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Response to the ACER Consultation Paper “European Energy Regulation: A Bridge to 2025”

Essen, June 13th 2014

RWE welcomes the opportunity to respond to the initiative taken by ACER to identify the key challenges and regulatory actions that should be taken in the period 2014 to 2025, in the form of the “European Energy Regulation: A bridge to 2025” consultation.

This paper is structured as follows, firstly we list those regulatory areas that we would suggest prioritising, before looking in more detail at the five headings suggested by ACER:

- A. Electricity Wholesale Markets
- B. Gas Wholesale Markets
- C. Infrastructure Investment
- D. Consumers, Retail Markets and the Role of DSOs
- E. Implications for Governance

A list of our key messages precedes each section.

RWE Priorities

ACER has raised key regulatory actions for the next decade. In our view, the following should be prioritised:

- **Customers:** RWE believes that customers are at the very heart of energy retail markets. Empowering and restoring trust by customers will be crucial to ensure that new technologies and demand-side response services are utilised to help solve new challenges such as the integration of an increasing amount of variable renewables into the power system, in a cost effective and equitable way.
- **CRMs:** While a growing number of countries find capacity mechanisms unavoidable, the uncoordinated implementation of capacity markets poses a risk to the internal market. ACER should become active and suggest a regional pilot project. While both capacity and flexibility are essential elements of a future proofed market design, valuing capacity ranks first in urgency.
- **Target model:** We agree that ACER should focus on the accelerated implementation of all aspects of the electricity target model including integrated intraday and balancing markets and the forward allocation of transmission capacity subject to the later comments about geographical and temporal coherence.
- **Integration of renewables:** Mature renewables should be fully integrated in the electricity market and incentivized by market signals. They should take over the same responsibilities as other market participants.
- **ETS:** The ETS is and should continue to be the key instrument for meeting Europe's GHG abatement targets.
- **Network tariffs:** RWE supports a general shift from volumetric (kWh) towards more capacity based (kW) network electricity tariffs, since most costs of the network are fixed. Dynamic network tariffs do not reflect this fixed cost based situation.

A. Electricity Wholesale Markets

Key messages

- *A CRM, if designed properly and market-orientated, is an efficient way to compensate for missing investment incentives and to guarantee security of supply. It is neither state aid nor subsidy. A CRM should be non-discriminating with fair access and equal treatment for existing and new capacities and for all technologies able to provide firm capacity.*
- *While a growing number of countries find capacity mechanisms unavoidable, the uncoordinated implementation of capacity markets poses a risk to the internal market. ACER should become active and suggest a regional pilot project. While both capacity and flexibility are essential elements of a future proofed market design, valuing capacity ranks first in urgency.*
- *We agree that ACER should focus on the accelerated implementation of all aspects of the target model including integrated intraday and balancing markets and the forward allocation of transmission capacity subject to the later comments about geographical and temporal coherence.*
- *Mature renewables should be fully integrated in the electricity market and incentivized by market signals. They should take over the same responsibilities as other market participants.*
- *The ETS is and should continue to be the key instrument for meeting Europe's GHG abatement targets. Its market-based design safeguards economic efficiency in the emission reduction process. The ETS is fully functional. However, to provide more clarity on the framework for long-lasting investments in the energy sector, climate targets for 2030 and beyond need to be defined already today. The first-choice instrument to achieve a 2030 carbon target in the EU ETS is a higher annual reduction factor from 2021 onwards.*

A.1 Integration of wholesale markets

1) Issues and trends

In general, we agree with the observations from ACER. However, we would like to caution against taking individual topics in isolation from related developments in creating truly integrated and economic markets and specifically:

