

Eni Gas & Power's response to ERGEG's and CESR's Call for Evidence on record keeping, transparency of transaction, supply contracts and derivative issue in the electricity and gas sectors.

Introduction

Eni Gas & Power welcomes the consultation, recognizing that an adequate and homogeneous level of transparency, first of all in access conditions, has to be considered an important step towards the development of a single European gas market.

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.

Moreover, a prerequisite to create liquidity and transparency in the market, is a stable and coherent regulatory framework, including clear regulatory bodies' duties and powers.

Responses to the main Consultation questions

D. RECORD KEEPING

In general terms, record keeping provisions proposed in the amendments to the electricity and gas Directives should be different from the record keeping obligations already in force under MiFID. Indeed, regulation on financial instruments, even in the electricity and natural gas sector, is exclusively under the responsibility of Financial Market Regulators, following the principles and provisions of Community legislation on financial market.

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.

Furthermore, without a clear definition of regulatory bodies' competences there is the real and concrete risk of duplication, overlapping and incoherencies of the regulatory provisions. Record keeping obligations could, in this view, add confusion and likely litigations hindering in practise the efficient allocation of resources, risk hedging and new entrance into the market.

Additionally, the introduction of record keeping obligations, in particular with respect to transaction in electricity & gas derivatives and wholesales supply conditions, seems to be not proportional to the aim of allowing National Regulatory Authority to carry out duties established in article 24 (Gas Directive). Furthermore, it constitutes an excessive power of intervention in commercial activities and decisions that, in a context of full liberalization of

sale activities, falls outside the specific area of competence of gas and electricity Regulators.

Finally, as a general approach, it should be avoided to publish data which are, as in the case of gas supply contracts, commercially sensitive, guaranteeing the confidentiality

E. TRANSPARENCY

12. What requirements, deriving from national law are currently put on energy traders, brokers, or exchanges to publish information “post trade”, for example on publishing traded volumes, prices etc?

13. What requirements, deriving from national law are currently put on energy traders, brokers, or exchanges to publish information “pre trade”, for example on publishing bids to organised markets?

16. What information, other than required by law or regulation, is made public by energy traders, brokers, information services or exchanges?

Energy traders, under national law provisions, have the obligation to communicate to National Regulator Authority and to government Authorities and Bodies “post trade information” related volumes and prices sold to final costumers detailed on monthly basis, consumption ceilings and territorial distribution areas, gas final customers selling contracts, gas supply contracts features. Also data regarding unbundling provisions have to be communicated. Except for information on gas supply contracts features, there are not law provisions about “pre trade information” to be communicated or published. For what concerns electricity, information “post trade” about pool outcomes are available. Post trade data communicated are published on aggregated form and no other significant trade information is made public.

17. Is access to information on traded volumes and prices equal for all parties active in that market?

18. If not, is unequal access to or general lack of information on trading causing distortion of competition?

Access to information on aggregated traded volumes and prices is equal and non discriminating to all parties active in the market.

19. In light of the findings in the Commission Sector Inquiry on energy and the subsequent study of the electricity wholesale markets, please consider:

- whether, pending the outcome of the legislative process in respect of the proposed Directives amending Directives 2003/54/EC and 2003/55/EC, greater EU wide pre and/or post trade transparency rules for electricity and gas supply contracts (physical and spot trading) and electricity and gas derivatives would contribute to a more efficient wholesale price formation process and efficient and secure energy markets;
- whether uniform EU wide pre and post trade transparency could have other benefits.

Eni Gas & Power considers the existing trade transparency requirements adequate.

In a context of full liberalization of sale activities, any further record keeping disposals are not proportional and would imply potential very high costs to operators. Furthermore, if these provisions concern commercial activities and investment decisions, they fall outside the specific area of National Regulatory Authority's competence. NRA should instead ensure an effective and non discriminatory access to the system and guarantee of a transparent set of requirements monitoring its effective and homogeneous application..

A lack of transparency in access condition can create barriers to entry and have impact on the development of competition. An adequate level of access transparency has also to be considered as a preliminary requirement for a 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).

The adoption of transparency requirements can be considered effective when information is really available, in a user friendly manner, to all European operators present in the market.

In other words, an effective transparency should be realized also through:

- the resolution of linguistic barriers. Nowadays documents are often not available in English or are available just after the conclusion of the procedure to which documents are related;*
- websites sent alerts: in case of deadlines or new relevant information, TSOs websites should send alerts to all transmission users and to operators who register themselves in the website;*
- the adoption of excel or cvs formats to publish numerical data; pdf formats don't allow to easily handle and elaborate information.*

APEA, 17.03.2008