

EDISON COMMENTS ON THE DRAFT DISCUSSION PAPER BY DG-TREN ON TRANSPARENCY AND INTEGRITY OF TRADED WHOLESALE MARKETS IN ELECTRICITY AND GAS

GENERAL REMARKS

Edison shares the European Commission's view about the increasing complexity and significance of wholesale energy markets. Their peculiarities should be taken in due account when defining a consistent legislative framework aimed at ensuring the correct functioning of these markets. As highlighted in the discussion paper, a series of regulatory gaps can be observed in the existing legislation, notably as far as MAD Directive is concerned. Physical commodities, OTC markets and MTFs (derivatives included) are out of the scope of the legislative framework designed by articles from 1 to 6 of the Directive, making its adoption unfeasible concerning market abuse in the gas and electricity sectors.

Moreover, Edison believes that a unique set of trade transparency guidelines is to be applied in all Member States, as regards fundamental and transactional data, introducing disclosure obligations focused on physical transactions of commodities and energy derivatives products outside regulated markets. On this point a clear definition of the competent authorities, the adoption of standard procedures and a single regulatory framework for record keeping, transmission and publication of data are of paramount importance in order to ensure consistency among European markets. Nevertheless, some issues must be duly taken into consideration:

- Information transparency is aimed at increasing trust among market participants, being thus limited to market price formation strategies. Commercially sensitive information, even if included in the record keeping obligations, shall not be in any way divulged in order not to jeopardise competition in energy markets.
- A new legislative framework on transparency and integrity of traded wholesale energy markets should avoid to duplicate administrative costs on operators due to regulatory overlaps. Therefore, a harmonization at national and European level aimed at minimizing administrative burdens on market operators is much needed.

Edison agrees with the European Commission on the need for a new piece of legislation aimed at extending market abuse regulation to all energy products and market venues. Still, in our view existing legislation, i.e. the Third Energy Package and competition law, shall be extensively applied to confine the scope of application of this new regulation to the settlement of failures in the existing framework. Furthermore, the process of definition of this ad hoc regulation for market abuse in the energy sector should be carefully oriented to avoid overlaps and lack of transparency in the execution of new duties by regulatory authorities.



Price signals delivered by energy markets are of paramount importance as a benchmark for investments in energy infrastructures. Hence, measures able to introduce some distortions of price signals for future investments shall be clearly ruled out.

Thus, in our view, internal market functioning shall be a major concern when defining an EU-wide market monitoring mechanism for preserving integrity and transparency of energy markets.

WHO WE ARE

Born in 1881, Edison is one of Europe's oldest energy companies. In 2008, it reported sales revenues of 8.867 mln €, and is carrying out an ambitious investment plan in the electricity and gas sectors. Edison 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, this becoming the largest new entrant on the Italian market.

With 50,3 TWh produced in 2009, it is now Italy's second largest electricity generator. Thanks to 7.000 MW of new highly efficient and low emission plants (CCGT thermo plants, as well as hydro and wind power plants), the Company has now a total installed capacity of 12.500 MW. In the hydrocarbons business, Edison has an integrated presence in the natural gas chain, from production to importation, distribution and selling, with sales of 13.2 billion cubic meters in 2009.

In 2009 the new LNG terminal in Rovigo started to contribute to the diversification of Italy's supply sources with its regasification capacity of 8 bcm of natural gas a year, equal to 10% of Italy's demand for natural gas. The start up of Galsi and ITGI pipelines will further connect Italy to Algeria and Caspian Sea, two areas rich in hydrocarbons.

POLICY OPTIONS (EU REGULATORY INITIATIVE)

1. Definition of insider dealing and market manipulation

Edison favours a tailor-made definition of "inside information" aimed at addressing the peculiarities of energy markets. However, it should be duly considered that some market operators have already complied with information disclosure obligations, e.g. in the electricity sector where information about physical transactions is made available by TSOs. A harmonization at European level is therefore more than welcomed in order to complement and to increase the efficiency of these existing channels. Still, we would like to stress that

any information disclosure obligation liable to affect the commercial position of an individual player and not properly justified by the risk of market manipulation shall be carefully avoided.

As regards the concept of market manipulation in the energy market, this is strictly connected with the dominant position of vertically integrated undertakings, already covered by unbundling rules included in the Third Package. Therefore the role of the new market abuse regulation should be complementary to existing legislation where violations are still detected by National Regulatory Authorities.

Thus, we agree on the need for a definition of insider dealing and market manipulation as close to MAD Directive as possible, though able to include specific market practices and operational arrangements in force in the energy sector. Hence, stakeholder's participation to the process shall be regarded as of utmost importance in order to deliver bespoke definitions strictly based on the reality of EU markets.

2. Commodity Scope

In Edison view, it is necessary to strengthen transparency and integrity across commodity markets other than electricity and gas. For instance, a lack of transparency and monitoring by the relevant authorities is envisaged in oil contracts as well as in the carbon markets. We therefore believe that the scope of the new legislative framework should be as wide as possible, in any case including at least electricity, gas and CO₂. In particular, this latter commodity can count on a good degree of standardization at a contractual and market level, thus easily fitting into a new tailor made legislative framework on market integrity and transparency.

3. Transactional data

We believe that the record keeping obligations codified by the Third Energy Package ensure adequate monitoring harmonized at European level. Further transactions reporting requirements would bring about an undue increase of administrative and bureaucratic costs charged to market operators, especially when imposed by different national regulatory authorities. However, we wish to highlight the need to ensure consistency between record keeping requirements on spot wholesale markets and future markets through a unique set of guidelines applicable in all Member States.

The introduction of a European trade repository, which collects all transactional data, risks to be excessively burdensome to market participants, besides being of no use for market transparency. We strongly believe that the publication of data regarding single transactions,

notably non-standardized products, is of no value to wider markets, while implying the disclosure of commercially sensitive information.

Thus, as far as the current proposal is concerned, regulators should rely on the already existing sources of data, included exchanges and other MTF, and on the current legal framework on report keeping. Furthermore, records disclosure from market participants to the relevant authorities should occur case by case on Regulator's specific request, in order for market oversight to be consistent with streamlined and efficient market procedures.

4. Fundamental data

Edison shares the EU Commission proposal to rely on the Third Package for the codification of disclosure obligations for fundamental data (guidelines approved by comitology). Nevertheless, the definition of a common and harmonised list of the information subject to publication at European level should fulfil the following criteria:

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

Moreover, all the data made public should be available to market participants in as much harmonized as possible format and time frame, throughout all markets and regulatory regimes. This would be useful in order limit expenses born by market participants to comply with market monitoring obligations.

We finally suggest, as an example of fundamental data to be required for monitoring reasons, the list proposed by ERGEG in its "Guidelines of Good Practice on Information Management and Transparency in Electricity Markets"¹.

5. Monitoring Models

Edison thinks that the design of a new monitoring model concerning integrity and transparency in the energy markets should be primarily aimed at an EU-wide harmonization, though avoiding any overlap and duplication among different regulatory level. In the perspective of an integrated internal energy market, it is of paramount importance for companies operating on several Member States to minimize the costs of compliance with transparency and integrity legislation in force in each markets.

¹ Ref: E05-EMK-06-10, August 2006.

Thus, whatever is the oversight model chosen, the appointment of a single authority in charge of collecting data from market participants, be it national or European, could considerably improve their capacity to comply with the new regulatory framework. Moreover, this arrangement should be accompanied by a full harmonization of the information to be provided to Regulators.

We would finally like to stress that ACER does have neither specific monitoring competences nor the adequate internal structure to carry out the competences foreseen by the new legislative proposal.