



ERGEG
via e-mail to: fis@ergeg.org

Shell Energy Europe B.V.
PO Box 444
2501 CH The Hague
Tel +31(0)70 377 3529
Fax +31(0)70 377 3570
Email W.Schaefer@shell.com

24 November 2008

Dear Sir

Re: C08-FIS-07-03 - CESR and ERGEG advice to the European Commission in the context of the Third Energy Package – Draft Response to: Questions D.4 to D.6 – record-keeping; Questions E.11, E.18 and E.19 – transparency; and Questions D.7 to D.10 – exchange of information. Consultation Paper

Thank you for the opportunity to respond to the issues raised in these proposals. The points contained in this response are offered on behalf of Shell Energy Europe BV (SEE BV).

SEE BV is a pan-European gas marketer. As such, we do not deal in financial derivatives, so our comments in response to this consultation are limited to the impact of information disclosure, availability and transparency on our marketing activities.

In particular, we have limited our response to addressing the questions and issues raised in: Section 2 – Transparency. Our comments are contained in Appendix 1.

General Comments

In broad terms, attempts at greater information disclosure should be welcomed. As the document makes clear, accurate price formation – which in itself can be expected to benefit the development of competition - is made easier by the availability of information.

However, there is equally the case that the level and detail of information publication has to be seen within the context of a negative impact if it increases or makes easier some degree of collusion. This concern applies to the derivatives market as it would any other.

In that context, SEE BV would suggest that the following principles should apply when considering the the issue of information publication:

- a) it should preserve a market participant's commercial confidentiality, be non-attributable and presented in an aggregated format;
- b) it should be cost-effective; and
- c) it should be aimed at creating a level playing field.

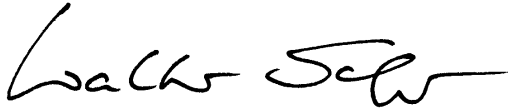
Established at The Hague, Carel van Bylandtlaan 30, 2596 HR
Commercial Register, The Hague, No. 27259906
VAT number: NL004790996B23

2008-11-24.C08-FIS-07-03.Shellresponse.doc

I trust that you have found these comments helpful. Please do not hesitate to contact me should you have any questions or require further clarification.

Yours sincerely,

Shell Energy Europe B.V.

A handwritten signature in black ink, appearing to read 'Walter Schaefer', with a long horizontal flourish extending to the right.

Walter Schaefer
Regulatory & External Affairs Manager
Shell Energy Europe

Appendix 1

Section 2 - Transparency

8. Do you see a need for a harmonised publication of aggregate market data on an EU/EEA level? Please provide your arguments for/against such publication.

At present, we think it would be sufficient for European energy regulators to define a common set of minimum aggregate information to be available to market participants, leaving the national regulators to determine whether such standards were already being met. This approach would lessen the possibility of a costly, inefficient and inappropriate 'one-size-fits-all' policy.

9. Do you consider that this publication should cover all instruments, including those covered by MiFID?

At one level, the mandatory publication of this information might appear useful. However, it is not clear whether the publication of aggregated data relating to, for example, OTC direct bilateral trades, would be cost-effective or could be utilized in the same way by all market participants.

Until such time as these issues can be addressed and to the extent that publication of this data is not already covered under MIFID, we would suggest that any mandatory publication of aggregate data should be limited to that which is available from regulated markets, brokers and Multi-Lateral Trading Facilities (MTFs).

10. Among the information proposed to be published, which ones are the most useful and why? Which one(s) should be published?

In principle, information regarding trading volumes, liquidity and market structure would be useful data. However, in most national markets we would assume that market participants can already access sufficient data from brokers, MTFs etc. Only to the extent that this is not the case should there be any formal publication of aggregated data.

11. Are the two levels of aggregation on products proposed appropriate and useful?

12. Among the options proposed for the level of aggregation during the period covered, which ones are the most useful and why? Which one should be chosen?

In response to both Questions 11 and 12, SEE BV would have a preference for the level of aggregation to relate to transactions of standardized maturities. Such transactions, we imagine, would typically relate to contracts traded on brokers' platform, RMs, MTFs and spot exchanges.

13. Among the options proposed for the frequency of publication, which ones are the most useful and why? Which one should be chosen?

In principle, the greater the frequency of publication, the better. However, we are equally aware of the very real danger of excessively onerous requirements that could dull activity and/or new entrants in the traded markets.

As such, we believe that at present publication on a monthly basis would be sufficient. Experience over time could inform any future need for change.

14. Do you consider that, in practice, as far as transactions in energy related products are concerned, distortion of competition may result from unequal access to or lack of transaction information? Please provide evidence for your agreement or disagreement.

SEE BV is not aware of any evidence, actual or anecdotal, which suggests that unequal access to or lack of transaction information has distorted competition. Moreover, unless mistaken, we are not aware that DG Comp has identified any particular issues in this area.

15. Do you agree with the results of the fact finding exercises and their analysis for the electricity and gas markets as described above? If not, please provide reasons for your disagreement?

In broad terms, we agree with both the results of the fact-finding exercise and the analysis.

16. Is there any part of the electricity and gas markets (either spot or energy derivatives trading) where there is lack of pre- and post-trade information which affects the efficiency of those markets or a part of them? In any case, please provide examples and your reasoning.

Please see our response to Q10 and the information that is already available to market participants. Subsequently, we are not convinced that there is a structural issue concerning transparency.

17. We note that there was no question 17.

18. Do you favour the status quo? Please provide reasons for your opinion?

Unless and until it can be proved that there is insufficient trade transparency in the wholesale electricity and gas markets, our preference would be the status quo. We believe that no such case has been made to date.

19. Do you favour a key principles approach? If so, what characteristics should it have?

To the extent that Option 2 is chosen, we would suggest that key principles should include that obligations will:

- a) not extend to pre-trade transparency; and
- b) be limited to trade transparency with respect to regulated markets and MTFs only.

20. Do you favour a more comprehensive regime/initiative? If so, what would be its characteristics?

We do not believe that such an initiative is required. In particular, we note the comments in paragraph 250 where CESR and ERGEG conclude that ‘a comprehensive MIFID type regime for trade transparency is neither needed nor appropriate for energy markets.’

21. Do you agree with the preliminary analysis included in paragraphs (a) to (e)?

To the extent that we have any comments to make, in summary:

Paragraph (a) – we would be against pre-trade transparency and even post-trade transparency should be limited to the standardized transactions referred to in our answer to Q12. Any obligation regarding pre-

trade transparency would also sit it at odds with the view that there is little to indicate that the current levels of trade transparency are insufficient.

Paragraph (c) – in line with the above comments, we are very much of the opinion that the views of market participants are highly relevant in deciding whether pre- or post-trade transparency would provide any benefits.

Paragraph (d) – even though we are not active in the derivatives market, we would question why there is little risk of trading shifting to third countries in response to intrusive regulation? In short, why should the response of the trading market to such an event be different to that of any other commercial activity?

22. What other views do you have on the matters covered in this section on trade transparency?

We have no further comments to make.