

CONTRIBUTION FROM IBERDROLA TO THE PUBLIC CONSULTATION BY THE DIRECTORATE GENERAL FOR ENERGY ON MEASURES TO ENSURE TRANSPARENCY AND INTEGRITY OF WHOLESALE MARKETS IN ELECTRICITY AND GAS

23th of July 2010

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?

We understand this consultation to be aimed at regulation intended to control market misconduct, broadly in the areas regulated under the Market Abuse Directive, and not such matters as competition, collateral and investor protection.

The issues on competition are being dealt with through the Directives and Regulations making up the Third Energy Package. On collateral, we are yet to be convinced that there is a systemic risk for these commodities justifying regulatory intervention. An extension of a central clearing obligation to energy derivatives would increase market player costs for hedging and would be likely to increase risk, reduce liquidity and damage competition in the European energy markets. Finally, on investor protection, we think that energy derivatives are used by professional market participants for hedging, rather than as investment products, and that regulation in this area is not necessary.

In our view, the consultation addresses all relevant major developments in relation to market misconduct issues.

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

We agree that clear EU-wide regulatory framework governing market misconduct should be introduced for the sector, taking account of the specificities of energy markets and the special characteristics of any clearly distinct regional market.

A non-harmonized regulatory framework in transparency and integrity of wholesale markets of electricity and gas could result in inefficiencies and obstacles for the move to a single energy market. Therefore we suggest making the most in terms of the Regulatory Framework at EU level.

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

If implemented, this should ensure a more consistent level of regulatory market oversight and, in some cases, establish a mechanism that could help detect and avoid instances of market abuse.

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?

We believe that this could be a contributory factor. In fact, wholesale markets of different commodities are more and more integrated: an operation in power could be linked to an operation with carbon and gas. Moreover, interconnections also play a key role in the integration of national markets: one purchase in Germany could be linked to a hedge of a bigger customer portfolio in a neighbouring country. In our opinion, this very complex integration of several commodities and national markets makes it very difficult to have an efficient over-sight of energy markets at national level where the market is operating on a wider scale.

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

It is of the utmost importance that terminology and consequences of market misconduct are understood at an EU level and defined in a transparent and consistent way, taking account where necessary of the special characteristics of any clearly distinct regional markets. If not, non-harmonized national regulation across countries could create distortions and hinder the integration of EU national markets and competition across borders.

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

We agree that the definition of market misconduct should be in line with MAD but should also take into account the specific characteristics of the energy sector.

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?

We think that binding guidance would only be sufficient for this purpose if it is legally effective. Accordingly, some way of acknowledging the specificities of energy markets will be necessary in the legislation, though the detail can be left to guidance.

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

Yes. We also believe that an evolving governance and change regime that takes into account commercial realities and system needs will help prevent market misconduct, and efficient markets with appropriate commercial arrangements will help avoid misconduct. The intensity of monitoring needs to be proportionate, in order that market misconduct is efficiently detected, but undue compliance burdens avoided.

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

In principle yes because cross border activities are very common and this requires a very close cooperation of the relevant authorities coordinated at EU level. But it is necessary to take into account that at present, EU electricity markets are operated in a number of regional groupings, and the market monitoring should be focussed at that level.

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

We see a role for ACER in co-ordinating regional monitoring of wholesale markets as well as ensuring that rules are transported in national legislation, implemented and enforced by national regulators on a level playing field.

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?

Yes. Effective co-ordination should help ensure consistent and transparent practices in conformity with the spirit and letter of the EU legislation employed to create a single and efficient market for gas and electricity.

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

The principles of market misconduct rules should be set out at EU level, taking account of the specificities of energy markets and the special characteristics of any clearly distinct regional markets. Enforcement and monitoring should ideally be undertaken at the regional/market level until the full market convergence is completed, either by a team reporting to the relevant national regulators jointly, or the EU Commission on their behalf.

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?

In our opinion, the European Commission is the best body to enforce compliance of EU-wide measures.

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

Yes. EUA plays a key role in electricity prices in Europe. In fact, many power transactions come from a previous transaction of EUAs and vice versa.

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

For the reasons given above, we consider that monitoring of traded carbon should be done at EU level.

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

We see a coordinating role for ACER.

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. Whilst electricity, carbon and gas have become very closely-related commodities in the UK and Spain, this can vary by Member State, and the proximity of indexation with other fuel types can change over time. An integrated approach to energy consumption would be a step forward, although the similarities for distribution and consumption mean that gas and electricity should continue to be considered together, along with the fact that in most cases both markets have been developed together and have similar governance (and regulatory) structures in place.

Moreover, coal and fuel markets are more “global” than pipeline gas, EUAs and electricity. Market monitoring of the former commodities would be quite inaccurate if it is restricted to operations in Europe. Therefore we recommend not to extend the framework to coal and fuel, at least at present.

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

As a general rule, we consider that all players should have the same obligations in terms of transparency and market integrity. However, we believe that smaller market participants are important for the development of competition. Exemptions and de minimis provisions help encourage these companies and new entrants in general.

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

Ideally this would be centrally reported so that comparisons can be made and market misconduct detected more easily. However, there are also concerns as to compliance costs of an indiscriminate reporting requirement and it would be important to guarantee commercial confidentiality. Further work would be required to define the scope of, and any exceptions to, a reporting requirement, so as to develop a system which was effective, efficient and protective of commercial confidentiality.

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

Yes.