



Market Abuse / Market Integrity Framework Advice delivered by CESR/ERGG

Johannes Mayer

Workshop on Trading transparency,
Brussels, 15 May 2009

The Mandate by the European Commission

20. Is the scope of Directive 2003/6/EC on insider dealing and market manipulation (market abuse) such as to properly address market integrity issues in the electricity and gas markets? Would the assessment be different if greater transparency obligations in line with the analysis above were adopted? What suggestions do regulators have to mitigate any shortcomings?

Includes questions on existing legal basis for:

- Existing transparency situation
- Provisions on insider dealing
- Provisions on market manipulation
- Proposals for improvement if considered necessary

Existing problems in energy markets

- Markets are often national – little market integration
- Lack of transparency
- Not sufficient independence of network operators
- Possibilities for market foreclosure
-

Definition Market Abuse (according to MAD)

- Insider dealing forbids:
 - i. To make use of inside information in order to purchase or sell financial instruments for own account
 - ii. To disclose inside information to a third party
 - iii. To leak inside information to a third party
- Market manipulation forbids:
 - i. To disseminate information or signals which are likely to give false or misleading signals or indications in relation to the price of financial instruments
 - ii. To engage in transactions which give or are likely to give, false or misleading indications in relation to the price of financial instruments via other forms of

both is different from abuse of market power - although it may be linked

- No full and in-depth market monitoring exercise performed (even DG Comp Energy Sector Inquiry did not have that focus)
- Data are not available to Regulators
- However, current conditions do allow for market abuse and these behaviours remain undetected and unprosecuted
- In markets where effective oversight mechanisms for market abuse exist (e.g. Scandinavia) actual cases have been detected

Assessment of legal basis provided by MAD

- Market Abuse Directive applies to any financial instrument (such as energy derivatives) but not the commodity itself (e.g. in the spot market)
- Disclosure Rules in MAD address issuers, but in energy markets issuers are usually the exchanges/MTFs -> They do usually not possess insider information
- Market abuse investigations need a trigger – but on the energy market:
 - Most wholesale transactions are carried out OTC
 - There is no general obligation for record-keeping or transaction reporting
 - Market participants are solely professionals

Is the scope of Directive 2003/6/EC on insider dealing and market manipulation (market abuse) such as to properly address market integrity issues in the electricity and gas markets ?

- The Scope of MAD may not properly address market integrity issues in the electricity and gas markets because:
 - Does not apply to physical products
 - Does not cover OTC markets
 - Problem with definition of issuer
 - Absence of definition of price sensitive information

Transparency of fundamental data

- Data on demand, production and transmission are essential for informed trading decisions (on physical and futures markets)
- Relevant for further judgements on insider dealing
- Current energy legislation (Regulations 1228/2003 and 1775/2005) requires data publication – but implementation of these requirements is partly poor and not uniform

Would the assessment be different if greater transparency obligations in line with the analysis above¹ would be adopted?

- Even with greater trade transparency, the analysis above on the possible insufficiencies of MAD in the context of market abuse would not differ
- Provisions in Regulations 1228/2003 and 1775/2005 do have shortcomings (not precise enough)
- Greater transparency disclosure on price sensitive fundamental data could enhance the supply of information and promote market integrity
- Non-exhaustive list of price sensitive data recommended

¹ Referring to questions 11-19 from the mandate on transparency

- Option 1: Keep status quo
 - Market Failure would still exist
- Option 2: Amend MAD
 - Risks leading to undesired application of MAD in other areas which should be avoided
 - Can hardly cover the specifics of energy markets
- Option 3: Implement disclosure obligations in energy regulations as a basis for sector specific market abuse provisions
 - Objective to cover all energy trades (physical products, OTC)
 - Consider specifics of energy markets

What suggestion do regulators have to mitigate any shortcomings?

- CESR and ERGEG consider that implementing disclosure obligations comparable to Art 6 MAD in the energy sector regulations would improve the situation
- Tailor made market abuse framework in the energy legislation for all electricity and gas products not covered by MAD should be considered
- Market conduct rules applicable at Nordpool could serve as an example

- Integrity of energy markets requires to address market abuse issues in a consistent and comprehensive manner
- CESR/ER GEG propose to consider disclosure obligations and a tailor made market abuse framework in the energy legislation
- The proposals were widely supported by responses in the public consultation
- ER GEG is committed to contribute actively to the further development in that area

Thank you for your attention!

www.energy-regulators.eu



Mark your diary for the World Forum on Energy Regulation IV

October 18-21, 2009

Athens, Greece

www.worldforumiv.info