



AEP¹ Response to Commission Consultation on Fundamental Data Transparency

General Comments

The Association of Electricity Producers (AEP) recognises that transparency has an important role to play in promoting competition and increasing trust in European energy markets. The issues have been extensively discussed at European level over the last few years and AEP largely supports the framework proposed by ERGEG.

The Transparency Guidelines form an important building block of the Market Integrity and Transparency Regulation (REMIT) and it is essential that the two pieces of legislation dovetail effectively. Here AEP is very concerned to note a lack of consistency in the timescales for implementation: the two prohibitions set out in REMIT will take effect shortly after publication in the Official Journal, whereas the data disclosure requirements may not be in place until considerably later. In the intervening period this is likely to cause substantial uncertainty, as market players will be unclear what they need to do to comply with REMIT.

AEP is of the view that two steps need to be taken to remedy this situation:

- The Guidelines need to be agreed expeditiously with a clear and realistic timetable for implementation; this should take into account the fact that requirements will have to be incorporated into national codes, communication arrangements will have to be finalised and, in some Member States, new IT systems may need to be procured and commissioned;
- ACER should as a matter of priority provide detailed guidance on what constitutes compliance with REMIT and clarify what action firms have to take in the period before the Guidelines take effect.

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?

AEP agrees that a harmonised transparency regime across Europe is needed and supports ERGEG's comprehensive approach to data disclosure. We have not

¹The Association of Electricity Producers (AEP) represents large, medium and small companies accounting for more than 95 per cent of the UK generating capacity, together with a number of businesses that provide equipment and services to the generating industry. Between them, the members embrace all of the generating technologies used commercially in the UK, from coal, gas and nuclear power, to a wide range of renewable energies.

identified any gaps in coverage. However, we think that more emphasis should be placed on data quality and reliability, which is of equal importance to breadth of coverage (see our response to Q.4 below).

Question 2:

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

AEP believes that the definitions of “consumption unit”, “generation unit” and “production unit” need to be augmented so that the application of the 100 MW threshold is clear. In AEP’s view, the threshold should be defined on a per-site basis. For instance, a site comprising two 50 MW generating (or indeed consumption) units should have to meet the disclosure requirements. In the case of consumption, it should be made clear, for instance, whether the threshold refers to maximum demand or the capacity of the connection.

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)?

AEP takes the view that requirements for generation and load should be symmetrical and supports the 100 MW threshold proposed for both generation and consumption units.

Nevertheless, AEP could accept that the names of 100 MW consumption units are not disclosed if convincing evidence is provided that this could have adverse effects on large consumers.

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)?

Ex ante and ex post data on availability are published by generation unit in the GB market. AEP believes that such disclosure is beneficial to the market and is not aware of any evidence that it could be anti-competitive. We therefore support the publication of data by generation unit. However, to ensure regulatory certainty, it is essential that European and national competition authorities thoroughly examine these proposals and confirm their support before the Guidelines are agreed. It should be noted that increased transparency should help regulators to identify any anti-competitive practices and that energy regulators will soon be given increased powers to tackle market abuse under REMIT.

AEP agrees with the general proposals on outage disclosure set out in paras 4.3.2.4 and 5 of the ERGEG document. However, we are opposed to the requirement that generators should immediately publish the reasons for and likely duration of an outage. In practice, it will often be extremely difficult to specify the cause and duration of an outage at the time when the trip occurs. Furthermore, the length of an outage will often be determined by factors other than the event which caused it. A requirement to publish outage cause and duration immediately could lead to unreliable information being released to the market, potentially resulting in legal uncertainty. AEP therefore proposes that these requirements should be omitted. Outage duration will in any case be disclosed to the market via the planned outage data once accurate estimates are available.

If the requirement is maintained, it must be specified that data are provided on a best-efforts basis and that companies will not be held liable for cause/duration data which subsequently prove to be incorrect (unless there was an intent to mislead the market).

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)?

Unit-by-unit output data are published in the GB market and we believe this to be beneficial to the market. We do not believe that such disclosure is anti-competitive and are also aware that such data is provided in other European markets by commercial providers, also without any apparent adverse effects on competition. AEP therefore supports unit-by-unit disclosure of output data, but again emphasises

the importance of competition authorities approving these arrangements before the Guidelines are agreed.

Question 6:

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

No. However, we would like to raise two other points of detail in relation to paras 4.3.2.4 and 4.3.2.5 of the ERGEG advice, which require generators to update availability data by H+1. While AEP accepts the case for increased transparency, it is important that unnecessary administrative burdens are avoided. We would suggest that:

- There is little benefit in providing an hourly figure for availability over long periods, e.g. one year ahead;
- Daily reporting of availability changes should be sufficient.

These points could be met by inserting “and where appropriate” between the words “day” and “hour”.

Association of Electricity Producers, 16th September 2011