

Our date
2008-08-15

Our reference
CESR/ERGEG/MAD

Internal

StatoilHydro

Your date

Your reference

StatoilHydro ASA

European Regulators Group for Electricity and Gas

Dear Sir/Madam,

CESR and ERGEG advice to the European Commission in the context of the Third Energy Package

Thank you for the opportunity to comment on the draft response to the above Commission request. StatoilHydro recognises the importance of effective regulation in all aspects of energy markets including the potential for market abuse. As such we would like to offer the following comments on the proposed answers you offer to the European Commission.

General

StatoilHydro is concerned that throughout the document and in particular reference to question 1 there is an underlying assumption that the gas market is the exact equivalent to the electricity market. This is clearly not the case and this becomes a significant issue when matters of market abuse are considered. The physical gas market is very different from the physical electricity market due to differences in balancing (not required in real time), storage and production. Any additional regulation needs to ensure that these specifics are taken into consideration.

Q1) Do you agree with the analysis of the market failures in the electricity and gas markets as described? If not, please provide reasons for your disagreement.

Q2) 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?

The regulators argue that the application and scope of MAD are not really intended for the physical power and gas markets, applying as they do primarily to commodity derivatives, it may be equally appropriate to assume that solutions driven by the power market are not entirely compatible with the gas market. As there has been no analysis offered on the gas market it is difficult to provide specific comments in this respect.

We agree that it is difficult to assess the insider information elements when it is unclear what information can be expected to be published. However, there is sufficient work being undertaken on market transparency issues under other initiatives such as the current amendments to the gas and electricity directives and regulations and these should resolve many of the issues of what information should be published.

Similarly issues raised with respect to market power are already dealt with under existing competition law and it would seem unnecessary to equip regulators with additional powers in this respect.

Q3) Do you agree with the conclusion above that greater pre- and post trade transparency would not be sufficient in the context of market abuse?

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StatoilHydro agree that increasing requirements for pre and post trade transparency is not required especially as there is already significant developments in this respect through the record keep requirements of the 3rd package.

There are some information shortcomings with the type and consistency of data provided in gas and power markets in Europe at present. However, as stated above this type of information transparency is being dealt with through other legislative mechanisms and we believe that efforts should be focused on these initiatives.

Q4) 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?

StatoilHydro agree that there are limitations to the current available fundamental data on electricity and gas markets. As such we welcome the existing work being undertaken by ERGEG in this respect through the regional initiatives. A single harmonised list may be a beneficial way of ensuring consistency across markets.

Q5) 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?

In the gas market it is important to receive information on the status of the network through which you are operating. Therefore planned and unplanned outages of transportation capacity, interruptions, balancing decisions (i.e. where a TSO takes action to restore system balance, either by acting on a balancing market or by drawing on prearranged flexibility, then the TSO should explain the reasons behind the action and the extent of the corrective behaviour) and changes in capacity availability should be made available.

Q6) What is your opinion on the proposals of CESR and ERGEG in the three different areas: disclosure obligations, insider trading and market manipulation?

Transparency/Disclosure obligations

StatoilHydro are of the opinion that issues such as transparency are already being dealt with through existing legislative developments and it is important that any solutions or identified gaps consider this. It may be beneficial for some consolidation of transparency requirements to take place to ensure better coverage and consistency but there is little need to extend the scope beyond existing developments.

StatoilHydro doubt the practicality of a single platform for such a diverse range of information but agree that some form of consolidation would be helpful in organising the information presented.

In addition the development of a still emerging market for energy wholesale trading and its market participants should not be hampered by a non-appropriate regulatory burden caused by any new EU Market Abuse Regime. Therefore, the proposed new obligations should not increase the level of market entry barrier and the cost of operation in the relevant markets

The right balance must be achieved between the interest of market transparency / market integrity on one side and the legitimate interest of market participants and of a still emerging EU energy wholesale trading market needs to be respected. The high density of this regulation could discourage market participants from transacting and therefore harm the liquidity of markets, efficiency and for an orderly price formation process. It is especially important that any regime does not artificially skew the balance between risk and reward for asset owners.

Insider trading

StatoilHydro do not believe the Nordic model is an appropriate basis for the structure of any new initiatives and we support the EFET position in this respect and in its concerns over the nature of the definition of insider trading ensuring companies are still able to optimise assets and respond to outages.

Market manipulation

StatoilHydro do not support the extension of MAD in this respect as it is not an appropriate solution. If there is a requirement for further legislation in this respect it would be better to be specific to the sector in order to ensure it was fit for purpose. However, considerably more analysis is required to establish what, if any, further regulation should be applied to energy markets.

StatoilHydro trust that our comments will be given due consideration and should you wish to contact us further please do not hesitate to do so.

Yours faithfully,

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