

EFET updated position, May 2006

Transparency of information about the availability and use of infrastructure and the promotion of competition in European wholesale power markets

1. Introduction

The need to develop efficient, liquid wholesale markets is at the heart of European electricity market liberalisation. Efficient wholesale markets underwrite competition between generators and between retailers and allow them to manage their electricity market risks cheaply and efficiently. Market transparency is crucial to the successful development of an efficient wholesale market and the currently poor level of information release in European electricity markets is slowing progress with EU electricity liberalisation.

To compete effectively in the wholesale market, all wholesale market participants – traders, generators and retailers - need to be able to predict the likely evolution of supply and demand fundamentals and their ability to move electricity around the transmission system. Participants base these predictions on analysis of expected levels of future demand, transmission capacity and generation capacity, but also by detailed analysis of actual events in the past and the observed impact on prices. The release of demand, transmission and generation data – both before and after the date of delivery - is therefore crucial to market participants' ability to analyse likely market developments and to participate in forward electricity markets.

Some European markets – notably the UK and Nordic markets – are already very transparent with hundreds of thousands of data items being released every day. Many other markets remain opaque, which requires market participants to risk their capital on events that they do not fully understand, thereby increasing risk premiums and reducing market liquidity. This is inefficient and ultimately imposes significant costs on electricity consumers.

2. A reminder of the EFET position as publicly stated in 2003 and 2004 and changes since

EFET in July 2003 published a major position paper on “*Transparency and Availability of Information in Continental European Wholesale Electricity Markets*” (July 2003). The paper called on European energy regulators to

secure the release of more information about transmission, demand and generation in European electricity markets. We concluded that this is necessary, to help overcome the lack of transparency then (*and indeed still now*) hindering the development of efficient wholesale markets in the UCTE area. Further information release, we said, would improve wholesale market competition, remove entry barriers and underpin the acceleration of European liberalisation.

Specifically, EFET requested that European energy regulators work to secure the release of *post-delivery* data on each generating plant's production, actual demand by market hub and the physical flows across transmission links between markets. This information should be supplemented, we stated in 2003, by *forecast* demand data, forecasts of net cross border transmission capacity and forecasts of available cross border transmission capacity, taking account of any prior commitments under long-term contracts. We called on Regulators subsequently in consultative meetings to consider the best way to release information on *forecast production plant availability*, without compromising generators' commercial confidentiality. We recognised in a further statement in 2004 that some aggregation of forecast generation data – by market hub and by fuel type, after proper consultation – was likely to be appropriate, at least in a transitional phase, in most relevant geographic markets.

Since that time individual EFET national and regional electricity task forces have been working with relevant regulators and TSOs with a view to achieving improvements. Notably we provided ideas to the Dutch and French regulators, as well as TenneT and RTE, as to how they might move forward; our central and eastern European and German task forces have also engaged regional regulators and TSOs in debates about provision of more data. Until very recently, however, most large generators in continental Europe have remained intractable in their opposition to release of *ex ante* plant availability data. Dutch generators are obliged since 2005 to publish some aggregated forecasts, however. Then on 10 April this year the four major operators of power plants in Germany started making available to the market through an EEX electronic platform some *ex ante* generating capacity availability figures, aggregated by fuel type for the whole of Germany, as well as hourly day-after actual generation statistics, again aggregated by fuel type nationally.

3. The guidelines and tabulated data sets suggested by ERGEG as of March 2006

We broadly support the intention behind the guidelines as drafted in the consultation document published on 15 March 2006. However, we find many statements too tentative, are disappointed that a “minimum acceptable standard” approach is offered, rather than a true vision of how to progress towards complete transparency, and we miss any timetable for further improvements.

In contrast to the often very tentative, vague and inconclusive statements set out in section 2 of the ERGEG draft Guidelines on transparency, we find the stipulations about the types of information required by the market set out in section 3 and in the tables of the Annex clearer and mostly appropriate.

Here a few specific observations on the content of the tables are required:

- **Table 2:** The data sets listed are comprehensive, with the exception of information about constraints expected or actually transpiring *within* national borders. Especially within large control areas or complex national high voltage systems, the occurrence of constraints from time to time can have a significant impact on the actual merit order of generating plant and may also affect cross border flows. Conversely, if potentially binding constraints are not declared internally within a control area, this may bring plants located inside it unexpectedly on-stream and have an adverse effect on the maximum allocation of transmission capacity at proximate international interconnections.
- **Table 3:**
 - Installed generation capacity: Why not immediately by single generator block rather than aggregated?
 - Ex ante scheduled generation: Any regulatory tolerance of aggregation of plant availability data within control areas needs closer definition by reference to fuel types as well as industry and market structure and needs a timetable for phasing towards disclosure per plant. (See sections 6 and 7 of this paper below, for EFET proposals.)
 - Unexpected plant outages: A separate stipulation for prompt publication of this data should be inserted
 - Ex post production: The data should be disclosed plant by plant as near to real time as practicable.
- **Table 4:** The data sets suggested are fine, as far as they go, but no mention is made of transparency regarding intra-day markets. Market participants can best avoid being out of balance and thereby penalisation if they are able to adjust their positions after the D-1 gate closure but ahead of the implementation of TSO balance mechanisms. In order to do this they need information about bids and offers, which can be accepted within a national system or control area and about remaining available cross-border transmission capacity within day.