- **Geographic coherence.** We support the development of more pan-European markets with common rules and seamless transit across borders and we recognise the role that increased interconnection capacity can play in delivering that objective. However, where capacity remains scarce and congestion occurs, ACER and regulators should avoid the temptation to think that a partial solution necessarily improves efficiency overall. For example, market splitting and the redefinition of bidding zones will achieve little if any benefit if system operators do not simultaneously provide market participants with the corresponding forward transmission rights to enable market participants to hedge themselves against short-term and volatile congestion costs across price boundaries (ie, to hedge the spread between bidding zones). Better congestion price signals will also have little if any impact on the efficient location of generators and large loads and no impact on the efficient build of incremental transmission if regulators fail to regulate TSOs so as to promote the efficient provision and sale of transmission. Amongst other things, this requires regulators to provide TSOs with the financial incentives to optimize the build and sale of transmission capacity and cross-border capacity (physically or contractually) rather than to use congestion rents to reduce national tariffs. Even with a supportive regulatory framework, regulators needs to strike an efficient trade-off between the purported benefits of redefining bidding zones to increase efficiency at the margins for occasional congestion and the benefits that large combined bidding zones play in reducing transaction and risk-management costs through the greater liquidity that they provide.
- **Coherence across market time horizons.** Regulators also need to ensure that markets remain coherent across time as well as geography and to avoid conflicts between different tenors of trade. For example, there is a potential conflict between increasing cross-border flows driven by the market and the use of interconnectors to share balancing services more.

- Allowing TSOs to reserve cross-border capacity for balancing services will reduce the amount of capacity available to market parties for efficient transfers and self-balancing actions in the day-ahead and intra-day market.
- Running an algorithm for the common merit order of balancing energy will need time. At the same time, ACER wants to move the gate closure time closer to real time (page 15). Time will therefore be an issue. There is a risk that the implicit XB intraday platform has to close early just to give TSOs time for their balancing optimisation. We do not believe that this can be efficient.
- The project to implement the common merit order needs implementation resources (from TSOs, regulators, other stakeholders and service providers) which are not available for other projects improving spot markets (including the intra-day implicit platform and flow-based market coupling all over the EU).

ACER should clarify that the utilization of interconnectors for self-balancing in the spot markets has priority over the use for TSO optimization. When the implicit European platform for cross-border intraday trading has been implemented with a late gate closure, under normal circumstances most the capacity should be used by the market. Hence very little capacity should be available for sharing reserves and balancing energy. Therefore, the potential of the common merit order for balancing services to increase social welfare is limited.

2) Appropriate regulatory response

Balance responsibility for all parties, cost reflective imbalance charges, risk management of BRPs via well-functioning markets. We fully agree with this ACER response. We believe that adequate imbalance charges in combination with near real-time balancing information and a liquid (cross-border) intraday market are the most efficient means to ensure a balanced network.

Non-discriminatory level playing field over different time horizons. This is a very important objective. Markets can only provide for an efficient use of resources if there is one price signal for the energy, balancing and reserves markets. Unfortunately, experience in Germany and other countries in the past is that national legislators and regulators create sub-markets with different rules for marketing and pricing (e.g. separate long-term reserves

with bilaterally negotiated prices, a premium compensation for load management of industrial consumers, cost-based remuneration for re-dispatching etc). The growing number of regulated (national) markets and products increasingly prevents the use of the most cost-efficient source for capacity and flexibility (nationally or cross-border) . This increases the costs of the electricity system and reduces the potential of the EU Target Model to utilize the internal market for enhancing social welfare.

Market based signals from balancing markets. We would argue that liquid and coupled intraday markets (combined with cost-reflective imbalance charges) will send optimal signals about the value of flexibility and in making the best use of available resources. Therefore, developing a common intra-day market should have priority over projects for cross-border balancing.

Optimisation and co-ordination of capacity calculation. We believe this should be a high priority of ACER. The approach from ENTSO-E in the CACM Network Code for capacity calculation is clearly insufficient. There is a significant risk that the efficiency gains possible under the flow-based market coupling are put at jeopardy due to insufficient national rules for capacity calculation, in particular with respect to over-dimensioned security margins (explicitly or implicitly taken into account by TSOs).

Limits on price formation. We fully support ACER's target to abolish regulated prices and bidding caps in all of the Union. In addition to the effects described in the paper, we would like to address another problem: disturbed prices will reduce the incentive to invest in generation capacity and other forms of secured capacity and flexibility. As a consequence of that, the government will be required to step in with guarantees to ensure sufficient investments, which means additional market intervention and the risk of higher wholesale prices.

A.2 Intervention in electricity markets

Integration of renewables into the market

Mature **renewables** should be fully integrated in the electricity market and incentivized by market signals. These signals will be primarily provided by the electricity market and the ETS. To reach maturity and to become cost-competitive, new and existing renewables technologies may need financial support. This support may be granted in different forms, e.g. by public R&D funding or in the form of investment or operating aid.

