacity at the Bacton (IUK) exit point meets peak demand and is consistent with the treatment of other points on the network

NTS capacity obligations are not predicated on the average utilisation of capacity. This principle has again been outlined in NG's RIIO-2 business plan. NG says in that plan that "the capacity baseline obligation should represent the maximum physical capability of the NTS of peak flow"[26]. The current allocation of baseline capacity to the Bacton (IUK) exit point is consistent with this principle and ensures equal treatment with other points on the network like the Moffat IP exit point.

Both IUK and NG provided similar graphical evidence in their CFE submissions showing a seasonal pattern to flows at the NTS Bacton IUK (exit) point and allocations peaking around the baseline levels in recent years. IUK noted periods of high NT Bacton IUK exit utilisation. It has been as high as 97% of technical capacity for periods in the gas year 2016/2017, 92% in the gas year 2017/18 and as high as 92% for periods of 2018/19. This continues to compare very favourably with other exit points such as the Moffat exit point which does not see as much peak utilisation. No one is suggesting that the Moffat exit capacity is no longer needed for exports to the Irish Market. It is also more than comparable with other infrastructure such as gas power stations, which have an average utilisation below 40% (see graph 1 below[27]), as well as with LDZ demand versus obligated capacity to LDZ which has an average utilisation of approximately 27% (see graph 2 below[28]).

[24] https://www.ofgem.gov.uk/ofgem-publications/91939/camntsstatconletterdecember2014.pdf

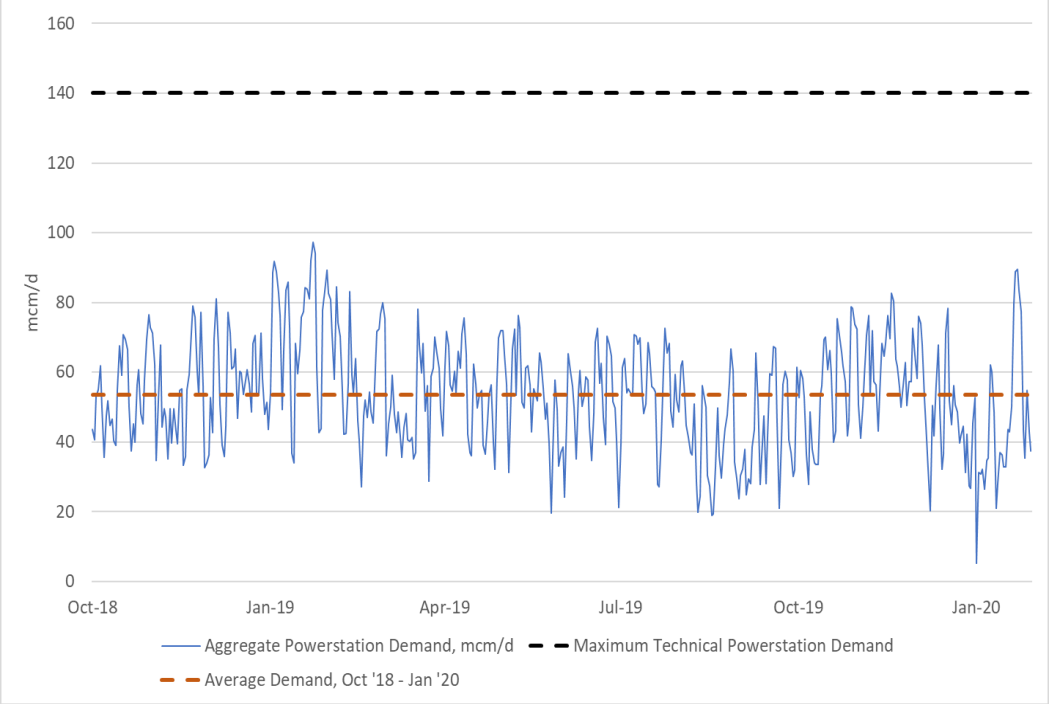
[25] Ofgem decision: https://www.ofgem.gov.uk/sites/default/files/docs/2015/02/cam_final_decision_letter_final_1.pdf

