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RE: EFET Response to ACER Discussion Paper “Disclosure of inside information according to Article 4(1) of Regulation (EU) No 1227/2011 through platforms”

Introduction

The European Federation of Energy Traders (EFET)¹ welcomes the opportunity to respond to the ACER discussion paper on disclosure of inside information according to Article 4(1) of Regulation (EU) No 1227/2011. There is clearly a balance to be struck in terms of ensuring:

1. that firms are able to efficiently and without delay disclose inside information in accordance with the requirements of REMIT and at an appropriate cost;
2. NRAs and ACER have ready access to the inside information they need to effectively monitor wholesale energy markets; and
3. a level playing field in terms of inside information transparency.

The practical difficulties of establishing sufficiently robust transparency platforms for disclosing inside information and standardisation of process and content of disclosure messages are also important considerations. It is also crucial that unnecessary duplication of disclosure and reporting requirements on firms are avoided.

EFET strongly believes that market participants should always retain the discretion to choose the route to disclose inside information in accordance with REMIT. Article 4(1) does not specify where a market participant must disclose inside information, but simply that it must be disclosed in an effective and timely manner and that it should

¹ The European Federation of Energy Traders (EFET) promotes and facilitates European energy trading in open, transparent and liquid wholesale markets, unhindered by national borders or other undue obstacles. EFET currently represents more than 100 energy trading companies, active in over 27 European countries. For more information, please refer to: www.efet.org

notify ACER and the relevant NRA where it has decided it has good cause to delay publication. Therefore, there should be no presumption or requirement for market participants to disclose inside information to any particular platform. Further innovation here will ultimately be driven by the market's own needs for transparency. A prescriptive approach from ACER or the EU Commission in this respect may actually suffocate market innovation.

EFET recognises however that ACER and NRAs will have their own "inside information" data gathering needs, for the purpose of performing their enforcement role and that this should not be onerous so as to prevent effective monitoring of wholesale energy markets. In this respect some centralisation of inside information disclosed could be a valuable resource for NRAs/ACER (and also for market participants).

If ACER and NRAs want to achieve greater centralisation of inside information then this can be delivered at least initially from an 'information aggregation platform' that collates the information disclosed on company, national or regional platforms into a single platform or repository. This could potentially evolve into a primary centralised publication platform in due course with the support of the energy industry.

In the context of designing the future inside information transparency regime, EFET would support ACER longer term ambitions on centralisation of inside information through establishment of a single EU wide central aggregation platform or repository.

In this sense, EFET would welcome an opportunity to work with ACER to help define the outline of how such an aggregation platform or repository could work – building on the work already undertaken on the transparency 'Pilot Project'. This could lead to the establishment of some form of aggregation platform for the EU that brought together the inside information published on company websites and national/regional platforms.

State of play

Given the lack of transparency platforms for inside information the main approach to complying with the obligation to publish inside information as outlined under Article 4(1) of REMIT appears to have been through market participants making arrangements for the publication of inside information either on their own websites or a third party website such as facility operators², exchanges³ or TSO transparency platforms. Furthermore, it has been evident that the publication of inside information in certain circumstances has been monitored and disseminated further through media organisations such as Reuters and Bloomberg. This gives a clear indication that the market itself has taken steps towards enhancing transparency and ensuring compliance with Remit's publication obligations. However, in the long run a more centralised and structured approach to ensuring this information is readily available without directly accessing many different websites/platforms is desirable.

In several markets initiatives have already been taken in order to create national or regional publication platforms.⁴ There are, however, still many markets, where such

² <http://flow.gassco.no/>

³ <http://nordpoolspot.com/>

⁴ See EEX transparency platform under:

<http://www.transparency.eex.com/en/Statutory%20Publication%20Requirements%20of%20the%20Transmission%20System%20Operators>

initiatives have not yet been taken – and here the creation of an EU information aggregation platform would help to increase transparency as quickly as possible.

Use of existing and new national and regional platforms

EFET believes that as a first step a pragmatic approach should be adopted to facilitate the process by making available national and regional platforms, suitably adapted and updated to foresee proper compliance with REMIT requirements, where such platforms are already in place. These platforms could already report the inside information they get from market participants to an aggregation platform or repository created by ACER. The aggregation platform could also directly collate information from company's own websites – although already as outlined above there is a general move to publication of inside information at a national/regional level.

EFET would support TSOs or exchanges to be the natural foundation for such national or regional transparency platforms. Accordingly, it is appropriate if they take the leading role in establishing publication platforms, where such platforms are not already in place. In the event that no platforms are established for one or more markets within a reasonable time, the NRAs could act as facilitator, or if necessary nominator of such platforms, in consultation with market participants.

