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Subject: EFET¹ response to URE consultation on measures distorting free formation of prices

EFET welcomes the opportunity to comment on the policies and measures in Poland that might affect the formation of wholesale power prices. Below, we provide our answers following the structure proposed in the consultation document.

Struktura rynku [Market structure]

- 1) Jak oceniają Państwo strukturę podmiotową hurtowego rynku energii elektrycznej?
[How would you evaluate the structure of the wholesale power market?]

EFET believes that competition on the Polish wholesale power market has deteriorated over the past few years, as many companies have decided to cease their activities in Poland, particularly on the production side. As a result, an overwhelming majority of the power generation capacities in the country has returned to the hands of the state-owned entities that used to comprise the former incumbent. Such strong concentration on the production side may be distortive to the price formation process and needs to be monitored.

Furthermore, with more companies leaving the Polish market and several entities threatened with insolvency as a consequence of this year's power market suspension², growing market concentration should be expected on the supply side as well in the coming years. The falling number of competitors may impact the capacity of the market to generate reliable price signals.

We take this opportunity to highlight that issues resulting from shrinking competition cannot be addressed through the imposed exchange trading obligations – while they add little to the general market transparency (already ensured under REMIT for OTC transactions), they increase the transaction costs and create an entry barrier for new, small entities.

- 2) Czy w Państwa ocenie struktura podmiotowa hurtowego rynku energii elektrycznej w latach 2018 - 2019 ma wpływ na funkcjonowanie mechanizmów konkurencji, w tym może przyczyniać się do zakłócenia procesu kształtowania się cen hurtowych?
[In your opinion, is the organizational setup of the power market distorting the competition and wholesale price formation?]

¹ The European Federation of Energy Traders (EFET) promotes competition, transparency and open access in the European energy sector. We build trust in power and gas markets across Europe, so that they may underpin a sustainable and secure energy supply and a competitive economy. We currently represent more than 100 energy trading companies, active in over 27 European countries. For more information: www.efet.org.

² Please refer to our [statement](#) from February 2019 for further reference

As indicated under point 1), we believe that falling number of competitors may damage the Polish market's capacity to optimize power prices for end customers and to form reliable price signals for different market participants. Growing concentration on the power generation side can limit the capacity to determine accurate prices for the energy produced, while limited competition on the supply side weakens the position of the consumers. Consequently, the limited number of trading entities weakens the efficiency of the Polish power market. This situation is a consequence of major interferences with the market and general freedom of economic activity – we will elaborate on this point further under point 3).

Furthermore, growing market concentration may increase the risk of uncompetitive behaviour of certain market participants, controlling a substantial share of the market along the supply chain. We note that URE has already signalled potential cases of market manipulation during 2018 and we hope that these cases will be resolved. We also reiterate that the threat of market abuse was not properly addressed through imposing a 100% exchange trading obligation and that this decision was counterproductive.

Otoczenie regulacyjne [Regulatory environment]

- 3) Jak oceniają Państwo aktualne otoczenie regulacyjne i prawne (przejrzystość zasad funkcjonowania hurtowego rynku energii elektrycznej, stabilność regulacji, adekwatność regulacji, inne) w kontekście możliwości przyczyniania się do zakłócenia procesu kształtowania się cen hurtowych? Jak oceniają Państwo możliwości wejścia na rynek i funkcjonowania podmiotów na rynku energii elektrycznej w kontekście obowiązujących przepisów prawa.

[How would you evaluate the current legal and regulatory environment (rules clarity, stability, adequacy and other) in terms of its potential impact on wholesale power price formation? How would you evaluate the ease of entering and functioning on the Polish power market in the current regulatory context?]

