



## **DG COMP invitation to comment on the commitments offered by TenneT TSO GmbH in case AT.40461**



### **EFET reaction – 4 May 2018**

EFET thanks DG Competition of the European Commission for the opportunity to provide views on the commitments of TenneT TSO GmbH in case AT.40461. The availability of cross-border transmission capacity to participants in the European wholesale power market is vital for healthy competition and minimisation of liquidity and price risks, hence our acute interest in the subject and our contribution below.

#### ***Introductory statement***

We take the opportunity of this contribution to remind DG Competition of the importance of on-going developments on the legislative and regulatory side with regard to cross-border transmission capacity calculation. With the adoption in July 2015 of Commission Regulation (EU) 2015/1222 establishing a guideline on capacity allocation and congestion management (CACM Guideline), a process was started to harmonise cross-border transmission capacity calculation in each capacity calculation region (CCR). ACER published in November 2016 its Recommendation 02/2016<sup>1</sup> which details the Agency's proposal as to how to design capacity calculation methodologies (CCMs) in accordance with the CACM Guideline and Regulation (EC) 714/2009. Recommendation 02/2016 describes in particular a method to ensure that TSOs do not discriminate against cross-border transactions and in favour of transactions taking effect within a bidding zone (often co-extensive with a Member State.) Exemptions are available to the TSO in the case of objectively verifiable operational security requirements and in the case of superior economic efficiency of operation of the wholesale power market measured from an overall system perspective at regional level.

<sup>1</sup> ACER Recommendation 02/2016, available at:  
[https://www.acer.europa.eu/Official\\_documents/Acts\\_of\\_the\\_Agency/Recommendations/ACER%20Recommendation%2002-2016.pdf](https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Recommendations/ACER%20Recommendation%2002-2016.pdf).

From June 2017 to March 2018, the TSOs of the various CCRs have consulted market participants and subsequently submitted their CCM proposals to their respective NRAs for approval. Depending on how early these proposals were submitted to NRAs, some of them have already been the subject of requests for amendments by the regulators, whereas some are still pending regulatory review. Even taking into account the longest possible approval process, with intervention of ACER, the CCMs of all CCRs should be adopted by the end of 2018 or early 2019.

We have expressed very serious concerns about the vast majority of the TSOs' CCM proposals: they generally lacked the level of detail and precision required for direct application, foresaw too much room for uncoordinated TSO practices, sometimes went even against general CACM principles, and generally lacked coherence between CCMs of different CCRs<sup>2</sup>. Despite all this, our confidence remains in the CACM GL process to establish harmonised CCMs. To retain our confidence, these CCMs must of course result in the maximisation of allocation of cross-border transmission capacity, at a level which is operationally safe and economically efficient (when efficiency is measured on a regional not just basis). The recent requests for amendments published by the regulators of certain regions<sup>3</sup> reassure us that they wish to uphold the principles of Regulation (EC) 714/2009, the CACM Guideline and the ACER Recommendation 02/2016. We do acknowledge the efforts and good intentions of national governments and regulators in their initiatives to increase the level of cross-border transmission capacity made available to the market via proposals related to specific borders, like those foreseen by TenneT, Energinet DK, the German government and the Danish government. We also appreciate of the recent effort of the European Parliament to bring forward compromise wording for the latest Council version of Article 14.7 of the draft recast Electricity Regulation in the Clean Energy Package for all Europeans (CEP). However, we continue to advocate EU reliance chiefly on sturdy, coherent and transparent capacity calculation methodologies approved according to the CACM Guideline process.

<sup>2</sup> For more details, see our response to the consultations on the various CCMs (including general statement common to all CCMs), dated 19 July 2017 and last updated on 22 March 2018, available at: [http://www.efet.org/Files/Documents/Downloads/EFET\\_Eurelectric\\_MPP\\_Nordenergi-TSOs%20consultation%20CCM\\_22032018.pdf](http://www.efet.org/Files/Documents/Downloads/EFET_Eurelectric_MPP_Nordenergi-TSOs%20consultation%20CCM_22032018.pdf).

