

June 2005

***EFET summarised response to the ERGEG May 2005
consultative draft of EU Congestion Management Guidelines
under Regulation 1228/2003***

1. Clarifications and changes from Commission draft which we welcome

- Three new general provisions at the very start of the text
- Reformulation of 1.8
- Greater precision in 2.1
- Clearer obligation in 2.4
- *Deletion in 2.7 of the proposition that value revelation for transmission capacity is a matter to be controlled only by TSOs – the value of transmission rights is indeed intrinsic to their original grant and the terms of it, and otherwise a matter from time to time for subsequent natural adjustment to market circumstances.*
- Correction of 3.5
- Netting provision in 4.1(4)
- Mention of scope for intra-day trades/ nominations in 4.1(9), *except does not go far enough nor clarify obligations of TSOs*
- Generation transparency mention in 5.8

2. Retrograde or largely inadequate amendments to Commission draft

- The deletion of the reference to use-it-or-lose it process is appropriate in 1.13, but we see an inadequate regulatory vision of the way in which previously booked but unused capacity would be recaptured by TSOs, and of the way in which previously not even offered (thus obviously not booked) capacity would be newly released to the market. *We fundamentally miss an indication in the draft of any understanding of the manner in which a secondary market in transmission rights could be operated (apart from short, qualified mention of the possibility of such a market in 2.14), let alone any indication of the roles of different stakeholders in that market operation.*
- In 2.8(10) the text should revert to the Commission formulation that capacity allocation methods should *never* included reserve prices; it is *objectively impossible* to say in advance whether any such price is “cost-reflective” or not.
- There has been some improvement to 3.8, but it still effectively grants a derogation from an implication in the definition of “congestion management” in Article 2 (2) (d) of the Regulation itself, that internal system congestion must not be artificially attributed to national borders. In particular the sentence “*Such a situation can only be tolerated until the long-term solution is found...*” does not in the view of EFET

belong in an instrument, which is meant to clarify, not obfuscate, the discharge of regulatory responsibilities by TSOs and the enforcement of compliance with those responsibilities by national regulators.

- The apparent intention in 5.2(3) to allow TSOs to revert to just monthly forecasts of transmission capacity availability is regressive in the worst sense. Traders are clear that in practice progressive wholesale market are already moving toward co-ordinated day ahead forecasts, whenever possible stipulated for each hour of the day, or at least each trading period.
- It must be made clear under 6.1 that the income from sales of transmission rights, or even from exchange based market coupling auctions, may pass not only to TSOs but also directly to those originally granted the rights by TSOs, who then sell on the rights to a third party, or who have thereby accumulated the a right to take income based on market splitting actions managed by power exchanges.
- Correspondingly it is important to adjust all the language in 6.3 to the end of 7 to accommodate the possibility that there may be cash proceeds in the hands of any person resulting from an original allocation of capacity (whether ultimately congested on the day or in the hour *or not*.) not just the contingency that there are “congestion rents” from time to time in the hands of TSOs.

ANNEX – EFET mark-up of Commission September 2004 draft of Guidelines (adjusted to remove now irrelevant observations because of changes already made by ERGEG, and adding some text – partly in yellow highlight - to reflect points made above)