

50Hertz Transmission GmbH - Eichenstraße 3A - 12435 Berlin

To the ACER:

Only via email:

Consultation2012E15@acer.europa.eu

Review of the ITC annual cross-border infrastructure compensation sum by ACER

Dear Madam or Sir,

50Hertz welcomes the opportunity to outline its view on Consentec's draft assessment of the annual cross-border infrastructure compensation sum. We would like to thank Consentec for drafting this good and comprehensive study.

The German transmission grid is a strongly interconnected transmission grid in the Centre of Europe which already became significantly affected by transits in the past and will be even more affected by the increasing transits in the future. The overall increase is confirmed by the study at hand which showed that the Global Transit Share increased from 6,65% in 2010 to 7,53% in 2011. Therefore there is a clear need to adjust the ITC fund sum respectively.

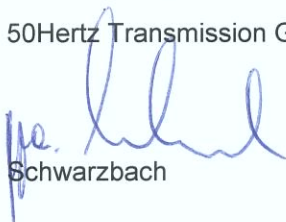
From our point of view the so called absolute approach constitutes the fairest option. However, we would also be able to accept the so called restricted absolute approach with 1996 being the reference year as a compromise. Furthermore we are of the opinion that congestion revenues and ITC should be treated separately.

For details please see the document attached.

Please do not hesitate to contact us if you have any further questions.

Yours sincerely

50Hertz Transmission GmbH



Schwarzbach



Ede

Attachement

50Hertz Transmission GmbH

Regulierungsmanagement

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Datum
08.11.2012

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1) Has Consentec's study considered a sufficient range of potentially suitable options for assessing the ITC infrastructure fund? What other options do you believe should be included in the assessment?

In our opinion by considering the three approaches, incremental, absolute and absolute restricted, Consentec has considered a sufficient range of suitable options for assessing the ITC infrastructure fund. All in all Consentec is very firm in the field of the ITC issues and presented a pragmatic approach which is suitable to support the discussion concerning the size of the infrastructure funds with a minimum data base.

If during the consultation process other stakeholders should propose to take into consideration additional options, these options would have to be evaluated and consulted on as well.

2) Are the criteria adopted to assess these options and their application to the identified options appropriate? What additional or alternative criteria do you think should be applied?

From our point of view the criteria and their application are in principle appropriate. Taking into account the understanding of the current ITC mechanism the used data base, especially the differentiation between the network levels, equals the current mechanism.

3) Of the options identified by Consentec, do you have any preferences? If so, please provide reasons for your preferences.

We prefer the **absolute approach**, since it constitutes the fairest option treating all infrastructure equally and applying the global transit share to both the relevant share of new infrastructure and the appropriate portion of the existing infrastructure. Regulation 838/2010 makes no difference between existing and new infrastructure in respect of compensation terms. Considering that the absolute approach would lead to an abrupt change of the fund size and the huge financial impact this approach would have on some TSOs we could accept the restricted absolute approach as a compromise.

However, the incremental approach is in our opinion not acceptable since it is not in line with the current legal framework. Regulation 838/2010 clearly gives ACER the task to perform a sound technical and economic assessment in order to propose an appropriate fund size to the European Commission. There is no legal link between the assessment ACER has to perform and the interim fund size of € 100 Mio. Furthermore it is common knowledge that the interim fund size is a political compromise after long negotiations and not the appropriate proportion of the costs of the existing infrastructure at the time of the entry-into-force of Regulation 838/2010. Having said this we do not agree with Consentec that the "...fund size of 100 m€ de facto constitutes an interpretation of the goals and principles of Regulation 714". It is a mere interim solution with no binding effect. The sole purpose of the interim fund size was to make the ITC mechanism work until ACER had to perform a first sound assessment of an appropriate fund size while the ITC mechanism is already in force. This

was necessary due to the fact that ACER was allowed by Article 35 (9) Regulation 713/2009 to operate only beginning 3 March 2011 - the same day when Regulation 838/2010 entered into force. The European Commission had to set an interim fund size until it was able to determine the appropriate fund size considering ACER's assessment as foreseen in Regulation 838/2010. Therefore we argue that the European Commission did not intend to give the interim fund size any binding effect and that considering all infrastructure built before March 2011 as valued with the € 100 Mio. would be a violation of Regulation 838/2010. Furthermore the incremental approach disadvantages the internal grid users over the external grid users, since only former would have to recover the costs of the whole depreciation period.