4. What grounds for non-publication of *ex ante* or *ex post* generation data?

We endorse the statement at the start of section 2.1 of the draft guidelines, "... that information shall generally be made available to market participants unless there is a clear reason against it..." However, the document fails to go on to identify what such a reason might really be. There is mention in succeeding paragraphs of commercial confidentiality, cost-benefit analyses, national security and the need to ring-fence any withheld data. But no analysis is

offered of *why and when any of these considerations might result in a particular regulator assenting to the withholding of data by a particular corporation, acting as system operator and/or generator, from the market.*

Part of the alleged difficulty with publication of advance information about generation plant availability revolves around two arguments:

- The idea that publication may allow especially larger generators at least tacitly to collude in setting prices
- The risk that smaller generators may be exposed to exploitative trading strategies from large competitors if an outage shows that they are short

The ERGEG document suggests that individual national regulators may judge that publication of data could facilitate collusion. However, EFET in 2003 concluded that, collusion could indeed be a problem in concentrated markets. But we went on to advocate that a concentrated industry structure should be a matter for longer term political resolution, whilst in the meantime the behaviour of dominant market participants was best addressed by either financial regulators (responsible for new market abuse legislation relevant to commodity derivatives trading) or competition authorities, on a case-by-case basis. Specific instances or risks of collusion could not constitute a justification for an overall failure to release the types of information required by a competitive market. Nearly all traders remain of the opinion that the benefits of information release still outweigh any potential detriment, largely because collusion can be an equal – if not a greater – problem in opaque markets and because greater transparency at least contributes to the better identification, and policing of, and competitive responses to, collusion. Using concentration and collusion as grounds to withhold information therefore risks creating a vicious circle, where competition is stifled because of the absence of information, but information is not released, effectively owing to the lack of effective competition.

Regarding the commercial exposure of smaller generators: In a liquid, competitive wholesale power market, the commercial detriment to any particular market participants from requiring generators to release *ex ante* generation information to other and potential market participants is likely to be limited. Larger, vertically integrated players with a portfolio of generation assets, customers and wholesale traded positions (physical or indeed financial) can surely look after their own potential exposures when releasing purely physical asset related data. However, in illiquid markets, revelation of unplanned outage information can potentially damage the commercial position of smaller players. For example, a single site generator is less likely to have access to a portfolio of assets and contractual purchases (including options) to cover its unforeseen outages, making it more likely that a requirement to reveal outage information will reveal its overall exposed commercial position to the market. In such illiquid markets, smaller generators may thus have to buy in power at short notice – or resort to balancing arrangements - at prices controlled by their larger competitors or alternatively countenance high premiums in buying options to cover potential outages in advance. The actual exposure will of course depend on what is the fuel type of the price setting

plant in the particular geographic market during the hours of outage in question. So there may be a case for temporarily differentiating the *ex ante* and immediate *ex post* disclosure obligation of small, independent generators in isolated, illiquid national markets; but this difficulty need not stand in the way of rapid improvements in the disclosure regimes across the more mature power markets of continental western Europe.

5. Clarity of assumptions used by TSOs in estimating cross border transmission capacity

The EFET position papers on transparency of 2003 and 2004 did not cover specifically the *calculation* by TSOs of how much transmission capacity should be allocated from time to time for market participants' cross border nominations. But in another major paper in November 2005 ("Reforming the Management of Electricity Transmission Congestion in the EU Internal Market: An EFET Vision") we argued strongly for a new commercial approach towards capacity allocation and a close examination by regulators of whether TSOs are complying with their obligation to maximise the availability of capacity at national borders.

Both article 5 of EU Regulation n°1228/2003 and the soon to be adopted Congestion Management Guidelines under it state that calculation of cross-border capacities must be published, after approval by Regulatory Authorities. For this purpose, we have noted that CRE, CREG and Dte, in a common roadmap, suggested for wholesale power markets in France, Belgium and the Netherlands and published in December 2005, state that it is critical that the three national TSOs start by sharing a common set of information and of forecasts. EFET applauds their idea that the TSOs should exchange:

1. Their best estimations of detailed generation and demand patterns;
2. Network topology and relevant characteristics in full detail;
3. Available data on already committed transactions.