Renewables should be **exposed to market signals** already at an early stage of their development. They should take over the **same responsibilities** as other market participants. This may need to be realised in stages, for example by introduction of a direct marketing requirement, tendering of capacities and responsibility for balancing and imbalances.

We recommend using **market premiums** which are determined **ex ante** as means of support. The support level would ideally be set by a technology-neutral tendering process to allow for the most cost-efficient choice of renewables. However, **in the long run all support schemes should be phased out.**

CRMs

The EU Commission sees new challenges for security of energy supply arising from **increases in** – often subsidized – **volatile energy production**. We share this view, not just because electricity production fluctuates more but mainly because the ongoing decline of wholesale electricity prices makes the operation of many thermal plants unprofitable. Decommissioning of a significant part of the existing plant portfolio in Europe is the rational outcome.

In this situation, the **Energy Only Market may fail to generate sufficient incentives for investment in existing and new generation capacities.** Its self-healing powers will remain limited at least as long as renewables keep to be subsidised into the market. To deal with the rising uncertainty about future security of energy supply, an adjustment of the market design should be considered.

A **Capacity remuneration mechanism**, if designed properly and market-orientated, is an efficient way to compensate for the missing incentives. It can be constituted as a separate market for the provision of reliable capacity and will then be **neither state aid nor a subsidy**. A capacity market should only pursue one single objective which is security of supply. It should be **non-discriminating** with fair access and equal treatment for existing and new capacities. It should be open for all kind of technologies able to provide firm capacity (coal plants, gas plants, storage, demand-side measures, etc.). And it should be open to both domestic capacity and capacity abroad resulting in a level playing field in Europe. It should be ACER's priority to ensure coordinated and harmonized solutions. A first step should be **common capacity market for the CWE region**. Such a market could be gradually extended to other Member States.

As a consequence provision of firm capacity would get a fair market price. This price will be zero or very low in case of abundant capacity, and prices will only be significant if substantial capacity shortages emerge.

Public intervention

Existing imperfections in the internal energy market can make interventions in the form of public support necessary. And even with the future realization of the internal energy market, public support may continue to play a role in achieving the EU's future energy and climate objectives. This should be done in a cost-efficient way with least distorting effects for competition, excluding pre-defined solutions and avoiding "picking winners". Therefore the Guidelines on state intervention as well as the Guidelines on environmental and energy aid provide an important and necessary framework for Member States when designing new aids or to re-work and improve existing ones. Unfortunately, both Guidelines provide much room for leeway. **Member States can still opt for less market-orientated solutions**. Inappropriate and inefficient discrimination of technologies remains possible. More precise and more unambiguous guidance would be desirable to achieve a European level playing field and to keep costs for consumers to a minimum.

ETS

The ETS is and should continue to be the key instrument for meeting Europe's GHG abatement targets:

- National climate instruments need to become more aligned with European law and principles. Energy policy and its instruments must be thought and conducted with a more European perspective. Nevertheless national governments tend to use more **national approaches to pursue climate targets**. Therefore it is more than appropriate that the EU Commission has updated its energy and climate policy guidelines recently to ensure minimum standards for the design of climate instruments.
- **Neither a RES nor an energy efficiency target are needed furthermore**. The intended freedom of the ETS to allow the market to choose the most efficient way to reduce EU carbon emissions is and would further be adversely affected by both with a considerable rise in costs for climate protection. But the dropping of a RES target should not imply to drop support for renewables. Non-mature and non-competitive renewable technologies at early stage of their development should further be promoted.

The ETS' market-based design safeguards economic efficiency in the emission reduction process. It sets the right incentives for investments in low-carbon technologies on the path to the envisaged low-carbon future. A well-designed EU ETS ensures undistorted competition and a level playing field for all market participants and for all low carbon technologies alike.

Carbon prices adequately reflect actual scarcity with currently low prices indicating that there is little need for additional abatement measures to meet current GHG reduction targets and that these targets can be achieved at low costs. **The ETS is fully functional**, but confidence in it has been shrinking as many regard the price for emission allowances as too low. **It is the right time to make the EU ETS fit for the future.**

To provide more clarity on the framework for long-lasting investments in the energy sector, **climate targets for 2030 and beyond need to be defined already today**. A target for the reduction of EU Greenhouse Gas Emissions should be set as the primary target. It must be brought in line with the EU's policy goals as laid down in the Energy Roadmap 2050, for instance. A reduction of -40% vs. 1990 levels seems to adequately reflect this.

