

EFET position on the draft CACM network code as published by the European Commission on 22 November 2013



5 December 2013

Since the summer of 2011, EFET has been actively cooperating with ENTSO-E, ACER and the European Commission to help developing a robust network code for Capacity Allocation and Congestion Management (CACM). This effort includes extensive contributions to formal and informal consultations, and active participation at stakeholder meetings. We also voiced our disappointment to ENTSO-E and ACER about the little progress made since the initial version of the network code back in September 2012. Since then, we suggested detailed comments and improvement proposals to this very important network code.

The version of the draft CACM network code published by the European Commission on 22 November 2013 in advance of the Electricity cross-border Committee of 6 December 2013 mostly shows clear improvements on the network code text compared to earlier drafts. Yet we remain highly concerned by provisions in a number of areas where the draft network code would permit individual TSOs' behaviour to diverge seriously from the spirit of EU Regulation 714/2009 and the intention of the CACM Framework Guidelines.

Our objective is to ensure that the CACM network Code actually fulfils its potential to push forward the integration of European wholesale power markets and promote their liquidity, rather than marking a step back from the principles already established in the Congestion Management Guidelines annexed to the 2009 Regulation.

1. Continuous intraday trading

In **article 71**, the European Commission has decided to keep the ACER amendment foreseeing that continuous trading could be suspended at intervals in the intraday timeframe, in order for a power exchange to perform a complementary regional auction inside and/or between bidding zones. This current wording of the goes against the general objective of European harmonisation and the option chosen in the target model of continuous intraday model, with regional auctions as an exception, provided that they do not interfere in the normal functioning of the continuous intraday market. The proposed

consultation process would not include market participants from Member States adjacent to those where the regional auctions are considered.

This approach would leave the door open for geographically isolated auctions, which do not take into account bids and offers available in the SOB which should normally be matched. Despite efforts to clarify the timescale for regional auctions (“for a limited period of time, which shall not exceed the minimum time required to perform the auction”), the provision risks continuous intraday trading being suspended regionally well ahead of real time.

Continuous intraday trading must not be interrupted in any case, and the complementary regional auctions must be an additional possibility for market participants, never an obligation.

The recent workshop organised by the European Commission, ACER and ENTSO-E on this subject on 2 December 2013 has proved that there is no clear vision on how to make regional intraday auctions coexist with the continuous intraday trading without negatively affecting the latter. We therefore call upon Member States to resist this particular set of amendments.

2. Allocation constraints

We remain of the view that the concept of "Allocation Constraints" (**article 27** and all articles in which the concept is used) should be removed from the network code unless strictly limited in scope. Although a requirement for update and review has been requested by ACER, the current approach still allows TSOs large flexibility to withdraw capacity from the market well ahead of real time, with limited regulatory oversight and without coordination or consultation.

We would propose by default that no allocation constraints should be allowed, and that all requests for exemption should be subject to full transparency, as well as to market consultation at a regional level, based on technical justifications supported by ex-ante arguments but also factual ex-post statistical data. Alternative solutions that do not impede cross-zonal market transactions should be evaluated first by TSOs and NRAs, with the aim of precluding a presumed need for any “allocation constraints”.

The market coupling algorithm should not be used for easing TSOs’ and cable owners’ procurement of transmission losses.

3. Bidding zones delineation

We fear that a review of bidding zones’ configuration (**chapter 2**) could be misused. The CACM Framework Guidelines require that, when assessing a possible change of bidding zone delineation, TSOs should also be guided by the principle of overall market efficiency.

Yet the proposed “technical assessment” in the Biennial Technical Report (Articles 39-40 of the draft network code) will inevitably ignore the concept of overall market efficiency as well as the associated market impacts of any changes in bidding zones. Network security should

not be guiding the bidding zone configuration review, nor should the minimisation of redispatch costs.

Changing the boundaries of any bidding zone in a single EU electricity market, which has already been operating at wholesale level across large parts of the continent since 1999, is bound to have a major impact on transactional activity. The disruption and uncertainty precipitated might adversely affect market participants' confidence and the liquidity of forward markets. Thus any changes should remain exceptional. For additional considerations on the subject, please refer to the EFET response to the recent ACER consultation on the review of bidding zones¹.

