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BP's response to ACER's market consultation on reporting of wholesale energy transactions under REMIT.

BP welcomes the opportunity to respond to ACER's consultation on data reporting under Article 8 of Regulation No 1227/2011 (REMIT). We have provided a summary of our views below and have included a more detailed response to some of the specific questions in annex one.

- BP believes that the scope of the data proposed to be collected by ACER is considerable and goes beyond that necessary to enable ACER to comply with the requirements of REMIT, i.e. to effectively monitor EU wholesale energy markets to prevent market manipulation and attempted manipulation. We would question whether this broad brush approach is appropriate given the significant administrative burden it will place on market participants and ACER itself.
- BP recommends that ACER should focus on collecting the most relevant data in the first instance. The adequacy of the data in meeting the objectives of REMIT can then be assessed after a period of time and additional data can be requested if required in light of experience. This approach would allow for the effective identification of new data items required to be reported on an objective and evidenced basis. Similarly, data that is not found to be useful could be discontinued and not collected. We would also urge that sufficient time should be given to allow market participants to update systems for any new data items.
- The requirement to provide non-standard contract information will impose considerable reporting burdens on market participants on an on-going basis and will provide, in our view, limited benefit to ACER as analysis of this data cannot be undertaken in an automated way, given these contracts are, by definition, bespoke. We also do not believe that it is straightforward to manipulate markets using such contracts.

- Aside from the administrative burden in providing copies of non-standard contracts, BP believes there are significant confidentiality concerns. Such contracts often contain highly secret information that could cause significant financial harm to market participants if they become known. Providing this data to ACER increases the risk of this occurring as the data can be accessed by numerous ACER and NRA staff. Risks include information being stolen, mislaid, accessed by unauthorised personnel (for example through staff moving to competitor firms, or through external hacking) and IT system failures. Where it is not essential to provide information routinely on an ex ante basis, at least until ACER will be actively using this information, the risk is unnecessarily increased for no gain. We would therefore like to remind ACER of its obligation under Article 29 of Regulation (EC) No 713/2009 in this respect.
- BP believes ACER should request additional information, including data on non-standard contracts, on an ad-hoc basis, specifically where ACER identifies behaviour that is of concern. If, however, non-standard contracts are to be provided then BP believes that individual contracts should not be submitted but rather a few data items such as the number of contracts signed, counterparties and volumes.
- As BP has noted in the past, we continue to believe that REMIT has been primarily developed with the power market in mind, specifically to address abuse concerns in the sector. The extension to the gas sector appears to have been an afterthought. This view is supported by some of the drafting in the first guidance document and the recent consultation, for example the section on 'de minimis thresholds for reporting' focuses largely on power and some data items to be provided in the annexes do not relate to gas (e.g. capacity and use of facilities).
- It is not clear how sales between EU and non EU members are to be treated in terms of trade reporting. Far greater volumes of energy are traded in this way in the gas sector compared to the power sector. Given the volumes of these flows and their importance from a security of supply perspective, greater clarity on this issue would be welcome.
- BP disagrees with a number of proposed definitions including 'transportation' and 'market participants subject to the reporting obligation'. In particular, BP does not believe intra-group transactions and contracts should be included in the reporting requirements. From a market abuse and insider trading perspective these transfers are not conducted via the market and hence do not impact wholesale market price. We therefore believe that the definition should be clarified to exclude internal trading. See annex 1 for further details.

If you have any questions please do not hesitate to contact BP using the details above.

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Annex 1 – BP’s response to specific consultation questions.

Question 1 *Do you agree with the proposed definitions? If not, please indicate alternative proposals.*

The definition of transportation in the consultation includes transportation through an upstream pipeline network and the transportation of LNG. BP does not agree that these elements should be covered as the nature and access regimes to upstream pipelines is very different to downstream pipelines. Annex II Section B of the consultation notes that contracts relating to the transportation of natural gas between two or more bidding areas or within a bidding area should be reported. Contracts for upstream transportation are clearly outside this definition, as there are no bidding areas (hubs) upstream but rather such pipelines link upstream production facilities to a bidding area.

Inclusion of LNG cargoes appears to go beyond the requirements of REMIT (Article 2(4)) where the requirement is to provide information on the capacity and use of facilities. We therefore believe that the reference to upstream pipeline network or the transportation of LNG should be removed from the definition.

In any event these contracts are generally non-standard so our concerns over reporting of such contracts as outlined above apply here too. If reporting of these contracts is deemed necessary by ACER then reporting should be on an ad-hoc, ‘as required’, basis.

The definition of the market participant subject to the reporting obligation includes ‘...producers supplying their production to their in-house trading unit or energy trading company’. The effect of this is likely to result in the double reporting of the same trade data from within a single entity with little benefit to ACER. From a market abuse perspective these transfers are not generally conducted via the market and hence do not impact wholesale market price. We therefore believe that the definition should be clarified to exclude internal trading.

Question 2 *What are your views regarding the details to be included in the records of transactions as foreseen in Annex II? Do you agree that a distinction should be made between standardised and non-standardised contracts?*

BP agrees that it is appropriate to make a distinction between standard and non-standard contracts. However, as we have noted above we do not believe non-standard contracts should be reported on a regular basis due to the commercially sensitive nature of the contracts, the high administrative burden on firms and small benefit ACER are likely to obtain from receiving such data.

