

TenneT TSO GmbH

Proposal of commitments under Article 9 of Council Regulation (EC) No. 1/2003

Case COMP/AT.40461 – *DE-DK Interconnector* -

- 1 In accordance with Article 9 of Council Regulation (EC) No. 1/2003, TenneT TSO GmbH (*TenneT*) offers the following commitments (*Commitments*) to the European Commission (the *EU Commission*) with a view to remedying the EU Commission's competition concerns as expressed by the EU Commission in its preliminary assessment (*Preliminary Assessment*) dated 19 March 2018 in the context of its investigation in case COMP/AT.40461 and enabling the EU Commission to adopt a decision confirming that the Commitments meet its concerns.
- 2 In line with Article 9 Regulation (EC) No. 1/2003, these Commitments do not constitute an acknowledgement of liability by TenneT (whether direct or indirect, explicit or implicit) that there has been any infringement of Article 101 or Article 102 Treaty on the Functioning of the European Union (TFEU) or Article 53 or Article 54 of the EEA Agreement or the competition laws of any other jurisdiction (*Applicable Competition Law*), and nothing in these Commitments may be construed as implying that TenneT agrees with the preliminary concerns expressed by the EU Commission in the Preliminary Assessment.
- 3 TenneT acts under the assumption that, when accepting these Commitments, the EU Commission will confirm that there are no longer grounds for action against TenneT, and the EU Commission will terminate the proceeding against TenneT without concluding whether or not there has been an infringement of Applicable Competition Law.
- 4 These Commitments are without prejudice to TenneT's position should the EU Commission or any other party conduct proceedings or commence other legal actions against TenneT.
- 5 This text shall be interpreted in the light of the Preliminary Assessment, the Commitment Decision, in the general framework of Community law and in particular in the light of Articles 101 and 102 TFEU and Regulation (EC) No. 1/2003.

I.

Objectives and Considerations

- 6 In recent years changed market and power generation patterns led to a frequent and significant decrease of the NTC available at the border between Germany and Western Denmark (DE-DK1

Border). Pursuant to Article 16 (3) of the Electricity Regulation, TSOs shall make available the maximum capacity of the interconnections and/or the transmission networks affecting cross-border flows to market participants, complying with safety standards of secure network operation. To this effect TenneT has implemented certain measures at the DE-DK1 Border. In particular, after consultations with market participants, the Governments and regulatory authorities of Germany and Denmark and the European Commission since April 2016, TenneT started to provide guaranteed NTC capacity in July 2017 which was stepwise increased up to the current level of 700 MW. This measure was based on a contractual cooperation on countertrading with ENDK and supported by a corresponding joint declaration between the Governments of Denmark and Germany.

- 7 In order to meet the concerns of the EU Commission as expressed in the Preliminary Assessment, TenneT will make available the maximum capacity at the DE-DK1 Border that is compatible with safety standards of secure network operation. In any event, TenneT proposes to commit to increase the guaranteed NTC capacity up to a minimum of 1 300 MW on the DE-DK1 Border. This TenneT Guaranteed Hourly NTC shall generally be offered to the spot market (day-ahead and intraday), but a certain share may also be offered to the long-term market in order to allow sufficient hedging opportunities on the market in compliance with the FCA Regulation, and may be reserved for balancing energy in compliance with the Electricity Balancing Regulation.
- 8 The increased TenneT Guaranteed Hourly NTC requires a Phase-in Period to allow market participants to adapt their processes and to gain experience with the increased exchange of energy. This Phase-in Period is expected to lead to an increase in the market liquidity required for countertrading and, thus, contribute to the overall security of supply.
- 9 The increase and provision of the TenneT Guaranteed Hourly NTC shall primarily be based on the procedures laid down in the Countertrade Agreement between TenneT and ENDK. ENDK is neither addressee of the proceedings in case COMP/AT.40461, nor has ENDK consented to these Commitments. By consequence, these Commitments only apply to the TenneT Guaranteed Hourly NTC which can deviate from the actual Trading Capacity. This is the case if the minimum value of NTC for the DE-DK1 Border determined by ENDK is lower than the TenneT Guaranteed Hourly NTC.
- 10 TenneT will only reduce the TenneT Guaranteed Hourly NTC below 1 300 MW in exceptional cases if required to maintain system stability and security of supply as specified under Section III and Annexes 1 and 2 of these Commitments.
- 11 TenneT aims at implementing the Commitments in an economically efficient way. The costs incurred by TenneT as a result of providing TenneT Guaranteed Hourly NTC will not be subject

to a cost cap. Further, TenneT will implement the Commitments in compliance with safety standards of secure network operation and in compliance with the applicable national and European regulatory framework, most notably the Electricity Regulation, CACM Regulation, FCA Regulation, SO Guideline Regulation, and other applicable legislation, and their implementation by regulatory authorities (including BNetzA, DERA and ACER).

