

**Position Paper of CEZ, a. s.  
on the Draft Response to Question F.20-  
Market Abuse– CESR and ERGEG Public  
Consultation paper**

<b>CEZ persons responsible</b>	
Jan Kanta ČEZ, a.s. Prague Czech Republic	Vladimir Prochazka ČEZ, a.s. Prague Czech Republic



CEZ, a. s., 28th August 2008

## I. Introduction

In September 2007, the European Commission published the Third Energy Package. The Third Energy Package introduces powers for the Commission to adopt guidelines on a wide range of subjects, such as record keeping and transparency of transactions in electricity and gas supply contracts and derivatives.

In this regard, in July 2008, CESR and ERGEG published their Draft Response to Question F.20 on Market Abuse exploring current situation in energy trading (within the context of Articles 22f and 24f in the two proposals for Directives amending Directive 2003/54/EC and Directive 2003/55/EC) .

Interested parties may comment on issues raised in the draft, in particular on the recommendations and issues for consultation pointed out in the document during the response period, which ends on 29 August 2009.

**CEZ, a. s. appreciates the possibility to participate in this consultation of CESR and ERGEG joint group. CEZ, a. s. has covered in its Position Paper all the principal issues discussed in the draft paper and expressed its views on issues concerning transparency obligations, insider dealing and market manipulation in energy markets.**

**CEZ, a. s. takes the general view that the current legal framework is adequate and sufficient. In addition, guidelines mentioned in the draft of the Directive 2003/54/EC will explain and clarify its impact and sense. New market abuse regulation would incur additional costs that could possibly lead to energy prices rise and would not have any positive effects for final consumers or market competitors.**



## II. Comments of CEZ on specific issues

**Q1) Is the scope of Directive 2003/6/EC on insider dealing and market manipulation (market abuse) such as to properly address market integrity issues in the electricity and gas markets?**

*1) Do you agree with the analysis of the market failures in the electricity and gas markets as described in Draft response? If not, please provide reasons for your disagreement.*

CEZ, a.s. ("CEZ") does not agree with the analysis of the market failures in the electricity and gas markets. CEZ would like to point out that regarding the Czech market, the Czech Republic fulfilled the requirements of Directive 2003/54/EC more than a year in advance. **As of 1 January 2006 the market was fully liberalized and unbundling obligation accomplished.**

Therefore, CEZ considers the **current Czech framework in the area of market failures in the electricity and gas markets as fully adequate.**

The Czech framework relating to market abuse in energy markets:

- Zákon č. 140/1961 Sb., trestní zákon (Penal Code) - Article 128 on insider trading
- Zákon č. 458/2000 Sb., o podmínkách podnikání a o výkonu státní správy v energetických odvětvích a o změně některých zákonů (Energy act)
- Zákon č. 406/2000 Sb., o hospodaření energií (Energy Usage Act)
- Zákon č. 256/2004 Sb. o podnikání na kapitálovém trhu (Capital Market Act)
- Zákon č. 403/2006 Sb. úplné znění zákona o kolektivním investování (Investment Act)
- Zákon č. 287/2006 Sb. úplné znění zákona o podnikání na kapitálovém trhu (see 256/2004)
- Zákon č. 189/2004 Sb. o kolektivním investování (see 403/2006)
- Zákon č. 15/1998 Sb. o dohledu v oblasti kapitálového trhu a o změně dalších zákonů (Capital Market Supervision)
- Nařízení vlády č. 80/2008 Sb., o Národním alokačním plánu pro obchodování období 2008-2012 (National Allocation Plan)
- CP04/2004 Informování Komise o podezření ze zneužívání trhu (informing Commission at suspicion of market abuse)
- CP01/2001 Kodex správy a řízení společnosti založený na Principech OECD (Company anagement Code based on OECD principles)

### **Act No. 458/2000 Coll.**

This Act determines discretions and duties of the energy traders and establishes Energy Regulatory Office ("ERO"). **Main tasks of the Energy Regulatory Office are as follows: support for competition and protection of consumer interests** in the areas of energy industries, in which competition is not feasible. ERO also determines



disclosure obligations and suggests supervisory control and infliction of a fine to State Energy Inspection.

