

Answer of the Italian Competition Authority to the Public Consultation on Fundamental Electricity Data Transparency

The Energy Directorate of the European Commission (DG Energy) launched a public consultation on a document produced by ERGEG and entitled “*Comitology Guidelines on Fundamental Electricity Data Transparency*”. The document aims at creating a continuously updated European database of information regarding load, transmission, generation and balancing, at a very disaggregated level (unit by unit). The Italian Competition Authority (ICA) welcomes the creation of an European database, as it is a necessary complement to all initiatives – e.g., to regional market coupling experiments - aimed at creating a single European energy market.

The public consultation document issued by the DG Energy strikes the difficult balance between positive and negative effects of transparency in electricity markets. On the one hand, it says that asymmetry of information can result in an unlevelled playing field and in opportunities of market manipulation; on the other hand, it also makes it clear that transparency, in particular on concentrated markets, can facilitate anti-competitive behaviour (in the shape of tacit or explicit collusion). Since most of the questions posed by the Public Consultation Document refer to the possible competition consequences of the increase in transparency, the ICA wants to participate at the public consultation with an opinion mainly based on some recent cases on electricity markets, one advocacy report of 2009 and one opening of investigation of 2010. A copy of the relevant documents is provided as an annex to this opinion.

On a preliminary base the ICA wants to outline that the major competition worries arising from an increase in electricity markets transparency concern the publishing of some of the data on generation, balancing and planned and unplanned outage of consumption units (see §§4.1.3.7, 4.1.3.8, 4.3 and 4.4 of the Guidelines). Data on load and transmission and interconnectors (see §§4.1 and 4.2 of the Guidelines) are less critical in so far as they are already largely published by the TSO; besides the delivery to the general public of the one which are currently unpublished could facilitate the participation of new subjects to the market and effectively help creating a level playing field between ex incumbents and new entry (especially traders of electricity).

From a general perspective, the ICA holds that an excess of transparency in the wholesale and balancing markets (stemming from the obligation to reveal “unit by unit” data on an hourly basis contained in the Guidelines) might create competition problems given that the benefits to the traders and consumers could be more than compensated by the larger opportunities to collude among generators granted by total transparency. While it is true that a greater transparency would make it easier to detect outcomes of collusive behaviour (but with extremely high monitoring costs), it would also offer firms a strong argument before competition authorities to claim that

their uniform behaviour was just the intelligent adaptation to the behaviour of competitors, as emerging by almost real-time data, and therefore outside the reach of art. 101 TFUE (tacit collusion).

This critical position on excessive market data has been held by the ICA in an advocacy report to the Italian Ministry of Economic Development, issued in april 2009 when a new law was approved providing that the time-lag for publishing unit by unit offers on the Italian power exchange would be reduced from twelve months to seven days.¹

The ICA maintains that the market structure crucially matters in evaluating whether the benefits of transparency are greater than its costs. In most European countries, wholesale electricity markets are still characterized by the presence of a single dominant company, usually the former legal monopolist, which can rely upon a strong information advantage vis à vis new entrant; such information advantage can be easily used to manipulate market outcomes. In markets with a structure of this kind, the cost of transparency associated to the risk of collusion is very low, and it is largely compensated by the benefits, deriving from the abatement of information asymmetries, accrued to consumers and traders.

The Italian wholesale electricity market does not share this kind of “dominant firm” structure. In the last decade, since full liberalization of generation activity took place in 1999, the market share of the incumbent - Enel - has constantly shrunk whereas many new entrants, three of whom have been created by the legal obligation imposed on Enel to sell 15.000 MW of generation capacity, step in the market. Enel’s market share of total electricity produced in 2010 is below 30% and Enel was able to set the marginal price in the Italian Power Exchange in slightly more than the 20% of the hours in 2010. The occurrence of zonal separation of different areas of the Italian territory as a “market outcome” is rapidly decreasing: in more than two third of the hours in 2010 continental Italy has been a single market zone while new interconnections from the continent to Sardinia and Sicily should rule out separation issues between Italy and its main islands by the end of 2013. Moreover, intense investments in new capacity and in the repowering of existing plants (mainly using CCCT technology) created an “overcapacity” situation which is still not fully able to extend its beneficial effects on electricity wholesale prices nationwide due to the persistence of some bottlenecks and congestions on the transmission line (which the Italian TSO Terna is trying to resolve by implementing an ambitious investment plan in the next five years).

Italian wholesale electricity market could then be defined an oligopoly. In such a situation, possible infringements of competition law would take the form of collusion rather than abuse of dominance. The ICA has recently opened an investigation

¹ AS632 “riforma del mercato elettrico in materia di trasparenza delle informazioni” , attached.

regarding an alleged cartel among three competitors aimed at sharing a niche of the ex ante balancing market in Central-Southern Italy². In this case, as in other possible situations, the ICA believes that firms involved could have taken great advantage of the possibility to know, with a seven days delay, their competitor behaviour on the balancing market. It must be noted that ERGEG Guidelines would reduce this delay to one hour.

If data have to be updated by the hour, the danger arising from an excessive transparency, in countries where the structure of the wholesale electricity market is similar to the Italian one, could be reduced, without sacrificing too much consumers and traders' benefits, by publishing generation and balancing (and perhaps load) data aggregated (not "unit by unit") over meaningful portions of the national transmission grid. In Italy, zonal structure would offer a natural aggregation basis, but appropriate sub-zonal aggregates could be determined by the TSO. A similar determination could be made by TSOs in other countries. Disaggregated data could be provided later, say at least one week later.

Against this general background, we provide below some specific answer to some of the consultation questions.

Question 3

The ICA submits that the "name of consumption unit" should be reported only if the "consumption unit" is a wholesale trader aggregating the demand of several customers. The identity of individual customers buying wholesale should never be revealed, to avoid leakage of commercial sensitive information, which could also be used for anti-competitive purposes (both in electricity markets and in those markets where the consumers are active). Provided that this condition is satisfied, data could be published even on a unit-by-unit base. The ICA does not believe that such a limitation would harm in any way participants to traded electricity market.

Question 4

Publishing unit-by-unit data on planned unavailability of generating plants it is useful in order to signal to consumption units the opportunity to modulate consumption to mitigate the effect on prices of reduced supply and to help discovery possible instances of concealed capacity withdrawal. As to unplanned unavailability, publishing data on a unit-by-unit basis could be useful to the extent that consumption units reduce consumption or take equivalent measures in order to avoid that generation units bid taking into account expected supply reduction. This effect could outweigh competition concerns related to the exercise of market power by pivotal units. However, in all countries where intraday adjustment markets are absent or do not experience a sufficient demand participation, publishing unit-by-unit data could raise a significant danger of balancing offer manipulation and of market power

² I736 "Repower Italia- prezzo del dispacciamento Italia centro sud", attached.

exercise by units made “locally essential” by the outage. Therefore, the ICA submits the opportunity of aggregating data published hour-by-hour and to publish disaggregated data later.

Question 5

See the general part above