ACER consultation on the harmonised allocation rules for Long Term Transmission Rights

A Eurelectric response paper

August 2021

Eurelectric represents the interests of the electricity industry in Europe. Our work covers all major issues affecting our sector. Our members represent the electricity industry in over 30 European countries.

We cover the entire industry from electricity generation and markets to distribution networks and customer issues. We also have affiliates active on several other continents and business associates from a wide variety of sectors with a direct interest in the electricity industry.

We stand for

The vision of the European power sector is to enable and sustain:

- A vibrant competitive European economy, reliably powered by clean, carbon-neutral energy
- A smart, energy efficient and truly sustainable society for all citizens of Europe

We are committed to lead a cost-effective energy transition by:

investing in clean power generation and transition-enabling solutions, to reduce emissions and actively pursue efforts to become carbon-neutral well before mid-century, taking into account different starting points and commercial availability of key transition technologies;

transforming the energy system to make it more responsive, resilient and efficient. This includes increased use of renewable energy, digitalisation, demand side response and reinforcement of grids so they can function as platforms and enablers for customers, cities and communities;

accelerating the energy transition in other economic sectors by offering competitive electricity as a transformation tool for transport, heating and industry;

embedding sustainability in all parts of our value chain and take measures to support the transformation of existing assets towards a zero carbon society;

innovating to discover the cutting-edge business models and develop the breakthrough technologies that are indispensable to allow our industry to lead this transition.

WG Market Integration & Network Codes

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Background

This is Eurelectric's response to ACER's consultation to gather views and information from stakeholders regarding the Harmonised allocation rules for Long Term Transmission Rights in accordance with Article 51 of Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a Guideline on Forward Capacity Allocation and which was submitted to ACER for decision. The input from the consultation will be used for ACER's evaluation in preparing its decision on that proposal according to Article 5(2) of Regulation (EU) 2019/942.

Consultation topics and questions

Cap on remuneration of LTTRs

In Article 59(5) of the HAR proposal, all TSOs propose to apply a cap on remuneration of LTTRs that would be equal to a month worth of congestion incomes on the respective bidding zone border:

'Irrespective of whether it is a Direct Current interconnector or not, the caps described in paragraphs 2 and 3 of this Article shall also apply to the remuneration of Long Term Transmission Rights holders for non-nominated Physical Transmission Rights and Financial Transmission Rights in case of fallback Allocation for Implicit Allocation, on a monthly basis.'

Article 35(3)(a) of the FCA Regulation clearly describes the principles of the remuneration of LTTRs to be applied to the current single day-ahead coupling that uses implicit capacity allocation:

'where the cross-zonal capacity is allocated through implicit allocation or another method resulting from a fallback situation in the day-ahead time frame, the remuneration of long-term transmission rights shall be equal to the market spread;'

ACER is of the opinion that an application of such a cap on remuneration of LTTRs lacks a legal basis and proposes to delete Article 59(5) of the HAR:

- Article 35 of the FCA Regulation lays down rules for the remuneration of LTTRs. It requires the remuneration to be equal to the market spread (implicit auction) or the clearing price of the daily auction (explicit auction) (para. 3). It does not state that the remuneration may be capped.
- In the current market conditions (implicit auction), the remuneration of LTTRs shall be equal to the market spread and the absence of any reference to a cap in that context imply that Article 35 of the FCA Regulation does not enable the HAR to introduce a cap on the remuneration.

- The FCA Regulation mentions caps explicitly only in the context of curtailments of LTTRs: Article 54 of the FCA Regulation allows TSOs to cap the compensation to be paid to holders of curtailed LTTRs and defines conditions for such cap.
- The remuneration of LTTRs does not qualify as a compensation for the curtailment of LTTRs. Therefore, Article 54 of the FCA Regulation does not provide a legal basis for a cap on the remuneration of LTTRs.

- In conclusion, there is no legal basis for a cap on the LTTR remuneration that is compliant with the FCA Regulation, because an application of a cap on remuneration of LTTRs would mean that the remuneration cannot be equal to the market spread, as it would always be lower.

Question 1: Do you agree with the deletion of Article 59(5)? Please, substantiate your choice from (i) legal and/or (ii) economic point of view.

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Eurelectric agrees with ACER in the deletion of Article 59 (5).

While Eurelectric agrees with ACER saying that the Article 59 (5) lacks legal basis, we also disagree with ENTSOE's proposal in terms of economics and responsibility of the stakeholders.

Recently, Eurelectric and EFET had jointly shared their concerns in a letter dated 6th April 2021 to the European Commission and ACER after this idea of altering the firmness of LTTR during decoupling events was presented by ENTSO-E at the MESC of 11th March 2021. The letter has clearly described the flaws in the rationale presented by ENTSO-E to reduce the firmness of LTTR in case of decoupling. Furthermore, the letter describes a way forward and requests ENTSO-E to focus on the management of decoupling events and improving the competition in the shadow auctions. We request ACER to refer to this letter for more details on our concerns, and reiterate a few major points presented in the letter below.

The proposal of ENTSO-E that the remuneration of LTTR could be capped in the case of decoupling is claimed to be introduced to ensure fairness and a level playing field both for market participants and for tariff payers. However, challenging the firmness of LTTR could not only be detrimental to the holders of LTTR for the period of the decoupling, but could even be detrimental to network tariff payers, as the risk of a revenue loss in case of decoupling event and consequently would be accounted by bidders when they auction to buy the LTTRs. In other words, TSOs would permanently get less revenues from LTTR auctions if they make LTTR a less reliable hedging solution.

Moreover, we consider that the proposal is not appropriate to address the problem of limited competition in the shadow auctions, which induces a loss of congestion rents for TSOs during decoupling events. Penalizing only the LTTR holders in terms of LTTR remuneration will not solve this concern. Eurelectric supports the ambition to increase competition in shadow auctions, but consider that the facilitating measures should target all market participants and not only the LTTR holders.

Finally, if a decoupling event has significant consequences in terms of congestion rents or price formation, Eurelectric considers that the economical compensation measures should rather be paid by the party that is responsible for the failure that caused the decoupling. In particular, LTTR holders could by no means be considered responsible of the past decoupling events, where the responsibility and operational performance of other stakeholders of the market coupling process were engaged.

Therefore, we are strongly opposed to the idea that the remuneration of LTTR could be altered in the case of decoupling. This goes against the key principle that LTTR is a hedging product for market participants, who would then bear a risk that they have no means to mitigate. Eurelectric strongly thinks that any short-term or long-term modifications of the market design related to LTTRs should be properly assessed in relation to the consequences these modifications may have compared with the expected benefits.

Question 2: Do you have any other comments on the HAR methodology?

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NIL

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