

EUROPEAN REGULATORS GROUP FOR ELECTRICITY AND GAS

The Chairman

London, 19 December 2008

European Commission
Mr. Matthias Ruete
Director General
TREN DG
1049 Bruxelles

Dear Matthias

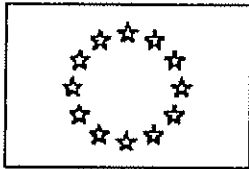
With reference to the European Commission mandate of December 2007 to ERGEG and CESR, please find enclosed the third and final set of the ERGEG and CESR joint advice to the European Commission in the context of the Third Energy Package. The advice was developed following a public consultation.

The ERGEG and CESR advice addresses the questions raised in the Commission's mandate regarding record-keeping, trade transparency and exchange of information. The advice will also be published on the ERGEG website in the first half of January 2009.

The key findings of the advice are that the contents of records to be kept as required by MiFID are not sufficient for electricity and gas supply contracts and derivatives. Therefore, the regulators propose that the minimum information which supply undertakings would be required to keep records of should include some additional elements compared to the MiFID requirements. Supply undertakings are allowed to choose the most suitable methods for retaining their records, but they should be able to extract information upon a request from the relevant authorities and provide them in an electronic form to the authorities. Regarding transaction reporting or other forms of transmission of information, the Third Energy Package does not include any specific requirements. ERGEG and CESR have therefore not assessed the benefits or the costs of transaction reporting, although this kind of regular reporting about transactions could be a helpful tool for monitoring the integrity of the market. The ERGEG and CESR advice to the European Commission on the content of supplementing guidelines for record-keeping does therefore not include any recommendations in this respect. However, it may be sensible to reconsider the issue of transaction reporting at a later stage, possibly in the context of a potential EU regime for market abuse as proposed by the regulators in the advice to the European Commission regarding market abuse.

Furthermore, regulators are of the view that publication of aggregate market data by energy regulators is not feasible at present because frequent, periodic transaction reporting by market participants would be required for daily publication of aggregate data as recommended by the energy regulators. Therefore, at this stage, regulators recommend that aggregate data is published by platforms.

ERGEG and CESR consider it important that all EU platforms should make public harmonised post-trade information, on a trade-by-trade basis and close to real-time for



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standardised electricity and gas supply contracts and derivatives traded on or cleared through these platforms.

EREG and CESR also propose that in order to fulfill the tasks of energy regulators the exchange of information between energy and securities regulators needs to be launched upon request, on a case-by-case basis. The exchange of information should be based on a sound legal basis in European legislation. At this stage, multilateral and bilateral memorandums of understanding are seen as a pragmatic option for exchanging information between energy and securities regulators on a cross-border and local basis.

The joint advice was supported by all EREG members and by a large majority of CESR members. However, two CESR members have expressed specific reservations in relation to some of the responses.

- Question E.19: The UK FSA and the Dutch AFM have noted that they do not believe that a case has been made for trade-by-trade transparency in these markets. Furthermore, even if a case had been made, they do not consider that enough work has been done for CESR to be in a position to put forward any recommendations relating to the specifics of a trade transparency regime, in particular, the 15 minutes maximum delay for a trade report to be published.
- Question E.19: The UK FSA considers a market-led solution is the only appropriate way forward. A market or industry-led solution would have the advantage of building on how the current market works, would be less costly and quicker to implement.
- Question E.11: In addition, the UK FSA has considered the proposals for aggregate/summary data and notes that some of the information proposed is describing the structure of the market and is not relevant for price discovery purposes. So, it is not of particular interest to the FSA as a securities regulator and it is not within the FSA's remit to implement.

I hope you will find the attached documents useful for the Commission's work. Johannes Kindler as the chairman of the Financial Services Working Group which deals with the mandate within EREG and myself are at your disposal for any further questions.

Yours sincerely



Lord Mogg

(seen and authorised for signature by Lord Mogg)

Attachment:

- EREG and CESR joint advice to the European Commission in the context of the Third Energy Package – Record-keeping, transparency and exchange of information (Ref. C08-FIS-07-03)