Regulated Information Service (RIS)

ACER has also put forward the concept of a Regulated Information Service (RIS) that could provide a means for publication of inside information and act as a feed into ACER monitoring systems. EFET reiterates that RIS, as referred to in section 4.2.1 of ACER public consultation on records of transactions, are not yet operational on the energy scene.

This proposal raises many questions including legal clarity and responsibilities around this approach if it were to be used as a primary means of publication and reporting to regulators of inside information, but also the commercial aspects in relation to the costs and potential residual liabilities to market participants when using a RIS. The RIS mechanism therefore needs to be further defined and elaborated by ACER.

If RIS were to be introduced, this concept should allow that existing national and regional platforms can easily become a RIS. Therefore, this RIS regime should take into account the existing mechanisms and arrangements of these platforms and should not raise the regulatory requirements for becoming a RIS to such level which would lead to the exit of these platforms or impose costly upgrades of these platforms. EFET sees RIS in a first step rather as centralised aggregation services, which could also report the collected inside information to ACER.

Centralised aggregation at national and regional level

As indicated in EFET informal input to the 2nd set of guidance in May 2012, a pragmatic approach, at least as a first step, could involve establishing centralised aggregation at a national level. Such centralisation at a national level could easily be coupled with links on the ACER website to further enhance transparency.

EFET would suggest a stepwise approach, where the existing national and regional platforms are used to establish simple centralised aggregation services to begin with in

order to provide the markets with central publication platforms as soon as possible, rather than awaiting the much more time consuming establishment of a single centralised European publication platform.

A centralised platform must not become the exclusive mandated route for publication. Firms should always be allowed to discharge their obligations through parallel disclosure via their company transparency websites, which should remain a permitted forum at least as a back up, to avoid any delay in disclosure in case of a centralised platform failure or malfunction. This will follow the adopted practice in financial markets. Any intermediate, temporary solution must allow the continuance of corporate websites.

If the parallel disclosure over the company website would not be deemed sufficient anymore in the future by regulators, a market participant, which sent inside information to the relevant national or regional platform(s), shall be deemed as having fulfilled its publication obligation under REMIT, even if the platform delays the actual publication for one reason or another.

Proper consideration should be given to the information affecting cross-border trading, since national gas and electricity markets are increasingly interconnected. This would reflect reality, and would also support further integration of national markets by ensuring that all market participants have access to the relevant information.

EFET believes that this approach would have a number of advantages:

1. It can be set up relatively easily with a minimum of cost as it is an aggregation site and it helps create a level playing field for all market participants with regard to transparency
2. It does not require a full standardisation of the information and messages to be published (which will be difficult at EU level – but will likely develop over time anyway). However, a minimum level of harmonisation, in particular concerning formats, should be defined already in the initial phase of the process in order to ensure aggregation of the information from many different firms by the platforms and facilitate any subsequent aggregation on a larger EU-wide scale.

Until and unless a robust and uniform EU-wide platform is available, firms can continue to choose where they publish their inside information, i.e. the quickest/most robust platform available to them: their own website⁵, or national/regional platforms⁶.

3. NRAs/ACER would see the inside information on the aggregation platform very quickly - the collation of inside information can be done in very short timescales.
4. The operational 'working' of an eventual EU-wide centralised aggregation would need to accommodate corporate websites and the various national transparency platforms.

⁵ This presents a viable solution in the context of implementing consistent publication policies across/within large corporate groups shortly after enactment of REMIT

⁶ See footnotes no.2 to 4 above.

Standardisation and avoidance of duplicative reporting

With respect to who could provide such aggregation services or what platforms to publish inside information, EFET would support commercial firms (such as exchanges) being allowed to come up with competitive solutions to ensure an efficient and cost effective approach which should ideally be free to market participants.

What is of the utmost importance is the avoidance of duplicative reporting requirements on market participants, and we believe an approach consistent with what has been outlined above would also be consistent with data collection principles outlined in Article 8(5) of REMIT which calls for minimised reporting obligations on market participants by collecting the required information or parts thereof from existing sources where possible.

Ultimate goal of creating a single European centralised platform

EFET believes that an information aggregation platform can deliver all what ACER requires in terms of centralisation of inside information without constraining the choice of firms about how and where to publish their inside information. Over time, the aggregation platforms could develop into a single EU-wide disclosure platform for those that want to use it while still collating all inside information published across the EU. It could also help to drive standardisation of content and data formats including through future editions of ACER guidance on REMIT implementation.

We hope this input proves useful to the discussion and if you have any questions on this feedback, please do not hesitate to contact Barry Shackleton (barry.j.shackleton@exxonmobil.com), Cemil Altin (cemil.altin@edftrading.com) or Karl-Peter Horstmann (karl-peter.horstmann@rwe.com).