

Increased Public Accountability and the Role of the Regulator

"Who would imagine a Champions League football match with a third class referee? But some Member States want a market worth billions of Euros to function with limited scrutiny by regulatory authorities" Claude Turmes, rapporteur for the European Parliament for the electricity market directive.

Switching from monopolistic, national markets to a EU wide liberalised electricity market is a challenge. Experience from markets that function well today - the UK or Scandinavian markets - show that if there is a period of de-regulation it is often followed by varying degrees of erratic market developments and consequently re-regulation has been introduced to ensure a better functioning of the market.

The European Commission proposes that each country establish an energy regulator. This is already the case in 14 of the 15 Member States, only Germany is resistant. While it is clearly desirable to have an independent regulator, what is even more important is that the regulatory functions are clearly defined and the power of the regulator enhanced to enable it to take action when necessary to allow all actors to have equal rights in the market.

The European Parliamentary rapporteur makes a number of clear recommendations to improve regulatory functioning, these include:

- Better control of cross-subsidies in integrated companies through a better definition of the costs which can be accounted under distribution and a special attention to monitoring of accounts
- Observation and reporting to the respective authorities on market dominance for all aspects of the electricity market
- Monitoring of trading activities (see ENRON case)

As the regulatory authorities have to take up more power, it is even more necessary to ensure a fair access to exchange of information with the regulators for all those touched by the market and to ensure a better democratic accountability of the regulator.

However, in order to complete the internal energy market and to reap its full benefits, further measures are now necessary. The nature of the measures which are required in order to provide for such an impetus are identified: they concern the degree of market opening ("quantitative proposals") and the minimum obligations regarding access to the network, consumer protection, regulation and the unbundling of the transmission and distribution functions in integrated gas and electricity companies ("qualitative proposals")¹.

Increasing market concentration is occurring, which adds to the market power of companies and decreases the relative power of the national regulators. It is therefore essential that the role of the regulator is made clearer and that the power of regulators to implement decisions is enhanced. The EU Commission's proposal although giving a better description of the role of the regulators could be improved by a series of amendments:

- Enhanced role in combating market dominance: The regulator must monitor concentration in the market – see separate briefing—taking into consideration the impact on the national and European market. Member States and national industries are keen to retain a large national utility to compete at a European level;

¹ Communication from the Commission to the Council and the European Parliament, Completing the internal energy market, COM(2001) 125 final, 13th March 2001, page 2

however, this may be to the detriment of smaller actors on the national level. Monitoring market domination must therefore be a key task for the regulator.

- Better fight against cross-subsidies in integrated companies: Many companies active in the electricity markets have assets in generation, in grid and in retail. In order to allow fair competition in the generation and retail business, cross -subsidies from the activities of the "natural monopoly" grid must be prevented. The role of the regulators must be clearer defined in this respect and those areas where "creative book keeping" allow for cross subsidies - notably the definition of which costs a company are allowed to be accounted for under distribution must be better defined.

- Monitoring of the trading activities: One aspect of the liberalised electricity sector will be increasing trading with electricity and derived products (futures). Manipulation of prices in the UK pool during the nineties and the ENRON debacle shows that close observation of these activities is required

Giving more power and independency to regulatory authorities should be accompanied by increased transparency of the regulator and increased democratic debate to achieve this two specific recommendations are made: -

Regulatory Supervisory Body: The Belgium Government has recently established an advisory body for its regulator. This enables interested parties, such as industry, NGOs, consumer groups and trade unions to discuss the strategic direction of regulation. Such a body could and should enhance the performance of the regulator and should be replicated across the Union.

Reporting to National Parliaments: The national regulator should report on an annual basis to the relevant committee within their national Parliament. Parliamentary scrutiny is an important part of the democratic control of the market.

The European Commission clearly wants the next stage of the liberalisation process to ensure that there is adequate consumer protection. In the light of this more explicit measures need to be introduced to ensure that the voice of individual consumers is heard and their needs respected. The Parliamentary rapporteur has recommended the following changes to the draft directive.

Energy Consumer Council: In 2001 the UK Government sanctioned the establishment of a consumer body, Energywatch, whose mission statement is: *"To be an independent and assertive consumer champion, dynamic in developing safe, confident and assertive customers and committed to improving the services provided to all gas and electricity customers"*. The specific aims of the organisation are: -

- To champion the interests of all gas and electricity consumers, to enable them to set the agenda with energy companies and other key organisations and to be instrumental in developing an effective and competitive market.
- To understand and protect the needs of all gas and electricity consumers, particularly in relation to customer service, fuel poverty, safety and the disadvantaged.

Such a body should be replicated in each Member State.

Access to information: The current Directive gives the right to the system operator to 'preserve the confidentiality of commercially sensitive information'. This gives insufficient guidance to the system operator, and the Rapporteur has proposed that it be revised to require the system operator to have a positive obligation to release all aggregated – generic – information to interested parties.

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