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SEDC response to ACER Public Consultation

European Energy Regulation: A Bridge to 2025

Foreword

The SEDC welcomes the emphasis given by ACER and CEER to the importance of demand-side flexibility and of consumers' engagement, both required for a successful energy transition. Nevertheless, the Coalition would like to highlight some areas of importance, which have not received the attention needed to enable demand side participation in the markets. In order to secure equal treatment of consumers and viable improvement in market development, clear targets for demand-side participation in the markets as well as a mechanism to measure and track progress are critical. Furthermore, the Coalition wishes to send a strong message that if demand-side flexibility is not rewarded and monetised (e.g. through availability payments) it will not participate. Last, but not least, the roadmap does not address several of the main regulatory barriers hindering the development of aggregation throughout EU, (e.g risk mitigation, simplification of complex business processes). Enabling the entrance of aggregation service providers is central for the consumer's engagement and the overall advancement of the sector. In a nutshell, although the "Bridge to 2025" stresses the need for great flexibility provided by the demand side, it does not include a concrete action plan of how to realise this development.

I. "Have we identified correctly the issues and trends within each area of the energy sector? Have we identified an appropriate regulatory response?"

The SEDC will focus its answer on a set of 7 issues identified along ACER's consultation document:

- | | |
|---|--|
| 1. Enabling, valuing, and monetizing flexibility | 5. Enabling demand response |
| 2. Non-discriminatory market arrangements | 6. The future role of DSOs |
| 3. Policy intervention in the electricity market | 7. Encouraging efficiency through dynamic pricing |
| 4. Consumer concerns and technological advances | |

For each of these items we have gathered and commented, identified trends and proposed regulatory actions. We've quoted in **blue** references to the consultation paper and in **red** our own suggestions.

Whilst the SEDC acknowledge the positive work provided by ACER and CEER in preparing this document, we suggest that a consistent vision about how to value and trade flexibility and enable consumer participation still remains to be defined.

1) **Enabling, valuing, and monetizing flexibility**

a. **Identified trends**

Enabling, valuing, and monetizing flexibility is a major requirement of our evolving electricity system. To this regard, the SEDC supports the statements made in paragraphs 2.5 and 2.9.

“(…) greater emphasis will be placed on the appropriate tools for market participants and system operators to manage close-to-real-time changes in supply and demand (an important example may be greater emphasis on the provision of balancing or congestion management services by the users connected at distribution levels). (§ 2.5)

“Further attention must be paid to market designs which **enable the pricing of flexibility** so that market forces can ensure that balancing can be undertaken in the most efficient way and that flexible assets, essential to any high-RES market, will enter or remain on the market. Such market design needs to support price discovery for products which can be activated quickly, and needs to provide efficient price signals for investment in new flexible capacity as required (on either the generation or the demand side).” (§ 2.9)

Avoid biased language use. As a start, to value and monetize flexibility in the market, the biased language around ensuring “the adequacy of generation capacity” (§ 2.8) should be removed and changed towards the need to ensure “**resource adequacy**” or “**system adequacy**”. Resource adequacy encompasses generation, demand and storage.

The SEDC would therefore like to state its **strong objection** to the use of biased and exclusive language in regulatory texts. The term ‘generation adequacy’ negates the possibility of consumer and demand side contribution toward adequacy.

Regulatory language should be unbiased and inclusive.

b. **Regulatory actions**

The SEDC agrees with the need for a market-based approach requiring the full implementation of the network codes and the creation of a level-playing field for all

participants and all resources, whether based on generation or demand response. Adapting product definitions would be a major step to implement this level playing field and broaden the range of available products, to enhance those who deliver low cost and clean flexibility resources such as demand and renewable generation.

Products definition valuing and monetizing flexibility. Flexibility could be promoted by ensuring a broader competition among flexibility providers, both from the generation and demand side, which would take into account the capability of their resources. In order for “flexible assets [to] enter or remain on the market” (§ 2.9), the definition of standard products should ensure a balance between enabling a wide range of resources to participate and meeting the TSO’s needs.

2) Non-discriminatory market arrangements

a. Identified trends

Enhanced competition is a key goal of the IEM. Achieving a level playing field for many market actors would give benefits for the system, and the SEDC supports the statement made in paragraph 2.2.

