

CESR
11-13 avenue de Friedland
75008 PARIS
FRANCE

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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 Sirs /Madams,

Nord Pool Spot AS welcomes the initiative to enhance today's European legislation on disclosure obligations, insider trading and market manipulation.

We will in the following comment on the draft response.

Question 1

1. Do you agree with the analysis of the market failures in the electricity and gas markets as described above?

Nord Pool Spot AS agrees with the general analysis of the market failures, and supports the initiative to draw up specific regulations where necessary, to tackle these market failures. In the Nordic electricity market there has been implemented regulation on market abuse, disclosure obligations and market surveillance for both physical products and derivatives. These regulations reduce the possibility for market abuse and enable market surveillance to investigate and sanction any market failures as described in the analysis.

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

Nord Pool Spot AS agrees with the analysis on the scope of MAD, and believes MAD is a good basis for market abuse regulation also in the physical electricity market.

Disclosure obligations

In relation to transparency, we believe additional rules are needed. Also, certain parts of MAD need to be looked into in order to create a regime which is suitable for physical electricity contracts, such as the provisions on delayed disclosure and also the relationship of the market participants to the regulator regarding such delayed disclosure.

Insider trading

In our opinion implementing binding disclosure obligations will make the existing prohibition of insider trading in MAD more workable. However, we would like to point out that the definition of inside information in relation to derivatives on commodities set out in MAD does not require the relevant information to be price sensitive. This implies that also information that is clearly not price sensitive may still be considered inside information. We cannot see the benefit of defining information that is not price sensitive as inside information. In our opinion one must balance the distribution of information to the market and have in mind that too much information will cost time and effort for both the issuers of information and the readers. The Market Conduct Rules of Nord Pool ASA and Nord Pool Spot AS have therefore implemented the general definition of inside information for financial instruments in MAD, i.e. the requirement that the information would be likely to have a significant effect on the prices, and not the definition for derivatives on commodities that distinguish whether the market participants would expect to receive the information.

Different characteristics of the physical electricity markets may further give preference to dissimilar regulations on the implementation of inside information regulation in the different national or regional markets. Some examples below:

- Because there are only a handful of really big market participants in the daily spot auction we recommend legislation that does not prevent participants from bidding, also in the situations where they have inside information. If a big market participant is suddenly excluded from the auction the result might not reflect the real supply and demand situation in the market.
- The prohibition on insider trading does not apply for the Nordic real-time balancing market. If it is considered to include the balancing market under the prohibition on insider trading, one must in our opinion implement a special regime adjusted to the special characteristics of this market.

Market Manipulation

Both Nord Pool ASA and Nord Pool Spot AS have implemented MAD's definition of market manipulation into the Market Conduct Rules for both the derivatives and the physical electricity market. So far this has proved to work well, and there has not been a need for a tailor-made regulation for the electricity market in respect of market manipulation.

Question 2

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?

We agree that greater transparency will not be sufficient in the context of market abuse. However, it is a precondition for fair and competitive markets.

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 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?

Our experience is that disclosure of price sensitive data is essential for a well functioning market. A non-exhaustive list of data that has to be published will undoubtedly be useful, but an exhaustive list may prove difficult to produce. Our experience is that it will always occur unforeseen situations where new information arises that is clearly price sensitive.

Trying to produce an exhaustive list may therefore result in some important information being left out. There is also a risk that an exhaustive list will lead to information that is not price sensitive being published. This represents an unnecessary cost for the participant publishing the information, and also for the reader who has to spend time on filtering out the information that is not price sensitive.

Further, what is considered price sensitive information may differ between national / regional markets depending on its size, bottlenecks etc. Each market participant must therefore be responsible for publishing price sensitive information on an ad-hoc basis.

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?

According to the Market Conduct Rules of both Nord Pool ASA and Nord Pool Spot AS, any price sensitive information relating to the market participants' business activities must be published. The only exception from this is information concerning the participant's own trading strategies. If such an exception was not in place market participants would have to inform the market in advance if they wanted to make large transactions in the market. Most of this information can easily be listed in a non-exhaustive list. However, there will always be some information that is not anticipated and such information should be published on an ad hoc basis.

Some examples of information that has been published by participants at Nord Pool are listed below:

- Failures or other circumstances that do not affect the available production capacity, but affect the cost of producing, such as a switch of fuel due to failures in the fuel supply.
- Risk of having to shut down a power plant due to political decisions. If such a risk becomes significant, information to the market is essential.

- Information regarding agreements between different hydropower producers along the same river to reduce production in order to get an ice-cover on the river.
- Terror threats related to production or transmission facilities.

These are just some examples to illustrate the diversity of information that may arise. All these incidents have the one thing in common that a market participant possesses price sensitive information, and thus, this should be the criteria for informing the market.

Information not related to the participants business activities may be inside information, but seems unreasonable to demand published. Examples of such information may be price sensitive information relating to other market participants' business activities. For example, a TSO may have information regarding planned outages at production plants, or hydropower production companies may have information regarding plans relating to other producers' planned outages in the same river.

Question 3

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

In the opinion of Nord Pool Spot AS the proposal is very good and benefits from the structure of MAD. From our experience in the Nordic market transparency, market abuse regulation and efficient market surveillance are the basic key elements of a well functioning market. The Market Conduct Rules of Nord Pool ASA and Nord Pool Spot AS are based on these key elements and are well accepted.

Yours Sincerely,

Nord Pool Spot AS



Erik Sæther
CEO