Energy UK Response to ACER Recommendations on Records of Wholesale Market Transactions

31st July 2012

Energy UK represents a wide spectrum of interests across the sector. This includes small, medium and large companies working in electricity generation, energy networks and gas and electricity supply, as well as a number of businesses that provide equipment and services to the industry.

General Comments

Energy UK welcomes the opportunity to respond to this consultation on the important topic of transaction reporting under REMIT. We agree that reliable reporting mechanisms are a key element in ensuring that ACER can monitor the European energy markets effectively. However, Energy UK is concerned that some of ACER's recommendations are disproportionate and could impose unnecessary costs on market participants.

The reporting requirements will generate extremely large volumes of data, which will represent a major challenge to ACER's resources, even with support from NRAs. As ACER recognises, REMIT explicitly states that reporting rules should be subject to cost-benefit analysis, that duplicate reporting should be avoided and that use should be made of existing data sources. In this light, Energy UK believes that ACER should review some of the proposals made in these recommendations, e.g. in relation to non-standard contracts, consistency with financial regulation, reporting of inside information and timescales for reporting.

To capture the required level of detail recommended by ACER would ultimately result in a reduction of market liquidity. It would also increase costs, firstly as IT trade capture systems would need to be modified to accommodate the extra information, but also because reduced liquidity could result in more retail, generation and renewable volumes going to imbalance rather than being traded. This would increase the underlying costs of the units and therefore the costs to the consumer.

Energy UK would particularly like to emphasise the following points:

- ACER's recommendations should focus on reporting as an element of market monitoring not as a means of furthering other objectives, e.g. increased transparency (which should be dealt with through specific Guidelines);

- Greater emphasis needs to be placed on measures for ensuring data security both within ACER and at platforms, given the highly confidential nature of the data;
- Reporting should focus on standard contracts and on completed transactions; non-standard contracts and orders to trade should be available to ACER but should not have to be systematically reported;
- Reporting should be phased in with a view to avoiding unnecessary costs;
- Intra-group transactions should be excluded from reporting requirements, as should general "route to market" agreements;
- The recommendations should clarify the treatment of bilateral contracts which are not traded via an exchange;
- Greater clarity is needed about the operation of RRMs and RISs; direct reporting should be an option for market participants and proportionate requirements should be set for becoming an RRM;
- It is important that REMIT reporting is consistent with the arrangements in EMIR and MiFID; ACER's proposals seem significantly different from ESMA's proposed approach for EMIR;
- The recommendations should not cover the reporting of inside information, as this should be dealt with through specific Guidelines on Fundamental Data Transparency;
- ACER should make clear that market participants are not liable in the event that they provide the requisite data to a platform operator but this is not then transmitted to ACER.

Specific Comments

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

Energy UK agrees with ACER that it is important to remove ambiguity on reporting requirements in the implementing acts. However, in our view, the definitions should be clearer and in some cases, e.g. "contract" and "tradable instrument", need to avoid overlap. Definitions should ensure consistency with other EU legislation, e.g. on financial regulation, and should take into account upcoming changes in, for instance, MiFID.

The definition of "transaction" is in our view too broad, as it would cover, for instance, intra-group and regulated transactions where there is no market."Transaction" and "agreement" also do not seem to identify separate activities. The definition of "agreement" is inconsistent with the use of the term elsewhere in the document. If something such as the EFET Master agreement is meant, it would be better to refer to a "framework agreement".

The term "order to trade" should relate to "a firm instruction to buy or sell a tradable instrument on an organised market place".

The term "wholesale energy products" is important for the scope of reporting and should be defined. Reference should also be made to the definition of "financial instrument" agreed on in MiFID II.

The definition “market participant subject to reporting requirements” goes beyond what is implied by REMIT. ACER should not try and capture intra-group transactions and the reference to “producers supplying their production to their in-house trading unit” should be removed. Suppliers buying energy in the wholesale market in order to supply customers should, in Energy UK’s view, not have to report and this needs to be clarified in the definition.

“Spot market” should be clarified as referring only to electricity and gas. Other commodities are not within the scope of data collection under REMIT.

The definition of “organised market place” should be aligned with MiFID II.

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? Do you agree with the proposal on the unique identifier for market participants?

Energy UK believes that there should be greater consistency between the requirements set out in Annex II and the technical standards adopted under EMIR. We agree with the proposal for a unique identifier code, provided that this is compatible with existing trading codes.

