

ACER

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Subject: EFET¹ response to ACER's "Bridge beyond 2025" consultation

EFET welcomes the opportunity to comment on ACER's regulatory actions proposals in terms of targeted regulation and enabling new technologies.

Topic 1: Targeted regulation and market functioning

1. *Is the proposed response set out above appropriate to address the challenges the sector faces? What should be done differently and why?*

EFET supports ACER's analysis of the key challenges remaining for delivery of effective market functioning under the existing framework. Progress has been mixed across EU. In "slower" member states, a lack of liquidity can be attributed to a lack of political support in implementing EU rules effectively, in introducing other barriers related to supply security obligations or licensing and reporting burdens, and ongoing support to maintain the protected status of a national champion. Elsewhere, price signals and liquidity have emerged, but overinvestment in infrastructure and uncertainty over future gas demand and the role of gas (conventional and new gas sources) have altered the risk appetite of many market participants, making them less willing to hold long term transportation contracts. In the shorter term, there is also a disconnect between the protected nature of infrastructure companies' revenues and shippers' valuation of the services provided, giving rise to the potential for asset stranding. In particular, a difference has arisen between the perceived value of surplus infrastructure to provide increased supply security and the market's ability to extract an equivalent value from commercial contracts with those who benefit from the increased security.

We additionally raise the following specific points:

- We are moving away from one-size-fits-all in terms of common interpretation of EU legislation and adherence to the gas target model. This will especially be affected by different policy approaches towards decarbonization and the role of gases, including new sources of gas. As a general rule, EU regulation to access infrastructure and transmission regime is preferable to *ad hoc* solutions developed at national level, which increase complexity and add market distortions. Nevertheless, in a situation where EU legislation must also accommodate different national policies, further thought may need to be given to a structure that allows for national interpretations without creating unmanageable distortions.

¹ The European Federation of Energy Traders (EFET) promotes competition, transparency and open access in the European energy sector. We build trust in power and gas markets across Europe, so that they may underpin a sustainable and secure energy supply and a competitive economy. We currently represent more than 100 energy trading companies, active in over 27 European countries. For more information: www.efet.org.

- With a new end goal of decarbonization, different routes may be anticipated to reach this goal depending on how far along the path to a competitive market a member state has reached. EFET believes that member states should still face a strong obligation to implement market reform and not seek to achieve decarbonization targets through overly interventionist approaches alone, even if some form of support is required to ensure gas decarbonization.
- Although this topic is generally related to the second part of the consultation, the impact of the power market reform is already being felt on gas as it changes the context in which gas market rules are implemented. It cannot therefore be considered in isolation.

Regarding the use of balancing platforms, bypassing interim measures under NC BAL may trigger objections from the Member States. Reasons for insufficient liquidity should be analysed to ensure that market participants hold the necessary information to self-balance, be it through a dedicated platform or directly on the market.

EFET has long advocated for simplified licensing procedures. Multiple, and often duplicate licensing and reporting requirements that differ from member state to member state by small irrelevant details still increase costs for market participants while adding little to transparency and market integrity. While providing collateral is important for ensuring trust between trading entities, we also note that onerous credit requirements may function as an entry barrier.

While we agree that tariffs are not the sole reason for price divergence between neighbouring hubs, we note that, upon expiry of the long-term contracts, the value of capacity at an interconnection point (i.e. the basis spread) may well be less than the tariff. This problem may be further aggravated if the booked capacities decrease and new investments in the network are finalized. Zone or market mergers may improve this locally but introduce other complexities such as ITC. Lack of political alignment also makes such mergers rare. While we agree that mergers could remedy the situation to an extent, we note that they are already possible under current legislation but seldom happen. Review of tariff methodologies - particularly those that allow a tariff that is disconnected with overall TSO costs - and a careful review of the TSOs allowed revenues may, however, improve the way markets function in the future. Further consideration should be given to the way security-of-supply related investments, which are not underwritten by the market, are financed. In any case, market participants are wary that a solution to tariff pancaking might actually create bigger barriers to market functioning than the problem it is trying to solve.

