AET response to the ACER publication on
“Recommendation to the Commission as regards the records of wholesale energy market transactions, including orders to trade, and as regards the implementing acts according to Article 8 of regulation (EU) 1227/2011”

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AET welcomes the consultation on the transmission of transaction and fundamental data " Recommendation to the Commission as regards the records of wholesale energy market transactions, including orders to trade, and as regards the implementing acts according to Article 8 of regulation (EU) 1227/2011" and that all operators may participate to the former one.

AET agrees with the fact, that insider information and market manipulation may distort the wholesale markets and that as a consequence measures should be taken to limit these phenomena.
Yet, the evaluation of the measures to be taken against insider information and market abuse should weight carefully the costs and benefits for the market and for the operators active in the market, as large administrative and operational burden for, in particular small(er) operators, may result being a access restriction and as a consequence have a negative impact on market liquidity and respectively competition.

General Comments
In order to give the possibility to detect market abuse, while considering operators' burdens, one should try to concentrate on transactions that may have significant impacts on market prices and volumes and thus may manipulate the market. Thus, market operators of any type (sellers, producers, traders independently if part of a group or not) with small transaction volumes that are not able to influence market prices should not be subject to the reporting obligation.
A small producer, for example, selling the production of its 10 MW production plant bilaterally to a trading company of the same group will not be able to influence the market price with this transaction. Furthermore, even the sale of the production by the same plant on the market (ca. 30-65 GWh annually for thermoelectrical producers), for example the Italian organised market with a daily transaction volume of 700-1'000 GWh and a yearly volume of 300 TWh, would be able to neither influence nor manipulate the market.
In addition, AET would consider it very useful that ACER clarifies that intra-group transactions are not scope of the transmission of transaction data, in line with regulation 1227/2011 where intra-group transaction are not foreseen.

Furthermore, we propose to limit the information within the transaction data to the very necessary information for evaluating the transaction, as every additional information does mean costs in time and system adaptations for the market operators. Thus, information concerning orders to trade and lifecycle information, which are very difficult to catch should not be included in the transaction information to be send.

Specific comments

Question1: Do you agree with the proposed definitions: If not please indicate alternative proposals

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AET agrees to foresee definitions in the implementation acts in order to enhance clarity of the regulation. Yet, concerning the definitions as proposed by ACER, the differences between agreement/contract and transactions are not very clear to us. We propose not to differentiate between contract and transaction, as such a differentiation does not represent present procedures in the market and the structure in the trading systems.
In addition, the definition of Market participant subject to reporting obligations' seems to differ from the definition of 'market participant' in Reg. 1227/2011. AET would consider it very useful that ACER clarifies that intra-group transactions are not scope of the transmission of transaction data.

Question2: 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? Do you agree with the proposal on the unique identifier for the market participants?
AET agrees to differentiate the records between standardised and non-standardised contract. Yet, as explained in the answer related to question 2, we would like to avoid a differentiation in contract and transaction. Furthermore, the information proposed in Annex II.1 and II.2 is very onerous for market participants. Information should be reduced to the most essential information in order to reduce costs for the market participants considering that the platea of market operators concerned is very large. Thus, information concerning the aggressor trader username might not always be available and may add little value to the detection of market manipulation.

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?
As discussed in the general comments, one should seek to reduce the cost deriving of the application of regulation 1227/2011 to a sustainable level. The collection of data directly from organized market places as energy exchanges or broker platforms for standardized contracts may aid to achieve this goal. The collection of offers to trade might be very burdensome to operators. Operators trading systems generally trace only information concerning concluded transactions. Offers may be present in other systems or in no system at all, as they may be present in any form (phone call, email, logs by organised markets platforms). By its very nature, offers and bids just represent the willingness to buy or sell, but only the concluded transactions may influence the market.
The dynamic updating of transaction information as proposed by ACER is very burdensome. Transmission of information of transactions should be able to be done in a single transmission. The indication of information as the cancellation of a

transaction may be very complex or even misleading (immediate cancellation of erroneous records, termination of the contract for reasons of insolvency, withdrawal of the contract in case of contractual breach) and are mostly not linked to market manipulation. Thus, lifecycle information should only be provided on request (once a case of market abuse seems to be detected).

Question 4: Do you agree with the proposed way forward concerning the collection of transaction 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.
Please refer to the answer of Question 2.
The dynamic updating of transaction information as proposed by ACER is very burdensome. Transmission of information of transactions should be able to be done in a single transmission. The indication of information as the cancellation of a transaction may be very complex or even misleading (immediate cancellation of erroneous records, termination of the contract for reasons of insolvency, withdrawal of the contract in case of contractual breach) and are mostly not linked to market manipulation. Thus, lifecycle information should only be provided on request (once a case of market abuse seem to be detected).

