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ACER Consultation

„European Energy Regulation: A Bridge to 2025“

Introduction

VNG Gasspeicher GmbH (“VGS”) would like to submit the following in response to ACER’s Consultation paper “European Energy Regulation: A Bridge to 2025”.

VGS key messages

- Market-based approaches are the first choice to tackle future challenges and to support the further integration of the European electricity and gas markets. Regulatory interventions shall only apply in substantively justified cases, e.g. to overcome market failure in fields relevant for security of supply. Any new instrument shall be introduced only after a careful assessment of its necessity and implications. As neutral and well regulated entities DSOs today already facilitate the market and provide a level playing field for all market parties. Binding rules should in all member states guide processes as billing, switching, communication between market participants.
- The unbundling requirements of the internal energy market directives (Second and Third Energy Package) are an important instrument to provide for a level playing field. Provided they are fully transposed, correctly implemented and strictly enforced at national level, – as in Germany since 2005/2011 – they ensure non-discriminatory network access and market functioning on wholesale and retail level. Confidentiality obligations (informational unbundling) and unbundling of accounts are binding for all network operators without any distinction or exception. There is no need to rethink the current unbundling requirements or to amend the existing de minimis rules. By contrast, experience with TSO unbundling shows that stricter unbundling rules may cause negative side effects such as problems concerning the funding of investments.
- A non-discriminatory network access for all market participants as well as market functioning are provided for most effectively and efficiently by accompanying the present unbundling requirements with a high degree of compulsory automation of workflow processes like supplier switching and data handling. Therefore, more emphasis should be placed on clear common national market rules i.e. data exchange processes / data formats and data content as well as related time frames. These rules should be mandatory for all market participants, as this will foster the market. However, VGS will see advantages for a European wide harmonisation of standardized processes and data formats e.g. the adoption of similar billing processes or standard load profiles. Demand response services should be left to the market. DSOs can make use of these services in order to tackle grid constraints. In the absence of grid constraints, market participants should be allowed to carry out demand response services in order to bring benefits to

customers. To indicate the relevant system state, the so called “traffic light concept” has been developed in Germany. While DSOs will continue to play a crucial role in a “smarter world” in the future, it remains to be seen how roles and responsibilities in the energy market will be allocated appropriately between DSOs and market participants.

- Customer data protection and privacy is a key element and has to be in line with the European data protection law. Additional national technical rules e.g. for minimum cryptographic standards can contribute to customer data protection and privacy.
- Regarding the considerations on governance, VGS urges that market actors which do not have defined responsibilities in a regulated context but have to bear the consequences of decisions taken, such as generators, DSOs, traders and retailers, should have a proper role in the governance process.
- A general shift from volumetric (kWh) towards more capacity based (kW) network tariffs could be beneficial for the electricity sector, since network costs are primarily determined by the electric capacity (kW). Yet, any change in this field has to be based on a profound impact analysis with regard to the different grid users and to expected costs of the technical equipment.
- The construction of incentive mechanisms for grid operators should consider the heterogeneity of grid structures. The tasks of the relevant grid operators and their dynamics, e.g. resulting from the development of political targets, shall be reflected adequately in the regulatory system.

General comments on the ACER Consultation Paper

As a general remark VGS would like to point out that, before setting new policy rules, the implementation of the existing Third Energy Package’s network codes for electricity and gas has to remain the top priority. VGS appreciates that ACER also holds this view (section 3.11) and recommends to place it more prominently (e.g. in the beginning of chapter 3 and in the annex). After their implementation, the impact of the network codes has to be analysed before setting new regulatory frameworks.

As mentioned in its response of December 2013, VGS considers the following elements as essential for a full completion of the internal energy market:

- free competition in the energy market and proper implementation of EU regulations in all EU member states,
- no regulated trading prices in wholesale and retail markets,
- a single stable and long-term framework for the reduction of CO2 emissions,
- an integration of RES into the market,
- an appropriate infrastructure,
- well-defined market roles, and

The structure of this VGS position paper follows the four parts A to D of the energy sector presented in chapters 2 and 3 of the consultation document. The VGS position paper concludes with comments on the implications for governance as presented in chapter 4 of the consultation document.

A: Gas Wholesale Markets

Just as for the electricity wholesale markets, VGS widely agrees with the analysis on the current situation and the future challenges in gas wholesale markets.

Achieving a liquid pan-European gas market

ACER correctly describes that implementing the network codes will be decisive to establish the single gas market (section 2.10 – 2.11). It should be ensured that the Gas Target Model review process does not distract or delay the implementation of network codes as well as that the progress achieved by the on-going implementation of network codes during the next years is taken into account in the assessment of the market situation and the future challenges it will face.