[26] https://www.nationalgridgas.com/document/128986/download

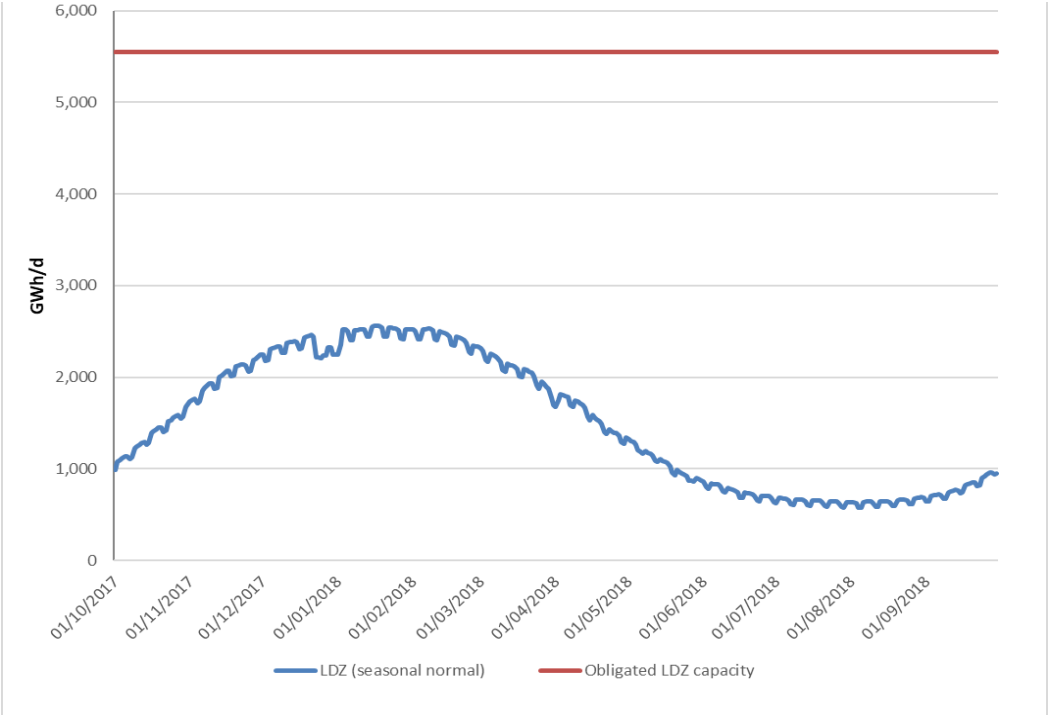
[27] The graph shows NTS connected gas power station utilisation (CCGT+OCGT+CHP plants). It shows the average utilisation of such plant is <40% (i.e. average utilisation of 56mcm/d (red line in the chart) compared to 100% capacity of 140mcm/d). Source is National Grid Data Item Explorer: https://www.nationalgridgas.com/data-and-operations/transmission-operational-data

[28] Source for graph 2: Seasonal normal LDZ demand as per the "CWV and seasonal normal demands rolling 5 year forecast – Oct 2017, www.nationalgridgas.com), obligated LDZ capacity per National Grid Winter Outlook Report 2016/2017, P 46, Figure 12) https://www.nationalgrideso.com/document/61776/download

Graph 1: NTS Connected Power Station Utilisation



Graph 2: NTS Local Distribution Zone Utilisation



It is important Ofgem respects its duty to be consistent and that the NTS Bacton (IUK) exit point is treated in the same manner as other points to avoid discrimination. Ofgem is also aware that seasonal profiles mean quoting average utilisations rates taking into account half the year when flows are in the opposite direction are misleading. It should also be noted capacity bookings hold value as a hedge or "insurance" which means capacity may not actually be used to physically flow once purchased. It does not mean that the booked capacity is no longer valuable or necessary, rather the contrary. Looking at utilisation figures therefore does not accurately reflect the value of the capacity to the market. This point is also made by CEPA in its assessment of the draft IA.

IUK furthermore disagrees with Ofgem's assertion that IUK is "on a declining trend following the expiry of long-term IUK contracts"[29]. We are surprised Ofgem has made this assertion when in the same document Ofgem states it has not been able to do a proper cost/benefit assessment of the options it has considered because of "the difficulty of forecasting future utilisation of Licence Baseline Exit Capacity at Bacton"[30]. We also note there has only been one summer export season since the end of IUK's long term contracts. There is also a great deal of uncertainty currently due to the delay in concluding the NTS charging review and incentives in the current regime are heavily skewed to acquire short term NTS capacity. A trend is therefore difficult to see. NG has also acknowledged the challenge of forecasting future bookings (across the whole NTS). As part of its RIIO-2 business plan submission for example it says "the outcome of ongoing gas transmission charging review will impact the way capacity is bought. We cannot accurately model this behaviour"[31]. NG has furthermore cautioned against looking just at longer term product bookings at Bacton in its RIIO-2 Bacton redevelopment plan[32] saying that the long-term capacity bookings do not reflect the true future need, and therefore decisions should not be made on capacity booking data in isolation. It remains impossible for Ofgem or any other stakeholder therefore to confidently consider that the need for NTS Bacton (IUK) exit capacity is on a "declining trend".

The outlook for export flows through IUK on the contrary remains positive. NG's Future Energy Scenarios (FES) 2019 suggests interconnector export flows will be steady until at least 2040 and this is used as justification by NG for its Bacton Terminal redevelopment proposal. The RIIO-2 proposals are seeking to maintain at least the existing capacity[33]. The Bacton redevelopment report also suggests a range of forecasts for Bacton exit flows which also include a scenario greater than the existing capacity levels[34]. It therefore seems reasonable to conclude that there will be periods of high utilisation going forward as experienced in the past.

[29] Paragraph 6.13 p27 of the Ofgem consultation https://www.ofgem.gov.uk/system/files/docs/2019/12/consultation_-licence_baseline_exit_capacity_arrangements_for_bacton.pdf

[30] Paragraph 4.5 p20 of the Ofgem consultation document (see link above)

[31] See Annex 12.03 NGGT Baseline Obligated Capacities Report https://www.nationalgridgas.com/about-us/business-planning-riio/our-riio-2-business-plan-2021-2026

[32] Para 4.8 of Annex A22.02 Bacton Terminal Redevelopment Justification Report July 2019. See National Grid website for further details on its draft RIIO-2 proposals (link in footnote 17).

