

**The Board of Appeal declares the appeals of RWE and UNIPER contesting the setting of a transitional price limit inadmissible for lack of standing of the appellants, despite the tension between the Treaty on the functioning of the European Union and the ACER regulation**

In today's decisions [A-002-2022 - RWE v ACER – Decision](#) and [A-003-2022 - Uniper v ACER – Decision](#), the Board of Appeal declares the appeals of RWE and UNIPER contesting the setting of a transitional price limit inadmissible for lack of standing of the appellants, despite the tension between the Treaty on the functioning of the European Union and the ACER regulation.

RWE Supply & Trading GmbH and UNIPER submitted their separate Appeals against Decision 03/2022 that amends the methodology for pricing balancing energy and cross-zonal capacity used for the exchange of balancing energy or operating the imbalance netting process.

RWE and UNIPER requested the Board of Appeal to annul the Contested Decisions on various grounds of appeal. However, the Board of Appeal did not examine the merits of the case as it decided to dismiss the appeal as inadmissible.

The Board of Appeal established that the Contested Decision is a regulatory act that concerns the Appellant directly. According to the criteria from the TFEU, the appeal would have to be declared admissible; however, the ACER Regulation does not – in difference to the TFEU - provide for a possibility of appeal against a regulatory act that does not entail implementing measures and concerns the Appellant directly. According to the case law of the EU Courts, the EU Courts alone are entitled, under the terms of Article 277 TFEU, to rule that an act of general application is unlawful and to draw the consequences of the inapplicability which results from that with regard to the act of individual scope contested before them; an EU institution (other than the CJEU), body, office or agency providing for the internal remedies has no such competence under the EU Treaties.

In the circumstances of the present cases (the Contested Decision is a regulatory act that does not entail implementing measures and concerns the Appellant directly) and in spite of the tension between the TFEU and ACER Regulation, the Board of Appeal dismissed the appeal on the basis of the ACER Regulation.