

STAKE HOLDER CONSULTATION PROCESS OFFSHORE GRID NL	
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1. Expert Meeting 27.11.2014

N.A.

2. Expert Meeting 29.01.2015

N.A.

3. Expert Meeting 18.03.2015

N.A.

4. Expert Meeting 15&16.04.2015

Feedback from the meeting attendees

In the tender requirements, signing of the connection agreement should be included. The framework of the agreement is available and consulted before start of bid procedure so the framework is known by then. It cannot be that a party wins the bid but refuses to sign the agreement.

When will the models be available? The content will be shown by TenneT and will be discussed in a separate legal session. They will preferably not be published publically (yet).

For the connection agreement you will have discussions with representative bodies. Also for the model other agreement? [TenneT] Yes; for both agreements.

Can you share the draft agreements with this group? In order to inform our representative bodies in the GEN. [TenneT] slides will be shared. Draft agreements TenneT prefers to set up a negotiating group which can debate in good faith on the content of the agreement itself.

When would this take place? [TenneT] In parallel with the GEN process.

Will the agreements be available in English? [TenneT] yes I think it is the best idea to provide these agreements in English (under Dutch Law).

So the agreement could be in either Dutch or English. That means that no framework agreement will be more official? Both equally valid?[TenneT] Yes.

Presentation Fokke Elskamp Connection agreements & realisation agreement

For the next meeting we'll organise a legal session with lawyers of the representative parties. Before the next expert meeting please have your legal party check the presentation and enter feedback into TenneT's feedback document.

There were questions on after the model contracts are ready by the end of this year; could there be any changes between model contract and to be signed contract or is the technical design fixed [TenneT] technical requirements in the contract will follow the code level and will not deviate from that. In the case of design changes before the end of the year, the technical specs will also change. But not expected after this year. Intention of TenneT to finalise these documents as far as needed to be able to commit to this model agreements.

What is the risk that something might change? [TenneT] we should operate in good faith – If TenneT makes the offer the developer can assume that that will also be the content of the contract. The offer is the set of maximum requirements that the developers should meet, if more is asked by TenneT the developers can argue that their position is damaged and that all that is asked additionally harms their position.

5. Expert Meeting 12.05.2015

Summary of concerns based on feedback during the Expert Meeting

- Language of contract
- Timeline and available time to discuss before commitment
- Planning and status of agreement during deadline of tender
- Compliance testing and approval of testing in relation to time

Feedback from the meeting attendees

Presentation on the Offshore Realisation Agreement

Q: What is the "connection unit"?

TenneT: By definition of the Electricity Act it is part of the grid. Until the connection point the responsibility for management will be with TenneT. Technically it runs from the main bus bar to the interface with the installation of the connected party.

Q: Will the agreement be in Dutch or English?

TenneT: We're considering to agree in English. We have to agree according to Dutch law, but the language of the agreement can be in English. To be decided and agreed upon.

Q: How will that be decided and when?

TenneT: If the parties and the involved governmental bodies agree, then we can finalise. From a legal perspective we would prefer to have an English and a Dutch version.

C: Please also add references to the Dutch law. There are concerns on translation and reference and/or definitions, which might lead to confusion.

Q: Will you be talking more about access to the platform?

TenneT: Yes, it's part of the technical topics.

C: In terms of security rights for the wind farm financing parties we need to know where the ownership of the connection starts.

Q: Is the amvb due to go to the parliament as well?

TenneT: Yes, The Minister intends so.

Q: Mentioning the matter of a reference date for compensations: do we have any idea on the level of detail of the compensation scenario? Will it be sufficiently detailed? The STROOM proposal will go into effect as from January 2016 and the scenario should at that point also be ready, but expectedly not in full detail.

TenneT: Planning is part of technical topics and will be incorporated in the connection (realisation) agreement.

C: The agreement will be part of the tender package which will be presented in December at the latest. At that point it will be fixed in the documents.

TenneT: The tender will give the planning but the realisation agreement will not be signed at that time. Planning will, at that point, be separately from any agreement be decided upon.

Q: Does this mean that we will know the planning before submitting our tender offer?

C: When we submit our offer we need to have a firm date from TenneT.

Q: Where will this date be documented? Will it be consulted and agreed upon during the technical sessions?

