

Netherlands Competition Authority

DECISION

No. 102746/47.BT522

Re case:

Decision by the Board of the Netherlands Competition Authority regarding the introduction of an explicit auction system for the NorNed cable (change in conditions pursuant to section 31, subsection 1, sub a and c, of the Electricity Act 1998).

NOTE: This document concerns an unofficial translation of the Dutch Grid Code. In case of any controversy between the Dutch version of the Dutch Grid Code and the English version, the Dutch version shall prevail.

I. Introduction

1. With the present decision, the Board of the Netherlands Competition Authority (hereinafter: "the Board") implements section 37, subsection 1, of the Electricity Act 1998 (hereinafter: "Electricity Act"). Pursuant to this provision, the Board will set conditions, taking due account of the proposals of the joint grid administrators and the interests referred to in section 36, subsection 1, subs b to f, of the Electricity Act and the Ministerial Regulations concerning tariff structures and electricity conditions¹.
 2. This decision was prompted by an amended proposal from the joint grid administrators submitted by letter dated 10 August 2007 (received by the Board on 13 August 2007) to change the conditions referred to in section 31, subsection 1, sub a of the Electricity Act (the Grid Code). The amended proposal concerns the introduction of an explicit auction system for the daily capacity on the cross-border interconnection between the Netherlands and Norway (hereinafter: "NorNed cable").
 3. Despite the fact that the explicit day-ahead auction mechanism is in principle not favoured by the Board, there is no other satisfactory alternative considering the current circumstances, under which the original market coupling option is impossible. The temporary nature of the solution introduced in this decision needs to be emphasised. It should be noted that international agreements have been concluded aimed at the removal of existing barriers, but that the implementation of these agreements may require some time yet.
 4. The present decision establishes the Grid Code conditions with regard to the auction mechanism which will apply to the NorNed cable. The Board reached its decision on the basis of the considerations set out in this document.
- Structure of this document*
5. This document is structured as follows. Chapter II deals with the procedural aspects of the decision-making process. The past history leading to the present decision is explained in chapter III. Chapter IV describes the legal framework, followed by the assessment framework in chapter V.

¹ Netherlands Government Gazette, 13 January 2005, no. 9, page 11.

Chapter VI describes the joint grid administrators' amended proposal. The Board's assessment can be found in chapter VII. Chapter VIII contains the operative provisions.

II. Procedure

6. On 12 April 2007, the Board received a proposal by letter from the joint grid administrators to amend the conditions as referred to in section 31, subsection 1, subs a and c, of the Electricity Act.
7. By letter dated 16 July 2007, the Board requested the joint grid administrators to amend the proposal of 12 April 2007 pursuant to section 36, subsection 3, of the Electricity Act, in connection with certain international developments.
8. Following the Board's letter of 16 July 2007, the joint grid administrators submitted an amended proposal by letter dated 10 August 2007.
9. By means of a notification published in the Netherlands Government Gazette of 14 August 2007² and a message on the DTe website³, the Board has given market parties and market organisations the opportunity to communicate their viewpoint with regard to the amended proposal; a hearing to this effect has also been announced.
10. The relevant documents were made available for inspection, whereupon the Board received viewpoints by letter and e-mail from Statkraft GmbH, Morgan Stanley, VOEG and VEMW.
11. A hearing took place at DTe's offices on 13 September 2007, where the amended proposal was discussed. The hearing was attended by representatives of the Netherlands Association of Energy Producers, Traders and Retailers (EPHRIN), Nuon, Electrabel, SLEA, APX, TenneT and Allen Overy (for Statnett).

III. Past history of amended proposal

NorNed decision

12. By decision of 23 December 2004 (hereinafter: "NorNed decision"⁴), the then Director of the Office of Energy Regulation (DTe) granted the national high-voltage grid administrator's request to finance the NorNed cable from the proceeds as referred to in section 31, subsection 6, of the Electricity Act.
13. As explained in margin number 22 ff of the NorNed decision, the Board takes a positive view of the expansion of interconnection capacity, as this can improve the liquidity of the Dutch market considerably. A liquid market is needed to realise effective competition and efficient market operation. Moreover, expansion is in line with the European Commission's policy and the Dutch and Norwegian electricity production parks have good interconnectivity.
14. As set out in margin numbers 102 and 103 and in TenneT's request, the NorNed decision assumes that market coupling will be realised. A necessary condition for this is the realisation of an implicit auction mechanism.
15. Appendix A to the NorNed decision details the conditions under which approval is granted to finance the NorNed cable from the auction proceeds.
16. As set out in margin number 21 of the appendix, TenneT is required to submit a proposal to change the Grid Code, in accordance with the procedure described in section 31 ff of the Electricity Act, and is required to do so before 1 January 2006. The Grid Code must include a procedure for determining

² Netherlands Government Gazette, 14 August 2007, no. 155, p. 10.

³ www.dte.nl.

⁴ The NorNed decision is available at:
http://www.dte.nl/images/101783-2-76%20BesluitAanvraagTenneT_tcm7-9160.pdf.

cable capacity and allocating that capacity to market parties by means of market coupling. This procedure must be operational by the time the NorNed cable enters service. The start-up is currently scheduled for November 2007⁵.

17. Margin number 25 in the appendix states that, once it becomes obvious that market coupling is not feasible, transmission capacity must be allocated in another, market-consistent manner.

Formal history of the current amended proposal

18. Within the framework of the trilateral market coupling between the Netherlands, Belgium and France (TLC region), DTe has noted that the proposal to change the technical codes for electricity transmission of 19 December 2005 did not meet the conditions of the NorNed decision. By letter dated 16 August 2006, DTe has asked TenneT to submit a proposal before 31 December 2006 to change the codes for market coupling with Norway. In response, TenneT indicated that the set term was not achievable. The main reasons were the problems concerning (i) harmonisation of the Gate Closure Times (the closing time of the energy exchange, hereinafter: "GCT") between the TLC region and Norway (Nordic region); and (ii) the willingness of the Belgian and French exchanges to share their bid data for the benefit of market coupling with the NorNed cable.
19. On 19 February 2007, the regulatory authorities, the TSOs and the Dutch and Norwegian energy exchanges discussed the problems surrounding the introduction of market coupling between the Netherlands (TLC region) and Norway.
20. On 12 April 2007, the Board received a proposal to amend the Grid Code and the System Code in connection with the introduction of market coupling for the NorNed cable.
21. However, the problems concerning GCT harmonisation and data exchange had not yet been resolved. In the Board's opinion, a change in the code proposal of 12 April 2007 was therefore necessary. The Board therefore sent a change request to the joint grid administrators on 16 July 2007.
22. The Board received the amended proposal to change the Grid Code on 13 August 2007.

