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Capacity mechanisms: their compatibility with regards to state aid rules and the principle of free movement

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January 2016, Dauphine



Capacity Mechanisms: why?

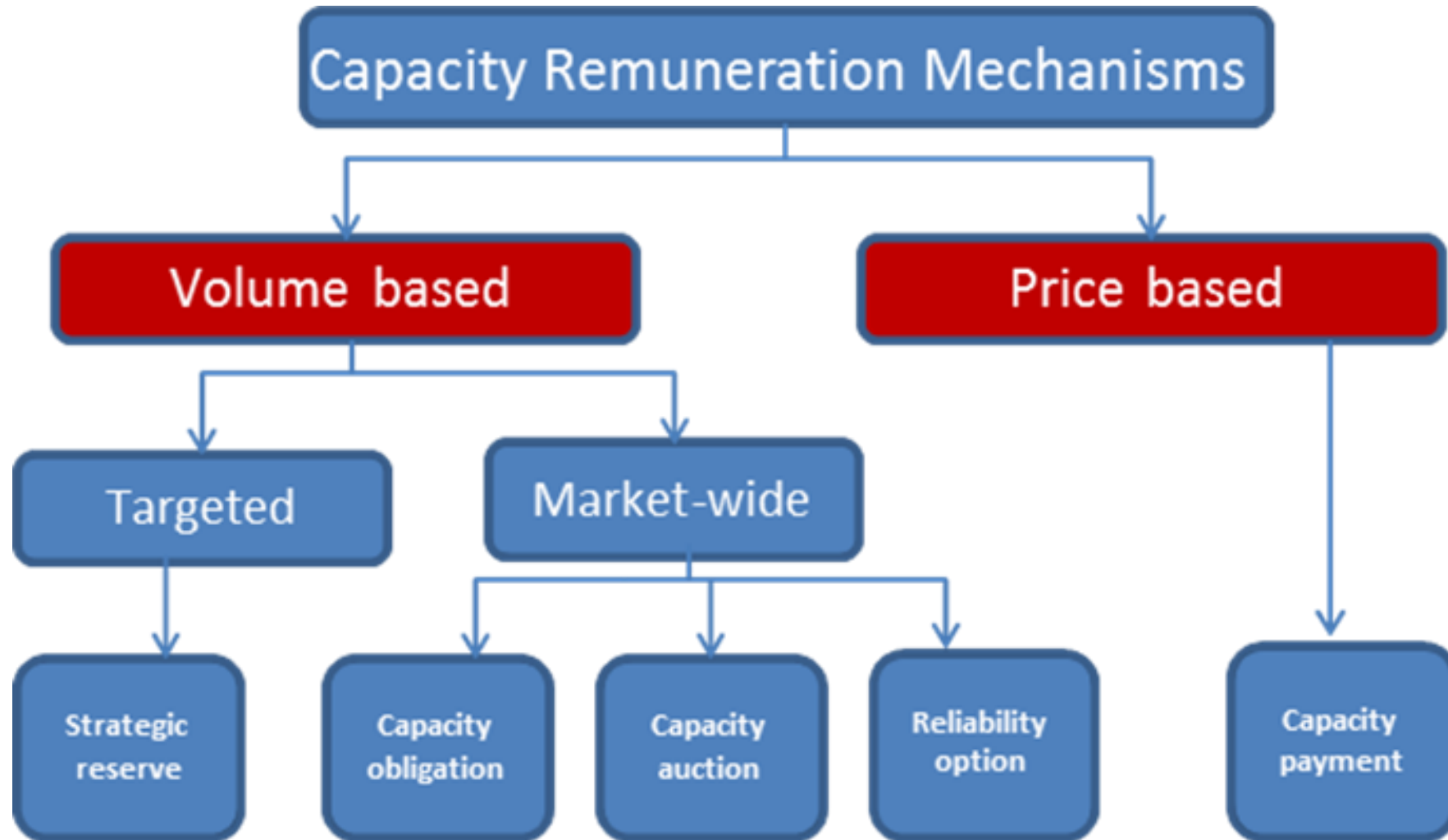
- Massive influx of RES and financial crisis (decreasing demand)
- Leads to thermal asset stranding (mostly CCGT / lower coal import prices) → closure / mothballing