TenneT: This will be part of agreement. After the winner is known planning of TenneT and the offshore windfarm developer need to be aligned.

Q: Does this mean that a fixed date will be set and in case a developer wishes to delay this could be discussed with TenneT?

TenneT: Correct.

C: the provision in the contract that "in case the planning does not seem reasonable, parties will consult with each other in order to arrive at a mutual acceptable solution" is too flexible in this perspective.

Q: Will the delivery date be legally binding for TenneT?

TenneT: Yes.

Q: Are you sure that the planning of onshore connections will not get into the way of the offshore development (Omgevingswet)?

TenneT: for this first project (Borssele Alpha) we don't have any worries, but for the following projects we should include the influence of the Omgevingswet.

TenneT: Questions on the compensation regulation should be addressed during the discussions with the ministry of EZ.

C: Yes, but the date of the start of the compensation is settled here.

Q: Going back to article 7, can we agree that the 2nd and 4th bullet are not relevant in the offshore agreement?

Q: What kind of liability do we have if we terminate the agreement?

TenneT: basically none, but you have made costs and the runner up will be connected.

Q: Are you taking into account that banks might like you to get into a direct agreement with them (in case of project financing). They want agreement in case project developer goes bankrupt.

Q: Is there attention given to the difference between full commissioning and first power? Will there be a difference? Is that taken into account during the connection phase?

TenneT: This is something we would like to discuss during the technical planning session.

Q: Are we talking about the ability of attaching one string at a time and energise the string? Developers want to energise right away. We should be able to energise string by string and use the information immediately.

Q: Regarding access to platform: we would like to have access during construction and operation phase, as this has consequences for the legal and security/insurance part. Are you aware of that? TenneT: yes we are and will make a draft after the technical discussion is closed.

Q: You will not be the one that will compensate us when the connection is delivered late?

TenneT: Yes, we are.

Q: Then we would also like to know about your insurance in order to be sure you can.

TenneT: The source of the money for compensation is not TenneT.

Q: If TenneT will be the intermediary of this payment, where will this be arranged in the legislation? Will there be separate legislation about this process?

TenneT: Yes, there is a basic rule in the law and it will be further elaborated upon.

Q: Still, if TenneT is paying the mandatory compensation., you compensate us first and then get financing from the tariffs. This still puts the financial situation of TenneT in the picture.

TenneT: Yes, that's correct. We also need a framework on how to approve the compensation/judging the claims. The system of the compensation still needs to be worked out – also where the finance comes from.

Q: We are concerned about compliance testing in relation to time. What if we fail a compliance test and this leads to delay? Where does the risk of damages of this delay lay?

Q: Who will decide or judge whether a project developer is compliant?

TenneT: There is a document with compliance definitions. Tests are executed by independent third party and will be approved/declined.

Q: Regarding compliance testing: are the only answers yes or no? We will have to discuss it with colleagues from operations.

TenneT: It could be that one doesn't comply but can take compensation measures and become compliant while being connected.

Q: Physical connection of inter-array cables and TenneT's platform – what is this part of the grid? What happens in case of damage during connection activities?

TenneT: Connecting the installation to the platform will be the responsibility of the developer.

Q: How about crossing agreements?

TenneT: That issue is still up for discussion and if relevant for operation of the platform, to be added to the CTA.

Presentation on the Offshore Connection and Transmission Agreement (CTA)

Q: How do you use the term connection?

TenneT: it's a defined term in the Dutch Electricity wet

Q: why do we need the realisation agreement? Why not take the technical details in the CTA? TenneT: Technical details are in CTA and we have the realisation agreement due to marks the moment/planning of connection. The Realisation Agreement will end at point of realisation of connection.

C: It is not clear why there is a need for a Realisation Agreement.

TenneT: So if we add the planning to the CTA we can skip the realisation agreement?

Answer: Yes.

Q: After the subsidy period, there may be charges for feed-in introduced?

TenneT: Transmission tariffs are not applicable for feed-in, this is included in the subsidy scheme.

Q: Could this be connection to the lifetime of the wind farm instead of subsidy scheme since the business case is based on the lifetime of the wind farm?

TenneT: The only thing we would like to clarify is that if something changes regarding the applicability of the subsidy scheme, this will not change the agreement.