VGS agrees with the assessment that a further integration of markets can contribute to liquidity which will presumably encourage entry, leading to more competition and further improvements in liquidity (section 3.13). Yet, before integrating market zones the possible impacts have to be analysed and national markets need to be liquid and functioning practically, above all on the firm capacity which is available in the integrated market. Larger market zones would need artificially more pipeline capacity to fulfil the fiction of the simultaneous Entry and Exit of the gas in any point of the market zone. This is why VGS supports the consideration of possible changes in market zone configurations on a case-by-case basis. The integration of market zones as well as the merger of zones should be a market driven decision. The current Gas Regional Initiative (GRI) projects are the best examples for such market driven decisions. Therefore, VGS recognizes a need for a market wide discussion if such an integration/merger is proposed. The process should be attended by the NRAs.

Uncertain gas supply and demand

As for the trend analysis, VGS agrees that infrastructure to meet any future peak demand will still need to be in place (section 2.13). This might be the case for future evolvement of the role of gas power plants as well as gas storages.

VGS also agrees that increasing grid charges as a result of declining demand or booking short term capacity are a problem and may lead towards a reduced attractiveness of gas (section 2.14), especially taking into account its potential for carbon emissions abatement.

In transport, VGS sees the LNG sector as an interesting market in the long-term. In the short and medium term, the development of regular natural gas vehicles (CNG) is more important.

In recent years, the model range of car manufacturers has grown considerably and provides the customers with a wide range of choices. Furthermore, heavy load vehicles like garbage trucks or street cleaning trucks have been developed for the natural gas usage bringing large advantages to cities in terms of emission and noise reduction. In combination with biomethane is this one of the best alternatives available for a climate friendly fuel. The additional demand for gas will help to stabilize grid costs in the future and to compensate the upcoming efficiency gains.

Concerning the regulatory impacts resulting from uncertain gas supply and demand, ACER correctly depicts that finding the adequate level of investment in infrastructure is the key challenge for market actors, network operators and regulators (section 3.15). In this context, VGS would like to remind that any market intervention should be carefully investigated (section 3.16). First of all, a European wide implementation of the Third Energy Package and the practical application of network codes are needed. This should be the first and main goal, which should be pushed by ACER and the European Commission. After an appropriate implementation period and market settlement of these rules there should be a discussion or evaluation if any (further) market intervention is needed.

The gas market's role in providing flexibility

VGS agrees that the greater penetration of non-programmable Renewable Energy Sources (NP RES) will increase the need for flexible tools with an ability to respond to any demand or balancing needs. In this case gas-fired plants play an important role for the flexibility needed (section 2.18). Therefore, VGS acknowledges the need for arrangements in the gas market and in the supporting regulatory framework to facilitate gas-fired plants' ability to fulfil this role.

However, VGS would like to emphasise that the role of gas-fired plants should not be reduced to delivering flexibility for the electricity market. Gas-fired plants also play an important role for meeting the energy efficiency goals and the European carbon reduction target. In this regard, the current trend in fuel switching to other energy sources, which emit more carbon, is of great concern.

Infrastructure investment (infrastructure development)

VGS widely agrees with ACER's position that cross border investment in energy infrastructure has to be driven by market signals and needs national and supranational coordination, also among the regulatory authorities. From a formal point of view ACER need to harmonise and streamline joint cooperation of NRAs since there is basically no such concerted action between national operators and authorities to enhance convergence of markets. VGS supports the view that the investments which bring the most economic benefit for the pan-European energy markets have to be focused on, regardless of whether the single project is cross-border or national.

In this context, VGS would like to emphasise that the need for infrastructure investments is not limited to the transmission systems. Also investments in distribution grids will be needed, in particular in the electricity sector. This results from changes in the grid usage, above all from the boost of renewable energies which are mostly connected to distribution grids. Up to 42.5 billion € of distribution grid investment will be needed in Germany until 2030 according to a study on distribution grids published by the German Energy Agency (dena) in 2012.

Furthermore, VGS regards the long term stability of the regulatory framework as very important for investments in energy infrastructure. A multitude of short term and/or unexpected changes can lead to uncertainty amongst investors, which will result in increasing costs of financing investments or even in their non-realisation.

The regulatory framework has to be designed such that investors are allowed to achieve a sufficient return on investment in order to be able to finance long-term infrastructure investments.

