

ENDEX European Energy Derivatives Exchange N.V. (“ENDEX”) has taken notice of CESR and ERGEG’s draft response of July 2008 to Question F.20 (Market Abuse) (“draft response”), which response forms part of CESR and ERGEG’s advice to the European Commission in the context of the Third Energy Package. ENDEX would like to react as follows to the draft response of CESR and ERGEG to the questions posed in the draft response:

Answer 1 ENDEX agrees with the analyses of the market failures mentioned in CESR and ERGEG’s draft response. ENDEX is of the opinion that, in general, there still is a poor level of transparency in the energy markets and no level playing field. Also, the scope of current regulation is still too narrow. Different parties on the energy markets (for example, financial institutions on the one hand and the incumbents on the other hand) are treated differently from a regulatory point of view. ENDEX regrets this. ENDEX agrees that sharing generation data with affiliates by vertically integrated incumbents before such information is shared with other participants – if those practices occur – will create asymmetry which may lead to market abuse. It further is of the opinion that physical markets for electricity and gas are also vulnerable to manipulation based on market power, given the current degree of concentration in many Member States.

Answer 2 ENDEX agrees that the disclosure obligations of Article 6 MAD do not apply to physical markets nor to derivatives markets; not to the physical markets since the physical markets are not regulated at all and not to the derivatives markets since the disclosure obligations of Article 6 MAD relate to issuers and the issuer of a derivative is the market operator which is not an issuer within the meaning of MAD. ENDEX also agrees that, as far as insider trading and market manipulation is concerned, the scope of market abuse regulations do not apply to physical markets for electricity and gas. Finally, ENDEX understands that the derivative specific definition of insider information in MAD may be difficult to handle for securities regulators in the absence of a clear definition of the information users of commodity markets can expect to receive in accordance with accepted market practices on those markets. ENDEX therefore advocates a tailor-made regulation for the energy market as a whole, i.e., for the physical market, the derivative market and for the OTC market. ENDEX is of the opinion that one tailor-made regulation for the energy market as a whole will prevent securities regulation arbitrage.

Answer 3 ENDEX agrees that greater pre- and post trade transparency could contribute to a more transparent market, and therefore to a more fair market. However, ENDEX is of the opinion that greater pre- and post trade transparency as a single measure is not sufficient. In order to promote market integrity, and therefore in order to create a fairer market, greater transparency/disclosure obligations on price sensitive fundamental data, such as data on generation, transmission, transportation, storage and capacity levels, is required. ENDEX would also encourage the availability of aggregated trading data of wholesale traded gas and electricity products. Such information should be made available on equal terms, in a timely manner, on a single platform and with standardized quality, so that the information will be reliable. Moreover, the obligation to provide fundamental data should be legally enforceable.

Answer 4 Yes. ENDEX agrees with the analysis on the importance of transparency/disclosure of fundamental data. Please refer to the answer to Question 3 above. In order to create a level playing field – and in order to prevent arbitrage with regard to securities regulations in different Member States – ENDEX considers it useful to set up a harmonized list of fundamental data required to be published at a European level. Such a list should not be an exhaustive list, but should be a nonexclusive list which to which certain data could be added, when necessary.

Answer 5 That depends on the situation, but at least information with regard to outages.

Answer 6 ENDEX endorses CESR and ERGEG's initiatives to create a more transparent – and therefore fairer – market. However, ENDEX is of the opinion that the European Commission should see to it that regulated markets on which energy derivatives are traded will not be stricter regulated than other platforms. At this moment, on the energy market, MAD only applies to energy derivatives which are traded on a regulated market. MAD does not apply to MTF's, the physical market or to the OTC market. In order to create a more transparent and fairer market and in order to guarantee a level playing field, ENDEX is of the opinion that the same rules on market abuse should apply to all energy markets equally. Otherwise an advantage for the other platforms over the regulated markets will be created and market participants will seek their refuge to the non-regulated markets. In addition ENDEX notes that, if disclosure of fundamental data will become obligatory, the European Commission should see to it that such an obligation will become legally enforceable.