

PUBLIC CONSULTATION ON ADAPTING THE BIDDING LIMITS ON THE DAY-AHEAD AND INTRADAY MARKETS IN AGREEMENT WITH THE PROVISIONS IN ARTICLE 10 OF REGULATION (EU) 2019/943 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 5 JUNE 2019 ON THE INTERNAL MARKET FOR ELECTRICITY



EFET response – 5 December 2019

General comments

The European Federation of Energy Traders (EFET*) welcomes the opportunity to provide our comments to OMIE's consultation on price cap and floors according to Regulation (EU) 2019/943.

As mentioned in our paper on the importance of free formation of prices¹, EFET believes that the electricity system in Europe is at a turning point. Collectively, we have reached an unprecedented level of liberalisation and integration of the whole electricity sector across Europe. At the same time patterns of generation and supply are changing. Generation sources are increasingly renewable and decentralised.

Through all of this the wholesale market in electricity as a commodity remains an essential foundation for effective competition in electricity supply. It facilitates market entry and exit, enables risk management by producers, suppliers and consumers through forward trading, and ideally will inform all investment and divestment decisions. Supply competition at the wholesale level underpins retail competition, which in turn guarantees customer choice, product innovation and variety, and improved efficiency. In this context, prices on the electricity market should be left to reflect the true value of energy. As per the CACM Regulation and the recast Electricity Regulation, they should only be limited for technical reasons. Therefore, even considering the possibility of not having any limits on the energy prices, **we agree with ACER's harmonised price clearing limits for the day-ahead market (i.e. -500/+3,000 EUR/MWh) and intraday (i.e. -9,999/+9,999 EUR/MWh), already applicable in Iberia.** We further justify this proposal below.

Effective market design

The key signal coming from the market is the electricity price. Only undistorted prices give an accurate signal for:

1. Dispatch of power generation and storage assets, as well as demand side response, services, and
2. Investment and divestment in these assets and services.

¹ https://efet.org/Files/Documents/Electricity%20Market/General%20market%20design%20and%20governance/EFET_Free-formation-of-prices-power-market.pdf

* The European Federation of Energy Traders (EFET) promotes and facilitates European energy trading in open, transparent and liquid wholesale markets, unhindered by national borders or other undue obstacles. EFET currently represents more than 100 energy trading companies, active in over 27 European countries. For more information: www.efet.org

Guaranteeing an undistorted price signal is indispensable to allow markets to play their role in allocating scarce resources in the context of the energy transition.

Explicit and implicit regulated price caps, and floors should be removed. Artificial price limits serve no efficient market purpose. These limits shield consumers from short-term price movements, whilst transferring any future costs to the medium and long-term (i.e. through inefficient plan closures or conversely maintaining unnecessary capacity available). Moreover, even where the impact on consumers is assumed to be minimized, it is due to the incorrect assumption that they are fully exposed to volatility in the market, which is not necessarily the case.

However, decision-makers should not be overly conservative in relation to price volatility and the occurrence of price spikes. These are natural features of the market which are necessary to ensure its efficiency in the short, medium and long-term. Natural volatility of the markets does not lead to higher risks for the system or higher prices for end consumers, provided they are able to access the appropriate tools (e.g. hedging or contractual price-fixing), or to outsource these activities. On the contrary, regulated price caps prevent the emergence of scarcity prices, which are vital, through the provision of price signals, for the proper functioning of the electricity market. Price signals are also key for the emergence of new services and technologies such as demand response, energy storage, frequency control or voltage control.

Compliance with EU regulation 2019/943

Article 10 of the recast Electricity Regulation (2019/943) states very clearly the principle of the exclusion of both bidding and clearing price caps in all timeframes, applicable as of 1 January 2020. The only exception to this rule foreseen by the Regulation in article 10.2 sets the following conditions:

- NEMOs can set limits on clearing prices
- Such limits need to be justified by technical reasons (i.e. functioning of algorithms)
- Such limits are harmonised for the internal market (SDAC and SIDC)
- Such limits take into account the maximum VoLL (Value of Lost Load)

The harmonised, technical, clearing price limits taking account the maximum VoLL have already been set by ACER for SDAC (-500/+3,000 EUR/MWh) and SIDC (-9,999/+9,999 EUR/MWh) in its Decisions 04-2017 and 05-2017 of 14 November 2017. The operation by OMIE of SDAC and SIDC in Iberia is governed by those Decisions.

