

DG ENER Consultation on Fundamental Data Transparency

(Consultation questions referring to latest ERGEG recommendation for Comitology Guidelines)

EFET response

16 September 2011

EFET is grateful to have the opportunity to give the European Commission further input concerning the ERGEG advice for electricity transparency guidelines. We believe it is important to allay the often misrepresented confidentiality and competition concerns related to the prompt publication of disaggregated data about the availability and use of electricity sector infrastructure. We believe it is also important that the Commission take the opportunity of the elaboration of comitology guidelines, to begin to identify more precisely those types of data related to power production and transmission assets or to power demand, which may be deemed to constitute inside information under the soon to be adopted Regulation on Energy Market Integrity and Transparency.

Q1: 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?

EFET supports an effective and consistent level of transparency in all EU power markets. The proposed guidelines provide a benchmark level of transparency related to the availability and use of electricity sector infrastructure, in accordance with the needs of market participants. Such transparency is necessary to facilitate efficient, deep and liquid wholesale power markets, free from any discriminatory treatment of classes of market participant. EFET is reluctant to suggest any significant changes to the guidelines as drafted finally by ERGEG, after many rounds of consultation and of coordination with DG ENER. It is high time such guidelines are decided upon by the Commission as a whole and adopted through comitology proceedings. On the other hand we do recognise that procedures, for ensuring that urgent market messages and *ex post* disaggregated transmission, demand and generation data are published in a timely manner, may need to be refined. It is imperative that the mechanics of any centralised data platform are not used as an excuse for unwarranted delays in such data becoming available to all market participants.

We acknowledge the basis for concerns in some parts of the Commission regarding the possible impact of information exchange on the competitive environment. However, one of the main findings of the Commission's own Energy Sector Inquiry in 2005-7 has been the lack of availability of information about the availability and use of assets to market participants on an equal basis. The long overdue EU regulatory initiative on fundamental data transparency in the power sector correctly aims to close the gaps identified and to help increase trust in market mechanisms.

Disclosure of detailed information is as much an issue impacting on market integrity as on market access. A detailed breakdown of data increases market participants' understanding of market events, thus dissolving information asymmetry, which might otherwise prevail, and also reducing the risk of misuse of "inside information".

Q2. Do you consider that the definitions are complete and clear enough to avoid any potential problems when applied?

EFET believes the ERGEG draft guidelines overall provide an appropriate level of detail, to help ensure consistent implementation across the EU, particularly in the light of the work being undertaken by ENTSO-E to develop further detailed definitions. It will of course be necessary for ACER and the Commission to assess the effective implementation of the guidelines in due course.

We do, however, urge the following timetable:

- ENTSO-E to complete its work on definitions in the next six to twelve months
- European Commission in the meantime to launch draft guidelines into comitology within six months at the latest, after any necessary further consultation with interested parties beyond generators and large consumers

We also urge ENTSO-E and the European Commission to review the timings, the data release duties and publication responsibilities, required to guarantee that urgent market messages and ex post disaggregated transmission, demand and generation data are published in a timely manner. (See our answer to question 2 above.) Such a guarantee must fit with the discharge of disclosure and other duties created pursuant to REMIT. For this purpose EFET has previously questioned the use in legally binding guidelines of the imprecise word "provide".

Q3. Points 4.1.3.7 and 4.1.3.8 require publishing ex ante information on planned and ex post information on the unplanned availability of consumption units including the name, etc. Do you consider publishing this information would be likely to create any competition concerns?

We are not aware of any such competition concerns. We believe that as between users of power in various energy intensive manufacturing sectors an analysis should be applied, equivalent to that we offer in relation to wholesale power production in the annex below.

Q4. Points 4.3.2.4 and 4.3.2.5 require publishing of ex ante information on unplanned and ex post information on unplanned availability of generation units including the name of the generation units etc. Do you consider that publishing this information on a unit by unit basis would likely to create any competition concerns?

EFET does not believe there are any competition concerns raised by the publication of such information. Publishing data in aggregated form might ensure dissemination of information on the overall functioning of the electricity system. But such publication would not solve the issue of information asymmetry among different market participants. This would represent a major shortcoming in the design of a proper market integrity regime applying to physical transactions in wholesale electricity.

See also annex.

Q5. Points 4.3.2.8 requires publishing of actual unit by unit generation updated every hour. Do you consider that hourly publishing this information on a unit by unit basis raises any competition concerns?

EFET does not believe there are any competition concerns raised by the publication of such information. See annex.

