

## **Public Consultation by the Directorate General for Energy on measures to ensure transparency and integrity of wholesale markets in electricity and gas**

### **1. Are there particular developments in relation to oversight of energy markets at a national, European or global level that we have not properly considered?**

The European Commission states in its consultation paper that a new regulatory oversight regime is sought in order to achieve greater confidence in the market, increased liquidity, reduced risk premiums and rooting out of market misconduct.

While liquidity in gas markets in continental Europe lags behind that of electricity, it is worth highlighting that the most liquid energy market in Europe is in fact the UK gas market. The NBP is an important success in delivering the benefits of competition in the energy industry. As such there is considerable confidence in it as a market as it has withstood a number of significant shocks both to fundamentals (e.g. transition to import dependency) and in counter party risk (collapse of Enron and exit of other US utility companies in the early 2000's). It has also attracted pipeline and LNG investments in a timely manner, a sign of market participants' confidence.

Statoil does not share the views of the European Commission that public trust is being undermined in energy markets today and that a lack of confidence in the market is under development. We believe it is important to recall the findings of the European Securities Market Experts Group (ESME)<sup>1</sup>:

- The Sector Inquiry did not identify any market failure resulting from a lack of information transparency in trading on the wholesale energy markets and the wholesale derivatives market;
- There is no evidence or threat of market failure that would result in significant consequences for the integrity and efficient operation of OTC markets and spot markets. Furthermore, the health and increasing participation in these markets together with the absence of any suggestion of a need in current energy and financial regulator consultations supports this assertion;

And those of CESR/ CEBS October 2008<sup>2</sup>:

- There are insufficient grounds to suggest that the large proportion of OTC trading in commodities derivatives markets is hampering the aims of market or prudential regulation, or more specifically giving rise to market failures;

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<sup>1</sup> ESME , July 2008,

[http://ec.europa.eu/internal\\_market/securities/docs/esme/commodity\\_derivatives\\_en.pdf](http://ec.europa.eu/internal_market/securities/docs/esme/commodity_derivatives_en.pdf)

<sup>2</sup> Feedback statement on CESR/CEBS' Consultation Paper on technical advice to the European Commission on the review of commodities business, 15 October 2008

- Generally the potential for market failures due to information asymmetries is limited in commodity derivatives markets given the experience and knowledge of current participants.

As well as CESR/ERGEG<sup>3</sup> stating:

- CESR and ERGEG have not received any significant evidence of the markets being distorted, but further analysis might be necessary;
- An improperly considered trade transparency initiative could:
  - lead to reduced liquidity and increase in volatility;
  - result in unjustified technological, legal and compliance costs on market participants and costs of supervision and regulation on securities and energy regulators
  - lead trading to shift to third countries following regulatory arbitrage possibilities.

Although CESR/ERGEG is of the opinion that the positive effects of their proposed framework more than compensate for any of the above negative effects, Statoil believes further analysis to be necessary ahead of concluding on the requirement of a tailor made oversight system for European energy markets.

Electricity and gas markets in Europe are still relatively early in their development and this underlines the importance of ESME's (2008) conclusion that the implementation of information requirements concerning electricity and gas wholesale physical and derivatives transactions should be driven by market developments and carried out in accordance with better regulation principles with a view to minimising the additional obligations that would result for the market participants. Furthermore, Statoil shares the view of ESME (2008) that regulators should make the maximum use of available information sources (brokers, exchanges operators) for market monitoring purposes – as they are generally better-placed to provide this information than market participants.

In fact, Statoil believes that ensuring full implementation of the third package will do more to deliver functioning markets with high levels of integrity than any further regulation of transactions in the wholesale energy market. In many ways the way forward should be one of full and smarter use of intelligently adapted existing financial and internal energy market legislation rather than one of additional legislation whose need for is not yet clearly established.

**2. Do you agree that the current Regulatory Framework should be updated to include clear rules governing energy market oversight? Please justify your reply.**

Further clarity is beneficial, however as stated above this needs to be carefully assessed against the problem it aims to address; a non-proportionate solution risk to over burden companies. In particular care should be given to not to over complicate market entry and exit for small firms or companies where their participation in energy markets in relation to specific requirements for hedging or managing risk.

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<sup>3</sup> CESR and ERGEG advice to the European Commission in the context of the Third Energy Package – Response to Questions D.4, D.6, D.7, D.10, E.11, E.18 and E.19, December 2008.

Statoil understand the “current regulatory framework” referred to above to be the combined framework of financial market related legislation now being reviewed and internal energy market legislation. In seeking to enhance clarity on rules governing energy market oversight one must ensure that the combined framework creates a coherent whole. Statoil also believes that effective monitoring and enforcement requires a minimum level of proximity to the markets in question. Therefore we believe it essential to base a revised framework on the competences of Member State's regulatory authorities whose duties should include obligations of harmonisation. Legislation that is too prescriptive can also stifle competent authorities in seeking to continuously explore and implement best practices based on inter-regulatory cooperation and through industry consultations. Statoil believes such an approach would allow to best respond to the innovation of markets.