In the present consultation document, **OMIE proposes to implement additional price limits on bidding in day-ahead and intraday markets. We see no justification for the application of any other price limit on the Iberian markets than the ones already set by ACER in compliance with the CACM Regulation and Regulation 2019/943**, and already applicable to the Iberian markets.

The proposal for additional limits at regional level, this time on bidding, is based on the third sentence of article 10.2 of Regulation 2019/943. This article requires NEMOs to establish a mechanism to automatically adjust bidding limits in case limits are expected to be reached. We contest this reading of article 10.2, as its different sentences cannot be read in isolation of each other, nor of paragraph 10.1:

- the reference to “technical bidding limits” in the third sentence is just a consequence of the technical clearing limits mentioned in the first two sentences;
- the third sentence’s purpose is to introduce the automatic adjustment mechanism, not new types of price limits;

- the automatic adjustment mechanism has already been established by ACER in its Decision 04-2017 for the whole SDAC, and hence already applies to the operation of SDAC by all NEMOs, including OMIE;

Whichever the legal reading of the third sentence of article 10.2 of Regulation 2019/943, OMIE does not provide any justification for the application of an additional price limit, nor for the level at which it is set. Should the underlying reason to introduce an additional limit on bidding be to avoid “market failures”, then this is not a technical justification for a price limit, nor does the proposed level of the limit take account of the VoLL.

In addition, CNMC, ERSE and OMIE should consider how the proposal affects the wider obligations under the Regulation. For example, Art. 7.2 provides key requirements, at least two of which we consider that the implementation of additional price limits would have a direct negative effect:

- **provide prices that reflect market fundamentals, including the real time value of energy, on which market participants are able to rely when agreeing on longer-term hedging products** – By definition any price limit that does not take account of the VoLL in day-ahead and intraday wouldn't be compliant, as VoLL reflects the price limit of demand during periods of scarcity. Even though there is not an officially defined VoLL in Spain or Portugal, ACER commissioned report² provide a robust insight that it might be €7,880MWh³ We agree with the ACER commissioned VoLL study where it states:

“At a pan-European level, VoLL is also intended to play a role in regulatory market design. Under the Capacity Allocation and Congestion Management guideline, Nominated Electricity Market Operators are supposed to ‘take into account an estimation of VoLL’ in setting harmonised maximum and minimum clearing prices. These clearing prices are to be applied in bidding zones which participate in day-ahead and intraday coupling mechanisms.” and

*“While we would expect that the NRAs of each MS would wish to develop their own regulatory approaches to defining wholesale scarcity pricing, **the interactions between scarcity prices and the implications for cross border electricity flows should be taken into account in the context of a harmonized EU market.***

Not letting prices reach up to the VoLL in real time, in this case not solely due to OMIE's price limits proposal, is a significant driver for the ‘missing money’ problem. The problem may not only be reflected by reduced investment in new capacity, it also may lead to the early closure of existing capacity.

- **make no distinction between trades made within a bidding zone and across bidding zones** – Implementing more conservative price limits than other western European markets would distort the level-playing field between internal and cross-border transactions. OMIE's price limits do not only leave Iberian market participants at a disadvantage vs. other markets peers. Ultimately, this leads to market wide impacts

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https://www.acer.europa.eu/en/Electricity/Infrastructure_and_network%20development/Infrastructure/Document/s/CEPA%20study%20on%20the%20Value%20of%20Lost%20Load%20in%20the%20electricity%20supply.pdf

³ See Table G.1 – Page 103 of the Study On The Estimation Of The Value Of Lost Load Of Electricity Supply In Europe

by artificially constraining market price formation which will translate into inefficient cross-border flows, as they will not be reflective of true scarcity and value of energy within each bidding-zone.

Thus, OMIE's proposal to implement an automatic adjustment mechanism for the maximum and minimum technical bidding limits is not satisfactory as it tries to circumvent CACM Regulation, EU Regulation 2019/943, ACER Decisions⁴⁵⁶ and might hinder the Iberian electricity market.

Therefore, we request OMIE to withdraw any proposal to set other limits than the ones already set by ACER in its Decisions 04-2017 and 05-2017.

EFET's answers to the consultation's specific questions:

1. *Do you agree with the mechanism described for increasing and decreasing the maximum and minimum bidding limit for day-ahead and intraday markets? If not, please propose an alternative mechanism and explain your response.*

No. Please refer to our general comments and compliance with EU regulation 2019/943 sections.

