

ACER Discussion Paper on the disclosure of inside information according to Art. 4(1) of REMIT through platforms

A EURELECTRIC comments paper



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EURELECTRIC, the sector association representing the electricity industry at pan-European level, welcomes the opportunity to comment upon ACER's discussion paper. Generally, we do believe that market participants should always have the choice of which way to disclose inside information (there is no prescribed route defined in REMIT). We also understand ACER's intention to enhance transparency in the publication of inside information through platforms which, if approached in the right way, could also be beneficial to wholesale energy markets. Thus we generally share ACER's long-term vision of an aggregation/publication of the relevant data on a centralised European platform for transparency purposes. In the following, we would like to stress some elements to be considered.

Firstly, with REMIT becoming effective in December 2011, market participants had to quickly decide how to comply with the obligation to publish inside information. Given the very short timeframe market participants made appropriate arrangements either to publish the respective inside information, as interpreted, on their own websites or through a third party website (i.e. existing transparency platforms organised by PXs or TSOs) in order to fulfil the REMIT obligation of a timely disclosure. In any case, dedicated processes and IT systems have been developed by the market participants, involving substantial efforts and direct costs for them. Additionally, commercial media organisations also seem to have started to routinely monitor the respective websites and provide this information to the market.

From a transparency perspective this may not be an optimal solution but rather a result of the absence of adequate transparency platforms and mainly the shortcoming of general guidance by both the REMIT text itself as well as by ACER (e.g. the lack of clarity concerning the repercussion on market participants in case the publication of inside information through intermediaries fails to meet the requirements).

Again, we think that a pragmatic approach should be taken in order to provide market participants appropriate means to fulfil their disclosure obligations according to article 4(1) of REMIT. As mentioned before, in some markets national or regional publication platforms have been set up and we believe that it should be possible that these existing national or regional transparency platforms can be used (such as Nordpool, EEX, RTE). Where such platforms are not yet in place energy exchanges or TSOs should be encouraged to take the lead in setting up such transparency platforms (in consultation with market participants). In any case, once market participants provide the inside information to the platforms it is the obligation of the platform to disclose immediately the information to the market. In a way these platforms then also serve as aggregation platforms for inside information. We also think that in addition to these platforms a central platform collecting and presenting this data on an European level; i.e. serving as user interfaces for the local actors, is advisable. In any case, for any platform a maximum level of robustness is a precondition.

As mentioned in the discussion paper, ACER has recently put forward the concept of a Regulated Information Service (RIS) that could provide means for publication of inside information and act as a feed into ACER's monitoring systems. Clearly there are many questions around this proposal including clarity around legal responsibilities of this approach if it were to be used as a primary means of publication but also the commercial aspects in relation to the costs and potential residual liabilities to market participant when using RIS. On this last point, we would suggest linking the admission of a transparency platform to be a RIS with the confirmation that all market participants disclosing their information through this platform fulfil the requirements of a timely, simultaneous, complete and effective public disclosure and will not be held responsible for failures after sending the inside information to the RIS platform.

Secondly, as it seems very unclear in which way ACER or NRAs would oblige existing or future central transparency platforms to adapt in order to ensure a timely disclosure of inside information in absence of a mandate or a legal basis, we propose not to exclude potential future developments by limiting the circle of candidates as proposed by option A and B. Rather we see the clear need for setting up a clear admission-framework for RISs and declaring the disclosure of inside information to this systems as being sufficient in the meaning of REMIT.

Thirdly, national gas and electricity wholesale markets are increasingly interconnected, therefore proper consideration should be given to information affecting cross-border trading and more than one national energy market. This would reflect reality and it would also support further integration of national markets by ensuring that (potential) market participants have all access to relevant information.

Finally, a minimum level of harmonisation, in particular concerning formats, should be defined already in the beginning of the process in order to facilitate any process of aggregation at a larger scale.

In any case, market participants should retain the flexibility to publish their information directly and report it directly to ACER. This is in particular necessary, if the platforms fail to operate correctly.



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