Q: The Agreement mentions "proposed changes". Does this mean by TenneT or the developer?

TenneT: Both, but after the Grid Code is brought in line, this will be included there.

C: We need legal reassurance that the developer is not obliged to change the technical specifics of the installation. The onshore edition is read and that paragraph is reassuring – therefore please rephrase this bullet (article 5).

Q: Regarding tariffs, where are the system services charges incorporated?

TenneT: Point taken, we will check proposed regulation.

Q: What is meant with "primary connection point"?

Q: Are the issue of trafo and cable losses included in the technical discussion?

TenneT: No, it is put in here as a reminder that we might have to agree on something. On second thought, this will probably not be relevant: cable losses until the platform are for the windfarm owner. Platform losses are for the account of TenneT.

Q: Also in the CTA compliance tests are mentioned. How often do you ask us to execute such a test?

Q: Depending on what documents we need to submit, will TenneT ensure that it will use that only for compliance purposes?

TenneT: Yes

C: Also include a minimal term for termination of the agreement.

Q: "Cancellation in case of pressing issues" is mentioned – what is the threshold?

C: There will be an overlap between CTA and Realisation Agreement – separate strings can be either in CTA or REA, therefore it would be useful to combine TCA and REA.

Q: Would it be a suggestion to merge the general terms and conditions into the agreement itself?

Process

It is generally suggested to have at least two more sessions like this before going to GEN and representative bodies.

Q: Which parties are involved with GEN? Which process do you follow? This in order for everyone to be represented.

TenneT: GEN parties that should be included in model contract negotiations are identified and invited for these sessions. If they agree with receiving a draft agreement which is further discussed in Expert meetings

of the offshore stakeholder consultation process, agreement on the negotiation agreement can be reached.

Q: Is the proposition to include the identified parties in this consultation?

TenneT: if the representative bodies and the consulted parties at the Expert meetings agree upon the procedure, this will be fine.

C: It is also important to be able to provide written input. But it's handy to have a written proposal of the contract available for that purpose.

6. TenneT stakeholder consultation website April

- There is still no clear view on the exact content of the connection and realization agreements and the timeline for finishing these.*
- TenneT wants to consult the draft agreements with the “representative bodies” in the GEN, not necessarily with the wind developers interested in Borssele. This may not be a very optimal way of working but TenneT is rather formal in saying that they are bound by law to do it this way. The GEN consultation should be in Q2/Q3 of this year, with a final proposal for these agreements to be submitted to the ACM for approval in September. Approval expected in Sept/Oct . It is highly recommended to have the content of the agreements also consulted via the TenneT present consultation procedure for the offshore grid, see also next bullet.*
- TenneT does not yet fully seem to realize that TenneT’s way of working on drafting the offshore connection and realization agreements and the content of these agreements is / will be heavily influenced by the fact that there will be a competitive tender. The Ministry of Economic Affairs indicated that they intend to stipulate in the tender guidelines that the developers may base their bid on the connection agreement / realization agreement as it is at the moment of bidding. The Ministry did however not state what would happen if TenneT for example changes the agreement after the tender and this increases the developer’s costs or diminishes his production. This needs to be to discussed further and cleared up fully before the 1st tender opens.*

7. TenneT stakeholder consultation website May

We appreciate the legal session and supports the way TenneT is consulting the sector with regard to the offshore legal framework. However, today’s session made clear that we are only at the start of a process and therefor We consider it of great importance that at least two more legal sessions will be organised in the same stakeholder setting during which all the details of the offshore connection & and transmission agreement, the offshore realisation agreement and the draft offshore code can be discussed. At this moment we are not yet able to comment on the legal documents as they are not available yet.

To enable developers to provide TenneT with relevant (written) comments, We ask TenneT to publish on its website the aforementioned documents at least one week before the next legal session takes place which enables a proper preparation.

We understand from TenneT that the legal documents will not have to be formally sent to GEN, but that only representative organisations (in casu Energie-Nederland, DE-koepel, VEMW, Energie uit water) from GEN have to be consulted. We are open to an approach where representative organisations and developers will jointly proceed in expert workshops. Should the legal documents have to be sent to GEN however, a clear consensus with the developers would first have to be reached.

Being part of an international concern, it is significant for us that all the legal documentation will be available at least in English.

