

CONSULTATION RESPONSE

Energy Traders Europe response to the ACER consultation on the pricing methodology and to the automatic frequency restoration reserve implementation framework

Brussels, 23 April 2024

Energy Traders Europe appreciates the ACER consultation, the public workshop, and the interactions at the last Electricity Balancing Stakeholder Group (EBSG).

General comments

We highlight that:

- The TSOs had proposed, 15 months ago on 26 August 2021, to lower the technical price limits from +/-€99,999/MWh to +/-€15,000/MWh. ACER rejected this proposal on 25 February 2022 (Decision No. 03/2022), because it was not compatible with the principles of operation of the electricity market in accordance with Art. 3 (a) and (b) of the Electricity Market Regulation, as the proposal restricts free price formation. This assessment also applies to the new proposal, as the legal situation and the applicable principles have not changed.
- Recent spikes in imbalance prices in some Member States reflect fundamentals and how they evolve within the European balancing model and all the influences of national design elements in it.
- Enforcing connection to the joint platforms and their maximum use by TSOs, ensuring full transparency on specific product usage and out-of-operating-window balancing actions, and reforming national balancing mechanisms to reflect the target model are the fundamental long-term remedies we want to see implemented rather than price limits or elastic demand.
- TSOs could also investigate the optimization of processes at their side. In its 2023 Market Monitoring Report (MMR), ACER refers to the possibility for “[...] optimizing the availability and use of physical transmission capacity at the time of the incident to increase the amount of cross-border capacity for balancing purposes.” [ACER [MMR, page 38](#)].
- There is a clear, legal deadline of July 2024 for TSOs to join the platforms, and this deadline should be respected. Only by extending the PICASSO platform can the market fully develop.

We included replies to the TSO response on our consultation input. The “[TSO response](#)” is marked accordingly.

TSO responses

The responses to the applicability of auction theory for balancing energy markets are given below. Other replies to the TSO answers are provided throughout the survey.

TSO response: "All TSOs emphasise that their argumentation was not based on any proved market manipulation/abuse but on observable strategic bidding behavior (confirmed by the market within the framework of EBSG) leading to inefficient market outcomes."

Energy Traders Europe is seriously concerned about this statement. We are not aware of any confirmation of abusive strategic bidding provided by the market at the EBSG. Furthermore, Energy Traders Europe was of the opinion that the EBSG is a round for open discussions – using alleged statements as a justification for market design proposals is not acceptable.

TSO response: "All TSOs acknowledge that the respondent agrees with All TSOs' theoretical argumentation why the balancing energy market does not meet prerequisites for a marginal pricing market. The respondent mainly refers to the fact that "a significant share of the settlement is performed according to the pay-as-bid principle". This is valid for aFRR only based on the provisions of the Pricing Methodology (Article 7(6), Article7(7))."

- Pay-as-bid also applies to mFRR-DA, which is the required activation mode for all pre-contracted bids, i.e. the majority of bids.
- Balancing energy is not a homogeneous good, due to the different dispatch probability at different levels of the merit-order.
- Market delineation unclear, e.g. different time slices actually constitute separate markets with different fundamentals and participants.
- The demand cannot be estimated in advance but is basically random.

TSO response: "With regard to the theoretical assessment of prerequisites for a marginal pricing market, it is important to note that in real-world markets, these conditions are rarely met perfectly."

Apparently, TSOs are using this line of reasoning as an explanation why several preconditions can be ignored. Market theory, however, cannot be applied if the pre-conditions are not met. Pointing to other real-world markets not meeting the requirements, is not an excuse here.

TSO response: "Additionally, All TSOs are convinced that mitigation measures are necessary to strive towards the theoretical optimal market outcome, where it is clear that it cannot be reached in reality, but inefficiencies (deviations from the optimum) must be limited."

