31 July 2012

FORTUMS RESPONSE TO ACER PUBLIC CONSULTATION DOCUMENT

Recommendations 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 REMIT

Dear Madam, Sir,

Fortum welcomes the opportunity given by the Agency for the Cooperation of Energy Regulators (ACER) to respond to the Recommendations 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 REMIT. We agree to several of the issues that ACER has made and pointed out. We have however found some serious concerns that we would like to point out to ACER in our answers below.

Fortum's purpose is to create energy that improves life for present and future generations. We provide sustainable solutions that fulfill the needs for low emissions, resource-efficiency and energy security, and deliver excellent value to our shareholders. Our activities cover the generation, distribution and sales of electricity and heat as well as related expert services. Fortum's operations focus on the Nordic countries, Russia, Poland and Baltic Rim area. In the future, the integrating European and fast-growing Asian energy markets provide additional growth opportunities.

Main concerns:

- In Fortum's view **non-standardised contracts should not be reported at all**.
- Fortum believes that **transactions reporting should be done by the organised market places or clearing house** in order to increase efficiency.
- Fortum points out that **double reporting should be avoided** to secure efficiency.
- Inside information should be **reported through public platforms**, where ACER and/or NRAs can collect the data efficiently

Should you have any questions on this document, please do not hesitate to contact Petri Eväsoja (petri.evasoja@fortum.com), Senior Portfolio Manager at Fortum Trading and Industrial Intelligence or Karl-Henrik Nordblad (karl-henrik.nordblad@fortum.com), Compliance Officer at Fortum Physical Operations and Trading.

Yours sincerely,

Petri Eväsoja
Senior Portfolio Manager
Fortum Trading and Industrial Intelligence

31 July 2012

Answer to Public Consultation Document

"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) No 1227/2011"

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

Answer 1
The definitions given to the terms 'Transaction' and 'Agreement' actually refer to the same thing. In the language used on the market, a 'transaction' or a 'trade' is different from an 'agreement'. In fact, a 'transaction' or a 'trade' is something that is concluded *pursuant to* a (framework) agreement or on an organised market place.

In our view, additional terms to be defined are "Initiator Trader" and "Agressor Trader" (See annex II.1 Field no 6 and 7). Also, regarding the definition of "Standardised contract", we consider that the term "standard agreement" should be defined.

Further, the term "Transparency information" used in Section 4 of the Consultation document should be defined. Is this term meant to be a synonym to the term 'fundamental data' referred to in the Fundamental Electricity Data Transparency guidelines (FEDT)?

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?

Answer 2
We have no comments on the details to be included in the records as such. However, we consider that non-standardised contracts should not be reported at all (see answer to question 4).

We also believe that internal transactions within a company, done bilaterally between two portfolios belonging to the same group, if orders are not visible to external parties, should not be required to be reported. If orders and transactions are not visible to third parties, no market manipulation should be suspected. But the rules should state explicitly what applies to internal transactions.

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?

31 July 2012

Answer 3
We agree with the idea that orders will be collected from organised market places.

It is however somewhat unclear in the Consultation document whether also bilateral orders, related to products traded on an organised market place, but visible only to the potential buyer and seller should have to be reported. We do not agree with that, since that would impose an excessive burden of recordkeeping of orders on market participants. We do not agree with the statement that e.g. orders by telephone are stored in the market participant's energy trading and risk management software. Or does "valid orders" in the text mean transactions?

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.

Answer 4
We do not think that non-standardised contracts should have to be reported. That would be very burdensome on market participants because this would require a lot of manual work. Also, non-standardised contracts are not relevant from a REMIT point of view. There are also confidentiality issues to consider and it would need to be ascertained that no business secrets or other confidential data can be leaked through the reporting procedures.

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.

Answer 7
Any possible *de minimis* rule should treat market participants equally irrespective of where in the EU they are functioning and which market rules/set-up apply to them. It is questionable to treat differently those who sell at feed-in tariffs and those e.g. receiving a feed-in premium on top of market price. We do therefore not support option C.