Background of problems concerning market coupling

23. As a result of the international integration of regional energy markets, parties from several countries are directly or indirectly involved in the realisation of the NorNed cable. The Norwegian regulations and the regulations proposed in the amended code proposal will have to be consistent and must take account of the currently applicable rules in the coupled markets of the Nordic and TLC regions, especially with a view to current European legislation in this area⁶. This requires harmonisation between the Dutch and Norwegian (Scandinavian) authorities, as well as the Belgian and French authorities. Eventually, the parties will have to reach a consensus about the rules that will apply in the Netherlands and Norway.
24. At the moment, the Dutch electricity market is linked to the Belgian and French markets (the so-called trilateral coupling (TLC)). In the countries concerned, this has resulted in a harmonised GCT (11.00 a.m.). To realise this market coupling, the Grid Code and System Code were amended by Board decision on 15 November 2006.

⁵ At the time of the hearing at DTe's offices on 13 September 2007, the scheduled start-up date was 31 October 2007. This date was postponed to (the second half of) November due to bad weather.

⁶ Compare Chapter IV, legal framework, European regulations.

25. The Norwegian electricity market is linked to those of Sweden, Denmark and Finland (the so-called Nordic region). The countries within this region have a GCT which differs from countries in the TLC region. The GCT in the Nordic region has been set at 12.00 noon.
26. To link the TLC market and the Nordic market, the GCT has to be harmonised at 11.00 a.m. or 12.00 noon (or another harmonised time).
27. Both the TLC region and the Nordic region will be linked to the German electricity market by means of several current projects. Germany has a GCT of 12.00 noon and is part of the so-called CWE region (consisting of the countries within the TLC region, Germany and Luxembourg). Thus, a market coupling will come into being between the Nordic region and the CWE region. Market coupling, however, requires that different regions use the same GCT and that the relevant parties (e.g. TSOs and energy exchanges) provide cooperation (for instance in relation to the required data exchange).

Independent study into GCTs

28. The research agency Frontier Economics has studied the implications of a harmonised GCT⁷ for the various countries, commissioned by the supervisory authorities in the CWE region, Norway and Denmark. Frontier Economics concludes that a GCT of 12.00 noon is probably the most pragmatic solution, but does emphasise that several issues have to be dealt with before harmonisation can take place. Parties from various countries will have to cooperate and put in an effort.

Memorandum of Understanding

29. On 6 June 2007 the ministers, regulatory authorities, TSOs and electricity exchanges from the CWE region as well as the market party platform signed the Memorandum of Understanding (hereinafter: MoU). The signatories have agreed in the MoU to do whatever is necessary to achieve market coupling in the CWE region, ultimately by January 2009. The MoU supports the process of regional integration of electricity markets into a single European energy market which is in accordance with Directives 2003/54 and 2005/89 as well as Regulation 1228/2003. The European Commission guidelines are part of Regulation 1228/2003. These guidelines are also aimed at establishing a harmonised GCT within the regional European energy markets⁸.
30. Market coupling within the CWE region supports wider European market integration. The MoU for instance, takes current projects into account, like the NorNed project⁹. Insofar as necessary, the Norwegian parties are involved with the MoU at the operational and organisational level, to realise compatible solutions. The MoU also provides a schedule for further elaboration of the arrangements¹⁰. The signatories to the MoU have indicated their support for a harmonised GTC of 12.00 noon, in principle¹¹. This is an important step towards market coupling in the CWE region and towards market coupling between the CWE region and the Nordic region.

International consultation after 12 April 2007 (submission of initial code amendment proposal)

31. On 25 April 2007, consultation took place between the regulatory authorities from Norway, Belgium, France, Germany and the Netherlands, the energy exchanges from Scandinavia, Belgium, France, Germany and the Netherlands, the TSOs from Norway, Belgium, France and the Netherlands and three German TSOs. All parties recognised the necessity of harmonising the GCT for the purpose of

⁷ The survey included all the relevant parties from the CWE region and the Nordic region, including energy exchanges, TSOs and market parties. The survey can be accessed at: http://www.dte.nl/nederlands/elektriciteit/marktmonitor/Publicaties_Groothandelsmarkt_en_Marktmonitoring_Elektriciteit.asp.

⁸ Compare section 3.5, opening line and subsection d of the guidelines belonging to Regulation 1228/2003.

⁹ Compare margin number 13, opening and subsection iii, of the MoU.

¹⁰ The TSOs and energy exchanges must submit a proposal by 1 November 2007 for a single harmonised GCT for the CWE region. Compare margin number 22, opening, subsection iii, sub a, of the MoU.

¹¹ Support Group 1 (allocation methods and optimizing interconnection capacity) of the Pentilateral Energy Forum, dated 23 August 2007.

market coupling between the CWE region and the Nordic region. The implementation of a harmonised GCT will, however, require time¹². An interim solution was therefore discussed, to be implemented in the period before realisation of the market coupling, but after completion of the NorNed cable.

32. Consultation took place on 23 May 2007 between the Norwegian and Dutch regulatory authorities (NVE and DTe), the Norwegian and Dutch TSOs (Statnett and TenneT) and the Dutch and Scandinavian energy exchanges (APX and Nord Pool Spot). The parties acknowledged that a harmonised GCT will not be realised at the same time the NorNed cable is completed. A discussion took place regarding an interim solution for market coupling without GCT harmonisation being required, whereby cooperation from the French and Belgian parties would be limited or not necessary. DTe indicated that disconnection from the TLC market on the part of the Netherlands is neither a political nor a policy option. Statnett indicated that the introduction of an explicit auction system and adaptation of the GCT to 11.00 a.m. was not an option in connection with the Norwegian license regulations.
33. The French energy exchange Powernext has informed TenneT, Statnett, RTE, Elia, Belpex, Nord Pool Spot and APX by letter dated 1 June 2007 that it will no longer cooperate with the so-called 'Pre-Interim Solution', but will aim instead at establishing market coupling within the CWE region. Powernext also noted that the explicit auction system may be seen as an interim solution that is easily implemented and consistent with market requirements.
34. Consultation took place on 19 June 2007 between NVE, DTe, Statnett and TenneT. Nord Pool Spot was invited, but entered an apology on 18 June 2007. In a memo dated 18 June 2007, Nord Pool Spot stated that it was in favour of an explicit auction system as an interim solution. During the consultation, an interim solution for market coupling was discussed again, based on a study of various interim solution options. DTe again emphasised that disconnection from the TLC market is not an option, whereas Statnett pointed out their license limitations. The relevant license regulations can only be changed by the responsible Norwegian government minister. An explicit auction system can only be discussed if a guarantee can be given that the explicit auction is temporary and a term is set in advance for the realisation of market coupling, in line with the original decisions.
35. Telephone consultation took place on 29 June 2007 between NVE, DTe, Statnett, APX and TenneT. Statnett found an explicit auction system acceptable only on a temporary basis and when market coupling is guaranteed in the first quarter of 2009. DTe emphasised that all parties within the CWE region have committed themselves in the MoU to exert their best effort to realise market coupling by January 2009. However, DTe cannot give a guarantee in this regard, as this depends on the cooperation given by the other parties to the MoU.
36. The Trade and Sales section of the industry association EnergieNed has informed the Board by letter dated 5 July 2007 that it prefers an explicit auction system if market coupling is not realised in time¹³.

