

# ACER Consultation on List of Organised Market Places under REMIT

Response to the Public Consultation Paper PC\_2014\_R\_07

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CAO Central Allocation Office GmbH (“CAO”) welcomes this public consultation as it provides the opportunity for all stakeholders to present their views about the list of organised market places that ACER needs to draw up based on the adopted REMIT Implementing Acts.

CAO considers important to react especially to the consultation question 3 since CAO expects that the allocation platforms will be asked by TSOs for which the allocation platform organises the primary cross-border capacity allocation to provide information related to transportation contracts on behalf of the TSOs.

**Question 3: For the reasons stated above (see point 1. in paragraph 4 of this consultation paper), the Agency currently believes that primary auction platforms for transportation contracts do not have to be listed as organised market places. Do you agree with this approach? Please justify your reply.**

CAO agrees with ACER that auction platforms should not be included in the list of organised market places, since the auction platforms should not be considered as organised market places at all.

Auction platforms serve for the cooperation of participating TSOs in the field of regulated activities of the TSO in contrast to non-regulated profit-oriented entities explicitly mentioned in the definition of organised market places/organised markets in Article 2 (4) of the Commission Implementing Regulation on data reporting implementing Article 8(2) and Article 8(6) of Regulation (EU) 1227/2011 on wholesale energy market transparency integrity and transparency (REMIT Implementing Act): *electricity and gas exchanges, brokers and other persons professionally arranging transactions.*

The argumentation above has also been confirmed in the Recital 35 of Directive 2014/65/EU on markets in financial instruments (MiFID II): *„...transmission system operators have specific obligations and responsibilities, are subject to specific certification and are supervised by sector specific competent authorities. Transmission system operators should also benefit from such an exemption where they use other persons acting as service providers on their behalf to carry out their task under those legislative acts or under network codes or guidelines.“*

In the light of the before mentioned, according to our opinion an auction platform cannot be qualified as an “organised market place” as defined in Article 2.4 of REMIT Implementing Act.

Similarly, we believe that an auction platform cannot be qualified as “*arranging transactions in wholesale energy products*” within the meaning of Article 15 of REMIT.

More detailed description:

- a) In the **primary capacity allocation**, the auction platform, on behalf of the TSOs, makes the capacities that have been determined by the TSOs available to the market participants and allocates these capacities to market participants in accordance with the terms and conditions set forth by the TSOs in the corresponding allocation rules which are approved by national regulatory authorities (NRAs). In that sense, we consider that the auction platform does not “arrange” transactions at all in wholesale energy products for the following reasons:
  - the auction platform is not a person acting on its behalf to professionally arrange transactions; it is not a third party practicing a business. It is only a driving force of cooperation between TSOs, which are, through the auction platform, parties to the transactions;
  - there is no multiple third party buying and selling interests in wholesale energy products; there is only one selling interest, which is that of TSOs acting *via* the auction platform.
- b) In the **secondary market**, the auction platform provides a notice/bulletin board but does not arrange the transaction itself; the auction platform is not involved in the transactions, which are not concluded on its interface; the role of the auction platform is substantially limited, because it only receives the notification of the transactions in question (notification also does not include information about the transactions price as such information is irrelevant for the auction platform).

In order to summarise our assessment above, we believe that the auction platforms are not an organised market place or a person “*arranging transactions in wholesale energy products*”, and shall therefore not be subject to specific and personal requirements under REMIT. In addition, even if the auction platform acts on behalf of the TSOs, it simply acts within the framework of the allocation rules established by the TSOs and approved by the NRAs and should not on its own bear the obligations already borne by the TSOs (TSOs have to be compliant with REMIT and are monitored by their respective NRA(s)).