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Dear Mr. Lowe,

18 March 2013

ENTSO-E views on ACER's Recommendation on the Capacity Allocation and Congestion Management Network Code.

We write to you regarding ACER's Recommendation to adopt the Capacity Allocation and Congestion Management (CACM) network code, dated 14 March 2013. In that document the Agency recommends the adoption of the CACM NC, while proposing a series of amendments. While we welcome the finalisation of the Agency's recommendation, we feel that it is important to make you aware of the significant concerns, which ENTSO-E has about a few Agency's suggested amendments.

This letter complements the response¹ to the Agency Reasoned Opinion sent on the 8th of February notifying that ENTSO-E did not intend to use its right to resubmit the network code as our proposal was fully in line with Framework Guideline and in the interest of delivering the Internal Energy Market as quickly as possible.

Areas of major concern

ENTSO-E has material concerns about the potential effects of the Agency's suggested changes related to capacity calculation methodologies, the deadlines for implementation, the intraday auctions and the redispatching and countertrading arrangements.

Capacity Calculation

ENTSO-E considers that the Agency's proposals on the capacity calculation process and methodologies, in particular those contained in Article 34, will have substantial negative unintended consequences. While ENTSO-E drafting ensured a balanced consideration of capacity calculation approaches as requested by the Framework Guideline, ACER's amendments appear skewed towards the use of the Flow Based Capacity Calculation methodology and thus risk precluding the application of coordinated ATC Capacity Calculation; which is a clear feature of the European Target Model.

Moreover, on Flow Based Capacity Calculation we share ACER's uncertainty – as expressed in their new suggested paragraph in Article 22 – as to *whether the requirements they recommend including in the capacity calculation methodology will prove feasible in light of the real-world experience* (recognising that the flow based approach has never been used in Europe to date²). We continue to firmly believe that the most effective and efficient way forward should be to include fewer details in the code at this stage while asking ENTSO-E to develop and implement³ the methodologies and processes defined in the code.

Deadlines for implementation

The deadlines included in the CACM network code were extensively discussed with all TSOs and a broad range of stakeholders and represent realistic compromises. ACER has

¹ A copy of the letter sent to the Agency is enclosed in Annex

² Flow based capacity calculation methodology has recently started in CWE region its 1 year parallel operation, before going live in 2014.

³ The TSOs' will and commitment to this pragmatic approach is evident in the recently launched parallel run in CWE and in the CWE/CEE efforts to cooperate.

provided no justification for radically shortening several of these timings⁴ and we are consequently unable to support unrealistic and unachievable provisions. To create a situation in which TSOs are forced to choose between breaching the law and compromising reliability is not in the interests of a well-functioning IEM. ENTSO-E believes that the EC should ensure that the deadlines included in the network code are feasible and built on a realistic date of the code entering into force.

Intraday

ENTSO-E draws the Commission's attention also to the potential effects of the Agency's recommendations related to intraday trading. The European Target Model allows the continuous pan-European platform⁵ to be complemented by regional auctions under certain conditions. It is thus for any complementary auctions to adapt to the continuous trade allocation so that they are compatible with the Europe wide approach. The Agency's proposed amendments to article 71 directly contradict this principle by introducing periodic suspensions of the pan-European continuous trading allocation to allow regional auctions to be performed separately. Moreover, the deletion of the Intraday Energy Gate Closure Time definition will also jeopardise the efficient operation of the intraday market as per Article 67(4). We struggle to understand how this solution is in the best interests of the market as a whole and consider that it would split liquidity and discriminate between market parties active in different Member States.

Redispatching and countertrading arrangements

Lastly, while ENTSO-E fully supports the ambition to cover remedial actions with a cross-border impact in the network code (in line with the conclusions of the last Florence Forum), we consider that the suggested wording of new paragraphs in Articles 41 and 83 is ambiguous and disproportionately going beyond the cross-border nature of the network code. We would recommend instead to further address this issue based on the outcome of the on-going discussions in the framework of the ACER and ENTSO-E dedicated joint Task Force.

Areas of support

We also consider that the Agency's recommendation contains several well-balanced amendment proposals, which can further increase the clarity and effectiveness of the code. We are generally supportive of the Agency's recommendations in the articles referring to regulatory approval procedures, the review of bidding zones, stakeholder consultation, the objectives of the network code, compensation in case of emergency situations, cost recovery, and entry into force.

Next steps

ENTSO-E hopes that these remarks will contribute to the Commission's assessment of ACER's recommendation. We will be pleased to assist the Commission in any way we can in the process of ensuring that this important network code becomes law.

Yours sincerely,



Daniel Dobbeni
President

⁴ For the development of capacity calculation methodologies, methodology for calculating scheduled exchanges, methodology for congestion income distribution, and algorithm development

⁵ One Capacity Management Module and one Shared Order Book allocating all cross zonal capacity and with an harmonised gate closure time for cross-zonal trade, as defined in ACER's Framework Guideline on CACM.