The Polish regulatory environment has proved to be remarkably unstable especially over the course of 2018 and 2019, discouraging companies from continuing their business activities on the Polish market. Changes have been introduced with no prior notice or consultation and with very limited information made available in English. While the changes were allegedly introduced to address the price spikes observed in 2018, they have resulted in a major deterioration of the market conditions:

- The Capacity Remuneration Mechanism (CRM) has been introduced without providing any evidence of a need for establishing one. Support granted under the mechanism is different for different technologies, as well as new/existing capacities, ultimately leading to a situation, where different prices are offered for the same service. Altogether, the mechanism may have a distorting impact on price formation without contributing to increasing the security of power supply.

- The exchange trading obligations have transferred most of the OTC traded volumes onto the exchange, increasing the transaction costs for all market participants which are later on transferred onto end energy users. EFET believes that these obligations have deprived market participants from concluding non-standard, tailor-made deals, with no clear contribution to the general market transparency or integrity. As a consequence, the Polish power market also became less accessible to new entrants.
- The revised Act amending the Excise Duty Act and other Acts that has resulted in the effective suspension of the power market in Poland, poses an unprecedented interference with the freedom of economic activity³. Retroactive interference with end-consumer contracts has clearly damaged the energy industry as a whole while bringing no real benefits to society in the long term. It should also be pointed out that suppliers still have little clarity over the amount of compensation they can count on as a result of the consumer price freeze in 2019. This regulatory distortion may lead to bankruptcies of smaller energy suppliers and further concentration on the retail side.

Altogether, changes made to the regulatory environment in Poland have made activity on the power market economically unviable, especially in terms of delivering energy to end customers. Sudden, major changes in legislation have substantially increased the regulatory risk of business activities in Poland, making the entire market less attractive to foreign competitors and potential new entrants.

In addition to these recent changes, EFET believes that the license acquisition process in Poland is particularly cumbersome. Existing licensing rules require gathering multiple documents, making the process very time-consuming and thereby maintaining barriers to market entry. Entities that are eventually granted a license to trade in Poland are then being faced with multiple reporting obligations to different bodies in addition to the obligations stemming from the EU acquis. EFET believes that both the license acquisition procedure and the reporting obligations on the Polish power market are among the most complex and time-consuming in all of the Member States. In comparison, many European countries do not even require a license anymore to trade electricity.

- 4) Czy w Państwa ocenie środki stosowane przez operatora systemu przesyłowego wynikające z IRIESP mogą przyczyniać się do zakłócenia procesu kształtowania się cen hurtowych? Jeśli tak, to w jaki sposób i w jakim stopniu?

[In your opinion, do the rules of the TSO's and DSO's Technical Network Rules (IRiESP) impact the wholesale price formation? If yes, to what extent?]

Przejrzystość, dostęp do informacji [Transparency, information access]

- 5) Jak oceniają Państwo dostęp do informacji (np. informacji bieżących o ofertach i cenach, informacji rynkowych publikowanych przez TGE S.A. oraz operatorów systemu elektroenergetycznego i gazowego, zasad funkcjonowania rynku – np. IRIESP i IRIESD) w kontekście możliwości przyczyniania się do zakłócenia procesu kształtowania się cen hurtowych? Z jakich źródeł informacji o rynku hurtowym korzystają Państwo najczęściej?

³ Please refer to our [statements](#) on the Act amending the Excise Duty Act and other Acts for further reference.

[How would you evaluate the ease of access to information (e.g. on current offers and prices, market information published by TGE & TSOs, market rules) in the context of free formation of prices? What sources of information you rely on most?]

EFET believes that greater transparency would be needed in terms of managing cross-border capacities on all profiles. Capacities on offer can differ greatly and are subject to curtailments, having major impact on wholesale prices. While we understand that these variations often result from technical conditions, at times the reasons for different incidents at interconnectors are not clear to the market participants. We look forward to an ambitious implementation of the transparency requirements contained in the ACER decision 02/2019 on the CORE day-ahead and intraday capacity calculation methodologies⁴ in order to provide market participants the right level of transparency on capacity calculation and allocation.