12 The Commitments shall be subject to a review process as specified under Section V of these Commitments, in particular taking into account the upcoming revised Electricity Regulation as part of the proposed European legislative package ‘Clean Energy for All Europeans’.

II. Definitions

13 For the purpose of these Commitments, unless the context otherwise requires, the subsequently listed terms shall have the following meaning:

14 *ACER*: Agency for the Cooperation of Energy Regulators.

15 *BNetzA*: German Federal Network Agency (*Bundesnetzagentur*).

16 *CACM Regulation*: Regulation (EU) 2015/1222 of 24 July 2015 establishing a Guideline on Capacity Allocation and Congestion Management.

17 *Countertrade*: Cross zonal exchange initiated by system operators between two bidding zones to relieve physical congestion.

18 *Countertrade Agreement*: The Agreement on Countertrading between ENDK and TenneT as concluded on 3 July 2017.

19 *DE-DK1 Border*: DE-DK1 Border refers to the alternating current electrical connection between TenneT and ENDK, geographically located between Jutland in Denmark and Schleswig-Holstein in Germany.

20 *DERA*: Danish Energy Regulatory Authority (*Energitilsynet*).

21 *Effective Date*: The date upon which TenneT receives the formal notification of the decision adopted by the EU Commission in Case COMP/AT.40461 pursuant to Article 9 Regulation (EC) No. 1/2003 of 16 December 2002.

- 22 ***Electricity Balancing Regulation:*** Regulation (EU) No 2017/2195 of 23 November 2017 establishing a Guideline on Electricity Balancing.
- 23 ***Electricity Regulation:*** Regulation (EC) No 714/2009 of the European Parliament and 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.
- 24 ***ENDK:*** Energinet, an Independent Public Enterprise (selvstaendig offentlig virksomhed) under the laws of Denmark registered in the central business register (centrale virksomhedsregister) under CVR number 28980671, whose registered office is at Tonne Kjaersvej 65, Erritso, 7000 Fredericia, Denmark.
- 25 ***FCA Regulation:*** Commission Regulation (EU) No 2016/1719 of 26 September 2016 establishing a Guideline on Forward Capacity Allocation.
- 26 ***NTC:*** Net transfer capacity refers to the maximum admissible trade volume over a border determined by the adjacent TSOs taking into account the relevant grid constraints.
- 27 ***Phase-in Period:*** Gradual increase of TenneT Guaranteed Hourly NTC within six months after the Effective Date.
- 28 ***Re-dispatch:*** Measure(s) activated by one or several system operators by altering the generation and/or load pattern in order to change physical flows in the transmission system and relieve a physical congestion.
- 29 ***SO Guideline Regulation:*** Commission Regulation (EU) No 2017/1485 of 2 August 2017 establishing a Guideline on Electricity Transmission System Operation.
- 30 ***TenneT:*** TenneT TSO GmbH, a limited liability company under the laws of Germany registered in the commercial register of the Local Court (*Amtsgericht*) of Bayreuth under number HRB 4923 whose registered office is at Bernecker Straße 70, 95448 Bayreuth, Germany.
- 31 ***TenneT Guaranteed Hourly NTC:*** The minimum value of NTC for the DE-DK1 Border determined by TenneT and valid for every hour of the year independent of the minimum value of NTC for the DE-DK1 border determined by ENDK.
- 32 ***Trading Capacity:*** Capacity actually made available to the market for the DE-DK1 Border equal to the lower of the two values of NTC determined by TenneT (i.e. at least the TenneT Guaranteed Hourly NTC) on the one hand and determined by ENDK on the other hand.

- 33 *Transmission System Operator (TSO)*: Pursuant to Article 2 (4) of Directive 2009/72/EC, a natural or legal person responsible for operating, ensuring the maintenance of and, if necessary, developing the transmission system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long-term ability of the system to meet reasonable demands for the transmission of electricity.

