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DG Energy - ENER.DDG1.B.2  
'Market Integrity'  
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**Public consultation on the initiative for the integrity of traded energy markets /  
Response of EnBW Trading GmbH**

July 23, 2010

Dear Madam or Sir,

EnBW Trading welcomes the opportunity to respond to the Public Consultation by the Directorate General for Energy on measures to ensure transparency and integrity of wholesale markets in electricity and gas.

We fully agree with DG ENER that functioning wholesale energy markets are at the core of the liberalisation and integration process of European gas and electricity markets. Thus we also support to develop a proportionate transparency and integrity framework which explicitly takes into account the specificities of the energy market.

**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 observe a growing number of regulatory initiatives which in its core all seem to have the aim to set up rules to oversee the energy markets. This development can be seen in addition to already existing provisions particularly on national level. At the same time, we are concerned that we may end up with several non-harmonised and overlapping oversight regimes, particularly bearing in mind that competition authorities already are overlooking energy markets and undertake sector inquiries. For us, it is therefore important to ensure that at the end the burden for the individual energy company is not blown out of proportions due to inappropriate and uncoordinated measures. Ideally, EU-wide harmonised and binding rules take the specificities of the energy markets (e.g. structure, products) adequately into account to ensure that the positive liberalisation process is not unduly restricted (e.g. no reduction in liquidity and number of participants). After all, energy markets also have a public task to supply power and gas on a secure level.

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

As mentioned above, we see a degree of overlapping and also fragmented provisions on energy market oversight with significant national differences. Thus, an update of the regulatory framework should ensure that energy markets and their participants are subject to clear rules which are harmonised across all Member States.

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

As financial energy markets are closely interlinked with the underlying physical market we do see the need for a coordinated oversight approach between financial and commodity markets in order to avoid multiple requirements for energy firms. We like to stress that this coordination should not be done on the company level (e.g. multiple reporting requirements) but rather between the relevant competent authorities. Ideally, a “one-stop-shop” approach with one “competent home authority” as the single point of contact would not only avoid the risk of overlaps and duplication with other regulations but would also minimise the additional burden on a company level. Such an approach would also strengthen the efficiency of the measure.

**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?**

It is important to recognise that it is the oversight responsibilities that do overlap but not the products that are traded. Thus close regulatory coordination is absolutely key.

**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?**

We do agree that definitions of market misconduct for gas and electricity markets should be consistent across EU in order to avoid regulatory arbitrage and ensure a level playing field; these rules should generally also be consistent between electricity and gas markets. This is crucial as there is a strong link between power and gas markets: gas producers are also active in power trading as power generators are actors on the gas market. Any imbalance in a regulatory framework between electricity and gas will create an unlevel playing field.

The Market Abuse Directive has its origin to address financial markets and the behaviour on these markets. However, we are not convinced that these rules will also fit to energy markets and its specificities. For example, due to the non-storability of electricity and non-elastic demand-side we see spot markets that may be highly volatile and even produce negative market prices; which could give the impression when simply tested according to the current provision within MAD that the markets do not work properly. Therefore, energy specific rules are necessary which take these issues into account.

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

As mentioned before, we think that in order to ensure a level playing field, it is necessary to have harmonised and binding rules across all Member States for electricity and gas alike. Additionally, we think that the specificities of the energy markets need to be adequately taken into account.

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

Yes.

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

As we see monitoring as a data collection function and possibly first analysis, a European approach is necessary in order to get the complete picture and consistence in data formats and to take account of the cross-border activities. As mentioned before, we support a “one-stop-shop” approach with one “competent home authority” as the single point of contact.

**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 of ACER in coordinating and ensuring that the rules affecting the energy markets are transposed in national legislation 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. Enforcement should stay with the national competent authority.

**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?

We think that enforcement of market misconduct rules are best organised on a national Member State level and done by the relevant competent authority.

**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?**

As there is a close link between EUA transaction and energy markets we see a strong need for a coordinated monitoring approach; and as carbon markets are of European nature a coordinated European monitoring seems necessary.

Generally, the relevant EUA transaction data are already available on the trading platforms (exchanges and MTFs) which should therefore, equivalent to the energy markets, be responsible to provide them to the competent authority.

**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?**

Although there is an interlink between the gas and power markets with other markets such as coal and oil we do recognise the global nature of these markets. Thus, we agree that it is not appropriate to consider coal, oil and other commodities along with wholesale gas and electricity markets.

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

We are of the opinion that generally all market players should be covered by a respective framework as size does not seem to be an appropriate indicator. At the same time there are good reasons to consider specific rules such as the minimum size of a power or consumption plant for market relevant information; at the German transparency initiative ("Transparency in Energy Markets") this threshold is 100MW installed capacity.

Additionally, when considering potential impacts on spot markets, the drastically increasing new-build of renewable energy sources (e.g. wind and PV) are increasingly important and should also adequately be covered.

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

For us it is important that the burden on the individual energy company is minimised. Thus all relevant data should be provided by the trading platforms for monitoring purposed. Regarding fundamental data, we believe that already existing national/regional approaches should be able to continue while a linkage to a central platform could be considered. Again, the burden on energy companies should be minimised.

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

We believe that these data are already available with the national EUA registries and competent authorities should get access to them.

For any further questions please do not hesitate to contact us.

Yours sincerely,

Dr. Bernhard Walter