ASSOELETTRICA

ASSOELETTRICA Response to ERGEG Consultation on Implementing 3rd Energy Package

23 December 2008

About ASSOELETTRICA

Assoelettrica brings together around 130 enterprises operating in the Italian electricity market, including power producers, wholesale purchasers and self-producers. Our members account for about 85% of the electricity generated in the country and for about 75% of the sales in the Italian free electricity market.

Assoelettrica represents the interests of its members vis-à-vis local, national, EU and international authorities. At the national level it adheres directly to Confindustria – the Italian Employers' Association – and at the EU level indirectly to Eurelectric – the Union of Electricity Industry. It actively takes part in the works that are promoted by both bodies at various levels.

Assoelettrica carries out, in collaboration with research institutes and other bodies, analyses and studies on energy-related issues. Special attention is paid in particular to the evolution of the electricity industry and to regulatory developments in the electricity sector. Furthermore, a relevant role is played by our activities in the fields of communication, training and networking, aiming in particular at promoting an "energy culture".

ERGEG CONSULTATION: IMPLEMENTING THE THIRD ENERGY PACKAGE
ASSOELETTRICA COMMENTS

First we would like to underline the significance of this consultation. The method of acting in advance in order to arrive to the interim period with good tools to enable Regulators to prepare the future operations of ACER is highly regarded.
We also appreciate the involvement of stakeholders in this early stage and hope for a stronger and stronger cooperation between Regulators and market players in the future consultations.
We think that it will be fundamental, in the future, the interaction of stakeholders with the Agency and the possibility for them to express their opinion on framework guidelines on network codes and in relation to the coordination of Regional and European initiatives.
We think that real independent and strong National Regulatory Authorities (NRAs) with effective enforcement powers, mirrored by an indipendent and accountable Agency, is a fundamental aspect.
From this point of view we applaud the "Third Package" in the common position just adopted by the Council of the European Union that ensures the independence of NRAs and gives them the powers to promote the single market, develope regional markets and eliminate restrictions on trade between Member States.
We think that the rules related to NRAs' tasks and their duties should be harmonised at European level and that the coordination of the actions of NRAs should be guaranteed, possibly by the Agency, at least as regards the implementation of the Regional Markets as an intermediate step and, eventually, the single European Market.
The common position clearly requests the close consultation among NRAs and the cooperation with the Agency. The result of such consultations and coordination should be an effective harmonisation of the regulatory framework**,** with the Agency having a pivotal role, which represents a necessary prerequisite to give market operators the necessary certainty in planning and managing their business.

Comments on some specific aspects:

1. Consultation procedures and new tools

   We agree with the consultation method proposed and the additional tools envisaged. In particular, we think that the introduction of instruments like the call for evidence – through which market players can comment on a very generic topic, even suggesting future regulation measures – and the impact assessment – aimed at evaluating the specific impact of new rules in a wider integrated regulatory framework - must be seen with favour. We also appreciate the application of basic principles of good consultation with particular regard to the ease of reading and the efforts to limit the length of documents.

   On the other hand the proposal regarding the introduction of a so called "stakeholder panel" should be carefully addressed. In particular, we think that:

   - the proposal to consider the Florence Forum as a "stakeholder panel" - as this panel is intended in the spirit of the ERGEG proposal – is not shareable, since the Florence Forum has neither the structure nor the flexibility to act as this entity should do;
   - the introduction of "ad hoc panels", with a limited number of members (perhaps ten people, as suggested in the ERGEG document), could generate some problems, in terms of how to ensure adequate representativeness and to make them an effective tool. In case these structures are actually set up, guaranteeing transparent and balanced participation (both on geographical and incumbent-new entrant basis) will be of the utmost importance, as well as defining a procedure by which these groups would facolitate the general consultation procedures;
   - a leaner figure of "ad hoc working group" of recognised sector experts**,** formed to assist Acer on specific regulatory issues and on specific and limited temporary basis, could eventually be the best solution; these working group could also be organised under the umbrella of the Florence and Madrid Fora, thus avoiding a proliferation of expertise structures;

- whichever solution is adopted on the "stakeholder panel", this new figure must not replace or interfere, but only facilitate, the traditional consultation process, where all the stakeholders maintain their own rights and weight.

2. Enforcement powers

As mentioned before, we agree with the Common position presented by the Council in regard to the enforcement powers granted to NRAs: possibility to impose effective, proportionate and dissuasive penalties on electricity and gas undertakings not complying with their obligations in relation to the Directive or with any relevant legally binding decision of the regulatory authority or of the Agency, or to propose to a competent court to impose such penalties. Such powers could represent a step forward in the establishment of a real functioning internal market.

Since the Agency itself will not have enforcement powers comparable with those granted to NRAs, it will be extremely important to define how the Agency and NRAs will cooperate in the future to ensure the correct application and the harmonisation of the rules necessary for the development of regional markets (e.g. in relation to cross border issues).

In particular, the Agency (and ERGEG in the interim period at least in relation to Regional Initiatives) could have a recognised role in stimulating the intervention of NRAs or European Commission (DG Comp, DG Tren, DG Market) in case of distortion of market rules or impediment in developing regional markets.

In general, in the future, such enforcement powers will be particularly important in relation to the monitoring tasks of NRA in the Member States which have not opted for full ownership unbundling of TSO.

The Agency should also actively promote a better coordination of NRAs activities and a higher level of exchange among Regulators, also encouraging, where advisable, the dissemination of "best practices".

3. Accountability

We agree with the provision related to the accountability of the Agency. We also appreciate the envisaged creation of a desk for questions coming from

stakeholders in relation to Review Report. We think that such desk should be better defined, scheduling an effective consultation on the Review Report once made public available and foreseeing a duty for the Agency to answer to the requests of clarification and/or eventual claiming of inconsistency. Such duty could be performed in the form of public answers or even public debate.

4. Priorities

Creating a truly European market for electricity and gas remains the main objective still to attained. In doing so, emphasis should be put on ensuring that the right regulatory condition exist for regulated use of existing and future infrastructure, as well as for merchant projects to take place.

With special regard to the earlier, we look with favour to the establishment of priorities in relation to the network codes both in electricity and gas.

However, as for what electricity is concerned, we believe that to achieve the aim of such codes – i.e. the creation of an interaction among national transmission networks, firstly at regional level and, finally, at European level - the order of priorities should be partially amended.

In particular, for the development of regional markets, taking into account that issues related to capacity allocation conditions for access to the network – including tariffs issues and third party access services – will be treated directly in the future Regulation amending Regulation 1228/2003/EC, the main priorities should be related to capacity allocation and congestion management, balancing and secondary markets and transparency of data associated to cross border exchanges of energy, mainly network available capacity.

We agree with the rank of ERGEG for the remaining list of priorities.

As for gas, the list of priorities proposed reflects, in general, the compelling criticalities to be solved. In our opinion, however, a higher priority should be assigned to the problems related to the access to the gas grid. The gas is in large part imported from non-EU countries and to reach the final market it needs to be transported through a number of transit countries. The problems affecting access to the gas grid are, in fact, impeding a fair competition to the final market.

As for the GGP, it has to be underlined that some of them (as the one on gas balancing and the one on tariffs) are well developed and effective. A full development and implementation of the framework guidelines as proposed by ERGEG could require some years. In the interim period it is of utmost relevance that the positive contribute of the effective GGP already issued is not wasted.