

[Address]

Copenhagen, September 13, 2011

**Nordenergi response to the EC Public Consultation: *Guidelines on Fundamental Electricity Data Transparency***

**Question 1:**

**Do you have any major problems or policy issues related to transparency which go beyond ERGEG's advice and which you think should be addressed in the Commission's proposal?**

Yes.

Reporting of fundamental data disclosure should primarily build on existing transparency platforms where possible and this should be clearly brought up in the guidelines. In addition, the guideline should be complete and also take into account parallel processes with REMIT. Ideally, market actors should face just one clear and consistent set of reporting obligations instead of several potentially conflicting ones stemming from different legislations.

Before comitology process, the Commission main objective should be to ensure the legal certainty and clarity of all provisions and definitions that market parties will be subject to. When any doubt about competition issues exists, this must be solved without ambiguity before the final version of the guidelines is adopted. As a general principle we believe that no exceptions or discrepancies of treatment should be allowed for any player or market: a level playing field is needed at EU level.

It is fundamental that in the Guidelines a clear timeline is set for the complete implementation of the transparency requirements. In this respect, the European Commission, the Agency for the Cooperation of Energy Regulators (ACER) and ENTSO-E, in cooperation with all relevant stakeholders, should take a leading role in the harmonisation process towards a European-wide solution.

**Question 2:**

**Do you consider that definitions are complete and clear enough to avoid any potential problems when applied?**

No.

Many items (e.g. generation unit, generation type, forecast margin, reservoirs filling rates, total load, etc.) don't currently have a precise enough or practical definition. Some critical items and a number of improvements have been brought up in Nordenergis and Eurelectrics responses to the ERGEG Consultation on their Draft Advice, especially 100 MW threshold applied to generation units and not to production units, removal of the point 4.3.2.3 as it is not of any significant value for the market, and a request for a standard definition of the reservoir filling rate in MWh. It is stated that data should be provided on a unit-by-unit basis by the primary owners of the data, but for unavailability it is not clearly stated that the information shall be published on a unit-by-unit basis as well.

Forecast information (such as all ex-ante requirements) shall be provided on a reasonable endeavour basis. Therefore, information providers should not be held liable if such information proves later to be incorrect, provided they have duly updated this information and unless it is demonstrated that the incorrect information was disclosed on purpose.

For these reasons, we believe that the drafting process of the definitions for the Fundamental Transparency Guidelines, which was informally initiated by ENTSO-E earlier this year, represents a crucial element needed to ensure the implementation of clear, balanced and practical Guidelines. Such process should therefore be carried out with great care and with a continuous and effective stakeholder involvement. While we can understand that ENTSO-E takes a central role in the drafting of the definitions, we believe that the Commission and ACER should also contribute to the process along with market participants, in order to ensure that the definitions are fully consistent with the legally binding Guidelines.

#### **Question 3:**

**Points 4.1.3.7 and 4.1.3.8 of ERGEG's guideline require publishing ex-ante information on planned and ex-post information on the unplanned unavailability of consumption units including the name of the consumption units, location, bidding area, available capacity during the event, installed capacity, etc. Do you consider that publishing this information on a unit-by-unit base would be likely to create any competition concerns (e.g. because of the commercially sensitive nature of information on energy consumption of individual companies)? If yes, for which industries, in which Member States, etc.? How does this concern relate to the potential benefit this information yields to participants of traded electricity markets? Could this concern be remedied in a way which would nevertheless enable market participants to properly assess such an important change in a demand fundamental (e.g. by publishing data in aggregated form)?**

Only information on unavailabilities of consumption units that can have impact on market outcomes should be released (thus only consumption units higher than 100MW). We have no view on the possible competition concerns in other industries, but as a leading principle similar requirements should apply as for generation units, as the impact on the market is similar.

#### **Question 4:**

**Points 4.3.2.4 and 4.3.2.5 of ERGEG's guideline require publishing ex-ante information on planned and ex-post information on the unplanned unavailability of generation units including the name of the generation units, location, bidding area, available capacity during the event, installed capacity, etc. Do you consider that publishing this information on a unit-by-unit base would be likely to create any competition concerns? If yes, how does this concern relate to the potential benefit this information yields to market participants? Could this concern be remedied in a way which would nevertheless enable market participants to properly assess such an**

**important change in a supply fundamental (e.g. by publishing data in aggregated form, for instance per production type and balancing zone)?**

No.

Planned and especially unplanned outages are not commercial or market driven events. We believe that publishing unavailability's on a unit-by-unit basis will have more positive than negative impact on competition. In fact, outage-information is regarded as insider information in the REMIT-proposal.

However, it needs to be stated in the Guidelines that information about the duration and cause of unplanned outages are provided on a "best effort" basis. When new information is available the updated information should be published as soon as possible, generators should not be liable for incorrect first information, provided they give corrected updates as soon as possible and provided there was no intentional misreporting.

In addition, the aggregated amount of unavailable capacity in each bidding area could be published on the information platform to make it easily available to all players .

**Question 5:**

**Point 4.3.2.8 of ERGEG's guideline requires publishing actual unit-by-unit generation updated every hour. Do you consider that hourly publishing this information on a unit-by-unit base would be likely to create any competition concerns (e.g. by increased possibilities to monitor the behaviour of competitors, to enter into collusive strategies)? If yes, how does this concern relate to the potential benefit this information yields to market participants? How in your view could the concern be remedied (e.g. by publishing data in aggregated form, for instance per production type and balancing zone and/or by publishing with a longer delay than one hour)?**

While we agree with the disclosing of unplanned outages unit by unit, we question if the increased transparency reached by disclosing real-time production per unit could bring socio-economic benefits which exceed the risk of reducing competition and reveal commercially sensitive information.

A thorough assessment of the regulatory options and their consequences should be carried out by the Commission and relevant authorities, especially competition specialists to establish what level of detail/disaggregation is the best for the market. This applies to all sorts of generation technologies but especially to hydro power.

Nordenergi believes that a series of concerns have to be taken into account in the final drafting of the guidelines and in their implementation.

- The potential disclosure of commercially sensitive information such as cost or price forecasts through the availability of real time production patterns per unit.
- The existence of potential competition issues (e.g. risk of collusion) should be carefully assessed, that could arise from the possibility to closely monitor a competitor's behaviour: the requirements of these guidelines should be approved by competition authorities before their adoption by comitology in order to avoid ex-post regulatory intervention to correct undesired effects.
- The application of the unit by unit aggregation level could result impractical in those markets with a limited level of liquidity and integration.

**In addition**, generators don't normally use plant by plant information to elaborate their bidding strategy: for market price formation, it is not relevant whether it is plant/unit A or B that is producing at a certain

moment in time, it is the aggregated volumes that are of interest. Therefore we propose the real time publication of aggregated information per prize zone / per production technology/fuel (nuclear, coal, gas, hydro, wind, solar, other).

Of course, production per unit should still be available to market surveillance authorities for monitoring and control purposes.

**Question 6:**

**Do you see any other issues arising from ERGEG' proposal which may in your view give rise to competition concerns?**

No.

Best regards,

Navn  
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