IV. Legal background

National regulations

37. Pursuant to section 5, subsection 1, of the Electricity Act, the Board is responsible for carrying out activities relating to the implementation of the Electricity Act and the Regulation¹⁴, as well as

¹² The regulatory authorities agreed to commission an independent study into GCT harmonisation. This study was conducted by Frontier Economics.

¹³ Comparable with the solution between Germany and Denmark in the so-called KONTEK area.

¹⁴ Regulation (EG) No. 1228/2003 of the European Parliament and the Board dated 26 June 2003.

supervising compliance with the Electricity Act and the Regulation, with the exception of Chapter 8, section 1a, of the Electricity Act.

38. By reviewing the proposal of the joint electricity grid administrators, the Board determines whether the proposal does not violate the interests as referred to in section 36, subsection 1, or the requirements as referred to in section 36, subsection 2, of the Electricity Act.
39. Pursuant to section 36, subsection 1, of the Electricity Act, the Board shall determine the tariff structures and conditions, taking into consideration:
 - a the joint proposal submitted by the grid administrators as referred to in sections 27, 31 or 32, and the results of the consultation referred to in section 33, subsection 1;
 - b the importance of the reliable, sustainable, efficient and environmentally responsible supply of electricity;
 - c the importance of promoting the development of trade on the electricity market;
 - d the importance of promoting efficiency amongst customers;
 - e the importance of good quality service provision by grid administrators;
 - f the importance of an objective, transparent and non-discriminatory maintenance of the energy balance in a manner that reflects the costs; and
 - g the regulations referred to in section 26b.
40. Pursuant to section 36, subsection 2, of the Electricity Act, the conditions to be determined shall guarantee the interoperability of the grids and shall be objective, proportional and non-discriminatory.
41. Pursuant to section 36, subsection 4, of the Electricity Act, if, in the opinion of the Board, a proposal as referred to in sections 27, 31 or 32 is in conflict with the interests referred to in section 36, subsections (1)(b), (1)(c), (1)(d), (1)(e) or (1)(f), of said Act, or violates the requirements referred to in section 36, subsection 2, the Board shall instruct the grid administrators jointly to amend the proposal in such a manner that this conflict or this violation is eliminated. Section 4(15) of the General Administrative Law Act shall apply *mutatis mutandis*.

European regulations

42. Directive No. 98/34/EC¹⁵ of the European Parliament and of the Council of the European Union of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations for information society services, as amended by Directive No. 98/48/EC of 20 July 1998¹⁶, stipulates that all technical regulations for information society products and services have to be notified to the Commission of the European Union. The provisions included in this Directive describe the adoption of a safety mechanism, whereby a choice is made for one of two options prescribed by European law. As such, the provisions do not offer a complete overview of the official notifications concerning the characteristics of a product, nor does it concern a service which is performed electronically and remotely. The change to the auction's operation is factually neither a service nor a product supplied in exchange for a consideration. This leads to the conclusion that the stipulations of the decision on hand do not concern technical instructions or information society services as referred to in Directive 98/34/EG, making notification to the European Commission superfluous.
43. Regulation (EC) No. 1228/2003 of the European Parliament and of the Council of 26 June 2003¹⁷ contains rules on conditions for access to the grid for cross-border exchanges in electricity (hereinafter: "the Regulation"). The general principles of congestion management are described in section 6 of the Regulation. In the Regulation's appendix the Commission has set guidelines for

¹⁵ OJ L 204

¹⁶ OJ L 217

¹⁷ OJ L 176, 15 July 2003, page 1

congestion management. These guidelines form an integral part of the Regulation and have the same effect. By decision of 9 November 2006, the European Commission has amended the guidelines.¹⁸

44. Pursuant to section 8 of the Regulation, the European Commission can adopt and amend guidelines with regard to specific subjects. The European Commission has made use of this authority.
45. The European Commission has changed the so-called congestion management guidelines by decision of 9 November 2006¹⁹.
46. Pursuant to section 2.1. of the guidelines, the methods for congestion management have to be market-based in order to facilitate efficient cross-border trading. Capacity will therefore only be allocated by explicit (capacity) auctions or implicit (capacity and energy) auctions. Both methods may be used for one and the same interconnection. In the case of intra-day trading, continuous allocation is possible.
47. Pursuant to section 3.1. of the guidelines, the TSOs will have a coordinating role in the allocation of interconnection capacity based on joint allocation procedures.
48. Pursuant to section 3.2. of the guidelines, a joint congestion management method and a procedure for the allocation of capacity to market parties has to be set up between the countries in the various EU regions by 1 January 2007 at the latest.
49. Pursuant to section 3.2 of the guidelines, a different congestion management method may be used in the case of interconnections between countries from different areas, in order to ensure compatibility with the methods used in the different areas. In such a case, the TSOs concerned will propose a method which will subsequently be submitted for evaluation to the regulatory authorities concerned.
50. Pursuant to section 3.4. of the guidelines, compatible congestion management procedures will be adopted for the areas referred to in section 3.2 with the aim of creating a fully integrated internal European electricity market. The market parties must not be confronted with incompatible regional systems.
51. To promote fair and efficient competition and cross-border trade pursuant to section 3.5. of the guidelines, coordination between the TSOs has to cover all the relevant steps, including capacity calculations, optimising the allocation of capacity, ensuring safe grid operation and a clear distribution of responsibilities. This coordination concerns, among other things, identical timeframes and closure times²⁰.
52. Norway is party to the Agreement concerning the European Economic Area (hereinafter: "EEA"). The EEA includes several associated Protocols and Annexes, including Annex IV concerning energy, as referred to in section 24 of the EEA. According to margin number 20 of Annex IV, Regulation No. 1228/2003 forms part of Annex IV. This leads to the conclusion that Norway is bound by the Regulation. The amended guidelines for congestion management (as drawn up in 2006) have not been adopted in Norway as yet²¹.

V. Assessment framework

¹⁸ OJ L 312, 11 November 2006, page 59

¹⁹ OJ L 312, 11 November 2006, page 59

²⁰ This concerns the aforementioned Gate Closure Times (GCTs).

²¹ A formal EEA procedure to adopt these guidelines is currently running.

53. In the present decision, the Board evaluates the amended proposal of 10 August 2007 to change the Grid Code, as submitted by the joint grid administrators.
54. The Grid Code contains conditions relating to the conduct of grid administrators and customers with regard to operating the grids, providing grid connections and transmitting electricity across the grid. The interests referred to in section 36, subsection 1, of the Electricity Act have to be taken into consideration by the Board when drawing up the Grid Code.
55. Within the limitations defined by the Electricity Act, the General Administrative Law Act and the general principles of good governance, the Board has a discretionary authority to set the conditions referred to in section 36, subsection 1, of the Electricity Act and to conduct an assessment of interests. Depending on the objective of the (amended) decision, it is at the Board's discretion to assign varying degrees of importance²² to the different interests.
56. The Board has also evaluated the changed code proposal in light of the NorNed decision.