Option A would be the preferred option.

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

Answer 9
We agree that for transactions done on an exchange or platform or cleared in a clearing house it is best that the organised market places or clearing house reports these trades to increase efficiency. To make this system function efficiently, it should be made clear in the ACER Recommendation that the market participants are considered to be in compliance with their reporting obligations

where they have concluded a contract with an RRM stating that the RRM is in charge of the given reporting obligation on behalf of the market participant.

In any event, for bilateral trades not cleared, if these should be reported, we believe that there should be some easy way for market participants to report these without having to pay fees to an RRM or investing in expensive systems compatible with ACER's systems, if the number of these transactions is limited. For example an internet based reporting form could be one option.

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

Answer 11
Yes we agree, market participants should be able to become RRMs themselves. However, it should also be possible to report transactions without being an RRM, if a market participant only has a limited number of transactions not done through organised market places.

Question 12
In your view, should a distinction be made between transactions in standardised and nonstandardised contracts and reporting of the latter ones be done directly to the Agency on a monthly basis?

Answer 12
Yes, we think that a distinction should be made because the same reporting templates cannot be used for the reporting of standardised and non-standardised contract given the varied nature of the latter ones. Indeed, given the variety of non-standardised contracts, we consider that they should not be reported at all (see answer to question 4). Should they be reported, the number of mandatory fields should be very limited. Also, for confidentiality reasons we do not support any standard procedure of submitting contracts to the authorities. Rather, this should be done in limited cases only, at the specific request of the authorities.

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

Answer 13
We agree with the proposed approach for avoidance of double reporting as long at it is clearly enough defined and there is no room for differing interpretations between different authorities.

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

31 July 2012

Answer 16
Yes, we agree on the described approach. Distinction between inside information and transparency information adds clarity because of the different nature of the information. We presume that Transparency information includes or is equal to 'fundamental data' referred to in the Fundamental Electricity Data Transparency guidelines (FEDT)?

We appreciate the statement that Transparency information should be reported as individual non anonymous data, while published only as aggregated anonymous data. And we presume that this principle apply also for the transparency data defined in FEDT, i.e. actual load and generation data.

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

Answer 17*The enduring solution for disclosure of inside information should be through public platforms (RIS or already existing platforms like Nord Pool Spots UMM service), not companies' websites. No direct reporting to the ACER and NRAs should be required, except for reporting pursuant to art. 4.2 and 3.4.b*
Most of the Transparency information should be collected through the TSOs, where the information is already available, often in both individual and aggregated format.

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?

Answer 18
We consider that ACER should not impose additional duties and responsibilities on market participants compared to those established by REMIT. This applies in particular to the reporting of inside information. We agree, that if inside information is to be reported to ACER it should definitely be done through the channels that already collect this information, e.g. in the Nordics through Nord Pool Spot. When deciding on the format for receiving this information it should be considered whether the existing market places/platforms collecting this information could submit the information in the existing format, to avoid additional expenses. We want to draw ACER's attention to Article 8(5) of REMIT which clearly states that the reporting obligations on market participants shall be minimised by collecting the required information or parts thereof from existing sources where possible. We consider that it should be made clear in the ACER Recommendation that the market participant has fulfilled its duty to disclose inside information when it has published the information on accepted platforms in accordance with REMIT Article 4 (1).

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

31 July 2012

Answer 19
Applicable thresholds concerning transparency information have been in some cases already identified through market practices. In particular this applies to the electricity market where data regarding production units of at least 100MW are usually subject to disclosure of availability and production data. Consistency between transparency threshold and inside information threshold is key to contribute to simplify the process of reporting.

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

Answer 20
We do not agree with the following ACER statement in section 4.3.1: *„The implementing acts could foresee that whenever market participants disclose regulated information, they shall at the same time file that information with the Agency and make it available to the competent national regulatory authorities without delay."*
Information should be collected through existing platforms by ACER and /or NRA at a time consistent with their monitoring activity.

We believe that draft recommendation #10 is too open. Fall-back procedures, exceptional circumstances etc. should also be described.