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Bursa Română de Mărfuri S.A.
Romanian Commodities Exchange

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To: THE ROMANIAN ENERGY REGULATORY AUTHORITY

To the attention of: Mr. Claudiu Dumbrăveanu, General Manager of the General Directorate of Market, Energy and Prices

With reference to: the RERA letter no. 2926/16.01.2020

rectangular stamp of the Romanian Commodities Exchange S.A.
Outgoing document no. 353 Date: 29.01.2020

Dear General Manager,

The subscribed, BURSA ROMÂNĂ DE MĂRFURI (“Romanian Commodities Exchange”) S.A. (“RCE”), legally represented by Mr. Gabriel Purice as President – Chief Executive Officer,

Given your response no. 2926/16.01.2020 to the letter of the RCE no. 57/08.01.2020, regarding the “Procedure for the Organization and Functioning of the Centralized Market of Electricity Contracts administered by the RCE” (“the RCE Procedure”), please take into account the following observations:

- according to article 8 paragraph (2) of the Law on electricity and natural gas no. 123/2012, with the subsequent amendments and completions, “the production, transport, system service, distribution and supply of electricity, as well as the administration activities of centralized electricity markets are carried out on the basis of licenses granted under this law”, and according to article 10, paragraph 2 of the same law the RERA issues licenses for the administration of centralized markets.
- in its turn, the Regulation for granting licenses and authorizations in the electricity sector, approved by the Order of the President of the RERA no. 12/2015, with the subsequent amendments and completions, indicated in your letter presents in details the licensing procedure of the centralized markets administration activity.

Therefore, we would like to highlight the following aspects:

- (i) Regarding the activities subject to the authorization regime, they are mentioned in article 8 of the Law on electricity and natural gas no. 123/2012 (“Law 123/2012”) and are exclusively carried out by operators of centralized electricity markets, based on licenses granted under the law, by the competent authority, respectively by the RERA, according to article 10 paragraph (2) of the same law.
- (ii) Following the adoption of Law no. 123/2012, the Regulation (EU) 2019/943 on the internal electricity market (“the Regulation 2019/943”) together with the Directive (EU) 2019/944 on the common rules for the internal electricity market and amending the Directive 2012/27/EU (“the Directive 2019/944”).
- (iii) Following the entry into force of Regulation 2019/943 on January the 1st, 2020, in accordance with the obligation of the regulatory authority provided by article 10 paragraph (5), the president of the RERA has issued the Order no. 236/2019 together with the rules for eliminating and / or mitigating the impact of measures or policies that may contribute to the restriction of price formation on the

wholesale electricity market (“the Order 236/2019”). The purpose of this Order is precisely to establish a national framework that would allow the direct application of Regulation 2019/943, if necessary even

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by derogation from the provisions of Law 123/2012.

- (iv) According to the provisions of article 2 point 40 of Regulation 2019/943, respectively article 2 point 9 of the Directive 2019/94, “electricity markets” include unregulated markets and electricity exchanges, the markets for trading energy, capacities, balancing services and system services in all time intervals, including futures markets, the day-ahead markets and the intraday markets **These definitions were also taken over in Article 4 of the rules approved by the Order 236/2019 and, obviously, they are not found in Law 123/2012 or in the Order of the President of the RERA no. 12/2015.**
- (v) As such, neither the Law 123/2012, nor the Order of the President of the RERA no. 12/2015 provides for a licensing procedure for each of these types of markets. On the contrary, even the Order 236/2019 defines the organized electricity market as the market administered by a licensed operator. Beyond the ambiguous nature of this definition that is not correlated with the definition of the electricity market in article 2 point 40 of the Regulation 2019/943 and is not used anywhere, further on, in the Order 236/2019, we appreciate, by an interpretation *per a contrario*, that all other types of markets where transactions may take place according to the Regulation 2019/943 and to the article 4 of the rules approved by the Order 236/2019 do not fall under the requirement of licensing.
- (vi) At the same time, we also notify you that, according to the Commission Implementing Regulation (EU) No. 1348/2014 regarding data reporting for the implementation of article 8 paragraphs (2) and (6) of the Regulation (EU) No. 1227/2011 of the European Parliament and of the Council on the integrity and transparency of the wholesale energy market (hereinafter referred to as “**the EMIT Implementing Regulation**”), the term organized market includes:

“(a) a multilateral system, which brings together or facilitates the pooling of the interests of third parties in the purchase and sale of wholesale energy products in a way that results in a contract;

(b) any other system or facility in which the interests of third parties in the purchase and sale of wholesale energy products may interact in a manner that results in a contract.

These include electricity and gas exchanges, brokers and other persons carrying out professional transactions and the trading venues defined in Article 4 of the Directive 2014/65/EU of the European Parliament and of the Council (n.n. regulated markets, MTFs or OTFs)”.

Thus, it is obvious that the notion of organized market, within the meaning of European legislation, does not include only the markets licensed by the RERA, these ones including any stock exchanges, brokers or financial instruments trading bodies, regardless of whether the support asset transaction takes place or not on that market. Thus, the clearing houses that report to REMIT the transactions that take place on stock exchanges in another Member State are organized markets too, provided that the transaction is completed financially on their platforms. However, these organized markets cannot be covered by the RERA licensing, just as other brokers that only mediate bilateral contracts cannot either.

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Moreover, according to article 4 of the rules approved by the Order 236/2019, market participants can make transactions freely on electricity exchanges. There is no provision in the Order 236/2019 that stipulates that the electricity exchanges must be licensed, and no correlation has been made between the notion of organized market and electricity exchanges.

Taking into account all of the above, we consider the fact that, pursuant to article 4 of the rules approved by the Order 236/2019, the RCE may operate an energy exchange without any license, as there is no licensing obligation.

Insofar as the RERA intends to condition the operation of certain market segments by obtaining a license, we request the publication of transparent licensing conditions, based on which the interested economic agents may request the obtaining of licenses.

At the same time, we kindly request the RERA to initiate the amendment of article 23 paragraph 1 of Law 123/2012, according to which the electricity transactions are carried out only centrally and of article 10 paragraph 2 letter f) of Law 123/2012, according to which a single license is granted to the electricity market operator.

Thank you for your cooperation.

Kindest regards,

PRESIDENT – CHIEF EXECUTIVE OFFICER

Gabriel Purice
illegible signature

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BUCHAREST, ROMANIA