[33] NG Future Energy Scenarios

[34] This capacity need includes local distribution as outlined in paragraph 4.11 of NG Annex A22.02 Bacton Terminal Redevelopment Justification Report – July 2019. See National Grid website for further details on its draft RIIO-2 proposals: https://www.nationalgridgas.com/about-us/business-planning-riio/have-your-say-our-future-business-plans/we-have-developed-our-draft-plan-with-you

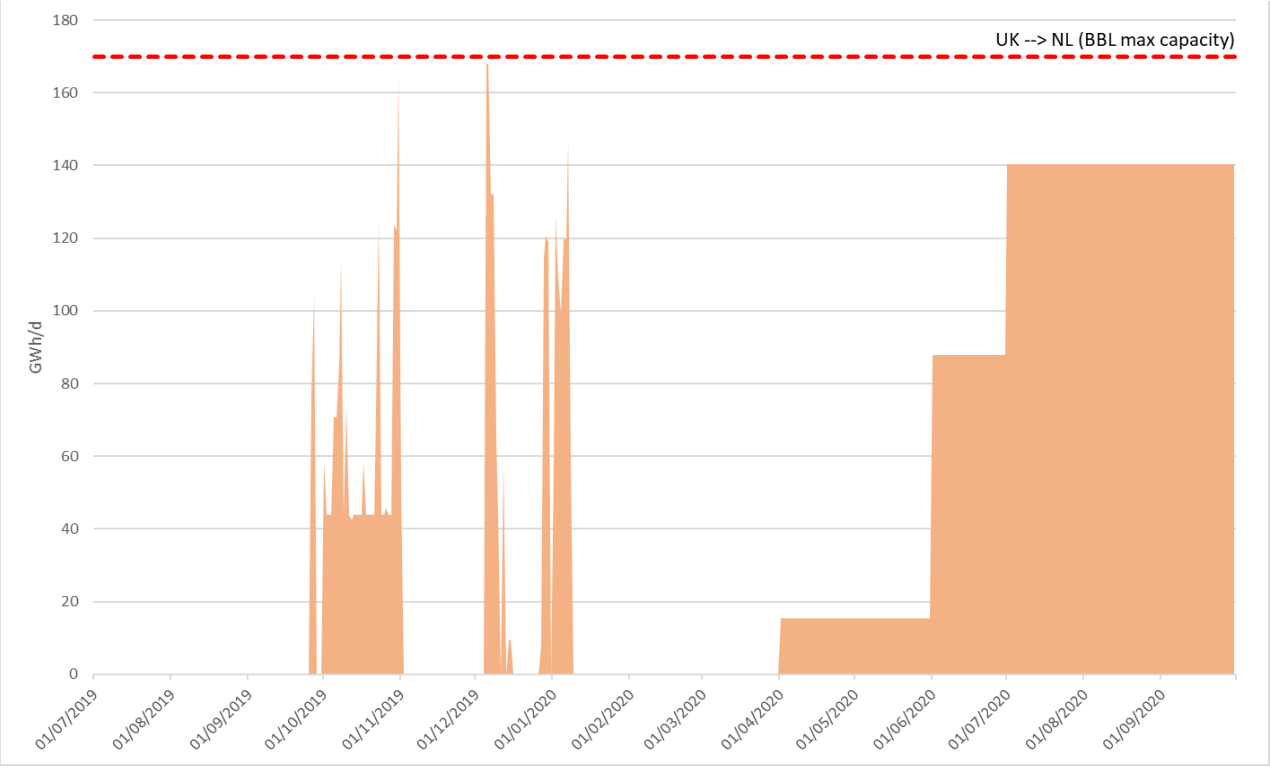
Observation 7: The impact on the Belgium market and Belgium consumers has not been considered

The consultation and draft IA suggest that a benefit of Ofgem's proposed intervention is to help the Dutch market address the decline of the Dutch Groningen field. In contrast, there is no assessment of the impact on the Belgium market and its consumers from the potential sterilisation of 26% of IUK's Bacton entry capacity, 26% of IUK's Zeebrugge exit capacity and 26% of Fluxys Belgium's Zeebrugge entry capacity. There is no consideration of the potential knock on impact to bookings at the Zeebrugge IP at times of peak demand given CAM auctions happen simultaneously and IUK has a "in = out" pipeline. For Fluxys Belgium the potential loss of revenue from the sterilisation of 168GWh/d of capacity could be up to €3m/y which impacts Belgian consumers as tariffs on other parts of the Belgian network need to increase to compensate for this loss. There is no mention of any consultation with Belgium's regulatory and governmental authorities to understand the potential impact and take their views into account. We note that Ofgem is obliged to cooperate and coordinate actions affecting cross border capacity with regulators of neighbouring countries.

Observation 8: Competition and cross border trade via BBL export has not been assessed properly

It is not accurate to suggest that the current situation "does not provide for any competition at the Bacton exit point"[35]. Shippers have been being acquiring NTS Bacton (BBL) exit capacity and using BBL. It has seen a number of export sale transactions since it became bidirectional as shown in graph 3 below. These have been daily, monthly and quarterly firm capacity sales.

Graph 3: BBL GB to Netherlands bookings (July 2019 to September 2020)[36]



note: data as at 9th February 2020

[35] Paragraph 3.5 p17 of the consultation document.

