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ExxonMobil's Response to ACERs public consultation on the records of wholesale energy market transactions, according to Article 8 of EU Regulation (EU) No 1227/2011

Dear Sir/Madam,

ExxonMobil[1] is a longstanding participant in the European gas and power business involved across the supply value chain including upstream production, storage and processing, LNG receiving terminals and marketing. As such we are keenly interested in the ACER consultation published on 21st June 2012 concerning recommendations to the Commission on the records of wholesale energy market transactions.

ExxonMobil welcomes initiatives that improve the functioning of European energy markets and promote further market integration, efficiency of network operations, and increased market liquidity. We support measures which are market based, ensure a level playing field for all market participants and improve the harmonization of regulations across the EU.

We support appropriate transparency in wholesale energy markets and continue to be fully engaged in the REMIT implementation process. It will be important to ensure that effective market oversight is executed in a way that does not jeopardise on-going market liberalisation efforts under the third energy package and the continued functioning of wholesale energy markets. With this in mind we have a number of general comments, followed by specific answers to some of the consultation questions raised.

General Comments

The challenge of establishing effective market monitoring under REMIT is becoming clear: initial ACER indications are that as many as 0.5 million transactions a day may be captured and processed in the monitoring exercise. Allowing for ~40 fields per transaction this represents nearly 7.3 billion data points per year. A large part of the data will be considered commercially sensitive and must be protected and kept confidential at all times. Any failure to secure that objective would undermine confidence in the market and introduce reputational risk. With this in mind we make the following comments which, if acted upon, should help achieve the data security objective:

[1] Nothing in this response is intended to override the corporate separateness of individual corporate entities. The terms "Corporation," "company", "affiliate", "ExxonMobil" "our" "we", and "its" and cognates thereof, as used in this document, may refer to Exxon Mobil Corporation, to one of its divisions, to the companies affiliated with Exxon Mobil Corporation, or to any one or more of the foregoing. The shorter terms are used merely for convenience and simplicity.

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- **Broadening scope of REMIT:** Whilst we support improved clarity of the regulation this should be done within the boundaries of the legislation. (See answer to question 1 and annex 1 for further details on the boundaries between wholesale energy markets and upstream markets). The proposed definitions arguably broaden the scope of the primary REMIT regulation in a number of places and this should be avoided.

- **Orderly Implementation with focus on standardised contracts:** We support the implementation and capture of data for the purposes of market monitoring in a phased approach to ensure adequate arrangements are in place and that only relevant data is collected. Initially the focus must be on the collection of transaction data for standardised contracts held by electronic trading venues. These contracts represent the majority of transactions being conducted on wholesale energy markets and more importantly are the transactions that exhibit the most volatility. We understand a European register of contracts to be reported will be established and expanded accordingly as the scope of REMIT is clarified. Time should be allowed for market participants to establish arrangements for reporting of any such transactions from the time the contract is added to the European register, and we would suggest at least a 6 month period to meet new contractual reporting requirements.
- **Provision of LT contract PDFs:** The provision of pdf copies of contracts seems to be based on a perception that market monitoring cannot be effective without that data. We query whether that perception is well-founded. We also believe that effective market monitoring could be undermined where the complex arrangements set out in non-standard long-term contracts are misinterpreted for whatever reason, and that the risk of this is significant in the event of non-experts interpreting the provisions of such contracts. We would instead suggest disclosure of a minimum set of data (essentially nomination data) as a second implementation stage following that associated with standard contract transactions. Copies of the relevant contracts could be requested if needed for investigations or specific pre-investigative queries.

- **Thresholds on lifecycle information:** We believe confirmations, amendments and cancellations should only be captured on the basis of cost benefit analysis which identifies them as being sources of market manipulation and therefore warrants them being captured, or captured at least above a certain relevance threshold. In our experience confirmations, amendments and cancellations are typically insignificant from a volume perspective and therefore largely irrelevant to the market.

- **List of contracts:** This should specifically include physical forward contracts for the purposes of clarifying boundaries between financial market legislative proposals and REMIT.

We believe regulators and industry alike share a concern that the implementation of market monitoring must be managed in a way that maintains clarity at all times and avoids confusion at any stage. The lessons from implementation of the EU ETS[2] must be shown to have been learned. We hope the above comments and attached responses to certain consultation questions prove useful in this respect.