VGS agrees with ACER on the need for a regulatory environment supporting innovation on their way to maturity, as innovations open new chances of higher efficiencies in the future (see section 3.24).

Consumers and retail markets

General remarks

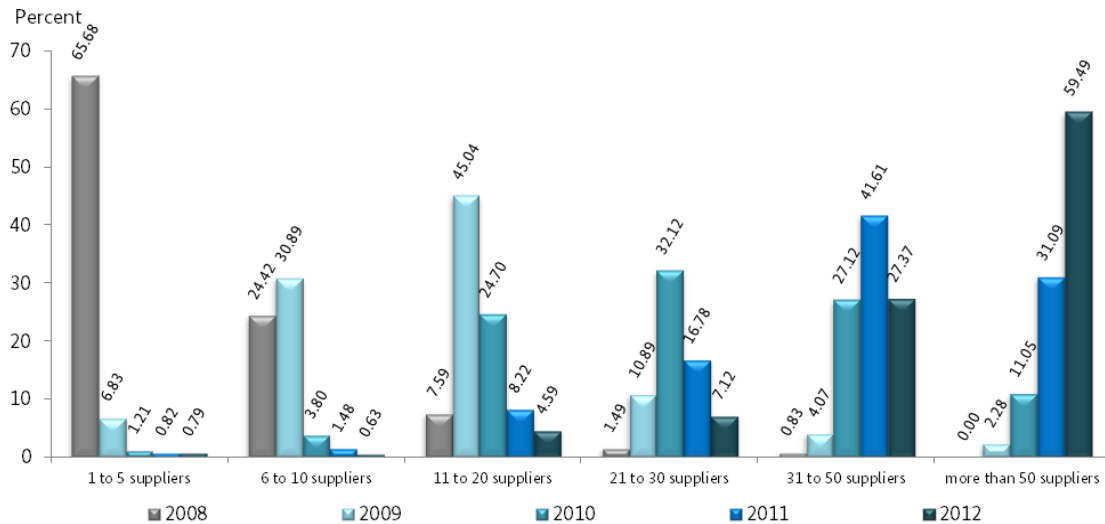
ACER puts the consumers into the centre of its considerations. Many of the instruments proposed strive to empower consumers so that they can assume a more active role in tomorrow's energy markets. VGS supports this target as well as the principles presented in sections 3.25 and 3.26, and would like to give some comments on how to best achieve these (see subsequent sections).

First of all, the analysis on consumer concerns should be complemented by some clarification on what has already been achieved. In many countries, consumers can switch their supplier easily thanks to standardised market processes and data formats (see section below "Removing barriers to retail markets: data exchange processes and data formats are key issues"). The only step they have to take is to choose a new supplier. Everything else – apart from the signature of the new contract – is taken care of by the new and the previous supplier.

In order to compare and choose suppliers consumers in Germany are supported by free comparison websites and/or free advice of consumer organisations or energy consulting services. On top of that, German consumers can choose between a large number of suppliers and tariffs thanks to a successful opening and liberalisation of the electricity and gas markets. The latest report published by the NRA and the Bundeskartellamt (German competition law authority) confirms this: In 2012, consumers in Germany could choose among 88 electricity suppliers (average among all network areas), more than 50 gas suppliers in 60% of network areas and more than 31 gas suppliers in 86% of network areas.¹ The number of suppliers grew significantly from 2008 through 2012, as the following figures taken from the report demonstrate:

Gas suppliers per network area in Germany:
Percentage of network areas in which the given number of suppliers operates (all final consumers) according to survey of DSOs 2008 - 2012 (totals may deviate slightly owing to rounding differences); Source: Bundesnetzagentur and Bundeskartellamt: Monitoringreport 2013, figure 30

¹ Bundesnetzagentur und Bundeskartellamt, January 2014: Monitoringreport 2013, pages 35 and 79, online at http://www.bundesnetzagentur.de/cln_1432/EN/General/Bundesnetzagentur/Publications/publications_node.html.



While this may be not the case in all markets it is an indicator for the high level of competition in the German market.

Concerning the access to retail markets, VGS supports ACER's position to identify and remove barriers to the entry of suppliers in other national retail markets. Yet, ACER is right when saying that an integrated European cross-border retail market is still an ambitious target. As a first step, VGS would advise to fully implement the Third Energy Package's rules and to assure non-discriminatory market access for suppliers within all member states.

The DSO will remain the market facilitator and guarantee neutrality and non-discrimination with regard to market participants.