<sup>3</sup> See for instance the requests for amendments of the regulators of the Core CCR ([https://www.e-control.at/documents/20903/388512/RfA\\_Core\\_NRAs\\_CCM\\_intraday.pdf/c3a969e8-5580-1429-f5e4-3a31574d70fe](https://www.e-control.at/documents/20903/388512/RfA_Core_NRAs_CCM_intraday.pdf/c3a969e8-5580-1429-f5e4-3a31574d70fe)), Nordic CCR ([https://www.ei.se/Documents/Projekt/Natkoder/CACM/Artikel\\_20/CACM\\_Andringsbegaran\\_artikel\\_20\\_Norden.pdf](https://www.ei.se/Documents/Projekt/Natkoder/CACM/Artikel_20/CACM_Andringsbegaran_artikel_20_Norden.pdf)), Channel CCR ([https://www.ofgem.gov.uk/system/files/docs/2018/03/channel\\_common\\_capacity\\_calculation\\_methodology\\_request\\_for\\_amendment.pdf](https://www.ofgem.gov.uk/system/files/docs/2018/03/channel_common_capacity_calculation_methodology_request_for_amendment.pdf)), Ireland-UK CCR ([https://www.ofgem.gov.uk/system/files/docs/2018/03/iu\\_common\\_capacity\\_calculation\\_methodology\\_request\\_for\\_amendment.pdf](https://www.ofgem.gov.uk/system/files/docs/2018/03/iu_common_capacity_calculation_methodology_request_for_amendment.pdf)), and Baltic CCR ([https://www.ei.se/Documents/Projekt/Natkoder/CACM/Artikel\\_20/Artikel\\_20\\_andringsbegaran\\_Baltikum.pdf](https://www.ei.se/Documents/Projekt/Natkoder/CACM/Artikel_20/Artikel_20_andringsbegaran_Baltikum.pdf)).

## ***Comments and recommendations on the commitments offered by TenneT to DG COMP***

As mentioned in our introductory statement, EFET favours the multilateral process of CCMs at regional level over bilaterally agreed levels of transmission capacity allocation between Member States – or even, as in the present case, between a private entity and the European Commission. The former, if properly implemented, allows a harmonised calculation of cross-border transmission capacity that strives for optimum “social welfare” at regional level. The latter concentrates on obliging one TSO to offer a minimum level of transmission capacity to exporters and importers at a single international and/ or control area border, with a view to preventing that TSO from giving preferential access for transactions occurring nationally or within its control area. The anti-trust remedy thus proceeds without consideration necessarily of overall welfare effects (at EU or regional level).

This being said, we thank DG COMP for making the TenneT proposal publicly available. We list below our concerns with the limited extent of TenneT’s proposed commitments:

### *1. Level of Guaranteed Hourly NTC*

#### *a. TenneT proposal vs. ACER benchmark capacity*

According to the 2016 ACER Market Monitoring Report<sup>4</sup>, the average capacity available at the German-Danish West border for 2016 was 194 MW in the direction DK1>DE and 1,306 MW in the direction DE>DK1. These allocated capacities are indeed very far from the 3,748 MW of installed thermal capacity in each direction at this border. In its report, ACER determines a so-called “benchmark capacity”, which the Agency defined as the maximum capacity that could be made available to the market on a given border if the ACER Recommendation 02/2016 (see introductory statement) were to be followed. The Agency’s assessment is that the benchmark capacity, i.e. what the TSOs should make available at the German-Danish West border, is 1,582 MW in each direction. Taking that value rather than the installed thermal capacity, we observe that the capacity allocated at the border in 2016 was 12% of the benchmark capacity in the direction DK1>DE and 83% in the direction DE>DK1.

Without justification from TenneT, it seems unclear to us why the Guaranteed Hourly NTC is fixed at 1,300 MW in each direction<sup>5</sup> and not at the level deemed economically efficient at a regional level and respectful of operation security by ACER, i.e. 1,582 MW. Also, considering the allocation of capacity in the direction DE>DK1, the commitment corresponds to the level of capacity allocated in 2016, hence does not constitute an increase of available capacity compared to the current situation.

<sup>4</sup> See more details in the 2016 ACER Market Monitoring Report, p.6 to 8 and p.63, available at: [https://acer.europa.eu/Official\\_documents/Acts\\_of\\_the\\_Agency/Publication/ACER%20Market%20Monitoring%20Report%202016%20-%20ELECTRICITY.pdf](https://acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/ACER%20Market%20Monitoring%20Report%202016%20-%20ELECTRICITY.pdf).

