

NordREG's Position Paper on the Revision of CACM

NordREG¹ appreciate the initiative from the Commission on amending and improving Regulation (EU) 2015/1222 (“CACM”). This revision should ensure an efficient development and operation of the market coupling, operational security, and fair competition between NEMOs. In this paper, NordREG present what we believe are important considerations to ensure that we achieve these objectives in the revision of CACM (“CACM 2.0”). This paper focuses on the governance of the MCO function and NEMO competition.

CACM 2.0 must ensure

- a clear separation between monopolistic tasks assigned to the MCO and commercial activities assigned to the NEMO.
- that operational security of the MCO function is prioritized.
- that new regulatory measures do not exceed what is necessary to achieve the policy objectives.
- that all countries participating in the market coupling transit to the competitive NEMO model. CACM 2.0 should include a plan for the phasing out of monopoly NEMOs.

Below we further elaborate on our reasoning for this position.

1. The governance of the MCO-function must be reorganized

1.1 Today's organization of the power market allows NEMOs to take their own commercial interest into consideration

The set-up in CACM is based on existing power exchanges performing the MCO-function that requires close cooperation and joint decision-making, while they at the same time shall compete against each other – a competition that shall lead to efficiencies for the benefit of European consumers. There is an inherent conflict of interest in this framework.

CACM recognizes this by establishing behavioral remedies to prohibit a certain behavior². We consider these behavioral remedies insufficient. The Nordic NRAs see that the current market structure induces NEMOs to take their own commercial interests into consideration which has led to numerous problems and delays to the current CACM implementation projects.

CACM 2.0. introduces two proposals to solve this conflict of interest, one where the MCO-function is decentralized and one where it is centralized. However, we believe that there is a need for a structural separation between the NEMOs' responsibility of both monopolistic and competitive tasks. A higher

¹ NordREG is an organization for the Nordic energy regulators. Our mission is to actively promote legal and institutional frameworks and conditions necessary for developing the Nordic and European electricity markets. NordREGs vision is to actively promote efficient and advanced energy markets, for the benefit of consumers towards a decarbonized society. This position paper is agreed upon by the Danish Utility Regulator (DUR), the Norwegian Energy Regulatory Authority (NVE-RME), the Finish Energy Authority (EV) and The Swedish Energy Markets Inspectorate (Ei).

² It is stated in article 7 (4) that “Cooperation between NEMOs shall be strictly limited to what is necessary for the efficient and secure design, implementation and operation of single day-ahead and intraday coupling. The joint performance of MCO functions shall be based on the principle of non-discrimination and ensure that no NEMO can benefit from unjustified economic advantages through participation in MCO functions.”

degree of unbundling is needed to solve the risks of tacit coordination and collusive agreements. Requiring legal and functional, or even ownership unbundling, for the companies involved with the monopolistic tasks would significantly reduce these risks. NordREG firmly believes that it will create a better level playing field among NEMOs, contribute to a more efficient operation and development of the market coupling and facilitate a more efficient regulatory oversight.

1.2 Operational security must be thoroughly assessed and not compromised

The European electricity market is highly dependent on a safe and robust operation of the market coupling. It is a critical element for the capacity allocation, and it is also highly critical for the system operation in general. The current rotating scheme for operating the MCO-function ensures back-up operators in case of security incidents.³ Centralization poses a greater need for security measurements in case of threats, e.g. cyber-attacks.

In the process on CACM 2.0 up until now, operational security has not been sufficiently considered. The proposals should oblige the MCO-function to implement adequate security measures and back-up solutions to prevent security incidents.

1.3 A thorough impact assessment is needed to make a well-founded decision on the governance of the MCO function

Before deciding on how to reorganize the MCO-function, a thorough impact assessment needs to be conducted. An impact assessment will promote a more informed decision-making and contribute to better regulation. There is clearly a need for structural change in the market to solve the problems experienced with the market coupling organization. However, before making a decision which will change the market structure, an impact assessment that identifies the advantages and disadvantages of the proposed solutions is needed.