#### Other energy traders rules

- Pravidla provozování přenosové soustavy (Rules of the Transmission System Operation)
- Pravidla provozování distribuční soustavy (Rules of the Distribution System Operation)
- Dispečerský řád- vyhláška MPO č. 220/2001 Sb. (Dispatching Rule)

CEZ takes the view that the **current Czech framework in the area of market failures in energy markets in conjunction with European framework especially with “Electricity Regulation” 1228/2003/EC is fully sufficient.**

*2) What is your opinion on the analysis provided on Draft response on the scope of MAD in relation to the three different areas: disclosure obligations, insider trading and market manipulation?*

CEZ agrees that Directive 2003/6/EC (“MAD”) is primarily designed for financial markets and thus has a limited scope as for energy markets. At the same time, CEZ holds the opinion that the current framework is adequate. As regards disclosure obligations, **CEZ voluntarily discloses generation data** as other large generators do and fulfils disclosure obligations in conformity with Regulation 1228/2003/EC. However, not all the Member States fulfil Regulation 1228/2003/EC correctly. Thereby, **CEZ invites the European Commission to guarantee effective fulfilment of the “Electricity Regulation” in all the Member States of the EU before adopting any new legal regulation.**

**CEZ considers that further disclosure obligations would cause additional costs for market participants and competent authorities and final consumers would not have corresponding benefits.**

As regards insider trading, article 128 of the Act No. 140/1961 Coll.,(Penal Code) on insider trading is currently applied to insider trading in energy markets. As regards market manipulation, **Czech energy market is fully liberalized and liquid. Pursuant to 2003/54/EC Directive there is no market abuse.**

**Q2) Would the assessment be different if greater transparency obligations in line with the analysis above<sup>1</sup> were adopted?**

*3) Do you agree with the conclusion above that greater pre- and post trade transparency would not be sufficient in the context of market abuse?*

CEZ agrees that MAD in the context of market abuse in energy trade is not sufficient. However, **CEZ holds the opinion that the guidelines previewed in the third Energy Package would be adequate tool to tackle more efficiently with market abuse.**



*4) Do you agree with the analysis above on the importance of the transparency/disclosure of fundamental data? If yes, would you consider it useful to set up at the European level a harmonised list of fundamental data required to be published? Is an exhaustive list conceivable or is it necessary to publish additional data on an ad hoc basis if it is considered to be price sensitive?*

CEZ agrees with the importance of fundamental data disclosure and points out that **energy companies are already subject to disclosure of all fundamental data** to Energy Regulatory Office and Energy Operator according to the existing European and national law. **CEZ is against elaboration of a harmonised list of fundamental data.** If anyone needs more pre- and post trade information, there is an online web portal with actual production data and other information of all important power plants.

The Czech Energy Market Operator discloses following information:

- Current participants list
- Short-term & Balancing Market
- Annual and monthly report
- Settlement of imbalances (Daily and Monthly)
- Long-term balances in the Czech Republic

*5) Which information retained by specific participants of the electricity and gas markets (e.g. generators, TSO) should be published on an ad hoc basis if it is price sensitive?*

**CEZ holds the view that all important information are already being published and the current legal framework regarding the disclosure obligations should not be modified for additional costs reasons.**

**Q3) What suggestions do regulators have to mitigate any shortcomings?**

*6) What is your opinion on the proposals of CESR and ERGEG in the three different areas: disclosure obligations, insider trading and market manipulation?*

According to CEZ, **the obligation of further disclosure would bring additional costs that would have to be paid by final consumers** and the effects for the consumers and competitors would not correspond to the additional costs they would have to pay.

As regards the insider trading and market manipulation, CEZ proposes to wait till the Third Energy Package is adopted. **The adoption of a new legislation would be currently premature.** CEZ supports the idea of a single electricity market within the EU. Nordic Power Exchange Nord Pool could serve as a model of a good practice **without being adopted as a binding legal regulation.**