

Obstacles to Electricity Trading in Central & Eastern Europe

3rd ECRB EWG Meeting

Belgrade June 12th 2007

Who are we?

The European Federation of Energy Traders (EFET) is an industry association which represents over 80 trading companies operating in about 20 countries.

The EFET mission involves improving conditions for energy trading in Europe and fostering the development of an open, liquid and transparent European wholesale energy market.

EFET main activities include:

- Advocacy
- Promote energy trading in Europe
- Standardisation of contracts

Requirements for a well-functioning wholesale market

- Well functioning liquid spot market
- Well functioning balancing mechanism ('Balancing Market')
- Market access support mechanisms and market transparency
- Clear roles for market participants

Clear roles in the wholesale market (I)

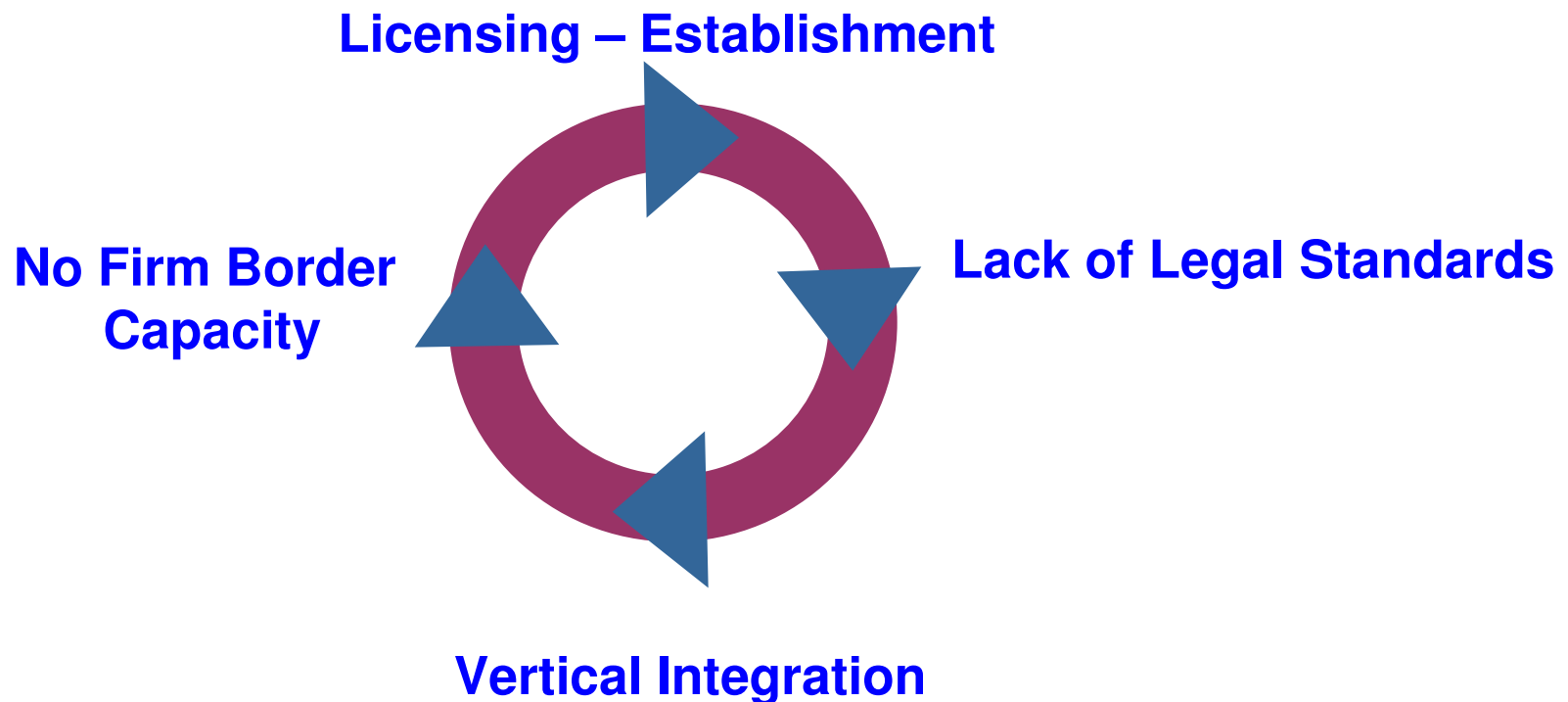
- TSO: provides low cost & transparent balancing services
- Producers/suppliers: utilise market to lay off risks ('hedging')
- Traders: provide liquidity by actively taking price risks
- Exchange: eliminate price risks at competitive transaction costs
- Brokers: compete with exchange as efficient intermediaries

Clear roles in the wholesale market (II)

- A trading company:
 - operates from its trading floor equipped by IT
 - connection with the scheduling systems of TSO
- Deals are closed via telephone or via broker's and exchanges' screens
- No permanent staff in countries necessary

Challenges for Traders in the CEE Region

Typical obstacles – Lack of Incentives



Once the trader has a license, scheduling obstacles occur

- Bureaucratic application process for wholesale grid access
- Nomination:
 - IT systems so far only with limited functionality
 - In most cases expensive system with high fees
 - Limited possibilities to adjust schedules
 - Scheduling only accessible for a reduced number of market actors
 - Non-transparent in terms of cost

Improvements necessary for proper scheduling

- Regulation power market and balance settlement driven by supply & demand
- Market participants able to adjust their schedules as close as possible to the hour of operation (intra-day market, spot market, D-1 or intraday cross border nomination)
- Easy & standardized contracts for grid access
- No fees for nomination and IT systems

Example for Challenges in the CEE Region Cross Border Capacities

Cross-border Capacity Curtailments - Example Poland Summer 2006

Energy short due to heat-wave, grid stability at risk, PSE-O is suspending all exports and buy imports

Consequence:

Traders loose “motorway” to cross-border customer, MUST sell in Polish market

Who pays losses?