Data access and data protection

Concerning consumer data, one challenging tasks for regulators will be to find a sound balance between data privacy and security on the one hand, and transparency and non-discriminatory data access for legitimated third parties on the other. Access to consumer data shall only be granted when applicable, depending on the purpose for which the data is used.

Concerning the access to consumer data, different approaches shall be applied depending on the addressee and the purpose of the respective data:

- TSO and DSOs need to have access to meter data which are necessary to fulfil regulatory and legal duties without explicit consumer consent, e.g. meter data needed for balancing settlement, monitoring the state of the network and system operation, grid usage billing, historical consumption (according to the EU Energy Efficiency Directive).
- Energy suppliers have to be granted access to all data which is necessary for their task of supplying costumers with energy and billing depending on the chosen tariff (at least for basic tariff with annual billing on the basis of an annual metering value for

household customers, but also more data if flexible and capacity based tariffs are provided).

- Other market participants: Meter data needed for purposes other than regulated duties or the supply of energy should be contingent on consumer consent. If the customer orders specific services which go beyond the simple supply of energy, he should have to contractually consent to the supplier of the service having access to the data needed for this service.
- The prerequisite for consumer acceptance is data protection. In Germany, data protection for smart meters is ensured by detailed rules for data communication and data handling. The Federal Office for Information Security (Bundesamt für Sicherheit in der Informationstechnik – BSI) has developed “protection profiles” – the so-called “BSI Schutzprofile” and a technical rule “Technische Richtlinie” – which have to be used when smart meters are being implemented.

Removing barriers to retail markets: Data exchange processes and data formats are key issues

VGS supports ACER’s view that retail markets have to be opened to a large number of competitors in order to achieve best results for consumers. ACER is right when saying that an integrated European cross-border retail market is still an ambitious target. Yet, the instruments providing for a high level of competition in retail markets already exist. The exchange of data plays an important role for the implementation of market processes (such as supplier switching). Data exchange processes and standardised data formats have been developed in some member states, allowing for the non-discriminatory access for all competitors in the respective retail markets.

In Germany, the NRA (Bundesnetzagentur) has put national ordinances in place that are mandatory for all market participants (TSOs/DSOs, suppliers, balancing group coordinators, metering companies) which provide clear electronic data exchange processes and responsibilities. These ordinances are accompanied by detailed process descriptions, timeframes, responsibilities and data formats for all market processes like metering, supplier switching balancing, RES feed in. The application of these processes and data formats is mandatory for all market participants. To ensure a high data quality, rules applicable by the DSOs for plausibility checks and default values have been created. This system has proven to be successful, since high quality meter data is being passed on to all relevant market participants. This also provides for equivalent access in terms of time and extend for all market participants, regardless of whether or not the market participant is part of a vertically integrated undertaking or not.

These detailed national provisions for data exchange processes and data formats were a key enabler for the very high number of suppliers to take up their business in the German retail market (see figures above in section D “general remarks”). The result is a wide choice for consumers. To make them become active participants in the energy market, trust and reliance in the market is needed, and encouragement by member states and the EU would be beneficial.

Therefore, before developing new provisions for the retail market, the European authorities should focus on the full implementation of the Third Energy Package’s rules in all member

states. For the time being, there is no need for further regulatory measures concerning supplier switching. If the development of technical facilities will enable shorter switching periods in the future, regulators should at first leave it to the market to develop products incorporating different switching periods. Therefore, VGS does not share the opinion that the implementation of a 24 hour switching process should be prioritised. In addition, a 24 hour switching process would not be compatible to other customer protection legislation such as the 14 days cooling off period for door-step selling and online commercial transactions.

Further consumer interests

Next to the above mentioned aspects, ACER correctly states that transparent and trusted information delivered by energy suppliers are of utmost importance for consumers (section 3.26). On this basis consumers can competently participate in the market.

Besides, surveys, executed on a regular basis in Germany show that consumers' satisfaction with their energy suppliers is high: more than 61 % of customers are highly satisfied with their gas supplier and more than 66 % of customers are highly satisfied with their electricity supplier². This demonstratively contrasts the results of the 8th Consumer Market Scoreboard quoted by ACER (section 2.26 and footnote 8). VGS therefore kindly asks ACER to consider the results thoroughly in order to avoid hasty conclusions from the scoreboard and to take into account concrete conditions and probably even the customers' cultural identity in the different countries. Not all aspects of the consumption and generation of energy will have the same importance for all customers all over Europe. Therefore, VGS regards ACER's suggestion to involve consumers more intensively as useful.

As cited by ACER, also the most vulnerable consumers should to be granted access to the services offered on the energy markets.