[36] Source: https://transparency.entsog.eu/

In a market moving short term and incentives very much in favour of short-term products, NG's ability to offer non obligated capacity and provision of interruptible capacity already allows a good degree of competition with the NTS Bacton (IUK) (exit) point where shippers also wish primarily to acquire short term capacity. Shippers can also use short term NTS capacity with different capacity durations on both interconnectors under the implicit allocation mechanism rules. Some of the broader benefits Ofgem mentions in the draft IA can be expected to therefore have already been realised under the current arrangements, yet are not recognised in the draft IA. We believe that the additional benefits of options 2 and 3 are therefore limited.

Observation 9: The proposed changes would constitute unlawful expropriation of IUK's property in contravention of A1P1

Ofgem's minded to proposal would constitute a breach of IUK's rights under Article 1, Protocol 1 (A1P1) of the European Convention on Human Rights (ECHR). This is in circumstances where the proposal will affect investment and will unpick the matching of NG capacity and IUK capacity across the IP which is essential for IUK's business. The effect of the proposal would be to materially reduce the goodwill built up by IUK in the existing business.

The proposals would be unlawful given the public law breaches outlined elsewhere (i.e. discrimination, irrationality and the factual errors) and Ofgem's preferred option and option 3 are not compliant and are inconsistent with existing arrangements and legal requirements under the CAM code. Therefore, the imposition of the proposals would be unlawful under domestic law and so A1P1 would be engaged.

Further, the minded to option and option 3 do not bear a reasonable relationship of proportionality between the proposed means employed and that aim. It is clear that each of these options is disproportionate where alternative, less intrusive, means of achieving the same aim exist (see observation 10 below).

The proposal will effectively lead to the 'deprivation' of the goodwill in the business without any compensation mechanism. The failure to offer compensation where there is deprivation would render the proposal disproportionate and unlawful as a consequence.

Observation 10: Other solutions do exist to make additional capacity available to the NTS Bacton (BBL) exit point and need to be assessed

There are additional solutions/options that need to be considered by Ofgem. These options can meet the objective of making additional capacity available to the NTS Bacton (BBL) exit point, not degrade or reduce the capacity offering at other connections, and importantly also comply with existing arrangements. This ensures there is no discrimination against other parties wishing to acquire incremental NTS capacity.

In addition to Option 1, there are at least four options to deliver on these objectives which should be considered:

- Expand the offer of firm non-obligated capacity products: Ofgem says that only daily and with-in day non-obligated capacity can be made available. This option would explore how NG can further improve the offer of longer capacity durations at the NTS Bacton (BBL) exit point (and indeed across the network) to improve overall efficiency. NG's incentives could be adjusted to facilitate this. If, as Ofgem suggest,

there is plenty of spare capacity on the network, it can be offered with little risk of NG not meeting its obligated capacity commitments, and little risk of any material adverse impact on consumers.

- Improving the dynamic calculation of available NTS capacity. The dynamic calculation of available capacity is an obligation under the CAM code anyway[37]. Depending on NG's assessment and the state of the NTS in the Bacton area, it might be the case that the baseline capacity at the NTS Bacton (BBL) exit can be increased during periods, enabling an offering of additional and obligated capacity.
- Use an oversubscription and buy back (OSBB) mechanism. Such a mechanism enables the offer of longer term products, with the TSO keeping the network user whole in case the TSO cannot provide the allocated capacities. OSBB is already used to deal with congestion management by a large number of TSOs across Europe and, as an example, German TSOs are currently considering expanding its use to deal with physical constraints under new trading arrangement proposals[38]. Again if Ofgem considers there is spare capacity available, any adverse material impact on consumers seems unlikely. Ofgem and industry can consider the appropriate balance of risk and reward incentives on NG to do this also in GB.
- Increasing the baseline capacity by additional technical capacity: This is obviously an option outlined in current ECRMS arrangements and can also be considered for security of supply reasons if there is no clear market demand signal. It is unclear and surprising why this has been excluded upfront and not assessed in the draft IA (whereas the substitution of capacity from Bacton (IUK) has). There is no opportunity for stakeholders to comment on this option or assess its viability.

Each of these options should be further assessed and considered against all other compliant options. Making additional capacity available to enable new exit flow through the described additional options can benefit the GB market better than degrading or reducing the capacity offering at another existing connection.

Assessment of Ofgem's economic arguments by CEPA consultants

Annex 2 outlines CEPA's economic review of the options and assessment of Ofgem's IA. CEPA found that Ofgem's draft IA does not provide sufficient economic justification to adopt any of Ofgem's proposed policy options, compared to the current arrangements. It noted that:

- There are inconsistencies and, therefore, risks of misleading conclusions being drawn from the Ofgem IA based on the counterfactual used as the comparison to the policy options.
- The IA's cost benefit analysis (CBA) is mainly based on qualitative assumptions rather than quantified evidence of the socio-economic benefits of the policy options.
- A weakness of the IA is the absence of structured quantified socio-economic analysis of the impacts on all stakeholder groups affected by each option. CEPA note there has been no assessment of the impact on the Belgium gas market and its consumers.
- Ofgem use an inappropriate measure of interconnector value.

It suggests the policy proposals increase regulatory risk, create the potential for stranded assets, potentially increase the cost of capital and reduce the incentives for investment. This applies not only to IUK, but potentially to other infrastructure owners and developers within the energy sector that may rely on rights established through a stable regulatory framework. It furthermore identifies the risk of introducing competing auctions under option 2 saying it may introduce extra uncertainty to shippers discouraging some

[37] Article 6 of the CAM code.