“Once achieved, the integrated European market will provide greater opportunities for cross-border trade and, as a consequence, **enhanced competition** resulting in a wide variety of benefits for system operators, market participants and, most importantly, consumers.” (§ 2.2)

A strong emphasis on competition is needed, in order to broaden the scope of energy services offered to consumers and facilitate demand-side flexibility on all markets.

b. Regulatory actions

- **Competitive energy services market.** Over and above competition in electricity sales, it is critical that regulation encourages competition over energy management services. Independent service providers (aggregators and ESCOs) as well as retailers, should be able to deliver such services to customers, and have access customer and needed customer information (assuming the consumer has provided their permission). The creation of a competitive market around **energy flexibility and energy efficiency services** should be a main objective of Regulators, in order to **strengthen the consumer’s position in the market** and **enable the development of demand side flexibility**.

Proposed regulatory action

In many electricity markets, the consumer must gain the prior agreement of the BRP/retailer, before he/she is qualified to participate in any demand response programme with a third party or access a market themselves. This lowers the range of programs available to consumer and may make it impossible for independent

aggregation service providers to enter a market and offer innovative services to consumers. It may also block larger consumers who might be able to participate on the markets alone from reacting to market prices.

ACER and CEER should make it their business to review such regulations and prohibit any such condition so that third parties can participate, in order to promote consumer rights and enable fair competition between services providers.

This should be performed within the context of standardised baseline and measurement criteria and the development of a regulated financial adjustment scheme for the retailer and for the aggregator.

- The SEDC supports **equal footing in electricity markets** – as stated in paragraphs 3.4 and 3.5, this is today far from being reality.

Electricity wholesale markets key priorities

“Non-discriminatory market arrangements must not create barriers to participation on the **basis of size**, location, connection voltage, technology and whether the participant is on the demand or generation side.” (§ 3.4)

- Ensuring **that all generation and demand compete on a non-discriminatory level playing field** over the different time horizons of the wholesale markets. ACER and NRAs will play their part in ensuring that rules for participation in energy, balancing and reserves markets will apply and be appropriate for demand-side, distribution users, RES generation and conventional generation. (§ 3.5, point 2).

In many European markets aggregated demand response is simply prohibited (SEDC, 2014). There is also a wide range of prohibitive program participation requirements still in place, which unfairly block consumer participation.

- Below is a list of the main areas that can cause issues if not handled correctly.
 - Over-sized minimum bids: A consumer or aggregator may need to provide up to 50MW to participate – rather than the more standard 3-5 MW.
 - Fast ramping period: Ramping periods which are significantly faster than the European standards and not justified by the TSO.
 - Extended duration or availability requirement: this is a policy geared toward historic generation requirements. When abused, it constitutes a regulatory bias toward one resource over another resource: Artificially raising prices for reserve power and shutting out clean, flexible resources from the market. Examples can include markets where reserve resources are required to be available to 12 -16 hours, when only 1 hour is needed in practice.
 - Too frequent activations/short recovery periods: This is done when a TSO does not want to have to make multiple calls for resources but prefers to make a single call and then have the resources available. This is convenient

for the TSO but lowers the ability of a range of resources including Demand and renewable resources from participating.

- Symmetric bids: consumers can rarely generate and consume in equal measure. A requirement for symmetrical bids acts as a total market barrier to consumer participation. In Member states where the TSO is willing to enable demand response asymmetrical bids are allowed.

Requirements often represent product descriptions oriented towards conventional generation (more examples are available in our last report “A Mapping of Demand Response in Europe”, available at: http://sedc-coalition.eu/?attachment_id=5807). **A strong and methodical regulatory approach is needed from ACER and NRAs to remove these barriers.**

- The SEDC supports the ACER’s statement on **regulated prices and bidding caps** made in paragraph 3.5.

• By allowing markets to reveal the true value of electricity delivery, regulators will work to remove barriers and impediments which limit price formation. **Regulated prices and bidding caps must not be allowed to distort efficient price discovery** in the market. This is particularly important in the development of markets in flexible response, where robust price signals are clearly required to balance the demand and supply for these services. (§ 3.5, point 5)

3) Policy intervention in the electricity market

a. Identified trends

As part of promoting equal footing in all electricity markets, the SEDC would like to support the statements regarding **capacity remuneration mechanisms (CRM)** made in paragraph 2.7.

“The implementation of CRMs (for this and other reasons) however needs to be done carefully, lest uncoordinated, national schemes may create distortions in the European wholesale market (highlighted by ACER’s Opinion on Capacity Markets and by the European Commission which has itself already expressed its concern).” (§ 2.7)

b. Regulatory actions

The SEDC supports the statement in favour of fair competition in capacity markets. When implemented, CRMs should allow all resources to participate on equal footing. Investment stability such as that provided by availability payments in capacity markets, are key for the growth of demand-side participation. The stable revenue stream provided by availability payments has been the main driver for the development of demand response in a series of countries. The combination of an attractive availability payment along with developed aggregation of demand side resources has proved to be a very successful approach to enable Demand Response.

