



ChargeUp Europe

Ensuring open market conditions prevail in public tenders for EV charging infrastructure in the EU

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ChargeUp Europe is the voice of the electric vehicle (EV) charging infrastructure industry, bringing together the charge point operators, e-mobility service providers and hardware manufacturers, with the aim of ensuring a seamless charging experience for all European EV drivers. As of today, our 20 member companies represent over 300.000 charging points in all 27 EU Member States.

In this guidance note, we outline the urgent need to address public authorities' recent designs of public EV infrastructure tenders that put into jeopardy the much-needed private investment flowing into the public infrastructure segment of the EV charging market.

Setting maximum prices and creating excessive financing conditions are not what our sector needs. The EV charging infrastructure sector is a rationally driven business that is best steered through public tenders focused on quality-of-service provisions. Dictating economic terms on how EV charging infrastructure should be run will have a significant impact on the market and effect the speed of the rollout of public EV charging infrastructure in Europe.

Several recent public tenders are jeopardizing the proper functioning of the market

In the interests of both consumers and fair competition, ChargeUp Europe considers it essential that the terms and conditions laid down in public tenders are set in a fair and market based way. This is critical to ensure the long-term investment needed for the rollout of public charging infrastructure across the EU. As mandatory targets for public charging infrastructure are now foreseen in the Alternative Fuel Infrastructure Regulation (AFIR) it is important we get this right.

Recently, several public authorities in different EU member states have put forward detrimental terms and conditions in public tenders regarding pricing and funding of charging infrastructure. Such terms will directly distort the free market competition among market actors and jeopardize consumers' interests. More specifically, recent tenders for charging infrastructure include terms that impose a price cap for EV charging sessions or provide for 100% state-supported financing to cover the construction and operational costs for a specific period of time. We consider both these developments to be anti-competitive as they directly dictate economic terms, distort the market and thwart competition.

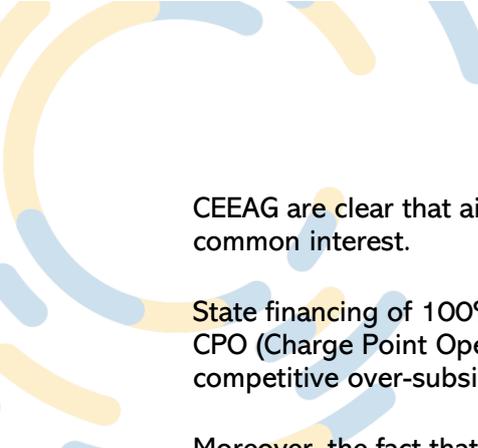
In the mid-to long term, it will threaten the prospect of several EU member states from meeting the European Green Deal and AFIR public infrastructure targets. State-funded EV charging stations coming out of the aforementioned tenders risk disincentivizing private investment in this important EV market segment. Below we outline some recent examples across the EU which illustrate these issues.

Germany: Excessive financing and price caps lead to the market distortion

We believe, in Germany, the recent "Deutschlandnetz" tender based on the "Schnellladegesetz" (fast charging act) will distort competition in the charging market by proposing 100% financing of the construction and operating costs of HPC (High Power Charging) infrastructure for a term of eight years, combined with a state-supported price cap of 44 cents gross per kilowatt-hour.

The "Deutschlandnetz" tender should be regarded as state aid that is not compatible with the requirements under Art. 107-109 TFEU¹, inter alia in view of the new Climate, Environmental and Energy State Aid Guidelines (CEEAG), which came into force in January 2022. The TFEU and

¹ [Treaty on the Functioning of the European Union](#)



CEEAG are clear that aid shall not adversely affect trading conditions to an extent contrary to the common interest.

State financing of 100% of the construction and operating costs covers the inherent costs of the CPO (Charge Point Operator) activity and eliminates regular business risks. This can lead to anti-competitive over-subsidization, which goes far beyond covering a financing gap.

Moreover, the fact that there is a price cap (currently set at 44 cents gross per kWh) undermines competition from operators of existing, as well as future, charging points that were not subsidized for the construction of the latter.

