

**ISDA**  
International Swaps and  
Derivatives Association, Inc.  
One Bishop's Square  
London, E1 6AO  
Tel: 44 (0) 20 30883550  
Website: www.isda.org

**FOA**  
Futures and Options Association  
2nd Floor  
36-38 Botolph Lane  
London, EC3R 8DE  
Tel: 44 (0) 20 7929 0081  
Website: www.foa.co.uk

**BBA**  
British Bankers Association  
Pinners Hall  
105-108 Old Broad Street  
London EC2N 1EX  
Tel: 44 (0) 20 7216 8800  
Website: www.bba.org.uk

**EFET**  
European Federation of Energy Traders  
Amstelveenseweg 998  
1081 JS Amsterdam  
Tel: +31 (0)20 5207970  
Website: www.efet.org

**LIBA**  
London Investment Banking  
Association  
6 Frederick's Place  
London, EC2R 8BT  
Tel: 44 (0) 20 7796 3606  
Website: www.liba.org.uk

**SIFMA**  
Securities Industry and  
Financial Markets Association  
St Michael's House  
1 George Yard  
London, EC3V 9DH  
Tel: 44 (0) 20 7743 9300  
Website: www.sifma.org

Commissioner Andris Piebalgs  
European Commission  
Rue de la Loi 200  
1049 Brussels

14 August 2007

Dear Commissioner Piebalgs,

**Subject: Commission proposals on transparency in wholesale gas and electricity markets**

The co-signatories to this letter are writing to you to express serious concerns regarding a specific element of the forthcoming Third Energy Package, scheduled for adoption on 19 September. We understand that inter-service consultation on this initiative is beginning today, 14 August, and will last three weeks.

The concerns relate to a proposal, which we understand has been introduced at a late stage, to apply significant new post-trade transparency and reporting requirements to virtually all parties engaged in trading of wholesale gas and electricity, and gas and electricity derivatives.

The co-signatories emphasize that they share the Commission's vision of enhancing liquidity, efficient price formation, prevention of market manipulation and abuse, and open, competitive markets. In this respect we welcome the Package's other proposals regarding transparency of physical infrastructure (including electricity transmission and generation; gas transportation and storage facilities which are open to third party access) which have been carefully developed over recent years in consultation with relevant stakeholders.

**Our concerns relate to the late stage proposals to significantly extend this regime without due consultation or impact assessment (we detail concerns on process later in this letter).**

**We believe the proposals raise complex issues. In their current form they risk damaging liquidity in wholesale electricity and gas markets. We oppose their adoption if the scope extends as described. Set out below are important substantive issues requiring more consideration<sup>1</sup>:**

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<sup>1</sup> These material considerations are outlined in more detail in the annex to this letter.

- Lack of evidence of market failure or inefficiency in commodity derivative markets. We draw your attention to the review of transparency in financial markets including commodity derivatives by DG Internal Market (MARKT) and the recent report by the Committee of European Securities Regulators (CESR).<sup>2</sup>
- Reflection on whether transparency and reporting requirements could result in unintended consequences for developing markets, such as low liquidity, less efficiency and increased volatility. In particular, consideration needs to be given to the exact scope of transparency requirements that is desirable, in light of the information that is already commercially available on the market.
- Confusion caused by overlap/conflict of the proposals with the Market Abuse Directive;
- The impact on the EU's competitive position with third countries e.g. Switzerland;

In addition to the substantive concerns above, the co-signatories have serious reservations regarding the **polymaking process**:

- We are concerned that the proposals on commodity derivatives have not been subject to consultation of the associations representing the technical experts in these markets (the FOA and ISDA). The process used does not reflect the Commission's stated commitment to thorough consultation<sup>3</sup>. This sets a worrying precedent. While EFET was consulted on proposals on wholesale market transparency, it was not consulted as regards the application of transparency and transaction reporting to such a range of market participants nor concerning their application to derivatives markets.
- We do not believe that thorough Impact Assessment and Cost-Benefit Analysis have been deployed for the extended transparency and reporting requirements proposals.
- There is currently overlap with several workstreams undertaken by the Commission regarding commodity derivatives and physical markets, posing a risk of dual policy-making and regulation.<sup>4</sup>
- Co-signatories have been unable to comment on a detailed text. The January 2007 Energy White Paper<sup>5</sup> gave no indication of regulation of derivatives markets.