It is an odd approach to formulate a desired market outcome ("theoretical optimal") and apply mitigation measures to drive market participants towards the envisaged bidding behavior. It is not an inefficiency for a rational market participant to take into account the real-world circumstances of a market. Trying to prevent this by mitigation measures, will cause side-effects (e.g. non-participation) that can definitely be seen as inefficiency.

Topic 1: Harmonized maximum/minimum prices for balancing energy

Adjustment based on the harmonized maximum/minimum clearing price for SIDC

1.1 /1.2 Do you agree with the modifications intended by ACER on the adjustment of the technical price limits based on the maximum/minimum clearing price for SIDC? Please provide an explanation for your answer.

No, we express significant concerns regarding planning uncertainty in the context of fluctuating price caps. The concern lies in the dynamic nature of these price caps, which can undergo alterations depending on market circumstances (energy crisis, balancing costs, etc.).

This poses a challenge for market participants who commit to multi-year contracts incorporating these cap elements. The need for renegotiation arises each time a change is anticipated, creating a lack of legal certainty regarding the stability of contract terms over the agreed duration. Introducing legal clauses to address this risk proves burdensome for market participants.

In case the technical cap is kept at +/-€99,999/MWh, such a mechanism is redundant. However, in case the cap is lowered, such a mechanism should be considered depending on which level the cap is eventually set. The exact design, triggers and conditions of such a mechanism would require further discussion. At the same time, such mechanism should be in place at the time of a reduction of price caps.

The possibility of having a harmonized maximum/minimum price for balancing energy

1.3/1.4 Do you consider that the introduction of a harmonized maximum/minimum price for balancing energy, at a lower level than the technical price limit (99,999 €/MWh) would be acceptable, if there would be a transparent mechanism to adjust the harmonized maximum/minimum price for balancing energy? Please provide an explanation for your answer.

No, the TSOs have not provided any evidence that the technical price limits are necessary for the efficient functioning of the market in accordance with Article 30(2) of the Regulation 2017/2195 (EB GL). No new arguments have been brought forward in the accompanying document since the last consultation in December 2023. The current proposal also lacks any explanation of the extent to which and why the balancing energy market is currently not functioning, even though there is currently a (temporary) price cap.

1.5/1.6 At what level, in your view, shall the initial value of the harmonized maximum/minimum price for balancing energy be set? Please provide an explanation for your answer.

10,000 €/MWh

15,000 €/MWh

At the value of highest VoLL among member states

Higher than the highest VoLL among member states

99,999 €/MWh (just keeping the technical price limit)

We conclude that the proposed price limit is of a commercial nature and does not constitute a technical price limit. As a commercial price limit, the TSO proposal violates EU Regulation 2019/943, and for this reason, it should not be submitted to ACER. The TSOs view the technical price limit as a means of regulating the bidding behavior of the bidders. However, according to Article 10 of the Electricity Regulation, this is explicitly not the case. The ACER decision of 25 of February 2022 also supports this perspective. It would be up to the legislator, not the regulatory authority, to make such a change.

Criteria of the adjustment mechanism for balancing energy

1.7/1.8 Do you agree with the general settings of the considered balancing adjustment mechanism? Please provide an explanation for your answer.

No, the TSOs evidently misunderstand the purpose of a technical price cap for the SDAC and SIDC. In the last explanatory note from the NEMOS regarding the amendment of the technical price cap, it states:

“The HMMCP allows for price limit only as a technical way to allow manage in an efficient way the cost of collaterals which Market Participants have to post to Organized Market Places in order to enter into wholesale negotiations, but such price limit should never prevent the free formation of prices on the market.” Essentially, the goal is to prevent market distortions resulting from uncontrolled counterparty defaults due to mandatory collateral.

The TSOs fail to acknowledge that NEMOS are neutral parties in the market who, by virtue of their business model, have a natural interest in fostering a platform for a free, transparent, and liquid market. Consequently, the technical price limit in SDAC and SIDC serves as an instrument to enhance market participants' confidence by bolstering financial stability, thereby supporting market liquidity and the resultant free price formation.