VI. Viewpoints

57. Various parties have given their viewpoints relating to the amended proposal to change the Grid Code of 10 August 2007. A number of parties have done this in writing and a number have done so verbally during the hearing at DTe's offices on 13 September 2007. Statkraft, Morgan Stanley, VOEG and VEMW have submitted their viewpoints in writing. During the hearing on 13 September 2007, the Production section of the industry association EnergieNed as well as Electrabel, EFET, Nuon, Statkraft, APX and TenneT were given the opportunity to present their viewpoint verbally, or to explain the amended proposal.
58. The viewpoints may be summarised as follows:
 - a) Unused NorNed cable capacity on the day-ahead market would have to be acquired via the intra-day market. The Grid Code would have to provide for this.
 - b) The NorNed cable capacity should not only be auctioned on the day-ahead market. The Grid Code should also provide for long-term auction systems, such as monthly and annual auctions. A 'use it or sell it' system could also be considered, in order to link in with the Norwegian financial hedging system.
 - c) The offer obligation on the APX exchange should not apply to the NorNed cable. The offer obligation acts as a market restraint. The obligation to sell daily volumes via the APX exchange limits the financial processing of import capacity acquired at the futures exchange. Another reason to have no offer obligation for the NorNed cable lies in the fact that the NorNed auction results are available an hour after the Belgian-Dutch and the German-Dutch results. The market parties' preparation time is halved, which increases the risk of errors with far-reaching consequences for the market (parties). Finally, the parties expressed concern with regard to additional transaction revenues, which APX would receive as a result of a NorNed offer obligation.
 - d) An explicit auction system has negative financial consequences (up to €40 million annually) for NorNed cable revenues, according to the NorNed decision. The question presents itself if an explicit auction system ensures a sufficient trade margin to finance the cable. No time limit has been included in the proposal with regard to the duration of an explicit auction system. The proposed explicit auction system could only be implemented up to 1 January 2009.
 - e) In the request which eventually resulted in the NorNed decision, TenneT indicated that a 'ramping constraint' of 30 MW per minute would apply. The proposal shows that a ramping constraint of 600 MW per hour also applies. This would mean a stricter limit. It is not clear why a stricter limit has become applicable since 2004. Neither is it clear whether there is a technical necessity to impose

²² Compare e.g. the ruling of the Netherlands Trade and Industry Appeals Tribunal of 11 February 2005 (LJN AS7083, AWB 04/511).

such a limit and whether this limitation is necessary for safety reasons. This would have to be demonstrated pursuant to section 6 of Regulation (EG) 1228/2003. The ramping constraint is not included in the original code proposal of 12 April 2007 and was not mentioned during the users' platform on 15 March 2007. Neither has the Board requested consideration of a ramping constraint in the amendment proposal.

- f) The introduction of an extra price area in Norway is a new fact for the parties and the effects on the congestion revenues will have to be discussed with Norway.
 - g) It might be possible to relax the 400-MW cap upon completion of the NorNed cable.
 - h) The deadline for submitting energy programmes to TenneT (1.00 p.m.) and the deadline for publishing implicit day-ahead auction results on the Nord Pool Spot exchange (1.30 p.m.) are awkward for the market parties. The parties should be able to submit their programmes to TenneT at a later time. A deadline of 2.00 p.m. is proposed for submitting energy programmes.
 - i) The proposal indicates that TenneT can make interim changes to the auction design in consultation with DTe. Market parties would have to be involved in this process.
 - j) If demand in both directions is less than 300 MW, the proposal indicates that the preferred direction will be the same as in the previous hour. It should, however, be the same as in the subsequent hour (as bids are known in advance).
59. By letter dated 7 September 2007, NMa has posed a number of questions to the Norwegian Ministry for Petroleum and Energy regarding the possibility of long-term auctions, netting import and export and the possibility of intra-day trade on the NorNed cable.
60. The Norwegian Ministry for Petroleum and Energy replied by letter dated 24 September 2007, indicating that long-term explicit auctions are not desirable, and that intra-day trading is not yet possible in Norway and may be introduced in the summer of 2008. Netting was not discussed at the time of this decision, as the Ministry has not formally received detailed information on the explicit auction system from Statnett.

VII. Assessment of amended proposal

Necessity of amending the code proposal of 12 April 2007

61. The Board has concluded that implementation of an implicit auction system as of November 2007 – when the NorNed cable is scheduled for completion according to the most recent plans – is not feasible, due to developments on the regional European electricity markets.
62. In the period preceding the amended code proposal of 10 August 2007 and preceding and following receipt of the amendment proposal of 12 April 2007, the Norwegian and Dutch parties, as well as parties from other countries, have attempted to set up a market coupling system. This attempt has not succeeded. The main obstacle turned out to be the divergence in Gate Closure Times (GCTs), and a lack of cooperation from certain parties with regard to the required information exchange.
63. The Norwegian electricity market is linked to those of Sweden, Denmark and Finland (the so-called 'Nordic region'). These countries employ the same GCT (12.00 noon). The markets of the Netherlands, Belgium and France (the TLC region) are also linked to one another, with a harmonised GCT of 11.00 a.m. The GCT for the German market is 12.00 noon. The German market will be linked to the markets in the Nordic region and the TLC region (which should eventually result in the CWE market coupling). A unilateral change in the GCT, resulting in the disconnection of the Norwegian market from the Nordic region and the disconnection of the Dutch market from the TLC region, is not an option for the Norwegian and Dutch parties involved. Such a step would mean the end of a market coupling system that has functioned effectively and was established after a long international consultation process. Unilateral disconnection would have major financial, political and administrative consequences and entail considerable risks.

64. Although the countries in the Nordic region and the CWE region have now agreed in principle on a harmonised GCT for both regions (12.00 noon), the implementation of this arrangement is expected to take considerable time. Consequently, a harmonised GCT will not be realised until after the NorNed cable has entered into service.
65. Because market coupling is not possible in the short term and completion of the NorNed cable is scheduled for November 2007, a situation may arise whereby market parties cannot use the cable for lack of an effective regulatory framework for capacity allocation. In view of the major investments involved in the NorNed cable's construction, this would be an unacceptable outcome. To prevent such a situation from arising, a temporary and effective allocation mechanism must be developed that can be implemented until market coupling has been achieved. Rules for this mechanism must be incorporated into the Grid Code.
66. For the benefit of the joint grid administrators, TenneT has examined the alternatives to an implicit auction system and submitted these to the Norwegian and Dutch parties involved. The Scandinavian energy exchange Nord Pool Spot and the Trade and Sales section of the industry association EnergieNed have both endorsed an explicit auction system as a temporary solution²³.
67. In light of these developments, the Board has requested the joint grid administrator to amend the code proposal of 12 April 2007. Because an implicit auction system did not seem feasible in the short term and the proposal of 12 April 2007 did not include an effective alternative method for allocating capacity on the NorNed cable, trade between Norway and the Netherlands would be practically impossible even though the cable would already be complete. As such, the proposal of 12 April 2007 does not fulfil the criteria of promoting 'an efficient [...] supply of electricity' or 'the development of trade on the electricity market' as laid down in section 36, subsections (1)(b) and (1)(c), of the Electricity Act.