Instead BP believes ACER should request data on non-standard contracts on an ad-hoc basis where ACER identifies behaviour that maybe of concern through its market surveillance activities. This approach has been successfully adopted by competition authorities for many years.

BP questions the need for the inclusion of some data items to be reported, for example BP questions the value of order to trade data and items 15 to 19 in Annex II. The reporting of every part of a transaction, from placing the order to execution, in real time, significantly increases the volume of data to be reported to ACER. As such BP believes that the required data should be reported to ACER after completion of trades with any updates or amendments to contracts reported on either an ad-hoc or fixed period basis (say six monthly).

Question 3 *Do you agree with the proposed way forward to collect orders to trade from organised market places, i.e. energy exchanges and broker platforms? Do you think that the proposed fields in Annex II.1 will be sufficient to capture the specificities of orders, in particular as regards orders for auctions?*

BP does not agree there is significant value in reporting data on orders to trade on a continuous basis. In addition, the data is often not stored in the easy to access manner that ACER implies in its consultation. However, BP agrees with the general sentiment that data should be collected from existing sources where possible.

Question 4 *Do you agree with the proposed way forward concerning the collection of transactions in non-standardised contracts? Please indicate your view on the proposed records of transactions as foreseen in Annex II.2, in particular on the fields considered mandatory.*

As already noted BP does not agree with the proposed way forward for the collection of transactions in non-standard contracts. In addition to the points raised above, such contracts generally contain different parameters and terms relating to volumes and pricing and may also be written in different languages. Hence reporting this data in using a standardised reporting mechanism is not appropriate. Instead ACER should request data on non-standard contracts on an ad-hoc basis.

Question 6 *What are your views on the above-mentioned list of contracts according to Article 8(2)(a) of the Regulation (Annex III)? Which further wholesale energy products should be covered? Do you agree that the list of contracts in Annex III should be kept rather general? Do you agree that the Agency should establish and maintain an updated list of wholesale energy contracts admitted to trading on organised market places similar to ESMA's MiFID database?*

We agree it would be useful for ACER to establish and maintain an updated list of wholesale energy contracts although we would note that where ACER decides to add new contracts to be reported sufficient time should be provided to allow market participants to make adjustments to systems and processes to collect and provide the additional data to ACER. We would also note that the contracts covered in items 1-5 in the list outlined in Annex III appear to be a subset of item 7.

Section B defines transportation contracts between two or more bidding areas and within a bidding area. However, earlier in the consultation transportation is defined as including upstream pipelines. We would note that upstream pipelines do not connect bidding areas (as opposed to interconnectors). We would therefore reiterate that the definition of transportation should be amended to exclude upstream pipelines.

Question 9 *Do you agree with the proposed approach of a mandatory reporting of transactions in standardised contracts through RRM's?*

BP agrees that an option to allow individual market participants to become RRM's (registered reporting mechanisms) to provide data directly to ACER and avoid using third-party RRM's if they so wish, is appropriate. This is particularly important given the reporting obligation always remains on market participants and cannot be transferred.

ACER should ensure that third-party RRM's have the necessary security arrangements surrounding the collection, storage and transmission of data in place during the accreditation process.

However, there is a distinction between a third party RRM and a market participant who becomes an RRM that should be recognised by ACER. The requirements on non-third party RRM's should not be as onerous as on third-party RRM's and should be kept to a minimum.

Whilst BP supports the collection of data from existing sources and RRM's where possible it should be remembered the obligation to report remains with the market participant. This is important to note as ACER preferred approach appears to be to obtain data from third parties. Market participants may prefer to have in place their own reporting systems in case the third-party RRM's fail in providing the data to ACER.

Question 10 *Do you believe the Commission through the implementing acts or the Agency when registering RRM's should adopt one single standardised trade and process data format for different classes of data (pre-trade/execution/post-trade data) to facilitate reporting and to increase standardisation in the market? Should this issue be left to the Commission or to the Agency to define?*

BP supports standardisation of the format of data that needs to be reported as well as the reporting process in order to ease the reporting burden on market participants. However, this should be done in close and open consultation with market participants.

Question 12 *In your view, should a distinction be made between transactions in standardised and non-standardised contracts and reporting of the latter ones be done directly to the Agency on a monthly basis?*

BP has outlined its views on the reporting of non-standard contracts earlier in our response. We would add that if reporting of non-standard contracts is required then we believe additional time should be provided to market participants by ACER to provide these contracts, particularly if existing contracts are required to be reported.

Question 13 *In view of developments in EU financial market legislation, would you agree with the proposed approach for the avoidance of double reporting?*

BP strongly supports ACER's position that double reporting should be avoided. As such ACER should work closely with ESMA to not only avoid overlaps and double reporting of data but also to ensure consistency in setting definitions and reporting fields between REMIT and EMIR.

Question 16 *Do you agree with this approach of reporting inside information?*

BP does not support the direct reporting of inside and transparency information to ACER. We believe that the disclosure of inside information either on company websites or on a national/European wide platform by NRA's/TSO's, which should be developed in consultation with market participants, is appropriate.

Where possible ACER should obtain the required information from existing sources, so for regulated information this should be obtained from existing sources such as TSO's to ensure that there is no dual reporting and minimise the reporting burden on market participants.