

## ANNOUNCEMENT OF APPEAL\*

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| <b>Case</b>                       | A-004-2022  |
| <b>Appellant:</b>                 | <b>Fingrid Oyj</b>  |
| <b>Appeal received on</b>         | 14 November 2022  |
| <b>Subject matter</b>             | Appeal against ACER Decision No 12/2022 of 14 September 2022 on risk hedging opportunities on the bidding zone borders between Finland and Sweden |
| <b>Keywords:</b>                  | FCA Regulation; Regulation 2016/1719; Long-Term Transmission Rights; hedging; EPADs; Finland-Sweden bidding zone borders                          |
| <b>Contested decision Number:</b> | 12/2022   |
| <b>Language of the case</b>       | English   |

### Remedy sought by the Appellant

The Appellant requests the Board of Appeal to:

- Declare the appeal admissible.
- Find the Appellant's appeal well-founded.
- Remit to the competent body of ACER Article 1 of the Contested Decision insofar as it: (i) requests the addressees of the Contested Decision, *Fingrid Oyj*, *Kraftnät Åland Ab* and *Affärsverket svenska kraftnät*, to make sure that other long-term cross-zonal hedging products are made available to support the functioning of wholesale electricity market, ie. not to issue long-term transmission rights (“LTTRs”), in respect of the Finland-Sweden bidding zone border; and (ii) requires the addressees to develop the necessary arrangements for the SE1-FI and SE3-FI bidding zone borders and submit them to the competent regulatory authorities for approval.
- Provide to the competent body of ACER sufficient reasoning, direction and explanation as to the correct interpretation of the relevant provisions of the relevant legislation to enable it to issue a new decision, in accordance with Article 28(5) of Regulation 942 and Article 21(2) of the Rules of the ACER Board of Appeal.

The Appellant makes a request for an oral hearing.

### Pleas in law and main arguments

The Appellant’s claims and arguments can be summarised as follows:

1. ACER has made multiple serious errors of assessment in applying Articles 3 and 30(5) of Regulation 2016/1719 establishing a guideline on forward capacity allocation (the “FCA Regulation”).<sup>1</sup> It has mischaracterised relevant elements of the Nordic market, and has incorrectly assessed the respective strengths and weaknesses of LTTRs and of ACER’s recommended EPAD coupling solution. In particular,

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<sup>1</sup> [2016] OJ L 259/42.

- ACER has disregarded the greater complexity, cost and time that would be required to develop EPAD coupling, and as a result has reached the wrong conclusions on the ability of the two solutions to satisfy the objectives of the FCA Regulation;
2. in rejecting LTTRs, the primary long-term hedging solution provided in the FCA Regulation and Regulation 2019/943 on the internal market for electricity (“Regulation 943”),<sup>2</sup> in favour of its preferred EPAD coupling solution, ACER has exceeded its powers and has infringed Article 5 of the Treaty on the Functioning of the European Union (“TFEU”);
  3. by dismissing LTTRs, the default option, without compelling reasons, ACER has infringed Article 9 of Regulation 943 and Article 30(5) of the FCA Regulation;
  4. by rejecting LTTRs in favour of a recommended solution (EPAD coupling) which would require the Appellant to carry out tasks (appointing a market coupling operator and a power exchange to carry out EPAD coupling) other than those permitted to TSOs by Directive 2019/944 on common rules for the internal market for electricity (“Directive 944”)<sup>3</sup> and Regulation 943, ACER has infringed those items of legislation;
  5. ACER has infringed Article 18 TFEU, Article 21 of the Charter of Fundamental Rights of the European Union (“CFREU”) and the principle of equal treatment by discriminating against Finnish market participants, in particular by forcing them to incur cost for a hedging solution that is likely to be superseded, in circumstances whether other market participants will not incur those costs;
  6. ACER has infringed the principle of proportionality by rejecting LTTRs in favour of a more intrusive, costly, complex and delayed solution (its EPAD coupling proposal) which is neither appropriate nor necessary to achieve the goal of creating sufficient cross-zonal risk hedging opportunities in the Finnish bidding zone in the short term;
  7. ACER has infringed Article 6(11) of Regulation 2019/942 establishing a European Union Agency for the Cooperation of Energy Regulators (“Regulation 942”)<sup>4</sup> by failing to conduct a proper consultation. It did not explain its EPAD coupling proposal in sufficient detail to allow stakeholders to understand its complexity, and therefore to be able to assess accurately the relative advantages and disadvantages of EPAD coupling and LTTRs; and
  8. by disregarding the fact that amendments to Finnish law would be required in order to provide the required framework for the recommended EPAD coupling solution, ACER has forced the addressees of the Contested Decision to do the impossible, which infringes EU law.
  9. The Appellant has started work on the implementation of ACER’s proposed solution, in accordance with the requirements of the Contested Decision, notwithstanding its contention that ACER’s proposed solution has significant defects. The Appellant’s compliance with the Contested Decision is without prejudice to its position in this appeal.

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<sup>2</sup> [2019] OJ L 158/54.

<sup>3</sup> [2018] OJ L 158/125.

<sup>4</sup> [2019] OJ L 158/22.