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ΘΕΜΑ: Διαβούλευση για τον Μηχανισμό Παρακολούθησης και Εποπτείας των Ενεργειακών Αγορών

Αξιότιμε κύριε Πρόεδρε,

Ο Ελληνικός Σύνδεσμος Ανεξάρτητων Εταιριών Ηλεκτρικής Ενέργειας συστηματικά προτείνει στον δημόσιο διάλογο τη θέσπιση και λειτουργία ενός αποτελεσματικού μηχανισμού παρακολούθησης των αγορών ενέργειας, έτσι ώστε να διασφαλίζεται ο υγιής ανταγωνισμός, να αποτρέπονται αντί-ανταγωνιστικές πρακτικές και να εδραιώνεται η εμπιστοσύνη όλων των Συμμετεχόντων -συμπεριλαμβανομένων των καταναλωτών- στην ορθή κι αποδοτική λειτουργία της αγοράς.

Υπό αυτό το πρίσμα, επιθυμούμε να καταθέσουμε ένα σύνολο παρατηρήσεων και προτάσεων στο πλαίσιο της παρούσας διαβούλευσης, ευελπιστώντας ότι έτσι θα συμβάλουμε στην καλύτερη διαμόρφωση του μηχανισμού παρακολούθησης κι εποπτείας της αγοράς.

Με εκτίμηση,

Γιώργος Στάμτσος

Γενικός Διευθυντής

Response to the Odyssey proposal of RAE for the Greek energy markets

We would like to thank RAE for the opportunity to respond and to contribute to the development of a market monitoring and market surveillance mechanism (MMSM) in the Greek power system and energy sector. We believe that the introduction of such a mechanism is crucial and desirable and we hope to further improve the proposal with our comments.

General considerations

The document asserts (page 8) that the objective of the new MMSM called “Odyssey” is not to solve current structural inefficiencies in the mid-term but to provide a framework for a long-term solution. While we welcome the progress on a long-term process, we would like to stress that solving the current structural problem with PPC being dominant in generation and supply is the main pressing issue since cases (that our Association regularly reports to RAE, the TSO and the Power Exchange) clearly indicate that the dominant company is prone to exercising its market power. Some indicative anti-competitive practices that our Association has already stressed before the competent regulatory authorities are as follows:

- Thermal power plants bids (especially from lignite plants) result in operating those plants at economical losses.
- Hydro power plants bidding behavior (strongly) deviates from a rational one where the hydro plant seeks to collect the opportunity cost and resembles rather to a de facto price cap.
- Systematic under declaration of the dominant player’s retail load at DAS in comparison with the actual load.
- Systematic declaration of hydro available capacity at levels close to the nominal capacity although the actual capacity is water-volume-dependent.
- Very long commissioning periods of hydro/thermal units.
- Ancillary services bidding by PPC’s multi-shaft CCGTS at ranges that are not feasible due to the plants’ technical characteristics.

Hence, in our view, the first target of the long-term proposal should be its ability to deal with the current distortions, and especially to address the potential abuse of a player’s position that is dominant in both market segments (supply and demand) and has an incentive to depress wholesale prices due to the fact that he is a net buyer. If such practice of wholesale price suppression cannot be acknowledged, justified and prevented, a competitive market is unlikely to develop since it creates a threat to any new entrant or investor.

In addition, we believe that market monitoring should not be limited to the day ahead market. Annex 1 details the methodology to be applied to the day ahead market. We believe that the same methodology should be also applied on the intra-day and the real time market (balancing

market). Furthermore, attention should be given to the exact way that energy and ancillary services bids are assessed with respect to their DEBS. Even though the volumes in the balancing market are smaller, it is the marketplace where flexible providers are expected to partially cover their fixed cost.

The intra-day markets need a close monitoring in order to avoid cases in which a dominant player on both generation and supply consistently underdeclare its supply (load) volumes in the day-ahead and proceeds in arbitrage games in the intra-day markets by matching their undeclared volumes in the IDMs that have lower liquidity. With such techniques a dominant player could manipulate prices in both DAM and IDMs. If the intra-day markets are not monitored with the same level of intensity, they could become a commonplace for such arbitrage games.

Furthermore, we welcome RAE's approach to use two types of indicators for the Market Monitoring Mechanism:

- Structural indicators so as to assess the market structure and identify potential and actual abuses of market power and
- Conduct/Performance indicators so as to examine the behavioral monitoring aiming at acknowledging a bidding strategy.