<sup>5</sup> TenneT commitment proposal, paragraph 34.

**Recommendation 1:** Unless duly justified, we do not see a reason for TenneT to set its commitment at a lower threshold than the benchmark capacity calculated by ACER. Hence, we recommend increasing the commitment to 1,582 MW of guaranteed hourly capacity in each direction.

*b. TenneT commitment vs. grid development projects*

TenneT commits to guaranteeing 1,300 MW of capacity available to the market at the German-Danish West border for the coming nine years<sup>6</sup>. This commitment would indeed increase the level of available capacity at the start (in the DK1>DE direction only, see section 1.a of this document) compared to the thermal or benchmark capacity of the interconnection. However, as time passes and new infrastructure is put into operation at the border, the TenneT commitment would appear less demanding, as the 1,300 MW would represent an ever decreasing part of the thermal or benchmark capacity over the nine-year period.

As per the 2017 Nordic grid development plan, two infrastructure projects are currently ongoing at the German-Danish West border:

- The East Coast project (in construction phase): upgrade of the 220kV lines from Kassø to Jardelund to 400kV, increasing the import/export capacity on the border to 2500MW in 2020<sup>7</sup>.
- The West Coast project (in construction): doubling of the 400kV line from Endrup to Niebüll on the Danish side, new 2 400kV lines on the German side between Niebüll and Brunsbüttel, increasing import/export capacity on the border from 2500MW to 3500MW in 2022.<sup>8</sup>

By 2022, not even half way through the nine-year agreement proposed by TenneT, the level of guaranteed hourly capacity will be more than two and a half times below the possible net transfer capacity at the German-Danish West border. A commitment by TenneT that does not take account of infrastructure developments does not appear ambitious enough.

**Recommendation 2:** TenneT's initial commitment should take into account planned increases in cross-border transmission capacity, by way of substantial supplements to the minimum guaranteed capacity to apply from 2020 and 2022, without the need for subsequent review. If DG Competition feels it would need advice on the magnitude of these supplements, this could be obtained from relevant Regulators. In any event the proportion of the thermal capacity of all cross-border transmission lines combined, after application of an n-1 factor, made available to the market by TenneT must not decrease during the period of the nine year commitment. Thus the level of Guaranteed Hourly NTC should go up automatically and proportionately each time the anticipated new grid infrastructure is commissioned at the German - Danish West border.

<sup>6</sup> TenneT commitment proposal, paragraph 54.

<sup>7</sup> For more information, visit: <http://www.kassoe-audorf.eu>,  
<https://docstore.entsoe.eu/Documents/TYNDP%20documents/TYNDP%202016/projects/P039.pdf>.

<sup>8</sup> For more information, visit:  
<https://docstore.entsoe.eu/Documents/TYNDP%20documents/TYNDP%202016/projects/P0183.pdf>,  
<https://docstore.entsoe.eu/Documents/TYNDP%20documents/TYNDP%202016/projects/P258.pdf>.

## 2. Capacity allocation over timeframes

### a. *Forward timeframe*

In its commitment, TenneT proposes to offer the Guaranteed Hourly NTC of 1,300 MW in the spot market (day-ahead and intraday timeframes). It also indicates that “a ***share of the capacity may be offered to the long-term market***”<sup>9</sup>. This possibility will only materialise after the phase-in period of six months (see our comments on the phase-in period in section 3 of this document).

Forward markets are an integral part of the electricity market, alongside the day-ahead, intraday and balancing timeframes. Forward trading enables market participants to secure deals (energy and transmission capacity) far in advance of real time, and provide long-term price signals to the market.

Forward trading is also a key element of risk management through (cross-border) hedging, which is essential for sourcing and providing electricity to customers competitively, as it allows market participants to avoid exposure to short term price volatility and imbalance costs: TSOs, as managers of cross-border capacity, have the ability to manage the associated risks and are the *only* parties in the electricity sector that can do so: TSOs are also the only asset owners and/or operators with an in-built capability to offer primary, physical hedges against future congestion rents through the allocation of firm cross-border transmission capacity rights. TSOs in this sense are *natural* sellers of firm transmission capacity rights.

