

Brussels, 28 September 2018

DG COMP
European Commission

Sent by email to: COMP-DIGITAL-CONTRIBUTIONS@ec.europa.eu

Re. CEER's contribution to shaping competition policy in the era of digitalisation

Dear Sir/Madam,

The Council of European Energy Regulators (CEER) welcomes the initiative of the European Commission to address the important issue of digitalisation and the impact on competition policy. We are delighted to have the opportunity to contribute to this discussion of how competition policy can best serve Europe's consumers in an increasingly interlinked and digital world.

Background and context for energy regulators and digitalisation

By way of introduction, CEER is the association of national energy regulatory authorities (energy NRAs) in Europe. There is a strong consumer-focus to CEER's work in our belief that a competitive and secure EU single energy market should deliver benefits for energy consumers. Our members (the energy NRAs) and the energy sector (established market actors, consumers and new players) are deeply affected by the digitalisation of the economy.

Starting firstly with our work as regulators, digitalisation has great potential to reduce future energy system costs, raise efficiency and benefit consumers. It already impacts on energy NRAs' functions. For example, the Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency - the **REMIT Regulation** - provides a consistent EU-wide regulatory framework to prohibit market abuse in wholesale energy markets. Energy NRAs monitor, investigate and enforce against breaches of REMIT. Effective market monitoring and enforcement depends critically on sophisticated IT systems and close cooperation with other European NRAs and the European Agency for the Cooperation of Energy Regulators (ACER) to detect and investigate cross-border market abuse.

A key challenge of digitalisation is of course cybersecurity threats – itself one of Europe's highest priorities. Energy NRAs play different roles from country to country. Many NRAs have an indirect role by deciding the allowed costs of regulated monopoly network operators, while others also have the legal obligations to manage threats to security of supply and/or have new roles with respect to Operators of Essential Services (OES) under the **European Network and Information Security Directive (NISD)**. CEER's upcoming cyber security report, to be published in Quarter 4, will address the impact of the regulatory and technical evolution of cybersecurity in the energy sector. We advocate that a culture promoting informed and conscious digitalisation of the sector may avoid cyber risks.

More generally, in the context of technological developments that are disrupting the traditional market sectoral approach on which regulatory supervision is based, we are reflecting on how best to steer and regulate an energy sector undergoing significant change, from decarbonisation to new innovations such as customer-friendly digital energy services and a mass roll-out of electric vehicles.

These changes offer both opportunities and challenges. Hence, we are determined as energy regulators to anticipate changing environments and guide them, to facilitate competition that benefits active energy consumers whilst protecting those that are vulnerable. Therefore, CEER has turned its attention to building digitalisation into its work. I will elaborate in turn on 3 concrete examples of our digitalisation-related work, namely our “3D strategy”; CEER’s Digitalisation study; and our PEER initiative.

CEER’s 3D Strategy

CEER has set Digitalisation as one of three key strategic policy areas (for the next 3 years) in our proposed [3D Strategy \(2019 - 2021\)](#). The two other strategic policy areas are Decarbonisation at least cost and Dynamic Regulation. We see the digitalisation of the energy sector not a goal in itself from a regulatory perspective, but as a potentially powerful tool to solve several key challenges facing the sector in consumer interests. From a regulatory perspective, we see that digitalisation (of the energy sector) has the potential to:

- Reduce system costs, enhance wholesale/retail competition and benefit all consumers;
- Facilitate more efficient network operation/congestion management;
- Contribute to allowing consumers to be more autonomous (prosumers, etc.), while at the same time ensuring that the situation of vulnerable consumers is not worsened; and
- Respect and safeguard consumer protection rights, whilst providing robust data protection and cybersecurity guarantees.

Digitalisation can be an enabler of an evolving energy regulatory framework which is stable, but not static. Europe’s energy regulators are determined to make regulation coherent with the fast-changing environment that digitalisation and decarbonisation bring about, whilst continuing to protect European energy consumers’ interests effectively. Our commitment to Dynamic Regulation refers to:

- Full and coherent implementation of the legislative and regulatory framework in the European Union;
- An appropriate oversight to ensure trust in the market; and
- A strong link between the evolution of the energy sector and regulatory implementation by developing future-proofed European solutions.

