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Competition Policy supporting the Green Deal EPEX SPOT contribution

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EPEX SPOT welcomes the opportunity to share thoughts and ideas with the European Commission regarding the future of competition policy in the context of the EU Green Deal.

Competitive markets are at the heart of a cost-efficient energy transition. Power Exchanges can sustain Europe's sustainable recovery by providing accurate and meaningful price signals, contributing to security of supply and facilitating necessary investments to achieve climate goals.

The European Power Exchange EPEX SPOT SE and its affiliates operate physical short-term electricity markets in Central Western Europe, the United Kingdom and Nordic countries. Early Q1 2021 we will also offer our services and products in Poland. On our markets, we bring together different market participants and allow them to react on short notice for example to updated forecasts for renewables origination and to adapt their consumption and production pattern to a reliable price signal.

Competition is an essential driver for innovation. EPEX SPOT has pioneered many innovations in electricity trading over the past ten years, providing market participants with a larger range of products and greater trading opportunities (continuous trading with 60, 30 and 15 minutes products, intraday auctions, or trading until delivery), to the benefit of the end-consumers. As the EU embarks on a profound transformation and decarbonisation of its economy, innovation is as crucial as ever. Innovation shall take place on a pan-European level, to increase the efficiency of the internal energy market, as well as on a local level as the electricity sector becomes more decentralised.

Competition policy can be in the lead to fight climate change and protect the environment by creating the right conditions for businesses to invest in carbon-neutral technologies and by ensuring cost-efficient solutions. In times of stretched public finances, the private sector has an essential role to play to finance and support the green transition. This is only possible if the competition framework encourages companies to do better, to become more innovative, more productive, and better at meeting customers' needs.

Well-functioning and competitive power markets are the key for the European industry to lead the energy transition. Lifting barriers to market-based price formation and ensuring access to the markets for the new players will allow the European industry to be a frontrunner in low-carbon technologies. As an example, new platforms to value the flexibility required in the power system (local flexibility markets) are essential to trigger the necessary investments in new, flexible assets and innovative technologies such as aggregated batteries, Virtual Power Plants and blockchain P2P trading solutions. These platforms facilitate grid management and ensure security of supply in a system dominated by renewable power generation.¹

Competition policy also has a critical role to support the completion of the internal electricity market. Competition between Nominated Electricity Market Operators ("NEMOs") has been developing since the entry into force of the Capacity Allocation and Congestion Management Regulation (EU) 2015/1222. However further steps have yet to be taken like the suppression of the status of monopolistic NEMOs. This is critical to maintain security of energy supply, increase competitiveness and ensure that all consumers can purchase energy at affordable prices.

¹ Local flexibility markets are market places gathering parties with flexible assets (e.g. wind energy installations, solar PV, batteries, Power-to-X) and allowing them to offer flexibility towards entities, typically system operators, both transport and distribution system operators, who need it to manage grid congestion and ensure security of supply.

To simultaneously achieve the goals of the EU Green Deal, complete the internal electricity market and drive an industrial renaissance, EPEX SPOT would like to share the following recommendations for the future of EU competition policy:

1. State aid control: preparing to phase out subsidies for renewable energy

- The EU's State aid guidelines on energy and the environment have been driving the transition of existing renewable support schemes to market-based instruments to minimise market distortions. The implementation of market-based mechanisms, such as direct marketing and tendering procedures, have proven instrumental in many circumstances to reduce support cost-effectively in competitive markets.
- Looking ahead, the revision of these guidelines should pave the way for a subsidy-free future for renewable energy. Currently implemented support schemes are not suitable in the long-term. They distort the energy market and hamper an efficient grid integration of renewables. Furthermore, they favour lock-in effects that increase the period for which renewable energy sources (RES) would receive regulated payments rather than promoting a gradual phase-out of subsidies. As a result, they contribute to raising the costs of the energy transition.
- Full market integration is both necessary and feasible. Considerable amounts of renewables are already being successfully integrated into the European power market today. EPEX SPOT contributes to market integration of renewables with innovative trading systems, trading close to delivery and products with finer granularities.
- Under the future market design, renewables should fully contribute and be exposed to the price signal. Revenues for renewables producers can be generated from different markets, such as wholesale energy markets, markets for Guarantees of Origins, system operators' services and Power Purchase Agreements. For this, a well working energy market with stable and liquid bidding zones and a robust emission trading system price are needed.
- During the transition phase to full market integration, certain support mechanisms are likely to be still needed. All support schemes shall be as least distortive as possible, limited in time, market-based, harmonised at a European level, and the subsidy amount shall be determined by competitive mechanisms (such as auctions).
- On another note, regarding the review of the compatibility of State aids with the internal market for the purposes of Article 107(3) TFEU, the recent EU Court of Justice's case law² has revealed the existence of paradoxes, if not shortcomings, in terms of efficiency of the EU treaties' objectives. It seems that because of the definition of the internal market for the purposes of Article 107(3)(c) TFEU, the full potential of the EU's environmental objectives³ cannot be unleashed, here in the area of State aids.

² Judgment in Case C-594/18 P, Austria v Commission.

³ Notably enshrined in Article 37 of the Charter of Fundamental Rights of the European Union, and Articles 11 TFEU and 194(1) TFEU.