In this context, it is not surprising that energy prices are in the focus of consumer interests. VGS agrees with ACER's view in several respects concerning energy prices.

- Firstly, energy prices are of high relevance to almost all consumers. The decision to liberalise the markets for electricity and gas has been driven by the firm intent to achieve welfare gains for the EU at large and the customer in particular. Therefore, electricity and gas liberalisation has been part of the Lisbon Agenda.
- Secondly, much attention has been attracted by the development of network tariffs. At the same time, increases – sometimes of severe nature – in taxes, levies, surcharges and other governmentally induced price elements evolved, basically uncommented by the EU-commission and ACER. As a result the paramount concern of liberalization – to reduce energy prices - has not been met. To the contrary, the EU has lost some of its competitive edge among others due to rising significant increases in taxes/levies.
- Thirdly, consumer empowerment is helpful as long as this does not mean that some consumers will have the possibility to waive some of the cost elements (grid, renewable levies etc.) to the detriment of other customers.

² see BDEW study: „BDEW Kundenfokus Haushalte – Repräsentative Bundesstudie 2013, Ergebnisbericht Oktober 2013“, online available at [wird in finaler Fassung ergänzt]

Therefore, prices should be viewed in a holistic manner.

Enabling demand response

ACER correctly states that demand response services will become more important, above all in the electricity sector due to the increasing share of non-programmable renewable energy sources (NP RES). Enabling demand response requires not only the implementation of appropriate technologies, but also clear-cut rules on the communication between the actors involved and their respective responsibilities. VGS appreciates that ACER is addressing these considerations (section 3.30).

ACER correctly depicts that innovative technological solutions are one base for the active participation of consumers in the energy market. Smart appliances and/or smart energy management systems could help shift consumption to low price periods or to network off-peak times according to user preferences. Energy management systems can, in addition, factor in parameters like weather conditions and light intensity. Home automation systems thus can help reduce energy costs for consumers. But saving costs via these instruments is not a given as such but depends on the costs of the necessary technical installation, which have to be compared with the possible savings potential. The maximum effect can be reached via the continuous use of energy management systems for the optimisation of processes of commercial and industrial customers.

From VGS's point of view, the delivery of demand response services should be organised in a free market. For generation oriented consumption, smart metering and smart grids in certain cases can help consumers to participate in the market, but it is limited by customer's acceptance. Besides market driven activities, a central quality assurance for all metered data will become necessary.

DSOs will assume a crucial role: on the one hand, they enable demand response by managing data on system states, energy demand and energy generation of the different actors and forwarding the data to legitimated actors. On the other hand, DSOs can make use of demand response services of third parties in order to tackle grid constraints. If DSOs need to act in auxiliary service for a TSO or on its own on matters of system stability this should be done transparently and non-discriminatingly. In the absence of grid constraints, market participants will be allowed to carry out demand response services in order to bring benefits to the customers.

In Germany, the relevant system state will be indicated by the so called "traffic light concept". This concept describes in an integrated way on how to organise the interaction between DSOs and different types of grid users (consumers and producers), depending on the actual state of the energy system.

A smart energy system with different active market participants requires intelligent solutions for the balancing of accounts of energy quantities. Every actor has to be responsible for imbalances in balancing accounts which derive from his activities. With new players entering the market, the design of balancing accounts responsibilities has to be adapted.

Roles and responsibilities of DSOs

VGS agrees with ACER that, besides grid management and distribution, DSOs will continue to assume the role of a neutral market facilitator (section 3.32). The tasks allocated to DSOs comprise

- facilitating the market by provisioning validated trustworthy data to all market participants in an neutral, efficient and non-discriminatory way,
- enabling efficient and reliable supplier switching processes,
- allowing for non-discriminatory and transparent network access and connection,
- taking care of security of supply, as well as,
- supporting TSOs in their system responsibility.

Tasks which, under the consideration of system stability and security of supply, can be part of the competitive market should be allocated to the non-regulated area. With the liberalisation of metering services, Germany has given customers the opportunity to choose if they want the metering service to be provided by a third party or the DSO.

Compared to today's situation, the tasks and responsibilities of DSOs will not change substantially (no "revolution") but rather evolve, following technological changes (e.g. in the field of metering). Neutrality and non-discrimination with regard to market participants will remain the basic principles for the work of DSOs.

In the context of the tasks of DSOs, ACER states that DSOs should not be able to use advance access to data to gain commercial advantage (section 3.32). From VGS's point of view, this argumentation is not comprehensible: it is the basic characteristic of the role of the DSOs that they do not act in areas where they compete with other players. On the contrary, DSOs perform the above mentioned tasks which are not exactly performed by market participants. Consequently, DSOs cannot gain a commercial advantage over others, be it from advance access to consumer data or from other information that they may gain when performing their particular tasks.