We will seek to implement a future-proofed regulatory framework that allows market forces and regulated entities to deliver the energy transition and digitalisation and to achieve energy efficiency targets as well as security of supply (for example, providing attractive investment signals in a market where renewables account for a large share of power production).

CEER's Digitalisation Study

CEER is working on a study to be published as a public consultation in March 2019 on "Dynamic regulation to enable the digitalisation of the energy system". The central aims of this study are to:

1. identify and explore the implications of digitalisation of the energy sector (electricity and gas), in particular to what extent, and how, digitalisation can: (a) facilitate a more fully participatory retail market that benefits consumers; and (b) makes digitalisation a cost saver for the whole energy system. Potential risks and drawbacks will also be addressed;
2. explore the regulatory implications of digitalisation of the energy sector with a focus on the economic incentives through wholesale markets and retail markets, including flexibility services and the roles of and relationships between the various market actors, and new business models;
3. identify/recommend regulatory approaches (policy actions, ex ante measures and other measures including monitoring) that energy regulators should possibly adopt to mitigate any consumer risks/drawbacks from digitalisation; and
4. seek views on whether there needs to be a common regulatory approach to digitalisation in the energy sector at EU level (and if so, what format this should take) given the cross-sectoral nature of digitalisation.

Partnership for the Enforcement of European Rights (PEER)

Consumer markets are increasingly intertwined: products and services are delivered in combination, software is embedded in products and more devices are connected to the internet. Ever-growing complexity means that the sectoral responses need to be reviewed to ensure that traditional ex ante regulation is updated to provide adequate protection and supervision, avoiding regulatory uncertainties and enforcement gaps.

In increasingly interlinked markets (where traditional jurisdictions between ex ante sectoral regulators and competition authorities becomes increasingly blurred), a legitimate question is where does the role of sectoral NRAs end and where does the national competition authority begin? With digitalisation, future homes are expected not only to become more energy efficient but also smarter. This can provide many benefits to consumers. But is the overall regulatory framework fit for purpose to handle customer questions and disputes? For example, what if the data collected has been breached – who is to blame and who is in charge? In the possible case of digital platforms' market power (or when a device become the single provider in the market), is there cross-sectoral harm or leverage of dominance from one market to another? Clearly, role clarity and cross-sectoral dialogue between authorities is of increasing importance in the context of a digital world, to properly protect consumers' interests.

An important consideration for the European Commission and others (e.g. competition authorities, consumer protection authorities and regulators) is whether digitalisation is likely to require a new approach in consumer protection to address issues such as those outlined above.

CEER is committed to enhancing its dialogue and collaboration with the mandated authorities responsible for supporting and protecting energy consumer rights (such as Consumer Protection Agencies, Competition Authorities, Ombudsmen, Alternative Dispute Resolution entities, NRAs from different sectors, and Data Protection Authorities). CEER has demonstrated this commitment by launching, in 2017, the Partnership on Enforcement and Energy Rights (PEER) – an initiative to strengthen the enforcement of European consumers' rights through enhanced cross-sectoral and cross-authority cooperation, at EU level, of relevant public entities with consumer-related responsibilities.

In the framework of the PEER initiative, this month we launched a [public consultation on a draft Guide for Bundled Products](#) aimed to protect consumers who buy “bundled products”. This draft Guide sets out principles that can be adopted by companies and NRAs to better protect consumers who choose bundled products. The draft Guide also promotes a consistent framework for the treatment of bundled products in all EU Member States across various sectors. Our hope is that other sectoral regulators, consumer protection authorities, competition authorities etc. will contribute to this work (deadline for responses to the consultation is 14 November) to develop guidance for companies and regulators in all sectors (not just energy).

We very much look forward to attending the January 2019 conference and to your upcoming report on the future challenges of digitalisation for competition policy.

Yours sincerely,



Garrett Blaney
CEER President