III. Commitments

- 34 TenneT will make available the maximum capacity at the DE-DK1 Border that is compatible with safety standards of secure network operation. In any event, TenneT commits to provide a TenneT Guaranteed Hourly NTC of 1 300 MW at the DE-DK1 Border.
- 35 The TenneT Guaranteed Hourly NTC of 1 300 MW will be phased-in over a period of six months starting at the current level of 700 MW. Beginning on the first day of the second month after the Effective Date TenneT shall increase the TenneT Guaranteed Hourly NTC in linear monthly steps of 120 MW until the TenneT Guaranteed Hourly NTC of 1 300 MW is reached six months after the Effective Date.
- 36 Subsequent to the Phase-in Period a certain share of the TenneT Guaranteed Hourly NTC may be offered to the long-term market. The remaining share as well as any long-term capacities, which have not been nominated, will be offered to the spot market (day-ahead and intraday) and may be used to provide balancing energy in compliance with the Electricity Balancing Regulation.
- 37 The TenneT Guaranteed Hourly NTC of 1 300 MW shall be valid for both directions at the DE-DK1 Border, i.e. from Denmark West (DK1) to Germany (DE) and from Germany (DE) to Denmark West (DK1).
- 38 In the following exceptional cases, which are further specified in Annexes 1 and 2, TenneT may reduce the TenneT Guaranteed Hourly NTC below 1 300 MW to what is necessary and proportional to comply with safety standards of secure network operation:
- (i) if critical grid elements are not available due to unplanned outages, construction or maintenance work, but even in these exceptional cases the TenneT Guaranteed Hourly NTC shall not be lower than 500 MW (cf. Annex 1); or
 - (ii) in emergency situations where TSOs (including TenneT) must act in an expeditious manner and re-dispatching or countertrading is not possible (cf. Annex 2).

IV. Monitoring Trustee

1. General

39 TenneT shall appoint a monitoring trustee on the terms and in accordance with the below
procedure (Monitoring Trustee), and once the Monitoring Trustee is approved by the EU
Commission, the Monitoring Trustee shall monitor TenneT's fulfilment of the Commitments.

40 The Monitoring Trustee shall, at the time of appointment, be independent of TenneT and its
affiliated undertakings as well as ENDK, and shall have the necessary expertise and experience
in the electricity sector to adequately fulfil and comply with the mandate as Monitoring Trustee.

2. Proposal by TenneT

41 No later than 2 weeks following the Effective Date, TenneT shall submit a proposal of at least
one person and/or institution TenneT considers adequate and qualified to fulfil the obligations of
the Monitoring Trustee. The proposal shall contain sufficient information to enable the EU
Commission to verify that the proposed person(s) and/or institution(s) fulfil the requirements set
out in Paragraph 40 above and shall include:

- (i) the full terms of the proposed mandate, which shall include all provisions necessary to
enable the Monitoring Trustee to fulfil its obligations under its mandate; and
- (ii) the outline of a plan which describes how the Monitoring Trustee intends to carry out its
assigned obligations and responsibilities under its mandate.

3. Approval or Rejection by the EU Commission

42 The EU Commission shall have the discretion to approve or reject the proposed person(s) and/or
institution(s) as Monitoring Trustees and to approve the proposed mandate subject to any
modifications it deems necessary for the Monitoring Trustee to fulfil its responsibilities. If only
one person or institution is approved, TenneT shall appoint this individual as Monitoring
Trustee. If more than one person and/or institution are approved by the EU Commission, TenneT
shall be free to choose the respective Monitoring Trustee to be appointed among the approved
persons. The Monitoring Trustee shall be appointed no later than one week after the EU
Commission's approval in accordance with the approved mandate.

4. New Proposal by TenneT

43 If the person(s) and/or institution(s) proposed by TenneT for the mandate as Monitoring Trustee are rejected by the EU Commission, TenneT shall propose at least one more person and/or institution within 2 weeks after the rejection by the EU Commission in accordance with the above requirements and procedure.

5. Monitoring Trustee Nominated by the EU Commission

44 If also the person(s) and/or institution(s) proposed by TenneT under Paragraph 43 are rejected by the EU Commission, the EU Commission shall nominate a Monitoring Trustee to be appointed by TenneT in accordance with the approved mandate.

6. Mandate of the Monitoring Trustee

45 The mandate of the Monitoring Trustee shall include, in particular, the following obligations and responsibilities:

- (i) Monitor the satisfactory fulfilment of TenneT's obligations under the Commitments;
- (ii) Propose to TenneT certain measures the Monitoring Trustee considers necessary to ensure compliance of TenneT with obligations under the Commitments;
- (iii) Provide every 3 months during the Phase-in Period and thereafter every 6 months written reports to the EU Commission on TenneT's compliance with the Commitments. The reports will contain in particular the following information:
 - TenneT Guaranteed Hourly NTCs;
 - actually offered cross-border Trading Capacities;
 - in case of reductions of the TenneT Guaranteed Hourly NTC, all relevant facts, in particular the reason for, and scope of, the reductions;
 - data on use of countertrade based on the Countertrade Agreement between TenneT and ENDK including the ratio between NTC offered to long-term market and to the spot market;
 - costs of providing the TenneT Guaranteed Hourly NTCs as soon as the relevant invoices are available; and

- decisions and agreements on cross-zonal capacity allocation and calculation based on principles and methodologies under the CACM Regulation approved by the competent regulatory authorities (in particular BNetzA) on the basis of CACM Regulation or on any European and national laws and regulation implementing the principles and methodologies of the CACM Regulation.