The signals to the market and the TSOs carried by forward transmission rights however only reflect the reality of market participants’ needs and inter-zonal congestions if capacity allocation is maximised as much in advance of real time as possible. Therefore, we urge TenneT and Energinet to make all the Guaranteed Hourly NTC available to the market as long in advance of real time as possible, and without waiting for the end of the phase-in period.

**Recommendation 3:** The full level of Guaranteed Hourly NTC should be made available to the market at least one year in advance of real time in the form of firm forward transmission rights.

### b. *Balancing timeframe*

The commitment foresees the possibility for TenneT to reserve part of the Guaranteed Hourly NTC for the exchange of balancing energy. This possibility to reserve transmission capacity is indeed foreseen in Commission Regulation (EU) 2017/2195 establishing a guideline on electricity balancing (Balancing Guideline)<sup>10</sup>.

EFET has always expressed concerns with the Balancing Guideline provisions related to the reservation of capacity by the TSOs for balancing purposes. By

<sup>9</sup> TenneT commitment proposal, paragraph 36.

<sup>10</sup> TenneT commitment proposal, paragraph 36.

reserving transmission capacity specifically for use in the balancing timeframe, TSOs remove available capacity from the allocation in the other timeframes, thereby restricting market participants' ability to adjust their position across borders in the most economically efficient manner and prevent them from using this capacity to reduce imbalances. The use of cross-border transmission capacity is a key element in the European market integration of forward, day-ahead and intraday timeframes. A major objective of integration projects such as the EU Harmonised Allocation Rules for forward transmission rights, day-ahead flow-based market coupling and the future platform for implicit cross-border intraday trading (XBID) are to improve the access and use of such transmission capacity.

EFET believes TSOs should only make use of transmission capacity once the intraday market has closed, that is to say when the market can no longer use transmission capacity. Before intraday gate closure, the maximum capacity must be allocated to market participants, without any TSO reservation.

Besides, coming back to the TenneT commitment itself, TenneT defines NTC as "the maximum admissible trade volume over a border"<sup>11</sup>. Reserving part of the Guaranteed Hourly NTC for TSO balancing purposes would mean that it would not correspond to "trade volumes", and hence decrease the level of capacity that TenneT actually makes available to the market according to its commitment.

Should DG Competition nonetheless consider the option of reserving part of the proposed Guaranteed Hourly NTC for the balancing timeframe, it should request a commitment to limit this capacity reservation to 5% of the available capacity (as per article 42.2 of the Balancing Guideline).

**Recommendation 4:** The Guaranteed Hourly NTC should be made available to the market in full and no part of it should be reserved by TenneT for balancing purposes. At the very least, any reservation of the Guaranteed Hourly NTC should be explicitly limited to 5% in the commitment document, as per article 42.2 of the Balancing Guideline.

### 3. *Phase-in period*

The commitment document foresees a phase-in period of six months to gradually increase the Guaranteed Hourly NTC from 700 MW to 1,300 MW by increments of 120 MW every month<sup>12</sup>. In the introductory statement, TenneT purports that this phase-in period is designed to "allow market participants to adapt their processes and to gain experience with the increased exchange of energy"<sup>13</sup>.

Market participants need no phase-in period to adapt their processes, as bidding against a fixed minimum of 700 MW or 1,300 MW of transmission capacity at one border makes no difference in terms of the conduct of a typical international power trading business. Furthermore, provided that market participants are informed

<sup>11</sup> TenneT commitment proposal, paragraph 26.

<sup>12</sup> TenneT commitment proposal, paragraph 35.

<sup>13</sup> TenneT commitment proposal, paragraph 8.

sufficiently in advance of the change, they will adapt their expectations of available capacity at or affecting any particular border, and no specific “experience” needs to be gained. Rather, it seems as though market participants’ supposed needs are taken as an excuse to slow the implementation of the full Guaranteed Hourly NTC.

**Recommendation 5:** EFET, as an association representing more than 100 trading companies in Europe, does not see the need for a phase-in period of six months for the allocation of the full Guaranteed Hourly NTC. Unless duly justified by TenneT, the 1,300 MW Guaranteed Hourly NTC should be allocated as of the entry into force of the agreement.

