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

The Stadtwerke München GmbH (SWM) is a multi-utility company owned by Munich City Municipality in Germany and citizen value is a central theme for SWM. It employs nearly 7 thousand employees and has a turnover of about €4.9 billion in 2009. It provides a range of utility services to approximately 1.1 million customers inter alia with Energy services (electricity, district heating and natural gas supplies) and uses a mix of energy generation, based on combined heat and power (CHP) and renewable electricity generation.

The Stadtwerke München GmbH appreciates the opportunity to comment on the Public Consultation on measures to ensure transparency and integrity of wholesale markets in electricity and gas:

### **Our comments:**

***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 see as well the need for a efficient regulation of energy trading markets (including the market of EUA's) to fulfil the aims of the development of the European and global energy markets and to ensure their efficiency and competitiveness.

When it comes to the point of responsibilities of duties energy markets can in our point of view be traded generally in the same way like financial markets. But the equal treatment of energy and financial markets is only in regard of the question which duties and responsibilities can be delegated on the concerned authority or regulator and not in regard of the detailed interpretation and use of the requirements which are the basis of the regulation for the energy markets. **The detailed requirements still have to consider the special attributes and characteristics of the energy markets.**

Regarding the responsibilities between the authorities/ regulators we are of the opinion that there have to be a clear separation between the authority who is observing the market on an integrated level and the authority, that has access to commercial data of all the different market player.

Making an relation to financial markets one can compare the authority, that is observing the market action on an integrated level in the European energy trading markets –in our opinion should this be the European Energy Regulator ACER- with the European Central Bank (ECB). Main duty of the ECB is the control of inflation via regulation of the key interest rate. For doing so the ECB is observing the market action in the financial markets on an integrated basis. Therefore the ECB is informed about the fundamental situation in the financial markets and all related questions, e.g. transparency about the fundamental situation.

The control of the individual market actors – and related to this the access to commercial sensitive data of each market actor- is the duty of the national financial authorities.

Parallel to the aforementioned remarks in our point of view the control of the individual market actors in the energy markets should be executed by an authority that is **independent from an European Energy Regulator, namely an European market authority.**

Such a separation is essential for the present and future confidence of the market actors in the energy markets and the price fixing mechanisms. If the authority with the largest overview about the fundamental situation in the energy markets (namely the European Energy regulator) has access to all the relevant commercial sensitive data of the individual market actors, having influence on the fundamental situation through regulation of the system operators at the same time, this merging of duties and responsibilities could enable an intervention of the European Energy Regulator via the regulation of the system operators on the market action in favour or to the disadvantage of certain market actors. This has to be avoided in any case, because this would convulse basically the confidence of the market actors in the existent efficiency and competitiveness of the European Energy markets.

**Therefore we are pleading that the control of the individual market actors should be allocated in an European authority which is independent from the European Energy regulator.**

Furthermore we think that these two authorities should be acting on an European level with adequate competences to enable the authorities to superordinate European interests to national ones. Only then harmonised and effective measures for transparency and integrity of wholesale markets can be reached promptly. Delegation of the control on national authorities won't enhance the current situation and would lead instead to problems in organisation and coordination and to preferences of national interests.

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

See answer to question 1.

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

See answer to question 1.

***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 think that this is indeed the case. Therefore we are of the opinion that an effective control like stated under cipher 1 should be implemented. It should be considered, that one of the most important aims of an effective control is, that market actors have confidence in the price fixing process in the energy trading markets. Therefore it is important to use equal control requirements on equivalent transactions.

As the Market abuse Directive (MAD) contains many market rules, requirements for the energy market should be equivalent to the rules laid down in the MAD, as far as possible. Nevertheless the specific requirements of energy markets have to be considered. Especially the sensitivity of energy markets in price fixing as a result of physical or economical shutdowns of power plants.

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

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

***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?***

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

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

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

*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?*

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

*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?*

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

*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?*

**Our comment to questions 13-16:**

In our point of view there is no necessity to introduce a new monitoring scheme on CO<sub>2</sub>-exchanges because there is already a well functioning system in place. The same goes with other commodities as coal or oil. However, monitoring of the OTC market could be helpful to improve transparency.

If such a scheme is to be introduced, it should be based in a first step on the principle of subsidiarity. That means: The target of a European market surveillance as stated in cipher 1 should still be the final one. For pragmatical reasons though, market surveillance could and be organized on a national level. The national market surveillances should anyway be coordinated by the European Union.

The market surveillance should be established in a way which avoids conflicts of interests as far as possible. Especially, grid regulators are not suitable as a market surveillance authority. There are two reasons for this conclusion:

1. The extended access of grid regulators to sensitive information about the European grid system.
2. The possibility to interfere with the CO<sub>2</sub> market by regulatory decisions on the European grid system.

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

We support the proposal to apply exemptions and de minimis level regarding reporting obligations to avoid unnecessary burdens on companies who participate in the energy markets on a small scale. It should be considered, that smaller companies causing systemic risks like us (=companies that aren't systemic relevant) could be generally exempted from any new burden regarding reporting obligations to strengthen the competition in the energy market because there will rest more market players who could enhance the energy market.

Greater pre- and post-trade transparency for electricity and gas supply contracts (physical and spot trading) and derivatives would not contribute to a more efficient price formation process, if transparency is understood in terms of disclosure of information about the state of the market and wholesale transactions, supply contracts and derivatives. On the contrary, it may provide improper information, due to the relatively low degree of standardisation of transactions in this market.

Instead, more information about technical availability of interconnections and technical availability of TSO networks is needed to increase the efficiency and security in electricity and gas markets. Market participants need to be able to predict the likely evolution of supply and demand fundamentals and their ability to move energy around the transmission systems. Access to information about electricity transmission and generation, gas transportation and gas storage would help new entrants to turn third party access from legal theory into a real business tool. Transparency on the use of the network infrastructures would reduce risk, provide confidence and bring efficiency, liquidity and improved security of supply. This information should be made public and equivalent across all commodities.

SWM is therefore deeply convinced that a de-minimis clause and equivalent exemptions are necessary and that the specific attributes and characteristics of the energy markets, which differ significantly from the financial market have to be considered. (See above).