

Europex (Forwards TF) response to ENTSO_E NC FCA HAR consultation with deadline 18th May 2016

(Your response ID is ANON-GJGB-3BNG-4. Please have this ID available if you need to contact us about your response.)

General Comments

1. Harmonisation

The number of annexes introducing specific treatment on some borders shows how challenging the harmonisation of allocation rules might be. Detailed rules harmonisation should not be an objective as such, as it imposes changes that might divert resources from more important priorities, with little added value. ENSTO-E should consider reviewing what main components of the model should be harmonised first, considering what aspects bring more benefits to the market.

Reviews of the Allocation Rules for Forward Capacity Allocation should be foreseen, so that any change to the FCA NC would be reflected (e.g. following the introduction of new products that would be made available by TSOs).

2. Full Firmness

In order for LTTRs to be working as true hedging instruments the principle of Full Firmness (without caps) is necessary and recommendable to apply, e.g. Article 59 in the current version of FCA HAR does not fulfill that criterion. While we recognize that Full Firmness on LTTRs exposes Capacity Owners (e.g. TSOs) to higher financial risks, the lack of Full Firmness for given LTTR products offered diminishes their value as hedging instrument for the Holders ("Buyers") of LTTRs.

3. LTTR Obligation

While the drafting of the NC FCA HAR at this stage is limited to PTRs/FTRs of Options type, it is essential that, as provided for in FCA NC, the choice to alternatively apply Obligations is still a valid choice for Capacity Owners (e.g. TSOs) to apply in the future. Therefore, it could be recommendable to add a note (Article) to that end in this NC FCA HAR.

4. Secondary Trading of LTTRs

It shall be possible to facilitate, on equal and efficient terms, Secondary Trading of LTTRs by exchanges, MTFs, OMPs, and in OTC or bilateral arrangements. However, the current FCA HAR proposal fails to describe or provide the key functionalities needed to enable orderly and efficient Secondary Trading of LTTRs for such entities and arrangements. E.g. A bulletin board is not helpful for that purpose but for example a central (open, connectable for Clearing/Trading Systems/...) registry of LTTR holders would be a step in the right direction. We strongly recommend that amendments are made in this FCA HAR proposal or in subsequent detailed regulation/guidance to ensure fair and non/discriminatory opportunity for parties other than the SAP to organize Secondary Trading of LTTRs and freely in either continuous or auction-based form.

Comments and Amendment Proposals for specific Articles

Article 21. Form of Bank Guarantee

It seems it is allowed to use non-fully backed bank guarantees for PTR/FTRs. However, according to section 2.1, point h) in Annex 1 in Regulation No 153/2013 (the EMIR Implementation Act), bank guarantees need to be fully backed from March 2016 for non-financial members of a CCP, when clearing financial instruments.

Having different collateral terms for clearing similar financial electricity contracts is discriminatory, creating artificial and unreasonable distortions of the market. We would prefer that bank guarantees were an acceptable form of collateral for all these broadly similar instruments.

Art. 43 - Legal consequences of the transfer

Original text:

All rights and obligations resulting from these Allocation Rules, with exception of the payment obligation of the original Long Term Transmission Right holder regarding the allocation of Long Term Transmission Right pursuant to Article 62(1), shall be transferred together with the Long Term Transmission Right.

Amendment proposal:

All rights and obligations resulting from these Allocation Rules shall be transferred together with the Long Term Transmission Right.

Comments/motivation:

HAR should not establish a monopoly for organising auctions and a secondary market for long term transmission rights or other similar products. We expect that all financial instruments can be introduced on a platform preferred by the market participants with hedging needs. The current proposal would however monopolize the LTTR hedging markets, which are currently under free competition, and this seems an unintended and negative consequence.

Art. 44 (1) - Notice Board

Current text:

The notice board shall facilitate only the exchange of information between the Registered Participants regarding their interest in buying and/or selling Long Term Transmission Rights. No agreements may be concluded via this notice board. Use of the notice board is free of charge.

