



Yara International's response to the Commission Public Consultation on Transparency and integrity of wholesale traded energy markets

Question 2: Do you agree that the Current Regulatory Framework should be updated to include clear rules governing energy market oversight?

Yara International's position: MAD is designed for the financial markets and not for physical products. Thus, the present scope for market abuse regulations (insider trading, market manipulation) generally does not apply standard OTC, (spot and forward) which makes up the bulk of traded electricity and gas markets. For this reason Yara International supports the Commission initiative.

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

Yara International's position: There should be coordination between financial, and commodity markets. Yara cannot see any good reasons why energy and commodity markets should be treated differently when it comes to transparency and integrity.

The target for the European gas market is to develop into one single market. In order to obtain this, it is essential to have strong coordination across borders.

Question 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?

Yara International's position: Yara is convinced that there is a suboptimal oversight of the energy markets in Europe. The markets become more and more integrated, and accordingly it is important to have the same principles for oversight in all EU countries in order to handle all irregularities occurring in the market in the same manner.

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

Yara International's position: Yara supports consistent definitions of market misconduct across Europe.

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

Yara International's position: MAD definitions should be applied. In the financial market transparency, rules for insider trading and abuse of dominant position are heavily regulated. This is not the case in the energy market.

Main producers of gas on the Northwest Europe have trading operations in the same company as their upstream operations. There are subsequently "no Chinese walls" to hinder market manipulation, which more easily may occur when a number of market actors possess more information about the market than other players, and actors obtaining essential information (e.g. supply problems, maintenance schedule) before other players. In this way they may take advantage and abuse their position.

This can be illustrated by an article in *ICIS Heren Spot Gas Markets report* of 7.7.2010: "The early sell-off came as Norwegian flows into UK resumed, as was expected by only a handful of traders the previous session. *Langeled* (pipeline) went from delivering at a rate of 15Mm³/day over the course of the last session, to a rate of 30Mm³/day for the majority of Wednesday's session, only falling off marginally in the late afternoon, to a 26Mm³ rate after 14:30 London time. Activity on prompt was reportedly focused on Day-ahead and BOM, with one major producer buying heavily, causing others to follow suit in the game, traders said; "People look at what they are doing and follow suit", one trader said."

The Commission should ensure that trading companies are unbundled from their upstream companies. This should be applied both for gas and electricity companies.

Question 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?

Yara International's position: Legislation is more binding than guidance. For this reason Yara believes that it is important to address all major issues in the legislation. In this way there will be less doubt about rules to be applied creating few diverging sets of national rules.

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

Yara International's position: Yara agrees to this aspect.

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

Yara International's position: The energy market in Europe becomes more and more integrated. To avoid Member States developing diverging sets of monitoring regimes, it is key to ensure that that

market monitoring is organised on EU level ensuring a harmonised level of surveillance based on common European principles.

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

Yara International's position: ACER is not in operation yet so it is difficult to judge their competence, but in principle ACER should be an appropriate body to monitor the energy market.

Question 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?

Yara International's position: We are not sure what “coordinating role” means. To Yara it seems to be a bit vague. We would like this body to have the mandate of “controlling role”, more than “coordinating role”.

Question 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?

Yara International's position: Yara is convinced that enforcement of market misconduct rules should be organized on EU level. We think ACER might be the right body to enforce compliance.

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

Yara International's position: Yara supports the idea that the same authorities monitor all energy markets, but if the consequence of this will be a delay for electricity and gas markets, we are in favour of a separate body for gas and electricity.

Question 14: Would monitoring of traded carbon markets be best organized on national or on EU level?

Yara International's position: We cannot see any reason why this should not be monitored on EU level.

Question 15: If on EU level; do you believe that ACER could be an appropriate monitoring body?

Yara International's position: Yes

Question 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?

Yara International's position: Yara believes that the best solution would be to handle other energy carriers along with electricity and gas markets, but our concern is at the same time that doing so will delay the process. The alternative may be to initiate a stepwise approach; setting the focus on gas and electricity markets first.

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

Yara International's position: We believe that exemptions should be avoided. The outcome from a regulatory regime with numerous exemptions may be a less efficient European gas market.

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

Yara International's position: This aspect is fully supported by Yara International.

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

Yara International's position: Yara International agrees.

For all comments or inquiries, please contact:

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