EFET fully supports the proposed technology-neutral approach when reviewing the substitutability of gas and electricity assets. Levelling the playing field between gas-to-power and power-to-gas technologies needs to be ensured in order to guarantee that the best and most cost-efficient solutions to meet climate targets are developed in a competitive environment. A holistic approach should be considered, covering energy commodities as well as infrastructure to optimize the development of technologies and the use of existing energy networks to avoid overinvestments (e.g. DSR or energy efficiency solutions might be apparently costlier than e-RES or new gas supplies but through reducing the necessity to invest new grids/pipelines they may be more economic overall).

When it comes to deliberate capacity hoarding in order limit competition from other companies, such behaviour is not permissible. Nonetheless, forbidding long-term capacity subscription is not a reasonable solution, since such contracts reduce investment-related risks and constitute a stable

source of financing for the TSOs. Long term capacity being booked and assigned to one (few) player(s) only shouldn't pose a major problem if there is no demand to book such capacity from other shippers or if there is sufficient entry capacity. When justified, capacity release could be an efficient solution to increase the efficiency of markets, at congested points

In particular:

1a. For monitoring the GTM metrics and prompting action, should the threshold values be set out at EU level? What should they be? Who should set these values?

It is important to distinguish between metrics measuring outputs (such as market concentration or liquidity) and those measuring inputs (such as implementation of network codes). Each may be a basis for prompting action.

EFET encourages a discretionary approach to action arising from GTM metrics and not to rely too much on particular scores as an indicator of where resource is best allocated. ACER is encouraged to work closely with market participants in order to promote reform where market entry is likely and where market participants are actively seeking support from authorities.

- We additionally need to recognise that a well-designed market may score low on output metrics because of low market interest, and that a badly designed market may still provide opportunities for participants at acceptable levels of risk. Therefore, metrics should not be considered in isolation.
- It is also important to note that barriers in some markets may be outside the control of energy authorities, e.g. if related to general tax issues or barriers to setting up businesses in general. Nevertheless, tailor-made approaches would still be useful, specific to deal with markets under investigation.
- Consideration should be given to incentives for member states to introduce reform, short of resource-intensive and time-consuming measures such as infringement proceedings and antitrust procedures. Eligibility for investment support or participation in an ITC mechanism (or threats of exclusion from them) could also be used to encourage participation in the single internal energy market.

Setting common thresholds for all of Europe would be very challenging, given the substantial differences in gas market development level in different Member States. If metrics are established in order to encourage improving the regulatory environment for market participants, they should rather be considered at a regional level, where Member States are facing similar challenges in terms of e.g. number of supply sources or hub liquidity.

The choice of metrics should reflect different aspects of the gas market's performance including:

- tariff levels on entries and exits
- market concentration level
- gas market liquidity
- TSO allowed revenue level
- Funds accumulated on the regulatory account (where relevant)

- Degree of implementation of European Directives

Threshold values for a given region should be defined and reviewed by the Agency in cooperation with the NRAs concerned. Other, non-quantifiable aspects of the market's functioning should also be included in the monitoring exercise, such as ease of market entry and potential double reporting obligations.

1b. Should there be new principles for tariff and allowed revenue methodologies in legislation – e.g. ensuring a level playing field between the gas and electricity sectors? What principles would be crucial?

There is a greater need to consider the impact of incentivising new asset investment *versus* sweating existing assets – combination of using RAB revaluation and rates of return (a low RAB and high RorR will incentivise new investment, high RAB and low rate of return will discourage investment and increase focus on extending the useful life of existing assets, reducing costs). In many markets, EFET believes that greater capacity could be made available with existing infrastructure through better application of EU legislation.

Recovery of allowed revenue primarily is achieved through sales of capacity. When a TSO has sold the capacity, there is no further incentive to ensure that the capacity is used effectively or re-marketed. Consideration could be given to a change in incentives to encourage such behaviour such as a commodity element that incentivises TSOs to remarket unused capacity rather than build more, to enforce use-it-or-lose it, to take more risk of overselling and buyback and generally to find better ways of extracting value from existing capacity.