More specifically:

- a. *Do you agree with the proposed threshold of 60% for the maximum technical bidding limit? If not, please propose another value and explain your response.*

No. The threshold of 60% applied in the ACER Decisions 04-2017 and 05-2017 is consistent with the technical limits and the automatic adjustment mechanism considered, but this is not the case in the OMIE's proposal.

The consultation document presents no technical or legal justification for any other price limits than the technical clearing limits already applicable in Iberian markets for SDAC (+3,000/-500 €/MWh) and SIDC (+9,999/-9,999 €/MWh), as per ACER Decisions 04-2017 and 05-2017.

In addition, ACER Decision 04-2017 already foresees an automatic adjustment mechanism, which is already in force and applicable by all NEMOs operating SDAC, including OMIE.

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https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/ANNEXES%20NEMOs%20HMMCP%20FOR%20SINGLE%20DAYAHEAD%20COUPLING%20D/Annex%20I_ACER%20DA%20MAX-MIN.pdf

⁵ https://acer.europa.eu/Official_documents/Acts_of_the_Agency/Individual%20decisions/ACER%20Decision%2005-2017%20on%20NEMOs%20HMMCP%20for%20single%20intraday%20coupling.pdf

⁶ https://efet.org/Files/Documents/Downloads/EFET_ACER%20consultation%20caps_15092017.pdf

Any alternative proposal for technical clearing limits and their automatic adjustment mechanism should be submitting by all NEMOs (in cooperation with TSOs) to all NRAs, according to the process set forth in article 41 of CACM Regulation.

- b. *Do you agree with the proposed value (+100€/MWh) as the increase applied to the maximum technical bidding limit in effect? If not, please propose another value and explain your response.*

No. Refer to the answer for 1.a.

- c. *Do you agree with the proposed value (-15€/MWh) as the decrease applied to the minimum technical bidding limit in effect? If not, please propose another value and explain your response.*

No. Refer to the answer for 1.a.

- d. *In the event of a trade on the intraday continuous market at a price above 60% of the value of the maximum technical bidding limit on the intraday market, or a price equal to the minimum technical bidding price on the intraday market. Do you consider it appropriate to apply a minimum energy threshold associated with that transaction in order to apply the updating mechanism for maximum (minimum) technical bidding limits? Justify your response and, if you agree, what value for that energy threshold you consider to be appropriate.*

No. In addition to the arguments given in this letter, the regulation doesn't qualify the obligation by a volume the market has to trade at to be impinged by price limits. Therefore, volume shouldn't be relevant for setting any price limit.

- e. *The proposed mechanism for updating the limits will take into consideration the maximum (minimum) price reached during a particular month m , in order to calculate the new maximum (minimum) limit that will result from the application in month $m+2$. This way, if several elevated prices were to be given consecutively in month m , it would only be necessary to apply the mechanism once, which is thought could make the operation simpler. Besides, the fact of considering its application with one month's delay could allow the process to be less rushed and would give the mechanism greater predictability. Regarding this proposal, do you consider it appropriate for updating the maximum (or minimum) technical bidding limits for the day-ahead or intraday market to be carried out by taking the maximum price reached in month m as a reference, and for it to be applied on the first business day of month $m+2$?*

No. Refer to the answer for 1.a. Also, the delay period is too great – we ask for immediate publication and the implementation 5 weeks after as per ACER Decision 04-2017.

2. *Do you agree with establishing a value of 300€/MWh as the starting value for the maximum technical bidding limit for the day-ahead market and for intraday markets? If not, please propose alternative initial values and explain your response.*

No, the consultation document presents no technical or legal justification for any other price limits than the technical clearing limits already applicable in Iberian markets for SDAC (+3,000/-500 €/MWh) and SIDC (+9,999/-9,999 €/MWh), as per ACER Decisions 04-2017 and 05-2017.

We deem the additional limit proposed by OMIE unjustified and contrary to EU Regulation 2019/943, as it is not a clearing price limit, it is not set according to technical justifications, and it does not take account of the VoLL.

3. *Do you agree with establishing a value of 0€/MWh as the starting value for the minimum technical bidding limit for the day-ahead market and for intraday markets? If not, please propose alternative initial values and explain your response.*

No. Please refer to the answers above.