Amendment proposal:

A notice board shall only be established if similar or more elaborated solutions are not provided by commercial entities.

The notice board shall then be organised at arm's length from the Allocation Platform's transfer notification systems and on the same basis as for entities providing similar services. It shall facilitate only the exchange of information between the Registered Participants regarding their interest in buying and/or selling Long Term Transmission Rights. No agreements may be concluded via this notice board.

Comments/motivations:

Although Europex welcomes the fact the notice board does not seem to be exclusive we do not consider it is an Allocation Platform's role to organise or facilitate the secondary market of long term transmission rights. The fact the service is offered for free while it has underlying costs, is considered unfair competition to the (potential) providers of such facilitation services.

A notice board should be established only if the market (exchanges, brokers,...) doesn't provide adequate solutions for facilitating the secondary market of Long Term Transmission Rights.

Such notice board should then be organised at arm's length from the TSOs' registration systems and on the same basis as for entities providing similar services.

Art. 45 (3) and (5) - General principles

Current text:

3. In case the Registered Participant does not nominate its Physical Transmission Rights, the Allocation Platform shall make the underlying Cross Zonal Capacity of the non-nominated Physical Transmission Rights available for the relevant daily allocation. The Physical Transmission Right holders who do not nominate their Physical Transmission Rights for physical use of their rights or has not reserved its Physical Transmission Rights for the exchange of balancing energy shall be entitled to receive remuneration in accordance with Article 48.

5. In case the Long Term Transmission Rights holder reserves its Physical Transmission Rights for the exchange of balancing energy, such Cross Zonal Capacity shall be excluded from the application of the Use It Or Sell It principle. The process of notification of such reservation where applicable shall be subject to the relevant rules as published by the responsible Allocation Platform.

Amendment proposal:

3. In case the Registered Participant does not nominate its Physical Transmission Rights, the Allocation Platform shall make the underlying Cross Zonal Capacity of the non-nominated Physical Transmission Rights available for the relevant daily allocation. The Physical Transmission Right holders who do not nominate their Physical Transmission Rights for physical use of their rights shall be entitled to receive remuneration in accordance with Article 48.

5. (TO BE DELETED)

Comments/motivations:

As already expressed in the several consultations on the draft network code on electricity balancing, Europex is opposed to any reservation of cross-zonal capacity for the exchange of balancing energy.

There are concerns that such set up might have negative implications like:

- a) price effects on other market timeframes;
- b) lack of transparency of valuation methods used for capacity reservations;
- c) overall reduced predictability and transparency of Day Ahead and Intraday markets.

Art. 48 (2) -Remuneration of Long Term Transmission Rights holders for non-nominated Physical Transmission Rights and Financial Transmission Rights Options

Current text:

The Allocation Platform shall compensate the Long Term Transmission Rights holder for the non-nominated Long Term Transmission Rights which are not reallocated at the relevant daily allocation in accordance with CHAPTER 9 in case of the triggering event listed Article 56.

Amendment proposal:

(TO BE DELETED)

Comments/motivations:

This article creates an artificial incentive for the holders of PTRs to nominate them in order to avoid not being fully compensated in case of non-nominated PTRs' curtailment. This could result on market parties' side in a useless increase of the complexity of the day-ahead processes. Such incentive would also reduce the capacity made available to the market coupling mechanism which could damage the liquidity on the markets to be coupled through the single day-ahead coupling, with a possible impact on transparency, on the quality of the day-ahead price formation and the efficiency of generation and demand dispatch.

Art. 57(5) - Process and notification of curtailment

Current text:

Compensation rules according to Articles 58 to 60 and where applicable Article 61 also apply if offered day-ahead Cross Zonal Capacities are lower than the amount of non-nominated Long Term Transmission Rights in case of Physical Transmission Rights and the total amount of Long Term Transmission Rights in the case of Financial Transmission Rights Options.

Amendment proposal:

(TO BE DELETED)

Comments/motivations:

See comment on article 48(2).