Question 5: Please indicate your views on the proposed collection of scheduling/nomination information. Should there be a separate Annex II.3 for the collection of scheduling/nomination data through TSOs or third parties delegated by TSOs.
TSOs dispose of all and always updated information concerning the nomination and scheduling of the transactions. The treatment of TSOs as data owners and a as consequence the elimination of indication of the scheduling/nomination in the data to be send by market operators would be very welcomed and would help efficient data collection by ACER.

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? What are your views on the idea of developing a product taxonomy and make the reporting obligation of standardised contracts dependent from the recording in the Agency's list of specified wholesale energy contracts?

Changes in the Agency's list should be announced with large advance (e.g. 6 monthes) as additional market operators may be subject to the transmission obligation and thus need to have time for the implementation.

Question 7: Which of the three options listed above would you consider being the most appropriate concerning the de minimis threshold for the reporting of wholesale energy transactions? In case you consider a de minimis threshold necessary, do you consider that a threshold of 2 MW as foreseen in Option B is an appropriate threshold for small producers? Please specify your reasons.
As explained in the general comments, a threshold for any type of market operator should be foreseen.
No discrimination should be applied between producers of renewable and non-renewable resources (as for example thermoeletrical producers), as small thermoeletrical producers may not influence the market in a more significant way as small renewable producers do.
Yet, the threshold of 2 MW as proposed seems to be too restrictive. Producers of plants of 10 or even 50 MW may not influence the market. In some markets plants of 10 MW or less are not considered as « relevant ». On the other hand, for similar reasons, the transparency information according to EC/714/2009 foresees a threshold of 100 MW for publishing planned and unplanned plant availability. Thus, AET would propose to apply a harmonized threshold of 100 MW or a maximum amount 1 TWh produced or traded per year, for the different data publication and transmission obligations concerning the transparency information according to EC/714/2009, fundamental data and transaction data.
Such a harmonization of thresholds would also facilitate implementation to operators and add clarity to the rules.
In order not be restrain complete market oversight, ACER might register all market operators, although in different registries, one registry for market participants with and one without obligation of transmission of transaction data.

Question 8 : Are there alternative options that could complement or replace the three listed above?

See answer to question 7 above

Question 9 : Do you agree with the proposed approach of a mandatory reporting of transactions in standardised contracts through RRMs?

Standardized data should be provided directly by the organised market places to ACER, as it may enhance harmonization of data formats, while easing the burden to market operators.
Nevertheless, as organised markets benefit a « monopolistic » situation by this approach, the service fee organised markets may ask for, should be subject to regulatory oversight.

The deadline of one working day is hardly feasible. In particular if one considers that bank holidays are not harmonized on a European Union level and thus a deadline of one working day may hardly be respected.
It would be proposed to enlarge the deadline to at least three working days.

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?

AET agrees on the proposal of ACER distinguish reporting channels for standardised and non-standardised contracts. Non-standardised contracts, by their nature, are more critical from a privacy point of view. ACER should thus offer the option to receive the information directly, to send the data by means of a third Party and foresee also the possibility that the lead company of a company group may send the information on behalf of the other companies of the group and by doing so exonerating the latter from the transmission obligation.

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

AET agrees that companies subject to either EMIR, and/or MIFID should be exonerated of transmission of transaction reporting according to regulation 1227/2011, and that such transaction data should be consulted by data exchange between ESMA and ACER instead.

Question 14: Do you agree with the proposed approach concerning reporting channels?

Please see response to the questions 9 and 12.

Question 18: Do you agree with the proposed approach for the reporting of regulated information? Please indicate your view on the proposed mandatory reporting of regulated information through RIS and transparency platforms. Should there remain at least one reporting channel for market participants to report directly to the Agency?

In case of transmission of data by means of RIS, considering that RIS in this case benefits of a kind of « monopolistic » situation, the service fee asked to market operators should be subject to regulatory oversight.

Question 19: The recommendation does not foresee any threshold for the reporting of regulated information. Please indicate whether, and if so why, you consider a reporting threshold for regulated information necessary.

Please see response to question 7

Question 20: What is your view on the proposed timing and form of reporting?

AET agrees to a unique transmission to the transparency platform both for the obligation according to regulation 1227/2011 and for the data publication obligation according to the transparency information according to EC/714/2009.

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