2. Antitrust rules and cooperation between Power Exchanges: ensuring fair competition in the power markets to drive innovation

- The energy sector is a prime example of interplay between competition policy and sectoral policy, with competition as a tool for achieving market liberalisation and integration. Climate-driven energy policy should capitalise on competitive energy markets and further market integration.
- The development of competition between Power Exchanges has been driving innovation in the electricity market. It is of utmost importance to preserve this and ensure fair competition between Power Exchanges and the new platforms active on spot power markets.
- Competition has stimulated a range of innovations at EPEX SPOT. Our market innovations across Europe have become a central pillar of the energy transition. Among others, we have continuously developed the possibilities of trading close to real-time. We also pioneered intraday products with smaller granularity, in particular 15 and 30 minute products, allowing market participants to adjust hourly forecast deviations, fine-tune customer portfolios and manage production ramps. We launched pilot projects for flexibility markets, enabling better congestion management in the distribution grid and thereby successful integration of renewables into the electricity system. We are taking further steps to open up our markets to decentralised market players and enlarge the trading community to active consumers.
- EU competition policy shall ensure that this competitive framework endures and is further strengthened to enable greener outcomes. In contrast, initiatives in favour of new agreements and cooperation between Power Exchanges would go against the decarbonisation objectives. More specifically, proposals to enable the sharing of Power Exchanges' order books outside of the framework of cross-zonal capacity allocation raise serious concerns regarding the possibility for Power Exchanges to continue innovating in products allowing for an ever increased trading of electricity from renewable sources. Indeed, asking a private commercial player to systematically share its products and innovations within a single liquidity pool would encourage free-riding and ultimately deter investment and innovation from both first generation inventors and second generation inventors, at the expense of the market and the climate objectives.
- Moreover, such proposal of order book sharing without cross-zonal capacity allocation – currently being discussed in the context of the revision of the Capacity Allocation and Congestion Management Regulation (EU) 2015/1222 – would affect the competitiveness of the whole electricity industry. The decarbonisation, decentralisation, and digitalisation of the power sector have allowed new actors and business models to emerge. These “niche”/digital born start-ups or established companies under transformation constitute disruptive actors and natural competitors to Power Exchanges in the EU. These are for instance new wholesale trading (bilateral or exchange-based) digital platforms or emerging peer-to-peer trading IT companies. Should Power Exchanges only be subject to liquidity pooling requirements, it would lead to discriminatory treatment between Power Exchanges and these new platforms. Should liquidity pooling requirements cover all players active on the spot power markets, the very benefits of competition would fade away, and these business models would disappear.
- Sectoral regulation should ensure that spot power markets remain competitive and open to disruptive innovation. Regulatory-driven cooperation amongst competitors should not jeopardise incentives to

innovate and ultimately the key components of the internal market, in particular the freedom to provide services.

3. Market definition and the increasing integration of the EU internal market: the existing competition framework has yet to be fully implemented

- Market definition plays an important role in ensuring a level playing field across the EU. However, the persistent national or even sub-national geographic approach is at odds with continued EU market integration and overall globalisation of markets.
- In the electricity sector, the consolidation of the EU electricity internal market, notably through the network codes, the further development of implicit multi-regional coupling, as well as the development of competition amongst NEMOs should lead to consider electricity trading activities and services with a European and/or regional scope.
- Competition policy can usefully complement internal energy market regulation and should ensure the development of competitive, integrated markets. The CACM Regulation aims at promoting effective competition in the generation, trading and supply of electricity (Article 3). Yet, more than five years after its entry into force, a third of the EU Member States still apply the monopoly model for NEMOs, which is an exception to the default competition model. This deprives market participants from access to competitive trading conditions (products, infrastructure & transaction costs, etc.), which thereby reduces incentives to participate in the market, limit trading opportunities and in turn affects price formation.
- Moreover, the lack of market coupling between several NEMOs' hubs within monopolistic NEMO countries, and the resulting lack of cross-border competition for such monopolistic countries, impede the welfare gains of European-wide market coupling to the detriment of the final consumer: a) optimal use of interconnectors facilitating congestion management; b) price convergence of market areas in case of sufficient border capacity; c) smoothing effect on negative or positive price spikes; d) attenuation of extreme weather conditions (cold wave, storm front) on other market areas; e) higher security of supply through market integration and no more dependence on an individual country.
- Phasing out monopolistic NEMOs would unleash the Power Exchanges' innovation potential described above, and boost the deployment of new trading solutions fit for the energy transition. No defining climate-friendly innovation has come from the monopolistic NEMOs over the past years. In contrast, the transition of monopolistic NEMOs to the competitive model would enable small and new market participants (e.g. flexibility providers, demand-side response technologies, energy communities etc.) to access several markets, instead of having to handle different trading systems, and country-specific administrative procedures. This would reduce their costs and allow them to play a bigger role in the decarbonisation of the European economy.

Hélène Weil

Senior Public & Regulatory Affairs Officer
h.weil@epexspot.com

Camille François

Senior Legal Counsel
c.francois@epexspot.com

About EPEX SPOT

The European Power Exchange EPEX SPOT SE and its affiliates operate physical short-term electricity markets in Central Western Europe, the United Kingdom and in Denmark, Finland, Norway and Sweden. As part of EEX Group, a group of companies serving international commodity markets, EPEX SPOT is committed to the creation of a pan-European power market. Over 300 members trade electricity across twelve countries on EPEX SPOT. 49% of its equity is held by HGRT, a holding of transmission system operators.