Consultation answer received on 21st March via NEMO Committee online form.

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Note: Following text was formatted by NC Secretary for better readability.

Original answer:

Nemo Committee
Consultation's answ

General comments EDF welcomes the NEMO's consultation on amendments proposal on the terms and conditions applied for the "Harmonized maximum and minimum clearing prices for single day ahead coupling" for SDAC and SIDC.

First, EDF would like to remind that, as a market principle, EDF supports the free formation of electricity prices to reflect real-time supply and demand conditions, guarantee a just remuneration and thus ensure an optimal allocation of resources. This is particularly important when considering the increasing need for flexibility in addition with the need for enough capacity. Pursuant to Electricity Regulation Article 10, technical limits in the DA and ID timeframe "shall be sufficiently high so as not to unnecessarily restrict trade, shall be harmonized for the internal market and shall take into account the maximum value of lost load".

EDF recognizes that, at the same time, price caps can limit negative financial impacts on forward markets or in case of operational errors. For this reason, EDF considers the inertia mechanism, which ensures price cap increases are implemented only with relevant price spike occurrences, is necessary.

Furthermore, the criteria which lead to revise price cap should be carefully determined to limit the number of increases. In parallel, during the electricity prices crisis, we have faced abnormal market situations for many months, where unprecedented high price levels were regularly observed, and many TSOs/institutions alerted on the risk of regular failure in some bidding zone. These high prices are detrimental to the whole economy. Beyond the review of the automatic increase mechanism of the HMMPC methodology, EDF believes that emergency temporary measure can be needed to tackle the acuteness of the problem and avoid uninterrupted price cap increases. Such measures should not interfere with the normal functioning of the market and should instead be triggered only under specific abnormal conditions. Therefore, we consider that one should distinguish emergency measures from the regular revision of this methodology foreseen by the CACM guideline.

This is why EDF proposes to adopt a twofold approach:

- First defining, in case of energy prices crisis, emergency temporary measures for preserving market of uninterrupted and detrimental price cap increase.
- Second, relying on the HMMPC methodology under standard market conditions. In such an approach, the HMMPC would apply routinely, standing on the principle of free formation of prices. In parallel, a legal framework with appropriate emergency measures would be set up.

Such framework would only be triggered in case of an energy crisis as defined in Article 66 bis of the new electricity directive and would consist of several measures such as a public support to relieve margin call burdens, a freeze of the cap at a given value, etc.

One should note that forward prices include failure risks, which take into account the spot price caps. It is consequently important that the level of. price cap is not unnecessarily high and is fine-tuned to strictly ensure that it does not restrict the free formation of prices.

The emergency framework would cease to apply once the energy crisis ends, in which case things would resume to the standard framework set by the HMMCP.

Specific comments on the NEMOs proposal EDF expresses below its views based on the assumption that the HMMCP would apply under normal market conditions and that emergency measures would be foreseen and could be implemented in case of emergence of a crisis:

- The proposal introduces two changes in the triggering event in article 4 (1a): the reference to "at least two MTUs" is removed and the requirement to reach the threshold is increased from two to three different days.

  The NEMOs explain that this change is due to “the coexistence of several time granularities which could affect the liquidity level of the market relevant to the orders submitted at the MTU level”. NEMOs also seem to consider that this evolution is needed to take into account a potential increase in price volatility linked to the introduction of the 15 min MTU. EDF would appreciate further explanation regarding this reasoning, considering that:

  - The “at least 2 MTU” criterion was meant to avoid that an isolated event on a single MTU of a given delivery day / a given market clearing leads to a price cap increase. This criterion thus seems appropriate to tackle the volatility issue. Therefore, EDF does not grasp the rationale behind such a

deletion and, more specifically, how "the coexistence of several time granularities could affect the liquidity level of the market relevant to the orders submitted at the MTU level". EDF believes that the notion of 2 MTUs could be adapted to the shift to 15', e.g. by targeting two disjoint MTUs of the same day or a greater number of MTUs.
    - The "2 days" criterion already plays the expected inertia role as it implies price spikes are not isolated events since they are observed on two different clearings with two different sets of order books.
- In addition, to avoid adjustment of the harmonized maximum and minimum clearing price limits for SIDC or SDAC due to price spike as a consequence of low liquidity of the market, the proposal introduces a criterion based on the liquidity. This liquidity indicator does not appear to provide an added value compared to the technical triggering conditions. Also, a major drawback of adding this criterion is that a low market liquidity could reflect a system scarcity, in which case the resulting price spikes should be fully accounted for and the price cap should be revised.

Are there events in the past which justify such a new criterion? Especially, based on the prices observed in 2023 and 2024 are there any studies which compared the actual criteria and the proposed one?

- The values for the different quantitative criteria (number of days, percentage or value for liquidity) seem arbitrary. More rationale and justification on how these parameters were calibrated would be useful.
- Considering the idea of a decrease mechanism for the harmonized maximum clearing price for SIDC and SDAC as well as an increase of the harmonized minimum clearing price for SIDC and SDAC, EDF would support such a mechanism under the condition that
    - (i) the decreasing step and
    - (ii) the observation period before implementing such a decrease are defined in such a way that they do not hinder the free formation of prices.

In its decisions 01/2023 and 02/2023, ACER considered that such a proposal raises legal issues. However, this reading is not shared by some NRAs. The NEMOs introduced this idea in 2022 but it was deleted by ACER. Indeed, ACER in its decisions considered that such "a lowering of the maximum price limit, [...] goes directly against the requirement that applies to higher limits according to the fourth sentence of Article 10(2) of the Electricity Regulation

(‘The adjusted higher limits shall remain applicable until further increases under that mechanism are required.’).

ACER considers that the higher limits referred to in this Article are the harmonised maximum and minimum clearing prices and that, therefore, any lowering of the harmonised maximum clearing price or any increasing of the harmonised minimum clearing price would be in direct contradiction with this requirement.” For increasing the minimum price limit, ACER stated it “suffice it to note that the principle of Article 3(b) of the Electricity Regulation implies (conversely) promoting free price formation by a decrease rather than an increase of the minimum price limit, and that, accordingly, Article 10(2) of the Electricity Regulation is not meant to disable the free price formation.” Both proposals were rejected by ACER.

Consequently, EDF wonders what the rationale behind this proposal is since it seems that ACER thinks that there is a lack of legal basis. Since these articles have not been amended in the recently revised Electricity Regulation, EDF does not fully understand what could lead ACER to change its position.

The reasons that could justify a potential change in ACER's position are, moreover, not detailed in the NEMO explanatory note. Furthermore, EDF underlines that the fundamentals that justify a decrease of the minimum price are different from those justifying an increase of the maximum price. EDF considers that there is no reason to foresee a decrease of the current minimum price, the main driver for reaching this floor being ill-designed RES support schemes.