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Directorate General for Energy
consultation on measurers to
ensure transparency and integrity
of wholesale markets in electricity
and gas

Directorate General for Energy

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ExxonMobil is a longstanding participant in the European Gas and Power business involved across the supply value chain including upstream production, storage and processing, LNG receiving terminals and marketing. As such we were keenly interested in the DGENERGY consultation published on 31st May 2010 looking at measures to ensure transparency and integrity of wholesale markets in electricity and gas.

We support DGENERGY's initiative to ensure transparency and integrity in wholesale gas and electricity markets and agree this is key to maintaining market confidence and future investment.

Whilst we are unaware of any current issues which provide a potential threat to the integrity of the wholesale gas and electricity markets we understand the need for market oversight given increasing liquidity and integration across markets. We believe such oversight is best achieved at the EU level but that any such oversight should not be a duplication of existing national level oversight activities. Specifically any new reporting requirements relating to transactional data should be done in an efficient way, allowing exemptions and application of *de minimis* levels whilst ensuring confidentiality and sanctity of contract is maintained.

We understand the benefits of consistent market rules across Europe, however we are concerned and eager to understand how the specificities between the gas and electricity markets would be handled in the application of those rules. It is vital that market specificities are addressed in the application of any such rules given the clear differences in structure, functioning, and operation between gas and electricity markets. We also understand the intention is for this guidance to come from the oversight body but have concerns around timing in relation to the availability of such guidance, in that we would expect the guidance to be available well before (and certainly not after) any new general market rules come into effect.

Finally, in relation to data on physical production, and consumption of gas and electricity we support the implementation of the measures outlined in the third package, and agree that any specifics should be addressed as part of the network code development procedure.

I hope these comments are useful and if you have any questions please do not hesitate to contact me.

Please also find attached specific responses to the questions raised within the consultation.

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 believe the consultation captures the main developments in relation to oversight of energy markets at National, European and Global levels.

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

The 3rd package contains measures to strengthen the role of the regulator and we believe focus should be on implementation of the 3rd package prior to the development of any new regulation. In addition, except for the perceived lack of overall oversight there have been no governance issues raised that we are aware of. Any rules should be balanced and in the interests of all market participants.

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

We believe any updates need to be done in an integrated/coordinated manner, and should continue to recognise the differences highlighted between the financial and commodity markets.

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 have not reviewed extensively the effectiveness of current energy market oversight and so can not comment.

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

We believe definitions of market misconduct should be consistent across the EU to ensure transparency clarity and a level playing field.

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

We understand the Market Abuse Directive is undergoing review, however we agree based on the current definition of market misconduct as outlined in Article 1 paragraph (1)(2) of directive 2003/6/EC.

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 believe legislation should be balanced in the interest of market participants, transparent and unambiguous. We believe that there should not be excessive legislation as this can stifle the efficient functioning of the market and competition. Any guidance should be developed taking into consideration the views of market participants and made available in a timely manner.

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

Market monitoring can help to detect market misconduct, however any such monitoring activity should not interfere with the functioning of the market.

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

EU level monitoring would provide oversight and facilitate better coordination of national regulators, however our concerns would be around the potential duplication of national level oversight activities and potential additional administrative burden.

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

As ACER will not be set-up until March 2011 we have minimal information on how it will operate and therefore can not comment specifically on the appropriateness of ACER to act as the monitoring body. Conceptually however it would seem to make sense from an efficiency point of view not to create a separate organisation responsible for monitoring activities.

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?

An EU level monitoring body would in principle help bring better consistency in adherence to market rules, however our concern would be in the detail of how this is set-up and the potential for over policing a market.

12. In your view, would enforcement of market misconduct rules be best organized 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?

We believe empowerment of national regulators as they would be best placed to enforce once detected.

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

We have not reviewed extensively the possibility of a market monitoring body for energy markets also being able to monitor EUA transactions and so can not comment.

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

We have not reviewed extensively the monitoring of traded carbon markets and so can not comment.

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

As ACER will not be set-up until March 2011 we have minimal information on how it will operate and therefore can not comment specifically on the appropriateness of ACER to act as the monitoring body. Conceptually however it would seem to make sense from an efficiency point of view not to create a separate organisation responsible for monitoring activities.

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?

As indicated in the consultation text, coal and oil markets are largely global and there is no clear case to warrant designing a regime which encompasses oversight of these markets.

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

We agree that in terms of transactional reporting requirements exemptions and *de minimis* levels should apply to ease any burden on reporting requirements to market participants.

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

We believe any reporting of energy market transaction data should be done in an efficient way so as not to generate additional administrative overhead. In addition we believe it should be transparent as to how such data will be used and that any such data should remain confidential. We look forward to hearing more around what is meant in terms of scope of "market transactions".

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

As previously mentioned we have not reviewed extensively the monitoring of traded carbon markets and so can not comment.