

**EUROGAS RESPONSE TO
CESR AND ERGEG ADVICE TO THE EUROPEAN COMMISSION
IN THE CONTEXT OF THE THIRD PACKAGE
DRAFT RESPONSE TO QUESTION F.20 – MARKET ABUSE
CONSULTATION PAPER**

Eurogas has taken notice of the joint CESR/ERGEG draft response on the question of market abuse. This addresses an important issue, because it is essential that there is confidence in the correct functioning of market mechanisms. In many respects, compared with electricity, gas trading experiences may be different. Eurogas agrees that the scope of Directive 2003/6/EC (“Market Abuse Directive – MAD”) for the reasons explained in the document does not apply for electricity and gas markets, and welcomes this opportunity to respond from a gas perspective (electricity may raise particular issues) to this consultation.

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 analysis does not present any up to date evidence of market failures in the gas market. There have been significant developments in market operations since January 2007 (and in any case the nature of the lengthy enquiry meant that it was reliant on information from 2005). Consequently as CESR and ERGEG rightly observe, the Sector Inquiry’s diagnosis might be outdated to some extent. Eurogas, however, accepts that vigilance is needed especially as gas trading gathers pace and it is important not to be complacent about the integrity of the system, but to guard against possible market failures.

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?

Eurogas shares the analysis made by CESR and ERGEG that the scope of MAD is designed for the financial markets and that it applies almost exclusively to financial instruments admitted to trading on a regulated market.

With regard to disclosure obligations the duties of the “issuer” under Art. 6 MAD cannot be easily transferred to the energy markets. Amongst other aspects, the scope of the disclosure obligations does not apply to physical market products.

Also with regard to insider trading the MAD provisions do not apply to physical markets for gas.

Regarding market manipulation the provision in Article 1 para. 2 MAD only covers market manipulation which has an impact on derivative 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?

In so far as the conclusion refers to the insufficiencies of MAD then possibly greater transparency obligations in themselves would not be sufficient to deal with potential market abusive behaviour. Without more concrete examples, it is difficult to reach a definite view. Nonetheless as the ERGEG/CESR paper points out (paragraphs 59ff) there is a panoply of measures designed to improve transparency in preparation, and in the gas sector these should

reduce opportunities for misuse and act as a deterrent to incorrect behaviour. For Eurogas it remains to be seen once these improvements are introduced, taken together with competition provisions and fair trading legislation, whether there will still be a legislative gap.

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?

Eurogas supports the transparency/disclosure of fundamental data which are important for the understanding of price formation in the markets. Whilst an exhaustive list of data to be published would guarantee legal certainty for the undertakings concerned and increase confidence in market functioning, this could prove insufficient in time and thus supplementary elements may need to be added to the list in order to keep pace with market development. Any additions should not be retrospectively applied. Much of the work in hand or planned will contribute to the production of such a list.

We have doubts, however, about what is intended by the alternative (publication of additional data on an ad hoc basis). This might introduce uncertainties into the approach, and furthermore while appropriate transparency is necessary to underpin the market, the publication of certain commercially-sensitive information on the commodity side could lead to the risk of market distortion.

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?

See answer to question 4.

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

Eurogas does not think that it is appropriate or necessary to create a new legal framework (Directive or Regulation) with regard to disclosure obligations. Too many legal frameworks in parallel do not serve to benefit market participants, but might cause confusion in the practical application of these rules. As already pointed out under 4) we support the transparency/disclosure of fundamental data which are important for the understanding of price formation in the markets via an exhaustive list of data. Such kind of list could finally be integrated into the already existing legislation.

With regard to the discussed options for insider trading Eurogas agrees with CESR and ERGEG that the mere extension of the scope of MAD to physical products would not improve the integrity of the gas markets (see para. 93 of the consultation paper), as the majority these markets are not regulated markets. We do not think that a tailor-made insider trading framework for gas products not covered by MAD is necessary at this stage. If sufficient transparency/disclosure of fundamental data (see above) is in place, market participants should be deterred from misuse and a new complex and costly tailor-made legislation would not be required.

Similarly we question if there is need for additional market behaviour provisions, taking into account the comments above and the well established provisions (including competition legislation) affecting the energy market. For this reason we do not consider that energy specific rules are justified.