This fundamental misunderstanding has evidently led to no effort being made to explain why an identical measure is necessary in the balancing market, which lacks these specific features. Due to this lack of engagement with the topic, the price limit must be recognized for what it truly is: a commercial limit intended to actively interfere with free pricing.

Only in the case the price cap is lowered, which we strongly oppose, the introduction of such a mechanism is a necessary evolution.

In order for the adjustment mechanism to become active effectively, when the price cap is restricting the efficient functioning of the market, an adjustment step needs to be sufficiently large. The current proposal of adjusting the price by 5% is insufficient.

Specific conditions of a balancing adjustment mechanism based on the specificities of balancing markets

1.9/1.10 Do you agree that the balancing adjustment mechanism shall account for the specificities of balancing markets through specific conditions? Please provide an explanation for your answer.

Requiring additional conditions for the update mechanism, is basically preventing most of the updates. The need for updating the price cap should arise from the actual market price formation only.

1.11/1.12 Do you agree with specificity 1 and the associated condition? Please provide an explanation for your answer.

This is an option that deserves further analysis.

1.13/1.14 Do you agree with specificity 2 and the associated condition? Please provide an explanation for your answer.

No, if the price cap on one product is reached, it is clear that there is demand from TSOs for that product and the price cap should be increased. We would want a market response to hitting the price cap, not a TSO activation behavior change.

1.15/1.16 Do you think that the adjustment mechanism should be triggered if there were concerns about market competition (specific condition 3)? Please provide an explanation for your answer.

No, we strongly oppose the argumentation linking it to market concentration or the existence of pivotal BSPs due to the lack of competition in the market.

Generally, there is no physical scarcity in balancing markets. In most of the markets there is abundant prequalified capacity or technically capable units available. The TSOs restrict the market concentration measurement to the BSPs active in the balancing energy market. This does provide an incomplete picture. It is each BSP's individual commercial decision to participate in the balancing capacity and energy markets. Reasons for not participating can be related to the commercial attractiveness of the market:

- Small activation probability
- Price limits
- No release of unused bids

or other issues:

- Operational complexity of the target model
- Regulatory concerns

Neither of the currently proposed measures will increase the attractiveness of the market and may further aggravate the issue of limited liquidity and the observed market concentration.

The current accession roadmaps, however, do provide a natural mitigation measure for increasing market liquidity. Most liquidity concerns, if any, should have been addressed in July 2024 when the TSOs were supposed to access the platforms.

TSO Response: "All TSOs take note that maximum and minimum balancing energy may affect the attractiveness of the market. Nevertheless, prequalified volumes show sufficient volumes available today."

The TSOs correctly state that the relevant market consists of all prequalified volumes. Hence, the market concentration measures proposed in condition 3 and evaluated in the quarterly reports need to be applied to all technically available capacity.

1.17/1.18 In case a condition about the lack of competition in the market would be introduced, what type of conditions would have your preference? Please provide an explanation for your answer.

Ex-ante condition

Ex-post assessment

Other

None.

1.19 Please provide any extra comments you would have on the design of a balancing adjustment mechanism.

No comments.

Topic 2: Transitional price limit

2.1 Do you agree with the change proposed by TSOs of the maximum transitional price limit from 15,000 Eur/MWh to 10,000 Eur/MWh and of the minimum transitional price limit from -15,000 Eur/MWh to -10,000 Eur/MWh? Please provide an explanation for your answer.

No, the adjustment to $\pm 10.000\text{€}/\text{MWh}$ until July 2026 for balancing energy bids unjustified. We stress that sufficient incentive compared to ID should be maintained.

Topic 3: Alternative way to compute the cross-border marginal price

3.1/3.2 Do you agree with the alternative way to compute the aFRR CBMP proposed by TSOs? Please provide an explanation for your answer.