With regard to the Structural Indicators proposed by RAE we have no specific remarks since those are included to the most common structural indices ranked based on their simplicity. With regard to the Conduct indicators we need to comment on the liquidity index that is included and is capped at the Forward Hedge Ratio (FHR) index. The latter is set at 20% horizontally for all the vertically integrated companies for 2020 (RAE's Decision 1008A/2020). We strongly recommend that RAE should revise this decision under the scope of the Market Monitoring and Surveillance Mechanism in order to prevent abusive practices by expensive units, such as the lignite units, systematically bidding in a way that distorts the market and therefore changes the merit-order (exactly as it is pointed out on page 35 of RAE's document).

Regarding lignite units, the text suggests (pp. 35) the competition issue due to bidding-below-cost is partially solved by the introduction of the 20% cap on the share of a supplier's load that can be covered from bilateral contracts. However, this rule will hardly affect PPC's ability to provide energy from lignite units at below-cost prices. The reason is that PPC has currently ca. 65% retail market share. So, the 20% rule is translated, in PPC's case, in ca. 6,5-7 TWh/year. Lignite units' production in 2021 is expected to be lower than the one in 2020 i.e. lower than 5,5-6,5 TWh. It is understandable that the modeling exercise and the report backing this market power mitigation rule was carried out prior to the significant rise in CO2 costs and the decision to withdraw all lignite-fired capacity by 2023; therefore, bearing in mind the significant output reduction of lignite plants and PPC's dominant position in retail, we could suggest revisiting RAE's Decision 1008A/2020, to reflect the current and future state of play and address the market abuse risks. Thus, we believe that the FHR index should be set at 10% for the incumbent since the 20% rule will allow PPC, in 2021, to divert the whole of its lignite unit production to serve bilateral contracts.

Finally, while focusing in our response on electricity we would like to stress that for natural gas we are also skeptical of a disaggregation made by pipeline/LNG entry point. Following our rationale analyzed in the part “Relevant Market” of this report, also in the natural gas market we would recommend to monitor:

- Total market share (aggregated market)
- Price differences between the retail segments HP, MP and LP

The special case of Hydro

Market manipulation can be done by economic or physical withholding or dumping. Most of the process is geared towards the monitoring of economic withholding/dumping which makes sense given the techno economic declaration of availability.

However, for seasonal storage large scale hydro we believe that more can be done. Ownership and management of large hydro power plants might be a strong tool for one to abuse its market power and move wholesale prices either upwards or downwards (depending on its market net position). This has been highlighted by the fine of 25 million Euro imposed to Spanish utility Iberdrola.

Given that hydro storage is seasonal, we would expect it to have the same DEB for the day ahead market and the balancing market. More specifically, it is absolutely necessary that the large hydro power plants, where the dominant player enjoys exclusive and, at any case, privileged access, are monitored very closely. The main characteristics of these plants in Greece are that they are energy-limited plants, flexible, with low variable and occasionally high opportunity costs. All these highlight the necessity of stricter rules to be applied on these plants especially in the Balancing Market since they are the dominant player at this market due to their technical characteristics as already described.

Market monitoring should also require that the TSO develops, within a two-month period, a new methodology to calculate the hydro power plants’ actual available capacity on daily basis, taking into consideration the water volumes in the reservoirs. The document under consultation suggests that it should be left to the owner’s discretion to adjust the hydro power plants’ declared available capacity: clearly, the established incentive of the incumbent (due to its capacity as a net buyer) to provide ‘inaccurate’ data prohibits such an approach and calls for an independent determination of the actual capacity by the TSO in order to ensure a level playing field.

In addition, we wish to stress again the necessity of re-establishing the methodology to calculating the daily Hydro Power Plants’ Opportunity Cost taking into consideration the water volume in the reservoirs. Of course, this figure has to be published at TSO’s website and considered by both Power Exchange and TSO (and finally by the Regulator) when they perform the market monitoring.

In particular, it should be monitored how bidding of hydro assets differs between day ahead and intraday/balancing.

Relevant market (aggregated/disaggregated)

We agree that the starting point of the market monitoring process is the definition of the relevant product market. At the same time, we would strongly recommend to follow the definition that European institutions apply. The European Commission has consistently defined a relevant product market encompassing both the generation and wholesale supply of electricity, irrespective of the generation sources and trading channels¹. In Germany, Europe's largest electricity market, the Regulator (Bundesnetzagentur) focuses on the overall activity as well². Hence, we believe that the same should apply in our country.

Disaggregation of the market should be done by time to delivery (day ahead vs balancing) and potentially by location. If consistent network congestions materialize and therefore they lead to a regional fragmentation of the market in the future, then we would advocate to disaggregate the relevant market into bidding zones.