Nevertheless, the market roles and responsibilities, especially in a RES dominated scenario and with regard to market processes for data exchange, have to be defined precisely in order to face the increasing need for coordination between all market roles.

In the following, ACER announces further analysis on whether the services currently provided by DSOs could be better provided within competitive markets (section 3.34). VGS agrees that metering services can be offered by third parties; the German Energy Industry Act provides this possibility. Nevertheless, all tasks currently fulfilled by DSOs should be carefully examined also regarding the security of the system. Data handling is highly sensitive, especially if it creates access to measuring and resource devices. Entities acting in this field have to be tightly regulated and supervised for the following reasons:

- Firstly, as described above, data protection is an important matter, especially with regard to consumer data.
- Secondly, data on energy flows in the grid and on electricity or gas infeed are the essential basis for the information on the system state. The DSO needs this information in order to be able to efficiently operate the network. Thus, even if a third

party was responsible for meter data handling, the relevant information would have to be passed on to the DSO.

- Thirdly, in the case of a third party being responsible for data handling, regulatory measures would be necessary to ensure data protection and non-discriminatory data access; as one feature of this construction. In the view of VGS, the installation of such a new player, next to the DSO, is not an efficient way to organise data handling.

In Germany, protection profiles and technical rules will be in place within a short time to safeguard system security and data protection. These rules have already been notified to the European Commission. From VGS's perspective it is essential that undertakings concerned with data handling have to fulfil certain security standards. Security standards directly affect and regulate any market actor's behaviour and the internal organisation regardless of the market role. It is therefore the best suited way to ensure a level playing field. Compulsory restructuring of a certain share of market participants are prone to additional problems, as stated above, and might not even have the intended effect.

Unbundling of DSOs

According to the rules already established under the Second Energy Package in 2003, vertically integrated undertakings are obliged to meet extensive unbundling requirements. One part of those requirements is that DSOs have to handle commercially sensitive information, such as meter data obtained in the course of carrying out their business, confidentially (informational unbundling). Regarding sensitive information, more or less identical rules apply to TSOs and DSOs. There are no exceptions for small undertakings and not even for ownership unbundled network operators. Besides, all electricity and gas undertakings are obliged to keep separate accounts for their transmission and distribution activities ("unbundling of accounts", Article 31 of the Electricity and Gas Directives, respectively).

The functioning of the unbundling system depends on strict implementation in national law and enforcement by national regulators. The same applies to transparency requirements. If fully implemented and enforced, the above depicted requirements guarantee that DSOs act neutrally and non-discriminatorily. In Germany, legislation has been adapted according to the requirements from the Second and Third Energy Package in 2005 and 2011. Extensive rules for informational unbundling and unbundling of accounts have been introduced in the Energy Industry Act; the regulatory authorities are entitled to and do audit their enforcement. Transparency requirements have been strengthened substantially since 2003.

In the present consultation paper, ACER suggests stronger unbundling requirements in case DSOs assume more tasks (section 3.33). VGS does not see how stronger unbundling requirements for DSOs would lead to additional benefits, which outweigh the disadvantages. The disadvantages of extensive unbundling rules have already been witnessed in the case of the TSOs ownership unbundling rules which, in many cases, did not incentivise investments as intended, but on the contrary seem in some cases to hamper wished-for and badly needed investments into the grid. On the basis of these experiences, the European Commission already considers to rethink its original interpretation of the TSOs unbundling rules.

Having the TSO experience in mind, VGS emphatically advises not to force changes in the organisational structure of DSO companies by extended unbundling requirements, hoping that they would lead to the desired results. Instead, the assumed potential problem – the DSOs' discriminatory behaviour (e.g. unequal distribution of information) – itself should be tackled. Therefore, VGS argues the case for full implementation and stringent enforcement of the existing unbundling rules combined with effective data exchange processes as already suggested by ERGEG in its "Guidelines of Good Practice on Functional and Informational Unbundling" dated from July 2008 (p. 11, recommendation G10). This ensures a level playing field without unwanted side effects. This aspect is crucial since DSOs face huge investment necessities to meet the new challenges for the grid. Also CEER³ stated that implementation of unbundling rules in Europe is on the way and further work has still to be done. The implementation and enforcement of the existing unbundling rules should consequently be the first step.