The first-choice instrument to achieve a 2030 carbon target in the EU ETS is a higher annual reduction factor from 2021 onwards. This ensures that the target is met in a cost

efficient way with no intervention in current market processes. A set-aside of allowances may complement a higher reduction factor, provided that it is a one-off measure that it has been aligned with the 2030 carbon target and that it is part of a larger package in order to retain investors' trust and confidence in the long-term predictability of the ETS.

B. Gas Wholesale Markets

Key messages

- *The development of liquid wholesale gas markets requires a quick implementation of the network codes.*
- *The liquid NW European gas market will trigger competition in neighboring markets.*
- *RWE supports ACER in putting focus on the optimal configuration of entry-exit zones.*

RWE wishes to see the **continued development of deep and liquid wholesale gas markets throughout the EU**. In our opinion however, this will only come about as a result of implementation of the network codes, rather through new regulatory initiatives attempting to force integration across a number of EU Member States. Competition and liquidity in NW European gas markets has improved significantly as a result of improvements in access to capacity and balancing regimes, which has led to greater price correlation. This is having a trickle-down effect into less developed connected markets, which have more work to do in making their markets more competitive and responsive to price signals, and serves to highlight the benefits of competition to those countries who have yet to embark on the journey.

Ongoing consideration of the practicalities and benefits of further market integration can take place through the Gas Regional Initiatives, and as part of development of the Gas Target Model. But this should not detract from the concerted efforts of all EU stakeholders to implement the legally binding network codes in a timely and consistent manner. Neither the Gas Regional Initiatives or the Gas Target Model confer any legally binding obligations on national regulators or TSOs. As market integration across more than one member state presents major political, statutory, regulatory and operational challenges, progress will be difficult unless the commercial and efficiency benefits arising from market integration are plain for all stakeholders to see.

If, following implementation of the network codes, there is insufficient progress in certain member states towards creating liquid and competitive wholesale markets, and market participants are unable to efficiently hedge this risks in a national market or a neighboring more liquid market, new legally binding market integration initiatives could be pursued. In which case, implementation of the network codes should help to reduce some of the operational and regulatory challenges to integration.

Finally, RWE supports ACER putting more focus on the optimal configuration of entry-exit zones, a regulatory framework that takes into account the impact of stranded assets and how the regulatory framework could facilitate gas generation and consistent gas and electricity market regimes. These initiatives should be included within ACER's ongoing work plan and pursued collaboratively via its existing powers and spheres of influence.

C. Infrastructure

Key messages

- *RWE supports a general shift from volumetric (kWh) towards more capacity based (kW) network tariffs, since most costs of the network are fixed. Dynamic network tariffs do not reflect this fixed cost based situation.*
- *With respect to output oriented regulation there may be situations where outputs alone are not able to hit the right incentive.*

DSOs have to service environments that are different in structure and thus have somewhat different tasks within energy markets, both between the different countries and within each country, e.g. city-grids, countryside-grids. Output variables should make it possible to reflect these tasks and their cost drivers in a way that expected and real financial remuneration enable a DSO to serve the cost of capital including its risks component and give an incentive to act properly. Different environments may need different outputs to be analyzed in a comprehensive way.

Not only the different structures, but also their speed of change can be cost drivers and become an output to be served by DSOs. Their tasks may change permanently reflecting the evolution of policy objectives. Different change processes, e.g. Smart Grid and the development of Distributed Generation, may need different outputs.

Incentive mechanisms should give a flexible enough framework to reflect existing structures and policy objectives. There may, however, be situations where outputs alone are not able to hit the right incentive. Then it might be worthwhile to add a limited signal on the input side, e.g. premia or budgets.

Today, a major share of typical distribution network tariffs are based on energy transported (kWh). This does not provide optimal signals and can lead to cross-subsidization between different network users since this concept hampers allocating the costs as far as possible on the basis of cost-causality. We support a general shift from volumetric (kWh) towards more capacity based (kW) network tariffs, since most costs of the network are connected to the capacity of the network, being determined by the electric capacity (kW) of the load and generation connected to the network.

