

**6<sup>th</sup> Meeting of the ACER Wholesale Market Surveillance  
ad hoc Expert Group**

Wednesday 22 May 2013 from 10:30 to 16:00  
CEER premises, Rue le Titien 28, Brussels, Belgium

**Minutes**

**(Chatham house rules, no names basis in quotes)**

Regulators			
Axel	Biegert	BNetzA (Germany)	Co-chair of the WMS TF
Pablo	Villaplana-Conde	CNE (Spain)	Co-chair of the WMS TF
Tommy	Johansson	ACER	
Elio	Zammuto	ACER	
Erik	Rakhou	ACER	
Geoff	Boon	E-Control (Austria)	
Louise	van Rensburg	Ofgem (UK)	
Charlotte	Roig	CRE (France)	
Aniko	Tóthné Kiss	HEO (Hungary)	
Austin	Sharman	Ofgem (UK)	
Ross	MacDonald	E-Control (Austria)	

**Wholesale Market Surveillance Expert Group members**

Wolfgang	van Rintelen	EEX
Florence	Vary	EPEX Spot
A.J.	Kool	ICE/Endex
Jorge	Simao	OMIP
Erik	Korsvold	NASDAQ OMX Commodities
Christian	Giswold	Nord Pool Spot
Andrea	Stejskalova	OTE
Theo	van Houten	APX (observer)

## **1. Opening of the meeting**

The meeting was opened by ACER and the co-chairs of the WMS Task Force. The agenda for the meeting was approved and the draft minutes of the previous meeting were approved subject to one minor amendment suggested by a member of the expert group. The final minutes will be sent via email to the members of the expert group and will also be uploaded to the relevant folder on the website.

## **2. Information on recent developments**

ACER informed the experts about the status of the MoU between ACER and organised market places. ACER's ambition is to invite the organised market places, including both energy exchanges and brokers, to sign the MoU in the course of the summer which will allow for a first meeting with the signatories of the MoU during the second half of 2013. In addition, ACER briefly informed the public consultations concerning technical requirements for data reporting under REMIT, the ongoing work with the 3<sup>rd</sup> edition of the ACER Guidance on the application of REMIT, the status of the ACER pilot project for data collection and market monitoring and the timeline for the adoption of the REMIT implementing acts by the Commission.

## **3. Market Surveillance practice by Energy Exchanges**

One member of the group presented an overview of how market surveillance is conducted on its market place. The presentation was much appreciated and followed by questions and a brief discussion.

## **4. Development of a wholesale energy market monitoring approach**

ACER introduced the discussion on the market monitoring approach by thanking the members of the expert group for their valuable contributions that was submitted to ACER via email prior to the meeting. The topics suggested by the experts to be included in the market monitoring approach are in fact topics on which ACER agrees that we should share our views and experiences in order to learn from each other and thus to contribute to a European wide monitoring approach. ACER confirmed that it is committed to work together with the expert group, as well as with organised market places under the MoU, to develop a common approach to market monitoring under REMIT. The results of this cooperation will be further specified in documents, either public ones such as the ACER Guidance or confidential ones, depending on the nature of the topics. However, ACER made clear that all topics discussed under the umbrella of the market monitoring approach will not be documented in one single document. In general, the expert group supported ACER's approach. Regarding the previously discussed market monitoring handbook, the experts shared ACER's view that the focus at this stage should be on the content of the market monitoring approach. The experts stressed that it is important that ACER remains transparent as regards which documents will be shared and which documents will be accessible only to ACER and NRAs.

Following the initial discussion on the topics of the market monitoring approach, two members of the expert group presented their views on general principles for market monitoring at energy exchanges. In the presentations, the experts highlighted what they consider as best practices for an efficient and effective monitoring of wholesale energy markets. In this context, it was suggested by the experts that ACER should consider to provide further Guidance on the application of Article 15 of REMIT, regarding e.g. at what stage in the monitoring process persons professionally arranging transactions should notify NRAs of suspected breaches of REMIT, and what kind of information to include in such notifications. It was also mentioned by the experts that they would appreciate feedback from the NRAs on the notifications made so far.

After the presentations from the experts, an NRA representative gave a presentation on some first thoughts concerning the development of a general framework to define different types of market abuse (and more specifically on types of market manipulation). ACER and NRAs considers that the development of such a framework would contribute a better understanding of market abuse practices, and also that it would help to identify practical indicators and alerts to detect potential abuse. Furthermore, a common understanding of market abuse practices would minimise the risk of different understandings of what constitutes market abuse under REMIT between ACER and NRAs (and organised market places), optimise the use of resources for market monitoring, and promote cooperation between “monitoring units”. In general, the experts agreed with ACER and NRAs that it is important to ensure a common understanding of the market abuse provisions in REMIT. In the more detailed discussion that followed, the issue of unintentional market abuse was raised and it was discussed how this should be treated under REMIT. In this context, it was suggested that ACER addresses the issue of unintentional market abuse in the ACER Guidance.

As a conclusion to the discussion on the wholesale energy market monitoring approach, it was suggested by the members of the expert group to focus the future work in the WMS ad hoc expert group on the following two main issues; (a) the understanding of market abuse provisions in REMIT, including the use of practical examples (“content”), and (b) the understanding of the obligation under Article 15, including when and how persons professionally arranging transactions shall interact with NRAs and ACER (“processes”).

#### **5. Application of the exemption from the prohibition of insider trading according to Article 3(4)(b) of REMIT**

An NRA representative gave a presentation on the application of the exemption to the prohibition of insider trading according to Article 3(4)(b) of REMIT. The presentation focused on the questions of who can use the exemption, what is an immediate physical loss and which criteria have to be fulfilled such that the market participant is allowed to use 3(4)(b). Following the presentation, there was a brief discussion where the experts expressed their views concerning the general applicability of the exemption, in particular with regards to who can use the exemption and during which time span the exemption may be applied.

## **6. Experiences of the first year of the WMS expert group**

The members of the expert group shared their experiences from the work so far within expert group. The general view was that the expert group provides an important forum to freely discuss issues related to market monitoring under REMIT. Several of the experts stressed that they find it important that the group continues to meet in the future. It was highlighted that the work can be further improved by ensuring that work is done also between the meetings, e.g. by preparing presentations or notes that can be discussed in detail during the meeting. The experts also expressed a wish to locate at least some meetings not in Ljubljana but in locations that can be reached with less travel efforts. It was also suggested to have a 1,5 day meeting once a year to allow for more in-depth discussions. During this discussion, the experts suggested possible topics to focus on in the future, including data reporting, different types of market manipulation and insider trading, effective disclosure of inside information and the obligation on persons professionally arranging transactions under Article 15.

## **7. AOB, next meetings**

The next meeting of the WMS ad hoc expert group will take place in Ljubljana on 17 September 2013.

On the basis of the discussions during the meeting, it was agreed that the main focus for the next meeting will be the understanding of the definition of market manipulation in REMIT. One of the experts volunteered to prepare a presentation on the different types of market manipulation, based on the definition in REMIT.

ACER will as soon as possible send an email to the expert group outlining the agenda for the next meeting, including information on what needs to be done in terms of preparation for the meeting.