

***“Understanding the REMIT:  
Aims and Limits”***

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## Introduction: Market Power vs Transparency & Integrity

### *I. California crisis Summer 2000 – Enron crash Fall 2001*

- California crisis: 15 months 45 billion \$ bankruptcy PG&E
- Enron crash: 11 billion \$ + death of Arthur Andersen N°5 worldwide in auditing and accounting

### *II. According to FERC : NO market power involved*

- NO dominant firm (all < 20%)
- “Enough competitors” (more than 10)
- “Market peaks cure by price spikes” (- Demand + Capacity)

## REMIT

- 1) *“Regulation on wholesale energy market integrity and transparency”* known by the acronym REMIT
- 2) Adopted by the European Parliament and the Council in October 2011
- 3) Entered into force on 28th December 2011: NO transposition – It is an EU REGULATION
- 4) Establishing a common regulatory framework for energy trading at European level

## Transparency / Integrity

1. **Transparency** ensures that market players play with similar and all significant market information. It favors “reliable market signals”. It permits “well informed decisions” even for non-incumbents and new entrants.
2. **Integrity** ensures that existing market rules are actually enforced with no lie, no abusive behavior, no manipulation, no cheating, no crime. It favors “fair trade”. It permits trust among players and confidence into market outcome.

## Towards REMIT (2007 -2010)

- 1) 2007: first signs of financial crisis / 2008: explosion of financial crisis and financial bankruptcy
- 2) Preparing 3d Energy Package the DG Energy asks (2007) EU regulators whether the existing securities regulation - i.e., MAD and MiFID Directives - sufficiently address market integrity in electricity and gas markets.
- 3) EU regulators identified several consequential regulatory gaps
- 4) Regulators' advice and recommendations were taken in due account by the Commission, and integrated into Proposal of a specific Regulation on energy markets integrity and transparency (2010)

## What Regulatory Gaps?

- 1) 3d Energy Package + MAD + MiFID only cover a portion of energy transactions
- 2) MAD & MiFID designed for financial markets (non “physical” markets) cover only a portion of energy exchange (around 16% of trade) and notably not OTC “physical”
- 3) Market abuse and market compliance were not defined!
- 4) Data storing and reporting was not organised (OTC  $\frac{3}{4}$  of “physical” trade)
- 5) Oversight was only nation-wide
- 6) Advanced practices exist mainly voluntary (self-regulation NordPool)

## REMIT

- 1) precisely defines the market misconducts which should be sanctioned across the European energy market
- 2) For example: rules for information disclosure
- 3) establishes monitoring and surveillance duties aiming at the detection and prevention of such misconducts
- 4) For example: data collection by NRAs and ACER

## **REMIT Pilar 1 out of 3 – Prohibition of insider information**

- 1) The Regulation defines “inside information” (Art. 2).
- 2) Prohibits trading on inside information, that is misusing inside information to obtain monetary or competitive advantages, or disclosing that information to selected other persons; or recommend or induce other people to acquire or dispose of wholesale energy products to which that information relates (Art. 3).
- 3) Regulation establishes the obligation to publish inside information: it covers capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas, + capacity and use of LNG facilities, including planned and unplanned unavailability of these facilities.



## REMIT Pillar 2: Prohibition of Market Manipulations

1) REMIT identifies “market manipulation” with well-identified abusive practices such as:

\*Entering into a wholesale transaction which gives false or misleading signals concerning supply or demand or price of wholesale energy products;

\*\*Trying to secure the price of a product at an artificial level;

\*\*\*Implementing deceptive behaviours which give false or misleading signals to the market;

\*\* \*\*Disseminating through the media information false or misleading signals to the market, as well as disseminating false or misleading news

2) AND prohibits market manipulation activities (Art. 5).

## REMIT Pillar 3: Duties for ACER and NRAs

- 1° Clear monitoring duties for ACER and NRAs, detect and prevent misuse of inside information & market manipulation (Art. 7).
- 2° ACER responsible for market monitoring activities - to be undertaken in cooperation with NRAs -, and collection of both transactional and fundamental data from market participants.
- 3° NRAs obligation to immediately inform ACER in case they suspect abusive market practices concerning trading on inside information or market manipulation
- 4° In case of infringement, penalties have to be applied by the competent Member States responsible for setting the rules. The rules to be notified to the Commission within 18 months, i.e., June 2013 (Art. 18).