Structural - concentration indices (market share, HHI, PDI) should in our view always be calculated on the basis of the relevant market and here the entire market. The reason being that any benefit of abusing market power has to be calculated on an energy mix level and not on the plants in a certain category. Hence also the concentration index should apply at the generation energy mix.

We can assume that technology-based disaggregation is proposed to guarantee a stronger monitoring not only of PPC, but also of other generators that are not dominant in the aggregated market. However, applying those indices in an isolated way on a technology-based disaggregated market may actually lead to higher concentration levels.

That being said, the process of comparing bids with the DEB will be applied for all bids for market monitoring purposes. Hence all market actors will be monitored even with the use of the

¹ See cases COMP/M.7927 – EPH/ENEL/SE, paras. 9-12; COMP/M.6984 – EPH/Stredoslovenska Energetika, para. 15; M.3268 – Sydkraft/Graninge, paras. 19-20. Case Comp/M.8660 -FORTUM / UNIPER para 18

² *“Ausschlaggebend hierfür ist, dass es auch einem marktbeherrschenden Anbieter möglich sein muss, seine effizienten Kosten zu decken. Dabei ist die **gesamte Tätigkeit auf dem relevanten Markt**, hier Stromer Absatzmarkt zu betrachten. Ein **Abstellen auf einzelne Kraftwerke** wäre zur Rechtfertigung **ungeeignet**. Denn im Falle der Kapazitätszurückhaltung erzielt das betroffene Kraftwerk keine Erlöse, obwohl es profitable Einsatzmöglichkeiten gegeben hätte “* [Leitfaden für die kartellrechtliche und energiegroßhandelsrechtliche Missbrauchsaufsicht im Bereich Stromerzeugung/-großhandel – Preisspitzen und ihre Zulässigkeit- Bundesnetzagentur & Bundeskartellamt 2019](#)

aggregated market. Hence, we do not see the need to tweak the relevant markets. Only renewables under FIT should be exempted since they would not benefit from any price variation.

Additionally, we believe that the structural concentration indices should be calculated on an hourly basis, allowing thorough and efficient monitoring of potential market abuse, which cannot necessarily be captured when looking at daily figures. We are aware that the clearing algorithm covers a 24 hour period but for the market concentration we believe it is more important to capture the variation of wind and PV (which are expected to increase in market share) and that can have a big impact on the concentration of the “residual” market than to capture “block orders” that cover the potential difficulty to start a unit for one hour for technical reasons.

Market power and Thresholds

The consultation document introduces benchmark values of 50% for a dominant market share in thresholds 1 and 2. The values are arbitrarily set based on a quote from Article 102 of the Antitrust Procedure “*if a company has a market share of less than 40%, it is unlikely to be dominant*”, which although it may explain the case for a market share less than 40%, does not clarify the situation for market shares above 40%. In setting the value at 50%, the consultation proposal seems not to comply with current worldwide and EU practices. For example, in the USA FERC has identified 20-25 % as the benchmark for finding lack of market power³. In EU, the same threshold of 25% is set by the EU Merger Control Regulation EC/139/2004, as an indication that the undertakings concerned, are not liable to impede effective competition and therefore the merger may be presumed to be compatible with the common market (recital 32). Moreover, in the EU, in the recent Guidelines on the Significant Market Power (SMP) for electronic communications networks and service (the closest structure to electricity markets due to dominant roles of former state monopolies), it is acknowledged that other factors than the market share may influence the determination of the SMP and that Regulators should exhibit flexibility:

“If the market share is high (~50%) but below the 50 % threshold, NRAs should rely on other key structural market features to assess SMP. They should carry out a thorough structural evaluation of the economic characteristics of the relevant market before drawing any conclusions on the existence of SMP”⁴

“The Commission's experience suggests that dominance is not likely if the undertaking's market share is below 40 % in the relevant market. However, there

³ Detailed references are provided in P. Twomey et. al (2005), A Review of the Monitoring of Market Power: The Possible Roles of Transmission System Operators in Monitoring for Market Power Issues in Congested Transmission Issues.

⁴ Paragraph 57 in <https://ec.europa.eu/digital-single-market/en/news/communication-smp-guidelines>

may be specific cases below that threshold where competitors are not in a position to constrain effectively the conduct of a dominant undertaking. See United Brands, op. cit. and Case COMP/M.1741 — MCI WorldCom/Sprint⁵⁵.

