

Restructuring of Energy Markets towards sustainability

Input from a German/European legislative point of view

Expert meeting on Renewable Energy

On Invitation by the

Japan Renewable Energy Foundation

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About us

- Founded in 1970
- Offices in Berlin, Brussels, Cologne, Munich, Stuttgart, Vienna
- More than 150 lawyers, auditors, tax accountants and engineers
- Leading provider of consulting services in the areas of energy and infrastructure law with an interdisciplinary approach
- Specializing particularly in:
 - energy industry, water/waste water and waste industry, public transport and telecommunication
 - Company law, tax and labour law
 - Competition and cartel law
 - Waste law, recycling and life cycle
 - Environmental law, municipal law and public procurement law
 - Financing
 - Business consulting / auditing
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 - Accounts receivable management and insolvency law consulting for creditors
- Successful representation of our clients in numerous fundamental legal issues
- Clients: municipalities and regional authorities, about 400 municipal utilities (“Stadtwerke”) and municipal transport enterprises, internationally operating supply and trading companies, operators of renewable and conventional generation plants, project developers, banks and industrial enterprises

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- Born in Recklinghausen in 1957
- Married, 1 child
- Studies of Law at the Universities of Marburg and Hamburg
- 1982 Academic and Research Associate, Junior Lecturer at the University of Hamburg, Law Faculty
- 1988 Civil servant of the State of Hamburg, Ministry for the Environment and Energy
- 1991 Civil servant in liaison office of Hamburg and Schleswig-Holstein to the European Commission in Brussels,
- 1993 Partner in law firm Kuhbier, Brussels, specialising in European and International law and consulting on European affairs in the fields of competition, energy, transport, environment
- Since 2011 Partner in law firm BBH and head of the Brussels office of BBH
- Memberships
 - Admittance to the German Bar of Berlin and to the Brussels Bar
 - Green Budget Europe, FÖS
 - Eurosolar
 - BWE (German Wind Energy Association)
 - Deutscher Juristinnenbund (German Female Lawyer's Association)
- Practice areas:
 - Energy, waste, environmental and competition law

1. Introduction of Energy Markets

A typical starting point before market introduction for on-grid energy supply

- A dominant nation-wide operating grid- and electricity (gas) production monopoly with integrated transmission and production or
- A chain of regional monopolies per country. Often communities may have their own grid and electricity companies or communities without own supply/grid companies face just one of the regional monopolies.
- Key word "Natural monopolies" - "Demarcation contract" between the regional monopolies
- Concession contracts for the use of public/municipal ground/paths are given to the monopoly with specific exclusivity clauses, that no other provider of electricity could use the public ground for his grid. At the end of the long-term concession contracts the community basically has only the right to take over the electricity supply for its municipality or to issue a new long term concession.
- The concession holder has to pay a fee for the use of the public ground, in some countries this fee is fixed in specific concession fee regulations

2. The basic elements for the introduction and subsequent opening of a energy market in electricity

First Step: Clarity on the energy path forward

- Dedication to long-term energy system change after 3/11 towards sustainable production supply and consumption of energy modes
- Clear binding targets for Energy Efficiency and Renewables
- Clear promotion instruments related to Efficiency and Renewables
- Public Service clarity
- Acknowledgement of obstacles and strategies to overcome
- Major obstacle: Encrusted monopolistic structures in energy supply - to be tackled urgently

Next urgent steps -Introduction of competition models:

- Major elements:
 - Priority access for Renewable Energy supply on the grid
 - Competition on the grid for distribution and trade in electricity/gas
 - Compulsory, discrimination-free grid access for third players
 - Clear grid access rules, by legal act or publicly guided industry accord
 - Direct contracting of consumers with suppliers on energy supply
 - Demarcation contracts between suppliers/grid owners and exclusivity clauses in concession contracts become illegal under cartel/unfair competition law provisions

Next urgent steps (II)

- Concessions for use of public ground by the grid owner have to be auctioned out with reasonable timeframes attached, independent who would supply customers with energy by these grids
- Specific legislation for time-efficient boosting, enlargement modernisation of grid infrastructure and interconnection
- Integration of priority role for energy efficiency and Renewable Energies, CHP promotion etc.
- Facilitating of re-communalisation of energy services
- Liberalising of ancillary services (e.g. metering)

Unbundling - the way to avoid mischief and reign in dominant utilities

- The operation of grids as -remaining- natural monopoly calls for so-called vertical disintegration of the energy industry
- Minimum requirements: Separation of grid accounting/billing from the other parts of the value chain of an integrated utility and clear separation from the other markets of production, purchase and trade /selling of electricity/gas to customers
 - Comment: this approach is sub-optimal and can be seen as minimum approach of the regulator/government to get some transparency into the billing/accounting from the integrated oligopolies/ big companies in order to facilitate discovery of discriminatory use of strong market position , which could result in abnormal high or low tariffs or in use of different conditions for similar services - It is a typical compromise- first- step when opening markets

Unbundling (II)

- Administrative Unbundling: separate departments of the integrated company , ensuring arms-length approach and clear separate accounting/billing
 - Comment: better than next-to-nothing, not good enough, at least in countries with market concentration in the hands of the very few and on the TSO level
- Company unbundling: organisational disintegration and creation of distinct legal subjects (independent companies for the grid service)-
 - Comment: clearest approach, ensuring good ability for regulator for control and clear data distinction

Concluding remark

- The way towards energy system change calls for a magnitude of change in the legal administrative system of countries and the way energy is transformed, transported and used
- The previously outlined elements are the minimal first steps in order to start the process

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Thank you for your attention!

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