

Antitrust Registry
(Energy Sector Inquiry)
DG Competition
European Commission
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Comments the Preliminary Findings of the Energy Sector Inquiry on 16 February 2006

Bergen Energi would like to thank the Commission for its work and the findings in the preliminary report. We appreciate that the Commission takes actions and makes clear statements in an area suffering from lack of strict regulations and control. We would also like to compliment the Commission for its strong statements made in the presentation of the report, and look forward to the actions from the Commission to solve some of the problems in the market.

We appreciate the fact that the report seems to be objective, without too much influences from the large dominant market participants and lobbyist, although we miss the participation of the end users and consumers.

Generally Bergen Energi agrees on the findings, and the statements made in the earlier issue paper. Bergen Energi is active as a broker all over Europe and we experience malfunctions and breaches of competition law on a daily basis. We strongly support the Commission in its work towards a better energy market, and the fact that there finally is an objective party active in improving the market, and not only leave this to the large dominant market participants.

We have chosen to comment on some of the issues mentioned in the report, and have focused on the electricity part. The gas sector will be commented separately when needed, like the price link between oil and gas, see the section about price issues below.

Price increase and comparison of prices in the chart presented both at the presentation and in the report show the clear need for stronger regulation and authorities controlling the markets. The prices in 2004-2005 have been unpredictable and uncontrollable. The market continued to be seemingly imbalanced and unpredictable at the end of 2005 and beginning of 2006.

Rules and regulations, and the authorities need to discharge them

The idea about decentralising and transfer of powers to the national authorities was in theory well-founded. The national authorities on the other hand have shown no willingness to take these powers into consideration, and the result has been different national regulations, different national enforcement rules, and different national market developments. Many of the national authorities lack both the competence and

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the willingness to change the market, and many of the national regulators do not have authority to sanction and thereby effectively enforce the regulations. Some authorities are moreover active participants in the market, both as producers, generators and grid-owners, and have for that reason conflicting interests, and these should for that reason be regarded as disqualified to effectively develop the market.

The majority of the national authorities who implement the regulative, choose however to implement only the minimum required. This can hardly be considered as adequate, as the minimum should not be the main rule.

The regulations are further often phrased in a way which makes it possible for the market participant to adopt through mere formal corporate reorganisations, without any real commercial effect. "Paper-rules" could hardly be the intention of the regulation. For that reason stricter regulations which enable the Commission and/or the national authorities to pierce the corporate veil are needed.

Concentration of market power

The concentration in trade and production is in our opinion far too high. The concentration of market power varies as the different market definitions varies, and BEAS have no comments on how the EC defines the market. On the other hand it is clear that no common European energy market exists, and the national and regional markets are still living their separate lives. The concentration of trade in the forward market is too high, which is also pointed out by the EC in the report too. It should be kept in mind that many of the so called "different" market participants are in fact separate entities within the same concern, and thereby have a joint ultimate owner and thereby joint interests. The need for new entrants is obvious, but the entrance barriers are high.

The Commission mentions that concentration may differ, especially in different times and different time-schedules, but, one should bear in mind that the possibility to influence the market in shorter periods is more than enough for a market participant to create hindrances in the market and to abuse their market position.

There are definitely a large number of large operators making offers which influence the price. We were not surprised to see the results found in the inquiry of the main price-setter and its position to raise prices. Based upon our own experience BEAS suspects that abuse of position and market power happens every day, and we were pleased to see the findings in the report and the amounts of operators supporting this. These suspicions are based upon experiences made in the market, and thus based on real life experiences and not only assumptions.

Vertical integration

Vertical integration is one of BEAS main concerns, and one of the main topics we have been trying to put on the agenda for many years. We fully support the findings of the Commission saying that vertical integration has a negative effect on the liberalisation process and the competitiveness of the markets. We experience problems in the market linked to the vertical integration on a daily basis. The results can be summarized as barriers to enter the market, differences in market behaviour and differences in requirements set for the market

participants, possibility to cross subsidise own offers and thereby participation in the market on different conditions and discriminatory behaviour in the market.

The energy market is also a market in need of collateral and cash flow. The incumbents and grid owners have sufficient capital and thereby offer collateral in the network, which gives them low security fees, an easier access to the market. The network as a collateral gives the grid owners another advantage in the market.

The exchange of customer data needed for switching is a pressing problem in some MS, and BEAS fight this problem on a daily basis for instance in Finland. In Finland we have lots of operational problems regarding the support of data from the companies within the time limits, and some times support of data as a whole, and even when reception of this data have been achieved, the datas turn out to be wrong and the companies supporting it refuse to correct them. The guidelines in Finland setting the rules for change of supplier are only for guidance and thus not legally binding, which gives the companies a choice whether to follow it or not. In Germany the problems are a bit different as there are in many cases no real switching opportunities, the customer is connected to a supplier and binding for all the customers in the same area/ same building etc. We hope this will be history when the regulator has taken actions in the market.

