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Dear Volker

**BG GROUP RESPONSE TO:
 PC_2012_R_10: Recommendations for Article 8 of Regulation 1227/2011 (REMIT)**

We welcome the opportunity to respond to ACER's consultation on records of wholesale energy transactions as regards the implementing acts and trust you will find our comments constructive in finalising your recommendations to the Commission.

In responding, we wish to make a few high level observations before answering the specific questions posed in your consultation.

We support the appropriate implementation of REMIT, and the monitoring of markets to ensure market integrity and the removal of market manipulation. However we were surprised by how far reaching some of these recommendations are, as we believe they go beyond what is necessary and beyond the strict scope of REMIT. When the final recommendations are presented to the Commission in September 2012, we hope that the proposals are measured against that scope, to ensure a workable regime that is ultimately agreeable to Member States.

Specific areas that we think are inappropriate include:

- The definition of Market Participants for reporting exceeds the scope of REMIT
- The provision of copies of non-standardised contracts provides too great a threat to a market participants confidentiality and ACER's own information security.
- The requirement for reporting intra-group transactions is unnecessary when they have no impact on the market
- Trade life-cycle reporting is unnecessary and overly burdensome to market participants

In order to monitor wholesale energy markets effectively, we believe it is important that ACER is the primary custodian of energy market data. As such, we believe that Annex III Section A should be more explicit in stating that it captures all wholesale energy trading periods. As you are aware, under MIFID II and EMIR, there is a strong likelihood that reporting of financial instruments will be reported to ESMA. Our initial reading of Annex III is that by stating items (1) – (5) so explicitly (effectively "Spot" transactions), it is inviting financial regulators to claim normal physical forward transactions as financial instruments. They are not financial instruments and nor are they derivatives, and should be fully covered by REMIT. ACER and the Commission have an opportunity to make it clear that energy transactions come under ACER's primary authority, not ESMA and we hope that you are firm on this point. Otherwise, REMIT runs the significant risk of being a piece of legislation predominantly for within day and day ahead, rather than the market as a whole.

Question 1:

We agree that it is helpful to include some definitions in the Implementing Acts as this will improve the interpretation of REMIT. We propose the following amendments to the definitions:

“Standardised contract”

We believe the intent is to capture the majority of transactions under this term, eg those following NBP97. However the phrase “subject to a standard agreement” could be misconstrued, as many “Master Agreements” will contain non-standard clauses. It is therefore better to refer to a “standard framework energy trading agreement”

“Bid and offer” is better to describe as “Bid / offer” as a participant may not be placing both at the same time (other than in fulfilling a market maker role).

“Order to Trade” add “ ...excluding intra-group trades conducted off market” as such transactions do not have an impact on wholesale energy markets.

“Market Participant subject to Reporting Obligations” delete *“including producers supplying their production to their in-house trading unit or energy trading company”*. We look forward to clear guidance with ACER’s 2nd set of guidance on Market Participant because we consider this to be quite a narrow definition, focusing on the entity transacting in wholesale energy markets.

“Derivative” or “Derivative Contract” should be consistent with the future definition under MiFID II, and for the avoidance of doubt, please ensure that physically settled forward OTC transactions are excluded from this definition.

“Organised market place” – we understand what is meant by this, but it may be worth being consistent with other legislation, perhaps worth using the definition under MiFID II of “Organised trading facility” (OTF)?

Question 2:

We do not consider that all the details in Annex II are required for the principle purpose of monitoring wholesale energy markets by ACER. Some items of information (eg 5,6,7,12,36-39) are not generally captured by Market Participant trading systems and as such are likely to be of limited value for the purposes of market monitoring.

Given that it is a Market Participant’s responsibility for transaction reporting, we are also keen to ensure that ACER and ESMA properly co-ordinate their requirements on transaction reporting to ensure that dual reporting is not a concern. This is why we favour ensuring that all gas and power transactions regardless of whether they are physical or financial are reported to ACER. In this way, by getting agreement, ACER are able to effectively monitor wholesale energy markets and ESMA can have access to the financial transactions should the need arise.

