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Dear Sir,

ERGEG Consultation on Market Abuse Directive

Scottish and Southern Energy is a UK based energy company active in the highly competitive UK and Ireland energy markets. We therefore welcome the opportunity to comment on ERGEG's draft response to the question that the European Commission has asked ERGEG on whether the Market Abuse Directive (MAD) for financial markets is adequate to address potential market abuse in energy markets and if not, what recommendations ERGEG would have for the Commission.

ERGEG's key conclusions are that the MAD is not adequate to address potential market abuse in energy markets, and that the European Commission should consider a tailor made market abuse framework for the energy sector.

We agree that the MAD has limited scope in energy markets, but nevertheless would strongly urge the Commission not to introduce tailor made market abuse framework. There are a number of reasons for this conclusion:

Firstly, we believe that there are existing tools that are adequate to deal with potential market abuse in energy markets, including competition legislation.

Secondly, we are concerned about the potential unintended consequences of any market abuse obligations placed on generators or suppliers, particularly for security of supply. An example would be where, because of concerns about potential accusations of "abuse", marginal plant is withdrawn rather than being offered to run at an apparently high price reflecting its low load factor. Also, a loosely worded obligation on market abuse could significantly increase risk for market participants.

Finally, the European Commission's DG Competition has already carried out a sector inquiry into the European energy markets and identified a number of issues in the operation of those markets. Some of the key conclusions relate to the lack of transparency (an issue that MAD deals with for financial markets), powers of national regulators, and lack of regulatory coordination for supervising regional markets.

As a result of that inquiry, the Commission has brought forward a number of proposals in its "third energy package". These proposals are designed to deal with the issues identified in the sectoral inquiry, with the potential for binding codes on transparency and for national regulators to have the powers to investigate market issues as well as the power to impose effective, appropriate and dissuasive sanctions on undertakings not complying with their obligations.

We therefore firmly believe that existing tools available through competition legislation and the proposed arrangements within the third energy package are more than adequate to deal with any potential for market abuse.

Our answers to the specific questions are set out below. If you require any further clarification or explanation, please do not hesitate to contact me.

Yours sincerely,

David Densley
Head of European Affairs

SSE Answers to ERGEG Questions regarding the Market Abuse Directive

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

The energy sector inquiry by DG Competition highlighted a number of issues with the functioning of many of the European markets. Indeed the fact that many markets that remain national in scope is itself an issue. However, the market shortcomings are being addressed by the Commission in its so-called “third package” of energy legislation.

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

We agree that the Market Abuse Directive was designed for financial markets and therefore has limited scope in application to energy markets.

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?

One of the key conclusions of the DGComp report was that lack of transparency is a problem in both the electricity and gas markets. The report says in the executive summary that “there is a serious lack of transparency in the electricity wholesale markets that is widely recognised by the sector” and for the gas market that “there is a lack of reliable and timely information on the markets – normally the lifeblood of healthy competition”. The proposals in the third package to improve transparency, combined with the other measures should in our view greatly improve the situation.

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?

We agree that transparency is important for the efficient functioning of markets, and ERGEG have made significant progress through the regional markets initiatives in the Guidelines of good practice. Although these are not legally binding at present, the “third package” proposals will create a framework whereby the European Regulatory Agency ACER is able to adopt codes prepared by the transmission system operators association and there is a further process for the Commission to adopt guidelines if such code does not lead to efficient functioning of the market. We believe it is for that process to determine which data is necessary to ensure adequate transparency.

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?

As noted above, we believe the existing and planned processes are the best means to develop an adequate level of transparency to ensure efficient market functioning.

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

ERGEG consider that implementing disclosure obligations comparable to Article 6 MAD would improve the situation. We believe that transparency obligations should be developed through the existing and proposed legal framework rather than through any new initiative.

Similarly, we do not believe that the Commission should consider developing proposals for a tailor made market abuse framework in energy sector legislation. The existing proposals in the third package of energy legislation are designed to overcome the market issues identified in the DGComp investigation, particularly in the wholesale markets.