EFET has previously raised the discussion that the existing cost recovery model does not recognise all potential parties who may share the cost burden arising through asset stranding. It can no longer be expected that the full asset base can necessarily be maintained and tariffs increased such that shippers alone can keep TSOs fully rewarded for all previous investments, especially if they were not requested by the market. Reductions in Regulatory Asset Values, savings in operating costs, socialisation to gas consumers or over the wider tax base, and explicit charging to power for the contribution to electricity supply security were all identified as possible avenues to explore. EFET takes the opportunity again to promote such discussion.

As recognised, burdensome licensing and reporting obligations remain a barrier. EFET remains supportive of simplified licensing procedures that are common to multiple member states, especially within in a market area, such that the same information can be used to apply for licences in multiple member states. This is preferable to a regional licence where a perceived disagreement with the NRA in one member state could lead to a shutdown of activity across multiple countries if that licence is suspended.

Increasingly we must consider whether gas transportation competes with electricity transmission for energy delivery. This affects not only differences in tariff arrangements that could create distortive behaviour or inefficient investment. In the context of sector coupling, a level-playing field between

the commodities is crucial. This means that where gas and power can be used interchangeably, tariff methodologies should guarantee that the same cost structures or exemptions are placed on both technologies. Additional consideration should also be given to cases where power-to-gas-to-power is used as a means of electricity storage – it is not clear what tariffs are suitable or whether sectoral pancaking causes more of a problem than it solves.

We also note that the increased dependency between the sectors may become a challenge in cases where gas infrastructure is maintained and developed primarily to serve as backup to the electricity network. In this particular case under the current tariff system, the financial burden has been solely placed on gas shippers. Where the deployment of power-to-gas technologies requires development/reinforcement of a relevant gas grid, the cost should be allocated to project developers rather than socialised among gas consumers.

One example question that arises is over how a regulator should treat an investment in one network that may strand an investment in another, which may again depend on whether there is an assumption of competition between gas and electricity grids.

2. Should the Agency develop a joint Electricity and Gas Target Model in view of sector coupling and what key features should this model have?

There are good grounds to have common scenarios, and common TYNDP.

Interactions between both sectors need to be taken into account when reviewing the existing Electricity and Gas Target Models. Nonetheless, since sector coupling is at an early stage of development, EFET believes it may not yet be possible to characterize in detail the desired structure of the coupled sectors.

Topic 2: Enabling new products and enhancing infrastructure governance

3. Is the proposed response set out above appropriate to address the challenges the sector faces? What should be done differently and why?

We support the dynamic approach to regulating the developing world of “green” and “low carbon/decarbonised” gas technologies. This, combined with technology neutrality of the regulations, should ensure that no technologies are pre-emptively ruled out. Our view is also that the unbundling principles should be enshrined so that the TSOs remain neutral to market developments.

We see investment in power-to-gas (P2G) capacity as a contestable activity, not least because it is a gas production activity. Power-to-gas technologies would be in competition with each other and with existing facilities (taking decisions whether to sell gas or use it for power production) and virtual services (financial risk management products based on gas and power price indexes, possibly combined with physical activity such as demand management). If authorities wish to promote earlier

investment in power-to-gas than is expected independently, then there is no obvious advantage gained by providing support only to the TSO or DSO as potential investor. Merchant facilities (akin to merchant gas storage or merchant CCGTs) could compete. However, there should be some obligations for TSOs to make available all the information necessary for taking such investment decisions and to connect third party facilities. Rules should also provide for commercial operation.

While we agree that financial support to investments in new technologies are a matter for governments, we believe that the regulatory authorities should advise against the introduction of support schemes that would interfere with the market-based mechanisms. NRA's intermediation in terms of data collection on different technologies could also support the development of non-distortive support measures, such as GoOs.