Discriminatory conducts in switching procedures are registered every day, and are unfortunately not limited to the cases mentioned by the Commission. In Denmark we have experienced that the network related charges differs, in Sweden cross-subsidising of electricity prices happens, and discriminatory use of data relating to the customers is seen on a daily basis.

The regulations and the electricity directive is a step in the right direction, but is far from sufficient to avoid all negative effects the vertical integrated companies cause the market. The regulation includes an exemption for companies with less than 100 000 customers. The majority of MS have used this as a main rule and not an exemption which results in an exclusion from the regulation for many, if not most, of the integrated companies. In our opinion the authorities should have demanded a complete separation between the monopoly part and the market part. We do not see why those managing a monopoly like the grid should be able to be involved in other services, especially services without any natural link to the network like alarm, security firms, broadband etc. A stricter split up would lead to more transparency in the market, easier regulation, clearer roles and functions in the market, and a large scale of non-discriminatory actions in the market.

We totally agree on the solution by introducing total ownership unbundling, based on the fact that we think that total separation of the monopoly part is the best solution. We further support the result of the inquiry as regards "inappropriate switching procedures, and a lack of Chinese walls between network and supply branches and discriminatory access tariffs".

Market integration

The needs to facilitate companies extending their activities into other regions outside their traditional areas in order to increase competition, and the need of an increased level of interconnector capacity is clear. Incentives to build more capacity are needed, but BEAS is of

the opinion that the solution is stronger regulations and further actions from the regulator as to the grid tariffs and congestion revenues. In many MS the customers never get a penny of the revenues, and calculations show that the network and the maintenance work on the network have been paid of a long ago. Our fear is the TSOs opportunity and possibility to spend it's margins on cross-subsidies, for instance on subsidising the price on energy, resulting in unequal situations in the market, and creating barriers for new entrants to enter the market.

The example from Germany gives a good example on how the large participants use their income to grow and become even more dominant. Have the inquiry investigated how much of the income have actually reduced the net tariffs, and how much the companies have used to develop new products like alarm services, broadband, telephone services etc. or to gain market shares by mergers and acquisitions?

Transparency

Transparency is one of the key-words in liberalisation and developing the energy market. BEAS is of the opinion that transparency is needed for electricity markets to develop, all market participants should have free access to necessary information, and the inquiry confirms the lack of transparency in the market.

The transparent information in the market should also have been coordinated better, and the same obligations to support the market with information should be imposed all over the European energy market. The only factor which should have been taken into extent is business secrets, and only those who expose the company towards the market.

As much information as possible should be published, otherwise the market will suffer from it, and some may gain undue profit on information. Nord Pool and the UK are good examples of transparent markets, with high liquidity. The network participant or the party with the relevant information should be responsible to reveal the information. There is an urgent need to increase the amount of published information, and BEAS would welcome transparency legislation in Europe.

Price issues

Our opinion on the link between the gas and oil prices should be well-know to the Commission. Historically the link could be explained, but there is no reason for the link any more.

The gas-market become more and more independent every day as the gas markets become more and more mature. This includes the link between the oil and gas prices, a link we hope to grow weaker and weaker every year. This link result in an artificial set gas price, and not a gas price set on the supply and demand of gas in the market. Factors influencing the supply and demand of gas are for that reason less relevant and information about such factors are not available to all the participants in the market. The result is less transparency in the market, transparency needed to make the market work properly and on a non-discriminatory basis.

The European Emission Scheme and the windfall profits was mentioned in the report, and discussed by BEAS in the questionnaire. The free amount of emissions results in a CO2 market where the CO2 element is set on top of the electricity prices. The producers have the

choice between producing electricity and thereby using the emissions, or avoiding production and get the emission price in the market. The CO2 market becomes an “alternative” to production of electricity.

The system regarding the CO2-emissions and thereby the CO2 price creates enormous profit opportunities for the producers. The system does not include strong enough incentives to produce alternative energy or develop systems to clean the emissions. In order to achieve the goal of less pollution and more alternative energy, the answer could be to charge 100 % of the emissions, instead of giving most of these out for free. The authorities would thereby get an income they could use directly on environmental measures, like direct support of alternative energy, environmental funds, development of cleaner energy and new ways to clean the emissions, etc. It is about time the emissions and the costs and income do not benefit those who pollute, but benefit the development of the environment as such.

Please let us know if you need any more information.

Best regards,
BERGEN ENERGI AS

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