SEDC’s response to ACER Public Consultation on European Energy Regulation:
A Bridge to 2025

“In a well-functioning and efficient market, capacity remuneration mechanisms (CRMs) may or may not be needed to ensure generation adequacy. Every step towards developing **CRMs needs to be clearly justified and carefully evaluated**. This evaluation may include sufficiently coordinated adequacy assessments and whether rewarding flexibility is a more appropriate measure in a specific market. **Where CRMs are considered necessary**, a proper competitive environment for such mechanisms needs to be guaranteed to ensure that they are fit-for-purpose, open to new, existing and cross-border resources, and **properly reflect the value of different generation, storage and demand response**. Close monitoring, evaluation of the mechanisms’ effectiveness, and, if possible, options for phase-outs also need to be envisaged.” (§ 3.6)

These mechanisms should also reflect the value of energy efficiency.

Proposed regulatory action

When there is not a risk of double counting efficiency measures, for example in the case of white certificates...NRAs should explore if CRMs could also reflect the value of energy efficiency in the balance of the energy system.

In a non-discriminatory market, the system is reviewed for *adequacy* and balance rather than generation alone (as embodied by the biased term *generation adequacy*). Within this system, energy efficiency is the cleanest, and often lowest cost resource available. In capacity markets such as the PJM Capacity Market for example, energy efficiency is successfully bid, and provides a safe, secure and clean capacity resource. It is therefore appropriate for a capacity market.

4) Consumer concerns and technological advances

a. Identified trends

The SEDC agrees with the statements made in paragraphs 2.23 and 2.27 regarding consumer empowerment.

“Consumers should be encouraged and empowered to take full advantage of the new and emerging technologies that will allow them to respond.” (§ 2.23)

“Greater home automation and innovative services will assist customers in managing their consumption and reduce the complexity of active participation in the market. Appliances will also increasingly help consumers to manage their energy consumption more efficiently.” (§ 2.27)

The increasing availability of technology will enable consumers to participate in electricity markets, but offerings do not arrive on their own through technology alone. Service providers, viable products and readily available **data** are also essential to realise the potential of technology developments. In addition, dynamic pricing options further enable consumers to realize the financial benefits of managing the timing of their consumption.

b. Regulatory actions

Regarding the paragraph 3.26, listing series of regulatory actions for domestic consumers, the SEDC would like to bring its support to important points.

- **Ensuring data privacy and fair access to data** are two principles which should be fulfilled at the same time.

“Building consumer trust and ensuring data privacy and security. Robust systems must be in place to protect customer metering data, while at the same time allowing customers to benefit from third-party services and efficient network operation. (...) **Regulators will work** with stakeholders to develop minimum standards for contracts, so that customers have confidence when third parties are involved, and **to provide for non-discriminatory access to customer metering data**, where approval has been given.” (§ 3.26, point 4)

It is essential that consumers can give access to metering data to the service provider of their choice, in a trusted manner. The principle of ‘non-discriminatory access to metering data’ (i.e. data already provided for billing purposes under appropriate regulation) has the full support of the SEDC and is critical to the development of competition within demand side services.

The timing of access should be consistent with the services the Regulator wishes to enable. In particular demand response, where consumers bid in the balancing market, requires near real time access to data.

- **Consumers’ ability to benefit from Smart Meters** is essential. The adjustment of the **settlement process** to utilize actual interval data is a key issue to this regard.

“Deriving consumer benefits through smart meters. When and where smart meters are rolled out, consumers must be in a position to benefit from the possibility of accessing new or enhanced services and be given greater control of their energy use (for example, through time-of-use prices, rapid responsiveness and speedier access to network and consumption information). “ (§ 3.26, point 6)

In order for consumers to receive the full advantages of a smart meters roll out, the settlement process should be adjusted in order to account for the actual value of ToU tariffs or dynamic pricing – i.e., perform settlement using interval usage data as is done in many jurisdictions today (and is planned for the U.K.). Without this adjustment, the reduction in revenue from the transfer of use to off peak times will not be offset by a reduction in the wholesale cost (i.e., if a class load profiling method is then applied by the settlement agency). Therefore, suppliers will face a net **cost**, if they give consumers a discount for off-peak usage. It is therefore critical that

settlement processes are adjusted if the benefits of dynamic pricing and ToU are to be achieved through SM.