[38] See Bundesnetzagentur website and consultation press release: https://www.bundesnetzagentur.de/SharedDocs/Pressemitteilungen/EN/2019/20190523_KAP.html?nn=404530

shippers from bidding for such capacity in the first place. This option may therefore be inefficient if it prevents efficient trades from taking place. It concludes with the recommendation that the reallocation of exit capacity at Bacton IP should be triggered by a market-based signal, as opposed to an administered reallocation of capacity rights as outlined in this consultation.

Ofgem's specific consultation questions

Notwithstanding the points above regarding the absence of a market signal and failure to follow the correct process, we outline below comments on the specific questions asked in the consultation:

Question 1: Do you have any views on the three options we are consulting on?

All three options have been not been considered adequately. There is insufficient evidence presented in this consultation and the draft IA for Ofgem to make a lawful decision to change to the status quo. In addition, there are a number of errors of fact, detailed above and below (see for example comments below on "Option 1: Do nothing").

Further, some obvious additional options have not been explored. The draft IA has no quantitative assessment and no assessment against compliance with the relevant national and EU legislation. A proper assessment needs to be done to ensure that Ofgem reaches a rational decision.

Option 1: "Do nothing" - Maintaining the Status quo

It is not accurate to suggest that the current situation "does not provide for any competition at the Bacton exit point"[39]. Some parties might read the "(Ofgem) do nothing" as NG not offering any capacity to the NTS Bacton (BBL) exit point, while in reality NG has been offering capacity since BBL's reverse flow project was available for commercial operations. As noted in observation 8, BBL has seen a number of export sale transactions and flows since it became physically bi-directional. The current arrangements, Option 1, can therefore be considered as effective and sufficient.

In a market moving short term and incentives very much in favour of short-term products, NG's provision of interruptible capacity already allows competition with the NTS Bacton (IUK) exit point where shippers also wish primarily to acquire short term capacity. Some of the broader benefits Ofgem mention in the IA for the other options will therefore already have been realised (e.g. allowing trading opportunities in response to price spreads on "days where a direct route to TTF could be more efficient and cost effective"[40] and to "channel excess gas from the UK"[41]). This is not recognised as something that can happen now which gives an exaggerated benefit of the other options. There are ways in which the offer of existing NTS network capacity can be improved as noted in observation 10. This must be considered first.

Option 2: Aggregating Bacton NTS (IUK) and Bacton NTS (BBL) exit into one

Option 2 is not justified for the reasons already outlined in the observations above. It is inconsistent and not compliant with the suite of national and European obligations noted in observation 1 (the CAM code,

[39] P17 of Ofgem's consultation document.
[40] P23 of the draft IA.
[41] P24 of the draft IA.

ECRMS, ExCS and EU SoS Reg). NG has received no market signal to allocate additional capacity to the NTS (BBL) exit point which is the trigger for it to consider possible options to meet that market request. As noted in observation 2, this option would afford BBL and NTS (BBL) exit users preferential treatment for immediate access to additional NTS capacity, discriminating against users using the correct process. It remains unclear to stakeholders (as noted in observation 3) why BBL or NTS (BBL) exit users have not been able to raise a request for additional capacity under the current framework while users at other points have been able to do so.

Option 2 would be inconsistent with the approach to other exit points on the network which remain individual points. Given the technical mismatch option 2 creates, it would also be inconsistent with arrangements on the Bacton NTS entry side where the technically capacity of both IUK and BBL is matched with NTS entry capacity. As noted in observation 5, matching of the technical capacity was deemed necessary by Ofgem to comply with Article 6 of the CAM code at the time of implementing CAM. By Ofgem's own logic, option 2 is therefore not compliant and inconsistent with the current arrangements and the treatment of the Moffat IP exit point (which remains ringfenced from substitution).

Competing auctions for technically mismatched capacity at Bacton NTS exit could potentially sterilise over a quarter of IUK's Bacton entry capacity. It would also have a knock-on impact at the Zeebrugge IP, sterilising not just IUK's capacity but also Fluxys Belgium's Zeebrugge IP given the capacity is technically matched and because IUK operates on an *in equals out* regime. From a regulatory point of view, we note that technical capacity is to be maximised across an IP and that specific actions at a given IP should not be detrimental to the offer of capacity at other IPs. Similarly, in relation to competing capacities, the NC CAM specifies that competing auctions can only be put in place subject to the consent of the directly involved transmission system operators.

There has been no assessment in the draft IA of the financial impact to IUK or Fluxys Belgium (in coordination with Belgian regulatory and governmental authorities) under this option. Sterilising capacity at Bacton sterilises capacity at Zeebrugge also. Under this option IUK could lose revenue from losing 168 GWh/d of IUK's Bacton entry capacity in the competing auction and £15m/y[42] in revenue from 168 GWh/d of sterilised Zeebrugge exit capacity at peak times. This is significant, particular for an asset like IUK which typically has low average utilisation and relies on revenues from seasonal and peak demand situations to maintain its capacity. We note Ofgem should be considering this financial impact given its obligation to secure that licence holders are able to finance the activities which are the subject of obligations on them. For Fluxys Belgium, the potential loss of revenue from the sterilisation of 168 GWh/d of entry capacity would be up to €3m/y which impacts BE consumers as tariffs on other parts of the BE network would need to increase to compensate for this loss. We have noted in observation 7 that the impact on the Belgium market and its consumers has not been considered. Ofgem must coordinate with the Belgian authorities to consider this impact.