Explicit auction system as a temporary solution

68. The amended proposal of 10 August 2007 is based on an explicit auction system in which the available transmission capacity and electrical energy are auctioned off separately. Separate contracts are concluded for transmission capacity and electrical energy.
69. An explicit auction system conforms to European legal guidelines. Section 2.1 of the relevant guidelines²⁴ stipulates that methods for congestion management must be market-based to facilitate efficient cross-border trading. Capacity can be allocated by means of an explicit (capacity) auction, among other methods. Experience has already been gained with this method. Explicit auctions are used to allocate capacity on the cross-border interconnections between the Netherlands and Germany, but also on the interconnections between the Netherlands and Belgium (through annual and monthly auctions). An auction mechanism of this kind can be implemented easily and quickly. This is an important criterion with a view to the completion of the NorNed cable in November 2007 and avoiding underuse of the cable. Through the Trade and Sales section of the industry association EnergieNed²⁵, Dutch market parties have also expressed their support for an explicit auction system should implicit auctions prove impossible to realise. The Scandinavian energy exchange Nord Pool Spot has also expressed its support.
70. The Board would like to emphasise that setting up an explicit auction system for the entire capacity of the NorNed cable is only an interim solution. Market coupling remains the ultimate objective, as

²³ See the relevant correspondence from Nord Pool Spot, Powernext and the Trade and Sales section of EnergieNed referred to in section 3 of the present document. In a letter dated 1 June 2007, Powernext also endorsed the explicit auction system as a temporary solution.

²⁴ As mentioned previously, these guidelines form part of EC Regulation No. 1228/2003 of the European Parliament and Council of 26 June 2003.

²⁵ This section represents the interests of energy traders and suppliers. In practice, these are the parties that will be most affected by the rules laid down in the Grid Code.

clearly indicated in margin numbers 102 and 103 of the NorNed decision. The parties concerned have concluded a Memorandum of Understanding which stipulates that market coupling (and therefore harmonised GCTs) must be realised in the CWE region by January 2009 at the latest. In addition, the CWE region must be linked to the Nordic region.

Explicit auction system and specific characteristics of the NorNed cable

71. The amended proposal is based on the method currently used to allocate daily capacity on the cross-border interconnections between the Netherlands and Germany. The regulations in the Grid Code concerning implicit capacity auctions on the NorNed cable are therefore largely identical to the instructions already applicable to the cross-border interconnections between the Netherlands and Germany. However, there are also differences resulting from specific characteristics of the NorNed cable and the underlying electricity systems, requiring different instructions. Insofar as the proposed regulations are the same as those applicable to the cross-border interconnections between the Netherlands and Germany, the Board has seen fit to adopt these provisions in accordance with the amended proposal.
72. The differences in the regulations can be traced back mainly to the so-called ramping constraint of 600 MW per hour that applies to the NorNed cable (see margin number 87). The ramping constraint limits the change in the direction of transmission to 600 MW in two consecutive hours. As a result of this ramping constraint, the method by which capacity on the NorNed cable is allocated differs from the allocation procedure for the cross-border interconnections between the Netherlands and Germany. Capacity is allocated in three phases: determining the preferred direction of transmission, reducing the capacity if the preferred direction changes, and allocating the capacity.
73. The closure times for the NorNed cable differ from the closure times of the Dutch-German interconnections. When conducting trade across the NorNed cable, market parties can take account of any capacity acquired on the cross-border interconnections between the Netherlands and Germany. The results of the NorNed auction are available before the close of bidding on the APX exchange, so that trading can still take place on the APX day-ahead market.

Assessment of opinions

74. Various parties have commented on the joint grid administrators' amended proposal of 10 August 2007 to change the Grid Code.
75. In the following sections, the Board will assess the written opinions and the opinions expressed during the hearing of 13 September 2007. The latter opinions have already been summarised in margin number 58.

a. Intra-day trading

76. Both the Norwegian Ministry of Petroleum and Energy and Statnett have indicated that intra-day trading is currently not possible on the Norwegian market, but that provisions are being made to facilitate such trading. This also means that the transmission capacity of the NorNed cable which remains unused after the auction cannot be allocated to intra-day trading. The Board therefore concludes that the code proposal should not be amended in this regard.
77. However, the Board recognises the importance of cross-border intra-day trading to the market, and the importance of making efficient use of the NorNed cable in a temporary explicit auction system. Furthermore, cross-border intra-day trading must be facilitated as soon as possible with a view to section 1.9 of the guidelines (Regulation (EC) No. 1228/2003), which prescribe the creation of mechanisms for cross-border intra-day congestion management as of 1 January 2008. The Board therefore requests TenneT to make provisions for cross-border intra-day trading on the NorNed cable together with Statnett as soon as the possibility of intra-day trading has been introduced on the Norwegian market.

b. Day-ahead and long-term auctions

78. Various parties have indicated that some of the available capacity on the NorNed cable should be allocated by means of medium-term and/or long-term auctions, e.g. monthly and/or annual auctions.
79. The code proposal aims to be aligned as closely as possible with the NorNed decision, which is based on an implicit auction of the entire capacity.
80. The Board is of the opinion that the code proposal is indeed in line with the NorNed decision. On the other hand, the Board also recognises the importance and usefulness of medium-term and/or long-term auctions for the allocation of transmission capacity. The Board has previously emphasised the importance of long-term auctions.²⁶
81. For the time being, however, the Board can see no possibility in the short term of including such auctions in the Grid Code, where the NorNed cable is concerned. Such a step would require the Norwegian regulatory framework to provide for medium-term and/or long-term auctions. The Board therefore requests TenneT to discuss with Statnett the possibility of medium-term and long-term auctions with a view to developing proposals for the introduction of such auctions, with due attention to the possible introduction of a 'Use it or sell it' system. The Board further notes that medium-term and/or long-term auctions could continue to exist after the introduction at a later date of an implicit auction system for day-ahead capacity. This would be comparable to the system currently in place for the cross-border interconnections between the Netherlands and Belgium.

