



Comments on the ACER Public Consultation Document PC_2012_R_10

The Bundeskartellamt submits its comments on the Public Consultation Document PC_2012_R_10 in its capacity as a national competition authority within the meaning of Art. 7(3)(2) of REMIT. The Bundeskartellamt limits its comments to issues it considers relevant to its tasks.

1.) Comments on the preface of the Consultation Document

In the preface of the Consultation Document, it is stated on page 2 that

“[...] the Agency for the Cooperation of Energy Regulators (the “Agency” or “ACER”), *in cooperation with National Regulatory Authorities (“NRAs”)*, may make recommendations to the Commission as to the records of transactions [...]” (emphasis added).

This statement is not in accordance with the provisions of REMIT. Under Article 7(3)(2) of REMIT, it is for ACER *alone* to make such recommendations to the Commission.

Article 7(3)(2) requires national competition authorities, amongst other authorities, to be consulted by ACER prior to making recommendations. National competition authorities are listed on equal footing with the national regulatory authorities. The Bundeskartellamt asks ACER to maintain the institutional balance in the preparation process of recommendations as established by Article 7(3)(2).

2.) Comments on question 5

It appears unclear how the collection of information on scheduling/nomination relates to the mandate of ACER according to Article 1(1) of REMIT, i.e. the surveillance of rules prohibiting abusive practices affecting wholesale energy markets which are coherent with the rules applicable in financial markets. Scheduling and nomination information relates to the contractual use of network infrastructure by market participants but not to activities on wholesale energy markets. Therefore, the Bundeskartellamt calls on ACER to review the necessity of this reporting obligation.

3.) Comments on questions 9, 11 and 18

The Bundeskartellamt acknowledges that a high level of quality of the reported data is of essence for the proper operation of REMIT. The organisational requirements established for this purpose should, however, not be overly burdensome.

The Bundeskartellamt considers the obligation of registration with ACER to be a suitable means to facilitate a high level of quality of the reported data. At the same time, it should be left to each market participant to decide whether it is more efficient to use a third-party service provider or to conduct the reporting in-house. Accordingly, the registration as RRM or RIS should be left open to market participants and the organisational requirements set by ACER should not disproportionately limit the discretion of market participants on how to fulfil their obligations.

4.) Comments on question 10

The definition of standardised trade and process data formats is very complex and greatly depends on the software infrastructure to be established for the operation of REMIT and may be subject to technological developments. Considering the goal of operational efficiency, the Bundeskartellamt proposes that the Commission delegates this issue to ACER.

5.) Comments on question 16

The Bundeskartellamt welcomes the approach proposed by ACER with regard to the obligation to report inside information on unplanned outages, which is limited to situations in which a market participant would not be able to meet contractual obligations because of the respective unplanned outage (Article 3(4)(b) of REMIT). The proposal is properly in keeping with the limits of ACER's mandate.