Competing auctions would continually be triggered due to the technically mismatched exit capacity at times of peak demand making capacity scarce. A negative consequence for making this capacity scarce at peak times is that the uncertainty of acquiring capacity and potentially incurring higher auction premia, could lead market participants to take risk mitigations such as LNG bypassing the GB market altogether and docking straight into neighbouring continental markets to the detriment of GB consumers. If capacity prices

[42] Potential loss of 6 months GB summer export * IUK tariff (1.5p/th)* 168 GWh/d.

are also driven higher in the auctions at these peak times, consumers in the adjacent markets will ultimately incur higher charges through additional costs passed through by shippers.

The CAM code obligation to simultaneously offer capacity has also not been considered. IUK is an interconnector not a hub and operates as in=out. If shippers are uncertain about getting NG/IUK bundled capacity at Bacton – as it depends on the outcome of a competing auction - they will not seek capacity in either auction at Bacton or Zeebrugge. This will negatively affect IUK's and Fluxys Belgium's commercial prospects, as well as the cross-border trade, and therefore competition itself. Forcing IUK to consider its business model and possibly become 1IP, which is a considerable exercise in itself, is wholly disproportionate.

We note also that this option gives BBL access to NTS capacity almost 4 times its technical capacity. There is nothing stopping BBL undertaking further unilateral investment decisions in the future without user commitments on its side to expand its export capability further. Clearly the risks of greater scarcity at peak times from competing for 50%, 75% or even 100% of available NTS Bacton exit capacity would make the negative consequences noted above even more greater.

Option 3: Reallocating existing Licence Baseline Exit Capacity at Bacton (IUK) to Bacton (BBL)

Option 3 is not justified for the reasons already outlined in the observations above. It is inconsistent and not compliant with national and European obligations noted in observation 1 (the CAM code, ECRMS, ExCS and EU SoS regulations). NG has received no market signal to allocate additional capacity to the NTS Bacton (BBL) exit point which is the trigger for it to consider possible options to meet that market request. As noted in observation 2, this option would afford BBL and NTS (BBL) exit users preferential treatment for immediate access to additional NTS capacity, discriminating against users using the correct process. It remains unclear to stakeholders why BBL or NTS (BBL) exit users have not been able to raise a request for additional capacity under the current framework while users at other points have been able to do so.

Removing capacity from the NTS Bacton (IUK) exit point creates a technical mismatch with IUK's Bacton capacity. It sterilises IUK capacity at both Bacton and the equivalent 168 GWh/d of capacity at the Zeebrugge IP, impacting Fluxys also. As noted in observation 5, this would not be compliant with the CAM code (Article 6), reducing cross border capacity via this route and the amount of capacity that can be bundled. It would also be inconsistent with the treatment of Moffat (which would remain ringfenced from substitution). It would also be inconsistent with arrangements on the NTS Bacton entry side where the technically capacity of both IUK and BBL is matched and which Ofgem deemed necessary for compliance at the time of implementing CAM Ofgem.

In observation 6 we have outlined that the capacity allocated to the NTS Bacton (IUK) exit point remains appropriate. Ofgem says in its draft IA with respect to option 3 that it would have to "consider current and forecasted flows from both exit points, based on historic date and Shipper User demand forecasts, as well as peak utilisation rates at Bacton (IUK)[43]" The draft IA however does not do this and elsewhere in the consultation Ofgem concede it has not been able to do a proper assessment "due to the difficulty of forecasting future utilisation of Licence Base Exit Capacity at Bacton."[44]

[43] See para graph 1.54 of the draft IA.

[44] See paragraph 4.5 of the Ofgem consultation.

There has been no assessment of the financial impact to IUK or Fluxys BE under this option. We have noted IUK is an interconnector is not a hub itself. It operates in=out. Sterilising capacity at Bacton, sterilises it at Zeebrugge. Under this option IUK would lose revenue from losing 168 GWh/d of IUK's Bacton entry capacity and 168 GWh/d of Zeebrugge exit capacity at peak times cost it £15m/y in revenue. This is significant, particular for an asset like IUK which typically has low average utilisation and relies on revenues from peak demand situations to maintain its capacity. For Fluxys Belgium the potential loss of revenue at peak times from the sterilisation of 168 GWh/d of capacity would be up to €3m/y which impacts BE consumers as tariffs on other parts of the BE network would need to increase to compensate for this loss. We have noted in observation 7 that the impact on the Belgium market and Belgium consumers has not been considered in the assessment of any of the options.

Overall for the reasons noted above, both option 2 and 3 are not justified and appropriate. We outline in observation 10 that there are other options available which Ofgem should consider.

Question 2: Should we have considered any other options to better utilise the existing exit capacity?