It should be noted that the list of traders should not be made public.

It is important that firms are allowed sufficient time to comply with the reporting arrangements which are decided. We would propose a phased approach, starting with standard contracts traded on organised platforms, moving on to bilateral standard contracts and, if reporting is deemed essential, finishing with bespoke contracts.

Although required by REMIT, there are difficulties associated with reporting ‘beneficiaries’. A single trade can have more than one beneficiary, as a position could be made up of volumes from different external and internal clients. Often the beneficiary is not known until full analysis is completed of the whole complex trading position. The reporting details should provide for some flexibility in this area and allow such transactions to be reported as “multiple beneficiaries” or “undetermined”.

Reporting orders is also problematic and we advise a different and shorter set of fields for this information, as well as the clarification of definition as discussed above. It is essential that orders can be easily captured by exchanges and platforms under existing arrangements without large additional IT costs.

Energy UK agrees that standard and non-standard contracts need to be differentiated, and indeed takes the view that reporting of non-standard contracts is unnecessary (see response

to Q.4 below) By definition, non-standard contracts cannot be reported in a standard way using automated processes and reporting will therefore impose considerable administrative burdens and additional costs.

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?

Energy UK agrees that orders to trade are best reported via organised market places. It is important that such market places take liability for the provision of data to ACER, as otherwise market participants will be forced to maintain direct reporting arrangements, which would be costly and inefficient. It is essential that ACER provides clarity on this point.

The recommendations do not appear to cover the case of bilateral standard contracts which are not concluded via organised market places. These should be reported direct to ACER by market participants.

The inclusion of orders to trade in the reporting requirements could result in a vast increase in the amount of data submitted, particularly as various elements are likely to be changed in the course of a transaction, potentially requiring regular updates. For this reason we propose that "orders to trade" are taken to mean only firm buy/sell instructions placed on an organised market place.

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 mentioned above, the reporting of non-standard contracts is likely to be extremely burdensome and of limited relevance to market monitoring, since any attempts to manipulate the market are much more likely to occur via standard products. Indeed, the definition of market manipulation set out in REMIT Art. 2.2 is clearly focussed on standard contracts. In addition, we think it entirely disproportionate to require actual contractual documentation to be submitted.

Energy UK therefore does not believe that non-standard contracts should be subject to reporting, though they should be available to regulators on request.

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?

Energy UK has some doubts about the value of systematic reporting of scheduling and nominations, but if this is required, TSOs are best placed to provide the information.

Duplicate reporting by market participants should be avoided. If scheduling/nomination data are required, there would be some logic in having a minimum level of harmonisation of the formats, but this could probably be better achieved through greater cooperation between TSOs.

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 product taxonomy and make the reporting obligation of standardised contracts dependent from the recording in the Agency's list of specified wholesale energy contracts?

Energy UK agrees with the broad approach set out in Recommendation 3. We support the high-level definitions adopted in Annex III and think that a list of contracts admitted to trading on organised market places would be useful. We agree that balancing contracts could be excluded at this stage.

Energy UK welcomes the suggestion on p. 15 that ACER could use a phased approach to implementing reporting for different contract types. This will help to ensure that costs are in line with benefits.

We are unclear why REMIT imposes reporting obligations on >600 GWh customers, as the scope for them to infringe the two REMIT prohibitions appears to be small. Under these circumstances, reporting requirements should be kept to a minimum

As mentioned in Q.4, we do not see the need to require reporting of non-standard contracts and Annex III should therefore focus on standard contracts. Point 7 in Annex III refers to cash-settled contracts, which we believe to be categorised as financial instruments under MiFID and therefore outside the scope of REMIT. It should be noted that OTC derivative transactions have to be reported to a trade repository in accordance with EMIR and that duplicate reporting to ACER should be avoided.

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.

Energy UK agrees that it is important to define clearly those market participants who have reporting obligations. We could accept a 2 MW threshold (Option B), but this should not depend on generation type as set out in Option C, since this would be discriminatory. Platform operators should report all trades without any de minimis thresholds.

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

If transactions are defined to exclude regulated transactions and non-standardised contracts do not have to be reported, this will reduce reporting burdens for many smaller players.

The threshold could be set in terms of economic value and number of contracts per market participant, which would be more logical as a transaction reporting threshold than a MW figure.