Organizacja rynku hurtowego [Wholesale market setup]

- 6) Jak oceniają Państwo funkcjonujące na towarowej giełdzie energii prowadzonej przez TGE S.A. mechanizmy (np. animator rynku, mechanizmy mające na celu ograniczenie wahań cen w zleceniach oraz ograniczenie wahań kursów transakcyjnych dla instrumentów będących w obrocie na Rynku Terminowym Towarowym) w kontekście możliwości przyczyniania się do zakłócenia procesu kształtowania się cen hurtowych?

[How do you evaluate the mechanisms functioning on TGE power exchange (e.g. market animators, bid/ask & forward transaction volatility limits) in terms of their capacity to interrupt the freedom of price formation]

On certain occasions market results suggest that the exchange's system has accepted bids that were evident mistakes. Apart from these incidents, EFET believes that placing artificial limits on price volatility weakens the signals given by the market. Placing limits on bids are particularly unacceptable and should at the very least be treated as an interim solution with a clear timeline of their phaseout.

It is worth to notice that trading activities on Polish exchange's systems are closing earlier than exchange markets in neighbouring countries. Such situation creates additional business risk in the situations when prices on the exchanges in the neighbouring countries are increasing after the exchange markets in Poland are closed.

- 7) Jak oceniają Państwo funkcjonującą na towarowej giełdzie energii prowadzonej przez TGE S.A. zasadę uznaniowości na Rynku Terminowym Towarowym w kontekście możliwości przyczyniania się tego mechanizmu do zakłócenia procesu kształtowania się cen hurtowych?

[How would you evaluate the discretion rule on TGE's forward market in terms of its impact on the freedom of price formation]

⁴ ACER decision 02/2019 on the Core CCR TSOs' proposals for the regional design of the day-ahead and intraday common capacity calculation methodologies, dated 25 February 2019 and available at:

https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Individual%20decisions/ACER%20Decision%2002-2019%20on%20CORE%20CCM.pdf.

The discretion rule on the forward market stems from EU legislation and does not affect the power price in the timeframes where liquidity is sufficient. Therefore we believe that the general lack of transparency and the instability of the regulatory environment have the largest impact on the functioning of the forward market.

Systemy wsparcia [Support schemes]

- 8) Czy Państwa zdaniem funkcjonujące mechanizmy wsparcia/programy pomocy publicznej (np. KDT, rynek mocy, wsparcie OZE, wsparcie kogeneracji) mogą przyczynić się do zakłócenia procesu kształtowania się cen na hurtowym rynku energii? Jeśli tak, to w jaki sposób i w jakim stopniu?

[In your opinion do the existing support schemes (e.g. capacity mechanism, RES support, CHP support) impact the wholesale price formation? If yes, how and to what extent?]

EFET remains of the opinion that energy-only markets are perfectly capable of ensuring supply and demand equilibrium at the lowest cost possible. Support mechanisms for other purposes (environmental, security of supply) may be introduced subject to a strict observance of the State Aid Guidelines. The decision on establishing a capacity mechanism was not properly justified with a capacity adequacy assessment and this support scheme offers different financial support for the same service. Similarly, different support levels exist for renewable sources and CHPs without periodic reviews of the need for granting financial assistance to any of these generation technologies. Additional benefits granted to certain market participants affects the way they place their bids on the market, impacting wholesale prices and the signals investors in new generation technologies receive.

Infrastruktura [Infrastructure]

- 9) Jak oceniają Państwo obecny rozwój infrastruktury przesyłowej, dystrybucyjnej i wytwórczej? Czy Państwa zdaniem istnieje związek między rozwojem tej infrastruktury możliwością przyczyniania się do zakłócenia procesu kształtowania się cen na hurtowym rynku energii?

[How would you evaluate the development state of the current transmission/distribution/generation infrastructure? Do you believe that the development of this infrastructure impact the wholesale price formation?]