(iv) Upon request by the EU Commission, provide additional oral or written reports to the EU Commission on any matters falling within the scope of the Commitments.

(v) The reports shall be in English and both TenneT and the BNetzA shall receive copies of the reports.

46 The Monitoring Trustee shall not:

(i) Participate or be involved in commercial or regulatory negotiations or discussions between TenneT and the BNetzA, other regulatory authorities or other third parties (e.g. other TSOs);

(ii) Disclose any confidential information of TenneT to anyone other than the EU Commission.

47 The Monitoring Trustee shall have access to TenneT's books, records, documents, management or other personnel, facilities, sites or technical or regulatory information only in so far as it is reasonably necessary for the performance of its duties, as set out in Paragraph 45 of the Commitments.

48 At the expense of TenneT, the Monitoring Trustee may appoint advisors subject to the EU Commission's prior approval and prior consultation with TenneT (including expected amount of fees), provided that the Monitoring Trustee reasonably considers the appointment of such advisors necessary for the fulfilment of its mandate, and that any fees incurred are reasonable.

7. Obligations of TenneT

49 TenneT shall ensure that the Monitoring Trustee's remuneration is sufficient to guarantee the effective and independent compliance with its mandate.

50 TenneT shall provide to the Monitoring Trustee all necessary assistance and information, including copies of all relevant documents, the Monitoring Trustee may reasonably require to adequately fulfil its obligations and responsibilities in accordance with its mandate.

8. Termination of Mandate

- 51 If the Monitoring Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest:
- (i) the EU Commission may, after hearing the Monitoring Trustee, require TenneT to replace the Monitoring Trustee; or
 - (ii) TenneT, with the prior approval of the EU Commission, may replace the Monitoring Trustee.
- 52 If the Monitoring Trustee is removed, the Monitoring Trustee may be required to continue its mandate until a new Monitoring Trustee is in place and has received all relevant information to carry out the mandate. The new Monitoring Trustee shall be appointed in accordance with the above procedure.
- 53 The Monitoring Trustee shall cease to act as Monitoring Trustee only after the EU Commission has discharged it from its duties.

V.

Duration and Review Process

1. Duration

- 54 The Commitments shall apply for a duration of 9 years from the Effective Date.

2. Review Process

- 55 Pursuant to Article 9 (2) (a) of Regulation (EC) No. 1/2003, TenneT may request the EU Commission to reopen the proceedings with a view to modifying and/or terminating these Commitments in case of an important change of facts on which the EU Commission's Commitment Decision pursuant to Article 9 (1) of Regulation (EC) No. 1/2003 is based.
- 56 The EU Commission may, upon a reasoned request by TenneT, review the Commitments if the provision of TenneT Guaranteed Hourly NTC under these Commitments conflicts with:
- (i) cross-zonal capacity allocation and calculation based on principles and methodologies under the CACM Regulation approved by the competent regulatory authorities (in

particular BNetzA) on the basis of CACM Regulation or on any national laws and regulation implementing the principles and methodologies of the CACM Regulation; or

- (ii) applicable future European legislation once this legislation becomes effective and, if and to the extent required, has been implemented on a national level.

57 To this effect, the Monitoring Trustee will monitor and inform the EU Commission within his written reports (cf. Paragraph 45 (iii) above) if and to what extent such conflict already does or is expected to occur.

58 In any event, TenneT may submit a reasoned request to review the Commitments as of the beginning of 2025 with a view that the revised Electricity Regulation as part of the proposed European legislative package “Clean Energy for All Europeans” may be implemented and may have become fully effective; Paragraphs 55 and 56 remain unaffected.

3. Extension of Time Periods

59 Without prejudice to Article 9 (2) of Regulation (EC) No. 1/2003, the EU Commission may, should unforeseen difficulties occur with implementing these Commitments, upon reasonable request by TenneT:

- (i) grant an extension of the time periods foreseen in these Commitments, in particular during the Phase-in Period, and/or

- (ii) modify or substitute certain obligations in these Commitments.

60 If TenneT requires an extension of certain time periods in these Commitments, TenneT shall submit its request, including reasonable grounds for such request, to the EU Commission no later than one month before expiry of the respective time period. Within the last month of any period TenneT shall only be entitled to request an extension in exceptional circumstances.

Signed the 19 March 2018



Dr. Jörg Meinzenbach, Hengeler Mueller Partnerschaft von Rechtsanwälten, mbB
on behalf of TenneT