[2] http://www.iata.org/pressroom/airlines-international/october-2010/Pages/8d.aspx

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

We believe it is useful to provide additional definitions to improve the clarity of REMIT, and support consistency with 3rd package definitions, but only to the extent this falls within the boundaries of the REMIT legislation. With this in mind we would raise concerns about the broadening of the scope of the regulation in certain cases, and in addition the lack of clarity in a number of the draft proposed definitions, as follows:

"Supply": LNG facilities are mentioned in REMIT from the perspective of their regasification capability to bring natural gas to the Union; however LNG is a different product from natural gas which is increasingly global in nature, and capable of flexibility in how it is transported to respond to global market signals. This definition appears to broaden the scope of REMIT to essentially include LNG as a wholesale energy product. As per Article 2.4 of REMIT, LNG is not defined as a wholesale energy product. Please see Annex 1 for further illustrative details.

"Transportation": There is a broadening of the regulation under the proposed definition of "Transportation" which appears to extend the regulation beyond wholesale energy markets into the upstream market by including contracts relating to upstream pipeline networks. This creates uncertainty and would potentially include contracts for the processing of gas at a terminal to ensure it is of the right specification to enter the downstream distribution system (wholesale energy market). What is relevant from a REMIT perspective is the contract for getting the on-spec gas from the processing terminal to the downstream distribution system as this is the contract relevant to the supply of gas to the wholesale energy market.

"Standardised Contract": As regards the definition of a standardised contract we would suggest linking this to those standard agreements that are reported on electronic venues, as there may be standardised contracts which are purely bilateral and would require some form of manual reporting. In addition, just to refer to "standard agreements" in the definition without saying what these are is unhelpful.

"Market Participant subject to reporting obligations" This definition includes intra-group transactions of natural gas between the producing entity and the marketing entity. We do not support the capture of these transactions as they have no obvious relevance to the wholesale energy market. These transactions are typically based on inter-affiliate agreements which are set-up once, and remain in place long-term. Internal accounting systems simply process the non-discretionary transfer of natural gas between the relevant entities to allow sale of the gas on the wholesale energy market. We would strongly suggest removing these from the definition as they are essentially irrelevant. Alternatively the definition could be altered to indicate that if these transactions are somehow more than just automated pass through transactions i.e. they involve a trader making decisions then they would be included otherwise they are excluded on the basis no market manipulation is possible and that in fact these transactions are not conducted on the wholesale energy market and so out of scope. (In relation to insider trading it is noteworthy that such transfers do not use inside information (in the event any is held by one the affiliates party to such transaction), given the non-discretionary nature of the transfers.) We note that the EMIR regulation does address clearing of intra-group transactions. However it has exemptions for the mandatory clearing of intra-group transactions and that the regulatory technical standards have yet to define any reporting requirements in relation to intra-group transactions. In our view EMIR also has in any case completely different legislative objectives to REMIT in that firstly it focuses on OTC derivative contracts and not wholesale energy products and secondly that intra-group transactions in wholesale energy products have no bearing whatsoever on market manipulation or insider trading in wholesale energy markets, and therefore should be explicitly confirmed as being out of scope of REMIT.

"Transaction": Is use of the term "exchange" appropriate? It suggests a swap rather than a purchase/sale. Is it not the case that transactions are entered into pursuant to agreements, and that a transaction in this context is really simply the purchase or sale of a wholesale energy product? The reference to "agreement" in the definition of "Transaction" is (a) confusing and (b) almost certainly too narrow if "agreement" as used in this definition is intended to have the meaning given to "Agreement" in the consultation. Query whether the definition should instead refer to "Contract".

"Agreement": We would suggest that this definition be relabelled **"Master Agreement"** or **"Framework Agreement"** to avoid confusion with the definition of "**Contract**".

***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?*

We note that for the listed fields under Annex II.1 most of the data requested is already available through electronic reporting venues and therefore it would seem appropriate to source this data directly from those venues. However there maybe standardized contracts not reported on electronic venues which would require some other method of reporting and therefore we would suggest making the distinction between standardized reported contracts (i.e. already processed through an electronic trading platform) and those that are not, where first phase implementation would capture those transactions already being reported through electronic venues. Furthermore and specifically relating to field 15, it is not clear what is expected from this in relation to gas? We would suggest this field is clarified or dropped altogether from a gas perspective.