Proposed regulatory action

To avoid this issue, and for the tariff to remain reflective of the underlying costs, settlement should use actual interval data. During the transition to this new system, a new assumed settlement profile could be developed for each ToU tariff formulation that would represent the change in consumption behaviour the tariff had elicited. These profiles can only be created once the tariff has been implemented using a sample of customer actual ex-post data.

The SEDC is concerned that ACER seems to be unaware of this issue and that settlement is not named within this document in connection with ToU and dynamic pricing. As Smart Meters are rolled out across Europe it is critical that the European Commission, ACER and CEER understand that unless settlement process are changed, and conducted according to the consumer's real consumption profile, demand response and dynamic pricing for SME and residential consumers **will not be possible**. The SEDC would strongly encourage ACER to review this issue further.

5) Enabling demand response

a. Identified trends

- The introduction of this section tends to oversimplify demand response in reality in Europe today.

"In many Member States, larger consumers have provided load management services to system operators for many years." (§ 2.31)

The interruptible load schemes in existence in many Member States, provide potential emergency reserves for TSOs. However, a limited range of consumers have access to such schemes, which may also be of limited use for the TSO.

In particular, in Italy, Spain,... these schemes are in place but have not been triggered for over 10 years. This makes them suspected of being no more than hidden **subsidy** for energy-intensive industries in those countries. The SEDC would advocate that CEER and ACER support models of demand response programs which are viable, market driven and lead to broader consumer participation.

Aggregation

- The SEDC appreciates the strong focus on empowering consumers, however we are concerned that there are **few practical steps planned towards enabling those consumers to access services**.

“Aggregation is also likely to facilitate system operators’ use of their services and could potentially be delivered by a range of players, including retailers, independent aggregators or energy services companies (ESCOs).” (§ 2.32)

The SEDC strongly supports this statement. Nevertheless, measures are needed to enhance competition around consumer **aggregation services** (not only energy sales). A great deal of regulatory adjustment is needed only to fulfil the requirements of existing European legislation, such as the Third Energy Package and the Energy Efficiency Directive with regards to demand response and the ability of aggregators to compete in the markets.

The Third Energy Package, Article 3.2, states “In relation to security of supply, energy efficiency/demand-side management and for the fulfilment of environmental goals and goals for energy from renewable sources, [...] Member States may introduce the implementation of long-term planning, taking into account the possibility of third parties seeking access to the system.” This language has now been strengthened further within the Energy Efficiency Directive (EED).

The EED mandates consumer access to the energy markets, either singly or through aggregation. Article 15.8 states:

- “Member States shall ensure that national regulatory authorities encourage demand side resources, such as Demand Response, to participate alongside supply in wholesale and retail markets”.
- Furthermore “Member States shall promote access to and participation of Demand Response in balancing, reserves and other system services markets, inter alia by requiring national regulatory authorities [...] in close cooperation with demand service providers and consumers, to define technical modalities for participation in these markets on the basis of the technical requirements of these markets and the capabilities of Demand Response”.

The language of the Directive should now be declined into appropriate regulations at the national level. (For further information see: “A Mapping of Demand Response in Europe”, available at: http://sedc-coalition.eu/?attachment_id=5807)

b. Regulatory actions

The SEDC would be happy to see further reflection and an **actual plan** for enabling consumer participation in the markets.

The introduction of new services and technologies which permit greater demand-side involvement in the energy market will need to be accompanied by a **framework that covers commercial, regulatory and standardisation aspects**. This framework will need to explore the **new relationships between service providers and consumers** and seek to facilitate consumer involvement wherever possible. Its preparation will build on the work of existing standards bodies by establishing

guidelines to standardise business processes and equipment without hindering innovation. Regulators are also aware that cross-sectoral impacts have to be considered too (for instance, the sharing of communications infrastructure for smart meters across different sectors could be beneficial, as long as issues such as data separation and consumer protection are taken fully into account). (§ 3.29).

The SEDC is looking forward the mentioned framework (§ 3.29) covering ‘commercial, regulatory and standardisation aspects’ and exploring ‘the new relationships between service providers and consumers’. However we suggest that it is **important that actionable initiatives are created in order to realise these aims**. These would include enforcing access to electricity markets for consumers across Europe, ensuring that consumers can contract with any aggregation service provider of their choice, creating products descriptions which enable a range of resources, including demand side resources within the balancing markets, develop adequate measurement and verifications requirements and fair payment....