We think that it is sensible to distinguish between standard and non-standard contracts, but daily volumes delivered under non-standard contracts can be reported in the same timescale. This should be sufficient for providing ACER with information under those contracts whilst not having to provide a copy of each non-standard contract, which we consider totally inappropriate.

Question 3:

Given that there are many more bids / offers than completed trades (a factor of four to five times?) we agree that the only sensible way to collect orders to trade is from the organised market places. Your statement that “valid orders to trade are captured and stored in the market participant’s energy trading and risk management software, where they are typically organised into trading books” is incorrect – very few organisations capture the bids / offers that are placed; it is almost solely the completed trades that are recorded in the ETRM system.

Orders to trade are important in monitoring the market for cases of manipulation but the solution proposed is appropriate.

Question 4:

For the purposes of market monitoring, it is important that transactions taking place through non-standard contracts are captured by REMIT. However, we believe there is a more pragmatic approach to recording the data that effectively “standardises” the reporting.

Non-standardised transactions should be disclosed when delivery takes place on a transaction by transaction basis. This could capture bilateral contracts (eg Beach master agreement) as well as storage and option contracts where there may not be continuous daily liftings. Where prices are yet to be finalised, then the indicative price can be reported and updated if considered essential (but generally it shouldn’t have any effect).

We strongly oppose the provision of field 29, a PDF of each contract as it brings too great a risk of breaches of confidentiality from ACER and those accessing the database. The

Question 5:

Scheduling / nomination information for transactions via the TSO is not necessary for the purposes of monitoring wholesale energy markets. You will have the individual transactions through reporting, so it doesn’t make sense to also capture entity to entity aggregated trade nominations for a particular day. However, if ACER still believe this is necessary, then the TSO is best placed to provide the information.

Question 6:

As we stated in our opening comments, we believe that Annex III is light on capturing the appropriate time frames. It almost appears as if spot transactions (the first five items) are the primary focus of REMIT and that longer term standardised contracts are not of primary concern. It should be remembered that it is the longer term standardised contracts is where the money lies.

So we would like this Annex significantly improved to make it clear that all physically settled forward transactions are included. Ideally this would go further, and with ESMA’s agreement, all gas and power contracts, whether physical or financial are initially sent to ACER’s REMIT database, with ESMA having access to financial transactions where required.

Question 7:

We do not think there should be *de minimis* exemption for reporting of trades, as marginal therms (particularly in balancing markets) can set the marginal price traded. From a pragmatic perspective, *ex post* trade amendments could be excluded for *de minimis* levels, but with IT systems set up for reporting, this may become unnecessary or inconvenient for a market participant anyway.

Question 8:

No response

Question 9:

We understand the logic for the creation of RRM's, but we are concerned that it creates an unnecessary burden for Market Participants who have to report transactions.

We would like to be in the position where for completed transactions (Not Orders to Trade), we report on a daily basis (Day after), all the transactions we have undertaken during that day (eg from within day to five years ahead, for both gas and transmission capacity). We would use the agreed format and sequence (an amendment from Annex II to reflect the data that is actually required to monitor wholesale energy markets) and would expect strong security on both sides to protect the data being transmitted.

The diagram below illustrates the issue – where the Broker records are likely to include a few minor data items that ACER want that we, and probably many others, don't capture (eg who was the aggressor / who was the other party's trader etc). However, we have all the data that we believe is necessary for ACER to satisfactorily monitor wholesale energy market transactions and we believe we can report it in a manner that is of least cost to the market participant.

It would be possible for organised market places to provide the transactions and then we sort through our records to only report the trades not conducted on organised market places. However we would require ACER to discharge liabilities on us for the Organised Market place failing to fully report our transactions and we would not expect to be charged by the OMP for the provision of this data to ACER.



