



Case: 104068
Date:

Report of the Netherlands Authority for Consumers and Markets within the meaning of Article 6.5 of Annex I of Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003.

1 Introduction

1. In this report, the Netherlands Authority for Consumers and Markets (hereafter: ACM) sets out the amount of revenues collected between 1 January 2011 and 30 June 2012 by TenneT TSO B.V. (hereafter: TenneT) through the auctioning of cross-border capacity, how these revenues have been used by TenneT, and whether such use is in compliance with Regulation No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 (hereafter: the Regulation).
2. Available transmission capacity on the interconnectors¹ with Germany, Norway and Belgium is auctioned by TenneT in cooperation with the relevant national transmission system operators. The 'Capacity Allocation Service Company', or CASC.EU², facilitates the explicit and long-term auctions for the interconnectors on the borders with Belgium and Germany. In assignment of TenneT, APX facilitates implicit auctions for the day-ahead market for these borders. The 'European Market Coupling Company', or EMCC³, facilitates the auctions for the interconnector with Norway, Norned. The revenues that TenneT

¹ Interconnector means a transmission line which crosses or spans a border between Member States and which connects the national transmission systems of the Member States (Article 2, paragraph 1 of the Regulation).

² See also <http://www.casc.eu/en>

³ Since 12 January 2011, EMCC facilitates implicit auctions for NorNed. See also <http://www.marketcoupling.com/>

collects through these auctions are called, unsurprisingly, auction revenues. The auctions generate revenues only in case of congestion⁴. The revenues of the auction minus the costs of the auction are divided among TenneT and the other national transmission system operators⁵.

3. These auction revenues must be managed separately, and can only be used for specific, statutory purposes. These auction revenues are managed by the Foundation on the Management of Purpose Funds of the National Transmission System (in Dutch: *Stichting Beheer Doelgelden Landelijk Hoogspanningsnet*).
4. In this report, ACM verifies whether the use of the auction revenues (also called congestions rents) between 1 January 2011 and 30 June 2012 complies with the Regulation. First, the statutory provisions relevant to this report are listed in section 2. Next, an assessment is given of the withdrawals from the auction revenues, as well as an overview of the withdrawals of and payments to the auction revenues over 2011 and the first half of 2012. Finally, ACM presents its conclusion regarding the question whether these withdrawals comply with the Regulation.

2 Legal context

5. Under the Regulation, ACM is required to report on the use of auction revenues, and does so based on a report submitted by TenneT⁶. The Guidelines on the Management and Allocation of Available Transfer Capacity of Interconnections between National Systems (Annex 1 of the Regulation) contain instructions directed at ACM with regard to the auction revenues. The relevant provisions are listed below:

6.2.

“National regulatory authorities shall be transparent regarding the use of revenues resulting from the allocation of interconnection capacity.”

6.4.

“TSOs shall clearly establish beforehand the use they will make of any congestion income they may obtain and report on the actual use of that income. Regulatory authorities shall

⁴ Article 6.1 of Annex I of the Regulation. “Congestion” is defined in Article 2, paragraph 2, under c of the Regulation.

⁵ Article 5.6.15.1 of the Network Code Electricity.

⁶ Report auction revenues of 20 July 2012, reference 104068/8.

verify that such use complies with this Regulation and those Guidelines and that the total amount of congestion income resulting from the allocation of interconnection capacity is devoted to one or more of the three purposes set out in Article 16(6) of this Regulation.”

6.5.

“On an annual basis, and by 31 July each year, the regulatory authorities shall publish a report setting out the amount of revenue collected for the 12-month period up to 30 June of the same year and the use made of the revenues in question, together with verification that that use complies with this Regulation and those Guidelines and that the total amount of congestion income is devoted to one or more of the three prescribed purposes.”

6. Article 16, paragraph 6 of the Regulation gives an exhaustive list of purposes for which the auction revenues must be used:

“Any revenues resulting from the allocation of interconnection shall be used for the following purposes:

- a) guaranteeing the actual availability of the allocated capacity; and/or*
- b) maintaining or increasing interconnection capacities through network investments, in particular in new interconnectors.*

If the revenues cannot be efficiently used for the purposes set out in points (a) and/or (b) of the first subparagraph, they may be used, subject to approval by the regulatory authorities of the Member States concerned, up to a maximum amount to be decided by those regulatory authorities, as income to be taken into account by the regulatory authorities when approving the methodology for calculating network tariffs and/or fixing network tariffs. The rest of revenues shall be placed on a separate internal account line until such time as it can be spent on the purposes set out in points (a) and/or (b) of the first subparagraph. The regulatory authority shall inform the Agency⁷ of the approval referred to in the second subparagraph.”

3 Assessment of the use of auction revenues

7. On 2 August 2012, the Board of the Netherlands Competition Authority (predecessor of ACM) received a report from TenneT concerning the receipts and uses of the auction revenues over 2011 and the first half of 2012 (1 January until 30 June 2012).

⁷ The Agency for the Cooperation of Energy Regulators, ACER.

8. TenneT included an accountants report for the data from 2011. The data from 2012 has not yet been validated by an accountant. This validation will be performed next year for the entire data set from 2012.

3.1 Auction revenues of 2011

9. ACM is required to verify whether the use of the auction revenues by TenneT complies with the Regulation, and whether all revenues from congestion have been used for the three purposes of article 16, paragraph 6 of the Regulation.
10. The revenues are determined in particular by the auctions for NorNed and the interconnectors with Belgium and Germany, and the stake in TenneT Duitsland B.V. Below, ACM only discusses the actual withdrawals and whether these fall within the purposes of article 16, paragraph 6 of the Regulation.