Yes. As mentioned above in observation 10 there are additional options that need to be considered, in particular to ensure that Ofgem is acting proportionately pursuant to its A1P1 obligations and under section 4AA of the Gas Act 1986. These options can meet the objective of making available more capacity to the NTS Bacton (BBL) exit point and also comply with existing legal obligations:

Additional option a) Expand the offer of firm non-obligated capacity products: Ofgem says that only daily and with-in day non-obligated capacity can be made available. This option would explore how NG can further improve the offer of longer capacity durations at the NTS Bacton (BBL) exit point (and indeed across the network) to improve overall efficiency. NG's incentives could be adjusted to facilitate this. If, as Ofgem suggest, there is plenty of spare capacity on the network, it can be offered with little risk of NG not meeting its obligated capacity commitments.

Additional option b) Improving the dynamic calculation of available NTS capacity: The dynamic calculation of available capacity is an obligation under the CAM code anyway[45]. Depending on NG's assessment and the state of the NTS in the Bacton area, it might be the case that the baseline capacity at the NTS Bacton (BBL) exit can be increased during periods, enabling an offering of additional capacity.

Additional option c) Use an oversubscription and buy back (OSBB) mechanism: Such a mechanism enables offer of longer term products, with the TSO keeping the network user whole in case the TSO cannot provide the allocated capacities. OSBB is already used to deal with congestion management by a large number of TSOs across Europe and German TSOs as an example are currently considering expanding its use to deal with physical constraint under new trading arrangement proposals[46]. Ofgem and industry can consider the appropriate balance of risk and reward incentives on NG to do this also in GB.

Additional option d) Increasing the baseline capacity by additional technical capacity: This is obviously an option outlined in current ECRMS arrangements and can also be considered for security of supply reasons if there is no clear market demand signal. It is unclear and not transparent how Ofgem has come to its

[45] Article 6 of the CAM code.

[46] See Bundesnetzagentur website and consultation press release: https://www.bundesnetzagentur.de/SharedDocs/Pressemitteilungen/EN/2019/20190523_KAP.html?nn=404530

conclusion that "we consider the technical increase in Licence Baseline Exit at Bacton to be inappropriate" without including an assessment of this option and its' costs/benefits in the draft IA. An assessment of this option should be shared and consulted on.

Question 3: Is our approach to assessing the costs, risks and benefits of the three options suitable? Are there any additional factors that we should build into our assessment?

The approach is not adequate. This is an important issue with a number of potentially damaging consequences. It undermines the current arrangements and discriminates against other users who are expected to continue to provide user commitments for NG to consider reconfiguring or investing in the network. It is important therefore that Ofgem does a robust assessment. This includes the need for a cost benefit analysis in line with the Government's Better Regulation Framework Guidance which says it should reflect "all the costs and benefits, including wider benefits to society". The analysis presented thus far has not done this. You only have to compare this draft IA with the draft IA published for Ofgem's minded to position on UNC678 [47] to see this IA is not of the same quality and adequacy for consultation. There is no quantitative assessment with Ofgem saying "we have not monetized the benefits and costs of the different options"[48]. This must be done. There is furthermore no assessment of compliance with existing arrangements and European legislation despite directly applicable rules applying to IPs.

It is inappropriate to base any speculation on the impact of Ofgem's proposal on IUK on the small snapshot of the summer months from 2017 to 2019 at paragraph 2.16 of the consultation document. Other than the expiry of long-term IUK contracts, it is unclear what constitutes the basis of the assertion that there is a "downward trend" as referenced at paragraph 6.13.

Question 4: Do you have any views on the specific qualitative analysis published in our Impact Assessment?

We note firstly that the draft IA contains no Ofgem quantitative analysis and this question only asks views on the qualitive information presented. We also note Ofgem concede "predicting flows in the future is very difficult"[49].

We are not surprised some users have supported options to access obligated capacity at the NTS Bacton (BBL) exit point without the need for user commitment. It provides these users a "free option" compared to the current arrangements. We note there has been no user committed market demand signal for obligated NTS Bacton (BBL) exit capacity in at least 4 market demand assessment consultations (the 2017 and 2019 market demand assessments, the BBL pre-consultation referred to on p21 of the consultation and responses to the CFE). There are only non-binding and non-committal expressions of interest. The current arrangements, legal obligations and historical allocation of capacity all point to allocating capacity only where there is proven market demand in the interest of protecting consumers from inefficient network allocation.

Even looking at these non-binding expressions of interest, there is no clear signal to justify granting the NTS Bacton (BBL) exit point access to 651.68 GWh/d of capacity. BBL's own survey as quoted on p21 of Ofgem's

[47] https://www.ofgem.gov.uk/system/files/docs/2019/12/unc678_minded_to_decision.pdf
[48] P4 of IA.
[49] E.g. see para 1.69 of the consultation.

consultation says only one shipper provided a non-binding commitment for 1 GWh/h of additional capacity. Despite this Ofgem is proposing in option 2 to make available 27 times this amount available or 7 times this amount under option 3. This is not proportionate.

We also caution against making assumptions about the benefits by looking at the historical price spread comparison of NBP – ZTP with NBP-TTF when BBL was doing virtual reverse flow[50]. Virtual reverse flow is a different product with different cost structures. Making assumptions based on the situation when BBL was virtually flowing will exaggerate the expected benefits of increasing obligated capacity at the NTS Bacton (BBL) exit point. Making assumptions based on the forward curve are also not stable given that this is a snapshot when looking at the data and spreads change over time. There has also been significant uncertainty about future NTS charges and the new regime will again influence price spreads and interconnector flows.