Table ES1: EU utility impairments during 2013 - thermal and gas assets (€m)

Utility	Date	Total Impairment	Thermal impairment	Gas-power impairment	Assets noted
Statkraft	14-Feb-13	375.95	274.12	274.12	German gas-power assets
GDF Suez	28-Feb-13	2,000.00	2,000.00	2,000.00	EU gas-power assets
SSE	22-May-13	692.87	362.00	> 327.80	UK CCGTs, coal assets
Verbund	12-Jun-13	1,130.00	1,030.00	659.00	Austrian and French CCGTs
Vattenfall	23-Jul-13	3,462.18	2,168.20	> 1,690.00	Dutch gas-power and coal assets
GDF Suez	31-Jul-13	200.00	200.00	200.00	Dutch, French and German CCGTs
RWE	14-Aug-13	800.00	800.00	> 800.00	Dutch thermal generation assets
Total		8,661.00	6,834.32	> 5,950.92	

- Decreasing capacity margins: threat on security of supply

Capacity mechanism: design types



Capacity mechanisms: key econ/policy issues (1)

- How to avoid undue subsidies in the face of lobbying?
- how to avoid market distortions at national level?
- CRM design:
 - Participation of non GEN activities, demand side and storage (need to adapt design)
 - Bidding process
 - Obligations and penalties
 - 'fit' with other market design initiatives?
 - X-border participation

Capacity mechanisms: key econ/policy issues (2)

- Market integration and governance:
 - Possibly wide ranging effects on competition, trade and investment
 - Limits of state aid control?
 - What about regional harmonization?
- CRM and path dependency:
 - « *It is difficult to properly define the capacity product, determine the amount and location of capacity needed many years ahead, and integrate diverse products that blend capacity and energy in a variety of configurations. The problems are fundamental. It is not easy to build a good forward capacity market model based on sound principles.* » Pr Hogan, Harvard University

Which EU provisions apply to capacity mechanisms?

1. State aid rules
2. Treaty provisions on the free movement of goods
3. 3rd Energy Package, Security of Supply Directive 2005/89/EC
4. Antitrust rules (Article 101 and 102 TFEU)
5. EU Public Procurement rules
6. REMIT Regulation 1227/2011

Step 1: Is it state aid? Article 107(1) TFEU



???

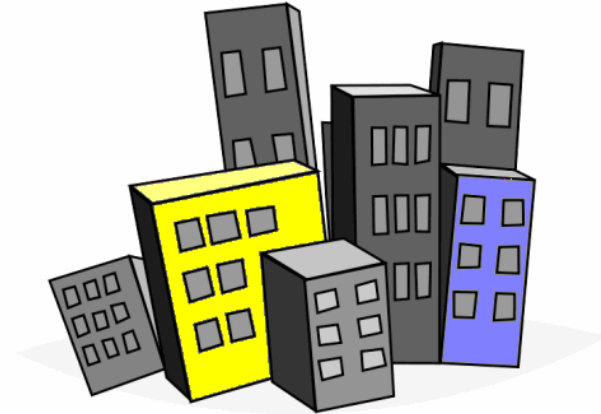
FUNDED BY STATE RESOURCES
OR OTHERWISE LINKED TO STATE RESOURCES



ECONOMIC
ADVANTAGE

DISTORTING COMPETITION ✓
& AFFECTING INTERSTATE TRADE

Escape route:
If compensation for the cost of
discharging public service obligation
Altmark criteria, C-280/00
No state aid – no need to notify it



GRANTED TO ✓
AN UNDERTAKING
& SELECTIVE

Commission state aid inquiry (29 April 2015)

- Pursuant to Art 20a of the Procedural regulation → first time (follow the decision on UK capacity mechanism)
- Focus on X-border trade distortions and discrimination
- The Commission seeks information from ministries, regulators, competition authorities and relevant market participants
- Preliminary findings will be published for consultation
- Interim & final report foreseen in 2016 (?)