Such aid will create unfair competition with current players and will prevent new entrants and investments, which is contrary to the common interest.

Netherlands: Fixed pricing does not reflect the market reality

We recently observed that in 6 major tenders throughout the country, local authorities laid down a maximum charging price in their tendering requirements. In our view, this goes against the open market model that our association stands for.

The conditions and requirements in the current concessions create unreasonable and unbalanced relationships between grantor and holder. Virtually all risks are placed with the concessionaire, whereby there is no or unclear room for manoeuvre to avoid cost increases and market developments in a long-term operating period.

We believe that local and regional authorities play an inappropriate role by prescribing a price for a commercial service, where it does not purchase it itself and therefore has no investment risk.

Fixed prices are not the future on public charging infrastructure, therefore variable prices (peak and off-peak) should become the norm. In the coming years, grid operators will face major challenges in which price increases (per connection) are plausible.

Additionally, dynamic pricing will be fundamental to provide consumers the right signals to adopt services based on Vehicle-to-Grid (V2G) and smart-charging technologies, which will be, likewise, crucial to manage the additional grid load in the coming years. Therefore, creating conditions to incentivize consumers to adjust charging behavior – and price being one of the most important factors in that sense – is fundamental to ensure that EVs shall contribute to the flexibility of the energy system, including their participation in the balancing market and further absorption of renewable electricity.

We would therefore like to see the central government formulate future requests based on the quality of terms of service, without influence on the final price. ChargeUp Europe believes that through an open market the EV driver in the EU is best served by competition between the different providers.

EU-level action is needed – general principles to be met

The EU institutions should provide guidance through the AFIR proposal and the revision of the TEN-T guidelines, ensuring that public tenders procedures are in line with principles of EU competition law. ChargeUp Europe argues that the following principles and conditions should be respected in each tender:

- A fixed state price cap for a significant part of the infrastructure is a competition-distorting intervention that is disproportionate and not compatible with European law.
- Conceiving and operating EV infrastructure in the context of an open, transparent, and non-discriminatory market model is crucial.
- Focusing on putting market-based policies in place to guide the organization of public and competitive tenders.
- Public tenders related to public charging infrastructure must be granted based on clear, non-discriminatory and open tender requirements and procedures, to encourage an open market, access for new players, fair competition and minimum service level agreements (SLAs).
- The tender procedure should ensure that all players, including SMEs and independent charging operators, have an equal opportunity to compete and that a qualitative, measured choice has been made for a given party in a fair and transparent manner.
- It is crucial that state aid can only be provided to publicly awarded projects on EV charging infrastructure that are obtained in line with EU competition laws. This means that aid for EV infrastructure projects awarded through tenders can only be provided if the process has been open and transparent.
- Subsidies/aid should encourage the development of economically less attractive sites. When on public land and under a public permit, the Member State should only allow aid/subsidies for projects awarded through open and transparent (tender) procedures.
- Ensuring that tenders value first and foremost the quality of the entire charging solution offered (i.e., including SLA, uptime, grid connections, etc.), and related value to the consumer, to ensure a long-term, high-quality pan European charging network.
- Ensuring that government aid directed at public tenders takes into account the full range of charging technologies available and the merit of different solutions for different needs, such as AC charging in residential areas.

Conclusion

Effective competition for charging stations will help to promote EU and Member State coverage, reasonable prices and a range of choices for the EV driver. In order to ensure this, open and non-discriminatory access to the market must be preserved at all stages of infrastructure development.

The allocation of state funds has to be carried out on a non-discriminatory basis. Additionally, the tender specifications should take sufficient account of the competitive objectives.

We strongly believe that setting upper price limits for charging tariffs combined with distorted public financing conditions is anti-competitive. This is not in compliance with the CEEAG and can adversely affect trading conditions contrary to the common interest. Such regulatory-type requirements distort competition and could squeeze out existing or planned private offers and investment and stand in the way of quick expansion.

So far, the EV charging market has been operating and developing under a fair competition model which should be maintained. Therefore, we call on the European Commission and National Competition Authorities to ensure an open, fair, competitive market-based approach in public tenders.