## Pillar 3 continued: Duties for ACER and NRAs

- 5° ACER collects wholesale market transactions (“transactional data transparency”): product bought or sold, price and quantity agreed, date and time of transaction, parties involved the transaction, beneficiaries of transaction. ACER and NRAs also get capacity and use of facilities for production, storage, consumption, or transmission of electricity or natural gas, as well as LNG facilities (“fundamental data transparency”).
- 6° European Commission in charge of rules of data collection: by listing the contracts and derivatives that must be reported to ACER, and by adopting uniform reporting rules and procedures for the disclosure of both transactional and fundamental data (Art. 8).
- 6° ACER responsible for a European register of wholesale market participants in a format that will be determined by ACER in cooperation with NRAs. (Art. 9) + mechanisms to share relevant information with other authorities, including NRAs, financial authorities and national competition authorities (Art. 10).

## REMIT Limit 1: Administrative Burden

- 1) REMIT does fill gaps BUT not simplify administrative duties for market
- 2) For example new registration regime. REMIT intended to establish EU-wide common rule of licensing to be fulfilled in only one country NRA.
- 3) BUT Council did refuse and added this common licensing on the top of national ones.
- 4) REMIT ends up with 1 common regime + as many national regimes as countries want: EU heterogeneity is kept
- 5) Regulators themselves (CEER) did advocate for “Passport regime” as certification allowing trading in all countries of the EU Economic Area, and reducing bureaucracy through a “one-stop shop” for traders.
- 6) Passport idea agreed by the Rapporteur of the European Parliament, was finally not agreed by the Council (i.e., by the governments of the 27 Member States)

## REMIT Limit 2: (other) lack of harmonisation

- 1) EU NOT federal state but combination of national and common rules in typical multi-level governance
- 2) REMIT implementation allocated among various authorities both at EU and national level. Particularly three areas: registration (new registration regime and previous national licencing procedures co-exist,) data collection and sanctions.
- 3) Collection of data by ACER goes with right of NRAs to require additional data for national purposes. Markets end up with additional (and disharmonised) data collection requirements with different submission methods, formats, as well as languages.
- 4) Finally, sanctions for infringements of REMIT. Responsibility for setting and applying these sanctions to Member States, possibility for different sanctions to be established across Europe.
- 5) For further details, cf. FSR “Energy Markets Transparency Report “.

## REMIT Limit 3: Regulatory uncertainty

- 1) Regulatory uncertainty comes from delay to fully implement REMIT already (into force since December 2011)
- 2) For example REMIT's new reporting obligations: implementing acts will be issued during year 2012. From the moment implementing rules will be adopted, NRAs will have 3 months to make the national registries fully operational. And definition of registration details and formats may vary from one NRA to the other
- 3) Another case is enforcement of penalty rules: within 18 months from REMIT's entry into force, Member States will specify the penalties. Remarkable regulatory uncertainty for 18 months for consequences of infringement occurring between December 2011 and June 2013.

## **REMIT Limit 4: Obligations for persons being intermediary**

- 1) REMIT touches intermediaries as energy exchanges & brokers: procedures to identify possible infringements by players (inside trading or market manipulation) + obligation to notify cases to NRAs
- 2) Extended cooperation: energy exchanges and NRAs and between NRAs. To identify effective cross-border cooperation mechanisms between NRAs. Exchanges covering different areas have to report to different NRAs.
- 3) A brand new role for power exchanges and brokers, as preferred instrument of identification of unlawful market participants.

***AND SO WHAT?***

## REMIT Limit 4 (end)

5) YES ACER addressed some related implementation issues:

\*electronic template to report suspicious transactions to NRAs,

\*\*clarified some reporting details as \$notification of the suspected abuse should be given to the competent NRA with no delay and information supporting the suspicion can be provided to the NRA in a second moment.

\*\*\*ACER illustrated some possible signals of suspected insider dealing or market manipulation in a Guidance document. The Guidance document was published on 20 December 2011, just before the entry into force of the REMIT,

6) BUT cases illustrated in ACER Guidance provide only indications and examples, and are neither exhaustive nor determinative. This leaves PXs and brokers with full responsibility to operate according to new Regulation's provisions and comply with them, in order to avoid sanctions .