EFET agrees that the TSOs should hold the obligation to disclose all the relevant information for investments in decarbonised, low carbon and green gases, including favourable locations from the gas system's perspective. We also see merit in establishing an EU DSO entity that could streamline the support measures for connecting these technologies to the gas network and support maintaining level-playing field between them.

When it comes to infrastructure planning, EFET believes that the assessment of the system investment needs on the EU market should be done at least from a regional perspective. Considering the ongoing sector coupling and the development of technologies that facilitate it, we agree that such assessment can no longer be done by power and gas TSOs separately and without supervision. In this context we support granting ACER with powers allowing it to ensure consistency between different national and EU infrastructure development plans.

Where dedicated hydrogen networks are developed, they would best be regulated in a similar way to existing natural gas networks. There may be an exception made for private networks already created as specialist chemicals, which is recognised in the report. Just as some countries allow exemptions or private networks in natural gas also, so such a regime may be portable and parallel. Transparency around network access and tariff-setting is equally important for third party access to Hydrogen as to Natural Gas networks.

When it comes to investment support schemes for energy-transition supporting technologies, it is important that it is granted on a non-discriminatory manner i.e. technologies that are found to be "green" or "low carbon/decarbonised" are eligible for similar levels of support which is not offered exclusively to system operators.

In particular:

3a. Who should provide data on the availability of decarbonised gases by location so as to enable assessment of changes of gas system needs and flows, in parallel to greater availability of decarbonised gases? At what frequency should this data be provided to the Agency?

EFET believes that TSOs and DSOs are best placed to collect the data on decarbonised gases production, since they already hold the responsibility to safeguard the security of supply and perform a system needs assessment of their own. This information should be submitted with granularity growing over time i.e. as more and more investments are done in this field. While the system needs

assessment methodology should be developed jointly by the ENTSOs and potentially a European DSO organisation, ACER should have the right to approve, monitor and request changes to the way this analysis is performed.

3c. Do TSOs face a conflict of interest in the future in planning gas and electricity infrastructure? If so, would stronger regulatory oversight resolve the problem? Which powers are needed and at which level (European, regional, national)? Would transparency requirements on TSOs/ENTSOs mitigate this problem and if yes, what shall be done?

Experience from last year's joint ENTSOs power and gas interlinkages study shows that the system operators are by default considering competing power and gas investments when it comes to their future joint scenario building. This implies that the system operators will have an interest in advocating for their commodity. In order to mitigate this problem, robust set of rules governing the CBA of power and gas investments needs to be established. The CBA should place strong emphasis on cost-efficiency of a given solution and its contribution to improving security of supply and potentially net emission reduction. Transparency around such evaluation of the system needs is crucial for both the NRAs and market participants to be able to verify the benefits of a potential investment.

Moreover, ACER should ensure European TYNDP is able to face energy transition challenges. In particular, transparency should be given to the market on several aspects :

- Physical congestion risks (for both power and gas) in severe climatic conditions (typically several days without wind in winter, or several days where intermittent production is geographically concentrated far from demand) in order for market players to be able to anticipate crisis; maximum transparency on results and improved market consultation on hypothesis are key in the process.
- Transparency on the amount of expected regulated investments and consequences on regulated tariffs evolutions is also key. This transparency is required for cross-border grid users, but is also important for end-users, that should be entitled to be given the best information possible ahead of investments in gas or power appliances.

Finally, the creation of an EU gas DSO entity with tasks and responsibilities – when applicable shared with ENTSG-, for instance regarding the development of network codes related to decentralised production, gas quality and blending issues, etc should also contribute to alleviate some conflict of interests of TSOs.

4. What powers are needed for dynamic regulation to be effective?

The Agency must be guaranteed unrestricted and timely access to data on the development of new technologies in order to be able to respond with proper regulation. Consistent implementation across the EU is also necessary for maintaining system integrity. System operators should also be obliged to provide sufficient evidence that there is no commercial interest at a given point in time and scale before they are allowed to invest themselves. Investments developed under monopolies should also publish transparent information that would support further development of a given technology, as well as allowing reviewing its development stage.