#### 4. *Exemptions for exceptional cases*

The commitment to provide a Guaranteed Hourly NTC of 1,300 MW suffers two main exemptions<sup>14</sup>:

- Reduction of capacity for planned and unplanned outages, construction of maintenance (annex 1 of the commitment)
- Reduction of capacity due to emergency situation (annex 2 of the commitment)

##### *a. Exemption for grid unavailability (annex 1)*

As duly justified by TenneT, the network in the Schleswig-Holstein peninsula is not meshed, making redundancies more limited. While there are multiple lines (and more coming with the West Coast project) and the failure of one line does not mean that there is not alternative, all lines North of Hamburg into Denmark West are radial. As a consequence, TenneT may indeed be required to limit available capacity below the level of the Guaranteed Hourly NTC in case of availability of a network element. In any case, even in case of grid unavailability, TenneT commits to allocate at least 500 MW of capacity to market, a commitment we appreciate.

One element that is missing in paragraph 38 and annex 1 is transparency: as the unavailability of a network element may or may not lead to a level of allocated capacity below the Guaranteed Hourly NTC, it is important that TenneT not only publishes the planned or unplanned outage or maintenance on its website and the ENTSO-E transparency platform (EMFIP), it is also vital that it indicates whether or not the outage/maintenance will lead to a capacity available to the market lower than the Guaranteed Hourly NTC.

**Recommendation 6:** TenneT should ensure that transparency on planned and unplanned outages or maintenance referred to in annex 1 are published as soon as known, and that they also announce how the grid unavailability affects the Guaranteed Hourly NTC.

<sup>14</sup> TenneT commitment proposal, paragraph 38.

*b. Exemption for emergency situation (annex 2)*

The exemption for emergency situation looks more problematic for us. TenneT foresees the possibility to reduce allocated capacity below the Guaranteed Hourly NTC “in **emergency situations** where the TSOs must act in an expeditious manner and re-dispatching **or countertrading** is not possible”.

First, regarding the definition of emergency situation: As emergency situation is a concept often used but nowhere defined in European legislation, TenneT proposes its own definition: an emergency situation would be “a severe inter-TSO critical grid situation”. We consider this definition imprecise and leaving too much room for interpretation. There is no clarity as to what constitute a “critical grid situation”, as of when it is considered “severe”. Also, would the concept of “inter-TSO” concern only situations happening on a cross-border network element?

Second, regarding the exhaustion of re-dispatching or countertrading: while re-dispatch can indeed be exhausted if the physical assets that have made themselves available for re-dispatch have all been used to their full capacity, countertrading is virtually inexhaustible. Indeed, countertrading consists in the TSO(s) buying energy on the market to relieve a physical congestion. Provided that the TenneT is not limited in the price it can offer to buy or sell energy in the market, it will always find a counterparty to trade with. Hence, if the exemption of annex 2 is maintained, it should refer to re-dispatching **and** countertrading not being possible.

Third, and most crucially, existing EU legislation governing the allocation of transmission capacity foresees that the occurrence of an emergency situation (which in its natural meaning must be of a short run nature) may justify a TSO’s curtailment of transmission capacity already allocated, but does not foresee such a circumstance automatically entitling a TSO to change its calculations for the purpose of future allocation.

As a consequence, it seems to us that the exemption in case of an “emergency situation” is inappropriate and should be struck out. In case the emergency situation exemption is maintained, it is worth noting that the TenneT commitment does not include any indication of the rules applicable to the holder of transmission capacity rights already allocated in the forward timeframe, who suffers from a reduction of the Guaranteed Hourly NTC. Pursuant to article 16.2 of the Regulation (EC) 714/2009, transmission capacity already allocated and curtailed for reasons of emergency situation should be the subject of financial compensation. This compensation is made at the level of the market spread according to article 53.2 of Commission Regulation (EU) 2016/1719 establishing a guideline on forward capacity allocation (FCA Guideline).

We also refer to our point above on transparency (see section 4.a of this document).