Furthermore, we think that the analysis of page 25 that argues against the use of 40% as a threshold does not hold. First, the EU legal framework introduces flexibility (as suggested by the number of cases), second, worldwide practices often move even below 25%. Lastly, even the Greek legal framework appears to either rely on the obsolete and discontinued NOME products or in-fact even consider 40% in specific markets. Therefore, setting the threshold value equal to 50% although it may seem it is based on the European case law for normal markets, it does not apply the regulatory flexibility shown by the EU and several of the EU countries. In doing so, it ignores the peculiarities of Electricity markets, especially in a Greek context with a dominant market participant in both generation and supply and a system converging towards the Target Model.

Regarding the different types of thresholds, for the threshold 1 we refer again to the European Commission guidance, i.e. the relevant market is typically defined as follows:

- electricity, without any further category of production/technology;
- national from a geographical point of view.

A market share of 40% should be used to identify a dominant player. Since market situations in power fluctuate with every demand level, we believe that even 40% is high for a producer and as already discussed entirely justified as a regulatory practice.

For the Threshold 2, again the 40% mark makes sense. In any case, we wish to emphasize that disaggregation should take place in time and territory domains and not in the technology one

For the Threshold 3, we agree with the 5% mark so as to facilitate the development and the market penetration of new energy technologies.

The difficulty of threshold 4 is that it addresses a net position (delta in percentages), not a concentration. So, a player having a delta exceeding the proposed Threshold (e.g. 3%) might wish to influence the market price according to its own interests. However, if this player does not hold a significant share in generation or supply then he won't be able to realize its goals. **Therefore, we propose to strengthen the concept behind Threshold 4 by combining it with a market share of at least 40% in either generation or supply.**

Furthermore, the definition of Threshold 4 highlights the importance of demand in the calculation of structural index. Therefore, we propose the use of indexes that focus on the demand side i.e.

⁵ Footnote 55 from <https://ec.europa.eu/digital-single-market/en/news/communication-smp-guidelines>

create demand curves so that the potential impact of monopolistic demand supply can be monitored (i.e. Residual Demand Analysis).

Production includes own thermal power and hydro plants, production from renewables that are not under FiT, long term offtake agreements (capacity rights) from other producers and contracted firm import capacity.

On page 10 in the third bullet of the paragraph on the MSM an illustration is given where stricter rules apply beyond the threshold. We respectfully disagree with this interpretation of thresholds. In our view stricter rules should apply for all bids once a market participant exceeds one of the thresholds (generation or supply).

Moreover, for the demand side we would like to follow the same logic of a single product market.

Ex-Ante or Ex Post

While we recognize that most national competition authorities concentrate on ex-post monitoring, we see benefits for an ex-ante monitoring since ex-post monitoring tends to be slow and might lead to long delays of mitigation. Greece is in the fortunate position to rely on unit-based bids that make ex-ante monitoring possible and we believe it should make use of this specificity.

A crucial element is the calculation of the default energy bid (DEB). We believe that calculating such a reference bid for thermal and hydro units is necessary.

No economic actor should systematically bid below its costs or below its opportunity costs. Hence any bid of a thermal unit below the DEB is suspicious. It may in fact comprise tangible proof of market manipulation, in the case of entities holding a dominant position in the relevant market and having an unquestionable incentive to suppress wholesale market prices. Equally any bid of hydro unit below its water value, (its opportunity cost) is equally suspicious and should trigger immediate investigation. This applies to all production of hydro.

The case for bids exceeding the DEB is more complicated. We recognize that the DEB is a plausible bid in a spot market. However, we know that in scarcity periods prices are in fact expected to significantly exceed marginal costs; these periods are needed to recover the necessary revenue to pay their annuities and fixed costs, to mitigate the missing money problem.

This is important since the day ahead market is -strictly speaking- still a forward market. A flexible unit (like a gas turbine or a CCGT) that expects higher prices in the intraday or balancing market must “price in” the opportunity costs of not waiting and selling in a later market. If there is a possibility of scarcity in real time, energy prices in the real time have a probability to be at the price cap. A day ahead bid should price in the expectation of such a situation in its bid.

Hence, even in ‘perfect competition’, bids must be afforded the right to exceed the DEB to achieve a non-arbitrage condition between day ahead and intraday/balancing. (Please note that the strict benchmark against a DEB is common in the monitoring procedure of many US markets but in those markets financial arbitrage between day ahead and real time is possible which is not the case in Europe). *If the regulator wants to impose all agents to a close to DEB bidding, then we would suggest to introduce an operating reserve function to artificially make the demand elastic and to allow for price spikes even with close to DEB bids*

Energy or Available capacity

In the market monitoring process, we propose to derive the relevant market concentration indices based on available capacities. For renewables (PV & Wind), available capacity corresponds to the forecasted production. Since production varies hour to hour, we believe that concentration indices need to be calculated on an hourly basis.