Norned

11. First, TenneT made a withdrawal for the costs of energy and capacity for NorNed. This involved costs for network losses, costs for regulating and reserve power, and costs for the auctions of EMCC.
12. Second, TenneT made a withdrawal for damage to the NorNed cable. This involved costs for repairing the Norned cable in spring 2011 as a result of a cable breakdown.
13. Third, TenneT withdrew €1,989,000 for the relative availability incentive for 2010 and 2011. In its decision of 26 March 2013⁸, the Board of the Netherlands Competition Authority set the incentive with regard to the relative availability of NorNed in 2010 and 2011. The objective of this incentive is to promote the cable's availability to the market. ACM is of the opinion that these three withdrawals comply with the purposes of article 16, paragraph 6, subparagraphs a and b of the Regulation.

Auctions for other interconnectors

14. As for NorNed, TenneT withdraws costs for the facilitation of the auctions on the Belgian and German interconnectors from the auction revenues. This is in compliance with the Regulation.

⁸ Decision with reference number 104134/17.

Preparatory costs for new interconnectors

15. TenneT withdrew preparatory costs for a second NorNed-interconnector, a possible interconnector with Denmark (Cobra) and a possible interconnector with Iceland (Ice-Ned). Study into expansion of interconnector capacity is needed, and is in line with the purpose of article 16, paragraph 6, subparagraph b of the Regulation. ACM expects to see in future reports from TenneT a more concrete explanation of the reasons behind certain preparatory costs and why these costs are necessary to facilitate new interconnectors.
16. An overview of all withdrawals and payments in 2011 is listed below:

Overview of auction funds from 1 January until 31 December 2011

| | |
|---|---------------------|
| Opening balance sheet of auction funds | €319,056,000 |
| <u>NorNed</u> | |
| Increase: NorNed auction revenues | € 37,048,000 |
| Decrease: energy and capacity costs | -€ 8,029,000 |
| - <i>Costs for network losses</i> | € 5,642,000 |
| - <i>Costs for regulating and reserve power</i> | € 1,572,000 |
| - <i>Costs for EMCC</i> | € 815,000 |
| Net earnings NorNed | € 29,019,000 |
| Increase: payment in connection with provisional settlement of capital costs NorNed | € 306,000 |
| Decrease: withdrawal in connection with damage to NorNed | -€ 2,168,000 |
| | -€ 323,000 |
| Decrease: preparatory costs for second interconnector NorNed | -€ 1,989,000 |
| Decrease: withdrawal of the incentive relative availability | |
| | € 24,845,000 |
| Net addition NorNed | |

| | |
|---|---------------------|
| <u>Auctions other interconnectors</u> | |
| Increase: revenues interconnectors Germany and Belgium | € 24,375,000 |
| Decrease: contribution TenneT to the auction costs | -€ 2,250,000 |
| Net addition auction funds | € 22,125,000 |
| Net addition stake in TenneT Duitsland B.V. | € 11,216,000 |
| Net addition interest revenues | € 614,000 |
| <u>Preparatory costs new interconnectors</u> | |
| Cobra (Denmark) | -€ 1,220,000 |
| Ice-Ned (Iceland) | -€ 93,000 |
| Withdrawal preparatory costs new interconnectors | -€ 1,313,000 |
| Final balance auction funds | €376,543,000 |

3.2 Auction revenues in first half of 2012

17. The considerations in paragraphs 11, 13 and 14 similarly apply to the withdrawals for NorNed and the auctions on the German and Belgian interconnectors.
18. Other withdrawals in 2012 were made in connection with cash management and commercial exploitation costs and costs for the phase shifting transformers in Meeden. Costs for cash management and commercial exploitation costs concern costs in connection with the management of the Foundation on the Management of Purpose Funds of the National Transmission System. Costs for the phase shifting transformers in Meeden concern costs for their commercial exploitation, and are made for the purpose of maintaining the interconnector with Germany.
19. An overview of all withdrawals and payments in the first half of 2012 is listed below:

Overview auction funds from 1 January until 30 June 2012

| | |
|---|----------------------|
| Opening balance sheet auction funds | €376,543,000 |
| <u>NorNed</u> | |
| Increase: NorNed auction revenues | € 23,461,000 |
| Decrease: energy and capacity costs NorNed | -€ 3,799,000 |
| Net revenues NorNed | € 19,662,000 |
| Increase: damage kp03 (disruption spring 2011) | € 121,000 |
| Net addition NorNed | € 19,783,000 |
| <u>Auctions other interconnectors</u> | |
| Increase: revenues interconnectors Germany and Belgium | € 22,718,000 |
| Decrease: contribution TenneT to the auction costs | -€ 1,460,000 |
| Net addition auction funds | € 21,258,000 |
| Net addition stake in TenneT Duitsland B.V. | € 13,598,000 |
| Net addition interest revenues | € 734,000 |
| <u>Other withdrawals</u> | |
| Decrease: Cash management and commercial exploitation costs | -€ 102,000 |
| Decrease: costs Phase shifters Meeden | -€ 1,000 |
| Total other withdrawals | -€ 103,000 |
| Final balance auction funds | € 431,813,000 |

4. Conclusion

20. ACM concludes that the withdrawals of the auction revenues in 2011 and the first half of 2012, are in compliance with the Regulation and the purposes of article 16, paragraph 6 of the Regulation.