

Warsaw, 30 April, 2019



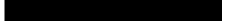
KL/167/DK/2019

EC Register Number: 22858051466-12

Concerns PC_2019_G_03 Observations from Polish Confederation Lewiatan, Poland

Respondent Information

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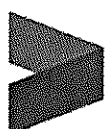

Polish Confederation Lewiatan
e-mail: 
tel. 

Dear Sirs,

With regard to ACER's consultation related to criteria of selection of single booking platform on the border between Poland and Germany, the Polish Confederation Lewiatan would like to present the following observations:

1. In our view, reiterating the entire tendering procedure does not provide for efficiency of the process and as such it is not reasonable. The Board of Appeal recommended ACER the option, in parallel with the other one, to continue the procedure from the second step. This means that the Board of Appeal issued a positive opinion regarding the first step of ACER's previous tendering procedure. What is more, when recommending the simplified procedure, the Board of Appeal considered that offers already submitted by booking platforms are still valid. Application of simplified procedure i.e. starting from second step as stated in the Board's of Appeal recommendation, is very important having in mind the ongoing procedure for incremental capacity on the border between Poland and Germany which is currently under administrative proceeding by respective NRAs. Timely selection of single booking

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platform shall enable Polish and German TSOs to offer incremental capacity in auction to be organized on 1st July 2019.

2. In addition, the probability of exercising the market power by the booking platform which has dominant position on the market, during repeated selection process, shall be also taken seriously into account. For instance, there are only three booking platforms active on the EU market where one booking platform has dominant position on the relevant market. Use of information received from the previous selection procedure, if selection criteria are similar or even same, may result in offering the service with price level that could eliminate the other competitors.
3. Our Confederation would like to underline that there is no legal requirement which restricts TSO from operating the booking platform. This means that booking platform operated by TSO shall be treated in same manner as booking platform operated by non-TSO related companies. For instance, Article 37(1) CAM NC clearly states that TSO have the right to be operator of booking platforms. Therefore, establishing additional criteria which may benefit independence of booking platform from TSO activity is doubtful from legal point of view. This also regards any potential new qualitative criteria which may be used by ACER in the selection process.

In the attachment we enclosed some information on the Polish Confederation Lewiatan – who we are and whom do we represent.

Please note that we agree to have our contribution published on the internet.

Best regards

[Redacted signature]
Polish Confederation Lewiatan

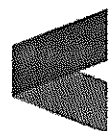
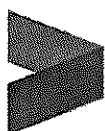
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Att. A note on the Polish Confederation Lewiatan

Polish Confederation Lewiatan is the most influential Polish business organisation representing employers' interests in Poland and in the European Union. We strive for stable economic growth, better legislation, healthy competition, more jobs and reinforced social capital. We associate 4,100 companies, which employ over 1 M workers. Our members are associations of employers (industry-specific and regional), federations of employers' associations and other organisations operating on the territory of the Republic of Poland.

We are the only Polish organization to be a full member of BusinessEurope, the largest community of European entrepreneurs encompassing over 30 European business organizations with 20 million member enterprises.

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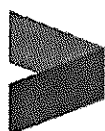
BusinessEurope is an acknowledged and efficient partner of the European Commission, European Parliament and other EU institutions. The organization issues its opinions on all drafts of EU directives and other acts of EU law having impact on the European economy as well as monitors all the important developments of the European economic policy.

Our Confederation has a permanent representation in Brussels, where it forwards the standpoint of Polish entrepreneurs to its EU partners. We participate actively in the works of BusinessEurope bodies whose task is to present opinions on all aspects of the EU economic policy, such as budget, structural aid programmes, improvement of competitiveness of European enterprises, reduction of the red tape and simplification of business-related regulations, organization of the labour market, international trade, liberalisation of the services market and further enlargement of the Union.

We develop bilateral contacts not only with partners from the EU, but also with organizations from non-European countries, such as the USA, Japan, Korea or Morocco, as well as launch cooperation initiatives with Poland's eastern neighbours.

Lewiatan issues its opinions on the Polish government's most important measures in the area of international economic policy, including such matters as relationships within the EU, international trade, removal of barriers in the access to foreign markets, acquisition of access to foreign investments, international promotion of Poland and its exports.

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