

Energy Investment in the EU and Russia: Investment Regulation under the Third Energy Package and the Russian Law on Foreign Investments in Strategic Sectors (comments of the discussant)

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3rd EU Energy Package: two “standard” procedures to build new capacity in EU

3rd EU
Gas
Directive

Art. 13.2

Standard “no-exemptions” procedure = “bottom-up” approach based on market demand for capacity = SHOULD BE a mainstream procedure => should be (?) based on EU-wide coordinated (& legally binding) “open season”

Art. 36

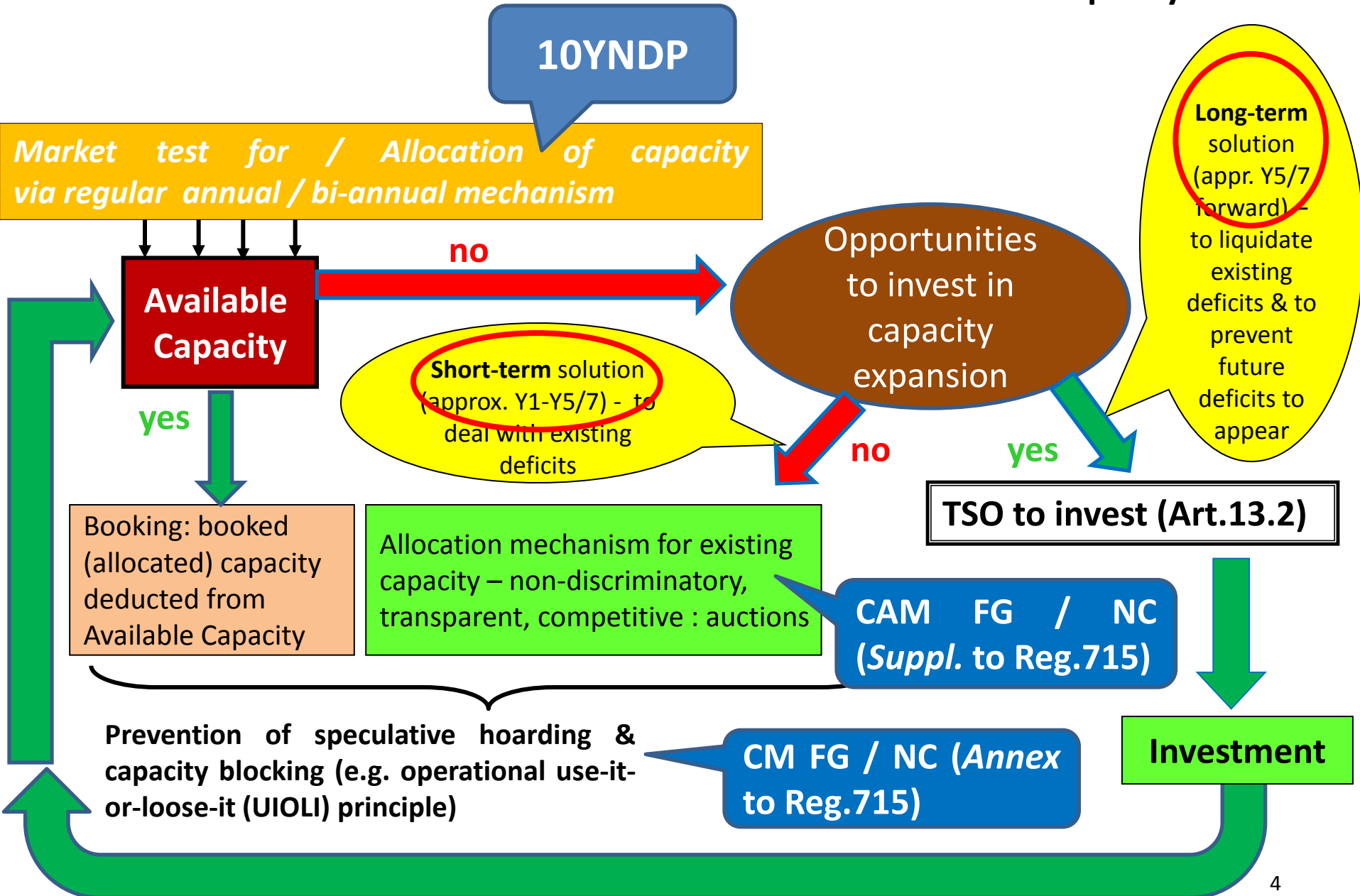
Workable but (might be) not best effective procedure:
(1) too lengthy (Nabucco: 28 months to receive exemptions, while Turkmen-Uzbek-Kazakh-China pipeline was built from the scratch in shorter time),
(2) each exemption based on individual perceptions, etc.

Standard “exemptions” procedure = “top-bottom” approach (SOS-based, etc.) or when derogation from the rules of acquis = FACTUAL mainstream procedure = exemptions from the EU rules as a general rule (22 major EU gas infrastructure projects since 2003)

CAM NC & new capacity

- CAM NC allows to book up to 15 years, but
- What if (auction shows that) there is no available capacity at the year 7-8+/-, when it is possible to invest & develop new available capacity needed by the market? CAM NC does not provide the answer...

Open Season as Universal Mechanism of Long-, Medium-, and Short-Term Allocation of Capacity



What provisions of the Third Package are supportive for such mechanism

Directive 2009/73/EC

- Art. 13.1(a), 13.2, 13.4
- Art. 14
- Art. 17 (e,f,g)
- Art. 22
- Art. 35.2
- Art. 36.6,
- Art. 41.1(g)
- Art. 42.2(a)
- Art. 52.1(d)

“TSOs must build infrastructure to satisfy all economically reasonable and technically feasible capacity demand”

Regulation (EC) 715/2009

- Art. 4
 - Art. 8.3(b)
 - Art. 12.1, 12.2
 - Art. 16.2(a), 16.5
 - Art. 18.1, 18.3
- PLUS: GGPOS-2007**
- Esp. Sect. 4.1 - 4.2 (esp. if “sponsor” = TSO)

(See also: “Memorandum on TSOs Obligations to Invest in Capacity” prepared by the Russian side of WS-2 for GAC 25.04.2012 meeting)

Proposed case study Art.13.2 ('Sweet Dream' Project map)



Some key provisions of proposed case study on Art.13.2 ('Sweet Dream' Project) bringing it in full compliance with 3rd EU Energy Package rules (no need in exemptions)

- Full ownership unbundling (supplier as a shipper only)
- Legally binding “open season” (shipper to book capacity requested)
- TSO shall invest – guaranteed return of investment (financial risks for TSO = 0: “ship or pay” + UIOLI)
- MTPA above capacity volumes requested
- Whether CAM NC provisions will apply? (20% short-term capacity reservation, 15 year-long booking, etc.) =>
- CEER Blueprint on Incremental Capacity (03.06.2013 meeting) => further cooperative efforts within informal Russia/GG-EU (CEER, ENTSOG, CEC) expert Consultations/GAC WS2

Thank you for your attention

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