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Development Group

Energy Transition: A Multifaceted Challenge for Europe

High-Level Energy Conference

The impact of the new EU electricity market design: how will the different pieces of the puzzle fit together?

6 December 2016, 9:00 to 13:00, Egmont Palace, Brussels

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Looking beyond – how to enhance the integration of national markets and consumers in the electricity market?

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BBH is known as “the” law firm of public utilities. But we are far more than that – in Germany and also in Europe. The decentralised utilities, the industry, transport companies, investors as well as political bodies, like the European Commission, the Federal Government, the Federal States and public corporations appreciate BBH’s work.

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- Offices in Berlin, Munich, Cologne, Hamburg, Stuttgart and Brussels

Dr. Dörte Fouquet

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- Studies of Law at the Universities of Marburg and Hamburg
- 1982 Research assistant, University of Hamburg
- 1988 Ministry for the Environment and Energy, Hamburg
- 1991 Liaison office of Hamburg and Schleswig-Holstein to the European Commission in Brussels
- 1993 Partner at law firm Kuhbier, Brussels
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Agenda

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2. Implementation struggles
3. The role of renewable energy
4. Where we should go – lessons to learn
5. European Commission Winter Package 2016
6. Outlook

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Where we stand – The Third Energy Package

- Background: "Europe 2020 Strategy"
  - Secure, competitive and sustainable supply of energy to the economy and the society
- Concrete objectives:
  - Accelerate investments in energy infrastructure to enhance cross border trade and access to diversified sources of energy
  - Break up market concentration and create competition
- Main measures:
  - Ownership unbundling
  - Creation of national regulators
  - Creation of ACER

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Implementation struggles

- Up to date: Several infringement procedures against several Member States
  - However: nothing new – predeceding legislation had been badly or not implemented as well
    - E.g. in June 2010 Commission had to urge 20 Member States with overall 35 reasoned opinions to implement and apply the SECOND Energy Package…
- Example: Price Regulation
  - Poland in 2013 taken to Court
    - Poland submitted price regulation was to protect consumers against incumbents being able to raise prices due to low competition
      - BUT: CJEU: Not in line with strict rules on price regulation
        - In case: not properly limited in time

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The role of renewable energy

- Development of renewable energy = EU objective
  - Directives 2001/77/EC and 2009/28/EC aimed at increasing the share of renewables in the (electricity) mix
- In most Member States renewable energy developed by independent, smaller energy producers
  - Competition to the existing incumbents!
    - Well in line with objectives of Third Energy Package
- Further, often renewable energy projects have been developed locally, and with support/contribution from local consumers
  - Increased consumer participation and choice

The role of renewables

- New products on the market increased consumer choices as well
  - Self-consumption, net-metering…
- And several consumers chose „for renewables“
  - „Guaranteed“ „green electricity“ became popular in many Member States
    - And consumers even willing to pay higher prices
- THUS: Renewables brought competition and challenged existing market structures
  - Liberalization driven by new market entrants

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Where we should go – Lessons to learn

- Market liberalization and increased consumer choices require new market entrants and effective competition
  - Allow in partiular renewable energy producers to participate in and sell their production on the market!
    - Priority dispatch as a basic requirement: Only when able to sell production (i.e. not the threat of being regulated down), real competition on the market
    - Renewable-friendly market design: Bidding windows more adapted to production forecast possibilities e.g. of wind power
    - Fair rules regarding access to available sites, the grid infrastructure etc: Non-discriminatory procedures to allow developing projects

Where we should go – Lessons to learn

- Market liberalization requires level playing field
  - While renewable energy technologies are becoming cost-competitive, markets remain distorted
    - Phase-out of all hidden fossil and nuclear subsidies: renewables are price competitive – but hidden subsidies distort the markets
    - Grant financial support as long as necessary to overcome market distortion disadvantages for renewables: renewable energy technologies such as wind and solar have „learned“ through that (reduced costs) – and so will others
      - And once markets are „free“ support will no longer be needed…

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- Priority dispatch?
  - No: renewables to be regulated down last
    - But only as long as no more than 15% of all capacity
    - Plus: subject to self-consumption plants
      - Possibly also conventional self-consumption???
- Market Design for renewables?
  - Harmonisation within the Member States
    - Principle of price development and competition
- Non-discrimination?
  - E.g. „one stop shop" for renewable energy projects and max. duration of licensing procedures

European Commission Winter Package 2016

- Phase-out of fossil and nuclear subsidies?
  - No: Even possibility for capacity markets/payments
- Support schemes as long as needed?
  - No: Tendering for all renewable energy projects unless proven that inefficient
    - Pressure in particular for smaller projects
      - E.g. local renewable energy projects may be disadvantaged in tenders
    - Pressure also for newer technologies
      - Still facing higher costs – and in technology neutral tenders no chance to compete
  - Mandatory cross-border support
    - Likely also to benefit only large energy companies, not new market entrants

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Outlook

- For finalization of the Internal Energy Market, renewable energy plays an important role
  - New market entrants bring competition
    - Increased consumer choices
    - Incumbents loose price-setting ability
    - ...
- However, as the market currently is still distorted, we need to assist new market entrants in getting to it!
  - While phasing-out all the distorting subsidies to the existing incumbents

Thank you very much
for your attention.

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Backup.