The integration of the national European electricity markets into one single European market is hampered by the lack of sufficient transmission capacity (‘interconnectors’) between the different countries. Therefore, the European Commission is promoting construction of new interconnection capacity.

In principle, construction, maintenance and operation of these interconnectors is a task of the transmission system operators (TSOs), and third party access (tpa) must be guaranteed. However, in particular where lasting price differences exist between markets, market parties might be interested as well to invest in additional interconnection capacity either to capture the congestion rents or for their own use. These ‘private’ interconnectors are commonly referred to as ‘merchant interconnectors’.

At first sight, merchant interconnectors do not seem to fit in the general structure of the European electricity industry, imposed by the EC Directives. The recent EC Regulation 1228/2003 has, however, created the possibility of a special regime for merchant interconnectors provided that they enhance competition in electricity supply.

This paper analyses the current potential for merchant interconnectors in the European electricity system. First, the economics of merchant interconnectors is discussed. The economic profitability has consequences for the (legal) position investors wish to obtain for these interconnectors.

Next, the (special) regime of merchant interconnectors under European law is analysed. The emphasis in this analysis is on the following four issues:

- **How is access to the merchant interconnector organised?**
  Can access to the merchant interconnector be organised in such a way that, on the one hand, it does justice to the principle of third party access, while, on the other hand, it still allows the owner of the merchant interconnector to recoup his investment from congestion rents?

- **What are the ‘tariffs’ for the use of a merchant interconnector (and how are they established)?**
  What should the ‘tariffs’ for the use of merchant interconnectors be based upon? Can these ‘tariffs’ be supervised, and by whom, under what legal framework?

- **Who is technically operating the merchant interconnector and what operational regime should apply?**
  Can the operation of a merchant interconnector be left to the owner, or should an independent operator be designated, or should the TSO be in charge of operating the merchant interconnector?

- **Once a merchant interconnector has been constructed, should other parties (TSO, other merchants) then be allowed to construct additional interconnection capacity in parallel, or should that be precluded?**
  Any additional interconnecting capacity parallel to a merchant interconnector will influence the economic case for the owner of the (first) merchant interconnector to recover, since congestion will be reduced and most likely also his congestion rents.

The paper concludes with a reflection on the issue whether the special legal regime for merchant interconnectors really contributes to the envisaged integration of the European electricity markets and whether competition in transmission investment will create new opportunities for market dominance and, potentially, abuse of such dominant positions.
[Short CV]

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