

To CESR and ERGEG

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**CESR and ERGEG advice to the European Commission in the context of the Third Energy Package – Draft Response to Question F.20 – Market Abuse – Consultation Paper**

Dear Sir or Madam,

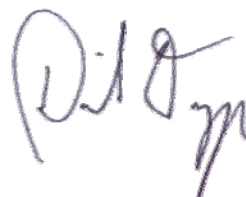
As indicated already in our answer to the Call for Evidence which preceded the Consultation Paper “Draft Response to Question F.20 – Market Abuse” we warmly welcome the cooperation of CESR and ERGEG as a good way to further develop the integrity of the wholesale market in energy and thank you for the opportunity to participate in this process.

Please find attached the answers and comments on the Consultation paper. Our response to the Call for Evidence completes these statements.

Yours faithfully,



Dr. Wolfgang von Rintelen



Daniel Wragge

**Response to CESR and ERGEG advice to the European Commission in the context of the Third Energy Package – Draft Response to Question F.20 – Market Abuse – Consultation Paper**

**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?**

The rules according insider dealing and market manipulation arose from the stock markets. The current structure of MAD does not reflect totally the need of the energy market as a special part of the commodity market. Hence, we prefer a tailor-made ruling for commodity markets, which means both the spot and the derivatives markets as well as the regulated markets and the non-regulated so called OTC market for standardised energy products.

**Questions to market participants:**

- 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 mandate for advice to ERGEG and CESR is one of the consequences of the sector inquiry performed by the European Commission. The findings to which the introduction refers to are not always reflecting our view of the market. As we stated in our position paper in 2006 (please find the whole paper under: <http://ec.europa.eu/comm/competition/sectors/energy/inquiry/eex.pdf>) we think that there is a great confidence in the functioning of the wholesale market of EEX. Visible sign for that is the number of participants (as of 29 August 2008: 210) of which more than a half come from outside Germany including many banks and financial institutions known for their high security standards. Further the open interest (open short and long positions) which is currently worth more than 31 Billion Euro, clearly underlines this perception.

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

The following remarks include also the answer to Q3.

The description of CESR /ERGEG of the current legal situation for market manipulation is correct. We support all efforts which include the “physical market” and the OTC market in the scope of the market manipulation and insider trading scheme.

Transparency and disclosure obligations to Authorities and Regulators including record keeping/ transaction reporting have to be treated separately. Transparency measures are necessary to enhance the trust in the markets, but not to detect any market abuse or manipulative behaviour. The confidence which the trading participants have in EEX markets is based on two decisive elements: transparency to the public and market supervision by an independent body. Diverse and intense supervision of energy trading ensures that equal opportunities for all trading participants are safeguarded and that the legal provisions are complied with. There is no “secret data” for surveillance purposes.

But a well-functioning market requires various motivations which are not public. At EEX we have an anonymous trading by which all members are equal, regardless the role a member may have in the market. The principles of anonymity and equal treatment avoid any kind of moral hazard on the one hand and ensure on the other hand the variety of different opinions which is essential for the energy market.

Handling with insider information is the task of the Authorities which need to have access to all relevant information. Hence, record keeping and reporting requirements are appropriate measures to ensure this supervision. When determining the details of record keeping and reporting, the effects for the market participants should be considered.

**Q2: Would the assessment be different if greater transparency obligations in line with the analysis above were adopted?**

**Questions to market participants:**

- 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?

Yes, we think that greater transparency on fundamental data and trading information of the OTC market would enhance the integrity of the wholesale market for electricity and gas.

- 4) Do you agree with the analysis above on the importance of the transparency/disclosure of fundamental data?
  - a. If yes, would you consider it useful to set up at European level a harmonised list of fundamental data required to be published?
  - b. 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 see the Congestions Management Guidelines, the Transparency Report of the Bundesnetzagentur (Federal Network Agency) as well as the latest clarifications by the German Federal Ministry of Economy as a sufficient basis for the further development of transparency in the market. Against this backdrop, the publication of transmission system data on the website of EEX in addition to a more sophisticated range of power plant data in the near future is both conceivable and desirable. At the moment we are working together with the Transmission System Operators supported by the associations BDEW, VKU and VIK on a common EEX Transparency Platform. You may find further information on:

<http://www.energie-verstehen.de/Energieportal/Navigation/Service/energiespartipps,did=255628.html>

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?

The above mentioned parties already are working on a common specification for the Congestions Management Guidelines and the Transparency Report.

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

The remarks on Question 1 and 2 also respond to Question 3