Substantial investments have been made in order to reinforce the Polish transmission and distribution systems. EFET acknowledges the need for many of these investments, but at the same time notes that their burden will have to be borne by the end customers. Growing energy costs will impact the consumption volumes and potentially the entire Polish economy, emphasising the need for a liquid, competitive market that can ensure cost-efficiency. This is of particular gravity, given the ageing generation infrastructure and growing share of renewables, that will require further investments in supporting the system's flexibility and resilience. It is therefore important for the Polish TSO to evaluate the system investment needs systematically and in the regional context, ensuring commercial availability of the interconnection capacities to the highest extent possible.

Mechanizmy kontroli [Supervisory mechanisms]

- 10) Jak oceniają Państwo skuteczność kontroli i zabezpieczeń przed nadużyciami pozycji dominującej na hurtowym rynku energii elektrycznej (w tym wynikających z art. 9 ustawy z dnia 16 lutego 2007 r. o ochronie konkurencji i konsumentów), a w konsekwencji ograniczanie ewentualnej możliwości przyczyniania się do zakłócenia procesu kształtowania się cen na hurtowym rynku energii?

[How would you evaluate the efficiency of market supervision and preventing abuse od dominant position on the wholesale power market?]

REMIT and its Implementing Regulation and extensive guidance have established a comprehensive framework for the detection and prevention of market abuse, which has improved considerably the integrity and transparency of European wholesale energy markets. MAR offers comparable provisions in relation to emission allowances and wholesale energy products that are financial instruments. Abuse of dominant position, in particular, is also subject to clear prohibitions under national and European competition law. However, effective market monitoring and supervision require adequate resources and enforcement powers on a national level.

We are not in a position to properly assess the efficiency of power market supervision by URE at this time, particularly since certain investigations are still ongoing. Nonetheless, we believe that the regulatory authority should be equipped with sufficient resources to ensure swift and timely reactions to any signals of market manipulation, while the common view of EFET Member Companies is that URE is understaffed.

- 11) Jak oceniają Państwo skuteczność kontroli i zabezpieczeń przed próbami manipulacji/manipulacjami oraz niezgodnego z prawem wykorzystywania informacji wewnętrznej na hurtowym rynku energii elektrycznej wynikającymi z obowiązujących przepisów REMIT, a w konsekwencji ograniczanie ewentualnej możliwości przyczyniania się do zakłócenia procesu kształtowania się cen na hurtowym rynku energii??

[How would you evaluate the efficiency of REMIT-related supervision preventing market manipulation, insider trading etc?]

In our view, REMIT has created a robust regime, which has helped to improve considerably the integrity and transparency of wholesale energy markets. The reporting framework and disclosure requirements under REMIT are comprehensive, which allows for effective market monitoring by ACER in cooperation with national regulators. The number of investigations and cases opened under REMIT has been growing over the last few years, which indicates that monitoring processes are maturing. On the side of market participants, internal compliance trainings on REMIT and what constitutes market manipulation and insider trading, as well as the establishment of various internal and external reporting channels related to REMIT compliance, have helped to raise awareness of the issues within companies as a whole and have led to overall improvements in market integrity.

- 12) Czy w latach 2018 - 2019 mieli Państwo do czynienia z nierównoprawnym traktowaniem na rynku? Jeśli tak, to w jaki sposób i jak często?

[Have you experienced discriminatory treatment on the market during 2018 or 2019? If yes, please specify in what way and how often?]

Inne [Other]

- 13) Czy w Państwa ocenie istnieją inne, niż opisane w odpowiedzi na powyższe pytania, polityki lub środki, które mogłyby pośrednio przyczynić się do zakłócenia procesu kształtowania się cen hurtowych? Jeśli tak, to jakie są to polityki lub środki i dlaczego Państwa zdaniem mogłyby pośrednio przyczynić się do zakłócenia procesu kształtowania się cen hurtowych?

[Would you be able to specify other policies and measures that could impact the power price formation? If yes, please indicate how could they potentially distort the market.]

Our thoughts on the importance of undistorted price formation have been gathered in a [separate document](#) – and while they apply to the entire EU, we remain at your disposal should you wish to discuss any of the recommendations we make.