***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?*

We understand many market participants do not currently capture orders to trade in their systems, however brokers do and so under current arrangements it would make sense to gather this information from brokers. However, there should be flexibility for market participants to choose to update their systems and provide the information directly as it is not yet clear what fees would apply for the provision of this data by brokers, and it is likely companies would want to analyse this to determine the most cost effective approach.

***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.*

We have concerns around the information being requested in Annex II.2, in particular in relation to confidentiality of commercially sensitive data. Non-standardised transactions form a small part of the overall number of transactions conducted on the wholesale energy market, and whilst the volume associated with these transactions is typically larger than under standard contracts, there is a general move away from longer term non-standard contracts that is being driven by implementation of the third energy package and improved market liberalisation across Europe.

Furthermore the nature of the information in these contracts is highly commercially sensitive and there is already a requirement under the Article 44 of Directive 2009/73 for records to be kept for a period of 5 years. The requirement to provide a pdf copy and updates thereof will generate additional risks around breaches of confidentiality and represent an unnecessary regulatory burden on market participants.

We believe ACER should capture the non-standard contractual data as a later phase of the implementation of REMIT and simply concentrate on nomination data under those contracts. Market monitoring questions in relation to nominations under non-standardised contracts should be a secondary follow-up where anomalies arise. We believe this would be a far more effective and efficient means of dealing with these types of transactions.

Please see also our general comments in response to this consultation.

***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?*

The inclusion of physical forwards under REMIT is a critical issue for many market participants in the context of the broader ongoing financial market reforms. Annex III should as a minimum include a clarification that physical forward contracts are wholesale energy products.

***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*.

Collecting de minimis levels of information would serve no purpose under REMIT, and would result in additional costs, largely to ACER and NRAs, associated with the risks and system related costs for managing that information. With this in mind we would suggest considering thresholds to apply in certain circumstances, such as:-

- A market participant with a low number of transactions per month/year where the related volume of those transactions also falls below a certain threshold should be excluded. The determination of such a threshold could be based on analysis of the number of market participants and numbers of transactions perhaps sourced from brokers who are closer to this information.

- Amendments below a certain volumetric threshold may also be de minimis and could be considered out of scope to reduce the level of data being requested.

- As part of the establishment of the operational IT systems and links to RRM's, some initial analysis could be done (by ACER) perhaps by applying filters and tests on historical data to determine the appropriate threshold levels to be applied.

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

There are currently standardised agreements that are purely bilateral and as such are currently not conducted on an electronic trading venue. Mandating all standardised contracts to be reported through an RRM would require significant effort to move those bilateral standard contracts to an RRM. Further work would be required to do a cost benefit analysis on the best way of handling the reporting of these types of transactions, and these purely bilateral standard contracts currently not conducted on an electronic trading venue should not be included in first phase implementation.

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

Yes.

***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?*

Standardised contracts being reported end-of-next-business-day seems appropriate where they are conducted on an existing electronic platform. Where they are bilateral then some kind of manual reporting process would need to be established, further analysis would need to be conducted to understand whether end-of-next-business-day would still be practically achievable for these contracts and would be dependant to some extent on what interfaces are available and established at the time the obligation starts.

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

Yes but we would encourage further clarity on the inclusion of physical forwards as financial instruments in Annex III.

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

Article 8.5 of REMIT stipulates this information should preferably be collected from existing sources and we believe that ACER should maximize its efforts to avoid asking market participants to initiate an additional information stream.
Regulated information is already published via TSO/SSO/LNG terminal forums (in aggregated form or not) and therefore is made available by market participants to TSOs/SSO/LNG terminals in the context of Regulation 714/2009 and Regulation 715/2009.

***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?*

Flexibility in reporting should remain.

***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.*

See answer to question 17 which refers to existing reporting of regulated information.

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

Please see opening general comments and specific answers to questions that follow. The key point is to ensure that where a requirement to report a contract is introduced by adding the contract to the ACER Europe register, time should be allowed for market participants to make arrangements to be able to meet this requirement.

We hope the foregoing comments prove useful in the development of ACER's final recommendations to the Commission. For further information, or if you wish to discuss the above, please contact Barry Shackleton (+44 1372 22 2715 barry.j.shackleton@exxonmobil.com).

Kind Regards,

Barry Shackleton
Regulatory Associate

ANNEX 1
Upstream Markets vs Wholesale Markets Illustrated

The diagram below illustrates the boundaries between upstream markets and wholesale energy markets in relation to the applicability of REMIT and transaction reporting.