In section 3.35 ACER states that many DSOs are presently exempted from unbundling. This should be complemented. Exemptions are allowed for organisational and legal unbundling only and restricted to small DSOs. Article 27 of Directives 2009/72/EC (Electricity) and 2009/73/EC (Gas) makes sure all DSOs – regardless of their size – have to respect the confidentiality obligations, i.e. they have to preserve the confidentiality of commercially sensitive information obtained in the course of carrying out their business, and they have to prevent information about their own activities which may be commercially advantageous being disclosed in a discriminatory manner. Thus, informational unbundling applies to all DSOs.

VGS is surprised by ACER's statement in the context of unbundling that "customers connected to small distribution networks may not benefit to the same extent as those connected to larger systems", in particular as there is no explanation given.

Market rules and obligations on grid use and connection to the grid have to be the same regardless of the network operator's size. Neither are there exemptions on the basis of the de minimis rule based on Articles 27 of the Electricity and Gas Directives, respectively. For that reason, VGS does not see any relation between the size of a DSO and the fact whether its grid is connected to a TSO or not and the opportunities of the DSO's customers to benefit as active grid users from the opportunities of the energy market. Especially for the example of Germany, VGS wants to state that the physical situation of the DSO is irrelevant to the possibilities of grid users with regard to basic market actions like supplier switching. In both gas and electricity markets, neither the distance to the next TSO-DSO interconnection point or to the next DSO-DSO interconnection point plays any role for the switching process, nor do suppliers need to book exit capacities on the TSO grid to gain grid access at the DSO level.

Since the implementation of the unbundling rules already established has not yet been completed in all EU member states and further unbundling rules would only have limited benefits for customers while bearing substantial risks, VGS sees no need to question the existing de minimis rules, which allow member states to decide not to apply certain

³ Status Review on the Transposition of Unbundling Requirements for DSOs and Closed Distribution System Operators, 16 April 2013

unbundling rules to network operators serving less than 100,000 connected customers.⁴ This threshold has proven to be an instrument which allows smaller companies to operate their networks efficiently, since the additional benefit for competition – if there is any – would not cover such an important part of the market and therefore do not justify the effort and cost.

Consequently, VGS urges ACER to delete this section in order to avoid a misunderstanding and misleading deductions for policy decisions.

Network tariffs

ACER proposes to consider time-of-use pricing or locational distribution network tariffs (section 3.37). VGS holds the view that a general shift from volumetric (kWh) towards more capacity based (kW) network tariffs could be an adequate measure in many parts of the electricity and gas networks, since most network costs are determined by the electric or gas capacity (kW). Besides, technological developments (e.g. micro-grids, section 2.29) and changing consumer behaviour are likely to lead to decreasing energy volumes taken from the network. Thus, on the basis of today's widely volumetric based network tariff systems, revenues for network operators would decrease which would hamper their potential to operate the network and carry out necessary investments.

As a consequence, more capacity based network tariffs could be an option for tomorrow's energy networks.

Besides, when designing a future network tariff system it should be considered whether incentives could be set for actions of "smart consumers" which benefit the grid. Reduced tariffs are the key driver to motivate the consumer to offer flexibilities. Unlike ACER, VGS does not support dynamic network tariffs. Due to high amounts of data, the calculation of dynamic network tariffs is a complex and cost intensive matter. The high costs of dynamic pricing do not compensate the added value of the price signal. Variable network tariffs, which are divided in a limited number of price levels, are easy and cost efficient to calculate and therefore recommended. An alternative approach, which is even less complex, is a reduced single-level network tariff.

Yet, any change in the national network tariff system has to be based on a sound analysis of the impacts on different grid users.

Incentive mechanisms for grid operation

Incentive mechanisms should set a frame which is flexible enough to reflect the costs resulting from existing structures and the tasks of DSOs as well as from changes in these tasks, e.g. due to changing political goals. VGS doubts whether a strictly output-oriented regulatory system can reflect all cost drivers occurring within DSOs. From VGS's point of view, there are situations where "outputs" alone are not able to reflect DSO costs and to set the right incentive for necessary investments. Therefore, it could be necessary to add input-oriented instruments such as budgets for specific investment projects or adders on top of interest rates that should incentivize technologies of comprehensive economic relevance.

⁴ Article 26 (4) of Directives 2009/72/EC (Electricity) and 2009/73/EC (Gas).

Finally, VGS would like to point out that the introduction of guaranteed minimum quality standards as proposed by ACER (section 3.26) may lead to distortions in the optimising mechanisms of a sound regulation environment, especially as infrastructure costs vary widely with population density and structure of settlement.