Auction Offices and TSO call on “all-in force majeure” clauses

Traders left alone with “red” numbers

Example for Challenges in the SEE Region Cross Border Capacities

- EMS CBC Allocation Rules:
 - Auctioned Capacities are not firm
 - In case of capacity reduction EMS will not refund
 - Pay as you bid
 - Transfer of capacity not allowed
 - Unnecessary formalities prevent market access !

Challenge - Multiple Licensing

- Starting point = regulatory concern to monitor market activity
 - HEO letter to EFET names “protection of household customers and enterprises” & security of supply
- Reasoning (without local presence & license)
 - no data from traders could be obtained;
 - Laws/regulations would not be observed;
 - Administrative decisions could not be enforced across EU borders.

Snapshot Multiple Licenses Licensing and Local Company Requirements

Country	License	Company	Validity
Czech Republic	Trading License	Subs. /Branch	5 Y
Hungary	Trading + Cross-border import/export	Subsidiary/ branch not sufficient	10 Y
Poland	Trading License	EU based entity may apply since 2006	10 Y - 50 Y
Bulgaria	Trading License = Energy Supply?	Subs. /Branch not longer required since Jan 2007	10 Y to 35 Y
Romania	Electricity Trading & Supply License	“local presence” = registered seat	8 Y
Serbia	Trading	Subsidiary	8 Y

Current CEE Licensing Practice illegal On what basis?

- **Applicable Law for EU Member States**

Primary law

- Art. 28 EC Treaty: Free movement of goods
- Art. 49 EC Treaty: Freedom to provide services

Secondary law

- Licensing is not explicitly covered by secondary EU legislation (Services Directive – scope of derogation in Art. 16 unclear)

- **Applicable Law for Non-EU Member States**

- Energy Community Treaty
- Other GATS (General Agreement on Trade/Services)

Legal Basis: EC Treaty

Art. 28 and Art. 49 EC

Free movement of goods, freedom to provide services guaranteed

Discriminatory measures are prohibited

Also: any disincentive for foreign companies are illegal
(settled case law of ECJ)

„rendering services less advantageous“ (ECJ Cases *van Binsbergen*,
Reisebüro Broede, *Parodi* etc.)

EC Treaty Infringement I

QUESTION: Does licensing requirement make wholesale trading services „less advantageous“?

ANSWER: YES. Loss of time + red tape costs money

BUT: No Principle without Derogation

Derogations allowed in well defined cases

EC Treaty Infringement I

Art. 30 EC: only applicable for discriminatory measures

Also: „Non-discriminatory measures“

TEST: „legitimate public interest“ + strict observance of the proportionality test

- consumer protection? Not applicable
- security of energy supply?! maybe? but still needs to be proportional = „not achievable with less“

EC Treaty Infringement II

- Proportionality Test:
 - is licensing requirement the least restrictive measure to protect public interest? RESPONSE: NO
 - Would not the mutual recognition of licensing requirements in Member State be a less restrictive measure and still safeguard potential public interests? RESPONSE: YES

European Court of Justice condemns licensing with discriminatory effects

- *The Court speaks clear language:*
- *“Article 59 of the Treaty requires not only the elimination of all discrimination against a person providing services **on the grounds of his nationality, but also the abolition of any restriction, even if it applies without distinction to national providers of services and to those of other Member States, when it is liable to prohibit or otherwise impede the activities of a provider of services established in another Member State where he lawfully provides similar services.***
- *In particular, a Member State may not make the provision of services in its territory subject to compliance with all the conditions required for establishment and thereby deprive of all practical effectiveness the provisions of the Treaty whose object is, precisely, to guarantee the freedom to provide services.”*

How does Energy Regulators Regional Association (ERRA) view the issue ?

- ERRA commissioned study on recognition of licenses published in December 2006
- Recommends “ harmonization of individual licensing regimes” + draft “model license”
- Study misses main and only relevant point:
- EFET VIEW:
 - Multiple Licenses are an infringement of EC Treaty;
 - no harmonization but abolishing required.

NON EU: Does the Energy Community Treaty have any bearing on Licensing Practice?

- Energy Community Treaty (ECT) is a Treaty under public international law, in force since 1st July 2006
- Parts of the „acquis communautaire“ extended to the Energy Community , but licensing is not expressly covered
- Article 41 ECT prohibits quantitative restrictions on the import and export of energy
- Article 42 ECT: Energy Community „may“ create „single energy market“
- Therefore: ECT signatories should observe basic freedoms guaranteed by the EU Treaty

Impact & Outlook

- Current licensing practice amounts to an infringement of the EC Treaty
- EFET supports idea of, or “no-license” or a “single passport license”!
- EFET White/Grey List:
 - Slovenia has repealed its legislation (still local presence requirements according General Commercial Act)
 - Poland has improved the situation in 2006
 - Messy situations for signatory states to the ECT remain and should be eliminated to give incentives to trade in illiquid markets
 - Consequence: CEE Traders will have to invest into regulatory compliance until obstacles are removed until then
- EFET will continue to work on these issues...



Thank you for your attention!

Any questions?