c. Offer obligation

82. The offer obligation applies to explicit auctions by operation of law. The Board sees no reason to make an exception in this regard for the NorNed cable.
83. The offer obligation requires parties to which import capacity has been allocated in the daily auction to offer a quantity of electricity on the Dutch side of the APX energy exchange that is commensurate with the amount of transmission capacity acquired in the daily auction²⁷. The offer obligation, as laid down in section 5.6.12.1.a of the Grid Code, plays an important role in ensuring proper distribution of import capacity and efficient market operation. Section 5.6.12.1.a of the Grid Code aims to promote market operation by enabling as many parties as possible to import electricity. If the offer obligation did not exist, traders or producers could acquire capacity and withhold it from the market by not using it, thus limiting the import options of competitors. In the opinion of the Board, the fact that the results of the NorNed auction become available at a later time than the results of the German-Dutch and Belgian-Dutch auctions does not constitute an essential difference requiring reconsideration of the offer obligation. Therefore, the Board is of the opinion that market parties have sufficient time at their disposal to meet their offer obligations, also with regard to the NorNed auction.
84. As regards the offer obligation, the Board draws attention to the financial consequences for market parties and the additional transaction revenue received by APX as a result of the offer obligation for explicit auctions. On 13 September 2007, APX sent a letter on this topic to DTe. APX indicated that it had produced an estimate of the expected increase in the total volume traded after the NorNed cable enters into commercial operation in accordance with the joint grid administrators' code amendment proposal. Combined with other considerations (including the discussion concerning the extra transaction revenues resulting from the offer obligation applicable to the NorNed cable), APX aims to reduce the transaction tariff by 3.5 eurocents per MWh (the current tariff amounts to 14 eurocents per MWh), on the condition that the joint grid administrators' code amendment proposal is implemented. The tariff reduction will remain applicable when the daily explicit auction system is converted into an

²⁶ See the document entitled 'Regional market integration between the wholesale electricity markets of Belgium, France and the Netherlands – A road map prepared by CRE, CREG and DTe', December 2005.

²⁷ Refer to section 5.6.12.1a of the Grid Code.

implicit auction system, i.e. as soon as market coupling has been realised with regard to the NorNed cable.

85. In light of the above, the Board sees no reason for the offer obligation not to be applicable to the NorNed cable. Furthermore, the Board emphasises that the offer obligation will have only temporary relevance with regard to the NorNed cable. The offer obligation is no longer applicable once market coupling has been achieved and an implicit auction system is in place.

d. Financial consequences of an explicit auction system

86. The Board understands that concerns exist regarding the financial consequences of implementing an explicit auction system. In response to the progress report for the second quarter of 2006, several questions on these matters were posed to TenneT by e-mail dated 14 June 2007. In an attachment to an e-mail sent on 10 July 2007, TenneT indicated that it had commissioned an independent consultancy firm to conduct a study of the financial consequences of an explicit auction system. The study confirms that the socio-economic revenues of such a system are lower than the revenues from a complete market coupling. TenneT notes that this shortfall in revenues is temporary, i.e. until full market coupling is realised in 2009. The Board agrees that revenues will be lower in the current situation when market coupling is not yet achievable.

e. Ramping constraint

87. The Norwegian TSO Statnett is legally obligated to apply the so-called ramping constraint of 600 MW per hour. This obligation is laid down in appendix 7.7 to the Nordic System Operation Agreement.²⁸ Said agreement (including the appendix) was concluded in the interests of safeguarding system integrity and has been approved by the Norwegian energy sector regulator NVE. The rules and regulations are mainly national in character and form part of the Norwegian regulatory framework. The Board played no official role in the development of this regulatory framework.
88. On the other hand, the Board agrees with the market parties that it is insufficiently clear why the ramping constraint of 600 MW per hour would be (technically) necessary. In view of the negative effects on socio-economic revenues, the Board will urge the Norwegian authorities to consider eliminating the ramping constraint. The Board also requests TenneT to discuss this issue with Statnett in order to develop proposals that would have a less limiting effect on the use made of the NorNed cable. The Board also notes that the auction design could be simplified considerably in the absence of a ramping constraint. It would also be possible to present import and export nominations on a net basis.
89. Chapter X and Appendix A of the NorNed decision describe the incentives intended to encourage TenneT to maximise the available capacity of the NorNed cable. The Board recognises that the ramping constraint can influence the NorNed cable's available capacity. The Board will determine whether and, if so, how the ramping constraint will be incorporated into the application of the aforementioned incentives.

f. Extra price area

90. Although it appeared initially that an additional, fourth price area would be introduced in Norway, which could have consequences for trade conducted on the NorNed cable, this plan seems to be off the table for the moment. Statnett has indicated that the capacity restrictions on the Norwegian side are lower than expected due to reduced capacity on the Skagerrak cable link (caused by transformer problems on the Danish side). As a result, there will be no fourth price area when the NorNed cable enters into service. However, it is unclear whether the fourth price area will be realised at a later time and what financial consequences this would have for the socio-economic revenues generated by the NorNed cable. In a letter dated 28 September 2007, the Netherlands Competition Authority (NMa) posed further questions on this matter to Statnett. The NMa will keep a close watch on any

²⁸ The Nordic System Operation Agreement can be found at www.nordel.org.

developments related to a fourth price area and will enter into discussions with the relevant Norwegian authorities where necessary and possible.

g. 400-MW import cap

91. During the hearing, several parties inquired about the so-called 400-MW import cap in relation to the NorNed cable. Several parties expressed a wish for this restriction to be eased. Furthermore, several parties were unclear about the exact interpretation of the 400-MW import cap.
92. With regard to the interpretation of the 400-MW import cap, the Board would like to note the following. By virtue of section 31a, subsection 1, of the Electricity Act, it is prohibited for a customer, supplier or trader, whether or not directly or subject to conditions, to have at his disposal transmission capacity in the cross-border grid in excess of 400 MW. Section 5.6.11.3 of the Grid Code stipulates that a Programme Responsible Party may not nominate cross-border transmission capacity in excess of 400 MW for all the relevant connections and after netting of imports and exports. Consequently, the purport of section 31a, subsection 1, of the Electricity Act differs from that of section 5.6.11.3 of the Grid Code.
93. By letter dated 10 May 2001, the then Director of DTe informed TenneT of DTe's interpretation of section 31a, subsection 1, of the Electricity Act and section 5.6.11.3 of the Grid Code, with reference to the way the relevant issues were handled by the Dutch parliament.

This letter can be viewed at the DTe website:

http://www.dte.nl/nederlands/elektriciteit/transmission/invoer_en_uitvoer/index.asp.

