

EDISON'S POSITION ON THE CESR/EREGG CONSULTATION ON MARKET ABUSE INTO ELECTRICITY AND GAS SECTOR

Edison is today the second largest electricity company in Italy and the third player for natural gas in Italy. In the future, Edison aims at continuous growth, international expansion (its joint venture with Hellenic Petroleum will soon make it the second electricity player in Greece) and at becoming the second player for natural gas in the Italian market. As shown by the recently presented business plan, the company will keep on investing in the years to come: more than 6.2 billions Euro in the next four years will be devoted to investments for both natural gas (exploration and production activities, as well as some major import infrastructures, such as the Rovigo and Rosignano LNG regasification terminal and the IGI and GALSI pipelines) and in power generation sectors, with a particular focus on renewable energy sources (1 billion Euro of capital expenditure) and strategic overseas developments in fast-growing markets, such as Greece, Romania and Turkey.

Edison, an historical energy company (one of the oldest energy companies in Europe, active since 1881), had to diversify its business, when the national monopoly on electricity was established in Italy in 1963; thanks to the first wave of EU Directives in 1996, it could re-focus its business on energy once again, thus developing one of the most modern and efficient gas-fuelled CCGT generation portfolios in Europe.

Today, through one of the most ambitious investment plans in Europe, Edison is the leading new entrant in the Italian energy market.

In the electricity sector, Edison runs more than 12.500 MW of generation capacity. It has massively extended its thermal power generation portfolio, with the recently developed high efficiency CCGT gas-fired power plants of Altomonte, Candela, Torviscosa, Simeri Crichi (ongoing development). Edison is also active in developing projects in the field of renewable power generation (especially wind farms) and merchant electricity transmission, such as the AC Tirano-Campocologno and the HVDC Bovisio-Magadino lines, with the latter been awarded TEN-E financing.

Along the gas supply chain, Edison is currently operating on- and off-shore exploration and production projects, both in Italy and abroad. Special interest and massive investments have primarily been conferred to the development of import infrastructures, with the purpose to reach diversified primary sources (such as Qatar, Azerbaijan, etc.) and establishing new import routes (through both LNG and pipeline investments). An overview of our developing projects would include the Rovigo off-shore (under construction) and Rosignano re-gasification terminals, the IGI (Italy-Greece Interconnector) and GALSI (Algeria-Italy via Sardinia) pipelines, as well as some new gas storage facilities in Italy.

INTRODUCTION

Edison S.p.A. welcomes the consultation launched by ERGEG-CESR on market abuse in electricity and gas trading. Only through a sound cooperation between institutions, regulators and stakeholders it will be possible to define efficient measures to further develop competition on energy markets.

The specific features of energy markets have to be taken into account in order to define a consistent legislative framework that insures the correct functioning of wholesale markets, in line with the liberalised internal energy market in the European Union.

Furthermore it is necessary to strengthen transparency information within the commodity markets in general, and not just in the electricity and gas sectors. For example a lack of transparency and monitoring by the competent authorities is still envisaged in the oil contracts as well as in the carbon markets. Raw materials and standardised products still have a significant degree of similarity with power and gas.

Taking into account the strict time schedule and the relevance of the topics as touched upon by the document, Edison hopes that further additional observations would be considered by ERGEG-CESR even after the conclusion of the consultation process.

A. 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.¹

Edison S.p.a. agrees on the analysis developed by ERGEG-CESR and considers unfeasible the adoption of the framework envisaged by Directive 2003/6/EC² (articles from 1 to 6) concerning market abuse in the gas and electricity sectors. These two sectors have in fact some specific features that make unlikely the application of the provisions on market abuse set out for the trading of financial instruments. Energy markets, in particular the electricity one, have just recently experienced the complete liberalization, but this process will still need to undergo few settlements in order to fully deploy its benefits. Concerning consumers protection, transparency and the monitoring activity carried out by the competent national authorities a coherent framework has to be envisaged in line with the most recent developments reached in the European Energy Consumer's Charter.