**The co-signatories would like to propose a solution** based on shared responsibility and input from DG TREN and the other relevant Directorates within the Commission working on issues affecting electricity and gas markets. Pooling of resources and responsibilities will promote an

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<sup>2</sup> DG MARKT has indicated it sees no case for further transparency requirements for commodity derivatives trading. The recent (9 August) CESR report providing technical advice to the Commission on non-equity transparency, stated that CESR is "not aware of any transparency-related concerns in the derivatives markets".

<sup>3</sup> The Commission's 2002 "General principles and minimum standards for consultation of interested parties by the Commission" (COM (2002) 704), committed to ensuring that "relevant parties have an opportunity to express their opinions" and that the consultation should ensure involvement of "those affected by the policy" and "those...involved in implementation of the policy" in order for it to be "equitable". The Commission also committed to ensuring "adequate awareness-raising publicity" and adapting its "communication channels to meet the needs of all targets."

<sup>4</sup> These include

- DG TRENS' review.
- DG COMP's implementation of the recommendations of its sector enquiry on energy.
- DG MARKT's review of commodity firm and derivatives regulation - mandated by MIFID.
- DG MARKT's review on transparency for non-equities (inc. commodity derivatives) – mandated by MIFID.
- CESR's work programme on market abuse (including definition of inside information in commodities).

<sup>5</sup> (SEC(2007) 12)

approach taking account of all considerations necessary for efficiency in these markets. Involving all relevant stakeholders will ensure detailed understanding of these markets and promote industry confidence in this process. Benefits would be seen in quality of legislation, transposition, implementation, and compliance (if legislation is necessary). The co-signatories are keen to cooperate in such a review, and would also be willing to consider commissioning independent research on these issues (in cooperation with the Commission).

The co-signatories underline that they have always taken a constructive approach to engaging with EU legislators concerning regulation and have often been major beneficiaries of European regulation. **We would welcome the opportunity to work with DG TREN and other relevant Commission Directorates, to find the optimal solution for transparency in wholesale markets electricity and gas markets.**

Yours sincerely,

**The International Swaps and Derivatives Association (ISDA)**, please contact Greg Zerzan (gzerzan@isda.org)

**The Futures and Options Association (FOA)** please contact Anthony Belchambers (belchambers@foa.co.uk)

**British Bankers Association (BBA)** please contact Ross Barrett (ross.barrett@bba.org.uk)

**European Federation of Energy Traders (EFET)** please contact Peter Styles (peter.styles@efet.org)

**London Investment Banking Association (LIBA)** please contact Katharine Seal (katharine.seal@liba.org.uk)

**The Securities Industry and Financial Markets Association (SIFMA)**, please contact Bertrand Huet (bhuet@sifma.org)

*Cc: The College of Commissioners;*

*Secretary-General of the European Commission, Ms. Catherine Day;*

*Director-General for Energy and Transport, Mr. Matthias Ruete;*

*Director-General for the Internal Market, Mr. Jorgen Holmquist;*

*Director-General for Competition, Mr. Philip Lowe;*

*Director-General for Enterprise and Industry, Mr. Heinz Zourek;*

*Director, Better Regulation and Administration (B), Secretariat-General, Mr. Hubert Szlaszewski;*

*Director, Security of Supply and Energy Markets (C), DG Energy and Transport, Mr. Heinz Hilbrecht;*

*Director, Financial Services Policy and Financial Markets (G), DG Internal Market, Mr. David Wright;*

*Director, Financial Institutions (H), DG Internal Market, Mr. Elemer Tertak;*

*Director, Energy, Basic Industries, Chemicals and Pharmaceuticals (B), DG Competition, Mr. Hubert Ungerer;*

*Director, Regulatory Policy (C), DG Enterprise and Industry, Mr. Michel Ayrat.*