Therefore, the SEDC would point out that phrases such as ‘new relationships between service providers and consumers...’ have been used for years, and have not resulted in actual access of consumers to services. We would therefore suggest that ACER looks at these issues in a concrete and actionable manner, taking concrete steps in order to ensure that consumers have access to markets, that they have access to service providers and that **progress is measured and mapped**.

6) The future role of DSOs

a. Identified trends

Considering the particular position of DSOs, it is important that they are able to act as market facilitators in a manner which does not threaten free and fair market competition or allow an abuse of market power. However, considering the significant potential for improved efficiency and demand side service delivery at the low voltage level, as well as the potential of cost reductions, ACER and other regulatory bodies should provide a nuanced and facilitating regulatory structure for DSOs. A black and white effort to ‘minimizing’ their role, may not achieve this larger aim.

“Given that DSOs are monopoly network operators, it is in the interest of all consumers that their influence on the operation of competitive markets will be appropriately minimised, leaving other actors (e.g. retailers, independent aggregators, ESCOs) to supply the new services including load control, usage monitoring and the provision of vehicle charging/refuelling, as well as non-energy services such as home security.” (§ 2.33)

b. Regulatory actions

DSOs could get important benefits from the use of demand side flexibility.

Regulation should provide the framework for the efficient operation of DSOs and facilitate the development of new markets to the benefit of consumers. (§ 3.31)

The Third Energy Package requires network operators to take the potential of Demand Response and energy efficiency into account when planning system upgrades. The regulation enables DSOs to buy demand response services in order to manage their network. In many member States, the current limit on operational expenditures (OPEX) negates any benefits DSOs could receive from DR or making use of Demand Response is illegal. Italy is one example here, but there are many more.

This is a basic negation of the Third Energy package and should be changed.

7) Encouraging efficiency through dynamic pricing

Time-of-use pricing in gas and electricity markets can be used to reflect more accurately the value of energy consumed at different times. Reductions in energy consumption during peak periods can reduce the need for additional infrastructure investment and thus reduce prices to consumers. Whilst the **benefits of dynamic pricing can be identified, there are also costs** which may result from different consumption patterns. These costs are harder to quantify because the effect of changing consumption patterns varies between consumers. Further, the costs and benefits will probably differ between electricity and gas as well as between different types of consumers. **Regulators will therefore consider further the implications for consumers of time-of-use or locational distribution network tariffs.** (§ 3.37)

Costs for all parties should be carefully assessed and market rules fair for all market actors. Nevertheless, it should not jeopardize the principle of equal footing in the electricity markets nor the consumer's freedom of choice. In particular, the procurement of DR resources by DSOs from third parties should take into account the locational value of flexibility.

II. Which regulatory actions are most important and should be prioritised?

1. Rewarding flexibility in the market
2. Ensuring access by energy consumers to the market, including setting parameters for information, dynamic pricing, and automation options
3. Ensuring that consumers can contract with any aggregation service provider of their choice
4. Ensuring access by DR operators to the wholesale markets on an equal footing with generation *and* as an alternative to grid investments
5. Addressing barriers to the development of flexibility services
6. Measure and map progress within the markets

The SEDC would suggest that the manner in which demand response and consumer services are discussed in this document show a lack of coherence. This results in issues which impact consumers being handled in a 'piecemeal manner', while some issues are dealt with, others are not. This is of course one of the reasons for carrying out a

consultation, to gather stakeholder input, however the SEDC suggests that ACER may find these topics are easier to handle if and when **consumer flexibility is seen as a resource**, (much like solar, gas, coal... for example) which can be traced and followed through the different steps in the electricity market.

III. Are there other areas where we should focus?

This paper does not cover many of the actionable initiatives that could practically enable demand response the development of consumer centred services around Europe. The SEDC is looking forward to the mentioned framework (§ 3.29) covering 'commercial, regulatory and standardisation aspects' and exploring 'the new relationships between service providers and consumers'. However we suggest that it is **important that actionable initiatives are created in order to realise the aims outlined in this paper.**

These would include enforcing access to electricity markets for consumers across Europe, ensuring that consumers can contract with any aggregation service provider of their choice, creating products descriptions which enable a range of resources, including demand side resources within the balancing markets, develop adequate measurement and verifications requirements and fair payment....

As mentioned above, phrases concerning consumer services, flexibility, choice, empowerment... have been used for years, and have not resulted in actual access of consumers to services. We would therefore urge ACER to look at these issues in a concrete and actionable manner, taking concrete steps in order to ensure that consumers have access to markets, that they have access to service providers and that **progress is measured and mapped.**



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