## Conclusions

- 1) REMIT remarkable milestone in the well-functioning of EU single energy market in Europe.
- 2) REMIT provides key tools necessary to identify and sanction potential abusive misconducts
- 3) REMIT assigns clear responsibilities in terms of monitoring activities and enforcement. ACER and NRAs play at the forefront.
- 4) However implementation raises serious challenges:
  - \*a lot of work for all different parties involved (incl. PXs and traders)
  - \*\*scope left for EU disharmonised procedures (registration, data collection and sanctions)
  - \*\*\*still remains regulatory uncertainty till 2013 or beyond (as actual implementation of sanctions)



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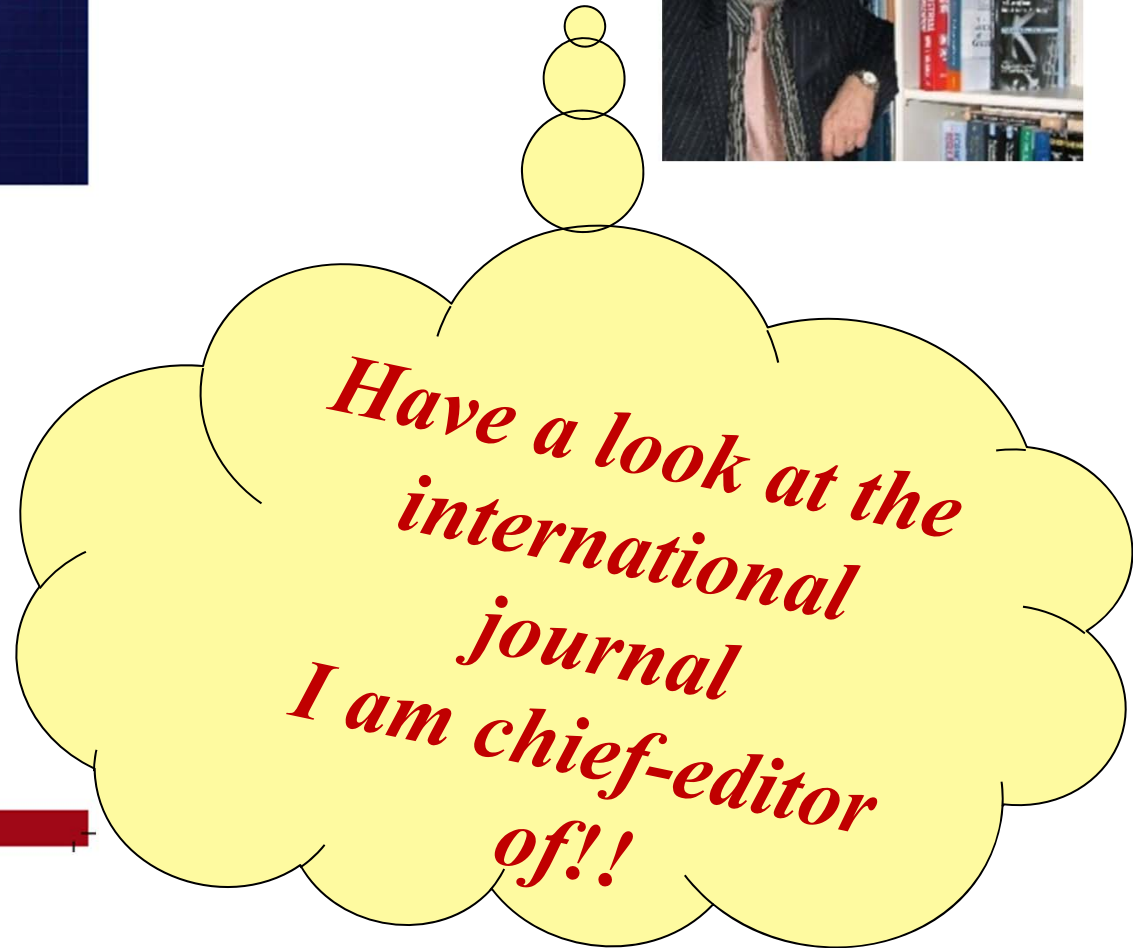
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