94. With respect to a possible easing of the 400-MW import cap, the Board sees no reason for the time being – with a view to the current Dutch market structure – to advise the Minister to adjust the import cap for the NorNed cable. However, the Board will continue to evaluate the usefulness of this arrangement in light of the ever-changing context of the Dutch electricity market.

h. Deadline for submitting energy programmes and publication of auction results

95. In response to comments made during the hearing, TenneT confirmed by letter dated 16 October 2007 that the deadline for submitting energy programmes to TenneT (1.00 p.m.) is not in line with the publication of the Nord Pool Spot implicit day-ahead auction results (1.30 p.m.). In order to better facilitate the market, TenneT has suggested altering the deadlines referred to in several sections of the System Code (section 2.4.1.4, section 2.5.3.a, section 3.6.3, section 3.6.5, section 3.6.6, section 3.6.8 and section 3.6.10). TenneT has also indicated that it will amend the Implementation Decision, so that market parties can simultaneously report their regulating margin and submit their T Programmes and bids for regulating and reserve capacity (section 2.4.1.4 of the System Code).
96. In light of the above, the Board will amend the deadlines referred to in the aforementioned sections of the System Code in line with TenneT's proposal (see chapter VIII 'Operative provisions').

i. Change in auction design by TenneT

97. The proposed section 5.6.10a.13 will authorise TenneT to alter the auction design, when necessary and in consultation with the Director of DTe. The Board also proposes that TenneT publish any changes to the auction design on its website. The Board notes that such far-reaching powers to deviate unilaterally from certain provisions of the Grid Code, System Code and Metering Code are not in conformity with sections 31 and 36 of the Electricity Act. On this point, the Board refers the reader to the judgment of the Netherlands Trade and Industry Appeals Tribunal of 4 September 2002, reference AWB 01/400. In said judgment, the Tribunal discusses a similar authority on the part of grid administrators to deviate unilaterally from certain provisions of the Grid Code, System Code and Metering Code, concluding that awarding such far-reaching powers to grid administrators violates the provisions of section 36 of the Electricity Act, which grant the Board the unconditional authority to define the conditions governing the relationships between the grid administrator and a third party as

referred to in section 31, subsection 1, of said Act. For that reason, the Board cannot adopt the proposed section 5.6.10a.13. Consequently, the Board will refrain from evaluating the substantive aspects of the proposed article.

j. Determining the preferred direction of transmission

98. In response to a proposal to determine the preferred direction of transmission on the basis of results in the next hour rather than the previous hour (for those hours when the preferred direction of transmission cannot be deduced directly), TenneT has explained that in those cases, the previous hour is used because this method guarantees that a direction can always be determined. If the next hour is used, this would create a (hypothetical) possibility that no preferred direction can be determined because no preferred direction can be established for the hour after that (or subsequent hours).
99. The Board supports this explanation by TenneT. At the same time, the Board understands that using the next-hour method instead of the previous-hour method may result in more efficient allocation in some situations. For the time being, the Board assumes that such situations will occur very rarely or not at all. However, the Board also notes that this problem, and other methods of improving allocation efficiency during a change of preferred direction, would not play a role if there were no ramping constraint. Consequently, the Board would recommend that priority be given to eliminating ramping constraints (see also margin number 87) before investing time, money and effort in fine-tuning the auction design for situations involving a change in preferred direction.
100. In view of the above, the Board sees no reason to deviate from the amended code proposal in this regard.

Unclear wording of section 5.6.9.3b

101. The Board is of the opinion that section 5.6.9.3b has not been formulated clearly. It could be concluded from this section that a party with a status comparable to that of Programme Responsible Party, for instance in Belgium, can participate in all daily auctions, including those on the German and Norwegian cross-border interconnections. Such an interpretation is not desirable. In this example, the party in question is only allowed to participate in the daily auction on the Belgian border. Consequently, the wording of this section will be modified.

Effective date

102. This decision comes into effect on 14 November 2007. Naturally, capacity cannot be supplied to the market parties until it is actually available. The NorNed cable may not have entered service on 14 November. In that case, TenneT will publish a daily notification that a capacity of 0 MW is available for the next day, in accordance with section 5.6.8.1a of the Grid Code. In such a situation, the amended sections of the Grid Code will have no practical implications. TenneT will provide information in a proactive and timely manner regarding the date on which the NorNed cable is to enter service. In any case, the amendments to the System Code (see margin number 95) will have practical implications with effect from 14 November.

VIII. Operative provisions

103. The changes in relation to the current version of the Grid Code are listed below (additions are underlined, deletions crossed out).

104. The opening line of section 5.6.6.1 will be amended to read:

5.6.6.1 When auctioning available cross-border transmission capacity on the interconnections Meeden-Germany, Hengelo-Germany, Maasbracht-Germany, Borssele-Belgium, Geertruidenberg-Belgium and Maasbracht-Belgium, the following categories of transmission shall be distinguished:

105. Following section 5.6.6.2, a new section 5.6.6.2a will be inserted to read:

5.6.6.2a The safely available cross-border transmission capacity of the Eemshaven-Norway interconnection shall be used entirely for spot transmission runs with an execution time of at least one hour and no more than one calendar day.

106. Section 5.6.7.4 will be amended to read:

5.6.7.4 The administrator of the national high-voltage grid shall allocate the available cross-border capacity for spot transmission runs on the cross-border interconnections Meeden-Germany, Hengelo-Germany, ~~and~~Maasbracht-Germany and Eemshaven-Norway to the market parties by means of an explicit auction.

107. Following section 5.6.8.1, a new section 5.6.8.1a will be inserted to read:

5.6.8.1a Every day by 9.15 a.m. at the latest, the administrator of the national high-voltage grid shall announce the quantity of capacity referred to in section 5.6.6.2a that is available for the next day.

108. Section 5.6.8.2 will be amended to read:

5.6.8.2 Every day, the administrator of the national high-voltage grid shall publish hourly estimates of the capacity available for spot transmission runs as referred to in section 5.6.8.1 and section 5.6.8.1a for the subsequent 30-day period.

109. Following section 5.6.9.1, a new section 5.6.9.1a will be inserted to read:

5.6.9.1a The transmission capacity referred to in section 5.6.6.2a and specified in accordance with section 5.6.7.4 shall be auctioned in a daily auction to be conducted every hour on the day prior to the transmission. Bids may be submitted at any time before 9.45 a.m. on the day in question.

110. Section 5.6.9.3b will be amended to read:

5.6.9.3b Participation in the daily auction is limited to parties that are recognised as Programme Responsible Parties or possess a similar status in Norway if it concerns daily capacity auctions for the Eemshaven-Norway connection, or in Belgium if it concerns daily capacity auctions for the Borssele-Belgium, Geertruidenberg-Belgium and Maasbracht-Belgium connections, or in Germany if it concerns daily capacity auctions for the Meeden-Germany, Hengelo-Germany and Maasbracht-Germany connections.

111. section 5.6.9.7 will be amended to read:

5.6.9.7 The administrator of the national high-voltage grid shall publish its conditions pursuant to the provisions of section 5.6 of the Electricity Grid Code at least 12 weeks prior to the start of the calendar year in which these conditions will be used.

112. section 5.6.10 will be amended to read:

5.6.10 Procedure of the explicit auction referred to in section 5.6.9.1.

113. Following section 5.6.10.9, the new sections 5.6.9.10a and 5.6.10a.1 up to and including 5.6.10a.12 will be inserted to read:

5.6.10a Procedure of the explicit auction referred to in section 5.6.9.1a.