4. Transparency

Since 2011, we have been given no justification why the Common Grid Model, including the list of applicable critical branches, the grounds for deeming internal network elements to be critical branches and the base case assumptions, should not be made available to market participants at the same time as the capacity calculation methodology. TSOs should provide full transparency concerning methods, models, assumptions and scenarios.

Transparency, consultation and regulatory approval regarding the congestion income perimeter and income calculation methodology are also essential. The perimeter will directly or indirectly affect many aspects of operation of the NC CACM network code, including the market coupling optimisation and matching function, the adoption of criteria to assess bidding zone configuration, and of course the distribution of revenues among TSOs .

5. Guideline on Governance

The Guideline on Governance rules concerning the Network Code on Capacity Allocation and Congestion Management (Guideline on Governance) included in the Draft Regulation establishing a Network Code on Capacity Allocation and Congestion Management and a Guideline on Governance and supplementing Regulation (EC) 714/2009 by the European Commission is a welcome addition to the regulatory framework for capacity allocation in the day-ahead and intraday timeframes.

A key feature of market coupling is that, at that point in time, the involved power exchange(s) enjoy exclusive access to the ATC (or to a PTDF profile). The CACM network code will be the first Community legislation that contains an exclusivity element and, in doing so, gives a particular role to power exchanges. The Commission, regulators and market participants therefore need to have confidence that it will function efficiently and give the expected efficiency benefits. Prices emerging from market coupling must be credible and understandable by market participants in terms of the supply-demand fundamentals. This is particularly important, since the resulting day-ahead market is likely to furnish the reference price for forward products, which – in turn - must provide appropriate signals for efficient investment in generation, transmission, and demand response capabilities.

¹ EFET response to the ACER consultation on the review of bidding zones, 30 September 2013, available at: http://www.efet.org/Cms_Data/Contents/EFET/Folders/Documents/EnergyMarkets/ElectPosPapers/~contents/G872V555Z5D4VGAC/EFET_ACER-consultation-BZ_30092013.pdf

Consideration of how the relationship between system operators, power exchanges, and market participants should be governed is therefore of particular importance and a natural outcome of the market coupling initiative.

The “governance framework for the European day-ahead market coupling” is not the right place to define the entire wholesale power market model. While the guidelines may largely be limited in scope to the day-ahead auction, however, they should not ignore the reality and value of the other trading timeframes, or the local continuous day-ahead and intraday trading (OTC trading). Liquidity and competition will be promoted not only by a day-ahead coupled auction of power, but also by continuous trading within and between bidding zones in varying time periods up to and after the gate closure for that auction.

Additionally, the Guideline on Governance should not discriminate against non-EU TSOs and non-EU market participants which may participate to the European single day-ahead coupling and single intraday coupling. The Guideline on Governance would interfere with EU external energy policy since most non-EU countries which are able to participate to day-ahead and intraday market coupling have already formalised their external energy policy with the EU or are in the process of formalising it. Non-EU TSOs and non-EU market participants should participate to the single day-ahead coupling and to the single intra-day coupling as fast as possible since this would effectively contribute to creating an integrated European electricity market, to enhancing security of supply and to increasing flexibility within Europe and allow for cross-border electricity exchange between non-adjacent EU Member States.

We support the creation of a European governance framework such as the one proposed by the European Commission which maintains the diversity of local market coupling governance arrangements including the relation between TSOs and power exchanges. The designation by Member States of one or more NEMOs in each country responsible to organise and deliver market coupling services seems a reasonable option considering the current orientation of the CACM network code.

However, we would like to stress the principle that power exchange services should not be viewed as a monopoly business or considered as part of a system operator’s functions. Our practical experience is that PXs who are not nationally licensed/regulated and given a local monopoly for organising the day-ahead trading platform provide the better customer service with regard to the access to their trading and financial settlement systems. In addition they provide more flexibility to correct inefficiencies and to innovate and provide new solutions/products for the market, thus enabling both market efficiency and real market integration.

EFET therefore considers that the central orientation of power exchanges should be as service providers. Such customer orientation should not be undermined by excluding local competition per se. The eventual legislation should not prejudge or substitute for normal market processes, especially since power exchanges are not a natural monopoly and should not need to become such. Not only would that raise anti-trust problems, it would also undermine their ability to evolve.