Implications for governance

General remarks

VGS shares the interest in a rapid implementation of the electricity target model as a fundamental step towards an integrated wholesale electricity market. In the effort of promoting its implementation, the target models should preserve enough flexibility in order to adapt them to the needs of a dynamic market.

With regard to activities where cooperation among different actors is necessary, flexibility and closeness to the market needs can only be achieved if clear roles and responsibilities are established. For this reason, VGS stresses the importance of the electricity target model to be accompanied by an appropriate, binding governance architecture, applicable on market coupling activities.

Experience shows that regional solutions can be helpful in early stages of integrative measures such as market coupling. The dissemination of best practice examples concerning governance issues may help to avoid lengthy negotiations in similar cases. VGS believes that deep coordination and cooperation in the framework of the Third Energy Package, especially between NRAs, shall be continued and strengthened. However, as the implementation of the target model disseminates through local/regional implementation projects, it is important that TSOs sufficiently harmonise their grid management rules, where it is appropriate along this implementation process, in order to maximise the benefits of market integration promoted by market coupling projects.

Fit-for-purpose processes for the implementation and enforcement of market rules

In general, VGS would like to suggest placing emphasis on the fact that the current regulatory framework should be fully exploited. Tasks defined in the Third Energy Package shall be performed. VGS believes that, in the current stage, further governance measures would not contribute to faster or more efficient achievement of the Internal Energy Market.

The principle of subsidiarity

ACER seems to hold the opinion that there are a number of responsibilities which could and should be delegated to the European level, e.g. to EU agencies such as ACER. ACER's role could be enhanced (subject to the necessary legislation) in a number of areas.

In contrast to national regulatory agencies, EU agencies such as ACER do not possess the detailed knowledge of the national markets and the respective energy legislation and regulation and their application. This is why VGS questions whether a shift of responsibilities to a supranational level would be beneficial. Transferring responsibilities for detailed energy regulation to EU agencies would also be in contradiction with the principle of subsidiarity, which is fundamental to the functioning of the European Union and, therefore, is also reflected in the Third Energy Package, for instance in article 27 of the Electricity and Gas Directives, respectively.

The role of the ENTSOs

VGS agrees that the responsibilities of the ENTSOs should prevail over the specific interests of their specific members. However, VGS sees no need for regulatory oversight by ACER of these organisations. VGS supports the harmonisation of market rules across Europe, but does not think that harmonisation shall be set equal to centralisation. We are of the opinion that competition and pluralism of views lead to most efficient solutions. Transparency in the process is the key to allow a maximum involvement of all stakeholders.

Appropriate regulatory oversight of new entities

From VGS's point of view any regulatory oversight or governance arrangements for new market entities should take into account the risk of market hampering (section 4.11). The development of new market roles or market entities should be possible without any barriers. The implementation of the Target Models in electricity and gas should be subject to a regular process in which ACER and the NRAs play an important role.

VGS does not agree with ACER's opinion that all market facilitators should be subject to a regulatory oversight in general (section 4.12). Especially, power and gas trading exchanges are already subject to a regulatory oversight by national and financial regulator. This should be sufficient. With regards to the specific activity of market coupling and the related role of power exchanges, it would greatly benefit from a clearer European governance framework. Moreover, if the market facilitator works for a regulated party – such as market area operators in the German gas market – it seems appropriate that the NRAs will have the regulatory oversight of the costs incurred by these bodies.

The proposed general governance arrangements for all relevant market actors which are assigned responsibilities in the internal energy market, such as network operators, European organisations like ENTSO-E/ENTSO, power and gas trading exchanges, common service providers (such as Customer Advisory Committee (CAO) and PRISMA) and other future institutions remains unclear for VGS (section 4.13). It should be mentioned, that some of these entities are fulfilling tasks passed down to them by TSOs, which are already subject to current regulatory governance. Companies related to RSCIs may need this governance arrangement but a general regulation of all relevant market actors cannot be supported by VGS. Therefore, VGS suggests a market wide discussion about any further governance arrangements. Additionally, VGS urges that market actors which do not have defined responsibility in a regulated context but have to bear the consequences of decisions taken, such as generators, DSOs, traders and retailers, should have a proper role in the governance process.

ACER's role in an expanding market / Regulatory capacity building

As for these two topics VGS supports ACER's view to share the knowledge among NRAs within the EU borders and beyond. However, since these two topics are mainly political, they should be discussed and decided upon by the relevant EU bodies (especially by the European Commission). Therefore, VGS sees no need to address these topics in the paper.



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