D. An appropriate framework for energy customers

Key messages

- *RWE believes that Customers are at the very heart of energy retail markets. Empowering customers is crucial to help solve new challenges such as the integration of an increasing amount of variable renewables into the power system.*
- *Customers' demand should be the driver for a faster switching process. This is why we question the current rationale for future the 24 hours switching requirement.*
- *The current unbundling rules of the internal market directives are sufficient. Still, RWE welcomes ACER's intention to consider whether to recommend the possible revision of the current de minimis limit of 100.000 customers.*
- *Customer data protection and privacy is key and must be in line with the European and national data protection laws. Additional national technical rules e.g. for minimum cryptographic standards are useful.*
- *The deployment of smart meters, including home displays should not be subject to a mandatory mass roll out, since a positive cost-benefit ratio is not a given for many customers. Therefore, deployment of these devices should be left to the market. A mass roll out of smart meters is not a prerequisite for smart grids. From a purely grid perspective, sensors reflecting the network topology in key grid areas – e.g. in transformers – are sufficient.*
- *More emphasis should be laid on generally binding national market rules i.e. data exchange processes / formats and content as well as corresponding time frames.*
- *RWE believes flexibility from both demand and supply side is required for active distribution system management. A more active approach towards distribution grids is becoming increasingly necessary in particular for optimisation of distribution networks with increased share of distributed energy sources.*
- *Demand response services should be left to the market. These services can be supported by DSOs by serving a so called "traffic light concept" and the necessary data for balancing/settlement processes that will allow customers to participate.*
- *Being a neutral und well regulated entity, DSOs today facilitate the market and provide a level playing field in a non-discriminatory way for all market parties. In the future DSOs' tasks will basically stay the same, but complexity of these tasks will rise in the context of smart grids and smart metering . Therefore DSOs' tasks shall not be mixed up with their ownership structure.*

Unbundling

As a natural monopoly electricity and gas DSOs are subject to regulation in Europe. The regulatory set-up inter alia includes provisions to apply informational **unbundling** as provided for in the Internal Market Directives. The DSOs provide all eligible market parties in a neutral, non-discriminatory manner with data vital for suppliers for billing purposes, balancing group coordinators etc. while guaranteeing data security and consumers' privacy. Therefore, the neutral provision of data as well as the mapping of supplier switching processes are major tasks of the DSOs besides the more traditional grid and distribution management tasks.

The full application and national enforcement of the unbundling rules of the Internal Market Directives by the NRAs in all EU member states has to be completed and the corresponding effects have to be monitored and evaluated before further unbundling requirements should be discussed.

The Internal Market Directives set mandatory rules for all DSOs concerning non-discriminatory behavior, treating all market participants equally and not giving any advantage to companies economically connected with the DSO (Art. 25, para. 2 Electricity Directive).

For all DSOs information unbundling is mandatory as well (Art. 27 Electricity Directive). Both provisions, put together, are sufficient. We do not see the necessity for additional unbundling requirements.

Supplier Switching

DSOs technically facilitate supplier switching, guaranteeing reliable supplier switching processes, hence fostering the market. As mentioned above, clear common national data exchange processes / data formats and data content as well as connected time frames for supplier switching create a level playing field for all suppliers.

According to the Third Energy Package customer switching processes should be finalized within a three week period. Customer demand should be the driver for any additional changes to the switching process. This is why we question the current rationale for the future 24 hours switching requirement. We do not believe that there is clear evidence of a link between the need for 24 hour switching requirement and an improved consumer experience. We believe a cooling off period remains important. In addition, there is a risk that the 24 hour switching requirement will further increase energy costs, thus running counter to consumers' concerns regarding higher energy prices; as identified in this consultation.

Data security and protection

Customer meter data should be protected by appropriate security measures that prevent unauthorized access and protect consumers' privacy, but which allows access of authorized parties, such as DSOs and suppliers to fulfill their regulatory requirements. The customer can authorize the third party to have access to the corresponding data. Customer meter data protection should be delivered through national legislation/regulation.

National legislation/regulation shall provide access to metered consumption data for DSOs and suppliers needed to fulfill regulatory duties and/or duties authorized by law without explicit consumer consent, (e.g. meter data needed for balancing settlement, monitoring the state of the network and system operation, billing, historical consumption according to the EU Energy Efficiency Directive).

Meter data needed for purposes other than regulated duties should be subject to consumer consent, i.e. the customer shall legitimate the relevant party, on the basis of a contract, to have access to the data needed for this service.