No, the choice for the CBMP determination based on bid selection was well considered and in our view is still valid. Advantages of the current approach outlined in the Explanatory Document of the initial Pricing Proposal included "[...] transparency, auditability and robustness of the price determination approach. The price determination is not affected by local behaviour of TSOs or BSPs [...]" and according to stakeholder

preference the “simplicity of the approach and consistency with other market time frames, that also determine the prices based on the clearing result.”

The disadvantage that “cross border marginal price directly derived from AOF could be very sensitive to large variations of aFRR demand and / or netting possibilities” were supposed to be mitigated: “[..] with a BEPP based on the AOF optimisation cycle, the impact of the price spike is confined to the volume exchanged / activated during the related optimisation cycles only”.

Furthermore, there were good reasons for not relying upon a decentralised price determination “mainly due to the lack of transparency”.

In our view, without a quantitatively substantiated assessment and measures to ensure that the transparency, auditability, and robustness are not compromised, changing the CBMP calculation is currently not sufficiently justified.

Furthermore, there are different local frequency restoration controller speed. Some TSOs are faster than others. ACER should make sure that faster controllers are not penalised and come up with an impact assessment before any change is made to the aFRR CBMP.

The alternative CBMP calculation will result in more occasions where a BSP is remunerated according to pay-as-bid instead of receiving the marginal price.

TSO response: “All TSOs take note that the respondent claims missing quantitative assessment effectiveness of the proposed determination of the aFRR CBMP also based on LFC output. The main arguments brought forward of All TSOs are cited – thus it can be assumed that the argumentation was analysed. There is no comment whether the respondent agrees with the drawn conclusion of All TSOs, that their proposal ensures that the aFRR CBMP determined based on the minimum of LFC input and LFC output better reflects the real activated aFRR energy.”

Obviously, it was not sufficiently clear that we were supporting the reasoning in the initial proposal and questioning the All TSOs’ conclusions due to the loss in transparency, auditability and robustness. Furthermore, the BEPP choice was originally intended as a mitigation to sensitive CBMP behaviour due to large variations in aFRR demand. If this mitigation is no longer required, the BEPP choice could be revised as well.

Topic 4: aFRR elastic demand

4.1/4.2 Do you agree with the possibility for TSOs to use an elastic aFRR demand with the proposed limitations? Please provide an explanation for your answer.

TSOs should refrain from influencing market outcomes. It is noteworthy that TSOs are starting to introduce an element of discretion regarding frequency quality, while persisting in enforcing stringent balancing requirements on market participants.

We are already observing that the introduction of elastic aFRR demand leads some TSO relying upon more (new) national specific products. This goes against the concept of

harmonizing rules while connecting to an European Platform and hence is to be avoided. Elastic aFRR demand must not foster the use of specific products. This would worsen the aFRR methodology.

With appropriate dimensioning in place, there should not be any need for additional elastic demand.

However, with the necessary limitations and conditions, it may make sense for TSOs to not exceed the quality target at any price. Limitations/conditions would include the ex-ante definition and publication of price level, clear explanation on how to avoid it becomes a price cap, limitation to volumes exceeding pre-contracted volumes, avoiding reliance on specific products, avoiding reduction of pre-contracted volumes and relying on free bids.

If an introduction is foreseen nonetheless:

- an additional item in Article 3(4) should be added:
 - e) use specific products to compensate unsatisfied elastic demand.If the requirements in Article 3(4) are not fulfilled, the option for using elastic demand for aFRR should be revoked.
- the design should ensure that TSOs are prohibited from deducting available non-contracted balancing energy bids ("free bids") from their aFRR needs in their national dimensioning methodologies, without subsequently activating those non-contracted bids.
- TSOs using elastic demand shall publish the elastic demand curves in advance, rather than after their application, as suggested in the explanatory document. This proactive transparency is essential to provide market participants with adequate visibility on the merit order and associated activation probabilities. In this context, the determination of volumes, pricing and the decision to trigger elastic demand, should be governed by transparent, fair and predictable (ex-ante) formulas, while fully minimizing discretion to the fullest extent possible.

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