Penalties

In general, the penalty scheme is described only at a high-level in the consultation document. For example, it is not clear how energy offers are assessed with respect their DEB. Moreover, we are surprised to see on p.22 a proposal that penalties seem to equally address issues in energy offers above and below their DEBs, while the sole genuine and evidenced concern today is underbidding. In our view, the penalty scheme should hold therefore for the absolute difference between the bid, the DEB and some tolerance. The calculation of the penalty level as such should be simplified and could look as follows:

In the case of bids below the DEB

$$Penalty (\text{€/h}) = (DEB - Bid) * [(Penalty multiplier)^{(1+x/2)}] * Portfolio volume$$

where x is the times the behavior has been repeated

In the case of bids exceeding the DEB plus a threshold covering a reasonable range for justifiable deviations from marginal costs as described before.

$$Penalty (\text{€/h}) = (Bid - [DEB + tolerance margin]) * Penalty multiplier * Portfolio volume$$

The penalty level is calculated on an hourly basis, but the total penalty should be capped at a level that discourages participants to frequently engaging with such strategies.

Natural Gas

NG MMS mechanisms include some general directives and guidelines.

We would like see clarified how the bilateral NG OTC contracts will be monitored in accordance with existing REMIT / MiFID procedures already followed by the Utilities when they report physical or financial OTC contracts for power and NG. Second, if such a tool is developed for NG, why not to be used to monitor OTC / or exchange forward contracts of Electricity.

Process

We agree with the need of the publication of the TSO of data relating to load forecast, interconnections net capacity, RES production from wind and PV as well as available interzonal constraints balancing service requirements and the available capacity of thermal units.

Based on this information the TSO can estimate the market share of each market participant on an hourly basis ex-Ante. The large hourly variation of PV/Wind renders it mandatory to assess market shares on an hourly basis. A daily “average” availability would hide concentration for the critical hours with low renewable production. The market concentration should then, by participant, aggregate thermal available capacity, hydro available capacity, committed imports and exports, sourced energy through long term contracts and RES production that is not covered by FIT. Ex post the market concentration analysis should be extended to market share analysis in actual production. This will also allow to identify ex post if storage in a specific hour is injecting or withdrawing energy.

This analysis should be done for the aggregated market. In our view the reporting on a technology-disaggregated level adds little to the analysis and might be in contradiction to the current European approach of defining the relevant product market by energy independent of the mean of production.

Based on the technoeconomic data provided by the TSO, RAE and HENEX can indeed derive DEBs for thermal and hydro units. HENEX should then compare day ahead and intraday auction according to the methodology on the calculation of the variable cost of the thermal plants and the methodology relative to the opportunity cost of the hydro that needs to be approved by RAE and included in the balancing energy regulation. (Please note that once a continuous intraday market is functioning, then those bids cannot be monitored in this way since they would work in a pay as bid environment). TSO will monitor additionally the balancing market bids of the thermal units and hydros with the DEB. DEBs for demand response and bidding by batteries is probably very difficult today. Demand response bids should hence be monitored for strong variations.

If bids are systematically just below the DEB then automatic fines (as introduced earlier) should be applied.

If bids are systematically above the DEB plus the acceptable mark up (like the 50% used on page 21 in the RAE proposal) automatic fines cannot be enforced and further investigation about the behavior and an impact assessment could be launched.

Moreover, RAE's Board shall decide on anti-competitive behaviors within a rather short time framework, e.g. **one month** after the WEMS&MD identifies such a behavior.

Conclusion

The Hellenic association of independent power producers supports the introduction of a closer monitoring of the bids in the HENEX. We believe that introduction of a reference price by power station (DEB) especially for hydro units is necessary based on the past experience of hydro bidding. Nevertheless, new methodologies as indicated in our report should be immediately established and approved. However, in our view there remains a strong difference between bids below the DEB (irrational or abusive) and above the DEB for which economically rational reasons exist even in the absence of market power. The current proposal does not reflect this difference.

Abusive behavior should always be assessed on the level of the portfolio of a market participant (supply and demand) with the relevant market being the whole market. Disaggregation should be limited to timing (day ahead and real time) and bidding zone in line with the practice in other European countries.

For the implementation of a market monitoring process we hope for a swift and efficient process such that anti-competitive behavior, once detected, can be investigated efficiently. A strict time limit for the investigation should be added with automatic fines being applied only in cases of market abuse regarding systematic bidding below the DEB. On the contrary, identification of systematic bidding above the DEB plus mark-up should be followed by a further investigation in order to judge whether this practice is justified or it is an ant-competitive behavior.