As data from meters and sensors in district areas/sites can be of critical importance for network operations, DSOs need to have direct access to data, without constraints, for their core operations: active grid management and operations but also planning, investment and maintenance.

As regulated and unbundled entities, DSOs do not have an interest in using data as a tradable product. This is a safeguard for data privacy.

Smart meters

The potential to save energy by the use of smart meters depends on the type of customer (domestic, SME or large enterprise) and their relative contribution to the overall demand, (i.e. the total number of customers supplied as well as their level of energy demand). The installation costs for metering equipment (smart meters with remote reading) and the telecommunication costs as well as the more complex processes have to be taken into consideration. To date, many cases and field trials have shown that these costs outweigh the possible energy savings of household customers. This is the reason why, for example, the German CBA on the national smart meter roll out states, that only small saving potentials for household customers are realistic, proven by experiences from smart meter roll outs of other countries and pilot projects.

In Germany, the extra costs for the underlying technology (e.g. smart meters with remote reading, telecommunication costs, more complex processes; Home Displays) would be disproportionate for most household customers since they would exceed the possible energy savings. Therefore the deployment of smart meters and home displays should not be subject to a mandatory mass roll out, and these products should be left to the market. The customers should have the right to access their current consumption data via a transparent and clearly defined process. The market should decide how to offer any visualization (e.g. in home displays) based upon that data, as an optional feature for the customer.

Information campaigns financed by public bodies will remain necessary to support and develop an increased awareness of energy efficiency and to help customers develop a better understanding of how to save energy and behave in a more energy efficient, sustainable way.

Data formats

There should be a generally binding national standard for data content, data formats and data exchange in the retail market and the underlying processes managed by DSOs. Retail markets across Europe are at different stages of development and have a range of country-specific features, data formats, processes etc. which would make it complex and costly to implement EU-wide standards. Even with Europe-wide standards it would still be necessary to “run” one balance group for every control zone in which an offer is supposed to be launched. Therefore these standards should be left to subsidiarity.

All data needed for the implementation of market processes (such as supplier switching, tariff information etc.) should be exchanged in standardized data formats in order to enable a non-discriminatory access and process for all competitors.

Removing barriers in Europe's retail markets

While appreciating the merit of the Internal Energy Market, we would question how allowing entry of energy suppliers into other Member States' retail market would work together with meeting the specific requirements (license conditions, eventually price controls) of the different retail markets.

There remains a need to better clarify how such a common retail framework would work and who would manage/oversee such a framework and also arbitrate in the event of non-compliance or failure.

ACER has announced its intention to assess retail markets' outcomes and the "value for money" provided to consumers. To do this might be a challenging task. We wonder, for example, how this "energy companies deliver value for money" criterion would be assessed and what would be the outcome or next steps following the results of a poor assessment due to low consumer confidence. We do however agree that ACER and National regulatory authorities should continue to ensure there are no barriers to increasing competition in retail markets and that the benefits of competition reach consumers. We do however agree that ACER and National regulatory authorities should continue to ensure there are no barriers to increasing competition in retail markets and that the benefits of competition reach consumers.

Demand response

For safe grid operation, the direct and fast access by network operators to controllable loads and generation is of the utmost importance, as well as having access to time critical metered data of these installations; in particular generation sites, sites with a large demand and distributed generation (particularly those with intermittent generation from renewable sources like wind and solar).

Tasks like demand response that, under the consideration of system stability and security of supply, can be part of the competitive market should be allocated to the non-regulated area. Both objectives can be achieved e.g. by applying the so called "traffic light" concept. This concept ensures that network capacity is optimized and allocated to the market as much as possible while ensuring that DSOs can manage local grid security issues such as local congestions e.g. by curtailing distributed generation or demand. Demand response itself is a commercial service that can be offered by different market parties including suppliers, aggregators or other market participants. DSOs should not offer commercial demand response services as they provide non-discriminatory access to the "level playing field" for the market parties selling these services.

Customer groups that can provide demand side response services should be appropriately rewarded for their actions.

In the UK there is a concern that for SME customers there isn't customer appetite (or ability) to manage their consumption as a result of market signals; as they will be too focused on managing their businesses to meet the needs of their customers. Therefore there needs to be a way to provide cost effective automation solutions that provide sufficient benefits with little input to deliver the potential savings from DSR.

ACER lists the different elements of distributed energy resources as comprising distributed generation, demand response and flexibility services. We would also suggest adding distributed heat systems to this analysis.

