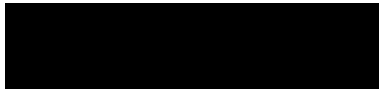


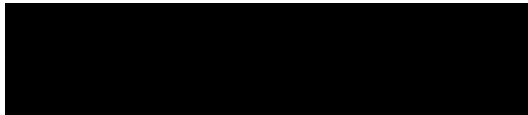
Warsaw, 30 April 2019

**DEPARTMENT OF MARKETS DEVELOPMENT
AND CONSUMER ISSUES**

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With regard to Agency's for the Cooperation of Energy Regulators (hereinafter referred as ACER) consultation as part of proceeding on capacity booking platform selection for the interconnection points on Polish-German border, URE would like to point out to some general issues that are crucial for conducting this procedure in due and efficient manner.

1. In URE's view, there is no reasonable justification for reiterating the entire tendering proceeding having in mind both the overall efficiency of the process and the influence on the other proceeding related to incremental capacity on the border between Poland and Germany. In our view only elements of the proceeding contested by the Board of Appeal should be repeated. The procedure chosen by ACER is contrary to the rule of due proceeding to repeal the whole decision if only some elements were identified as faulty. The Board of Appeal also gave ACER the option to continue the procedure from the second step. This means that the Board of Appeal neither undermine the procedure chosen by ACER in the first stage of the proceeding nor question the validity of offers already submitted by booking platforms to be used in simplified procedure. Both issues were examined by the Board of Appeal. Thus, these offers are still binding and should be the subject of ACER's analysis.
2. As it was mentioned above, the decision of ACER has significant influence on the incremental capacity process for the Market Border of Poland (E-Gas Transmission System) and GASPOOL. According to art. 28 par. 1 and 2 of CAM NC, URE and BNetzA were conducting administrative proceeding aiming at coordinated approval of the incremental capacity project proposal. The bundled capacity products including incremental capacity shall be offered on single booking platform during the yearly capacity auctions on 1st July 2019. The lack of selection of a single booking platform in due time has a detrimental effect on the market because the incremental capacity which is demanded by market participants will be not delivered to the market by the TSOs. The whole incremental procedure needs to be conducted by TSOs again.
3. The decision to reiterate the whole procedure leads to the situation where the probability of infringement of the competition on the market is higher than it would be if the procedure have concentrate only on the questionable issues. There is no doubt that there are only three booking

platforms active on the EU market where one booking platform has dominant position on the relevant market. This means that using information received from the previous stages of the proceeding, provided that selection criteria are same or very similar, the dominant could offer his service with lower price than it did previously in order to eliminate competition from the market.

4. It is also necessary to highlight that introduction of the specific qualitative criteria in the first stage of the proceedings was made without proper legal basis. This means that establishing new, additional criteria is even more doubtful from legal point of view. It should be emphasized that the situation where TSO is conducting booking platform shouldn't be seen in the negative light. There is no legal requirement that restricts TSO from operating the booking platform. This means that this issue should be treated as neutral during the proceeding conducted by ACER. Article 37(1) CAM NC clearly states that TSO have the right to be operator of booking platforms.
5. In addition, there is no reasonable justification to introduce new specific criteria having in mind that the Board of Appeal in general didn't undermine the criteria used in first stage of the proceedings.