4) Are the assumptions adopted for the illustrative numerical analysis appropriate? Considering the practical limitations of availability, what other data or assumption do you believe should be used in such analysis?

Regarding the selection of the reference year for the restricted absolute approach it is of utmost importance that there are sufficient reasons for the selection. The decision should not be a compromise but a reasoned one. Therefore we suggest that 1996 should be used as reference year. 1996 constitutes the beginning of the liberalisation of the energy sector in Europe. The first European energy liberalisation directive was adopted. If it is decided to refer to another year the reasoning would have to be equally solid.

We also acknowledge that the assumptions are mostly simplified. This is in our opinion a common procedure within model calculation. In this regard the ENTSO-E data sets constitute a solid basis for numerical analysis. We therefore do not see the need to collect data in addition and recommend to rely on the ENTSO-E data sets for future analysis.

It is furthermore conditioned by the scope of the study to only look at the fund size. Any detailed numerical analysis would question the method for determining contributions and compensations and thereby the ITC mechanism itself.

5) How do you believe the different parts of the congestion revenues should be treated in calculating the ITC infrastructure fund and why?

Generally speaking in our opinion congestion revenues and ITC should be treated separately since they have different origins and purposes. While congestion revenues deal with commercial flows, ITC compensates physical flows. Quite often significant deviations between commercial and physical flows appear.

However, we do acknowledge the connection between these two instruments which is established by Regulation 838/2010. Article 5.3 of Annex A of Regulation 838/2010 requires the infrastructure fund to be appropriately adjusted in order to reflect infrastructure financed from other sources than network access charges. The wording clearly indicates that solely financial means which are actually used to finance infrastructure should be taken into account. Article 16 (6) of Regulation 714/2009 introduces a

clear hierarchy for the use of the congestion revenues. Only if it is not possible to use the congestion revenues efficiently for guaranteeing capacity or for maintaining or increasing capacities through investments the TSO is allowed, subject to NRA approval, to lower the network access charges. Therefore it cannot be argued that lowering the network access charges constitutes an investment in infrastructure, not even an indirect one, since the TSO is only allowed to lower the network access charges if there is no project to invest in.

Furthermore it has to be taken into account that network access charges are not only used to invest but also to finance other services. Therefore it cannot be concluded that the lowering of network access charges will lead to an indirect investment.

In conclusion congestion revenues should either not be taken into account for the calculation of the ITC infrastructure fund at all or if it is taken into account only the part of the congestion revenues which was actually used to finance infrastructure should be considered. Therefore we strongly support the narrow approach.

6) Do you agree with Consentec's assessment and the preliminary conclusions on the options for determining the ITC infrastructure fund?

In the light of the current ITC mechanism we generally agree with Consentec's assessment and the preliminary conclusions.

7) What are your views regarding the suitability of using LRAIC to determine the ITC infrastructure fund? Do you consider the LRAIC proposed by Consentec appropriate?

The use of LRAIC for the determination of the unit cost is at least partially introduced by law, see Article 13 (6) 714/2009. However, by giving ACER the task to assess the suitability of LRAIC the legislator gives a clear sign that it might be eligible to use another method to determine the ITC infrastructure fund or at least that he is willing to change the current system. However for the time being a proper alternative is missing. Therefore, the simplification proposed by Consentec seems to be acceptable.

8) Are there any other issues that you believe should be taken into account in this review? In particular, how do you believe the on-going wider developments in the European energy market and regulatory arrangements should impact the ACER's proposal on the infrastructure fund?

In this context the ongoing discussion about unscheduled physical flows needs to be considered. Often significant deviations between commercial and physical flows appear. Besides discussions about an appropriate market structure it needs to be studied more in-depth whether the ITC

mechanism should be adjusted in order to contribute to solutions for dealing with unscheduled flows or not.

Sharing the view of Consentec that financing Projects of Common Interest out of the Energy Infrastructure Package need to be considered in an appropriate adjustment of the current ITC mechanism we would like to address that solutions might be needed in the future ITC mechanism for different cost and ownership sharing in such common projects.

Because remedial actions for guaranteeing the security of supply become an important matter (e.g. integration of RES) it should be considered to amend Regulation 714/2009, Article 16 regarding the use of congestion revenues.