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Nordenergi response to European Commission Public Consultation by the Directorate for Energy on measures to ensure transparency and integrity of wholesale markets in electricity and gas

Nordenergi welcomes the initiative taken by the Directorate General for Energy to take a holistic view on the regulation of electricity, gas and related trading markets. Efficient markets for physical and financial trading in energy and related allowance and certificate markets – including the interaction of these markets – are of crucial importance for society to reap the benefits from the introduction of competition in these markets. The Nordic experience clearly shows this.

Step-wise approach for development of interaction between physical and financial markets

Nordenergi fully agrees that the present major gaps as well as overlaps in the regulation of physical and financial energy markets must be addressed in order to move towards an efficient and harmonized European set-up. Due to the many specificities of energy trading there is no doubt that a tailor-made set-up for electricity and gas is needed, as stated by ERGEG/CESR. There are many interacting parameters in cross-border trade as well as in interaction between physical and financial markets in this area thus, a regulatory design taking into account all aspects, will hardly be realistic in the short run. This is also due to the varying degree of maturity of European national and regional markets. Therefore a step-wise approach is needed, and in the continued work of the Commission formulation of precise conditional timetables will be of major importance.

A simple regulatory approach in monitoring

The actors in electricity and gas wholesale markets generally are utilities and less often financial actors. To a high degree their activities are governed by their need to hedge portfolios, while the investment aspect is less prominent. In addition new entrants should not be discouraged by a very demanding regulatory set-up. These elements call for a relatively simple approach on data-collection, monitoring and enforcement, still efficiently identifying and correcting activities, which would threaten the crucial confidence of market actors to the credibility of pricing in these markets. Multiple regulation and regulatory overlaps must be avoided in order to keep the regulatory framework simple and to keep the regulation efficient.

Close cooperation between the national regulators

Currently there are several relevant and competent national authorities regulating and monitoring the electricity and gas markets. In line with the third energy package these national authorities are strengthened and will be well equipped to perform the monitoring tasks. In this respect, the market integrity and transparency guideline has to ensure that common standards and rules are applied all over Europe and will facilitate the European cooperation of the national authorities.

To coordinate and monitor the national authorities a central European regulator is necessary, and ACER will be the obvious choice. In addition, ACER should also cooperate closely with national regulators on continuous data-collection and could become the contact point for European monitoring – data. ACER should also coordinate the national enforcement of the market rules to ensure that European standards are applied.

Below please find a number of comments to the specific questions posed in the report:

1.

The paper takes into consideration most legislative developments that are relevant. However, among the elements in relation to oversight of energy markets also the role of competition legislation as well as competition authorities on national and EU level must be taken into account.

2.

We agree, due to both gaps and overlaps in regulation being revealed during the gradual integration of energy markets – geographical and by type – that an updating of the current regulatory framework will be needed. The need for an increasingly level regulatory playing field calls for the same.

3.

Yes, a coordinated/integrated oversight approach is needed. Both cross border aspects of regulation as well as between types of markets – various physical and financial markets – must be monitored. The physical markets of different timeframes – longer term, day-ahead, intra day and balancing – should be explicitly mentioned, as malpractices could also occur between these.

4.

We agree. The increasingly complicated interaction between energy markets obviously makes present national monitoring/regulation insufficient. It is also the impression of Nordenergi that in many countries the cooperation between different regulatory authorities on national level is insufficient.

5.

Yes, the definitions of market misconduct should be harmonized across EU. However, due to the very different levels of maturity of energy markets the harmonization might have to take a stepwise approach. In integrated, coupled markets common rules need to be applied, and, therefore, the goal must be complete harmonization.

6.

We agree, that the MAD definitions of market misconduct must be the starting point. However, specificities of the energy markets must be taken into account and will require a number of adaptations. Limited storage capabilities and the “essential facility” transportation systems, for instance, makes a degree of central planning necessary, which is hardly known from other markets.

7.

Nordenergi agrees that a specific legislative set-up for energy-trading will be hard to accomplish. However, the demand of market actors on legal protection and certainty must not be underestimated. Guidelines by ACER or any other body without a firm legal basis must be very carefully designed to take care of this legitimate demand.

8.

We agree in principle. Identification of market misconduct might be based on complaints or on systematic monitoring. Systematic monitoring should be the main tool to detect market misconduct in order to maintain the actors' confidence. However, benefits of rigorous monitoring must be balanced with the costs of a comprehensive monitoring system.

9. – 10.

Currently there are several competent national authorities, which are responsible for the monitoring. These authorities are strengthened in the third package. Common rules founded in the Commission's market integrity and transparency guideline have to ensure that harmonised standards are applied and will facilitate the European cooperation of national authorities. ACER has to play an important role to monitor the national authorities and to coordinate them and to ensure their cooperation.

11. – 12.

We agree that an EU level monitoring body should have a coordinating role. But it is crucial to distinguish between monitoring and enforcement as it is done in the paper. For legal reasons – as mentioned above – enforcement probably will have to be dealt with by national regulatory bodies, even in the case of EU level rules for energy markets. However, a de facto coordination of the enforcement is extremely important in order to ensure a reasonably regulatory level playing field at EU level. ACER could play the role of monitoring and coordinating the relevant national authorities. National energy regulatory authorities probably will be best suited to enforce compliance, due to their knowledge of the specificities of energy markets. However, it will be important to continuously cooperate with both financial regulatory authorities and competition authorities.

13.

Also in relation to ETS market the cooperation of national authorities is essential to ensure effective oversight. The same body monitoring energy markets could be a natural choice to be responsible for monitoring the carbon market too.

14.

Monitoring could be done on a national level by competent national authorities, with the market integrity and transparency framework ensuring common standards and harmonised rules. An EU body should coordinate and monitor the national monitoring authorities.

15.

Yes, ACER could – for practical reasons – be the appropriate EU level monitoring and coordination body. But ACER should not be an additional supervisory body.

16.

Yes, we agree. In order not to complicate matters, monitoring of coal and oil should not be a priority in the early stages. However, coal and oil influence the price formation process of energy markets, and thus could be considered in the future.

17.

Yes. An important aspect is not to put up administrative barriers to new entrants in the market. While the monitoring and enforcement activities of energy markets will be an important task in general it should be designed and operated to have the least cost impacts on market actors. An important aspect is not to put up administrative barriers to new entrants in the market.

18.

Yes, data relating to energy market transactions should be collected and held centrally. As suggested in the consultation document, the data should be collected and reported by those who operate energy markets and by those who provide brokerage services. A practical way to action would be that the data is first submitted to the competent national monitoring authorities. These should then submit the data after validation and with appropriate comments to a central European body, for example ACER, to make European coordination and cooperation easier.

We also agree that a situation in which each regulator demand data with its own format, deadlines, and reports should be avoided and the requirements for data should be harmonized when possible.

19.

Yes, referring to item 13 the body with an oversight role should have full access to relevant fundamental data relating to carbon. However the access normally should be implemented by national regulatory bodies.

Best regards,



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