Herewith an initial response to the materials submitted and discussed during the legal meeting.

Connection and Transmission Agreement (CTA) and Realisation Agreement (REA):

- *Mandatory compensation in relation to grid delays and/or interruptions of power transmission (art 6 GTC CTA; art 7 REA and art 8 GTC REA; art 5.27 STROOM Act and subordinate regulations)*
 - *We note that the rules of compensation are set out by the Ministry of Economic Affairs in the STROOM Act and its subordinate regulations, however, payments are, as we understand it, coming from TenneT. Thus it is crucial that we have complete clarity on the compensation that will be paid by TenneT, how modelling on losses is to be conducted and what consequential losses (if any) are not to be covered in case of a delay and/or outages on the transmission cable. This applies both for the situation when the full wind farm is/should be up and running and in case only part of the wind farm is active but after first power.*
- *Commissioning (art 7 REA)*
 - *Please provide clarity as to when commissioning will take place, in order to ensure that this process is aligned with the possibility offered by the subsidy scheme to start operation of the wind park in strings.*
- *Access to platform (art 3 CTA; art 6 REA)*
 - *It is essential to [Us] that we gain access to the platform – not only during construction but also under operations since it would normally have certain assets including the SCADA situated on the platform. Operational agreement to regulate conduct, assets and liability (typically knock for knock and in rare cases capped liability).*
- *Crossing agreements (art 5 GTC REA; art 4 GTC CTA)*
 - *Please ensure that there is a legal framework quickly solving disputes between crossing parties if no agreement can be reached. As the crossing agreement is tied to the consent it will be important to ensure that the existing party is somehow motivated to enter into a crossing agreement on market terms, as the crossing party otherwise risks being forced into unreasonable terms and/or delays.*
- *Information exchange (art 9CTA; art 5 REA)*

- *Please clarify the range of information and use of information by TenneT in relation to compliance testing.*
- *Language of agreements (art 1 CTA; REA (general))*
 - *[We] would prefer an English version of the agreements with Dutch terms inserted in brackets to avoid ambiguous interpretations of an English term (subject to Dutch law).*
- *Change in installation requirements (art 5 and Annex 4 CTA)*
 - *It needs to be clearly defined when and what TenneT is allowed to change in relation to installation requirements.*
- *Direct Agreements (General remark, e.g. in relation to termination as set out in art. 9 REA en art. 5 and 12 GTC CTA)*
 - *As briefly touched upon during the consultation meeting of May 12th, we kindly request TenneT to consider that in view of a potential project financing, it may be asked to enter into so-called direct agreements with the lenders in relation to the REA and CTA, providing the lenders, inter alia, a right to step into these agreements to remedy a default/termination event with respect to the project company. This is done since from the lenders' view the real value of their security lies in the project agreements such as the CTA and REA and the directs agreements may help them to preserve the project agreements and find another party to take them over from the defaulting project company.*
- *Deadlines (General remark)*
 - *Please note that the backstop date for when the grid has to be operational needs to be firm and set prior to the submission of the tender bid in order for bidders to be able to properly plan the project.*
- *Continuation of the consultation process (General remark)*
 - *[We] would strongly prefer at least 1, but ideally 2 more consultation meetings between TenneT and potential bidders, similar to the session on May 12th, before the text is handed over to the GEN for further negotiation. During our meeting on May 12th only parts of the CTA and REA were discussed. There was for instance no opportunity to address the GTC, which contain important information. Moreover, for a comprehensive understanding the CTA and REA should be seen as part of the overall regulatory package and [We] would welcome additional consultation meetings in order to be able to address additional concerns that may arise in the course of the development of this package.*

CTA	TEXT	REMARK
1		<i>Consider to integrate T&C into contract</i>
3		<i>Max. 10% overplanting : where does this percentage come from?</i>
4	<i>Basic Design: technical description and diagrammatic representation of the Connection on TenneT's connecting platform, added as Annex 2. Information</i>	<i>The bidders in the offshore wind subsidy tenders will base their bids on the TenneT documentation (most importantly the Basic Design) as it is available at the time of the tender. If the documentation changes in</i>