5.6.10a.1 Bids for import and export capacity to be submitted during the auction

5.6.10a.2 Every day, the administrator of the national high-voltage grid shall determine the preferred direction of the transmission runs for each hour based on the bids submitted, by determining, for a capacity of 300 MW in both directions, the price of the first bid that has not been accepted and that was issued by a party other than the party which issued the last accepted bid. If the bid in question was not issued, the price for that direction shall be nil.

5.6.10a.3 The direction for which the highest price was determined according to the method described in section 5.6.10a.2 shall be the preferred direction.

5.6.10a.4 In the event that the price is the same in both directions, the preferred direction shall be the same as the preferred direction in the previous hour.

5.6.10a.5 If the demand in both directions amounts to less than 300 MW, the preferred direction shall be the same as the preferred direction in the previous hour.

5.6.10a.6 In the hour before and after a reversal in the preferred direction, the administrator of the national high-voltage grid shall auction 300 MW of capacity in the preferred direction. In other hours, the administrator of the national high-voltage grid shall auction the capacity in the preferred direction as referred to in section 5.6.6.2a and published in accordance with section 5.6.8.1a.

5.6.10a.7 If sufficient capacity is available to grant all capacity requests, the clearing price shall be nil.

5.6.10a.8 If the total demand for capacity in the preferred direction exceeds the capacity available for that particular auction in that particular direction, the clearing price shall be equal to the last accepted bid (whereby a bid is defined as the maximum price that a market party is willing to pay for capacity on that connection in the preferred direction).

5.6.10a.9 If it is not possible to grant all requests in the preferred direction (submitted in the form of bids), the bids shall be granted in the order of their amount, starting with the highest amount.

5.6.10a.10 Parties to which capacity has been allocated in an auction shall pay the clearing price of that auction to the auction house responsible for conducting transmission capacity auctions for the administrator of the national high-voltage grid.

5.6.10a.11 Every day before 10.15 a.m., the administrator of the national high-voltage grid shall announce the quantity and price of the capacity that has been allocated.

5.6.10a.12 The costs incurred by the administrator of the national high-voltage grid in purchasing electricity to compensate for grid losses on the NorNed cable and in facilitating efficient trading

between Norway and the Netherlands shall be part of the auction costs within the meaning of section 5.6.15.1.

114. Section 5.6.13.2 will be amended to read:

5.6.13.2 The transmission capacity for spot transmission runs, as referred to in section 5.6.8.1, may be reduced to a minimum of 100 MW before 8.30 a.m. on the day prior to the transmission. The transmission capacity for spot transmission runs, as referred to in section 5.6.8.1a, may be reduced to 0 MW before 9.15 a.m. on the day prior to the transmission.

115. Section 5.6.13.30 will be amended to read:

5.6.13.3 If the transmission capacity ~~for spot transmission runs~~ referred to in section 5.6.8.1 must be reduced, if it concerns an explicit auction, after 8.30 a.m. on the day prior to the transmission or, if it concerns an implicit auction, after 10.00 a.m. on the day prior to the transmission, or if the transmission capacity referred to in section 5.6.8.1a must be reduced after 9.15 a.m. on the day prior to the transmission, the administrator of the national high-voltage grid shall provide replacement capacity, in order to guarantee the availability of the import capacity referred to in sections 5.6.8.1 and 5.6.8.1a insofar as it is related to trade conducted on the APX exchange in fulfilment of the obligation referred to in section 5.6.12.1.

116. In the following sections, changes in relation to the current version of the System Code are indicated in blue. Deletions have been crossed out (also in blue). New sections are indicated in black.

117. Section 2.4.1.4 will be amended to read:

2.4.1.4 A connected party within the meaning of section 2.4.1.1 shall report the regulating margin (in MW) of each of his production units in each Programme Time Unit to the administrator of the national high-voltage grid before ~~2.00 p.m.~~ 2.45 p.m. on the day prior to the day to which the regulating margin relates. The report shall make a distinction between the following types of capacity:

- capacity that is instantaneously available for regulating activities in accordance with section 2.2.5;
- capacity that is available within 15 minutes for regulating activities in accordance with section 2.2.5;
- capacity that becomes available within 15 to 30 minutes for regulating activities in accordance with section 2.2.5;
- capacity that becomes available within 30 minutes and 2 hours for regulating activities in accordance with section 2.2.5;
- capacity that becomes available within 2 to 8 hours for regulating activities in accordance with section 2.2.5.

118. Section 2.5.3a will be amended to read:

2.5.3 a. Every day, the administrator of the national high-voltage grid shall publish the data received in accordance with section 2.4.1.4 and relating to the regulating margin for the next calendar day on its public Internet site before ~~3.00~~ 3.45 p.m. The data shall be specified for each Programme Time Unit and presented as a total for each category listed in section 2.4.1.4.

119. Section 3.6.3 will be amended to read:

- 3.6.3 If the allocation referred to in section 3.6.2 does not conform to the schedule referred to in section 3.6.1, the Programme Responsible Party must submit an updated schedule to the administrator of the national high-voltage grid before ~~4.00~~2.00 p.m. on the same day.
120. Section 3.6.5 will be amended to read:
- 3.6.5 Every day before ~~4.00~~2.00 p.m., fully recognised Programme Responsible Parties must submit to the administrator of the national high-voltage grid a daily energy programme, including an IET schedule, for all the connections for which it holds programme responsibility.
121. Section 3.6.6 will be amended to read:
- 3.6.6 Every day before ~~4.00~~2.00 p.m., Programme Responsible Parties with trade recognition must submit to the administrator of the national high-voltage grid a daily energy programme, including an IET schedule, covering the next day's planned energy transactions.
122. Section 3.6.8 will be amended to read:
- 3.6.8 If the allocation referred to in section 3.6.7 does not conform to the energy programme referred to in sections 3.6.5 and 3.6.6, the Programme Responsible Party must submit an energy programme with an updated IET schedule to the administrator of the national high-voltage grid before ~~3.00~~4.00 p.m.
123. Section 3.6.10 will be amended to read:
- 3.6.10 If an allocation of transmission capacity as referred to in section 3.6.2 or section 3.6.7 is not confirmed before ~~5.00~~5.30 p.m. on the same day by the administrator of the part of the cross-border interconnection that is not located in the Netherlands, the allocation shall expire.
124. This decision shall come into effect on 14 November 2007. The text of the decision will be published in the Netherlands Government Gazette and on the DTe website (www.dte.nl).

The Hague,
Date:

The Board of the Netherlands Competition Authority

P. Kalbfleisch

R.J.P. Jansen

G.J.L. Zijl

All persons whose interests are directly affected by this decision may lodge an administrative appeal with the Board of the Netherlands Competition Authority (NMa), Legal Department, P.O. Box 16326, 2500 BH The Hague, The Netherlands, stating their reasons, within six weeks after the date on which this decision was announced. Pursuant to section 7:1a, subsection 1, of the General Administrative Law Act (AWB), any interested party may use this administrative appeal to request the Board of the Netherlands Competition Authority to approve a direct appeal to the administrative court.