We also believe that the benefits of attracting LNG and to security of supply are exaggerated in the consultation. Firstly we note that, under the current status quo, LNG entry expansion is already being signalled. A PARCA application has been made to increase the Milford Haven ASEP entry capacity by a sizable quantity, 163 GWh/d. Options 2 and 3 do not actually increase the technical capacity for Bacton to export LNG gas to the continent. Competing auctions for mismatched capacity at peak times may actually discourage additional LNG from landing in GB and be diverted directly instead to the many continental terminals. This is due to both the higher potential capacity charges incurred by shippers at these peak times and also due to the uncertainty in acquiring the capacity.

We also question the extent to which NG can be expected to earn additional revenue at Bacton under option 2 or 3. The £2.1m BBL figure quoted in a few places by Ofgem has not been assessed by Ofgem. There is no explanation of how it is calculated. Options 2 and 3 do not increase capacity. NG's Bacton exit revenue essentially gets split with revenues from facilitating BBL exports as well as IUK's. In a market moving short term, a new charging regime, NG able to offer non-obligated capacity, and interconnectors able to offer capacity via implicit allocation, one would expect the bulk of NG's Bacton exit revenue to be earnt through shorter term daily or interruptible products. This happens already under the current regime. The additional options we have mentioned in observation 10, by increasing the level of capacity offered, may actually provide a better prospect for additional NTS revenues to be made.

We have noted earlier that whilst Ofgem highlight the benefits for the Dutch market to allow it to compensate for the decline in Groningen production, there is a lack of analysis on the impact to the Belgium market and its security of supply. Both options 2 and 3 can sterilise IUK's Bacton entry capacity with a direct knock on impact on the Zeebrugge exit point and ability to flow into Belgium. The risks also do not consider the practicality and the damaging consequences on cross-border trade and therefore competition itself of competing auctions at peak times creating uncertainty for shippers at Bacton at precisely the same time they are required to bid for Zeebrugge IP capacity.

[50] Noting the comment for example in para 1.64 of the consultation document.

Question 5: Are you in agreement with our preferred option and our minded to decision?

No, we believe Ofgem's preferred option is:

- Non-compliant and inconsistent with existing arrangements and legal requirements under the CAM code. The consultation has not explained why BBL and parties interested in additional NTS Bacton (BBL) exit capacity have not been able to use the current arrangements to seek this.
- Not needed nor proportionate, given that current arrangements (Option 1) have shown to be effective for NG to offer and sell capacity at the NTS Bacton (BBL) exit point and for BBL to sell capacity on its pipeline.
- Not consistent with Bacton entry arrangements where the technical capacity of both interconnectors is matched by the NTS Bacton IP ASEP capacity.
- Not proportionate, affording preferential treatment for users of the NTS Bacton (BBL) exit point compared to users of other NTS network points working within the current framework.
- Not justified given there has been no binding user commitments indicated.
- Not robustly considered, with the draft IA not being able to quantify any costs and benefits, nor rank it against all viable options, nor provide an assessment of compliance with relevant national and EU legislation.
- Creating regulatory uncertainty which harms rather than protects the interests of consumers. Connections to the network have a legitimate expectation that rules/processes will be respected. If Ofgem facilitates bespoke processes like this one, there is a risk of uncertainty deterring new investment or that connected asset providers may not continue to maintain their assets. If this capacity is not created where needed or reduced due to regulatory uncertainty, ultimately it is to the detriment to GB consumers.

Question 6: Is there any other relevant information we should consider before taking forward a change?

Yes, Ofgem need to consider and explain:

- Why BBL and parties interested in BBL exit capacity have not been able to use the current arrangements to seek additional capacity whilst for other parts of the network applications for additional capacity are being made.
- If the current arrangements are a barrier, how the arrangements will be appraised, and new arrangements consulted on. We note NG along with industry are already undertaking a capacity access review under UNC 705R[51]. Ofgem should not be proposing preferential treatment for users at one point on the network with bespoke solutions.
- The implications of moving away from efficiently allocating additional capacity only if there is a positive market demand signal.
- All the costs and benefits of all the relevant options. We have outlined in response to question 2 that additional options must be considered such as looking at improving the way existing available capacity to calculated and offered.
- Compliance of the options against all of Ofgem relevant duties, in particular compliance with the relevant NG capacity methodologies, national and EU legislation.

[51] https://www.gasgovernance.co.uk/0705

- The potential negative effects of competing auctions and scarce capacity at times of peak demand given the mismatch of technical capacity under options 2 and 3. Ofgem should also consider the impact on the Zeebrugge point which is required to auction capacity simultaneously as with Bacton.
- The negative impact on Belgian consumers, Belgium security of supply and Fluxys Belgium (sterilisation of capacity at Zeebrugge), in coordination with the Belgian regulatory and governmental authorities.
- The financial impact on IUK from the sterilisation of capacity under options 2 and 3.
- Why it considers it appropriate to grant BBL access to nearly 4 times its technical capacity, and nothing prevents BBL from expanding its technical capacity to this limit potentially sterilising all of IUK's exit capacity.
- The wider context and more long-term perspective in relation to allocation of capacity at Bacton.

Annex 2: CEPA economic review of the options and analysis outlined in Ofgem's consultation and accompanying Impact Assessment (IA)

Please see the additional assessment report by Cambridge Economic Policy Associates.