	<p><i>duty TenneT regarding possible or planned changes to the details of the Basic Design (Annex 2)</i></p>	<p><i>the period between bid submission and signing of the agreements and this change causes either higher costs for the wind farm developer, or reduces his income from the wind farm during the operational period of the wind farm, the developer should be compensated for this.</i></p> <p><i>This compensation could be arranged either via an increase in the SDE subsidy or via direct compensation by TenneT.</i></p> <p><i>If the choice is made to arrange the compensation via TenneT, the Realization Agreement and Connection Agreement need to include a mechanism whereby TenneT compensates the developer for the negative effects of the change.</i></p> <p><i>It would be advisable to make explicit in the contracts that TenneT will consult with the developer on any desired changes in order to minimize any negative effect for the developer of changes to the TenneT requirements and design of the offshore transmission system.</i></p>
5	<p><i>OWF ensures to satisfy the requirements applicable to the connected Installation in Annex 4, after taking in operation and continuously during the term of the CTA</i></p>	<p><i>Fulfilling the grid code is a joined responsibility of both the wind farm owner and the owner of the substation. This should be represented as such in this agreement.</i></p> <p><i>Furthermore, it should be made unambiguously clear that these requirements are reasonably achievable for the wind farm developer / owner, taking into account accessibility, technical design and other challenges that an offshore wind farm poses for the developer/owner.</i></p> <p><i>Early consultation (before opening of the subsidy tender) of these Annex 4 requirements is necessary, as well as a representation of this shared responsibility in the agreement.</i></p>

9		<i>All testing requirements should be based in Codes. Any additional tests desired by TenneT needs to explicitly agreed upon by OWF</i>
10	<i>CTA takes effect on the day after the Connection has been taken into operation</i>	<i>How does this work if the connection is delivered in tranches</i>
11	<i>CTA governed by the Laws of The Netherlands</i>	<i>Consider adding: With the exclusion of the rules on the choice of law. boilerplate clause to prevent the Dutch rules on which law applies to eventually point to a different jurisdiction than the DCC. Could be a risk since foreign parties may be contracted</i>
CTA GENERAL T&C		
4	<i>Arrangements for cable crossing</i>	<i>Presumed to be needed for cable crossings of OWF and TenneT cables. Needs to be a separate agreement. Template agreement should be in place together with TCA/REA</i>
4	<i>Shared use on behalf of a third party</i>	<i>Shared use on behalf of a third party should only be possible with the consent of the OWF. OWF should have full discretion in deciding whether or not to cooperate; terms of cooperation to be agreed upon.</i>
5	<i>Successor to TenneT</i>	<i>Successor should be of financial standing as per the entry into the agreement</i>
6	<i>Entire article</i>	<i>Not in compliance with STROOM, to be deleted</i>
10	<i>5.27 STROOM</i>	<i>Reference to article(s) of the law will do; copy/translation not desired.</i>
11	<i>Entire article</i>	<i>Not compliant with STROOM. Please note that the STROOM bill and AmvB prescribe a strict/no-fault liability for TenneT (risico-aansprakelijkheid). Other sources of liability should also be reviewed and dealt with in the contract, i.e. DCC book 8 (transportation law), treaties, sea law, etc.</i>
12	<i>Termination grounds TenneT: TenneT's TSO-at-sea designation ceases</i>	<i>Only if a new one has been appointed and is legally bound (by a CTA) to transfer and supply OWF</i>
12	<i>Upon granting suspension of payments (unless sufficient security furnished within reasonable time) •Bankruptcy declared or filed (unless sufficient security furnished within reasonable time)</i>	<i>At all times, continuation of the OWF should have priority. What is the legal risk of TenneT, since no feed-in tariff is due? TenneT should not be entitled to unilaterally terminate the contract</i>
12	<i>TenneT may cancel the CTA because of</i>	<i>This cannot be done at the sole discretion of TenneT.</i>

