

EFET contribution to the consultation on Energy Sector Inquiry (Electricity)

EFET strongly believes that liquid and transparent wholesale energy markets help bring benefits to customers and provides at the same time the right investment signals to enable efficient delivery of secure energy supplies. EFET emphasizes the need for information transparency to enable the proper functioning of the markets in the interests of all European citizens.

EFET supports most of your preliminary findings of the Energy Sector Inquiry; in particular, the significant criticism of the effects of market concentration, vertical foreclosure and lack of market integration are well founded. We also agree that non-transparency of information for new market participants about utilization of infrastructure is a barrier to entry in the power sector. However, we feel that the chapters on power market integration and transparency could be more consistent. We set out below short explanations of three new EFET papers attached to this letter and also raise a fourth point which is not the subject of any attachments.

1. More Transmission Capacity for European Cross Border Transmission

You will see that the new EFET Position Paper *Improving firmness of transmission capacity rights and maximizing cross border transmission capacity allocation* is tackling firmness of rights to use transmission capacity and capacity availability maximization, in conjunction with the incentives and regulatory framework required to improve TSO performance. We have identified a few areas, where there is still considerable room for improvement.

Looking at the challenges facing us in completing the single European market in electricity at the wholesale level, we emphasize that TSOs should, as required by the 2003 EU Regulation concerning cross border electricity transactions, offer the maximum practicably attainable amount of cross border capacity, separately estimated for each day and hour of the year, and they should offer it on a fully firm basis.

The lack of progress in improving NTC estimates over the past five years calls for renewed action by Regulators, to ensure TSOs have incentives to maximize the capacity they sell to the market. Another necessary action consists in the improvement of firmness. This could be done through the provision of compensation at the full cross border market spread if a TSO has allocated capacity and subsequently withdraws it for any reason (other than narrowly defined “acts of God”).

Alternatively the TSO could buy back capacity from the secondary market in cases where they deem this necessary.

We would like to stress that the costs of increasing the availability of capacity at borders, and of guaranteeing its firmness, would be very minor compared with total network costs. We also emphasize that we would not normally expect TSOs to “oversell” capacity; indeed, it seems at many borders in the UCTE area there is so much leeway between the current NTC/ATC estimates and the actual thermal ratings of lines that, with more sophisticated modeling and better anticipation of flows, significant increases in capacity will be achievable. You may also be reassured that we do not envisage the immediate replacement of the Use-It-Or-Lose-It (UIOLI) principle by the Use-It-Or-Sell-It (UIOSI) principle; indeed, as long as at any particular border the timing for day-ahead nominations is different from the time of final allocation of capacity it will be necessary to retain the UIOLI principle. We expect that in practice it will prove easiest to introduce the UIOSI principle on a day-ahead basis at border where an implicit auction is organized; and even then UIOLI may remain relevant for intraday allocations.

Some of the benefits of TSOs making available more capacity on a firmer basis, well in advance of the day-ahead market timeframe, would be:

- Better ability for new competitors to hedge their risks of encountering congestion at borders;
- Clear signals for both operation of, and investment in, infrastructure in the future;
- Enhancement of competition in supply across borders;
- Incentives for TSOs to reassess bottlenecks at national borders, compared with the costs of attributing congestion points within their grids and redispatching generation plant.

These benefits are of greater importance than any apparent optimization of cross border flows from "perfected" day-ahead congestion arrangements, for a theoretical overall economic benefit.

EFET argues in this paper that TSOs are natural sellers of transmission capacity rights. Our accompanying quantitative analysis suggests that offering firm capacity does not significantly increase TSO businesses risks, as has to date been commonly believed.

2. Transparency and Availability of Information, updated position

With its new paper *Transparency of information about use of electricity infrastructure* (Updating previous analyses and proposals on the same subject, dating back to 2003 and 2004), EFET calls for greater clarity regarding any (temporarily) permitted exemptions from duty to disclose data, and for an ambitious timetable to achieve improvements.

We are in favor of voluntary initiatives to improve transparency, but notice that they remain incomplete and not harmonized across national boundaries. EFET rejects, at this advanced stage of the liberalization process, the legitimacy of any broad ranging exclusion from disclosure of *generation* related data, based on assertions of

commercial confidentiality, on the risk of facilitation of collusion or on jeopardy to trading strategies.

EFET advocates as next steps, in a harmonized system of disclosure across the main part of central and western continental Europe:

- Publication of ex post generation data on a plant-by-plant basis at H+1 or +2.
- Publication of ex ante estimates of available generation capacity broken down by fuel type across price zones, or smaller areas if feasible, in such a manner that the breakdown could indicate in different time periods likely variations in production of marginal price setting plant; the estimates should be amended beyond D-1 and up to real time, so as to facilitate transparency also in intra-day trading and in balancing markets.

Once these steps are achieved, we would like to see ERGEG and DG TREN keep under review the right time to progress from aggregated *ex ante* generation data publication to a plant-by-plant availability disclosure system right up to real time.

3. EFET Position on the Inter-Transmission System Operator compensation (ITC) mechanism

The European Group of Energy Regulators has launched a public consultation on draft Guidelines on Inter-Transmission System Operator compensation (ITC) mechanism for hosting cross border flows of electricity.

We would like to point out our concerns regarding the multi-lateral agreement of TSOs behind the ITC mechanism. Our special request is that the Commission considers carefully EFET points about questionable continued justification for any ITC.

4. Status of Power Exchanges

When checking the Preliminary Report we noticed a mistake with respect to paragraph 345 (page 111).

The Sector Inquiry defines two groups of exchanges, those having a special need or incentive to trade and those who don't have. According to the preliminary report, EEX and APX belong to the second group.

With respect to APX this seems to be incorrect. A report prepared by Frontier Economics on behalf of the Dutch Regulator (DTe) notes that import capacities acquired from Tennet have to be traded at APX due to a particular legal requirement in the Netherlands.

A study carried out by McKinsey on the operation of European energy exchanges estimates that about 70 per cent of the traded volume of APX is not traded voluntarily, but forced to APX by law. This constitutes a *de facto* and *de jure* monopoly for APX in the day-ahead power market in the Netherlands.

We would also point out that the envisaged trilateral market coupling arrangements between Belgium, the Netherlands and France will entail a monopoly position for Belpex (and at the Southern Netherlands border for APX and the Northern French border for Powernext) regarding day-ahead cross-border nominations.

We wish with the help of the attached papers to continue our dialogue with you on how to fast track this vital aspect of realizing the benefits of a true European internal market in electricity.