Even though the problems experienced with the organization of the market coupling are substantial, it is important that regulatory measurements are proportionate. We have a responsibility to ensure that the measurements imposed on market players do not exceed what is necessary to achieve the policy objectives. It is important that the advantages and disadvantages of both proposals are properly considered in an impact assessment⁴.

NordREG stress that it is important that the timeline for current projects is not affected by a change in governance of the MCO function.

2. Ensure a level playing field among NEMOs by phasing out monopoly NEMOs

CACM 2.0 should include a plan for the phasing out of monopoly NEMOs. This will improve the level playing field among NEMOs as well as contributing to a more efficient cooperation among all parties in the market coupling.

³ Incidents which have required the back-up operator to take over the market coupling process have occurred several times. Something which 1) underlines the need for competent back-up solutions and 2) shows that the current security scheme works as intended.

⁴ Establishing a centralized MCO entity will be resource intensive as it demands the requirement of the necessary competent personnel, operational procedures, equipment, security measurements and legal work. It is also uncertain how substantial the operational costs will be compared to a decentralized solution. Major changes in governance structure will likely affect the current ongoing market coupling projects.

The Commission shall evaluate whether the exemption to allow national legal monopoly NEMOs is justified⁵. In 2018, the Commission concluded that competition between NEMOs had not yet started to show its full effect and that a conclusive view could not be taken⁶. Several Member States have now experienced a successful go-live of multi-NEMO arrangements, and the experience have taught us that it is time for all countries to transit to the competitive model.

First, the coexistence of two different models creates conflict and inefficiencies as two types of NEMOs with very different starting points and considerations must cooperate, make joint decisions and establish joint procedures. An example of this is Transit Shipping, where the coexistence of the two models creates unnecessary costs and is a barrier for efficient cooperation and development. Second, competition between monopolistic and competitive NEMOs hinders a level playing field. CACM addresses this by allowing Member States to forbid monopolistic NEMOs to offer trading services in its own bidding zone(s)⁷. However, monopolistic NEMOs may develop business in secondary markets in countries with the competitive model, and hence indirectly competing with competitive NEMOs⁸. Third, the CACM regulation established the principle of competition between NEMOs with the aim of facilitating innovation and efficient market solutions. Markets with competition between power exchanges show such benefits⁹. In our opinion, we cannot reap the full benefits of NEMO competition in the coupled European electricity market when national legal monopolies still exist.

3. Final words

NordREG support the revision of CACM. The objectives of CACM are to ensure a level playing field, promote effective competition, ensuring fair and non-discriminatory treatment of TSOs, NEMOs and market participants, contributing to the efficient long-term operation and development of the electricity sector and ensure operational security¹⁰. By structuring the regulation in line with the principles outlined in this paper we believe that CACM 2.0 will reach these objectives.

CACM 2.0 must ensure a more structural separation between the NEMOs' responsibility of both monopolistic and competitive tasks, adequate security measures and phase out monopoly NEMOs. A thorough impact assessment is a necessity for an informed decision and will ensure that regulatory measures are proportionate and provide the most beneficial solutions for the European consumers.

NordREG are happy to provide clarifications and more in-depth explanations to the points above.

Kind regards
NordREG Board

⁵ CACM Article 5(3).

⁶ With reference to the report issued in 2018 by the Commission pursuant to article 5(3) in CACM. <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52018DC0538>

⁷ According to Article 4(6)(d) of CACM the relevant NRA may refuse the trading services in its Member State by a NEMO granted a monopoly status in another Member State.

⁸ Competing on services not strictly related, but indirectly related to the NEMO's tasks, like IT-services. With reference to the Commission staff working document issued in 2018 by the Commission pursuant to article 5(3) in CACM. [EUR-Lex - 52018SC0376 - EN - EUR-Lex \(europa.eu\)](#).

⁹ With reference to the report in footnote 8.

¹⁰ Article 3 of CACM.