



VERBAND DER  
ELEKTRIZITÄTSUNTERNEHMEN  
ÖSTERREICHS

[www.veoe.at](http://www.veoe.at)

[fis@ergeg.org](mailto:fis@ergeg.org)

via E-Mail

Ihr Zeichen	Ihre Nachricht vom	Name	DW	Datum
		Mag. Alexandra Herrmann/mme	212	27.08.2008

**CESR/ERGEG advice to the European Commission in the context of the Third Energy Package - Response to Question F.20 - Market Abuse Consultation Paper  
Comments by VEÖ, Austria**

Dear Madam,  
Dear Sir,

the Association of Austrian Electricity Companies (VEÖ) appreciates the opportunity to comment on the recent consultation paper on the CESR and ERGEG advice to the European Commission in the context of the Third Energy Package.

VEÖ represents more than 130 energy companies active in generation, trading, transmission, distribution.

*Due to the very tight timeline for the response, we limit our observations to the most important issues and would like to ask for the possibility to add additional comments in the further consultation process.*

**1) 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.**

We disagree with the analysis of market failures, especially as far as the Sector Inquiry is quoted. This inquiry does not provide sustainable evidence of market failure on a European level that is due to market manipulation or inadequate transparency. To render our position more precisely by quoting a single example we would like to state that it should not be the aim of MAD to prolong and duplicate the discussion on vertically integrated energy companies.

Taking this lack of evidence of market failure as given it is furthermore important to emphasise that market dominance may not be compulsively considered as a market failure. Having a dominant position in a market does not have to stand for market manipulation automatically. We worry that the current version of the analysis tends to advance a rather ungrounded opinion that adds up to put the whole market under general suspicion as stated in paragraph 35 for instance.

Finally we doubt that the introduction of additional regulatory burden (as proposed in the analysis) facilitates market entry of new potential participants. This, however, has to be considered as an eminent aim to ensure competition. Put in a more general language we miss that the importance of competition is not emphasised in an appropriate way.

**2) 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?**

In principle we can support the basic classification of the stated three different areas. However, as far as the characteristics and consequences of these areas are treated we believe that CESR/ERGEG consider them too strictly divided. In our opinion a more integrated approach is desirable:

It is hardly possible to state requirements in relation to a specific area without being tangent to the other areas as we are convinced of existing side-effects. To illustrate this please refer to the following example: Paragraph 34 states that a common way to misuse market power is to impose high prices, especially when the manipulating entity knows that its production is likely to be indispensable to meet demand. This knowledge of current prices is in fact a question of asymmetric information as well. Hence there would be possible ways to handle this situation depending on the point of view of the analysis: combating market power or forcing transparency – just to quote two possibilities in this specific situation. We miss such efforts to find the best answer for specific problems in the proposed paper.

As a consequence the isolated approaches of CESR/ERGEG are not adequate to cover the variety of instruments to fight market abuse.

**3) Do you agree with the conclusion above that greater pre- and post trade transparency would not be sufficient in the context of market abuse?**

Considering the needs of market monitoring we believe that it is sufficient if regulators make use of existing information sources and their powers designated under the future record keeping obligation of the 3<sup>rd</sup> Energy Package. We are convinced that this record-keeping obligation is sufficient to ensure supervision of market integrity by authorities in energy markets.

**4) 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?**

We generally agree to the outcomes of the analysis above. However we consider it important to repeat that (according to our viewpoint mentioned in 2.) this is not the case if the instrument of transparency/disclosure is treated too isolated. In certain cases the disclosure of fundamental data may constitute a precarious intervention with relative poor results. Hence it is highly advisable to measure both required input and consequences of different kinds of interventions diligently. This is the main reason why we favour a single tailor-made regime that covers different instruments that aim to arrive at the same outcomes. This should enable the persons and entities in charge to set appropriate actions.

Furthermore we definitely prefer to agree on regulations at the European level. To foster reliance upon the new regulatory regime we believe this is one decisive requirement, as many players are acting at the European level as well. Besides that, we favour an exhaustive list as mentioned. In our opinion it is necessary to agree on mainly mandatory rules to guarantee uniform and consistent European rules. We are aware of the fact that it is hardly attainable to compile an exhaustive list at the first attempt and that a review procedure is inevitable to meet this objective. Nevertheless this should rather constitute an acceptable solution than a system that has to concentrate on mere flexibility to cover all individual cases and consequently lacks foreseeability.

**5) 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?**

As set out in our answer to question 4, we recommend an exhaustive list of information to be disclosed.

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

If the European Commission comes to the conclusion that the current regime needs to be adapted, then we will agree that the introduction of a tailor-made sector-specific regime seems to be a sensible approach. However, the development of such a regime would need careful consideration (impact assessment) and intensive work.

However we reject the idea to have this system established in addition to the MAD-regime and further projects, we regret that neither CESR nor ERGEG does obviously aim to take

into consideration that certain problems mentioned by the often quoted Commission Sector Inquiry are also expatiated upon in further relevant legal acts (energy law, competition law). Again, we emphasize that the considerations as defined in your proposal are focused too much on the single areas.

First of all we are afraid that your approach leads to a regulation that is subdivided into too many different sections. We doubt that this will induce positive side-effects but rather cause confusion and redundancy; furthermore it will be costly to provide different systems with independent regulators and separate structures. Moreover we doubt that a grand variety of different systems with indefinite marginal areas will reduce the danger of regulatory arbitrage.

We hope these comments are helpful for your work on this important issue.

Yours sincerely,

Alexandra Herrmann  
Business Unit Trading & Sales