**Recommendation 7:** The exemption for emergency situation foreseen in annex 2 should be removed from the agreement. In case the exemption for emergency situation is maintained, the following elements should be included in the agreement with TenneT:

1. The exemption should be reformulated so as to refer to “emergency situations where the TSOs must act in an expeditious manner and re-dispatching **and** countertrading is not possible”;
2. The agreement should make it clear that a cancellation of transmission capacity rights already allocated by way of a reduction of the available capacity below the Guaranteed Hourly NTC constitutes a curtailment which must be the subject of compensation at market spread, except in cases of true *force majeure*;
3. TenneT should ensure that information about an emergency situation referred to in annex 2 is published as soon as known, and that they also announce how the situation affects the Guaranteed Hourly NTC.

## 5. Application and enforcement of the agreement

### a. *Practical effects of a one-sided commitment*

The TenneT commitment, would they be accepted by DG Competition and turned into an agreement between TenneT and the European Commission, only bind TenneT. Cross-border capacity allocation, however is – at least – a two-sided matter. In case AT.40461, this means that the Danish TSO Energinet (ENDK), the other party to the capacity allocation process, is not bound by the agreement.

This reality is properly reflected in the TenneT commitment document, where the Guaranteed Hourly NTC is always labelled “TenneT Guaranteed Hourly NTC” and defined as the “minimum value of NTC for the DE-DK1 border determined by TenneT and valid for every hour of the year **independent of the minimum value of NTC for the DE-DK1 border determined by ENDK**”<sup>15</sup>. Also, the trading capacity is defined as “the capacity actually made available to the market for the DE-DK1 border equal to **the lower of the two values of NTC** determined by TenneT (i.e. at least the TenneT Guaranteed Hourly NTC) on the one hand and determined by ENDK on the other hand”<sup>16</sup>.

In practice, this means that market participants will have actually no guarantee whatsoever that the 1,300 MW of cross-border transmission capacity will be available for trading at the German-Danish West border. All will depend on the NTC calculated by ENDK.

One solution we could see to this problem would be for TenneT to secure a parallel bilateral agreement with ENDK mirroring the conditions of its agreement with the European Commission before the entry into force of the latter.

<sup>15</sup> TenneT commitment proposal, paragraph 31.

<sup>16</sup> TenneT commitment proposal, paragraph 32.

*b. Conflict of norms*

If and when an agreement is signed between TenneT and the European Commission regarding the allocation of capacity at the German-Danish West border (possibly complemented by a mirror agreement between TenneT and ENDK as suggested in section 5.a of this document), there remains the question of the applicability of this agreement with other binding legislation.

As described in our introductory statement, the TSOs and NRAs are currently in the process of establishing capacity calculation methodologies for each capacity calculation region. Once the CCM for the Hansa region (to which the DE-DK1 border belongs) will be approved, it will be binding on all TSOs of the region, including for the allocation of capacity at the German-Danish West border. Likewise, new capacity calculation rules may be borne from the current discussions on the review of Regulation (EC) 714/2009. Once the CCM for the Hansa region and possibly new capacity calculation rules are approved in the framework of the CEP, they will all have the same binding character as the agreement between TenneT and the European Commission.

We therefore welcome the review clause in the TenneT commitment document that partially addresses this question<sup>17</sup>. However, the review should not be an option (“**may** review”) but an obligation (“**must** review”) in case the agreement between TenneT and the European Commission conflicts with other rules, with or without request from TenneT. The clause should also foresee an interim solution to avoid any uncertainty as to the applicable rules for capacity allocation at the German-Danish West border in case the review of the TenneT - DG COMP agreement runs into a period of time where conflicting rules have already entered into force. That interim solution could simply entail the prevalence of the new CCM for the Hansa region, as long as application of that methodology is observed to deliver more transmission capacity to the market than would the then calculated level of the Guaranteed Hourly NTC.

**Recommendation 8:** The European Commission should mandatorily initiate a review of its agreement with TenneT, with or without request of TenneT, any time a conflict of norms arises. The agreement should include safeguard measures to ensure that transmission capacity allocation at the German-Danish West border does not drop below the higher of the then prevailing Guaranteed Hourly NTC under the TenneT commitments and the result of conducting a calculation pursuant to an adopted Hansa region CCM.

<sup>17</sup> TenneT commitment proposal, paragraph 56.