Question 10:

Standardisation of reporting is important and we would expect data formats for each reporting process to be consistent. This should be managed by ACER, in consultation with market participants, to define the exact format.

Question 11:

REMIT puts the obligation for reporting on the Market Participant, so if RRM's are a necessary feature for ACER to accept transaction data, then yes, they should be eligible to become an RRM. We believe that the onus on Market Participants should be then limited to the security and communication protocols and there should not be onerous additional requirements that might be placed on a 3rd party RRM.

Question 12:

D+1 reporting (end of next business day) is appropriate for transactions that can be considered standardised or reporting of daily volumes under non-standardised contracts. We would welcome ACER's clarification for the time delay provided for non-standardised contracts where there is a known delivery volume and price for the transaction. We believe that those trades can still be reported in the same time frames.

Question 13:

We strongly support avoiding double reporting of transactions to ACER and ESMA. This must be a key principle between ACER and ESMA in setting the appropriate solutions. In our view, if agreement can be made with ESMA to ensure that ACER's REMIT database captures all physical and financial power and gas transactions, this would be the optimum outcome.

It is essential that the costs of data reporting are minimised to market participants, as costs will significantly dilute the benefits that REMIT is meant to provide to the market in terms of increased confidence in market integrity.

In developing the criteria for transaction reporting, it is important to ensure that this is done once through ACER and that NRAs do not then impose additional reporting requirements on Market Participants.

Question 14:

Please see our response to Question 9 and 11

Question 15:

Provided there is clarity from the Implementing Acts on what is required, a simple solution as outlined in Question 9 above (minimal requirements for self reporting), that this can be a relatively quick process (within 6 months). Where relying on outside agents and requiring more stringent IT solutions could easily take a year.

Question 16:

We do not agree with Recommendation 8. It should be remembered that information required by ACER is for the purposes of monitoring wholesale energy markets. The granularity of reporting should therefore be at the level relevant for wholesale energy markets, not as individual, non-anonymous data.

As such, the TSOs can provide all the necessary information that can be used together with transaction reporting to monitor the wholesale energy markets. The TSOs reporting requirements come under the existing EC714/2009 and 715/2009 and in itself, is an area that requires substantial improvement from an implementation perspective.

We support the TSO taking a leading role at a national (NOT European) level in facilitating a centralised reporting platform for inside information. We believe that this will improve the transparency of information to the market and can be provided at low cost. We believe this can be achieved through a "reposting" service rather than forcing market participants to use that as the sole mechanism for informing the market. This is because REMIT puts the primary obligation on the Market Participant who holds the inside information to make that known to the market.

Question 17:

We agree that regulated information should be collected from existing sources (TSOs), so we do not believe that individual market participants should have a role here.

Question 18:

As mentioned in our response to Q16, we support the TSO taking a leading role at a national (NOT European) level in facilitating a centralised reporting platform for inside information. We believe that this will improve the transparency of information to the market and can be provided at low cost. We believe this can be achieved through a “reposting” service rather than forcing market participants to use that as the sole mechanism for informing the market. This is because REMIT puts the primary obligation on the Market Participant who holds the inside information to make that known to the market.

The area of a RIS and RRM should be subject to an industry workshop to develop greater clarity for both industry and regulators.

Question 19:

A threshold is only ever a guide to market participants or operators as to what constitutes price significance. An outage of say 8mcm/d rate can have no price effect one day but a substantial effect on another day where demand and supply conditions apply.

It is clear that only a small subset of information is going to ever be Regulated Information for the purposes of this test. We should not confuse the reporting requirements for REMIT with a separate test for transparency, as seems to have been applied in the power market.

Question 20:

The Market Participant should only have to publish inside information once. This can be via its own means that is additionally “reposted” by a TSO (or other national platform). ACER should have access to this reposting stream to collect inside information that it believes necessary to capture.

We do not agree with Recommendation 10 that a Market Participant also needs to report to the Agency in electronic form.

Yours sincerely

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