**3. Do you agree that this update should ensure integrated/coordinated oversight between financial and commodity markets and across borders?**

There is certainly a requirement to coordinate activity between the different institutions and across borders. It is necessary to establish clear rules for how these institutions share information and coordinate investigative work. It is not essential that a new organisation be formed to deal with this or even that new powers be given to ACER to manage this work. Statoil believes that cooperation can be managed at a national level between regulators, with an obligation to cooperate and harmonise, and across borders. It should be possible to effectively respond to issues with appropriate local market knowledge.

However, it is likely that some issues will cover many borders and be complex in nature. It may therefore be worth considering how enforcement mechanisms could apply for investigations of a suitable scale. This would hence function in a similar manner to competition powers where up to a certain level or complexity they are managed at a national level.

**4. Do you agree that the overlap of physical, and financial (derivative) markets, and the cross border nature of the market currently leads to sub-optimal oversight of energy markets?**

No. It is not because of market overlaps that oversight is sub-optimal. It is not the markets that causes oversight problems, sub-optimal oversight systems is a question of legislative and regulatory design. It is the way the legislator respond to the fact that markets develop and overlap that leads to oversight problems, not the characteristics of the market. Sub-optimal oversight ensues from regulatory failure, not market failure.

**5. Do you agree that definitions of market misconduct for gas and electricity markets should be consistent across EU? If not, why not?**

Yes. Statoil refers to its contribution to the Market Abuse Directive consultation recently held by the European Commission.

**6. Do you agree that market misconduct should follow the MAD definitions? If not, why not?**

Yes. Statoil refers to its contribution to the Market Abuse Directive consultation recently held by the European Commission. The MAD framework dispose of sufficient flexibility and adaptability that appropriate definitions of such behaviours in the energy market could be developed and retained as part of this framework.

**7. Do you agree that specific account of the specificities of the physical energy markets should be taken of energy markets through guidance rather than in legislation? If not, why not?**

Yes. See answer to question 6.

Statoil believes it is also important to differentiate between gas and electricity and that such differences may need to be identified in rules. Furthermore we would like to underline that substantial parts of gas production falls outside EU borders and is increasingly subject to global competition from LNG which can impact the market beyond the control of specific EU legislation. An EU framework must not introduce measures that unduly impact the competitiveness of producers active in the EEA in comparison to third country competitors.

**8. Do you agree that regular market monitoring is an essential function to detect market misconduct?**

No. If guidance and legislation is sufficiently clear most participants will seek to operate within the rules as applied. Ex ante monitoring of markets will take up a lot of resources and will not prevent abusive behaviour. Furthermore ex post investigations would still be required once abusive behaviour has been identified if penalties are to be applied. It may therefore be better to correct abusive behaviour rather than continually monitor markets.

**9. If yes, given the characteristics of wholesale energy markets, do you agree that market monitoring is best organised on EU level?**

N/A

**10. If yes, do you believe that ACER should be given the role of an EU level monitoring body for wholesale energy markets?**

N/A

**11. Do you agree that the EU level monitoring body for energy markets should have a coordinating role to ensure effective application of EU level rules for energy markets? If not, why not?**

See answers to question 3 and 8.

**12. In your view, would enforcement of market misconduct rules be best organised on national level or EU level?**

See answer to question 3.

*a. If on national level, would national energy regulators or national financial regulators be better placed to enforce compliance?*

*b. If on European level, which institution would be best placed to enforce compliance?*

**13. Do you agree that the market monitoring body for energy markets should also be able to monitor EUA transaction?**

Yes.

**14. Would monitoring of traded carbon markets be best organised on national or on EU level?**

This may be better at EU level as it is an EU created market. The review referred to in the introduction would conclude on this.

**15. If on EU level, do you believe that ACER could be an appropriate monitoring body?**

**16. Do you agree that it is not appropriate, at least at present, to consider coal, oil and other commodities along with wholesale gas and electricity markets? If not, why not?**

Yes it is not appropriate but the reasons for coal and oil not being appropriate also have some influence on gas and how the gas market will develop. In this sense it will be necessary to treat the gas market differently from that of the power market.

**17. Do you agree that it is appropriate to apply exemptions and *de minimis* levels? If not, why not?**

Yes.

**18. Do you agree that market data relating energy market transactions should be reported centrally? If not, why not?**

Yes.

**19. Do you agree the body with an oversight role requires full access to fundamental data relating to carbon?**

Yes.