B. 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?

DISCLOSURE OBLIGATIONS

Concerning disclosure obligations (article 6 of the Directive) Edison stresses the lack of consistency of the framework envisaged for market abuse in the financial instruments trading if applied to electricity and gas markets. Edison considers unfeasible to regulate within the framework of the Directive the physical transactions of commodities (be that

¹ Is the scope of Directive 2003/6/EC on insider dealing and market manipulation (market abuse) such as to properly address market integrity issues in the electricity and gas markets?;

² Following refereed to as 'the Directive';

spot or on a long term basis) and/or derivatives markets products outside regulated markets, making thus incomplete the scope of the provisions set out by the Directive. Moreover Edison considers necessary to complete, in the wider perspective of the third energy package, the definition of the new European policies related to:

- A clearer definition of the provisions aimed at identifying the competent authorities, based on the effective roles and competencies (e.g. defining some ex ante and ex post scope for exercising their competencies);
- The definition and the subsequent adoption of a shared model within the European Union aimed at defining standard procedures and a single framework for record keeping, the transmission and the publication of data and information.

In this respect Edison considers necessary to stress that information transparency matters only in the price formation strategies but they do not affect the circulation of commercially sensitive information. These ones in particular do not constitute a means to detect a market abuse of one or more operators, but can simply indicate the pursuit of a commercial strategy, a behaviour that is still within the border of free market dynamics. For this reason discretion on commercially sensitive information is of the utmost importance in order not to jeopardise a fair deployment of competition on the market.

INSIDER TRADING

An ad hoc definition of “inside information” (article 1 of the Directive) for the electricity and gas markets would be convenient. In several electricity markets, for example, a large part of the information concerning the physical transactions (on both wholesale and OTC markets) are made available by System Operators (e.g. ETSO VISTA platform). Therefore an harmonisation at European level would be welcomed in order to increase the efficiency of such information.

Concerning the information on the non-availability of power plants, the data related to the schedule for maintenance/unavailability are already made available to System Operators by operators according to the provisions set out in the network codes. Thus it is not necessary to impose operators further obligations related to the publication of information, especially in case of unexpected and exceptional disservices of the power installation that in no way can be associated to an intentional lack of transparency. These situations have to be steady handled by System Operators to guarantee the safety of the system.

Also in this case it is necessary to evaluate any additional measure in the light of the developments of the ongoing debate on the third energy package and on the provisions already foreseen related to transparency information.

MARKET MANIPULATION

Market manipulation (article 5 of the Directive) can represent a particular abuse when it is carried out by an operator that takes advantage of its dominant position in the market by influencing the behaviours of other operators and consequently the price paid by the users of the grid.

A dominant position – especially for non incumbent operators – do not constitute itself a market abuse. In particular manipulation can occur through the coexistence of generation, trading and activities directly related to dispatching and network operation.

In this case it is important to follow the developments within the measures foreseen by the third energy package aimed at ensuring a full separation (unbundling) of the network operation, limiting the vertical foreclosure and potential anti-competitive behaviours.

Additional specific obligations can be foreseen for incumbent operators whereas insufficient opening of the market and a lack of competition are detected by the national energy regulators (as in article 22 c letter *i* of the proposal of Directive amending Directive 54/2003/CE and article 24 c letter *i* of the Directive amending Directive 55/2003/CE).

Within the process of definition of an ad hoc regulation for market abuse in the electricity and gas sector it should be highlighted the need to define the scope of intervention for the competent authorities in order to avoid overlaps and lack of transparency when dealing with the single cases.

Edison considers furthermore that it should be the national energy regulator and the antitrust authority to identify and enforce the rules and to punish abusive behaviours.

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

No further regulation is needed in these areas.

D. 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?

Edison considers of the utmost importance to define a common and harmonised list of the information subject to publication at European level based on the criteria suggested by ERGEG-CESR, in particular:

- Harmonised timing and pattern for publication
- A single platform for the acquisition of information
- Standard quality levels

Such a list should be likely defined at European level in order to guarantee the highest degree of harmonisation and foster market integration at both regional and European level. Additional specific obligations can be foreseen for incumbent operators when verified conditions of insufficient market opening and competition exist.

E. 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?

Same as answer to point D.

³ Would the assessment be different if greater transparency obligations in line with the analysis above³ were adopted?;

F. What is your opinion on the proposals of CESR and ERGEG in the three different areas: disclosure obligations, insider trading and market manipulation?⁴

Edison shares the option proposed by ERGEG-CESR through the three recommendations for each case. Moreover Edison considers the following elements as a necessary feature of such a development:

- A careful streamlining of the provisions, of the procedures and the competencies based on market design and on the powers foreseen by the *acquis communautaire* to enforce competition in the energy sector and protect it from market abuse;
- A fully inclusive consultation process aimed at defining the most efficient measures as means to avoid red taping and potential drawbacks in the deployment of a fully competitive market.

⁴ What suggestions do regulators have to mitigate any shortcomings?