Based on a then common and optimally updated set of information and forecasts, the three TSOs have been asked, by 1st August 2006, to publish a common, coordinated, transparent and non-discriminatory method for the calculation of both "long-term" capacities (i.e. annual and monthly timeframes) and "short-term" capacities (i.e. day-ahead, intra-day and balancing timeframes). They have been told that the calculation method must include rules for the sharing of available capacities on coupled interconnections and define cooperation measures for optimized scheduling of maintenance periods and for curative cross-border re-dispatching.

In the view of EFET the evaluation by the three regulators of the TSOs' submitted calculation method must be critical and thorough. *That goes equally for future scrutiny by regulators in other countries of NTC, ATC and/or flow based cross border profiles offered by TSOs to nominating market participants.* In particular inflexible and minimum estimates of potential loop-flows, the exclusion or inflexible estimation of counter-flows and the

unquestioned inclusion of national *n-1* security values, as a justification for permanent standby capacity reservation at a border, will need review.

EFET calls for the publication in full *without delay* of assumptions behind, and estimation methodologies for, all NTC and ATC values now being used.

6. The transition towards prompt publication of individual power plant availability

.What steps might regulators now contemplate, based on the background we describe in section 3 above and from the considerations we have analysed in section 4 above? Happily ERGEG now has access to comprehensive market concentration, wholesale liquidity and market share data obtained by DG COMP in the course of its electricity sector review. DG COMP have also analysed patterns of control of price setting plant and potential vertical market foreclosure. That data and the accompanying analysis could now be used to establish priorities for requiring greater *ex ante* disclosure of plant availability. It should be possible to suggest:

- *Narrow* bands of aggregation of plant by fuel type according to which type is marginal at different times in the larger, already more liquid markets,
- Restriction of aggregation by fuel type across price zones, or smaller areas if feasible, and even
- Temporary differentiation of the disclosure obligations of generators who are vertically integrated within a given geographic market from those who are not.

ERGEG and DG TREN should subsequently keep under review the right time to progress from aggregated *ex ante* generation data publication to a plant by plant disclosure system.

7. Conclusions and setting a timetable for improvements

EFET welcomes the ERGEG consultation initiative, but calls for greater clarity regarding any (temporarily) permitted exemptions from duty to disclose data, and for an ambitious timetable to achieve improvements. EFET suggests that ERGEG in particular take a more proactive and determined approach to publication for the market of *ex ante* and *ex post* generating plant availability data.

EFET by no means criticises voluntary initiatives to improve transparency regarding generation recently put in place, as far as they go. Yet they remain incomplete and unharmonised across national boundaries. EFET rejects, at this advanced stage of the liberalisation process, the legitimacy of any broad ranging exclusions from disclosure of generation related data, based on assertions of commercial confidentiality, on the risk of facilitation of collusion or on jeopardy to trading strategies. In addition, any costs of organisation and

internet based publication of data seem to be manageable and should not stand in the way of full disclosure to the market free of charges.

EFET advocates as next steps, in a harmonised system of disclosure across the main part of central and western continental Europe:

- Publication of *ex post* generation data on a plant-by-plant basis at H+1 or +2.
- Publication of *ex ante* estimates of available generation capacity broken down by fuel type across price zones, or smaller areas if feasible, in such a manner that the breakdown could indicate in different time periods likely variations in production of marginal price setting plant; the estimates should be amended beyond D-1 and up to real time, so as to facilitate transparency also in intra-day trading and in balancing markets.

Once these steps are achieved, ERGEG and DG TREN should keep under review the right time to progress from aggregated *ex ante* generation data publication to a plant by plant disclosure system.

CRE, CREG and Dte mentioned in their December 2005 joint roadmap that most respondents to their consultation exercise pleaded for a higher level of market transparency. These regulators have promised to publish a detailed list of transparency items by 1st August 2006. This list will contain a detailed, common benchmark for implementation by market participants (including TSOs) by 1st July 2007 at the latest.

The three regulators will strive to aim for the "best practice" transparency of the three countries by way of a minimum benchmark, but will also take into account best practices in other areas, including apparently the Nordic countries.

EFET understands that ERGEG as a whole may not be in a position to adhere to the precise timetable envisaged by CRE, CREG and Dte, but a commitment to fast implementation of improvements, utilizing the framework of the planned regional Mini-Forums, would be appreciated. EFET suggests that ultimately there is no legitimate justification for owners and operators of electricity infrastructure in a liquid and competitive market to withhold data about its availability and utilization from that market. Does ERGEG not share this view? A *measured* transition from non-disclosure towards more openness may be justifiable, according to current national industry and market structures, but if it agrees with this proposition, then ERGEG should offer precise criteria and a timetable for that transition.