Role of DSOs

Transparent rules and a clear separation of regulated and non-regulated businesses are the basis for any competitive market. The DSO is the neutral platform on which competition evolves.

DSO's tasks in the future of a more "smart world" will not be substantially different from today's tasks;

- In a future "smart world" most of the current roles and responsibilities of DSOs overall will remain the same as today:
 - being a market facilitator by providing validated, trustworthy data to all market participants in an neutral, efficient and non-discriminatory way,
 - delivering efficient and reliable supplier switching processes (incl. reconciliation/settlement),
 - providing network access and network connection in a non-discriminatory and transparent way and
 - ensuring of security of supply and quality of service.
- By introducing smart meters the complexity of handling data as well as the volume of customer data will increase. Whilst the technology will enable additional services, the fundamental logic of the market and its actors, remains the same.

An evolution might take place in demand response: whereas today DSOs provide static information regarding off peak/on peak load times in their networks, in future with increasing levels of decentralized generation, more dynamic concepts like a "traffic light" system will

facilitate a market by granting unlimited access for demand response services of commercial market parties in stable network conditions without congestions when “the traffic light is green” in a neutral and non-discriminatory way. Here, DSO should not offer DSR contracts directly to end customers. This task would remain part of the tool box offered by commercial market players.

The DSOs step in during parts of the “yellow” phase to manage pre-arranged flexibility that is contractually agreed between the DSO and the corresponding market parties. Only in the “red” phase market mechanism will be suspended to technical restrictions.

As customers connected to smaller DSO organizations may not benefit from unbundling requirements to the same extent as those connected to larger systems, RWE welcomes ACER’s intention to consider whether to recommend to the European Commission the possible revision of the current *de minimis* limit of 100.000 customers.

Encouraging efficiency through dynamic pricing

Within this consultation document, there is no mention of facilitating and improving consumer engagement with dynamic pricing, nor the requirement to ensure that all consumers (including those vulnerable customers) are able to access and participate in any opportunities forthcoming.

There also seems to be a disconnect between the ability to encourage the take up of dynamic pricing and the degree of market liberalization and price controls still in existence.

A key component of future regulatory governance should focus on the cost effective delivery of services and ensuring the correct commercial incentives are provided to deliver the most cost-effective system to manage the greater levels of intervention / infrastructure investment, so that customers are not overcharged for avoidable costs.

For those individuals / groups that have a high level of export (from distributed generation) they must pay an equal share of the investment and operational costs.

E. Implications for governance

Key messages

- *The governance and oversight of the ENTSOs needs reviewing. Relying on regulated monopolies to reach a consensus on the key elements of the regulation to be applied to themselves has turned out not to be appropriate (particularly for electricity).*
- *Regulatory frameworks need to become more European in scope.*

We agree that the governance and oversight of the ENTSOs needs reviewing, particularly in electricity. We're particularly concerned about the potential for conflicts between their roles as representative bodies for system operators and quasi-regulatory role as promulgators of the network codes. This had led to a "lowest common denominator" approach to the network codes in areas where consensus is difficult (eg, on balancing and forward capacity allocation). In retrospect, relying on regulated monopolies to reach a consensus on the key elements of the regulation to be applied to themselves was not an appropriate or efficient way to approach the network codes.

This governance issue is exacerbated by the absence of regulatory frameworks which regulate in the European interest rather than national interest. Not only can TSOs struggle to reach a collective viewpoint, but they have no regulatory or financial objective to do so given the divergent regulatory objectives, frameworks and incentives provided by their national regulators. While ACER can help to address this through capacity building, it is difficult to avoid the conclusion that regulation needs to switch to a more European and less national basis if it is to overcome national stand-offs in arriving at the most efficient solution.

Finally – again in electricity more than gas – the respective roles and regulation of power exchanges and system operators needs further examination to ensure that regulation remains targeted and appropriate. The current hybrid between the competitive provision of a trade execution venue and the "natural monopoly" elements of providing transmission services and congestion management via market coupling has not been adequately addressed. This has led to delays in market coupling – particularly intraday – as exchanges (understandably) fail to agree on the future model. ACER should look at this issue further to ensure both appropriate governance surrounding congestion management as a regulated



The energy to lead

transmission service and to maintain effective competition between exchanges as execution platforms.

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