Q6. Do you see any other issues arising from ERGEG's proposal which may in your view give rise to competition concerns?

EFET does not believe the proposal raises any other competition concerns. See annex.

ANNEX

EFET analysis of arguments against and for fully disaggregated transparency of data about the availability and utilisation of power sector production assets in Europe

The argument against publication of individual plant data has since 2005 centred on the pillars of commercial confidentiality, lack of utility and risk of collusion. The argument was expounded, for example, as part of the debate within a Transparency Working Group set up by DG ENER (then “TREN”) officials and by ERGEG at the end of 2006 and the beginning of 2007. The following reasons for not disaggregating generation data for public consumption were advanced:

- The publication of plant-by-plant generation data raised concerns with respect to European and national competition law. Experience and competition practice had shown, that caution in disseminating market-relevant data should especially be exercised, when it comes to product and geographic markets with an appreciable level of market concentration
- In the electricity sector, it was “obvious” that dissemination down to plant or unit level would force market participants to reveal information about their commercial positions and/or their bidding strategies; most “notably” in the case of hydro plants
- In the case of planned and unplanned loss of generation information published by fuel type would provide sufficiently specific data, to allow players in the market to estimate the evolution of the generation merit order and its effect on short-term price formation
- Any information, which gave indications about individual generators’ bidding strategies should better be communicated just to authorities responsible for supervising the market
- Publication of generation data plant-by-plant created a major asymmetry between generators and other types of market participant; an equivalent approach applied in full to all other market participants (e.g. large consumers, in relation to their individual purchase contract positions, or pure and financial trader in relation to their long and short wholesale positions) implied a compulsory opening of books, in order to reveal purchase, sale and financial options equivalent to the real options of generators
- A major asymmetry could also be observed in the context of VPPs; in these arrangements the successful bidders for capacity did not have to provide any information subsequently as to how they were planning to exercise their virtual production options and the relevant generator was usually informed only at the beginning of M+1 about how the option was used in month M by a particular trader

EFET was a prime participant in the Transparency Working Group set up by DG ENER (then “TREN”). In response to the argument raised against disclosure of plant by plant data, EFET advanced several points in rebuttal. In summary these were:

- The commercial claim of individual generators to protect hitherto confidential information needs to be balanced against the informational requirements of the wider market; every purchase made by a generator to cover a short position resulting from an outage, for example, is matched by a corresponding

sale from another market participant; if only the generator knows that prices are likely to rise once the wider market becomes aware of an outage, the seller faces an asymmetric risk compared with the buyer, which will reduce market liquidity, increase buy-sell spreads and increase the costs of trading in the market, to the ultimate detriment of consumers

- The release of data on outages and planned maintenance does not necessarily reveal a market participant's trading position; a generator may have bought additional power in advance of notifying an outage (e.g. during low priced periods), bought options to acquire or sell power, or sold more power in advance than he plans to generate on average; in a liquid competitive market, therefore, the commercial detriment from requiring generators to release *ex ante* generation information to the wider market is likely to be small
- With regard to the risk of combined market abuse by generators gaining access to plant availability and utilisation data, several factors were likely to constrain any collusion in practice:
 - EU and national competition laws prohibit implicit, or indeed explicit, collusion; participants engaging in anti-competitive conduct face significant fines
 - Financial services regulation is increasingly being applied to power markets; this places onerous restrictions on participants manipulating market prices and engaging in transactions without a bona fide commercial purpose
 - Implicit collusion can typically only be maintained with a small number of participants in a concentrated market (typically four or less) before the incentives to "cheat" on the collusive agreement override the incentive to collude; Implicit collusion therefore tends to be unstable, particularly in the presence of growing competition and new entry With information release, collusive behaviour is readily identified and analysed by regulators and market participants
 - Potential collusion left behind closed doors, or in a "grey" market of private bilateral deals between incumbents, would be significantly more difficult to detect; indeed, a lack of transparency can itself be a breeding ground for collusive behaviour
 - The light transparency throws on any potential collusive behaviour allows traders to factor the risk of that behaviour into their decisions and "trade around it"
 - Preventing information release on the grounds that it aids the exercise of market power does nothing to address that underlying market power, nor offers the prospect of moving to a more competitive future; if market power is actually a problem, regulators should take direct steps to reduce market concentration and to improve new entry, rather than attempt artificially to restrict information flows (and thereby in effect help prolong the *status quo*)

We believe all these arguments hold good in 2011, possibly even more so than in 2007, given the additional challenges to wholesale power market access, which have transpired in the meantime.

