Mandating Shared Order Books without Cross-Border Capacity Sets a First Step to Kill Competition, Threaten Innovation and Imperil Energy Transition

In the current discussion on the Electricity Market Design (EMD) review, the European Commission (EC) proposes to amend Article 7 and Recital 14 of Regulation (EU) 2019/943 on the internal market for electricity in a way to ensure the sharing of liquidity between all NEMOs, both for cross-zonal and for intra-zonal trading. Although the proposal was part of the public consultation of the EC, no results on the stakeholders' feedback were shared. Moreover, neither a clear justification for the envisaged changes nor an impact assessment or cost-benefit analysis was provided. The European Parliament, however, recently called upon the EC to prepare an in-depth analysis of impacts on competition, productivity, and efficient investments for each proposal, regardless of the alleged urgency of a proposal.

The wording of the proposed changes is quite selective and, at first glance, appears non-invasive. This might be the reason why it gained little attention in the ongoing debate both in the EU Council and Parliament. However, this impression is deceptive as **the unlimited sharing of liquidity through shared order books (SOB) in all short-term markets and market situations is a first step to undermine competition**, **threaten innovation and jeopardise resilient and future-proof markets.**

The discussion of SOB is closely connected to the question of liquidity. Even in the current debate, the references to sharing of orders and sharing liquidity are used synonymously by EU law makers. In this context, the debate can be traced back to the discussions to design and draft the Commission Regulation (EU) 2015/1222 on establishing a guideline on Capacity Allocation and Congestion Management (CACM). Already back then, **the idea to concentrate liquidity in a single shared order book was contrasted with the concept of competition between power exchanges to foster innovation, create tailor-made products and services for the market, and have a variety of different systems for the sake of resilience.** According to the latter concept, these benefits resulting from competition would create additional liquidity instead of merely managing existing one. This is what we perceive as the purpose of an organised competitive market. And that is what we pursue daily. As we know, the discussion about CACM did not result in a clear decision in favour of one of these two concepts. Although the general way forward was competition, member states were allowed to keep a monopoly status for their national power exchange for political reasons. Today, however, we face a clear monopolistic backlash.

Besides this general discussion about the benefits of competition and innovation on the one hand and liquidity pooling on the other, **the non-discriminatory access to "monopolistic" cross-border capacity made exclusively available by the Transmission System Operator between the different bidding zones is a paramount principle which should be guaranteed**. To achieve this, the existing concept of pooling all orders from various exchanges to allocate scarce cross-border capacity for the purposes of cross-border welfare maximization was rightly incorporated in CACM. Only the need to couple markets via non-discriminatory access to cross-zonal capacity justified the pooling of orders from competing exchanges. In conclusion, CACM exclusively requires power exchanges/NEMOs to share order books when cross-border capacity is expected to be allocated simultaneously.

On 20 January 2021, the EC requested ACER to draw up a recommendation for a revision of CACM. Consequently, ACER conducted a public consultation on this reform from April to June 2021. In this consultation, the idea of extending SOB to periods when no cross-zonal capacity is to be allocated was presented by ACER. According to the final ACER recommendation presented in December 2021, all orders in short-term electricity markets would have been required to be shared both for cross-zonal and for intra-zonal trade. This outcome was considered particularly inappropriate by EPEX SPOT as the ACER recommendation did not provide for clear justifications and limitations nor a solid future-proof framework. **Linking the obligation to share order books to the mere time-horizon (i.e., spot markets) would expose NEMOs to this requirement for *any***

activity, including, e.g., respective capacity, flexibility, dedicated niche markets etc. **This would then de facto erase any business incentive to develop such individual and innovative solutions which are crucial for the energy transition.** The attempt works against the very aims of competition policy, as recently re-emphasized by the European Parliament in its 2022 report on competition policy and will work against the imperative objective of a resilient EU internal market.

As experiences of the recent past have shown, this is not a hypothetical issue. For instance, instead of developing innovative solutions in France, a competitor requested EPEX SPOT to share the order book of the capacity market auction. This is a good example of a commercial initiative launched at its own risk by a power exchange, outside the framework or cross-border capacity allocation, on which a competitor merely attempted to free-ride as soon as the initiative proved to be profitable. On the contrary, the same competitor is the only NEMO in Europe benefiting from an exclusive access to an interconnector capacity, namely the North Sea Link interconnector. EU law and procedures should not be instrumentalized to serve such an opportunistic approach of private business.

EPEX SPOT considers that for a successful and timely energy transition, the EU needs new ideas, innovation, and risk appetite of NEMOs and power exchanges more generally to create the markets of the future, addressing decarbonisation, decentralisation and digitalisation. **Killing any incentive to do so from the outset will cause a massive backlash for the energy transition. The idea of extending SOB is also legally contestable as it interferes, amongst others, with the principles of subsidiarity, proportionality, and the freedom to conduct business.**

Unfortunately, **ACER neither provided an impact assessment nor a cost-benefit analysis** for the extension of SOB. The same goes for the EC proposal. Moreover, a profound discussion on the merits and pitfalls is still outstanding.

Against this background, it is manifest that:

(i) the concept of SOB itself is an exception to the normal functioning of competitive markets, not known to any other market, and has been justified only by specific policy ends, namely, to facilitate EU cross-border trade;

(ii) the idea to extend SOB has been challenged for several years; it is not linked to competition but consists in a monopolisation of the EU's electricity markets, including nascent innovative markets which are key to the energy transition;

(iii) the extension of SOB is neither a simple nor a no-regret measure; the overall picture of the interplay between competition, innovation, customer orientation and resilience remains completely overlooked by proponents;

(iv) the concept of SOB is not linked to the EMD and its main aims, namely consumer protection and incentivising investments in renewables; it is a potential instrument of market coupling and does neither bring prices down, nor increase the trust of investors, nor facilitates the accomplishment of the EU's net-zero goals; and

(v) although the EMD proposal has its dedicated legislative process, the required discussions on the merits and pitfalls of this topic have not taken place there yet; given the limited time that was dedicated to the EMD review as regards impact assessment and cost-benefit analysis, the concept of SOB does not fit within the current proposal process-wise either.

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