	<i>pressing interests (“zwaarwichtige belangen”), with due observance of the OWF’s reasonable interests upon written notice giving reasons for the cancellation and a reasonable period of time</i>	<i>A third party (court or ACM) should be involved to test and approve/decline proposed termination by TenneT</i>
	<p><i>TenneT may dissolve the CTA with immediate effect after:</i></p> <ul style="list-style-type: none"> <i>• notice of default affording a reasonable time for redress, OWF fails to fulfil any of its obligations (except payment obligations – under the CTA, and seriousness justifies dissolution in view of safety of people and property or the safety and reliability of the public electricity supply</i> <i>• notice of default affording a reasonable time for redress, OWF fails to fulfil its payment obligations</i> 	<p><i>All possible rights under the Dutch Civil code (DCC) for dissolution should be excluded as far as possible. A right for TenneT to suspend Transportation/supply/ connection could be included in the event of immediate and grave danger for materieel/ personnel/the distribution system, etc.</i></p> <p><i>All DCC- rights of suspension should also be excluded</i></p>
15	Amendments of the General Terms and Conditions (1)	<i>If the T&C are integrated into the agreement, this discussion is not needed anymore. Any changes to the agreement only in writing between the parties. No role for the representative bodies, i.e. no majority voting, etc.</i>
17	<i>Choice of court</i>	<i>It is advisable to nominate a court with experience in offshore disputes. The courts of Rotterdam fits that profile.</i>
REA		
7	<i>Setting the target date for commissioning of the Connection; in accordance with the scenario of the Minister of Economic Affairs</i>	<i>The completion date of the connection must be a legally and contractually binding term. This should be the date from which the compensation scheme for late delivery kicks in.</i>
	<i>TenneT shall do everything that may be reasonably expected (best effort) to complete the Work in accordance with the Planning; if in spite of this the Planning turns out not to be feasible, Parties will consult with each other in order to arrive at a mutually acceptable solution</i>	<i>Fine to include obligation of TenneT to ‘do everything’ as long as the consequences of not making the planning are not curtailed: compensation in accordance with STROOM. Please note that the STROOM bill and AmvB prescribe a strict/no-fault liability for TenneT (risico-aansprakelijkheid).</i>
7	<i>If the required permits for the construction</i>	<i>Permits of TenneT not relevant for OWF. Delay =</i>

	<i>of the Connection are not issued, Parties shall consult with each other about possible alternatives</i>	<i>compensation for OWF if requirements of STROOM are met.</i>
GENERAL T&C REA		
	<i>General to be discussed: consider integration of T&C into contract; consider integration of REA and CTA into one document</i>	
2	<i>REA ends by operation of law after both Parties have fulfilled all of their obligations arising from the Agreement</i>	<i>No objection but provisions may need to be made in the event of delivery in sections</i>
9	<i>If during or after the performance of the Work shows that the performance does not meet the requirements that may be reasonably imposed on it, TenneT will correct any errors and rectify any deficiencies</i>	<i>The requirements should be clearly set either by government decision or contract). Room for discussion about "what requirements may be reasonably imposed" should be minimised. TenneT to correct errors at its risk and costs</i>
9	<i>If OWF suffers damage due to attributable failure to TenneT in fulfilling its obligations connected to the realisation of the Connection, TenneT will only be liable for damage covered by its Construction All Risk (CAR) insurance policy or that TenneT can recover from third parties</i>	<p><i>Having or not having an insurance is not relevant for determining liability. A CAR is not a third party liability insurance and will not cover contractual liability. So it cannot be a condition for liability of TenneT nor a measure for the scope of liability.</i></p> <p><i>This clause is in its effect a limitation of liability. TenneT's liability should not be limited as this imposes a risk on the developer that he cannot manage.</i></p> <p><i>Clause to be deleted in its current form.</i></p>
12	<p>Article 12 – Early termination of Agreement</p> <ul style="list-style-type: none"> •<i>If the OWF:</i> •<i>files for bankruptcy, is declared bankrupt, cedes its property to credits, submits a request for suspension of payment</i> •<i>decides to discontinue its business activities or a significant part thereof – including its stake in a company that already exists or is to be established – or decides to change its business objectives or to dissolve or wind up its business</i> 	<p><i>Marked parts:</i></p> <p><i>Please explain what is meant and why they are a threat for TenneT which would justify such a grave measure</i></p> <p><i>General: TenneT may not unilaterally terminate the REA. The developer/owner of the offshore wind farm is bound by the Execution Agreement with the State to have the wind farm operational by a certain binding date. Cancellation of the REA would of course make this impossible and would cause an extreme loss for the wind farm owner.</i></p>

		<i>So this right of termination should be deleted.</i>
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8. Bi-lateral meetings

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9. Other