

**IV. ANNOUNCEMENT OF APPEAL<sup>2</sup>**

<b>Case</b>	A-[NNN]-[YYYY]
<b>Appellant:</b>	TenneT TSO B.V.
<b>Appeal received on</b>	23 March 2020
<b>Subject matter</b>	Article 7 Annex I ACER Decision 01/2020
<b>Keywords</b>	ACER's Decision to set the duration of the aFRR MTU equal to the optimisation cycle
<b>Contested decision Number:</b>	ACER Decision 01/2020
<b>Language of the case</b>	English

**Remedy sought by the Appellant**

The Appellant requests the Board of Appeal to:

Annul Article 7 of Annex I Decision 01, then to be replaced by a new decision on the aFRR MTU

**Pleas in law and main arguments**


The contested decision was adopted on 24 January 2020

The Appellant contests the Agency's decision. The Appellant's claims and arguments can be summarised as follows:

The pricing methodology set in Decision 01/2020 includes the duration, expressed as a Market Time Unit ("MTU"), for the pricing of bids in relation to one of the standard products for balancing energy, this product being the standard automatic frequency restoration reserve ("aFRR"). Article 7 of Annex I ACER Decision 01/2020 determines the aFRR MTU as being equal to the "optimisation cycle". TenneT does not agree with this duration of the aFRR MTU for the following reasons.

**(i) First plea: setting an aFRR MTU equal to the optimisation cycle is not compliant with Article (30)(1)(c) Electricity Balancing Guidelines Regulation (Regulation 2017/2195)**

- Setting an aFRR MTU equal to the optimisation cycle would not comply with Article 30(1)(c) Electricity Balancing Guidelines Regulation (which prescribes that the methodology should establish "at least one price of balancing energy, for each imbalance settlement period."), as this would not result in one price that applies for the entire ISP of 15 minutes.

Date of Submission: 23 March 2020	Name: Mr. Arjan Kleinhout	Signature: 
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- The text of Article 30(1)(c) Electricity Balancing Guidelines Regulation should be interpreted as meaning at least one price for each ISP – i.e. per entire ISP of 15 minutes.
- In order to be able to settle the volume as meant in 45 Electricity Balancing Guidelines Regulation per the entire ISP, it is necessary to have one balancing energy price for that entire ISP.
- A system setting an aFRR MTU equal to the optimisation cycle would no longer be a true marginal price system as required by Article 30(1)(a) Electricity Balancing Guidelines Regulation.

**(ii) Second plea: Decision 01/2020 does not give the right incentives and leads to more distortion of the market**

- ACER's approach would distort the market more than existing systems that are compliant with the Electricity Balancing Guidelines Regulation.
  - ACER has not taken into account the interrelationship between the balancing energy price and the imbalance price.
  - ACER has now set the aFRR MTU before there is clarity on the imbalance pricing decision ACER is yet to take.
  - It can already be – and ACER should have also – foreseen that an aFRR MTU equal to the optimisation cycle gives incentives that go in the wrong direction.
  - ACER wrongfully suggests that no other aFRR MTU is possible that would give the right incentives and comply with the binding principles.

**(iii) Third plea: even if setting an aFRR MTU equal to the optimisation cycle is compliant with the requirements of the Electricity Balancing Guidelines Regulation, ACER's decision results in an unnecessary and disproportionate restriction of Tennet's ability to apply the Dutch Grid Code in a way that complies with the Electricity Balancing Guidelines Regulation**

- This is in breach of ACER's EU law obligation to adhere to the EU principles of proportionality and subsidiarity.

**(iv) Fourth plea: ACER uses the wrong definition of "market congestion"**

- (v) The concept of "market congestion" was a key factor for ACER to determine the aFRR in the way that it did. However, ACER has not applied the right definition and therefore based its decision on the wrong starting point.

**(vi) Fifth plea: Decision 01/2020 suffers from failure to adequately state reasons**

- In Decision 01/2020, no real explanation or reasoning is given by ACER on why it believes the aFRR MTU should be equal to the optimisation cycle. ACER merely responds to points raised against its viewpoint, without properly stating reasons of its own. This is not sufficient to comply with the standard set under EU law. Also, that response is unconvincing.

**Further information**

More information on the appeal procedure can be found on the 'Appeals' section of the Agency's website:

[http://www.acer.europa.eu/The\\_agency/Organisation/Board\\_of\\_Appeal/Pages/default.aspx](http://www.acer.europa.eu/The_agency/Organisation/Board_of_Appeal/Pages/default.aspx)

<sup>2</sup> Announcement published in accordance with Article 9 of Decision BoA No1-2011 Laying down the rules of organisation and procedure of the Board of Appeal of the Agency for the Cooperation of the Energy Regulators.

Date of Submission: 23 March 2020	Name: Mr. Arjan Kleinhout	Signature: <b>SIGNED</b> 
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