

Eni Gas &Power's response to ERGEG's and CESR Consultation Paper on Market Abuse

Introduction

Eni Gas & Power welcome this consultation recognizing the importance of measures able to prevent Market Abuse behaviours: significant sub-optimization in market functioning could result in decreased confidence and participation in gas and electricity markets creating a barrier to the development of an efficient market context.

At the same time it's important to underline that in principle each additional obligation should be proportional to additional costs; any possible discretionary or discriminatory treatment in information disclosure should be avoided and Regulatory Authority should limit their competence only to acquire information related to regulated activities..

Indeed the competence of sector regulatory authorities should relate only to activities connected to access to the system and a parallel jurisdiction of the National Regulatory Authority, the National Competition Authority and the Commission should be avoided.

The possibility of "concurrent competence" between sector regulatory authorities, who should guarantee the non discriminatory access to networks, and antitrust authorities, who should ensure the proper functioning of the system in a liberalized market, has to be minimized.

However a complete and homogeneous level of transparency, has to be considered as a priority step in preventing Market Abuse behaviours; for this reason in our view the first measures to be adopted should guarantee the implementation of existing requirements in terms of transparency.

Nevertheless, transparency requirements shall be consistent with the principle of avoiding any commercial sensitive information's disclosure to the market, avoiding, at the same time, useless or disproportionate burden laden on the operators.

Responses to the Consultation questions

Question Q1:

- Do you agree with the analysis of the market failures in the electricity and gas markets as described above? If not, please provide reasons for your disagreement
- What is your opinion on the analysis provided above on the scope of MAD in relation to the three different areas: disclosure obligations, insider trading and market manipulation?

Concerns underlined by the Commission's Sector Inquiry are sharable and it can't be duly addressed by MAD, properly designed for the financial markets. Amending MAD, introducing rules related to physical markets, could create complications and potential duplications favouring an unclear framework in matter where existing provisions are not fully applied.

Question Q2:

- Do you agree with the conclusion above that greater pre and post transparency would not be sufficient in the context of market abuse?
- Do you agree with the analysis above on the importance of the transparency/ disclosure of fundamental data? If yes, would you consider it useful to set up at the European level a harmonised list of fundamental data required to be published? Is an exhaustive list conceivable or is it necessary to publish additional data on an ad hoc basis if it is considered to be price sensitive?
- Which information retained by specific participants of the electricity and gas markets (e.g. generators, TSO) should be published on an ad hoc basis if it is price sensitive?

A lack of transparency constitutes the field where Information asymmetry and manipulation can develop. Consequently creating the conditions for a better level of transparency should be the first measure to adopt to prevent market abuse behaviours.

An adequate level of transparency has also to be considered a preliminary requirement for the correct addressing of areas considered crucial in view of the development of a single European gas market. (For example the efficient utilisation of the existing transport capacity, interoperability of grids, common balancing mechanisms).

For this reasons, in our vision it would be important that transparency levels were progressively monitored and that a referring level of transparency to be reached in the European market was identified also as a goal on European Network of Transmission System Operators for Gas (ENTSOG) responsibility. ENTSOG would be able to guarantee better than each single TSOs both the compliance to the Regulation 1775/2005/EC and the development of measures entailing a common effective and operative framework also in matter of transparency.

Eni Gas & Power considers the existing transparency requirements adequate. For this reason the priority should be the implementation of existing requirements and of friendly utilisation ways to supply information. For example an effective transparency should be realized through the resolution of linguistic barriers. Nowadays often documents are not available in English or are available just after the conclusion of the procedure to which documents are related. Moreover, in order to facilitate the availability of information, it would be useful that, in case of deadlines or new relevant information, TSOs websites sent alert to all transmission users and to operators who registered themselves in the websides. Another improvement that in our opinion is necessary to allow a better information usability is the adoption of excel or cvs formats to publish numerical data; pdf formats don't allow to easily handle and elaborate information.

Generally speaking, better transparency conditions on fundamental data (as transmission, transportation, storage and capacity levels), that means also better and easier usability, is important to support market integrity for both physical and derivatives markets.

Question Q3:

- What is your opinion on the proposals of CESR and ERGEG in the three different areas: disclosure obligations, insider trading and market manipulation?

In our vision it's sharable the proposal of developing a basic, tailor-made market abuse framework in the energy sector legislation for all electricity and gas products not covered by MAD, particularly in the physical markets. However it's fundamental to prevent inappropriate publication of commercially sensitive data. Data disclosure measures that could support the market to operate efficiently should be related to access infrastructure information. Different disclosure obligations would constitute a useless and disproportionate burden put on supply undertaking, considering that they operates in a context of full liberalization of sale activities, and would be not consistent with competences of NRAs whose intervention powers should be oriented to guarantee a not discriminatory access to infrastructure systems.

Consideration in matter of Record keeping

In principle, in a context of full liberalization of sale activities, the record keeping obligation set out in articles 22f and 24f of the proposed Directives amending Directives 2003/54/EC and 2003/55/EC (The Third Energy Package) constitutes a useless and disproportionate burden put on supply undertakings.

Moreover further record keeping disposal is not proportional to the aim of allowing National Regulatory Authority to carry out duties and activities under its competences.

In general, when speaking about data disclosure, there should be clarity concerning the objectives underpinning the data collection and possible publication, and the precise nature of the information needs to be provided. Regulatory Authority should be entitled to acquire information restricted to regulated activities while commercial and financial activities and related data, when not concerning to vulnerable customers protection, shouldn't be submitted to Authority control. In this view, the provisions of article 24 f should further legitimate policy objectives in a proportionate manner, also avoiding the creation of an unjustified difference in treatment of gas market participants operating in different Countries. Thus it is essential that the Commission produces guidelines to define in a uniform way the methods and arrangements for record keeping as well as the form and content of the data involved.

There should also be clarity as to how and when the regulatory authority will be allowed to release the information acquired as a result of record keeping provisions. This clarity is fundamental to avoid any possible discretionary and even discriminatory treatment by the NRAs in the disclosure of information.

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