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

Energy UK believes that it will generally be more efficient and cost-effective for platform operators to report transactions in standard contracts. It is important that such operators take liability for the provision of data to ACER, as otherwise market participants will be forced to maintain direct reporting arrangements. ACER should make clear that market participants will not be liable for the failure of a third party, e.g. exchange or broker, to provide data where this has been approved.

Notwithstanding these comments, market participants should have the option of direct reporting to ACER. In any case, market participants will (presumably) have to report transactions in standard contracts which are not concluded through an organised market.

Question 10
Do you believe the Commission through the implementing acts or the Agency when registering RRMs 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?

A single data format could be beneficial, but should preferably be based on existing standards, with a view to minimising costs. Moreover, there are existing reporting services covering standard products, so a single format is not essential for pre- and post-trade transparency purposes. Any decision on reporting format should be subject to full consultation with market participants.

Question 11
Do you agree that market participants should be eligible to become RRMs themselves if they fulfil the relevant organisational requirements?

It is important that ACER clarifies the process and requirements for becoming an RRM. Market participants should be able to report transactions directly but should not be subject to onerous requirements, e.g. on data security and reporting timescales, if they are not offering services to third parties. For example, market participants should not have to report

transactions instantaneously; it should be possible to report on the whole day's activities en bloc at D+1 or D+2.

Requirements for market participants becoming RRMs should focus on compliance with ACER's communication protocols. It should also be ensured that at least one RRM not operated by a market participant is always available, so that data does not have to be submitted via a competitor. ACER should consult on the requirements for becoming a RRM as early as possible to ensure that this is a workable option for 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?

We agree that a distinction should be made. Recommendation 5 indicates that standard contracts should be reported at most one working day following execution. This would be a challenging timescale and very expensive to implement. Energy UK does not believe that this is necessary from the standpoint of effective market monitoring. We would propose D+2 as an alternative.

In our view, the reporting of non-standard contracts is likely to be extremely burdensome to market participants and of little relevance to market monitoring. Consequently, we do not believe that non-standard contracts should be subject to reporting, though they should be available to ACER on request.

If ACER does decide to require reporting of non-standard contracts, this should be limited to the standard elements and should not require updates as contractual terms change. Reporting frequency should not be less than one month.

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

Energy UK is concerned that the approaches of ESMA, as indicated in the recent consultation on EMIR technical standards, and ACER are rather different. This is likely to result in duplicate reporting of the same transaction to meet two varying sets of requirements. It is essential that the reporting obligations in relation to derivatives are harmonised. Market participants should only have to report to one regulator and the data should then be transferred automatically between them.

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

Yes, provided that RRM obligations are clearly set out, are proportionate and are subject to consultation (see response to Q.11).

In general, we would like to see more emphasis in the consultation on data security, both within trading platforms and within ACER itself, given the confidential nature of much of the material. ACER should, for instance, set out its processes for storing data, ensuring restricted access and dealing with data breaches.

Question 15
In your view, how much time would it take to implement the above-mentioned organisational requirements for reporting channels?

This depends on the extent of the requirements established by ACER. We believe that it would take one to two years to implement and test the necessary systems. Smaller players are likely to face the greatest challenge.

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

Energy UK believes that the reporting of inside information should be dealt with through specific rules on fundamental data transparency rather than through these recommendations. Guidelines on electricity transparency will shortly be issued and these are likely to propose the creation of a central platform for publication of data. In gas, Transparency Guidelines already exist, though these will probably need to be augmented.

Energy UK believes that it is disproportionate for ACER to require separate reporting of inside information under these circumstances, particularly given the express requirement in REMIT to use existing sources as far as possible and avoid double reporting. In any case, no standard yet exists for reporting inside information.

Question 17
Please indicate your views on the proposed way forward on the collection of regulated information.

We believe that ACER's reporting recommendations should be directed towards its function of market monitoring. Transparency should be dealt with through specific rules on fundamental data provision. ACER should encourage the use of centralised platforms for this purpose and should make maximum use of existing sources.

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 RISs and transparency platforms. Should there remain at least one reporting channel for market participants to report directly to the Agency?

We would like to see further detail on the RIS proposal. To ensure that unnecessary costs are not incurred, market participants should have the option of using RIS or reporting direct.

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.

100 MW per site is an acceptable threshold for electricity. Further work is needed to establish a comparable threshold in gas.

Question 20

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

This should be dealt with through detailed Guidelines on transparency.

31st July 2012